



Tonga

NATIONAL RESERVE BANK OF TONGA ACT

Chapter 16.12

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NATIONAL RESERVE BANK OF TONGA ACT

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NATIONAL RESERVE BANK OF TONGA ACT

AN ACT TO ESTABLISH THE NATIONAL RESERVE BANK OF TONGA AND FOR PURPOSES CONNECTED THEREWITH¹

Commencement [31st January 1989]

PART I - PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the National Reserve Bank of Tonga Act.
- (2) Part V and section 62 of this Act will not come into operation until the day appointed under section 36.²

2 Interpretation

- (1) In this Act, unless the context otherwise requires —
 - “**Bank or Reserve Bank**” means the National Reserve Bank of Tonga established under section 3;³
 - “**bank**” means any financial institution engaged in banking business and other financial activities, as determined in the licence granted by the Bank;⁴
 - “**banking business**” means:
 - (i) the business of receiving funds from the public through the acceptance of deposits of money payable upon demand or after a fixed period or after notice, or any operation through the frequent sale or placement of bonds, certificates, notes or other securities,

and the use of such funds either in whole or in part for loans or investments for the account and at the risk of the person doing such business; and

- (ii) any other activity recognised by the Bank as customary banking practice which a bank engaging in the activities described in (i) may additionally be authorised to do by the Bank;⁵

“Board” means the Board of Directors of the Bank established under section 9;

“Chairman” means the Chairman of the Board;

“currency” means note or coin as established in Section 24(1);⁶

“Deputy Chairman” means Deputy Chairman of the Board;

“Deputy Governor” means the Deputy Governor of the Bank appointed under section 9A(1)(i);⁷

“director” means a member of the Board;

“employee” means any person appointed and employed under subsections 11(1); subsection 9A(1)(i) or section 17 of this Act;⁸

“financial activity” means an activity listed in section 27 of the Financial Institution Act or approved by the Reserve Bank as prescribed under the same section;⁹

“financial institution” means an institution —

- (a) carrying out banking business as prescribed by this Act or the Financial Institutions Act;
- (b) carrying out any financial activity listed in section 27 of the Financial Institutions Act;
- (c) prescribed by subsection 2(2) of this Act; or
- (d) approved by the Reserve Bank as prescribed by any Act or Regulation.¹⁰

“Governor” means the Governor of the Bank appointed under section 11;

“holding company” means a company whose main business is to own the shares of other companies;¹¹

“legal tender” means currency which any creditor is obliged to accept in payment for a debt for the amount established in Section 24(1) of this Act;¹²

“licensed financial institution” means a financial institution carrying out any banking business, as determined in a license granted by the Bank

Provided that, for the purposes of this Act, unless otherwise specified, all offices and branches of a licensed financial institution in Tonga shall be deemed to be one entity and regarded by the Reserve Bank as a single licensed financial institution;¹³

“**Ministry**” means the Ministry responsible for Finance;¹⁴

“**monetary liability**” means currency in circulation, financial claims against the Bank, and deposits by non-government resident entities, existing in the balance sheet of the Bank;¹⁵

“**non-bank financial institution**” means a financial institution other than a bank, established under any applicable Act or Regulation, and included in the list established under section 2(2) of this Act;¹⁶

“**statutory corporation**” means a body corporate other than a financial institution, established under any written law, other than a law relating to the formation and registration of companies:

Provided that for the purposes of this Act any company in which His Majesty's Government owns a majority of the share capital shall be deemed to be a statutory corporation.

“**subsidiary**” is as defined under the Financial Institutions Act;¹⁷

- (2) The following entities are considered non-bank financial institutions- Retirement Funds; Insurance Companies; Credit Unions; Cooperative Societies; Credit Institutions; Money Lenders; Microfinance Institutions; Foreign Exchange Dealers; other Investment companies and other entities as established by the Bank through regulation.¹⁸

PART II - CONSTRUCTION

3 Establishment of National Reserve Bank of Tonga

- (1) The National Reserve Bank of Tonga is hereby established to act as the Central Bank of the Kingdom in accordance with the provisions of this Act.¹⁹
- (2) The Bank shall —
- (a) be a body corporate with perpetual succession and a common seal;
 - (b) be capable of entering into contracts, suing or being sued in its own name;
 - (c) subject to the provisions of this Act, have power to acquire, hold and dispose of real and personal property;
 - (d) have power to make such expenditure as it deems necessary for the proper discharge of its functions.

3A Independence²⁰

- (1) In the pursuit of its objectives and the performance of its functions, the Bank shall be independent and accountable as provided for in this Act.

- (2) The Bank, and the members of its decision-making bodies and employees, in the exercise of their functions, shall not take instructions from any person or entity, including government and its entities. The independence of the Bank shall be respected at all times and no person or entity shall seek to influence the members of the Bank's decision making bodies and employees in the exercise of their functions or to interfere in the activities of the Bank.

4 Objectives of the Bank²¹

- (1) The principal objectives of the Bank shall be to maintain internal and external monetary stability.
- (2) Without prejudice to its principal objective, the Bank shall —
- (a) promote financial stability; and
 - (b) promote a sound and efficient financial system.
- (3) Subject to subsections (1) and (2), the Bank shall conduct its activities in a manner that supports macroeconomic stability and economic growth.

4A Functions of the Bank²²

The principal functions of the Bank shall be, to —

- (a) issue currency;
- (b) formulate and implement monetary policy;
- (c) prescribe the regime for the determination of the external value of the Tongan currency in consultation with the Minister;
- (d) determine the foreign exchange rate and implement foreign exchange policy;
- (e) determine and implement financial stability policy, and oversee the maintenance of the stability of the financial system as a whole;
- (f) regulate as required the supply, availability and international exchange of money;
- (g) exclusively hold and manage the external reserves of the Kingdom;
- (h) provide advisory services to the Minister on banking and monetary matters;
- (i) be the principal banker, fiscal agent and depository of the Government;
- (j) undertake banking business, in Tonga or elsewhere, subject to the provisions of this Act;
- (k) regulate and supervise financial institutions, including non-bank financial institutions;
- (l) oversee and promote the efficient, sound and safe functioning of the payment system;

- (m) collect and produce statistics;
- (n) cooperate with and participate in international councils and organisations, including public international financial institutions, and cooperate with domestic and foreign public entities, concerning matters related to its objectives and functions;
- (o) regulate and supervise capital markets in Tonga;
- (p) to manage and promote financial inclusion initiatives and related activities; and²³
- (q) carry out any other function or any ancillary activities incidental to the exercise of its functions under this Act or any other Act.²⁴

5 Offices, branches, agents and correspondents²⁵

The Bank shall have its head office in Nuku'alofa and may establish branches within Tonga, appoint agents and correspondents within Tonga and abroad and, with the approval of Cabinet on the recommendation of the Board through the Minister, establish offices abroad.

PART III - CAPITAL, RESERVES AND PROFITS

6 Capital

- (1) The authorized capital of the Bank shall be \$5,000,000 and such amount may be increased by the Board with the approval of the Minister. No reduction of the authorised capital shall be permitted at an time.²⁶
- (2) Additional amounts of authorised capital shall be paid up by the Minister in cash.²⁷
- (3) All capital stock shall be wholly owned by His Majesty's Government, shall not be transferable or subject to encumbrance and shall not be reduced except by an amendment to this Act.
- (4) Notwithstanding any other provision of this Act, where the Board informs the Minister that the assets of the Bank are less than the sum of its liabilities and paid up capital, the Minister shall cause to be transferred to the Bank cash or negotiable, market interest bearing securities issued by the Government for such amount as is necessary to preserve the paid up capital.²⁸

7 General Reserve²⁹

The Bank shall establish a General Reserve to which shall be allocated at the end of each financial year of the Bank such sums as shall be specified pursuant to section 8.

The General Reserve account may not be used except for the purposes of covering losses sustained by the Reserve Bank.

8 Profits³⁰

- (1) The net profits of the Bank for any financial year, after meeting all current expenditure for that year and after making provision for bad and doubtful debts, depreciation in assets and any other purposes deemed necessary by the Board shall be allocated as follows —
 - (a) where the General Reserve does not exceed 50% of the authorised capital of the Bank, 100 % to be transferred to the General Reserve; and
 - (b) where the General Reserve exceeds 50% of the authorised capital of the Bank, 30 % to be transferred to the General Reserve until the sum of the General Reserve and the authorised capital of the Bank equal 10% of the total monetary liabilities of the Bank. Provided that upon agreement between the Minister and the Bank the General Reserve may be increased.³¹
- (2) Subject to subsection (1), the remainder of the net profits for the financial year shall be applied to the redemption of any securities issued under section 6 held by the Bank.
- (3) The Board shall, with the approval of the Minister, subject to subsections (1) and (2), allocate to the General Reserve and pay to Government's general revenue the remaining net profit.
- (4) No deduction or payment shall be made under subsections (2) and (3) where the assets of the Bank are, or after the deduction or payment would be less than the sum of its liabilities and paid up capital.

PART IV - BOARD, MANAGEMENT AND EMPLOYEES

9 Board, its general powers and responsibilities³²

- (1) There shall be a Board of Directors of the Bank appointed in accordance with section 10.
- (2) The Board shall be responsible for its policy and affairs and may issue directives for the purpose of giving effect to the provisions of this Act.
- (3) The Board —
 - (a) shall keep under constant review the performance of the Bank in the conduct of its functions and its use of resources; and
 - (b) may give advice to the Governor on any matter relating to the Bank's functions and the exercise of its powers.

