

SAMOA

INTERNATIONAL BANKING ACT 2005

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PART I - PRELIMINARY

Short title and commencement

- 1.(1) This Act may be cited as the International Banking Act 2005.
- (2) This Act shall commence or any part or section thereof on the day or days nominated by the Minister.
- (3) Notice of commencement of this Act or any part or section thereof shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

Interpretation

2. In this Act, unless the context otherwise requires -

“accounting records” in relation to a company includes, whether maintained in Samoa or elsewhere, such working papers and other documents and records kept in a computer, on magnetic tape or by means of any other storage device used in electronic data processing by or on behalf of the company, as are necessary to explain the methods and calculations by which accounts of the company are made up;

“accounts” means profit and loss accounts and balance sheets, and includes notes (other than directors’ reports) attached to, or intended to read with, any of those profit and loss accounts or balance sheets;

“approved auditor” means a chartered accountant, certified public accountant or other professionally qualified accountant who has been approved by the Inspector and who is a registered company auditor under the International Companies Act 1987;

“authorised person” means any person authorised by the Inspector pursuant to section 5(6);

“banking business” means the business of banking in all its customary forms, branches and departments including that of a savings bank and without limiting the generality of the foregoing also includes -

- (a) borrowing, receiving or taking up money at interest or otherwise on current account, savings account, deposit account or other account and which according and subject to arrangement is repayable on the cheque, draft, order or authority of the customer;
- (b) lending, giving credit at interest or otherwise with or without security to any person;
- (c) discounting, buying, selling and dealing in bills of exchange, promissory notes, coupons, drafts, bills of lading, warrants, debentures, certificates, script, hire purchase agreements, and other instruments and securities whether transferable or negotiable or not;
- (d) granting and issuing letters of credit and circular notes;
- (e) buying, selling and dealing in bullion and specie;
- (f) dealing in foreign or overseas exchange;
- (g) acquiring or holding or issuing on commission, debentures, debenture stock, bonds, obligations, securities and investments of all kinds;
- (h) negotiating of loans and advances;
- (i) becoming surety for the payment of money or performance of contracts or obligations by any person;

- (j) receiving money and valuables on deposit or for safe custody or otherwise;
- (k) collecting and transmitting money and securities;
- (l) managing property and transacting all kinds of agency business commonly transacted by bankers; or
- (m) carrying on such other business outside the customary scope of the business of banking as the Minister may from time to time authorise or approve in writing.

“Central Bank” means the Central Bank of Samoa established pursuant to the Central Bank of Samoa Act 1984;

“chief executive” in relation to a company, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the company;

“company” means a body corporate with legal personality recognised for most purposes as separate from that of its members, constituted, incorporated or formed under the laws of Samoa or in accordance with the laws of any other country or place, including public and private corporations;

“controller” in relation to a company means:

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary; or
- (b) a shareholder controller or an indirect controller;

“Court” means the Supreme Court of Samoa;

“director” means any person occupying the position of director (by whatever name called) of a company and includes any person in accordance with whose directions and instructions the directors of a company are accustomed to act or who has been held out by a company to be a director;

“dollar” means a unit of the currency of the United States of America;

“domestic banking business” means banking business transacted by, for, and in respect of residents of Samoa, but does not include any company incorporated or registered under the International Companies Act 1987, any trustee company registered under the Trustee Companies Act 1987, any international trust registered under the International Trusts Act 1987, any international partnership or limited partnership registered under the International Partnership and Limited Partnership Act 1998 or any segregated fund international company registered under the Segregated Fund International Companies Act 2000;

“financial interest” means an investment in the equity, ownership or control of a company;

“fit and proper” has the meaning given in section 3;

“holder” means, in relation to a licence, the person to whom it was issued;

“indirect controller” in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other body corporate of which that company is a subsidiary, or any controller of that company is accustomed to act;

“Inspector” means the Inspector of International Banks appointed under section 5 and includes any person acting under the Inspector’s authority;

“international banking business” means any banking business conducted in any currency, including the currency of Samoa, transacted by, for or in respect of non-residents and with the approval granted pursuant to section 12, can include domestic banking business;

“Judge” means a Judge of the Supreme Court of Samoa;

“licence” means a licence granted pursuant to Part II of this Act;

“licensee” means any company holding a current valid licence pursuant to the provisions of this Act;

“manager” in relation to a company means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company -

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the company;

“Minister” means the Minister of Finance;

“Money Laundering Authority” means the Money Laundering Authority appointed under the Money Laundering Prevention Act 2000;

“non-resident” means a person not ordinarily resident in and not domiciled in Samoa who does not engage in a trade or business in Samoa, and includes any company incorporated or registered under the International Companies Act 1987, any trustee company registered under the Trustee Companies Act 1987, any international trust registered under the International Trusts Act 1987, any international partnership or limited partnership registered under the International Partnership and Limited Partnership Act 1998 or any segregated fund international company registered under the Segregated Fund International Companies Act 2000;

“officer” in relation to a licensee includes any director, secretary or employee of the licensee;

“person” has the same meaning as provided in section 2 of the International Companies Act 1987;

“residence” means ordinary residence or usual place of abode and the words “to reside” or

“resident” shall have corresponding meanings;

“shareholder controller” in relation to a company means a person who, alone or with associates, is entitled to exercise or control the exercise of 10 per cent or more of the voting power in general meeting of that company or of any other body corporate of which that company is a subsidiary;

“this Act” includes regulations made under this Act.

Meaning of “fit and proper”

3. For the purposes of this Act, in determining whether a person is a “fit and proper” person, regard shall be had to all circumstances, including that person’s -

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

PART II - LICENSING OF INTERNATIONAL BANKS

Unlicensed international banking prohibited

4.(1) No person shall transact any international banking business from within Samoa, whether or not such business is carried on in Samoa, unless the person is the holder of a valid international banking licence issued under this Part.

(2) Every person commits an offence against this Act who, not being duly licensed under this Part -

- (a)* acts as an international bank, whether on the person's own account, in partnership or otherwise;
- (b)* holds themselves out as being licensed or otherwise entitled to act as an international bank;
- (c)* takes or uses any name, title, addition, or description implying or likely to lead any person to believe that the person is licensed or otherwise entitled to act as an international bank; or
- (d)* carries on business as an international bank's agent, or in any way advertises or holds themselves out as an international bank's agent.

(3) In any proceedings in respect of an offence under this section, the following shall, in the absence of proof to the contrary, be sufficient evidence of the matters contained therein -

- (a)* a certificate signed by the Minister to the effect that at the time of the alleged offence the defendant was not the holder of a valid international banking licence; and
- (b)* a certificate signed by the Minister to the effect that the defendant was at the time of the alleged offence acting as an international bank, or holding themselves out in such capacity.

(4) Any person convicted of an offence under this section shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding 50,000 dollars or to both.

Inspector of International Banks

5.(1) The Inspector of International Banks shall be appointed by the Minister for the regulation and supervision of licensees.

(2) There shall be appointed by the Minister from time to time such Deputy Inspectors as are required for the purposes of this Act.

(3) Subject to the control of the Inspector, a Deputy Inspector has and may exercise the powers, duties and functions of the Inspector under this or any other Act.

