SAMOA

MONEY LAUNDERING PREVENTION ACT 2007

Arrangement of Provisions

MONEY LAUNDERING PREVENTION ACT 2007

2007 **No. 2**

AN ACT to make provision for the prevention of money laundering and to repeal the Money Laundering Prevention Act 2000.

[Assent date: 30 January 2007]
[Commencement date: 7 February 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement–**(1)** This Act may be cited as the Money Laundering Prevention Act 2007.

(2) This Act comes into force, or any part thereof, on such date as may be nominated in writing by the Minister.

(3) Notice of commencement of this or any Part of this Act shall be published in English and Samoan in the *Savali* and one other newspaper circulating in Samoa.

2. Interpretation–**(1)** In this Act, unless the context otherwise requires:

"Asia Pacific/Group" or "APG" means an inter-governmental organisation that Samoa is a part of, consisting of 41 member jurisdictions, focused on ensuring that its members effectively implement the FATF international standards against money laundering, terrorist financing and proliferation financing related to weapons of mass destruction;

"Authority" means the Money Laundering Prevention Authority established under section 4;

"beneficial owner" means a person who owns or controls a customer as well as the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement;

"business relationship" means a business, professional, or commercial relationship between a reporting entity and a customer that has an element of duration or that is expected by the reporting entity, at the time when contact is established, to have an element of duration;

"business transaction" includes any arrangement or attempted arrangement, including opening an account, between two or more persons where the purpose of the

arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person and a one-off transaction;

"business transaction record" includes, where relevant, to a business transaction:

(a) the identification records of all the persons party to that transaction; and

(b) a description of that transaction sufficient to identify its purpose and method of execution; and

(c) the details of any account used for that transaction, including bank, branch and sort code; and the total value of that transaction; and originator details; and

(d) the total value of that transaction; and

(e) originator details; and

(f) such other information as will permit the tracing of the movement of property and the parties thereto;

"cash" means any coin or paper money that is designated as legal tender in the country of issue and includes bearer bonds, travellers' cheques, postal notes and money orders;

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

"Confiscated Assets Fund" means the fund established under section 34;

"controller" has the same meaning as provided in section 2 of the International Banking Act 2005;

"customer" in relation to a transaction or an account includes:

(a) the person in whose name a transaction or account is arranged, opened or undertaken; and

(b) a signatory to a transaction or account; and

(c) any person to whom a transaction has been assigned or transferred; and

(d) any person who is authorised to conduct a transaction; and

(e) such other person as may be prescribed;

"customer due diligence" is the process by which a Financial Institution ensures that they know who their customer is and where their money comes from;

"data" means representations, in any form, of information or concepts;

"Director" means the Director of the Financial Intelligence Unit, appointed pursuant to section 6(2)(a);

"Financial Action Task Force" or "FATF" means the inter-governmental body established in 1989 by the Ministers of its Member jurisdictions and whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system;

"financial institution" means any person whose regular occupation or business is the carrying out of:

(a) any activity listed in Schedule 1 and includes all persons carrying on such activities within or outside Samoa whether carried on by a Samoan person or person having an office or being registered in Samoa; or

(b) any other activity as may be determined by the Minister and published by notice in the Savali, which activity shall then be deemed to be included in Schedule 1;

"fit and proper" has the same meaning as provided in section 3 of the International Banking Act 2005;

"Financial Intelligence Unit" or "FIU" means the Financial Intelligence Unit established under section 6;

"foreign State" means:

(a) any country other than Samoa; and

(b) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;

"Guidelines" means guidelines issued by the Money Laundering Prevention Authority under section 4(3);

"Judge" means a Judge of the Supreme Court; "Minister" means the Minister of Finance;

"large cash transaction amount" means a cash threshold equivalent to or more than 20,000 Samoan tala;

"money transmission services" means a person (other than a licensed bank or the Central Bank of Samoa) carrying on a business of:

(a) exchanging cash or the value of money; or

(b) money changing; or

(c) collecting, holding, exchanging or remitting funds or the value of money, or otherwise negotiating transfers of funds or the value of money, on behalf of other persons; or

(d) delivering funds; or

(e) issuing, selling or redeeming travellers' cheques, money orders or similar instruments;

"one-off transaction" means a transaction carried out between a financial institution and a person that is carried out other than in the course of a business relationship;

"politically exposed person" means:

(a) an individual who holds, or has held at any time in the preceding 12 months, in any overseas country the prominent public function of -

(i) Head of State or head of a country or government; or

(ii) Government minister or equivalent senior politician; or

(iii) Court of Appeal, Supreme Court Judge, or equivalent senior Judge; or

(iv) Governor of a Central Bank or Reserve Bank;

(v) Senior foreign representative, ambassador, or high commissioner; or

(vi) High-ranking member of the armed forces; or

(vii) Board chair, chief executive, or chief financial officer of, or any other position that has comparable influence in, any Stated enterprise; and

(b) an immediate family member of a person referred to in paragraph (a), including -

(i) a spouse; or

(ii) a partner, being a person who is considered by the relevant national law as equivalent to a spouse; or

(iii) a parent; and

(c) having regard to information that is public or readily available -

(i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close relationship, with a person referred to in paragraph (a); or

(ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of a person described in paragraph (a);

"prescribed" means prescribed by regulations or Guidelines made under this Act;

"Proceeds of Crime Act" means the Proceeds of Crime Act 2007;

"record" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

"Samoa International Finance Authority" means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2005;

"satisfactory evidence of identity" means such reliable, independent source documents, data or information or other evidence of identity as may be prescribed;

"serious offence" means an offence:

(a) against a law of Samoa that would constitute unlawful activity; or

(b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws

of Samoa; or for any imprisonment period or for any fine; or

(c) is an offence that would generate a proceed of crime, which also includes any offence under the category of terrorist financing or the attempted commission of it;

"suspicious transaction report" means a report required to be made under section 23 or 24;

"this Act" includes regulations made under this Act;

"transaction" includes:

(a) opening of an account; and

(b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means; and

(c) the use of a safety deposit box or any other form of safe deposit; and

(d) entering into any fiduciary relationship; and

(e) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; and

(f) such other transactions as may be determined by the Minister and published by notice in the *Savali*, which transaction shall then be deemed to be included in this definition;

(2) A reference in this Act to a document includes a reference to:

(a) any part of a document;

(b) any copy, reproduction or duplicate of the document or of any part of the document; or

(c) any part of such copy, reproduction or duplicate.