- (4) A Director shall act in good faith in the best interests of the Bank and shall —
- (a) not act, or agree to the Bank acting, in a manner that contravenes the law;
 - (b) not agree to, cause or allow the business of the Bank to be carried on in a manner likely to create a substantial risk or serious loss to the Bank; or
 - (c) not agree to the Bank incurring an obligation unless the director believes at the time on reasonable grounds that the Bank shall be able to perform the obligation when it is required to do so.

9A Specific powers and functions of the Board³³

- (1) The Board shall have the following powers and functions —
- (a) define and adopt the monetary policy;
 - (b) determine the regime for the determination of the external value of the Tongan currency in consultation with the Minister;
 - (c) define and adopt the financial stability policy, foreign exchange policy and other policies of the Bank regarding the execution of its functions, and issue, as appropriate, internal rules for their implementation;
 - (d) propose the increase of the capital of the Bank;
 - (e) supervise the implementation of the policies and the exercise of the functions of the Bank;
 - (f) adopt directives and prudential statements issued by the Bank;
 - (g) determine the general policies and to adopt the internal rules applicable to the administration and operations of the Bank;
 - (h) decide on the establishment and location of branches, representative offices, and operations facilities;
 - (i) appoint and terminate the employment of the Deputy Governor and Chief Internal Auditor on the recommendation of the Governor;
 - (j) determine the Reserve Bank's general terms and conditions of employment, including the remuneration policy;
 - (k) approve the annual budget of the Bank;
 - (l) approve the annual report and other formal reports and financial statements of the Bank;
 - (m) recommend the appointment of the external auditors of the Bank to the Minister in accordance with section 53;
 - (n) decide whether the Bank should take on debt in material amounts, and if so, the terms and conditions of such debt;
 - (o) determine the categories of assets that shall constitute the official external reserves in accordance with section 30;

- (p) determine the categories of assets that shall be suitable for investment of the Bank's financial resources;
 - (q) advise on the determination of the denominations and design of banknotes and coins under section 25, and arrange for the minting of coins and the printing of currency notes and for all related matters as prescribed by the same section;
 - (r) establish one or more advisory bodies, prescribe their terms and conditions of appointment of their members, and determine the terms of reference of such bodies;
 - (s) establish one or more committees consisting of members of the Board and/or other persons, including on monetary policy, audit, finance, currency and human resources, and to define their responsibilities;
 - (t) adopt the rules of procedure for the Board; and
 - (u) such other powers and functions as explicitly granted by this Act.
- (2) The powers and functions listed in the previous subsection may not be delegated.

10 Appointment of Board³⁴

- (1) The Minister shall, with the consent of Cabinet, appoint 5 directors, to the Board other than the Governor and the Secretary for Finance (or an alternate nominated by the Minister) and the Minister shall appoint a Chairman and Deputy Chairman of the Board.³⁵
- (2) The Governor shall be a member but shall not chair the Board.³⁶
- (3) The Secretary for Finance (or an alternate nominated by the Minister) shall be a member of the Board.
- (4) Each director shall be appointed for a term of 5 years and may be reappointed.
- (5)
 - (a) give regard to a person's recognised integrity, knowledge, skills, experiences and recognised standing in agriculture, commercial, financial, industrial or professional and academic matters, including in economics, banking, finance, accounting, auditing, or the law; and
 - (b) be made so that no more than two Directors' terms expire in any one calendar year.
- (6) The Governor shall not be present during any deliberation of the Board in any matters relating to his terms of employment.
- (7) Directors at the time of the enactment of the present amendments shall continue being members of the Board until the term stipulated under their respective contracts expires.
- (8) The Governor at the time of the enactment of the present amendments shall continue being a member of the Board until the term stipulated under his respective contract expires.

Provided that any subsequent appointment of a person as a Governor and member of the Board shall be made for a term of not less than 5 years.

11 Appointment and removal of Governor³⁷

- (1) The Governor shall be a person of recognised experience in financial and banking matters, and shall be appointed by Cabinet on the recommendation of the Minister after consultation with the Board for a term of 5 years and shall be eligible for re-appointment.
- (2) The Governor shall be employed under a contract of employment with the Board on terms and conditions determined by the Minister on the recommendation of the Board.
- (3) Where the Governor during his term of office becomes permanently incapable of carrying out, or is guilty of serious misconduct in, the performance of the duties of his office or has failed to perform his or her duties for a consecutive period of more than two months without approval of the Board, he may be removed from office by Cabinet, on the recommendation of the Minister made at the request of the Board.

12 Remuneration of directors³⁸

All directors shall be paid such remuneration in respect of their services as may be determined by the Minister on the recommendation by the Governor.

13 Resignation and disqualification

- (1) A director may resign his office on giving notice in writing to the Cabinet through the Minister. The Governor may resign his office on giving not less than three months' notice to the Minister³⁹
- (2) No person shall be appointed or remain a director —
 - (a) who becomes or has anywhere been declared bankrupt and has not been discharged, or against whom an order has been made in any Court to pay a specific sum of money and who fails to do so without leave of the court;
 - (b) who has anywhere been convicted of an offence involving dishonesty;
 - (c) who has, in the case of a person having professional qualifications, been disqualified or suspended from practising his profession by the order of any competent authority made in respect of him personally;
 - (d) if the Minister with the consent of Cabinet, following consultation with the Governor, decides that he is incapable of carrying out, or is guilty of serious misconduct in the performance of, the duties of his office;⁴⁰

- (e) who is a director, officer or employee or who directly or indirectly holds or exercises power over any voting stock of, a licensed financial institution;⁴¹
- (f) who is a member of the Public Service (other than the Secretary of Finance or his alternate);⁴²
- (g) who is a member of staff of the Bank (other than the Governor);⁴³
- (h) who is a Director or member of staff of a licensed financial institution;⁴⁴ or
- (i) who is a member of the Legislative Assembly.⁴⁵

14 Appointment to fill a vacancy

If a director dies or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person shall be appointed in accordance with section 10 at the earliest opportunity, and in any event within 30 days, to fill the vacancy and shall hold office until the date when the appointment of the person in whose place he was appointed would have expired.

14A Restrictions on subsequent functions⁴⁶

Former members of the Board shall not serve in any capacity in or for a bank or other financial institution for a period of two years immediately following the termination of their active service for the Reserve Bank, without obtaining the prior approval of the Board.

15 Duties of the Governor

- (1) The Governor shall —
 - (a) serve as Chief Executive Officer of the Bank responsible to the Board for the execution of its policy and the prudent management of the Bank;⁴⁷
 - (b) except as may otherwise be provided in this Act, the regulations of the Bank or the resolutions of the Board, have the power to act, contract, sign instruments and documents on behalf of the Bank and, pursuant to the resolutions of the Board, delegate any of these powers to the Deputy Governor or to other officers of the Bank provided that no person may delegate a power or duty that has been received by delegation from the Governor.
 - (c) propose and implement the monetary and exchange rate policies, and the other policies of the Reserve Bank;
 - (d) take enforcement measures, including instructing any bank or financial institution, or any regulated payment system, to take remedial actions;

- or by appointing a receiver for such entities; or by imposing administrative penalties, as provided by this Act, or by any other Act;
- (e) report, not less than ten times each year, to the Board on the conduct of the Reserve Bank's policies and operations, on the soundness and stability of the financial system, and on the state of the money, capital and foreign exchange markets, including all events and conditions that have or are expected to have a significant effect on the conduct of the policies of the Reserve Bank and on its administration or operations, on the financial system, or on the above-mentioned markets;
 - (f) appoint the officers, heads of departments and employees of the Reserve Bank, other than those that must be appointed by the Board;
 - (g) have such other powers and functions as explicitly granted by this Act, as well as all powers under this Act that are not specifically reserved for the Board.
- (2) The Governor shall devote the whole of his professional services to the Bank and shall not, without the approval of the Minister on the recommendation of the Board, occupy or hold any other office or employment, whether remunerated or not, except as nominee of the Bank except that he may —
- (a) act as a member of any statutory board, committee or commission established by His Majesty's Government;
 - (b) become a governor, director or member of the board of any international financial institution of which the Kingdom of Tonga is a member.⁴⁸
- (3) In the event of the absence or incapacity of the Governor from whatever cause arising, the Deputy Governor appointed in accordance with section 17 shall act as Governor and shall have and may exercise all the powers and functions of the Governor in accordance with subsection (1), and shall be deemed to be a director.
- (4) In the event of both the Governor and the Deputy Governor being unable for any reason to carry out their duties the Minister, on the recommendation of the Board and with the consent of Cabinet, may appoint another director, an officer of the Bank or any other person who is qualified for appointment as a director under this Act, to act as Governor for the time being; and any person so appointed shall, so long as his appointment continues, have all the powers and functions of the Governor.⁴⁹
- (5) Any person, other than a director, who is appointed under this section to act as the Governor shall while so acting be deemed to be a director.⁵⁰

16 Meetings of the Board

- (1) The Board shall meet as often as the business of the Bank may require but not less frequently than ten times per calendar year.