(4) It is the duty of the Inspector -

- (a)* to maintain a general review of international banking practice in Samoa, including the maintenance of adequate policies and procedures for "know your customer" and anti-money laundering;
- (b)* whenever the Inspector thinks fit to conduct on-site examinations and off-site supervision, by way of the receipt of regular returns or in such other manner as the Inspector thinks necessary, of the affairs or business of any licensee for the purpose of satisfying the Inspector that the provisions of this Act are being complied with and that the licensee is in a sound financial position and whenever the Inspector thinks fit to report to the Minister the results of every such examination;
- (c)* to assist in the investigation of any offence against the laws of Samoa which the

Inspector has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such;

- (d) to examine audited annual accounts, statements and returns forwarded to the Inspector under sections 27 and 28 and to report on them to the Minister whenever the Inspector thinks fit; and
- (e) to examine and make recommendations to the Minister with respect to applications for licences or licence renewals.

(5) In the performance of the Inspector's functions under this Act and, subject to section 37, the Inspector is entitled at all reasonable times -

- (a) to have access to such accounts, accounting records, books, records, vouchers, documents, cash and securities of any licensee;
- (b) to request any information, matter or thing from any person who the Inspector has reasonable grounds to believe is carrying on international banking business in contravention of section 4;
- (c) to call upon any officer of the licensee for such information and explanation;
- (d) to call upon the auditors of any licensee for such auditor's reports, working papers, information or explanation;
- (e) to require that the auditor of a bank report to the Inspector on the extent of the procedures of the auditor in the examination of the annual financial statements and may require that the auditors enlarge the scope of that examination or direct that any other particular procedure be performed in any particular case; or
- (f) to require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the bank for the safety of its creditors and shareholders, or any other examination as considered necessary by the Inspector,

as the Inspector may reasonably require for the purpose of enabling the Inspector to perform the Inspector's functions under this Act;

(6) The Inspector, with the approval of the Minister, may in writing authorise any other person to assist the Inspector in the performance of the Inspector's functions under this Act.

(7) If it appears to the Inspector that there are reasonable grounds for suspecting that an offence against this Act has been or is being committed by any person the Inspector may take such action as the Inspector considers necessary in the interests of the depositors or other creditors of the licensee concerned to preserve any assets held by that licensee.

(8) Any person who fails to comply with any requirement under subsection (5) by the Inspector or any authorised person commits an offence.

Regulatory codes

6.(1) The Minister may by notice in writing make codes (in this Act referred to as "regulatory codes") concerning -

- (a) the conduct of any business carried on by international banks;
- (b) the financial resources of international banks;
- (c) the assets, liabilities and other matters to be taken into account in determining an

international bank's financial resources for the purposes of the code;

- (d) arrangements for the settlement of disputes;
- (e) the keeping of accounts and other records, their form, content, inspection and audit;
- (f) the form and content of advertisements in respect of any business carried on by international banks;
- (g) the giving of notice to the Minister or the Inspector of the occurrence of such events as may be specified in the code;
- (h) the form and content of any information required to be produced by international banks to the Minister or the Inspector;
- (i) the financial statements and returns which are to be submitted to the Minister or the Inspector; and
- (j) the display of notices and the provision of information about the affairs of international banks to the public at its offices and places of business,

which shall apply to international banks.

(2) A regulatory code may include a requirement that the licensee to whom it applies shall comply with such rules, regulations, codes or standards as are from time to time in force and made or issued by the Minister.

Directions

7.(1) The Inspector may from time to time issue by notice to all licensees directions in relation to the implementation of the provisions of this Act.

(2) Failure by any licensee to comply with such directions shall be taken into consideration when any action is proposed to be taken under section 44.

Licences

8.(1) Every person who desires to obtain a licence under this Act shall make application to the Minister in the prescribed form.

(2) The following kinds of licences may be granted under this Act, namely -

- (a) "A" class international banking licences;
- (b) "B1" class international banking licences; and
- (c) "B2" class international banking licences.

(3) Except as otherwise specially provided herein, or in any other Act, no person other than a company shall be eligible to hold a licence under this Act.

"A" class international banking licence

9.(1) No company shall apply for or obtain or be eligible to hold an "A" class international banking licence under this Act unless it has at all relevant times an aggregate of unimpaired capital issued and paid up in cash

and reserves of not less than 10 million dollars or an equivalent amount in a currency approved by the Minister.

(2) An “A” class international banking licence shall license the holder to transact international banking business through its business office in Samoa.

(3) An “A” class international banking licence shall, subject to this Act and payment of the prescribed annual licence fee, be valid until cancelled or surrendered pursuant to sections 44 and 46.

“B1” and “B2” class international banking licences

10.(1) A “B1” class international banking licence shall, where the holder has at all relevant times an aggregate of unimpaired capital issued and paid up in cash and reserves of not less than 2 million dollars or an equivalent amount in a currency approved by the Minister, license the holder to -

- (a) transact only such international banking business as may be specified in the licence through its business office in Samoa; and
- (b) transact such specified business only in the currency or currencies specified in the licence.

(2) A “B2” class licence shall, where the holder has at all relevant times an aggregate of its capital issued and paid up in cash and unimpaired reserves of not less than 250,000 dollars or an equivalent amount in a convertible currency approved by the Minister -

- (a) prohibit the holder from soliciting or accepting any deposits of money or any other valuable thing from the general public;
- (b) license the holder to accept deposits of money or any other valuable thing only from those persons or entities whose names are listed in the undertaking accompanying the licence application or application for renewal of a licence under section 16;
- (c) prohibit the holder from issuing to any depositor a cheque book, or providing any cheque account facilities for the transaction of the depositor’s international banking business;
- (d) license the holder to transact only such international banking business as may be specified in the licence through its business office in Samoa; and
- (e) license the holder to transact such specified business only in the currency or currencies specified in the licence.

(3) A “B1” or “B2” class international banking licence shall, subject to this Act, be valid for a period of 1 year from the date of granting and may be renewed for further periods of 1 year each.

(4) Any licensee, whose “B2” class licence is deemed to continue in effect pursuant to section 60, shall, within one month of the commencement date or such further period as the Inspector may allow, file with the Inspector the undertaking as to acceptance of deposits, referred to in subsection (2)(b).

(5) Every person who fails to comply with the provisions of subsection (4) commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

Physical presence in Samoa

11.(1) All licensees are required as a condition of their licence to establish and maintain a physical presence in Samoa.

(2) For the purposes of subsection (1) -

“physical presence” means a place of business maintained by the international bank and located at a fixed address, other than a post office box or electronic address in Samoa and at which location the bank -

- (a) employs one or more individuals full-time; and
- (b) maintains operations and banking related records.

(3) Notwithstanding subsection (1), any licensee, whose licence is deemed to continue in effect pursuant to section 60, shall be allowed a period of 270 days from the commencement of this Act to comply with the provisions of this section.

(4) The Inspector may, in the Inspector’s absolute discretion, and upon sufficient cause being shown, extend the period of time referred to in subsection (3) for a further period of up to a maximum of 270 days.

Approval to carry on domestic banking business

12.(1) A licensee may, at any time during the term of its licence, apply to the Minister for permission to transact domestic banking business by, for and in respect of residents of Samoa.

(2) In determining whether to grant permission in respect of an application made under subsection (1), the Minister shall have regard to the public interest, the advice of Central Bank and such other considerations as the Minister thinks fit to take into account.

(3) The Minister, on being satisfied that permission should be granted in accordance with subsection (2), may grant permission upon such terms and conditions as the Minister thinks fit.

(4) No decision made by the Minister under this section shall be reviewed or questioned in any Court by way of appeal, prerogative writ or otherwise howsoever.

(5) The provisions of this section shall have effect notwithstanding any restrictions to the contrary in this Act, the International Companies Act 1987 or any other enactment.