(3) Except so far as the contrary intention appears, an expression that is used in this Act and is defined in the Proceeds of Crime Act has in this Act the same meaning as in the Proceeds of Crime Act.

3. Secrecy obligations overridden – The provisions of this Act have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

3A. Trustee companies may be relieved of certain obligations – Despite any other provision of this Act, all trustee companies providing off-shore financial services in Samoa under any law that is administered by the Samoa International Finance Authority, may be exempted from any obligation arising under this Act, in accordance with Guidelines issued to that effect by the Money Laundering Prevention Authority.

3B Trustee companies' obligation to conduct due diligence and report suspicious transaction – (1) Despite section 3A, a trustee company must carry out a customer due diligence if required by the Authority.

(2) A trustee company must report any suspicious transaction that may occur as a result of subsection (1) to the FIU for analysis and any further investigation.

3C. Trustee companies' obligation to provide information required – (1) Subject to section 3 a trustee company must provide any information as required by Samoa International Finance Authority or the Authority to ensure compliance with the Act.

(2) A trustee company who fails to comply with subsection (1) commits an offence and is liable to an imprisonment term not exceeding five (5) years.

PART 2
ANTI MONEY LAUNDERING SUPERVISION

4. Money Laundering Prevention Authority – **(l)** The Minister may appoint a person or persons to be known as the Money Laundering Prevention Authority to supervise financial institutions in accordance with this Act.

(2) Until such time as the Minister makes an appointment under subsection (1), the functions of the Money Laundering Prevention Authority as provided in this Act shall be carried out by the Governor of the Central Bank, or by any person authorised by the Governor in writing in that behalf.

(3) The Authority shall issue Guidelines to financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions.

5. Money Laundering Prevention Task Force – **(1)** The Money Laundering Prevention Task Force is hereby established and consists of:

(a) the Governor of the Central Bank or such other person as may be designated by the Governor, as the Chairperson; and
(b) the Attorney-General; and
(c) the Commissioner of Police; and
(d) the Chief Executive Officer of the Samoa International Finance Authority; and
(e) the Head of the Customs department; and
(f) the Head of the Immigration department; and
(g) the Director of the Financial Intelligence Unit; and
(h) such other persons as may be appointed by the Minister, acting on the advice of the Authority.

(2) The Money Laundering Prevention Task Force shall:

(a) advise the Authority on any matter referred to it by the Authority relating to the prevention of money laundering or the financing of terrorism ;and
(b) on its own motion, report and make recommendations to the Authority on any matter relating to the prevention of money laundering or the financing of terrorism, as it sees fit; and
(c) ensure close liaison, cooperation and coordination between the various Government departments, statutory corporations and the Authority and the Financial Intelligence Unit.

(3) Except for the purpose of the performance of the person's duties or the exercise of the person's functions under this Act or when lawfully required to do so by any court, a member of the Money Laundering Task Force shall not disclose any information or matter which has been obtained by the person in the performance of the person's duties or the exercise of the person's functions under this Act, except for one or more of the following purposes:

(a) the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or
(b) the enforcing of the Counter Terrorism Act 2014 or the Proceeds of Crime Act 2007.

6. Establishment of the Financial Intelligence Unit – **(1)** The Financial Intelligence Unit shall be established by the Money Laundering Prevention Authority.

(2) The Financial Intelligence Unit shall consist of:

(a) a Director appointed by the Authority, on such terms as it may determine; and

(b) such other persons as may be appointed by the Authority.

(3) The Director shall exercise all of the powers, duties and functions of the FIU under this Act.

(4) The Director may authorise any person, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

7. Functions and powers of the Financial Intelligence Unit – **(1)** The Financial Intelligence Unit:

(a) shall receive reports required to be provided to it and information provided to the FIU by any agency of a foreign State, information provided to the FIU by a law enforcement agency or a government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence, a money laundering offence or the offence of the financing of terrorism; and

(b) may collect information that the FIU considers relevant to serious offences, money laundering activities or the financing of terrorism and that is publicly available, including commercially available databases or information that is collected or maintained, including information that is stored in databases maintained by the government; and

(c) may analyse and assess all reports and information; and

(d) may request information from any law enforcement agency, government agency or supervisory agency for the purposes of this Act; and

(e) may enter into Memoranda of Understanding, agreements or arrangements with Samoan

Government and non-governmental agencies and authorities, including the Police Service, the Customs Department, the Immigration Department, the Central Bank and the Samoa International Finance Authority, so as to ensure close liaison, cooperation and the secure exchange of information; and

(f) may provide information concerning a money laundering offence or an offence of the financing of terrorism, without the need for a request, to foreign agencies concerned with the prevention or investigation of money laundering or the prevention and suppression of terrorism, when such information comes to the attention of the FIU and may assist that foreign agency; and

(g) may send any report, any information derived from such report or any other information it receives to the appropriate law enforcement and, supervisory authorities if, on the basis of its analysis and assessment, the FIU also has reasonable grounds to suspect that the transaction is suspicious; and

(h) may inform any regulatory authority, government agency or law enforcement agency of an alleged breach by a financial institution of the provisions of this Act or the Regulations with a request that such authority or agency review the business or other licence of the financial institution following such alleged breach; and

(i) shall destroy a suspicious transaction report received or collected on the expiry of 5 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report for five years from the date of the last activity relating to the person or report; and