- (2) Meetings of the Board shall be convened and notice given in accordance with regulations to be made, and in addition the Chairman shall convene a special meeting of the Board whenever in his judgment, he deems it necessary.
- (3) The Chairman or in his absence the Deputy Chairman shall preside in all meetings of the Board.⁵¹
- (3A) In the absence of the Chairman and Deputy Chairman at a meeting of the Board, the members present shall appoint an Acting Chairman for that meeting.⁵²
- (4) Four directors of whom one shall be the Governor or Acting Governor, shall form a quorum at any meeting and unless otherwise provided in this Act, decisions shall be adopted by a simple majority of the votes of the directors present except that in the event of an equality of votes, the person presiding shall have and exercise a second or casting vote.
- (5) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the directors.
- (6) All acts done by a person acting in good faith as a director shall be as valid as if he were a director notwithstanding that some defect in his appointment or qualification be discovered.
- (7) In unusual and exigent circumstances, the Governor may convene an extraordinary meeting at which decisions may be taken without regard to the existence of a quorum; such decisions must be ratified at the next regular meeting of the Board to remain in effect.
- (8) The rules of procedure of the Board may permit meetings and voting by teleconferencing or, in exceptional circumstances, by written or electronic means of communication.
- (9) Subject to the quorum requirement, no act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies on the Board.⁵³

16A Proceedings⁵⁴

- (1) The proceedings of the meetings of the Board shall be confidential. The Board may decide to make public the outcome of its deliberations on any matter.
- (2) The minutes of each Board meeting shall be signed by the person chairing that meeting and the Secretary of the Board. (3) The Secretary of the Board shall be the Deputy Governor or any person who is acting in that capacity and who shall be a non-voting member of the Board

16B Employees⁵⁵

- (1) With the exception of the Governor, employees shall devote the whole of their professional services to the Reserve Bank, and shall not hold other offices or

employment, whether remunerated or not, except as nominee of the Reserve Bank or for educational and civic endeavors provided that these do not conflict with the ability to serve the Reserve Bank. The Governor may decide to limit the participation of employees under this section in such external activities.

- (2) The Board may adopt policies and rules deviating from the previous subsection.
- (3) Subject to section 11(1), the Governor shall appoint and terminate the employment of employees, agents and technical experts of the Reserve Bank, within the limits of his powers, and in accordance with, the general terms and conditions of employment adopted by the Board.
- (4) No remuneration shall be based on the Reserve Bank's profits or any type of revenue.

16C Benefits for the Employees⁵⁶

- (1) The Bank may establish and regulate insurance plans, pension plans or provident funds or schemes for the benefit of the Governor, the Deputy Governor, and employees, and may make contributions to any such plan, fund or scheme, as approved by the Board.
- (2) The Bank may grant loans and advances, for housing and other purposes, to the Governor, the Deputy Governor, and its employees, on the mortgage of, or otherwise on the security of, immovable or other property, as approved by the Board and in accordance with this Act.
- (3) The Bank shall promote and sponsor the training of technical personnel on the subjects relating to the functions and duties of the Reserve Bank.

17 Power to appoint officers and employees⁵⁷

The Governor may appoint and employ, at such remuneration and on such terms and conditions as the Board may determine, officers and employees as the Governor considers necessary for the efficient functioning of the Bank.

18 Conflicts of interest

- (1) No director shall act as a delegate of any agricultural, commercial, financial, industrial, professional or other interest, or receive or accept directions therefrom in respect of duties to be performed under this Act or by virtue of such capacity under any other Act.
- (2) All directors shall fully disclose to the Board before 31 January each year, in accordance with the rules approved by the Board, any agricultural, commercial, financial, industrial, professional or other interests with which they or any person with whom they have personal, family, business or

financial relations may at any time be directly or indirectly connected and shall refrain from voting on any matter related thereto which becomes the subject of Board action. Provided that such an interest, if so disclosed, shall not disqualify the interested party for the purpose of constituting a quorum.⁵⁸

- (3) No director nor any officer or employee of the Bank shall accept any gift or advantage for himself or, in his behalf, for persons with whom he may have family, business, or financial connections if the acceptance thereof would result, or give the appearance of resulting, in a diminution of his impartial devotion to his duties under this Act.
- (4) Whenever any matter related to —
 - (a) an interest declared under subsection (2); or
 - (b) a new interest not already declared, is before the Board, the member concerned shall disclose his interest at the beginning of the discussion and shall not participate in the discussion and decision on such matter. Provided that the presence of the Board member abstaining from discussion and decision-making shall be counted for the purpose of constituting a quorum.
- (5) A breach of this section by a member of the Board or of the employees, as the case may be, shall constitute a serious misconduct.⁵⁹

19 Secrecy⁶⁰

Except for the purpose of —

- (a) the performance of his duties;
 - (b) the exercise of his functions;
 - (c) when lawfully required to do so by any court or under the provisions of any written law;
 - (d) when made in accordance with the express consent of the natural or legal person about whom the information relates;
 - (e) giving to the external auditors of the Bank;
 - (f) giving to domestic regulatory or monetary authorities, in the exercise of their official duties; or
 - (g) is required by the interests of the Bank in legal proceedings, no director, officer or employee of the Bank, or auditor appointed under section 53, shall disclose to any person any information relating to the affairs of the Bank or of any financial institution or other person which he has acquired in the performance of his duties under this Act.
- (2) Notwithstanding subsection (1), information may be provided to foreign regulatory, supervisory or monetary authorities or to public international financial institutions, provided that prior to the provision of such information, the Reserve Bank will —

- (a) inform licensed financial institutions of the names and functions of foreign regulatory, supervisory or monetary authorities and public international financial institutions and the general nature of the information to be provided (if appropriate);
 - (b) within 14 days receive feedback from licensed financial institution on proposed third parties and provision of information; and
 - (c) take into consideration the views of licensed financial institutions when determining third parties to whom information will be provided under this subsection.
- (3) Any person contravening the provisions of this subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$20,000 or imprisonment for any period not exceeding 4 years or to both.
 - (4) Any person unlawfully using inside knowledge for his own benefit or the benefit of any other person shall be liable on conviction to a fine not exceeding \$40,000 or to imprisonment for any period not exceeding 8 years or to both.
 - (5) The Governor shall determine the classification and accessibility of documents held by or drawn up by the Reserve Bank.

20 Personal immunity of directors, officers and employees⁶¹

- (1) No director, officer or employee of the Bank or any person including a person previously holding such positions, acting under direction of the Bank shall be personally liable for an act or default of the Bank done or omitted to be done in good faith and without gross negligence in the course of the operations of the Bank.
- (2) The Bank shall indemnify any person indicated in the previous subsection against costs incurred in the defence of a legal action brought against such person in connection with the discharge or purported discharge of official functions within the scope of his employment or engagement under this Act, provided that no such indemnification shall apply if such person has been convicted of a crime arising out of the activities that are covered by such legal action.

PART V - CURRENCY

21 Monetary unit

- (1) The monetary unit of Tonga is the pa'anga, divided into 100 seniti.
- (2) The monetary unit may also, for all purposes, be expressed by the symbol "\$".

22 Sole right to issue currency⁶²

- (1) The Bank shall have the sole right of issuing currency in the Kingdom and no other person shall issue currency or any documents or tokens payable to bearer on demand having the appearance of or purporting to be currency.
- (2) The Bank shall issue notes and coins that are commemorative of any person, place or event of special relevance for the Kingdom. Commemorative notes or coins may be sold at a price higher than the denomination specified in such note or coin as may be determined by the Bank.l.

23 Defacement of notes

- (1) No person shall, without the authority of the Bank, deface any currency note by means of any writing, printing, stamp, mark or erasure.
- (2) Any person contravening the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or imprisonment for not exceeding 5 years or both.⁶³

24 Legal tender

- (1) Currency issued by the Bank or deemed to have been issued by the Bank by virtue of section 36(1)(a) of this Act shall be legal tender in Tonga —
 - (a) in the case of notes, for the payment of any amount;
 - (b) in the case of coins, if the coins have not been tampered with —
 - (i) in the case of coins of denominations in excess of \$1 for the payment of any amount;
 - (ii) in the case of coins of denominations of \$1 or less, for payment of an amount not exceeding 50 times their face value.
- (2) For the purposes of this Act, a coin shall be deemed to have been tampered with if it has been impaired, diminished or lightened (other than by fair wear and tear) or has been defaced, whether or not the coin has thereby been diminished or lightened.

25 Manufacture and characteristics of currency

- (1) In accordance with clause 45 of the Constitution His Majesty, with the advice of His Cabinet, shall determine the denominations, composition, form, design, content and material of the Tonga currency, and may make regulations with regard thereto.⁶⁴
- (2) The Bank shall arrange for the minting of coins and the printing of currency notes and for all matters relating thereto, and for the security and safekeeping of unissued currency and for the custody, disposal and destruction, as necessary, of plates, dies and retired currency.

- (3) Currency notes issued by the Bank shall, subject to subsection (1), bear the signatures of the Prime Minister of Tonga, the Minister, and the Governor of the Bank, or such other person as may be approved by His Majesty with the advice of his Cabinet.
- (4) The characteristics of currency to be issued by the Bank shall be published in the Gazette.