Application for licence

13.(1) Every application for a licence under this Act shall be submitted to the Inspector and shall be accompanied by -

- (a) a certified copy of the Act, charter, memorandum of association and articles of association of the company, or other document or documents by which the company is constituted;
- (b) the prescribed fee;
- (c) evidence, in such form as the Minister or the Inspector shall specify, verifying -
 - (i) that the laws of the jurisdiction under which the company is incorporated have been complied with;
 - (ii) the nature and character of the company’s business and proposed business;
 - (iii) the financial standing of the company;
 - (iv) the ultimate beneficial ownership of the company; and

- (v) that every person who is or is to be a director, controller or manager of the company is a fit and proper person to hold that position;
- (d) such references as the Minister or Inspector may require; and
- (e) notice of an address for service within Samoa.

(2) In addition to the documents, information, and evidence which shall accompany an application under subsection (1), an applicant shall, if required to do so by the Minister or the Inspector, furnish to the Inspector such additional documents, information or evidence as the Minister or the Inspector may require.

Minister may grant or refuse licence

14.(1) Where an application for a licence is made, the Minister may, after due consideration of that application and at the Minister discretion, either grant a licence or reject the application.

(2) In making a decision under subsections (1), (3) and (4) the Minister shall have regard to the public interest.

(3) Where the Minister grants a licence the Minister may do so subject to such terms and conditions, if any, as the Minister thinks fit.

(4) If terms and conditions are imposed under subsection (3) the Minister may, from time to time, vary or revoke any of those terms or conditions or impose any additional terms or conditions.

(5) The Minister need not give reasons for any decision or direction made under this section.

(6) No decision or direction made by the Minister under this section shall be reviewed or questioned in any Court by way of appeal, prerogative writ or otherwise howsoever.

(7) An applicant for a licence shall have no right or entitlement to the granting of a licence under this Act.

Licence fees

15.(1) Where an application for a licence is refused, any application and licence fees shall be totally non-refundable.

(2) In any case where a prescribed annual fee has not been paid by the licensee by the due date and the licensee continues to transact international banking business, the amount shall be recoverable together with the prescribed penalty in any Court of competent jurisdiction as a debt due to the Government.

(3) Every licensee who makes default in paying a prescribed annual fee imposed upon the licensee in respect of a licence under this Act by the due date and the licensee continues to transact international banking business, commits an offence for which the licensee is liable upon conviction to a fine not exceeding an amount equal to treble the amount of the unpaid fee.

Licence renewal

16.(1) Subject to this section, an application by a licensee for renewal of a licence granted under section 10 must be received by the Inspector not later than two months prior to the expiration of the said licence.

(2) An application for a renewal of a licence shall be in the prescribed form submitted to the Inspector and accompanied by -

- (a) particulars of any material changes or alterations in the particulars submitted pursuant

to subsections (1) and (2) of section 13 which have taken place since the grant of the licence;

- (b) in the case of B2 class licensees, the undertaking as to depositor acceptance;
- (c) such other additional documents, information or evidence as the Minister or the Inspector may require; and
- (d) the prescribed annual licence fee, any penalty fees and any late fee.

(3) Where an application for renewal of a licence is made pursuant to subsection (1) the Minister may, after due consideration of that application and at the Minister's discretion, either grant the renewal subject to such terms and conditions, if any, as the Minister thinks fit or refuse the application.

(4) If terms and conditions are imposed under subsection (3), the Minister may, from time to time, vary or revoke any of those terms or conditions or impose additional terms or conditions.

(5) Where an application to renew a licence is made after the time specified in subsection (1) and the licence has not expired or has not been cancelled or revoked, the licence may be renewed pursuant to this section, subject to payment of such penalty as may be prescribed.

(6) Subject to section 47, a licensee shall have no right or entitlement to renewal of a licence.

Transfer of a licence

17.(1) In this section "transfer of control" in relation to a licensee, shall include -

- (a) the sale, transfer or other disposition whatsoever of the shares in the capital of the company, or any issue or allotment of any new shares in the capital of the company or the happening of any other matter or event whatsoever, the effect of which is to transfer directly or indirectly the effective ownership, management and control of the company; and
- (b) any of the events referred to in paragraph (a) occurring to any holding company of the licensee or any holding company of any holding company of the licensee.

(2) Subject to subsection (3), a licensee shall not transfer the licence or assign any interest therein and any such purported transfer or assignment shall be void and of no effect.

(3) A licensee shall not transfer control of the holder of the licence without prior written approval of the Minister.

(4) A licensee shall have no right or entitlement to transfer a licence.

Shares not to be issued or transferred without approval

18.(1) Subject to this section, shares in or other securities whatsoever of a licensee shall be issued and no issued shares or beneficial interest in shares or other securities of any licensee shall be transferred or disposed of in any manner without the prior written approval of the Inspector.

(2) In subsection (1) the reference to shares of any licensee being transferred or disposed of includes any transfer or disposition that would result in any change in beneficial ownership or control of the licensee.

(3) Notwithstanding the provisions of subsection (1) the prior written approval of the Inspector shall not be required where shares or other securities are issued to existing shareholders on a pro-rata basis.

- (4) No bearer shares or share warrants to bearer shall be issued by a licensee.

Appointment and Approval of directors and chief executive

19.(1) A licensee shall at no time have less than two directors who effectively direct the business and who shall be natural persons.

(2) At least one of the directors of a licensee shall be a resident of Samoa.

(3) A licensee shall, before the appointment of a director or chief executive, apply to the Inspector for the Inspector's written approval of such appointment as a fit and proper director or chief executive of the licensee.

(4) Approval granted under subsection (3) -

(a) automatically lapses if the director or chief executive becomes bankrupt or makes an arrangement or composition with creditors or is convicted of an offence involving dishonesty; and

(b) may be revoked by the Inspector.

(5) Notwithstanding subsections (1) and (2), any licensee, whose licence is deemed to continue in effect pursuant to section 60, shall be allowed a period of 270 days from the commencement date of this Act to comply with those provisions.

(6) The Inspector may, in the Inspector's absolute discretion, and upon sufficient cause being shown extend the period of time referred to in subsection (5) for a further period not exceeding 270 days.

Disqualification to be employed by licensee

20.(1) Subject to subsection (2), no person shall apply for or obtain employment, or be eligible to be employed as a director, manager, company secretary or employee of any licensee under this Act, without the express prior approval in writing of the Inspector if the person -

(a) has been a director of or directly or indirectly concerned in the management of a licensee that has had its licence cancelled in accordance with section 44 or has been wound up by a Court;

(b) has been sentenced by a Court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence;

(c) is or becomes bankrupt or suspends payment to or compounds with the person's creditors; or

(d) has been a director of a company that has gone into bankruptcy or insolvency proceedings other than voluntary winding up proceedings,

Provided that the approval of the Inspector shall be granted only in exceptional cases where it would not be contrary to the public interest and the said person would otherwise be considered a fit and proper person to hold that position.

(2) Nothing in this section shall prejudice, limit or restrict the powers of the Inspector under section 19(3) in approving the appointment of a director or chief executive of a licensee.

(3) Every person who acts in contravention of the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 dollars.

(4) Sufficient evidence of a previous conviction, for the purposes of proceedings under subsection (3), may

be given-

- (a) by the production of the original judgement of conviction purporting to be signed by the judge or sealed by the Court who made or issued it without evidence of such signature having been made or of such seal having been impressed or any other evidence relating thereto; or
- (b) by the production of a written copy or extract of the judgement or conviction purporting to be certified by an official of the Court who made or issued the copy or extract without evidence of such certificate having been made or any other evidence relating thereto.

(5) Sufficient evidence of the absence of a full pardon, for the purposes of proceedings under subsection (3), may be given by certificate by an official of the Court in which the conviction or judgement was issued stipulating that no appeal is outstanding and that no pardon has been entered in the records of the Court Registry in respect of the conviction or judgement.