(j) may instruct any financial institution to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation anticipated by the FIU, notwithstanding that such financial institution has

not made a suspicious transaction report in relation to such matter; and

(k) may compile statistics and records, disseminate information within Samoa or elsewhere and make recommendations arising out of any information received; and

(l) may provide training programmes for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions; and

(m) may undertake due diligence checks and other inquiries as may be requested in writing by the Central Bank, Samoa International Finance Authority, the Samoa Police Service and other Government agencies and departments, as may be named by the Authority; and

(n) may provide feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under the Act; and

(o) may conduct research into trends and developments in the areas of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism; and

(p) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism; and

(q) may obtain further information on parties or transactions referred to in a report made under sections 13, 23 and 24; and

(r) may disclose any report, any information derived from such report or any other information it receives to a government of a foreign State or an institution or agency of a foreign State or of an international organization established by the governments of foreign States that has powers and duties similar to those of the FIU as set out in sections 8 and 9, if on the basis of its analysis and assessment, the FIU has reasonable grounds to suspect that the report or information would

be relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of financing of terrorism.

(2) Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may:

(a) involve the proceeds of a serious crime, a money laundering offence or an offence of the financing of terrorism; or

(b) be preparatory to the offence of the financing of terrorism,

may, by an order of the Authority, freeze without delay the funds affected by that transaction or attempted transaction.

(3) The Authority may by order under subsection (2), direct a financial institution not to proceed with the carrying out of the transaction or attempted transaction or any other transaction in respect of the funds affected for a period of time determined by the Authority, to allow the FIU to:

(a) to make any necessary inquiries concerning the transaction or attempted transaction; and

(b) if the FIU deems it appropriate, to consult with or advise the relevant law enforcement agency about the inquiries.

(4) The Authority may only remove the freeze order if:

(a) the FIU deems that the transaction is no longer suspicious; or

(b) the Court has ordered for it to be removed.

8. Exchange of information agreements – **(1)** The Financial Intelligence Unit may, with the approval of the Authority, enter into an agreement or arrangement in writing with:

(a) the government of a foreign State; or

(b) an institution or agency of a foreign State or an international organization established by the governments of foreign States that has powers and duties similar to those of the Financial Intelligence Unit; or

(c) a foreign law enforcement or supervisory authority, regarding the exchange of information between

the FIU and the government, institution, authority or agency, as the case may be; or

(d) a competent authority.

(2) Agreements or arrangements entered into under subsection (1) shall:

(a) restrict the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such offence; and

(b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the FIU.

(3) With or without any Memorandum of Understanding, agreement or arrangement, the Authority may approve any request for assistance and information received from a foreign agency concerned with the prevention of money laundering or the financing of terrorism; but any information given is to be subject to the restrictions provided in subsection (2).

(4) A request approved under subsection (3) shall be treated as a matter to be investigated and analysed by the FIU and the foreign agency shall have all authority and powers of request for information and instructions and enforcement, as are available to the FIU for any other matter being investigated and analysed by it and such authority and power shall be exercised by the FIU on behalf of the foreign agency.

9. Disclosure to foreign agencies – **(1)** The Financial Intelligence Unit may disclose any information to an institution or agency of a foreign State or to an international organization or other institution or agency established by the governments of foreign States that has powers and duties similar to those of the FIU, on such terms and conditions as are set out in the agreement or arrangement between the FIU and that foreign State or international organization or its institution or agency, as the case may be, regarding the exchange of such information.

(2) Nothing in subsection (1) limits the power of the Financial Intelligence Unit to disclose its information to an institution or agency of a foreign State or to an international organization or other institution or agency established by the governments of foreign States that has powers and duties similar to those of the

FIU, for the purposes of an investigation, prosecution or proceedings relating to a serious offence, a money laundering offence or an offence of the financing of terrorism.

10. Power to examine – **(1)** The Financial Intelligence Unit or any person it authorises in writing may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with this Act or Guidelines, or for the purposes of any investigation or analysis being undertaken by the FIU, and for those purposes may:

(a) at any reasonable time, enter any premises in which the FIU or the authorised person believes, on reasonable grounds, that there are records relevant to its investigation or analysis or to ensuring compliance with this Act; and

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system; and

(c) reproduce any record or cause it to be reproduced from the data, in the form of a printout or other intelligible output, and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for the premises referred to in subsection (1) and any person found therein shall give the Financial Intelligence Unit or any authorised person all reasonable assistance to enable them to carry out their responsibilities and shall provide them with any information that they may reasonably require with respect to the administration of this Act or the regulations.

(3) The Financial Intelligence Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities, if the FIU has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence, a money laundering offence or an offence of the financing of terrorism.

(4)A person who wilfully obstructs, hinders or fails to cooperate with the Financial Intelligence Unit or any authorised person in the lawful exercise of the powers under subsection (1),

or any person who does not comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years, or to both.

11. Powers to enforce compliance – **(1)** All officers and employees of a financial institution shall take all reasonable steps to ensure compliance by that financial institution of its obligations under this Act.

(2) The Financial Intelligence Unit may direct any financial institution, that has without reasonable excuse failed to comply in whole or in part with any obligations in Part 4 or 5, to implement any action plan to ensure compliance with its obligations under that Part.

(3) Where a financial institution fails to comply with a directive under subsection (2), the Financial Intelligence Unit may, upon application to a Judge and satisfying the Judge that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations under Part 4 or 5, obtain an order against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(4) In granting an order pursuant to subsection (3), the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that order, such financial institution, officer or employee shall pay a financial penalty in the sum of 500 penalty units or such other penalty as the Court may determine.

12. Power of search – **(1)** The Financial Intelligence Unit, the Authority or a commissioned officer of the Police Service, upon application to a Judge or the Registrar of the Court and satisfying the Judge or the Registrar, as the case may be, that there are reasonable grounds to believe that:

(a) a financial institution has failed to keep records and verify identity, as provided in Part 3; or

(b) a financial institution has failed to report suspicious transactions, as provided in Part 4; or

(c) an officer or employee of a financial institution is committing, has committed or is about to commit

a money laundering offence or the offence of the financing of terrorism, –

may obtain a warrant to enter any premises belonging to, in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the FIU, the Authority or the Police Service, as the case may be, as ordered by the Judge or Registrar and specified in the warrant.