26 Power of recall

Notwithstanding the provisions of section 24, His Majesty, with the advice of His Cabinet, shall have power, on giving notice in the Gazette and in at least one newspaper published and in general circulation in the Kingdom, to call in, for the purpose of withdrawing from circulation, any currency issued or deemed to have been issued by the Bank on payment of the face value thereof, and any such currency so recalled shall, on the expiration of the time limit specified in the notice, cease to be legal tender:

Provided that the holders of any such currency shall be entitled at any time to claim payment from the Bank of the face value thereof.

27 Issue, withdrawal and exchange of currency

The Bank shall issue, reissue and exchange on demand and without charge currency which it has issued or which is deemed to have been issued by it:

Provided that —

- (a) in the event of the unavailability of a requested denomination the Bank may deliver currency of available denominations which most nearly approximate those requested;
- (b) a charge may be made for the issue or reissue of any particular currency specified by notice made under section 53(2).

28 Recovery of lost, stolen mutilated or otherwise damaged currency

- (1) No person shall be entitled to recover from the Bank the value of any lost or stolen currency, except under the terms of any waiver expressly executed in respect of the assumption by the Bank of risks incidental to shipments of currency.
- (2) The conditions under which mutilated or otherwise damaged currency may be exchanged or refunded at partial or face value shall be determined by the Bank.

29 Counterfeit currency⁶⁵

- (1) Any person that counterfeits or alters any banknote or coin that is legal tender in the Kingdom or abroad, or any cheque, security or payment card, whether denominated in the legal tender of the Kingdom or in another currency; or possesses, transports or issues any such note, coin, cheque, security or payment card with the knowledge that it was counterfeited or altered; or possesses or transports any plate, stone, paper, die or other object or substance with the knowledge that it was destined to be used to counterfeit or alter any such note, coin, cheque, security or payment card, commits an offence and shall be liable upon conviction to imprisonment for a period not exceeding 5 years.
- (2) Notes and coins presented to financial institutions or other entities authorised to carry out exchange operations denominated in legal tender in the Kingdom or abroad, which are suspected of being counterfeited or altered, must be withdrawn from circulation and forthwith sent to the competent authorities in compliance with any other legislative provision.
- (3) The Bank shall seize all notes and coins presented to it which are suspected of being counterfeited or altered, and shall draw up a writ with the identification of the banknotes and coins, their bearer, and the Reserve Bank's grounds for suspicion. The writ shall be forwarded to the competent authorities for such investigation and further action as may be required.
- (4) The Bank may call upon the resources of any other authorities for assistance in carrying out the purposes of this section.
- (5) The Bank shall assist in the enforcement of any law related to the counterfeiting of currency in Tonga and certification by a duly authorised officer of the Bank that an item in question is or is not genuine shall be prima facie evidence of the fact in any legal proceeding in Tonga.

29A Reproduction of currency⁶⁶

- (1) Any reproduction of banknotes and coins, whether legal tender in the Kingdom or abroad, and the creation of any objects that imitate any such banknote or coin, shall require the prior written authorisation of the Bank.
- (2) The Bank may issue directives authorising certain categories of reproductions of currency.
- (3) A person who breaches the provisions of this section commits an offence and upon conviction shall be liable for a fine of up to 100 times the amount involved in the infraction.

29B Destruction or misuse of coins or derived metals⁶⁷

- (1) Any person who, without the authorisation of the Bank, melts, breaks up, perforates, mutilates or uses otherwise than as legal tender, any coin which is

legal tender in the Kingdom, commits an offence and upon conviction shall be liable for a fine of 100 times the amount involved in the infraction.

- (2) Any person who knowingly uses, possesses or deals with any metal or section which he knows or has reasonable cause to believe, is derived from any coin which has been dealt with in contravention of subsection (1), commits an offence and upon conviction and shall be liable for a fine of 100 times the amount involved in the infraction.

PART VI - EXTERNAL RESERVE, FOREIGN EXCHANGE OPERATIONS AND REVALUATION RESERVE ACCOUNT

30 External Reserve

- (1) The Bank shall exclusively hold and manage the official international reserves of the Kingdom. To this end, the Bank shall, maintain, within the limits of its powers, an External Reserve at a level which the Bank considers adequate, consisting of all or any of the following on such terms and conditions as the Board may determine —
 - (a) gold;
 - (b) freely convertible foreign exchange in the form of currency or bank balances held abroad;
 - (c) any internationally recognized reserve asset;
 - (d) bills of exchange and promissory notes denominated in freely convertible foreign currency and payable at any place outside the Kingdom;
 - (e) readily marketable treasury bills denominated in freely convertible foreign currency issued by foreign governments specified from time to time by the Board;
 - (f) readily marketable debt securities denominated in freely convertible foreign currency issued or guaranteed by foreign governments, supranational organisations, foreign central banks, international financial institutions or any foreign public, municipal or local authority specified from time to time by the Board;
 - (g) such other readily marketable external assets denominated in freely convertible foreign currency as the Board shall specify.⁶⁸
- (2) The Bank shall, in managing the external reserve, hold high quality assets with low credit risk and give due regard to the ratings, if any, applied to such assets by internationally recognised credit rating agencies.⁶⁹
- (3) The Bank shall manage all official external reserves consistent with international best practices, and respecting safety, liquidity, and yield in that order of priority.⁷⁰

31 Value of External Reserve

- (1) If the External Reserve has declined or, in the opinion of the Bank, appears to be in danger of declining to such extent as to jeopardize its adequacy, the Bank shall submit to the Minister a report on the reserve position and the causes which have led or may lead to such a decline together with recommendations concerning the measures that it considers necessary to forestall or otherwise remedy the situation.⁷¹
- (2) The Minister shall submit this report to Cabinet and the Legislative Assembly.⁷²

32 Operations in foreign exchange and precious metals

The Bank may, whether in Tonga or elsewhere on such terms and conditions as the Board may determine—

- (a) buy, sell, borrow or otherwise deal in foreign exchange, gold, silver or other precious metals;
- (b) buy, sell or deal in treasury bills and other securities issued or guaranteed by foreign governments, supranational organisations, international financial institutions or any foreign public, municipal or local authority specified from time to time by the Board;
- (c) open and maintain accounts with, and place deposits with, central banks and other banks and financial institutions abroad;
- (d) open and maintain accounts for, accept deposits from, and act as agent or correspondent for, any person approved by the Board.
- (e) establish foreign credits and give guarantees which are essential to the functions of the Bank.⁷³

33 Revaluation Reserve Account⁷⁴

- (1) The gains or losses arising from any change in the valuation of the Bank's assets or liabilities in, or denominated in, gold or foreign currencies or any internationally recognized reserve asset as a result of alterations of the exchange rate of the currency of Tonga, or of any change in the values of those assets or liabilities with respect to the currency of Tonga, shall be credited or debited to a Revaluation Reserve Account and neither profit nor loss arising from any such change shall be included in the computation of the annual profit or loss of the Bank.
- (2) Any loss arising from any such change referred to in subsection (1) shall be set off against any credit balance in the Revaluation Reserve Account and, notwithstanding any other provision of this Act, if such balance is insufficient to cover that loss, Cabinet shall cause to be transferred to the ownership of the Bank non-negotiable market interest bearing securities issued by the Government to the extent of any deficiency.⁷⁵

- (3) Any credit balance in the Revaluation Reserve Account at the end of each financial year of the Bank shall be applied, on behalf of the Government, to the redemption of all securities issued and outstanding under section 6. Any balance thereafter remaining in the Revaluation Reserve Account shall be carried forward to the next financial year.⁷⁶
- (4) Subject to subsection (3), any remaining credit in the Revaluation Reserve Account may –
 - (a) be used by the Reserve Bank for the costs of implementing the monetary policy subject to the approval of the Board; or
 - (b) be paid to the Government upon the request of the Minister in writing to the Reserve Bank subject to the market conditions and approval by the Board:

Provided that the Revaluation Reserve Account maintains a minimum balance of \$10,000,000.⁷⁷
- (5) No credit or debit shall be made to the Revaluation Reserve Account except in accordance with the provisions of this section.

34 External value⁷⁸

Without prejudice of the principal objective of the Bank under section 4(1), the external value of the pa'anga shall be determined from time to time in a manner approved by the Board, after consultation with the Minister, having due regard to the obligations which the Kingdom of Tonga has assumed in accordance with the provisions of any international monetary agreement to which it is a party or to which it has adhered.

35 Exchange rates

- (1) The Bank may determine the rate at which the Tongan currency may be exchanged for the currency of any other country.
- (2) Any person who exchanges any Tongan currency for the currency of any other country, at a rate which he knows to be other than the rate determined under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.⁷⁹

PART VII - TRANSFER OF ASSETS AND LIABILITIES

36 Transfer of Assets and Liabilities

- (1) On a day to be appointed by the Minister by notice in the Gazette,⁸⁰ the Bank shall take over the following —
 - (a) the assets of the Board of Commissioners of Currency established under the Treasury Notes Act and the Coinage Act including (but not limited to) the assets of the Note Security Fund, Treasury Note Income Account, Coinage Security Fund and Coinage Income Account established thereunder, and the Bank shall thereupon assume all liabilities of the said Board of Commissioners of Currency, Note Security Fund, Treasury Note Income Account, Coinage Security Fund and Coinage Income Account, including liability for notes and coin issued or deemed to have been issued under the Treasury Notes Act and the Coinage Act and any such notes and coin shall be deemed to have been issued by the Bank;
 - (b) all external financial assets held by or on behalf of His Majesty's Government;
 - (c) the financial obligations of membership of the Kingdom of Tonga in the International Monetary Fund.
- (2) The net assets acquired by the Bank in terms of the last preceding subsection shall be allocated firstly towards meeting His Majesty's Government's liability to pay up an initial amount of \$1,000,000 capital stock in terms of section 6(2) of this Act; any excess of net assets remaining shall be allocated to the General Reserve referred to in section 7 of this Act.