Certain approvals required

21.(1) A licensee shall not, without the prior written approval of the Minister or the Inspector -

- (a) open outside Samoa a subsidiary bank, branch office, agency or representative office; or
- (b) change its name.

(2) A licensee, licensed as an "A" class international bank under Section 9 or licensed as a "B1 class international bank pursuant to section 10(1) shall not, without the prior written approval of the Inspector, acquire or hold in any one or more companies any financial interest exceeding in value in the aggregate fifteen per cent of the paid up capital and reserves of the licensee.

Insurance policy

22. The Minister or the Inspector may require a licensee to effect a policy of insurance with an approved insurance company against -

- (a) the dishonesty of employees of the licensee;
- (b) loss of documents; and
- (c) such other risks as the Minister may stipulate,

in such amount and of such nature as the Minister or the Inspector determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Inspector and shall cease to carry on its business until the insurance has been reinstated or replaced.

Prohibited activities

23.(1) A licensee shall not -

- (a) hold a licence or operate under a name or use a name which -
 - (i) so closely resembles or is identical to the name of any company, firm, business house or other financial entity or institution, whether within

Samoa or elsewhere as is likely to mislead or deceive;

- (ii) is calculated to suggest falsely the patronage of or connection with some person or authority whether within Samoa or elsewhere; or
 - (iii) is calculated to suggest falsely that such licensee has a special status in relation to or derived from the Government of Samoa or has the official backing of or acts on behalf of the said Government or of any Ministry or agency or official thereof or is recognised in Samoa as a national or central bank;
- (b) use or trade under any name other than the name under which it is licensed under this Act;
 - (c) transact any banking business with residents of Samoa, unless authorised pursuant to section 12; or
 - (d) transact any business otherwise than in accordance with the terms and conditions of its licence and this Act.

(2) A holder of an “A” class international banking licence or a “B1” class international banking licence shall not -

- (a) grant any advance or credit facility against the security of its own shares;
- (b) accept any deposit of money or any other valuable thing less than the amount which shall from time to time be specified in the licence;
- (c) grant or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of 5,000 dollars or of one percent of the sum of the paid up capital and unimpaired reserves of such licensee, whichever is the greater, or give any financial guarantees in excess of such amount without proper security, or incur any other liability in excess of such amount without proper security -
 - (i) to or on behalf of any of its controllers, directors, shareholders, beneficial shareholders or beneficial owners, whether such advances, facilities, guarantees or other liabilities are obtained by or on account of such person jointly or severally; or
 - (ii) to or on behalf of any firm, partnership or company in which the licensee, or any one or more of its controllers, directors, shareholders, beneficial shareholders or beneficial owners, is interested as a controller, director, partner, manager, agent, shareholder, beneficial shareholder or beneficial owner or to or on behalf of any individual firm, partnership or company of whom or of which any of the licensee’s controllers, directors, shareholders or beneficial shareholders or beneficial owners is a guarantor; and
 - (iii) for the purposes of this paragraph, a controller, director, shareholder, beneficial shareholder and beneficial owner shall include the wife, husband, de facto partner, father, mother, brother, sister, son or daughter of such a person;
- (d) acquire or hold in any company any financial interest exceeding in value in the aggregate sixty per cent of the paid up share capital and reserves of the licensee; or
- (e) acquire or hold any interest in any property, chattels or real estate for any purpose other than the carrying on of its international banking business.

(3) Every person who acts in contravention of this section commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for each day during which the offence continues.

Name to contain word “bank”

24. Every licensee shall use as part of its description or title the word “bank” or one or more of its derivatives in any language.

Notification of changes

25.(1) Notwithstanding the provisions of any other Act, a licensee incorporated outside Samoa or with its head office situated outside Samoa shall, within one month after the making of an alteration in the act, charter, memorandum of association, articles of association or other document by which the licensee was constituted a company, furnish to the Inspector particulars in writing of the alteration verified by a statutory declaration made by a senior officer of the company authorised to do so.

(2) A licensee shall forthwith notify the Inspector, in writing, of any material change in the particulars set out in the application for issue or renewal of a licence or in the documents, information, or evidence accompanying that application or in any documents, information, or evidence, if any, given under sections 13 or 16.

(3) Where a reconstruction of the licensee has occurred or where the licensee makes an arrangement or enters into an agreement for -

- (a) the sale or other disposal of its business by amalgamation or otherwise; or
- (b) the purchase or other acquisition of the business of any other licensee,

such licensee shall forthwith, upon the occurrence of the said reconstruction or upon the making or entering into of the said arrangement or agreement, inform the Inspector in writing thereof.

(4) Where any particulars or information is received under this section, the Minister, having regard to the nature of such particulars or information and notwithstanding the fact that the company concerned is a licensee, may direct the company, in writing, to apply for another licence within such time and in such form as the Minister may determine.

(5) The issue of a directive pursuant to subsection (4) shall not affect the validity of any licence subsisting at the date of such directive and which was granted to the company to which the said directive is issued.

(6) Every licence to which subsection (5) refers shall be of full force and effect until -

- (a) it is cancelled by the Minister by order under section 44; or
- (b) another licence is granted to the company concerned upon an application made pursuant to a directive under subsection (4), and thereafter the licence referred to in subsection (5) shall cease to have effect.

(7) Every person who fails to comply with any of the provisions of subsections (1), (2) or (3) or with any requirement of the Minister under subsection (4) commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

PART III - ACCOUNTING RECORDS, BUSINESS INSPECTIONS AND AUDITS

Keeping of accounting records

26.(1) A licensee shall -

- (a) keep such accounting records as correctly record and explain the international banking transactions and financial position of the company in relation to such business and maintain such accounting records at a location in Samoa notified to the Inspector;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the international banking business of the company to be prepared from time to time; and
- (c) keep its international banking business records in such a manner as will enable the accounts of the company to be conveniently and properly audited.

Annual report and audit

27. A licensee shall submit to the Inspector -

- (a) within 6 months of the end of its financial year, accounts duly audited pursuant to the provisions of section 35; and
- (b) an Annual Report, in such form as the Inspector may from time to time approve, by December 31 of each year.

Quarterly statements and other returns

28.(1) Subject to subsection (3), every licensee shall, in relation to its operations in or from within Samoa, submit to the Inspector, in such form as the Inspector may from time to time approve, the following statements -

- (a) in the case of holders of an “A” class banking licence or of a “B1” class banking licence, not later than 21 days after the last day of the quarter to which it relates a quarterly statement of assets and liabilities, cash flow statement, profit and loss statement and a return providing an analysis of customer liabilities to the licensee in respect of loans, advances and other assets of the licensee at the close of the last business day of that quarter;
- (b) in the case of holders of a “B2” class banking licence, not later than 21 days after the six month period to which it relates a half-yearly statement of assets and liabilities, cash flow statement, profit and loss statement and a return providing an analysis of customer liabilities to the licensee in respect of loans, advances and other assets of the licensee at the close of the last business day of that half-yearly period; and
- (c) such other returns as may be prescribed in the regulatory code issued pursuant to section 6;

(2) Subject to subsection (3), the Inspector may require a licensee to submit to the Inspector such further information as may be necessary for the proper understanding of any statement or return furnished by that licensee under subsection (1) above and such information shall be submitted within such period and in such manner as the Inspector may require.

(3) The Inspector may extend the period within which any statement or return is required to be submitted under this section where the Inspector considers that there are circumstances justifying an extension.