(2) In this section, "premises" includes:

(a) land, whether or not covered by buildings; and

(b) any structure, whether or not attached to land; and

(c) any means of transport.

(3) Nothing in this section authorises a person to search a person of the opposite sex.

(4)A person who wilfully obstructs, hinders or fails to cooperate with the Financial Intelligence Unit, the Authority or the Police Service in the lawful exercise of the powers under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years, or to both.

13. Currency reporting at the border – **(1)** A person who leaves or enters Samoa with more than $20,000, or such other amount as may be prescribed, in cash or negotiable bearer instruments (in Samoan currency or equivalent foreign currency) on the person or in the person's luggage, cargo or mail without first having reported the fact to the Financial Intelligence Unit, commits an offence and is liable on conviction to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 10 years, or to both.

(2) For the purpose of this section and section 14:

"authorised officer" means:

(a) a commissioned officer of the Police Service; or

(b) a Customs officer; or

(c) an employee of the Central Bank authorised by the Governor; or

(d) an employee of the Airport Authority authorised by the Airport Manager; or

(e) an officer of the FIU; or

(f) a person authorised in writing by the Governor pursuant to section 4(2);

"negotiable bearer instrument" means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, whether made payable to the bearer or not.

(3) Where a person:

(a) is about to leave Samoa or has arrived in Samoa; or

(b) is about to board or leave, or has boarded or left, any ship, aircraft or conveyance,–

an authorised officer may, with such assistance as is reasonable and necessary, and with use of force as is necessary:

(c) examine any article which a person has with the person or in the person's luggage; and

(d) if the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person, –

for the purpose of finding out whether the person has in the person's possession any cash or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) A person shall not be searched except by a person of the same sex.

(5) An authorised officer and any person assisting such officer may stop, board and search any ship, aircraft or conveyance for the purpose of exercising the powers conferred by subsection (3).

(6) Where an authorised officer has reasonable grounds to suspect that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (3), may afford evidence as to the commission of an offence under this section, a serious offence, a money laundering offence or the offence of the financing of terrorism, the officer may seize the cash or negotiable bearer instruments.

(7) An authorised officer who has seized cash or negotiable bearer instruments under subsection (6) shall report such seizure to the Financial Intelligence Unit.

(8) The FIU may transmit copies of the reports made under subsection (1) to the Central Bank and the Customs Department for the purpose of exercising their respective duties and functions.

14. Seizure and detention of cash or negotiable instruments – An authorised officer may seize and detain any cash or negotiable bearer instruments which is being imported into or exported from Samoa, in any form or manner, if the officer has reasonable grounds for suspecting that it is:

(a) used in or derived from a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) intended by any person for use in the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism.

15. Retention and release of cash and negotiable instruments seized – **(1)** Cash and negotiable bearer instruments seized under section 13(6) or14 shall not be
detained for more than 48 hours after seizure, unless the Court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that:

(a) there are reasonable grounds to suspect that it was derived from a serious offence, a money laundering offence or an offence of the financing of terrorism or is intended by any person for use in the commission of such an offence; and

(b) its continued detention is justified while its origin or derivation is further investigated.

(2) The court may subsequently order, after hearing, with notice to all parties concerned, the continued detention of the cash and negotiable bearer instruments if satisfied of the matters mentioned in subsection (1), but the total period of detention shall not exceed 2 years from the date of the order.

(3) Subject to subsection (4), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the cash or negotiable bearer instruments:

(a) by order of a Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Authority to the contrary; or

(b) by the Authority, if it is satisfied that its continued detention is no longer justified.

(4) No cash or negotiable bearer instruments detained under this section shall be released where it is relevant to an investigation, prosecution or proceeding under this Act, the Counter Terrorism Act 2014 or the Proceeds of Crime Act 2007.

(5) Where the cash or negotiable bearer instrument is not forfeited or its detention is no longer justified and there is no person claiming an interest in the cash or negotiable bearer instrument, such cash or negotiable bearer instrument shall be forfeited to the Confiscated Assets Fund.

PART 3
OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

16. Financial institution to identify the identity of a customer – **(1)** A financial institution shall be required to identify the identity of a customer using primary documents or source secondary documents where necessary, and be satisfied of the identity of the customer when:

(a) establishing a business relationship; or

(b) conducting any transaction; or

(c) there is a suspicion of a money laundering offence or the financing of terrorism; or

(d) the financial institution has doubts about the veracity or adequacy of the customer identification or verification.

(2) For the purposes of subsection (1), the following primary documents shall be used to identify the identity of a customer who is a person:

(a) original copy of a valid passport, domestic, national and foreign; or

(b) a copy of a valid driver's license; or

(c) any other evidence of identity as may be determined by the order of the Authority, in consultation with the financial institutions, which may be changed from time to time as is necessary.

(3) If the person does not possess any of the primary documents in subsection (2), then the identity of the customer should be verified using two independently sourced documents, data, or information, which are referred to as secondary

documents as determined by the Authority and may be changed from time to time as is necessary.

16A. Circumstances when standard customer due diligence applies – A financial institution must conduct standard customer due diligence in the following circumstances:

(a) if the financial institution establishes a business relationship with a new customer;

(b) if a customer seeks to conduct an occasional transaction or activity through the financial institution;

(c) if, in relation to an existing customer, and according to the level of risk involved –

(i) there has been a material change in the nature or purpose of the business relationship; or

(ii) the financial institution considers that it has insufficient information about the customer; or

(iii) any other circumstances specified by way of Regulations.