PART VIII - RELATIONS WITH FINANCIAL INSTITUTIONS

37 Opening accounts for financial institutions

The Bank may under such terms and conditions as the Board may determine —

- (a) open accounts for, and accept deposits denominated in pa'anga or any foreign currency from financial institutions doing business in Tonga; and
- (b) open accounts with, and place deposits denominated in pa'anga or any foreign currency with, financial institutions doing business in Tonga.

38 Operations with account holders and open market operations

The Bank may in order to achieve its objectives under section 4, as the case may be, under such terms and conditions as the Board may determine—

- (a) effect remittances of money;
- (b) buy from, sell to, discount and rediscount for, holders of accounts with it bills of exchange and promissory notes;
- (c) for its own account issue, sell or place bonds, certificates, notes and similar instruments and purchase such instruments:
Provided that these operations need not be limited to account holders only;
- (d) make open market operations in the financial markets by buying and selling outright (spot or forward) or under repurchase agreement, and by lending or borrowing claims and marketable instruments, as well as precious metals;
- (e) lend money to holders of accounts with it on such terms and conditions, and against the security of assets, including intraday credits to banks that are fully paid at the end of the day, as may be specified by the Board.⁸¹

39 Required reserves of financial institutions

- (1) The Bank may, by written notice to the principal place of business in Tonga of each financial institution and by publication in the Gazette,⁸² specify the reserves required to be maintained by way of cash holdings or deposits with the Bank or by both in such proportions as the Bank may specify. The reserves shall be the same for all financial institutions of the same class and shall not exceed 25 per cent of deposit and other similar liabilities which may be specified by the Bank.⁸³
- (2) The Bank may pay interest on all or part of the reserves specified under subsection (1).
- (3) The Bank may specify different reserve ratios for different classes of liabilities, and may specify the method of their computation.
- (4) The initial specification of reserves required under subsection (1), or any increase thereof, shall be effective only after at least 30 days notice thereof has been given and shall not relate to a period prior to the date of notice.
- (5) The Bank may impose on any financial institution which fails to maintain the reserves specified under subsection (1) an interest charge not exceeding one tenth of one percent of the amount of the deficiency in such reserves for every day on which the deficiency continues.
- (6) Notwithstanding provisions under the previous subsections, when this is considered necessary to achieve monetary policy objectives, the Board may

prescribe reserves in a percentage higher than 25%, which may be made effective in a period shorter than 30 days notice.⁸⁴

39A Supervisory functions⁸⁵

- (1) The Bank shall be exclusively responsible for the regulation, licensing, registration and supervision of banks and other financial institutions as further specified in the Financial Institutions Act, or any other relevant Act.
- (2) Such responsibility shall include the powers of the Bank to —
 - (a) issue directives, prudential statements, guidelines and other acts as necessary for the implementation of the Bank's supervisory functions;
 - (b) visit the offices of financial institutions to examine such accounts, books, documents and other records and to obtain such information and records from them;
 - (c) subject to section 19(2) disclose information and data obtained under the previous subsection in whole or in part in aggregate form for classes of financial institutions determined in accordance with the nature of their business;
 - (d) impose administrative penalties and take remedial action or such other action in respect of any financial institution as the Bank may deem necessary or advisable in light of the circumstances;
 - (e) define the ratios to be observed among balance sheet items or off-balance items and establish prudential limits on the operations that financial institutions are authorised to carry out, in both cases either individually or on a consolidated basis; and
 - (f) participate in the process of resolution of troubled banks and financial institutions, through controllership or receivership in accordance with the Financial Institutions Act.

40 Regulation of interest and credit⁸⁶

- (1) The Bank may, specify by publication in the Gazette⁸⁷ and by written notice to the principal place of business in Tonga of each financial institution —
 - (a) the maximum or minimum, or maximum and minimum rates of interest payable in respect of deposit and other similar liabilities and the method of computation thereof;⁸⁸
 - (b) the permissible purposes, aggregate ceilings, maximum amounts beyond which the approval of the Bank is necessary, the maximum maturities, and maximum and/or minimum rates of interest chargeable in respect of —
 - (i) the making of advances, whether by loans or overdrafts, and investments;

- (ii) the discounting of bills of exchange, promissory notes and other commercial or financial paper;
 - (iii) the issuing of letters of credit;
 - (iv) the granting of acceptances and other forms of credit;
- (c) the minimum cash margin or security required in respect of the items enumerated in paragraph (b):

Provided that any increase in such cash margin or security shall only be effective after at least 30 days notice thereof has been given and shall not relate to a period prior to the initial date of notice.

- (2) The specifications made under subsection (1) shall be the same for all financial institutions of the same class.
- (3) With the approval of the Minister, the provisions of subsection (1) may be made applicable by the Bank, by publication in the Gazette and by written notice, to any person having as a principal object of his business the extension of credit.
- (4) The Bank shall have authority to examine the accounts, books, and papers of any person who it has reason to suspect is extending or has extended credit in violation of subsection (3) and the refusal to submit those accounts, books and papers shall be prima facie evidence of a violation.
- (5) Any financial institution which fails to comply with a requirement of subsection (1) or (4) may, for each violation and at the option of the Bank, be required to pay a charge not exceeding \$50,000 and \$1,000 for every day during which the offence continues to the Bank; and upon being so required in writing the said sum shall be a civil debt and if not paid may be enforced by action in the Supreme Court.
- (6) Any person to whom the provisions of subsection (1) has been made applicable pursuant to subsection (3) shall be guilty of an offence if —
 - (a) that person is in breach of this section; or
 - (b) that person supplies false information or fails to furnish, within a specified time, any information required by the Bank to satisfy it that that person is complying with this section.
- (7) Any person guilty of an offence under subsection (6) shall be liable on conviction —
 - (a) in respect of an offence under paragraph (a) thereof to a fine not exceeding \$50,000; or
 - (b) in respect of an offence under paragraph (b) thereof to a fine not exceeding \$1,000 for every day during which the offence continues.

40A Disclosure⁸⁹

Every licensed institution shall disclose —

- (a) to each depositor, the effective annual interest rate payable and the method of computation thereof, and the nature and amount or basis of charging of fees, in relation to each account of the depositor; and
- (b) to each person to whom credit is extended, the terms under which such credit is extended including the effective annual interest rate payable and the method of computation, and the nature, amount and basis of computing fees, charges and penalties applied to such credit; and
- (c) the fees and charges for other services provided to customers and others, by maintaining a list of such fees and charges available for inspection by customers upon request.

41 Foreign Exchange Positions

The Bank may, by notice in writing to a licensed financial institution, specify the maximum amount which it may hold or borrow in foreign currencies or a specified foreign currency.⁹⁰

42 Minimum holdings of unimpaired liquid assets

- (1) The Bank may from time to time, with the approval of the Board, by notice in writing to each financial institution and by publication in the Gazette, specify the minimum holdings of unimpaired liquid assets that financial institutions must maintain in relation to their operations in Tonga. The minimum shall be the same for all financial institutions of the same class and shall not exceed 35 per cent of deposit and other similar liabilities.⁹¹
- (2) The Bank shall determine the composition and the method of computing the amounts of unimpaired liquid assets to be held by financial institutions.
- (3) Any financial institution which fails to comply, within such reasonable time as the Bank may fix, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Bank, an interest charge not exceeding one tenth of one per cent of the amount of the deficiency for every day on which the deficiency continues.

43 Local assets ratio

- (1) A financial institution shall maintain assets consisting of such claims payable in the currency of Tonga and other assets situated in the Kingdom in such minimum proportion of its deposits and other similar liabilities payable in the Kingdom as the Bank may specify.⁹²
- (2) The Bank may impose an administrative penalty to any financial institution, which fails to comply with a requirement established by the Bank under this section, not exceeding a fine of \$10,000 and a further fine not exceeding \$1,000 for each day of continued contravention.⁹³

43A Payment System⁹⁴

- (1) The Bank may, in cooperation with licensed financial institutions, establish facilities for the clearing and settlement of cheques and other instruments for effecting payment in the Kingdom.
- (2) The Bank may provide facilities, including intra-day credit, to payment, clearing and securities settlement systems, and their participants, to ensure the safety, soundness and efficiency of such systems.
- (3) The Bank may organise, own, participate in and operate systems referred to in the previous subsection.
- (4) The Bank shall be exclusively responsible for the regulation, licensing, registration and oversight of payment, clearing and securities settlement systems as may be further specified in, or any other relevant Act or regulation. Such responsibility shall include the imposition of administrative penalties.
- (5) Regulations may be made to
 - (a) require the registration or licensing of any payment, clearing and securities settlement system or the operator of such system;
 - (b) require any payment, clearing and securities settlement system or the operator of such system to observe such conditions and requirements as may be established by the Reserve Bank; and
 - (c) regulate and oversee the issuance and quality of payment instruments.
- (6) The employees of the Bank, and other qualified persons designated by the Bank, may visit the offices of payment, clearing and securities settlement systems, and their participants, to examine such accounts, books, documents and other records, to obtain such information and records from them, and to take such other action as the Reserve Bank shall deem necessary or advisable.
- (7) Payment, clearing and securities settlement systems, and their operators and participants, shall furnish the Reserve Bank with such information and records as the Reserve Bank may require.
- (8) The Bank may disclose information and data obtained under subsections 5 and 6 of this section in whole or in part in aggregate form, as it deems necessary to perform its functions under this Act or any other Act.