(4) Every licensee which fails to comply with any of the provisions of subsection (1) or subsection (2), or with any requirement of the Inspector thereunder, commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

Inspection

29.(1) The Inspector shall during the normal office hours of the licensee, at the registered office of the licensee or principal office of the licensee, have the right to inspect -

- (a) the licensee's accounting records;
- (b) the licensee's register of shares;
- (c) the licensee's record of transactions;
- (d) any other record kept by the licensee in the course of its international banking business; and
- (e) the premises where the licensee carries on its international banking business.

(2) In exercising the right of inspection pursuant to subsection (1), the Inspector shall have a reasonable belief that the action is required to carry out the Inspector's functions under this Act or as part of a regular on-site inspection of the licensee.

Supply of information

30.(1) A licensee shall furnish to the Inspector such information in respect of its international banking business or any other matter as the Minister or the Inspector may from time to time direct.

(2) In exercising the right to request information pursuant to subsection (1), the Inspector or the Minister shall have a reasonable belief that the action is required to carry out their functions under this Act or as part of a regular on-site inspection of the licensee.

Central Bank controls

31. A licensee or its auditor shall furnish to the Central Bank such information regarding its domestic banking business as the Central Bank may from time to time direct.

Power of search

32.(1) A Judge or Registrar of the Supreme Court who is satisfied by information on oath of the Inspector or authorised person that -

- (a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises, building or place or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities, that ought to have been produced under sections 5, 29 or 30 and have not been produced, are to be found at any such premises, building or place or in any such vehicle, vessel or aircraft,

may grant a search warrant authorising the Inspector or authorised person named in the warrant at any time within one month from the date of the warrant, to enter the premises or building or place specified in the warrant or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be and to search such premises, building or place or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or building or place or any vehicle, vessel or aircraft may search every person who is found in or whom the authorised person has reasonable grounds to believe to have recently left or to be about to enter those premises or building or place or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or building or place or in such vehicle, vessel or aircraft which the person has reasonable grounds for believing ought to have been produced under sections 5, 29 or 30.

(3) Where by virtue of this section a person has any power to enter any premises or building or place or a vehicle, vessel or aircraft, the person and any police or other person assisting may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Every search warrant shall be exercised by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of everyone executing any search warrant to have it with them and to produce it if required to do so.

(6) Whosoever obstructs the Inspector or any other person in the exercise of any powers conferred on the Inspector under this section commits an offence.

(7) The Commissioner of Police shall provide the Inspector or authorised person with such assistance as the Inspector or authorised person requests concerning the exercise of the Inspector's or authorised person's powers under this section.

False or misleading information

33. Any licensee or any director or officer of a licensee who knowingly or willfully supplies false or misleading information to the Minister or the Inspector or any authorised person commits an offence.

Official examinations

34.(1) The Minister may, at the Minister's discretion from time to time, appoint one or more qualified persons to make examinations, under conditions of confidentiality, of the books and affairs of any licensee.

(2) The Minister may, at any time, appoint one or more qualified persons to make a special examination, under conditions of confidentiality, of the books and affairs of any licensee -

(a) where the Minister has reason to believe that such licensee may be carrying on its business in a manner detrimental to the interest of its depositors and other creditors or may have insufficient assets to cover its liabilities to the public or may be, either in Samoa or elsewhere, contravening any of the provisions of the Act; or

(b) if the licensee suspends payment or informs the Minister of its intention to do so.

(3) Every licensee, of which an examination has been ordered under subsections (1) or (2), shall produce to the person or persons appointed at such times and in such places as such person or persons may specify (being times and places which, in the opinion of such person or persons, would not be unreasonably detrimental to the conduct of the normal daily business of the licensee) all books, accounts and documents in the possession or custody of such licensee or of which it is entitled to possession or custody relating to its business, and shall give, within such times as such person or persons may specify, such oral information concerning the licensee's business as may be required.

(4) As soon as may be practicable after the conclusion of an examination under this section, the person or persons appointed to carry out the examination shall submit a full report on such examination to the Minister who may forward a copy thereof to the head office of the licensee concerned and, depending upon the contents of the report, may take such action as the Minister deems fit under the provisions of the Act or other laws of

Samoa.

(5) The Minister may order that all expenses of and incidental to an examination under this section shall be paid by the licensee examined.

(6) Every person commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day on which the offence has continued who -

- (a) refuses or fails or neglects to produce any book, account, document or information required under subsection (3); or
- (b) knowingly produces any book, account, document or information required under subsection (3) which is false or misleading in any material particular.

Annual audit

35.(1) Every licensee shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that licensee a report upon the annual balance sheet and accounts, and in every such report the auditor shall state whether, in the auditor's opinion, proper books of account have been kept and where applicable proper returns adequate for the audit have been received from branches not visited by the auditor, whether the balance sheet and accounts are in agreement with the company's books, and whether the balance sheet is full and fair and properly drawn up and whether it exhibits a true and fair statement of the licensee's affairs, and, in any case in which the auditor has called for explanation or information from the officers or agents of the licensee, whether this is satisfactory and the said audit shall be prepared in accordance with internationally accepted accounting standards.

(2) In addition, the auditor shall report upon whether the licensee is carrying on business in accordance with the terms of its licence in so far as those terms relate to financial and/or accounting matters and shall include verification of compliance with the undertaking given by a licensee under section 10(2)(b).

(3) The auditor shall also report whether, in the auditor's opinion, the quarterly or half-yearly returns filed by the licensee have been completed correctly in accordance with the reporting instructions and accurately reflect the management accounts as prepared by the licensee.

(4) The report of an approved auditor under subsection (1) shall be read together with the report of the directors of the licensee at the annual meeting of shareholders and copies of that report shall be sent to the Inspector, together with copies of the balance sheet and profit and loss account, and if any default is made in complying with the requirements of this subsection, the licensee concerned commits an offence and is liable on conviction to a fine not exceeding 5,000 dollars.

(5) If a licensee fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor the Inspector may appoint an approved auditor and shall fix the remuneration to be paid by that licensee to such auditor.

(6) The duties and powers conferred on examiners appointed under section 34(3) are hereby conferred also in relation to approved auditors.

(7) No person having an interest in any licensee, otherwise than as a depositor, and no director, officer or agent of any licensee shall be eligible for appointment as an approved auditor for that licensee; and any person appointed as such auditor to any licensee who subsequently acquires such interest or becomes a director, officer or agent of that licensee shall cease to be such auditor.

(8) Where, in the case of a licensee incorporated outside Samoa, the auditor is satisfied that a report upon the annual balance sheet and accounts of such licensee has been duly made by an auditor in accordance with the law of the country in which such licensee is incorporated, and a copy of such report, together with the report of the directors of such licensee, is sent to the Inspector, the Inspector may by notice in writing exempt any such licensee from the provisions of this section.

Duties of auditor

36.(1) In carrying out an audit of the accounts of a licensee, it shall be the duty of the auditor, where necessary, to enlarge or extend the scope of the audit of the business and affairs of the licensee and to carry out any other examination or establish any procedure so as to give a true and fair view of the licensee's financial condition and results of its operations and any procedure or action undertaken under this subsection must be disclosed in the auditor's report.

(2) It shall be the duty of the auditor to report immediately to the Inspector, without notifying the licensee in any way, of any information relating to the affairs of a licensee obtained in the course of an audit, if the auditor is of the opinion that -

- (a)* the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties;
- (b)* a criminal offence involving fraud, dishonesty or money laundering has been committed;
- (c)* serious irregularities have occurred, including irregularities that jeopardize the interest of depositors and creditors;
- (d)* losses have been incurred which substantially reduce the capital funds of the licensee;
or
- (e)* the auditor is unable to confirm that the claims of creditors are still covered by the licensee's assets.