16B. Standard customer due diligence: verification of identity requirements – A financial institution must:

(a) take all reasonable steps to satisfy itself that the information obtained under section 16 is correct; and

(b) according to the level of risk involved, take reasonable steps to verify any beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and

(c) if a person is acting on behalf of the customer, according to the level of risk involved, take reasonable steps to verify the person's identity and authority to act on behalf of the customer so that the financial institution is satisfied it knows who the person is and that the person has authority to act on behalf of the customer; and

(d) provide senior management approval when establishing a business relationship or continuing

(for existing customers) with a politically exposed person; and

(e) verify any other information prescribed by regulations.

16C. Circumstances when enhanced customer due diligence applies – A financial institution must conduct an enhanced customer due diligence in the following circumstances:

(a) if the financial institution establishes a business relationship with a customer;

(b) if a customer seeks to conduct an occasional transaction or activity through the reporting entity and that customer is -

(i) a trust or another vehicle for holding personal assets;

(ii) a non-resident customer from a country that has insufficient anti-money laundering and countering financing of terrorism systems or measures in place;

(iii) a company with nominee shareholders or shares in bearer form;

(c) if a customer seeks to conduct, through the financial institution, a complex, unusually large transaction or unusual pattern of transactions that have no apparent or visible economic or lawful purpose;

(d) when a financial institution considers that the level of risk involved is such that enhanced due diligence should apply to a particular situation;

(e) if the FATF or APG makes an official request to the FIU;

(f) any other circumstances determined by the Governor, which may be revoked by the Governor at any time.

17. Necessity of identification to conduct business – If satisfactory evidence of the identity of a customer is not produced to or obtained by a financial institution under section 16, the financial institution shall not proceed any further with the

transaction unless directed to do so by the Financial Intelligence Unit and shall report the transaction or attempted transaction to the FIU as a suspicious transaction.

18. Financial institution to maintain records – **(1)** A financial institution shall establish and maintain with the appropriate backup or recovery, in such manner as will enable records to be retrieved or reproduced in legible and useable form within a reasonable period of time:

(a) all business transaction records and correspondence relating to the transactions; and

(b) records of a person's identity obtained in accordance with section 16; and

(c) records of all reports made to the Financial Intelligence Unit; and

(d) all enquiries relating to money laundering and the financing of terrorism made to it by the Financial Intelligence Unit.

(2) Records required under subsection (1)(a) shall be those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the Financial Intelligence Unit or a law enforcement agency.

(3) The records mentioned in subsection (1) shall be kept for a minimum period of 5 years from the date:

(a) the evidence of a person's identity was obtained; or

(b) of any transaction or correspondence; or

(c) the account is closed or business relationship ceases, whichever is the later.

(4) Where any record is required to be kept under this Act, a copy of it may be kept:

(a) in a machine-readable form, if a paper copy can be readily produced from it; or

(b) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who keeps the record is retained.

(5) The records maintained under subsection (1) are to be made available upon request to the Financial Intelligence Unit for purposes of ensuring compliance with this Act.

19. Financial institutions to maintain account in true name – **(1)** A financial institution shall maintain accounts in the true name of the account holder.

(2) A financial institution shall not open, operate or maintain any anonymous or numbered account or any account which is in a fictitious, false or incorrect name.

20. Financial institutions to monitor transactions – **(1)** A financial institution shall pay special attention to:

(a) any complex, unusual or large transactions; and

(b) any unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

(2) A financial institution shall pay special attention to:

(a) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism; and

(b) electronic funds transfers that do not contain complete originator information.

(3) In relation to subsections (1) and (2), a financial institution shall:

(a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and

(b) upon request, shall make available such findings to the Financial Intelligence Unit or to a law enforcement agency, to assist the FIU or the law enforcement agency in any investigation relating to a serious offence, a money laundering offence or an offence of the financing of terrorism.

21. Banks and money transmission service providers to include originator information – Banks and money transmission service providers shall include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer.

21A. Financial institution to reject or suspend a transaction – **(1)** A financial institution may suspend or reject any fund transfer if:

(a) the customer has not produced all necessary information required by the financial institution; or

(b) it is a suspicious transaction.

(2) The financial institution shall only reinstate a transaction if it is satisfied that the customer has provided all the information required or the FIU has given approval for the transaction to continue or both.

(3) A financial institution must formulate risk based policies and procedures on how to execute, reject or suspend a wire transfer lacking required originator or beneficiary information.

22. Offences – A financial institution or any person who contravenes section 16,17,18,19,20, or 21 commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both.

PART 4
OBLIGATIONS TO REPORT

23. Financial institution to report suspicious transactions – **(1)** Where a financial institution has reasonable grounds to suspect that a transaction, an attempted transaction or information that the financial institution has concerning any transaction or attempted transaction may be:

(a) relevant to an investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) of assistance in the enforcement of the Proceeds of Crime Act; or

(c) related to the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(d) preparatory to an offence of the financing of terrorism,–

the financial institution shall, as soon as practicable after forming that suspicion, but no later than 2 working days, report the transaction or attempted transaction to the Financial Intelligence Unit.

(2) A report under subsection (1) shall:

(a) be in writing and may be given by way of mail, fax or electronic mail or by telephone, to be followed up in writing as soon as is practicable, but no later than 48 hours after the initial telephone call or in such other manner as may be prescribed; and

(b) be in such form and contain such details as may be prescribed in the Guidelines; and

(c) contain a statement of the grounds on which the financial institution holds the suspicion; and

(d) be signed or otherwise authenticated by the financial institution.

(3) A financial institution that has made a report or has given any other information to the Financial Intelligence Unit shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the

transaction, if requested to do so by the FIU or the law enforcement agency.

23A. Financial institution to report large Cash transactions – (1) A financial institution must report any large cash transaction to the FIU.

(2) A financial institution that has made a report must also provide any information regarding the large cash transaction as required by the FIU.

(3) Any report given under this section must be in the form as approved by the FIU.