PART IX - SUPPLY OF INFORMATION**44 Supply of Information**⁹⁵

- (1) A financial institution shall furnish to the Bank such information regarding its business, or that of any related company in Tonga or elsewhere, as the Bank may require for the purposes of this Act.

- (2) The Bank may require a certificate from the auditor of the financial institution verifying the accuracy of any information furnished under subsection (1).
- (3) Every director and every manager of a financial institution which fails to provide the required information or a certificate from its auditor after a reasonable period of notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for every day during which the offence continues.
- (4) If information provided under this section is false in any material particular, every director and every manager of the financial institution shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for any period not exceeding 5 years or to both.
- (5) Any person who is prosecuted in respect of any offence under this section shall have a good defence if he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to his position in the financial institution in respect of which the offence was committed.
- (6) In subsection (1), “related company” means any body corporate which is or has at any relevant time been the financial institution’s subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary.

45 Extension of time limit for provision of documents and information

At the request of a financial institution the Bank on justifiable grounds the Bank may extend any period within which the financial institution is, in accordance with the provisions of this Act, obliged to furnish any document or information.⁹⁶

PART X - RELATIONS WITH AND FOR THE GOVERNMENT

46 Bank to be principal banker, fiscal agent and depository for the Government

- (1) The Bank shall be the principal banker, fiscal agent and depository for the Government; and may act as registrar for any domestic issues of government stocks, bond, promissory notes and treasury bills.⁹⁷
- (2) The Minister may request the Bank to render advice on the borrowing program of the government, to assist in specific borrowing negotiations, and to advise and furnish reports on matters relating to the purposes of the Bank.

- (3) It shall be the duty of the Bank to inform and advise the Minister about any matter which in the opinion of the Bank is likely to affect the achievement of its purposes.
- (4) It shall be the duty of the Bank to provide advisory services to the Minister on banking, monetary and external reserve matters, and to provide statistics pertaining thereto.
- (5) The Bank may from time to time make recommendations to the Government, as to the measures and policies which should be adopted by the Government for the purposes of coordinating its policy with the policies of the Reserve Bank.
- (6) The Bank shall be entitled to receive from the Government departments and organisations, essential financial and economic statistics, information and documents, which shall be analysed by the Bank.
- (7) The Bank shall present its views to the Government at the request of the latter or at the discretion of the Bank, based on the analysis indicated in the previous subsection.⁹⁸

47 Agent for the administration of Acts relating to banking and exchange control

The Bank shall exercise, as agent for His Majesty's Government, such powers or functions under any law relating to exchange control and the regulation of financial institutions as may be delegated to it.

48 Consultation⁹⁹

- (1) The Bank shall be consulted by the Ministry of Finance in the preparation of the Government's budget with a view to reaching an understanding of the likely fiscal outcome, the consequent effect on economic activity and monetary policy, and its compatibility with the Bank's objectives specified under this Act.
- (2) The Bank may submit a report to the Ministry of Finance if it has serious concerns about the likely impact of the proposed Budget on the pursuit of its statutory objectives. The Minister shall submit this report to the Cabinet.¹⁰⁰
- (3) The Bank shall be informed by the Ministry of Finance, other government institutions, agencies and statutory corporations at any time that either domestic or foreign credit operations are contemplated; in the event that, operations individually or collectively appear to be of a magnitude inappropriate to prevailing economic conditions, the Bank shall submit to the Minister a report drawing attention to the situation and recommending measures to rectify the situation. The Minister shall submit this report to the Cabinet.¹⁰¹

- (4) The Minister and the Governor shall consult regularly on monetary policy, exchange policy, fiscal policy, financial stability policy, general economic policy, and other matters of common interest, in order to promote a constructive and harmonious relationship between the Government and the Bank, in the compliance of their respective objectives.¹⁰²

48A Government securities and credits to the Government¹⁰³

- (1) In the conduct of monetary policy, the Bank may buy, sell, repurchase or deal in securities issued or guaranteed by Government, which are being negotiated in the secondary financial market.
- (2) The Bank is also authorised to buy, sell or deal in the primary financial market, in securities issued or guaranteed by Government, provided that the sum of the value of these securities and the value of the securities held by the Bank in accordance with the previous subsection do not exceed, at any time, 30% of the average ordinary income of Government over the previous three years.
- (3) Except in accordance with this section, and sections 6(4) and 33(2), the Reserve Bank shall not, directly or indirectly, make advances to the Government or to any statutory corporation or acquire the notes, bills, securities or other evidence of indebtedness of, or guaranteed by, the Government or any statutory corporation or establish credits for the Government or any statutory corporation.

49 *Repealed by Act 19 of 2007*

50 Policy directives¹⁰⁴

- (1) The Minister may with the consent of Cabinet, issue to the Bank written directives necessary to give effect to the achievement of statutory objectives of the Bank as specified under this Act, and the Bank may consider to comply therewith.
- (2) The Minister and the Bank shall endeavour to reach agreement, where there is a difference of opinion between them about whether a policy determined by the Board is appropriate to the achievement of the Bank's statutory objectives.
- (3) The Board shall forthwith furnish the Minister with a statement of the difference of opinion if they are not able to reach an agreement under subsection (2).
- (4) The Minister upon receipt of a statement of the difference of opinion from the Board shall forthwith submit it to Cabinet within 7 days of receipt to determine the policy in relation to that difference of opinion to be adopted by the Bank.

- (5) The Minister shall inform the Bank in writing of the decision of the Cabinet and that the Government accepts responsibility for the adoption by the Bank of that policy.
- (6) The Minister shall publish and submit to the Legislative Assembly, as soon as practicable but no later than 30 calendar days after the Bank has been notified of the decision indicated in the previous subsection.
- (7) The Bank shall publish the documents referred to in subsections (3) and (6) on its website.
- (8) Any directive under this section shall expire no more than six months from date on which it was issued, unless renewed under this section.

50A Policy Statement¹⁰⁵

- (1) The Bank shall, at least every six months, publish a Monetary Policy Statement and submit a copy to the Minister.
- (2) The Statement in subsection (1) shall contain —
 - (a) a review of economic developments and the conduct of monetary policy in the period since the previous Statement;
 - (b) a statement of how the Bank intends to conduct monetary policy over the coming six months to achieve its objectives specified under this Act; and
 - (c) a statement of any other development outside its control, which are adversely affecting, or may adversely affect in future, the successful pursuit of the Bank's objectives under this Act.
- (3) The Minister shall submit this monetary policy statement to the Legislative Assembly and Cabinet as soon as practicable.

51 Depository and fiscal agency of international financial institutions and supranational organizations

- (1) Notwithstanding the provisions of section 6(4) of the Bretton Woods Agreements Act, the Bank shall from the day appointed under section 36, serve as the fiscal agency of Tonga for the purposes of the International Monetary Fund and as depository in Tonga for all the fund's holdings of its currency.
- (2) The Bank may be designated as the depository of or the fiscal agency or institution through which dealings shall be conducted with other international financial institutions and supranational organisations of which the Kingdom of Tonga is a member.

PART XI - ACCOUNTS STATEMENTS AND BUDGET¹⁰⁶

52 Financial year and accounting standards¹⁰⁷

- (1) The financial year of the Bank shall begin on the first calendar day of July and end on the last calendar day of June.
- (2) The Bank shall prepare its annual financial statements in accordance with internationally accepted accounting standards as determined by the Board, to reflect its operations and financial conditions.

53 Accounts

- (1) The accounts of the Bank shall be audited by external auditors appointed annually by the Minister on the recommendation of the Board.¹⁰⁸
- (2) In its accounts, the Bank shall not be required to include the face value of any particular currency on issue that Cabinet has specified by notice in the Gazette.¹⁰⁹
- (3) Notwithstanding the provisions of subsection (1) the Minister may at any time require the Auditor General to examine and report on the accounts of the Bank or on any aspects of its operations, and the Bank shall facilitate such examination.¹¹⁰

54 Publication of accounts and annual report and monthly return¹¹¹

- (1) The Bank shall transmit to the Minister, within 3 months after the close of each financial year, or such extended period as the Minister may permit —
 - (a) a copy of the annual accounts certified by the auditors; and
 - (b) a report of its operations during that year.
- (2) The Bank shall cause a copy of the annual accounts to be published in the Gazette, or a newspaper circulating in the Kingdom and on the Bank's website.
- (3) The Minister shall table in Cabinet and at the next ensuing session of the Legislative Assembly, and if the Legislative Assembly is currently sitting at that sitting, a copy of the annual accounts and the report of operations.¹¹²
- (4) The Bank shall —
 - (a) within 1 month after the last working day of each month, prepare a return of its assets and liabilities as at the close of business on that day; and
 - (b) submit a copy of the return to the Minister and publish such return in the Gazette.¹¹³

54A Performance Audit by External Auditors¹¹⁴

The external audit stipulated under Sections 53(1) and 54B may include an assessment of the performance of the Bank of its functions and powers under this Act.