(3) The auditor may be required by the Inspector to discuss the audit directly with the Inspector or be asked to provide additional information regarding the audit.

(4) The Inspector, may, by notice in writing to a licensee, require it to supply the Inspector with a report, prepared by its auditor on such matters as the Inspector may determine, which may include an opinion on asset quality, adequacy of provisions for losses and the adequacy of the accounting and control systems.

(5) No civil, criminal or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Inspector pursuant to this section.

Preservation of confidentiality

37.(1) Subject to this section and except for the purpose of the performance or exercise of their duties or functions under this Act or other law or when lawfully required to do so by any court of competent jurisdiction within Samoa, the Minister, the Inspector or any officials or officers thereof, including any authorised person and any person appointed under sections 34, 43 or 44, shall not disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a licensee or of any customer of a licensee which the Minister, the Inspector or other person, as the case may be, has acquired in the performance or exercise of such duties or functions under this Act

(2) Subsection (1) shall not apply to a disclosure by the Inspector -

- (a)* necessary for the effective regulation of a licensee;
- (b)* in respect of the affairs of a licensee or a customer of a licensee with the authority of the licensee or the customer of the licensee which has been voluntarily given, as the case may be;
- (c)* where the information is already in the public domain;

- (d) where the Inspector believes that a suspicious transaction was not reported as required under the Money Laundering Prevention Act 2000; or
- (e) where the Inspector believes that a transaction may be associated with an offence under the Prevention and Suppression of Terrorism Act 2002.

(3) The Inspector may disclose to a foreign or domestic banking supervisory authority, or a domestic or foreign agency responsible for the prevention and suppression of terrorism, or the Money Laundering Authority or any other like regulatory authority information about the licensee, provided that -

- (a) the Inspector is satisfied that the intended recipient agency or authority is subject to adequate legal restrictions on disclosures which shall include the provision of an appropriate undertaking on confidentiality; and
- (b) the information is required for the purposes of banking supervision, or the prevention and suppression of terrorism or the enforcement of the Money Laundering Prevention Act 2000 or any other like law only and is not related directly or indirectly to the imposition, calculation or collection of taxes or the enforcement of exchange control regulations.

(4) Every person who commits an offence under this section shall be liable upon conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding 50,000 dollars or both.

Breach of confidentiality

38.(1) Except as required by or provided for under the laws of Samoa, every person commits an offence who -

- (a) divulges any information, in Samoa or elsewhere, which the person has become aware of in the person's capacity as an officer, employee, or authorised agent of a licensee, or as an officer or employee of an approved auditor, in relation to -
 - (i) any international banking business transacted in or from within Samoa;
 - (ii) the transfer of money and property into or out of Samoa in the course of any international banking business; or
 - (iii) the account of any person with a licensee or any item of such an account or the fact of any person having, or having had such an account; or
- (b) attempts to induce any other person to breach professional confidentiality in relation to any such matters.

(2) Notwithstanding subsection (1), it shall not be an offence under this section to divulge the information referred to in subsection (1)(a) -

- (a) to the Inspector pursuant to section 5 or if directed to do so by the Minister or the Inspector pursuant to section 30;
- (b) to the person on whose behalf the international banking business is being carried out;
- (c) in Samoa, to an officer or employee of the same licensee in the performance of the person's duties as an officer or employee;
- (d) to an officer or employee of a bank or other such financial institution outside Samoa, if all the persons concerned in the banking business or in whose name the account stands, consent in writing to doing so;
- (e) to an officer or employee of the licensee outside Samoa, so long as the names of the persons concerned in the banking business and any information which might identify

them and the names in which accounts stand and the balance therein, are not divulged;

- (f) with the prior written approval of the Minister, to the Government of or to a public officer of any other country, provided such information is used only as part of -
 - (i) an amount representing the total assets of the licensee in Samoa; or
 - (ii) an amount representing the total sum of money transferred to Samoa from that country or from Samoa to that country and the currencies in which such money was transferred, provided that the amount of individual banking transactions, the names in which accounts stand, and the balances therein are not divulged; or
- (g) to the Inspector by the auditor or former auditor of a licensee with respect to the audited accounts or returns of the licensee.

(3) For the purposes of subsection (2)(d) all the persons concerned in the banking business or in whose names accounts stand, shall be deemed to have consented to an officer or employee of a licensee divulging to an officer or employee of a bank or other such financial institution outside Samoa such information of the banking business being carried out as is essential to the carrying out of that business or where the request for information by the foreign financial institution is pursuant to a statutory requirement binding on that foreign financial institution, but the consent deemed to be given pursuant to this subsection shall not apply to any other particulars.

(4) Nothing in this section shall prevent the Court from requiring any person to give evidence or produce documents in any proceedings in the Court of any facts relevant in those proceedings that the person could otherwise be required to give or produce.

(5) Every person who commits an offence under this section shall be liable upon conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding 50,000 dollars or both.

Breach of confidentiality by officer or employee deemed to be breach by licensee

39.(1) For the purposes of section 38, an offence by an officer or employee of a licensee or of an auditing company, as the case may be, or by a person after termination of the person's employment as an officer or employee of a licensee or of an auditing company, as the case may be, whether such offence occurs in Samoa or elsewhere, shall be deemed also to be an offence by that licensee or by that auditing company, as the case may be.

(2) Notwithstanding subsection (1), an offence under section 38 by a person after termination of the official or employment relationship with a licensee or an auditing company shall not be deemed to be an offence by the licensee or by the auditing company, as the case may be, if the licensee or the auditing company can prove, on the balance of probabilities, that it had taken all reasonable steps to prevent an offence by the person.

PART IV - TAXATION

Profits and dividends

40.(1) Notwithstanding anything contained in any other enactment -

- (a) no income tax, nor any other direct or indirect tax or impost, shall be levied in Samoa upon the profits or gains of a licensee, or upon any interest earned by a licensee, in respect of the international banking business it does from within Samoa;

and

- (b) no income tax, nor any other direct or indirect tax or impost, shall be levied in Samoa in respect of any dividends or earnings, or upon any interest earned by a licensee, attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by an international company or a person who is not a resident of Samoa; and
- (c) no income tax, nor any other direct or indirect tax or impost shall be levied in Samoa upon any interest paid to a non-resident depositor (other than interest paid to a trustee company registered under the Trustee Companies Act 1987 in their own right which is taxable in Samoa) by a licensee.

(2) The exemptions from taxation granted under paragraphs (a) and (b) of subsection (1) shall not apply to the domestic banking business only of any licensee that has been granted approval under section 12 to carry on domestic banking business.

Exemption from stamp duty

41.(1) Bills of exchange and promissory notes payable on demand and any other document, instrument or certificate executed by, for or in connection with an international bank licensed under this Act and relating to international banking business shall be exempt from stamp duty.

(2) Every instrument chargeable with duty executed by or for a licensee, and not exempt under the provisions of subsection (1), may be presented for stamping within an extended period of 4 months after and exclusive of the day of execution thereof (or in the case of an instrument executed out of Samoa, within 4 months after it has first been received in Samoa) without penalty.

(3) The exemption from stamp duty granted under subsection (1) shall not apply to the domestic banking business only of any licensee that has been granted approval under section 12 to carry on domestic banking business.

Exemption from currency and exchange control

42.(1) International banking business conducted by and in accordance with a licence under this Act shall be exempt from any currency and exchange control restrictions or regulations.

(2) No foreign exchange levy shall be imposed or be payable in respect of international banking business conducted by and in accordance with a licence under this Act.