24. Supervisory authority or auditor to report suspicious transactions – Where a supervisory authority or an auditor of a financial institution has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be:

(a) relevant to an investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) of assistance in the enforcement of the Proceeds of Crime Act 2007; or

(c) related to the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(d) preparatory to the offence of the financing of terrorism, –

the supervisory authority or the auditor of the financial institution shall report the transaction or attempted transaction to the Financial Intelligence Unit.

25. Authorisation to continue a suspicious transaction – Where a financial institution or person discloses to the Financial Intelligence Unit a suspicion or belief that a business transaction may involve the proceeds of crime or money laundering, and the financial institution or person continues to take further action in the business transaction, the institution or the person, as the case may be, does not commit an offence under this Act or the Proceeds of Crime Act 2007 **PROVIDED THAT:**

the further act is performed with the consent of the Financial Intelligence Unit.

26. False or misleading statements – A person who in making a report under section 17, 23 or 24 makes any statement that the person knows is false or misleading in a material particular, or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular, is guilty of an offence punishable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years, or to both.

27. Disclosure of suspicious transaction reports and other information – **(1)** A financial institution or supervisory authority, its officers, employees or agents, an auditor of a financial institution or any other person shall not disclose to any person:

(a) that a report to the Financial Intelligence Unit under section 23(1) or 24 has been or may be made, or further information has been given under section 23(3); or

(b) that the financial institution, supervisory authority or auditor, as the case may be, has formed a suspicion in relation to a transaction for the purposes of section 23(1) or 24; or

(c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

(2) Subsection (1) shall not apply to disclosures made to:

(a) an officer, employee or agent of the financial institution, supervisory authority or auditor, as the case may be, for any purpose connected with the performance of that person's duties; or

(b) a barrister, solicitor, lawyer, attorney or legal advisor for the purpose of obtaining legal advice or representation in relation to the matter; or

(c) the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority's functions.

(3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made, shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of:

(a) the performance of the first-mentioned person's duties; or

(b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in any of subsections (1) to (3) prevent the disclosure of any information in connection with, or in the course of, proceedings before a court.

(6)A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(7) If a person contravenes subsection (1) with intent to prejudice an investigation of a serious offence, a money laundering offence or an offence of the financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for themselves or any other person, the person commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a period not exceeding 7 years, or both.

28. Protection of identity of persons and information in suspicious transaction reports – **(1)** A person shall not disclose any information that will identify or is likely to identify:

(a) a person who has handled a transaction in respect of which a suspicious transaction report has been made; or

(b) a person who has prepared a suspicious transaction report; or

(c) a person who has made a suspicious transaction report; or

(d) any information contained in a suspicious transaction report or information provided pursuant to subsection 23(3), –

except for the following purposes:

(e) the investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(f) the enforcement of the Proceeds of Crime Act.

(2) No person is required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against section 29.

29. **Protection of persons reporting suspicious transactions** – **(1)** No civil, criminal, administrative or disciplinary proceedings shall be taken against:

(a) a financial institution, an auditor or supervisory authority of a financial institution; or

(b) an officer, employee or agent of the financial institution, the auditor or the supervisory authority of a financial institution, acting in the course of that person's employment or agency, in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent taken under section 17,20(3),23 or 24 in good faith or in compliance with directions given by the Financial Intelligence Unit pursuant to section 11(2).

(2) Subsection (1) does not apply in respect of proceedings for an offence under section 27.

30. Privileged communication – **(1)** Nothing in section 17 or 23 requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if:

(a) it is a confidential communication, whether oral or in writing, passing between—

(i) a barrister, solicitor, lawyer, attorney or legal advisor in the person's professional capacity and another barrister, solicitor, lawyer, attorney or legal advisor in such capacity; or

(ii) a barrister, solicitor, lawyer, attorney or legal advisor in the person's professional capacity and the person's client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to, receipts, payments, income, expenditure or financial transactions of a specified person (whether a lawyer, the lawyer's client or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

(4) For the purposes of this section, references to a lawyer include a firm in which the person is a partner or is held out to be a partner.

31. Other preventative measures by financial institutions – **(1)** A financial institution shall:

(a) appoint a compliance officer who is responsible for ensuring the financial institution's compliance with the requirements of this Act; and

(b) establish and maintain procedures and systems to—

(i) implement the customer identification requirements under section 16; and

(ii) implement record keeping and retention requirements under section 18; and

(iii)implement the reporting requirements under sections 17 and 23; and

(iv) make its officers and employees aware of the laws relating to money laundering and financing of terrorism; and

(v) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and the financing of terrorism; and

(c) train its officers, employees and agents to recognize suspicious transactions.

(2) Subsection (1) does not apply to an individual who, in the course of carrying on the individual's business, does not employ or act in association with any other person, provided that the individual discloses any relevant information or other matter that gives rise to a knowledge or suspicion that a person is or has been engaged in a serious offence, a money laundering offence or an offence of the financing of terrorism.

32. Compliance audit – Where under any Act, a financial institution is required to have its accounts audited; such financial institution and its auditor shall ensure that:

(a) the financial institution requires its auditor to audit and report on the financial institution's compliance with the provisions of the Act, the regulations and Guidelines and in particular compliance with sections 16, 17, 18 and 31; and

(b) the auditor audits and reports on the financial institution's compliance with the provisions of the Act, the regulations and Guidelines, including the matters referred to in paragraph (a); and

(c) the auditor gives to the Financial Intelligence Unit a copy of such audit report within seven days of providing the financial institution with such report.

33. Offences under Part 4 – **(1)** A financial institution or a person who contravenes section 23, 24 or 28 commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both.

(2) A financial institution or a person who contravenes

section 31 commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years, or both.

PART 5
CONFISCATED ASSETS FUND

34. Establishment of Fund – **(1)** The Confiscated Assets Fund is established.

(2) The Confiscated Assets Fund is a special purpose account for the purposes of the Public Finance Management Act 2001.

