

FINANCIAL INSTITUTIONS ACT, 1991
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I assent,

TU'IPELEHAKE

30th April, 1992.

AN ACT

TO REGULATE THE LICENSING AND SUPERVISION OF FINANCIAL INSTITUTIONS IN TONGA AND FOR PURPOSES CONNECTED THEREWITH

[30th October, 1991.]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows: -

PART I – PRELIMINARY

1. This Act may be cited as the Financial Institutions Act 1991. Short Title
2. In this Act, unless the context otherwise requires – Interpretation

“**banking**” has the meaning given to it by the National Reserve Bank of
Tonga Act 1988;

“**banking business**” has the meaning given to it by the National Reserve
Bank of Tonga Act 1988;

“**body corporate**” means a company incorporated in Tonga or elsewhere
under any law for the time being in force relating to the formation and
registration of companies, or a corporation established in Tonga or
elsewhere under any other written law;

“**financial institution**” has the meaning given to it by the National Reserve
Bank of Tonga Act 1988;

“**licensed financial institution**” means a financial institution licensed under
the provisions of this Act;

“ **Ministry**” means the Ministry of Finance.

“ **Reserve Bank**” means the National Reserve Bank of Tonga established
under the National Reserve Bank of Tonga Act 1988;

PART II – LICENSING OF FINANCIAL INSTITUTIONS

**Licence
required to
do banking
business**

3. (1) Subject to section 18, no person shall advertise for or solicit deposits or do banking business in Tonga without being in possession of a current valid licence granted under section 7.

(2) If the Reserve Bank has reason to believe that any person is contravening the provisions of subsection (1) it may cause an examination of the books, accounts and records of such person to find out if that is the case.

(3) Any person who –

(a) contravenes the provisions of subsection (1); or

(b) refuses, on request, to make available for examination the books, accounts and records referred to in subsection (2);

is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

(4) A person holding funds which he has obtained in contravention of subsection (1) shall repay such funds as directed by the Reserve Bank. Any person who fails to comply with any such direction is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000.

**Existing
financial
institutions
deemed
licensed**

4. (1) Notwithstanding the provisions of any other written law, the financial institutions specified in the Schedule shall –

(a) be deemed to be licensed under section 7 on the coming into force of this Act;

(b) be issued with a licence accordingly; and

(c) be subject to the provisions of this Act.

(2) The financial institutions specified in the Schedule shall comply with the provisions of this Act within 6 months of the coming into force of this Act.

**Application
for licence**

5. (1) Any person desirous of commencing banking business in Tonga after the commencement of this Act shall, before commencing such business, apply for and obtain a licence to do so.

(2) An application for a licence under this section:-

(a) shall be made in writing to the Ministry in such form as shall be specified by the Reserve Bank.

(b) shall be accompanied by the payment of a fee of \$3,000.

(3) (a) The Ministry shall refer any application received pursuant to subsection (2) (a) to the Reserve Bank within 14 days for investigation and consideration.

(b) Every person who makes an application under subsection (2) (a) shall furnish to the Reserve Bank such information, and such

documents, authenticated in such manner as the Reserve Bank may specify, as may be required by the Reserve Bank to assist it to consider the application.

(4) Any person who knowingly with intent to deceive furnishes any information or document which is false or misleading in any material particular in connection with an application under this Act is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000.

6. In considering any application for a licence referred to it by the Ministry pursuant to subsection (3) (a) of section 5 the Reserve Bank shall have regard to - **Consideration of application**

- (a) the adequacy and structure of the applicants capital;
- (b) the ability of the applicant to carry on the proposed business, and the character and experience of its management;
- (c) in any case where the applicant is a body corporate incorporated outside Tonga, or a subsidiary of such body corporate, the relevant law and regulatory requirements relating to the licensing and supervision of financial institutions in its country of incorporation; and
- (d) such other matters as the Reserve Bank considers relevant.

7. (1) Within 3 months after receipt of an application from the Ministry pursuant to subsection (3) (a) of section 5, and all other relevant information and documents, the Reserve Bank shall advise the Ministry of its findings in regard to the application. **Determination of application**

(2) The Reserve Bank's findings referred to in subsection (1) shall be submitted by the Ministry to his Majesty in Council as soon as possible.

(3) The Ministry shall, as soon as may be after receipt of the Reserve Bank's findings, and with the approval of His Majesty in Council -

- (a) issue to the applicant a licence to carry on banking business subject to such terms and conditions as may be specified in the licence; or
- (b) inform the applicant that its application is refused, in which case the application fee shall be refunded in full.