(3) The exemptions from currency and exchange controls and foreign exchange levies granted under subsections (1) and (2) shall not apply to the domestic banking business only of any licensee that has been granted approval under section 12 to carry on domestic banking business.

PART V - SUSPENSION, CANCELLATION AND OTHER ENFORCEMENT OF LICENCE CONDITIONS

Enforcement of examination findings

43.(1) If, in the opinion of the Minister, an examination under section 34 shows that the licensee concerned is carrying on its business in a manner detrimental to the public interest or of its depositors and other creditors, or has insufficient assets to cover its liabilities to the public, or is, either in Samoa or elsewhere, contravening any of the provisions of this Act, the Minister may take such one or more of the following steps from time to time

as may seem to the Minister necessary -

- (a) require the licensee forthwith to take such measures as the Minister may consider necessary in relation to its business;
- (b) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (c) require the removal and replacement of any director or officer of the licensee;
- (d) appoint a person who, in the Minister's opinion, has had adequate training and experience to advise the licensee in the proper conduct of its business and fix the remuneration to be paid by the licensee to such person;
- (e) appoint a person to assume control of the licensee's affairs who shall *mutatis mutandis* have all the powers of a person appointed as receiver or manager of a business under the Companies Act 1955 and fix the remuneration to be paid by the licensee to such person; or
- (f) unless the Minister is satisfied that the licensee is taking adequate measures to put its affairs in order, make an order under section 44 cancelling the licence.

(2) If a licensee refuses or fails to take any measure required by die Minister under subsection (1), it commits an offence and is liable on conviction to a fine not exceeding 500 dollars in respect of every day during which the offence continues.

(3) Every person who knowingly and willfully refuses or fails to take any measure required by the Minister under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars.

Powers of the Minister

44.(1) Whenever the Minister is of the opinion that a licensee -

- (a) is carrying on business in a manner detrimental to the public interest or detrimental to the interest of the depositors or other creditors of the licensee; or
- (b) is or appears likely to become unable to meet its obligations as they fall due; or
- (c) has failed to comply with the terms and conditions of its licence; or
- (d) has failed to comply with any directive or regulatory code issued by the Minister under this Act; or
- (e) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act,

the Minister may forthwith take one or more of the following actions, as may seem necessary to Minister -

- (i) require the licensee forthwith to take such measures as the Minister may consider necessary in relation to its business;
- (ii) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (iii) require the removal and replacement of any director or officer of the licensee;
- (iv) appoint a person who, in the Minister's opinion, has had adequate training and experience to advise the licensee in the proper conduct of its business

and fix the remuneration to be paid by the licensee to such person;

- (v) appoint a person to assume control of the licensee's affairs who shall *mutatis mutandis* have all the powers of a person appointed as receiver or manager of a business under the Companies Act 1955 and fix the remuneration to be paid by the licensee to such person;
- (vi) present a petition to the Court for the winding up of the licensee; or
- (vii) cancel the licence.

(2) A person appointed under subparagraphs (iv) or (v) of subsection (1) (e) or whose appointment has been extended under paragraph (b) of subsection (3) shall from time to time at the person's discretion and in any case within three months of the date of the person's appointment or of the extension of the person's appointment (as the case may be), prepare and furnish a report to the Minister and the Inspector of the affairs of the licensee and recommendations thereon.

(3) On receipt of a report under subsection (2), the Minister may -

- (a) revoke the appointment of the person appointed under subparagraph (iv) or (v) of subsection (1) (e);
- (b) extend the period of the person's appointment;
- (c) subject to such conditions as the Minister may impose, allow the licensee to reorganise its affairs in a manner approved by the Minister; or
- (d) cancel the licence.

(4) Notwithstanding any other provisions herein, the Minister may cancel a licence if the licensee -

- (a) has ceased to carry on international banking business or does not within six months after the issuance of its licence commence international banking business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(5) The Inspector shall give notice in writing to the licensee and, through such means as the Inspector deems fit, to creditors, depositors, shareholders and employees of the licensee and relevant banking authorities elsewhere of a cancellation of the licence or a refusal to grant renewal of a licence under section 16(3).

Minister may apply to the Court

45. The Minister may, in any case in which a licensee or a person who has at any time been a licensee is being wound up voluntarily, apply to the Court if the Minister considers that the winding up is not being conducted in the best interest of its depositors or other creditors, and the Court shall make such order as it shall consider appropriate.

Surrender of licence

46.(1) A licensee who has ceased to carry on the business in respect of which the licence was granted may apply to the Minister to surrender its licence if it -

- (a) has ceased to carry on such business, and produces evidence that it has repaid all deposits held by it and has transferred all trust assets held or administered by it; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all deposits held by it and all its other creditors and has transferred

all trust assets held or administered by it,

and the Minister may thereupon approve the surrender.

(2) In the case of an application under subsection (1)(b), the Minister may apply to the Court for the licensee to be wound up by the Court, and on the making of such an order the provisions of the International Companies Act 1987 relating to the winding up of a company by that Court shall *mutatis mutandis* apply.

Appeals

47.(1) Subject to subsection (2), any person affected adversely may, within 21 days of the date of the decision appealed from, appeal to the Court, from -

- (a) any decision not to renew a licence under section 16;
- (b) any decision to cancel a licence under section 44(1), (3) or (4);
- (c) any decision by the Minister to enforce examination findings under section 43(1); or
- (d) any decision by the Minister to take any of the actions under section 44(1),

Provided that any person affected adversely by a decision of the Minister referred to in paragraphs (a), (b), (c), or (d) of this subsection may, upon notice to the Minister, apply to the Court for leave to extend the time within which the notice of appeal must be filed. The Court, upon hearing such application, may extend the time prescribed by this section, as it deems fit.

(2) The only grounds for an appeal under this section shall be that the decision was *ultra vires* or was an unreasonable exercise of the Minister's powers or was in breach of the Constitution.

(3) In determining any appeal under this section the Court may, if it thinks fit -

- (a) exercise any of the powers conferred on the Minister by this Part;
- (b) cancel or amend any decision to which the appeal relates; or
- (c) confirm any such decision.

(4) The decision of the Court on appeal proceeding brought before it under this section shall be final and conclusive.

(5) In determining an appeal under this section the Court shall not have the power to award damages or costs against the Minister or the Inspector or the Government.

(6) An appeal against a decision of the Minister shall not have the effect of suspending the execution of such a decision.

PART VI - MISCELLANEOUS

Protection of the terms "bank" and "international bank"

48.(1) Except as provided by law or with the approval of the Minister in writing, no person, other than the holder of a valid international banking licence issued under this Act, shall:

- (a) use the word "bank" or "international bank" or any of its derivatives in any language in the description or title under which such person is carrying on international

banking business from within Samoa; or

- (b) make or continue to make any representation in any billhead, printed form, letter, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on international banking business from within Samoa.

(2) Every person who contravenes this section commits an offence.

(3) In this section the term “printed form” includes a form of which copies are produced by cyclostyling, or by any duplicating or reproduction process, whether letterpress, photographic, lithographic multigraphic, or stenciling, or any other process.

General penalty for offence

49. Every person who commits an offence against this Act and any regulations issued hereunder for which no penalty is provided, otherwise than in this section, is liable upon conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding 10,000 dollars or to both, and, if the offence is a continuing one, to a further fine not exceeding 500 dollars for every day on which the offence has continued.

Application of International Companies Act to winding up

50.(1) The provisions of Part IX of the International Companies Act 1987 shall, so far as they are applicable and with the necessary modifications, apply with respect to the winding up of companies licensed under this Act.

(2) The Court shall have jurisdiction in every such winding up.