35. Credits to Fund – There shall be credited to the Confiscated Assets Fund amounts equal to:

(a) proceeds of forfeited assets under the Proceeds of Crime Act 2007; and

(b) money paid to Samoa by a foreign State, under a treaty or arrangement providing for mutual assistance in criminal matters; and

(c) money, other than money referred to in paragraph (b), paid to Samoa by a foreign State in connection with assistance provided by Samoa in relation to the recovery by that country of the proceeds of crime or the investigation or prosecution of a serious offence.

36. Asset sharing – Where the Minister considers it appropriate, either because an international arrangement so requires or permits or in the interest of community, the Minister may order that the whole or any part of any property forfeited under the Proceeds of Crime Act 2007, or the value thereof, be given or remitted to a foreign State.

37. Payments out of the Fund – The following are purposes of the Confiscated Assets Fund:

(a) making any payments to foreign countries that the Minister considers are appropriate under section 36; and

(b) making any payments that the Minister considers necessary to satisfy Samoa's obligation in respect of—

(i) a registered foreign forfeiture order; or
(ii) a registered foreign pecuniary penalty order; and

(c) making any payments under a programme approved by the Minister under section 38.

38. Approved Programmes for expenditure – **(1)** The Minister may, in writing, approve a programme for the expenditure in a particular financial year of money standing to the credit of the Confiscated Assets Fund.

(2) The expenditure is to be approved for one or more of the following purposes:

(a) funding of the Money Laundering Prevention Authority or the Financial Intelligence Unit; or
(b) crime prevention measures; or
(c) law enforcement measures.

PART 6
MISCELLANEOUS

39. Money laundering an offence for extradition Purposes – For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.

40. General penalty provisions – A person who contravenes or fails to comply with any provision or requirement of this Act for which no offence is specifically created commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or imprisonment for a term not exceeding one year, or both.

41. Account in fictitious, false or incorrect name – **(1)** A person who opens, operates or authorises the opening or the operation of an account with a financial institution in a fictitious, false or incorrect name commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution unless the person

has previously disclosed the other name or names to the financial institution.

(3) Where a person using a particular name in the person's dealings with a financial institution discloses to it a different name or names by which the person is commonly known, the financial institution shall make a record of the disclosure and shall, at the request of the Financial Intelligence Unit, give the FIU, a copy of that record.

(4) For purposes of this section:

(a) a person opens an account in a false name if the person, in opening the account or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and

(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement date of this Act.

42. Liability of employers and principals – **(1)** Any act done or omitted by a person as an employee or agent shall, for the purposes of this Act, be treated as done or omitted by that person's employer or principal, whether or not it was done with the knowledge or approval of the employer or principal.

(2) Subsection (1) only applies, in the case of an agent, where the agent acted within the terms of the agent's agency or contract.

43. Liability of directors, controllers or officers of bodies corporate – Where a body corporate is convicted of an offence under this Act or any regulations made under this Act, every director, controller or officer concerned in the management of the body corporate commits the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent.

44. Non-disclosure – **(1)** This section applies to a person while the person is or after the person ceases to be an officer, employee or agent of the Authority or the Financial Intelligence Unit.

(2) Except for the purpose of the performance of the person's duties or the exercise of the person's functions under this Act or when lawfully required to do so by any court, the person referred to in subsection (1) shall not disclose any information or matter which has been obtained by the person in the performance of the person's duties or the exercise of the person's functions under this Act, except for one or more of the following purposes:

(a) the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) the enforcing of the Counter Terrorism Act 2014 or the Proceeds of Crime Act 2007.

45. Obligations of supervisory authorities – The relevant supervisory authority of a financial institution may:

(a) adopt any necessary measures to prevent or avoid any person who is not a fit and proper person from controlling or participating, directly or indirectly in the directorship, management or operation of the financial institution; and

(b) examine and supervise the financial institution, and verify, through regular on-site examinations, that a financial institution complies with the requirements of this Act; and

(c) issue guidelines to assist financial institutions in detecting suspicious patterns of behaviour in their customers; and

(d) co-operate with law enforcement agencies and the Financial Intelligence Unit, both domestic and foreign, in any investigation, prosecution or proceedings relating to a serious offence, a money laundering offence, an offence of the financing of terrorism or any offence under this Act.

46. Immunity – **(1)** No civil, criminal or administrative liability, including damages or penalties, shall be imposed against the Government of Samoa, the Minister, the Authority,

the Financial Intelligence Unit, the Director or any officer, servant or agent of the Authority or the Financial Intelligence Unit or any person acting pursuant to any authority conferred by the Authority or the Director, 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 Authority, the Director, or any officer, employee or agent of the Authority or the FIU or any person acting pursuant to any authority conferred by the Authority or the Director, as the case may be, is to be borne by the Government of Samoa.

47. Audit and Annual Report – **(1)** The Money Laundering Prevention Authority and the Financial Intelligence Unit is subject to examination and audit by or under the control of the Controller and Auditor General, except where the accounts of the Authority or the FIU are included as part of the audited accounts of the Central Bank.

(2) The Controller and Auditor General and a person acting on behalf of or under the direction of the Controller and Auditor General shall not use or disclose any information that they have obtained, or to which they have had access, in the course of their audit except for the purposes of exercising those powers or performing their duties and functions under the Samoa Institute of Accountants Act 2006.

(3) The Authority and the FIU shall submit an Annual Report to the Parliament within 3 months from the end of its financial year, except where the Annual Report is included as part of the Annual Report of the Central Bank.

48. Regulations – **(1)** The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for, or in relation to, any of the following:

(a) to provide for the regulation and control of financial institutions for the prevention of money laundering and the financing of terrorism;

(b) to prescribe the requirements, procedures and systems for training, customer identification, record keeping and reporting obligations and internal controls under this Act; or

(c) where it is necessary to determine whether or not the amount of cash or currency exceeds any prescribed amount, the manner and method of determining whether any cash denominated in a foreign currency is taken to be the equivalent in Samoan tala.

(3) Regulations made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine of 100 penalty units or imprisonment for a term not exceeding one year or both.