54B External audit¹¹⁵

- (1) The external audit referred to under section 53(1) shall be performed in accordance with the International Standards on Auditing by independent external auditors who shall be of good repute and have recognised international experience in the auditing of major international financial institutions or central banks.
- (2) No external auditor shall be appointed consecutively for a cumulative period exceeding five years, after which the audit firm or the key audit partners shall be replaced.
- (3) The Minister may dismiss the Bank's external auditors for good cause after consultation with the Board.
- (4) The external auditor shall report to the Audit Committee on key matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process.
- (5) The external auditors shall have full power to examine all books and accounts of the Reserve Bank and obtain all information about its transactions.
- (6) The report of the external auditors shall be published together with the Reserve Bank's annual financial statements.

54C Chief Internal Auditor¹¹⁶

- (1) A Chief Internal Auditor of the Reserve Bank may be appointed by the Board on the recommendation of the Governor.
- (2) The Chief Internal Auditor shall be a person with extensive professional experience in the field of accounting or audit. The conditions and requirements for a person to be appointed as internal auditor as well as the terms of his employment shall be approved by the Board.
- (3) The Board shall determine the responsibilities and duties of the internal auditor as well as the scope, terms and conditions of the Internal Audit function.

54D Audit Committee¹¹⁷

- (1) The Board shall appoint an Audit Committee, which shall be responsible for advising and assisting the Board and the Governor in the internal control of the administration and operations of the Reserve Bank, and shall have such

other functions and duties incidental to such control as the Board may determine from time to time.

- (2) The Audit Committee shall have three members appointed by the Board, from among non-executive Board members.
- (3) The members of the Audit Committee shall serve on such terms and conditions, including salary and other emoluments, as shall be determined by the Board.
- (4) In carrying out its functions and duties, the Audit Committee shall have authority to —
 - (a) seek advice from experts; and
 - (b) to investigate any matter, including the power to require any member of the Board or employee of the Bank, to furnish it with such information concerning the financial transactions of the Bank as the Audit Committee may request, and to review any related accounts, records and documents of the Bank.
- (5) Upon an invitation of the Audit Committee, the Governor, the Deputy Governor, or employees of the Reserve Bank, may attend the meetings of the committee without the right to vote.
- (6) The Audit Committee's responsibilities shall include —
 - (a) overseeing the internal audit function;
 - (b) supporting the Board in recommending the appointment of external auditors, and advising on the scope of external audits and other services;
 - (c) meeting with the auditors to discuss their findings; and
 - (d) reviewing with the external auditors the year-end financial statements.
- (7) The Audit Committee shall periodically report to the Board and the Governor.
- (8) The Board shall determine further responsibilities and duties of the Audit Committee.
- (9) The Audit Committee may determine its own procedures.

54E Budget¹¹⁸

- (1) Prior to the commencement of each financial year, the Board shall approve the Reserve Bank's annual budget.
- (2) All revenue and income projected to be generated by the Bank or granted to the Bank from any source together with projected expenditures, including depreciation and provisions for losses, shall be included in the annual budget.
- (3) The approved annual budget shall be communicated to the Minister for information purposes.

- (4) The Board shall adopt internal rules for the implementation of the annual budget.

PART XII - GENERAL

55 Exemption from taxes and duties

The Bank shall be exempt from all Government taxes and duties on its profits, purchases, operations, capital, property transactions and documents.

55A Fees and charges¹¹⁹

The Bank may charge reasonable fees and charges for the services it provides and the functions it carries out. These fees and charges shall be notified to the interested parties.

56 Bank of Tonga and Tonga Development Bank

Notwithstanding any provision to the contrary in any other law, the provisions of this Act relating to a financial institution shall apply to —

- (a) the Bank of Tonga established under the Bank of Tonga Act;
- (b) the Tonga Development Bank established under the Tonga Development Bank Act.

57 Prohibited activities

- (1) The Bank shall not engage in trade, purchase the shares of any corporation or company, including the shares of any banking company or otherwise have an ownership interest in any commercial, agricultural, industrial, or other undertaking except such interest as the Bank may acquire in the course of satisfaction of debts due to it:

Provided that all such interest acquired in the course of satisfaction of debts due to the Bank shall be disposed of at the earliest suitable opportunity.¹²⁰

- (2) The Bank may purchase, acquire or lease real property where it is —
- (a) for the provision of premises for the conduct of its business and for the housing of and amenities for its staff;
 - (b) to satisfy a debt due to it; or
 - (c) connected with the resolution of an insolvent financial institution,

Provided that all such property referred to in paragraphs (b) and (c) shall be disposed of at the earliest opportunity.¹²¹

- (3) Nothing in this section shall prevent the Bank to implement policies to benefit the employees or the officers of the Bank that are within current practices of central banks, as approved by the Board.

57A Financial Institutions Act 2004¹²²

The Bank shall not be subject to the Financial Institutions Act 2004.

58 Prohibited names¹²³

No financial institution shall hereafter be authorized to do banking business in the Kingdom by a name which includes any of the words “Central”, “National”, “Reserve”, “State”, “Tonga”, or their equivalent in any other language without the consent of Cabinet; nor by a name which includes any of the words “Royal” or “Kingdom”, or their equivalent in any other language without the consent of the King in Privy Council.

59 Bank holidays

- (1) If the Bank considers it necessary or expedient in the public interest, it may by order declare any day a non-business day for financial institutions.
- (2) Without prejudice to subsection (1), the Bank may in the event of cyclone, earthquake or other natural disaster declare in such manner as it considers appropriate any day a non-business day for financial institutions, which declaration may relate to any part of or to the whole of the Kingdom.
- (3) No financial institution shall transact any banking business with the public on any day declared to be a non-business day.
- (4) Any day declared to be a non-business day under this section shall not necessarily be a public holiday, except for the purposes of the Bills of Exchange Act, and nothing in this section shall be deemed to affect the provisions of the Public Holidays Act.

59A Credit information system¹²⁴

- (1) The Bank may regulate, license, register and supervise credit information systems to collect and disseminate credit information among financial institutions.
- (2) The information collected and maintained in credit information systems referred to in the previous subsection shall only be used for the purpose of improving the quality of bank credit and in the Bank’s supervision of financial institutions.

59B New areas of business of financial institutions and consumer protection¹²⁵

- (1) The Bank may regulate new areas of business of financial institutions, including on electronic and mobile banking, in fulfilling its objective of promoting a sound and efficient financial system.
- (2) The Bank shall establish a policy aimed at maintaining confidence in the financial system and protecting financial consumers. The Bank may issue all the necessary directives, prudential statements and guidelines for the proper and efficient implementation, administration and enforcement of the policy.

60 Responsibility and communication

The subject matter of this Act is within the sphere of responsibility of the Minister, who shall serve as the channel of communication between Cabinet and the Bank.¹²⁶

61 Regulations

- (1) The Minister, on the advice of the Board and with the consent of Cabinet, shall make regulations necessary for giving effect to and carrying out the purposes of this Act.
- (2) The Minister, on the advice of the Board and with the consent of Cabinet, shall prescribe by regulation the extent to which non-bank financial institutions shall be subject to licensing, supervision, and other regulatory requirements established by or in accordance with this Act, any other Act or Regulation.

61A Administrative penalties¹²⁷

- (1) The Bank may impose administrative penalties upon all legal and natural persons operating in breach of this Act, or any other relevant Act or Regulation, directives, prudential statements, or guidelines.
- (2) Administrative penalties include administrative fines and other administrative measures, such as written warnings or orders, suspension and dismissal of administrators of financial institutions, revocation of licenses, or other measures, as specified in this Act, or in any other relevant act or regulation.
- (3) The Bank may impose an administrative fine under this section, not exceeding \$10,000 and a further fine not exceeding \$1,000 for each day of contravention.
- (4) The Bank shall, unless urgent action is required, before imposing administrative penalties, provide a detailed statement to the person against whom the penalty is to be imposed describing the facts and the legal provisions supporting the existence of a violation, and shall give such person a full opportunity to contest the imposition of the penalty.

- (5) In determining whether to impose administrative penalties, and in determining the nature or form of such penalties, the Bank shall take into consideration- the severity of the breach; whether it was recurring; whether depositors or other persons were injured thereby; whether the person against whom the penalty is to be imposed profited from the conduct at issue; the financial resources of such person; any mitigating factors; and such other factors as, in its discretion, it believes to be relevant.
- (6) The Bank shall issue a prudential statement setting forth the procedures it will use in connection with its imposition of administrative penalties.