Civil remedies not affected

51. Nothing in this Act shall affect any civil remedy that any person may have against a licensee in respect of any matter.

International banking not an authorised trustee investment

52. A deposit or lodgment of any kind or any other form of security arrangement with an international bank licensed under this Act shall not constitute an authorised investment for co-operative societies, credit unions, industrial and provident societies, and trustees, other than a trustee company licensed under the Trustee Companies Act 1987 or except where otherwise expressly authorised under the trust settlement or by other Act

No other business licence required

53. Except as provided by this Act, no other business licence shall be required to operate as an international bank from within Samoa.

Choice of measures

54. A holder of a valid licence under this Act may conduct its international banking business (including its books and accounts relating thereto) in accordance with its licence without restriction as to the measurement

system to be adopted or as to decimalization.

Regulations

55. The Head of State, acting on the advice of Cabinet, may from time to time make Regulations prescribing all matters and things required or authorised by this Act to be prescribed or provided, or which are necessary or convenient to be prescribed or provided, for the carrying out of, or the giving full effect to, the provisions of the Act and its due administration including, but not limited to, all or any of the following particular purposes -

- (a) prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms;
- (b) prescribing forms of application and other notices under this Act;
- (c) fixing the fees and charges to be paid under this Act and the penalties for breaches thereunder, or delegating the power of fixing such fees, charges and penalties to prescribed persons or bodies;
- (d) empowering the employment of non-citizens and non-residents required to provide efficient services for the due administration of this Act, subject to and on the following conditions -
 - (i) any person employed as a barrister or a solicitor must obtain a practicing certificate under the Law Practitioners Act 1976; and
 - (ii) any person employed as a public accountant must obtain a certificate of public practice under the Public Accountants Act 1984; or
- (e) delegating to the Minister the function of granting such duty and other concessions as shall be desirable to facilitate the objectives of the Act.

Immunity

56.(1) No action shall lie against the Government or any statutory body or authority of Samoa, the Minister, the Inspector or any person acting pursuant to any authority conferred by the Minister or the Inspector, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made thereunder.

(2) The legal costs of defending any action instituted against the Minister, the Inspector or any person acting pursuant to any authority conferred by the Minister or the Inspector shall be borne by the Government of Samoa.

Procedure where none laid down

57. In the event that any act or step is required or permitted to be done under this Act, and no form is prescribed or procedure laid down in this Act or Regulations for doing the same, the Inspector may in response to application made to the Inspector, or on the Inspector's own motion, give directions as to the manner in which the same may be done, and any act or step done or taken in accordance with the Inspector's directions shall be a valid performance of such act or step.

English the authentic text

58.(1) Every document filed with the Inspector, and all records and accounts required to be kept under this Act shall be in the English language.

(2) Where a document is not in the English language it shall be accompanied by an authentic English translation; and in the event of any conflict in meaning between the foreign language and the English versions, the English version shall prevail.

Repeal of Off-Shore Banking Act 1987

59. The Off-Shore Banking Act 1987 is repealed.

Transitional

60.(1) Any licence, authority, approval or exemption granted under the repealed Act that is in force immediately before the commencement date of this Act -

- (a)* shall continue to have effect after the commencement date as if granted under this Act; and
- (b)* in the case of a licence or grant for a specific period, shall remain in force for so much of that period as falls after the commencement date.

(2) Where prior to the commencement of this Act, an application, request or petition had been made to the Minister or the Inspector of Offshore Banks, in respect of any licence, permit, authorisation or approval required to be given by the Minister or the Inspector, as the case may be, under the Offshore Banking Act 1987, and which has not been completed or otherwise determined, such application, request or petition shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been enacted.

Consequential amendments

61. The enactments specified in the Schedule to this Act are hereby amended or modified in the manner indicated in that Schedule.

SCHEDULE

(Section 61)

Section 58

Enactments Amended

Enactment

Extent of Amendment or Repeal

Shops Ordinance 1961	By amending section 6A to delete the words “an off-shore banking business licensed under the Off-shore Banking Act 1967” and substituting the words “an international bank licensed under the International Banking Act 2005”.
Post Office Act 1972	By deleting 17(2)(j) and substituting the following: “(j) Letters by, for or in respect of an international bank licensed under the International Banking Act 2005, an international insurance company licensed under the International Insurance Act 1988, an international company registered under the International Companies Act 1987, a trustee company licensed under the Trustee Companies Act 1987 or an international partnership or limited partnership registered under the International Partnership and Limited Partnership Act 1998;”
Bills of Exchange Act 1976	By amending section 73(1) by deleting the words “including an off-shore bank licensed under the Offshore Banking Act 1987” and substituting the words “including an international bank licensed under the International Banking Act 2005”
Law Practitioners Act 1976	By amending the proviso in section 2(2) by deleting the words “with offshore banking or the giving of advice on off-shore banking matters” and substituting the words “with an international bank licensed under the International Banking Act 2005 or the giving of advice on international banking matters”.
Public Accountants Act 1984	By amending section 3(2)(d) by deleting the words “of an off-shore banking business licensed under the Offshore Banking Act 1987” and substituting the words “of an international bank licensed under the International Banking Act 2005”
International Companies Act 1987	By amending section 40 by deleting the words “Off-shore Banking Act 1987” and substituting the words “International Insurance Act 1988 or the International Banking Act 2005”. By amending section 54A(10)(a) by deleting the words “Off-shore Banking Act” and substituting the words “International Banking Act 2005” By amending section 227(4)(i) by deleting the words “Offshore Banking Act 1987” and substituting the words “International Banking Act 2005” By amending section 249(2)(a) and (b) by inserting after the words “every international company and every foreign company registered under Part X” the words “other than an international bank licensed under the International Banking Act 2005” By amending section 249(2)(c)(ii) by deleting the words “Off-shore Banking Act 1987” and substituting the words “International Banking Act 2005” By amending section 249(3)(a), (b), (c) and (d) by inserting after the words “by an international company or a foreign company registered under Part X” the words “other than an international bank licensed under the International

Banking Act 2005”.

By amending section 249(4)(a) by inserting before the words “carry on business” the words “unless it is an international bank licensed to carry on domestic banking business under the International Banking Act 2005,”

By amending section 249(5)(e) by deleting all the words following the words “are prepared or maintains” and substituting the words “or, being a licensee under the International Banking Act 2005, from where it maintains and operates its business.”

Financial Institutions Act 1996 By amending section 28 by deleting paragraph (c) and substituting the following:

“(c) Any company licensed under the International Banking Act 2005 or any act replacing that Act, but only in respect of those companies that have not commenced domestic banking business, pursuant to approval granted under the said Act;”

Money Laundering Prevention Act 2000 By amending section 13(2) by inserting after the words “the licence” the words “or registration” and by deleting the words “the Offshore Banking Act 1987 and the Financial Institutions Act 1996” and substituting the words “any Act.”

By amending paragraph 1 of Schedule 1 by deleting the words “Off Shore Banking Act 1987” and substituting the words “International Banking Act 2005.”

By deleting paragraph 2 of Schedule 1 and substituting the following:

“2. “International banking business” as defined in the International Banking Act 2005”

Foreign Investment Act 2000 By amending the definition of “foreign investment” in subsection (2) of section 2 by inserting after the words “Business Licences Act 1998” the following sentence -

“Provided that the provisions of this Act shall not apply to trustee companies licensed under the Trustee Companies Act 1987, international companies or foreign companies registered under the International Companies Act 1987, international insurance companies licensed under the International Insurance Act 1988 or international banks licensed under the International Banking Act 2005, or any successor legislation to the above Acts.”