49. Repeal – The Money Laundering Prevention Act 2000 is repealed.

50. Savings and transitional arrangements – **(1)** A document and an act of authority so far as they are subsisting or in force at the time of the repeal of the Money Laundering Prevention Act 2000 shall continue and have effect under the corresponding provisions of this Act until such time as they are altered or amended or cancelled, as the case may require, under the provisions of this Act.

(2) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of the Money Laundering Prevention Act 2000 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine.

(3) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Money Laundering Prevention Act 2000 to this Act, the Minister by Notice may make such provisions as the Minister deems necessary in order for all matters under or concerning the Money Laundering Prevention Act 2000 and this

Act to be properly and effectively determined or otherwise dealt with.

SCHEDULE 1
(Section 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Banking business as defined in the Central Bank of Samoa Act 1984 and the Financial Institutions Act 1996;

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

3. Credit unions;

4. Lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

5. Finance leasing;

6. Money transmission services;

7. Issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

8. Entering into and issuing guarantees and commitments;

9. Trading for its own account or the account of customers in:
   (a) money market instruments (such as cheques, bills or certificates of deposit); or
   (b) foreign exchange; or
   (c) financial and commodity based derivative instruments (such as futures or options); or
   (d) exchange and interest rate instruments; or
   (e) transferable or negotiable instruments;

10. Underwriting share issues and participation in such issues and the provision of financial services related to those Issues;

11. Money broking;

12. Investment business including portfolio management and advice, safekeeping and administration of securities, safe custody services and acting as a securities dealer or futures broker;

13. Insurance business transactions, including carrying on the business of an insurer or insurance intermediary;

14. Trustee administrator or investment manager of a superannuation scheme but excluding closed-end schemes;

15. Dealing in bullion;
16. Trustee, manager or administrator of a mutual fund or unit trust;

17. Operating a gambling house, casino or lottery, including carrying on operations through the internet, when their customers engage in financial transactions equal to or above $10,000 or the equivalent in another currency, or such other amount as may be prescribed by regulation;

18. Trust or corporate service provider;

19. Trustee company business as defined by the terms "carry on business" and "trustee company" in section 2 of the Trustee Companies Act 1987;

20. Lawyers (barristers and solicitors) when:
    (a) assisting in the planning or execution of transactions for their clients relating to:
        (i) depositing or investing of funds; or
        (ii) buying and selling real property or business entities; or
        (iii) managing client money, securities or other assets; or
        (iv) opening or managing a bank, savings or securities accounts; or

(v) organisation of contributions necessary for the creation, operation or management of companies; or

(vi) creation, operation or management of trusts, companies or similar structures; or

(b) by acting on behalf of or for a client in any financial or real estate transaction, but only to the extent that the lawyer receives funds in the course of the lawyer's business for the purpose of deposit or investment or settling real estate transactions (whether or not the funds are deposited into a separate trust account);

21. Accountant or certified public accountant, but only to the extent that the accountant gives investment advice or receives funds in the course of the accountant's business for the purposes of deposit or investment (whether or not the funds are deposited into a separate trust account);

22. Real estate agents, when they are involved in transactions for their client relating to the buying and selling of real estate;

23. Dealing in real estate or high value items, including antiques;

24. Dealers in precious metals and stones, including pearls, when they engage in any cash transaction with a customer equal to or above $50,000 or the equivalent in another currency, or such other amount as may be prescribed by regulation.

25. Dealers or Promoters of virtual or digital currency, or anything related to block chain technology.

26. Non-Profit Organisations of Samoa.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008.*

The following general revisions have been made:

(a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
(b) Amendments have been made to up-date references to offices, officers and statutes.
(c) Insertion of the commencement date
(d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
    (i) "Every" and "any" changed to "a"
    (ii) "shall be" changed to "is" and "shall be deemed" changed to "is taken"
    (iii) "shall have" changed to "has"
    (iv) "shall be guilty" changed to "commits"
    (v) "notwithstanding" changed to despite"
    (vi) "pursuant to" changed to "under"
    (vii) "it shall be lawful" changed to "may"
    (viii) "it shall be the duty" changed to shall"
    (ix) Numbers in words changed to figures
    (x) "hereby" and "from time to time" (or "at any time" or "at all times") removed
    (xi) "under the hand of" changed to "signed by"
    (xii) Part numbers changed to decimal

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007:*

By the *Audit Act 2013, No. 22,* (commenced on 27 January 2014):

Section 47(1) and (2) amended by deleting the words "Chief Auditor" and substituting with "Auditor General".

By the *National Prosecution Office Act 2015* (commenced on 1 January 2016):

Section 5(1) After paragraph (g), insert "(ga) the Director of the Public Prosecutions; and".

By the *Constitution Amendment Act (No. 1) 2017, No 8* (commenced on 6 June 2017):

Section 5(1) paragraph (ga) repealed.

By the *Money Laundering Prevention Amendment Act 2018, No. 13* (commenced on 22 June 2018)*:*

Section 2 definitions for "Asia Pacific/Group", beneficial owner", "business relationship", "customer due diligence", "Financial Action Task Force" or "FATF", "large cash transaction amount", "politically exposed person" and "serious offence" inserted.

Sections 3B & 3C new sections inserted.

Section 7 subsections (2), (3) and (4) substituted.

Section 8 in subsection (1)(c), substituted "; or" for the full stop at the end of the paragraph; and

new paragraph (d) inserted in subsection (1).

Section 13 in subsection (1), inserted "cargo or mail" after "luggage" and for "100 penalty units" substituted with "200 penalty units" and for "5 years" substituted with "10 years";

in subsection (2)(e) inserted "or" after "FIU;" and

inserted new paragraph (f) in subsection (2).

Section 16 substituted.

Sections 16A, 16B, 16C new sections inserted.

Section 21A new section inserted.

Section 23A new section inserted.

Schedule 1 new clauses 25 and 26 inserted.

Savalenoa Mareva Betham-Annandale
Attorney General of Samoa

This Act is administered by
the Central Bank of Samoa.