PART XIII - REPEAL

62 Repeal and Saving

- (1) The following enactments are hereby repealed:
 - (a) The Treasury Notes Act;
 - (b) the Coinage Act;
 - (c) the Decimal Currency Act; and
 - (d) the Investment Fund Act.
- (2) Section 13 of the Contract Act shall not apply to the Bank or to any financial institution or to any person to whom section 40 applies.
- (3) Notwithstanding the repeal under subsection (1), all subsidiary legislation made thereunder and in force at the time of coming into force of this Act shall be deemed to have been made under this Act and shall continue in force until other subsidiary legislation shall be made by virtue of this Act.

ENDNOTES

¹ 1988 Revised Edition Cap. 102; Act 48 of 1988

Amending Acts after 1988

Amending Acts	Commencement
Act 7 of 1990	12 July 1990
Act 24 of 2000	7 November 2000
Act 19 of 2007	13 February 2008
Act 42 of 2010	24 November 2010
Act 7 of 2011	9 July 2012
Act 15 of 2014	27 October 2014
Act 2 of 2017	4 April 2017

² Part V and section 62 came into operation on 1 July 1989 *vide* G. 109/1989

³ Amended by Act 23 of 2014

⁴ Amended by Act 19 of 2007 and Replaced by Act 23 of 2014

⁵ Replaced by Act 23 of 2014

⁶ Amended by Act 23 of 2014

⁷ Amended by Act 23 of 2014

⁸ Inserted by Act 23 of 2014

⁹ Inserted by Act 23 of 2014

¹⁰ Inserted by Act 23 of 2014

¹¹ Inserted by Act 23 of 2014

¹² Inserted by Act 23 of 2014

¹³ Replaced by Act 23 of 2014

¹⁴ Replaced by Act 23 of 2014

¹⁵ Inserted by Act 23 of 2014

¹⁶ Inserted by Act 23 of 2014

¹⁷ Inserted by Act 23 of 2014

¹⁸ Inserted by Act 23 of 2014

¹⁹ Amended by Act 19 of 2007

²⁰ Replaced by Act 23 of 2014

²¹ Replaced by Act 23 of 2014

²² Inserted by Act 23 of 2014

- ²³ Inserted by Act 2 of 2017
- ²⁴ Amended by Act 2 of 2017
- ²⁵ Amended by Act 19 of 2007
- ²⁶ Amended by Acts 19 of 2007 and 23 of 2014
- ²⁷ Substituted by Act 19 of 2007 and 23 of 2014
- ²⁸ Inserted by Act 19 of 2007 and Substituted by Act 23 of 2014
- ²⁹ Replaced by Act 23 of 2014
- ³⁰ Substituted by Act 19 of 2007
- ³¹ Replaced by Act 23 of 2014
- ³² Substituted by Acts 19 of 2007 and 23 of 2014
- ³³ Inserted by Act 23 of 2014
- ³⁴ Substituted by Act 19 of 2007; Amended by Acts 42 of 2010, 47 of 2010 and 7 of 2011 and 23 of 2014
- ³⁵ Amended by Acts 47 of 2010 and 7 of 2011
- ³⁶ Substituted by Act 47 of 2010
- ³⁷ Substituted by Act 19 of 2007; Amended by Acts 42 of 2010 and 23 of 2014
- ³⁸ Amended by Acts 19 of 2007 and 23 of 2014
- ³⁹ Amended by Acts 42 of 2010 and 23 of 2014
- ⁴⁰ Amended by Acts 19 of 2007 and 42 of 2010
- ⁴¹ Inserted by Act 19 of 2007
- ⁴² Inserted by Act 19 of 2007
- ⁴³ Inserted by Act 19 of 2007
- ⁴⁴ Inserted by Act 19 of 2007
- ⁴⁵ Inserted by Act 19 of 2007
- ⁴⁶ Inserted by Act 23 of 2014
- ⁴⁷ Amended by Act 19 of 2007
- ⁴⁸ Amended by Act 19 of 2007
- ⁴⁹ Amended by Acts 19 of 2007 and 42 of 2010
- ⁵⁰ Amended by Act 23 of 2014
- ⁵¹ Substituted by Act 7 of 2011
- ⁵² Inserted by Act 7 of 2011
- ⁵³ Amended by Act 23 of 2014
- ⁵⁴ Inserted by Act 23 of 2014
- ⁵⁵ Inserted by Act 23 of 2014
- ⁵⁶ Inserted by Act 23 of 2014

⁵⁷ Amended by Act 24 of 2000 and Replaced by Act 23 of 2014

⁵⁸ Replaced by Act 23 of 2014

⁵⁹ Amended by Act 23 of 2014

⁶⁰ Amended by Act 19 of 2007 and 23 of 2014

⁶¹ Amended by Act 23 of 2014

⁶² Amended by Act 23 of 2014

⁶³ Amended by Act 19 of 2007

⁶⁴ Amended by Act 23 of 2014

⁶⁵ Amended by Act 23 of 2014

⁶⁶ Inserted by Act 23 of 2014

⁶⁷ Inserted by Act 23 of 2014

⁶⁸ Amended by Act 19 of 2007

⁶⁹ Inserted by Act 19 of 2007

⁷⁰ Amended by Act 23 of 2014

⁷¹ Amended by Act 19 of 2007

⁷² Inserted by Act 19 of 2007; Amended by Act 42 of 2010

⁷³ Amended by Acts 19 of 2007 and 23 of 2014

⁷⁴ Amended by Act 2 of 2017

⁷⁵ Amended by Acts 42 of 2010 and 23 of 2014

⁷⁶ Substituted by Act 19 of 2007

⁷⁷ Inserted by Act 2 of 2017

⁷⁸ Amended by Acts 19 of 2007 and 23 of 2014

⁷⁹ Amended by Act 19 of 2007

⁸⁰ 1 July 1989, vide G. 109/1989

⁸¹ Amended by Act 23 of 2014

⁸² By GS 4/2007, notice was given by the National Reserve Bank, with the approval of Privy Council, that with effect from 2nd April 2007 “each licensed financial institution in Tonga will be required to maintain a deposit with the Reserve Bank equivalent to not less than 10 percent of deposits and other similar liabilities held by the financial institution as at the last business day of the preceding month. The deposit prescribed in this notice is to be maintained from the first business day of each month to the first business day of the following month”.

⁸³ Amended by Act 19 of 2007

⁸⁴ Inserted by Act 23 of 2014

⁸⁵ Inserted by Act 23 of 2014

⁸⁶ Amended by Act 19 of 2007

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- ⁸⁷ By GS 1/2006, notice was given by the National Reserve Bank, with the approval of Privy Council, “that an overall credit ceiling be imposed on each licensed financial institution in Tonga”
- ⁸⁸ By GS 5/1990 the National Reserve Bank of Tonga, with the approval of His Majesty in Council specified that with effect from 1 July 1989 the maximum rate of interest chargeable in Tonga by financial institutions in respect of the making of advances denominated in Pa'anga, whether by loans or overdrafts, is –
- (a) For advances made prior to 1st July 1989 - 10% per annum
 - (b) For advances made on or after 1st July 1989 - 13.5% per annum
- ⁸⁹ Inserted by Act 19 of 2007
- ⁹⁰ Substituted by Act 19 of 2007
- ⁹¹ Amended by Act 19 of 2007
- ⁹² Amended by Act 19 of 2007
- ⁹³ Inserted by Act 23 of 2014
- ⁹⁴ Inserted by Act 19 of 2007 and Amended by Act 23 of 2014
- ⁹⁵ Amended by Acts 19 of 2007 and 23 of 2014
- ⁹⁶ Amended by Act 23 of 2014
- ⁹⁷ Amended by Act 19 of 2007
- ⁹⁸ Inserted by Act 23 of 2014
- ⁹⁹ Substituted by Act 19 of 2007
- ¹⁰⁰ Amended by Act 42 of 2010
- ¹⁰¹ Amended by Act 42 of 2010
- ¹⁰² Inserted by Act 23 of 2014
- ¹⁰³ Inserted by Act 23 of 2014
- ¹⁰⁴ Substituted by Act 19 of 2007; Amended by Acts 42 of 2010 and 23 of 2014
- ¹⁰⁵ Amended by Act 23 of 2014
- ¹⁰⁶ Inserted by Act 23 of 2014
- ¹⁰⁷ Replaced by Act 23 of 2014
- ¹⁰⁸ Amended by Act 19 of 2007
- ¹⁰⁹ Amended by Act 42 of 2010
- ¹¹⁰ Amended by Act 19 of 2007
- ¹¹¹ Amended by Act 19 of 2007
- ¹¹² Substituted by Act 19 of 2007; Amended by Act 42 of 2010
- ¹¹³ Substituted by Act 19 of 2007
- ¹¹⁴ Replaced by Act 23 of 2014
- ¹¹⁵ Inserted by Act 23 of 2014
- ¹¹⁶ Inserted by Act 23 of 2014

¹¹⁷ Inserted by Act 23 of 2014

¹¹⁸ Inserted by Act 23 of 2014

¹¹⁹ Inserted by Act 23 of 2014

¹²⁰ Amended by Acts 19 of 2007 and 23 of 2014

¹²¹ Inserted by Act 19 of 2007

¹²² Inserted by Act 19 of 2007

¹²³ Substituted by Act 42 of 2010

¹²⁴ Inserted by Act 23 of 2014

¹²⁵ Inserted by Act 23 of 2014

¹²⁶ Amended by Act 42 of 2010

¹²⁷ Inserted by Act 23 of 2014