(4) No person other than a body corporate shall be granted a licence to do banking business under this Act.

(5) A copy of the licence issued under this section shall be displayed and kept displayed conspicuously in a public part of all places of business of the financial institution in Tonga.

(6) The licenced financial institution shall pay an annual fee of \$3,000 on each anniversary of the date of the grant of the licence.

(7) The licence shall remain valid unless revoked in accordance with section 8 or 15.

**Revocation
of licence**

8. (1) The Ministry may, on the recommendation of the Reserve Bank and with the approval of His Majesty in Council, revoke a licence issued to a financial institution under section 7 -

- (a) if the licensee -
 - (i) requests revocation of the licence;
 - (ii) fails to commence business within a reasonable time following the issue of the licence;
 - (iii) ceases to carry on business in Tonga;
 - (iv) contravenes the terms and conditions of its licence or the provisions of this Act;
 - (v) is subject to voluntary or involuntary winding up proceedings or has a receiver appointed; or
- (b) in the circumstances specified in section 15.

(2) (a) The Ministry shall give the licensee notice in writing of its intention to revoke the licence, and shall afford the licensee an opportunity to submit to the Ministry reasons why the licence should not be revoked.

(b) The Ministry shall forward to the Reserve Bank for consideration any submission received under subsection (2) (a). The Reserve Bank shall advise the Ministry of its findings in this regard.

PART III - CAPITAL AND RESERVES

**Minimum
capital and
reserves**

9. (1) Every financial institution licensed under this Act shall maintain -

- (a) if incorporated in Tonga, paid up capital and unimpaired reserves; and
- (b) if incorporated abroad assigned capital;

in such minimum proportion of its liabilities to the public as the Reserve Bank may specify.

(2) The Reserve Bank may specify the minimum amount of paid up or assigned capital required by a financial institution for the issue of a licence under section 7.

(3) The proportion specified under subsection (1) shall not less than 5 percent for a licensee incorporated in Tonga.

(4) The computation and form of the capital required to be held under subsections (1) and (2) shall be determined by the Reserve Bank after consultation with the financial institution concerned.

**Restrictions
on dividends**

10. (1) No licensed financial institution shall declare or pay any dividend or make any other transfer from profits if this would contravene the provisions of section 9 or any specification made thereunder.

(2) Any licensed financial institution which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

PART IV - SUPERVISION OF FINANCIAL INSTITUTIONS

- 11.** (1) The Reserve Bank shall undertake the prudential supervision of licensed financial institutions in order to maintain public confidence in the operation and stability of the financial system and to protect the interests of depositors. **Reserve Bank to supervise financial institutions**
- (2) To enable the Reserve Bank to undertake the functions conferred by subsection (1) the Reserve Bank may require licensed financial institutions to supply to the Reserve Bank such returns, financial accounts or information relating to their business as may be specified by the Reserve Bank.
- 12.** (1) The Reserve Bank may, from time to time, inspect or cause the inspection of the books, accounts and transactions of any licensed financial institution and such institution shall facilitate such inspection. **Inspection**
- (2) The Reserve Bank shall carry out the inspection referred to in subsection (1) if it has reason to believe that a licensed financial institution -
- (a) is conducting its business in an unlawful or imprudent manner; or
 - (b) is in danger of becoming insolvent or about to suspend payment.
- 13.** (1) No person shall be appointed or elected as a director or to the management of a licensed financial institution who - **Persons debarred from management**
- (a) has acted in similar positions in a financial institution in Tonga or elsewhere which has had its licence revoked or which has been wound up by a court; or
 - (b) has been sentenced by a court in any country for an offence involving dishonesty; or
 - (c) is or becomes bankrupt or enters into a scheme of arrangement with his creditors.
- (2) Any person who accepts an appointment in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a period not exceeding two years.
- (3) Any person appointed or elected as a director or to the management of a licensed financial institution shall cease to hold such office if he becomes subject to any disqualification specified in subsection (1).
- 14.** (1) A licensed financial institution shall not in Tonga - **Restrictions on lending and other activities**
- (a) grant to any person, or group of persons which group is under the control or influence of one and the same person, any advance, credit facility or guarantee which in total is at any time more than 30 percent of the sum of the issued capital and published reserves of the licensed financial institution unless -
 - (i) the transactions are between banks, or branches of a bank, or relate to purchases of telegraphic transfers or bills of exchange payable outside Tonga;

- (ii) the transactions are granted to, or guaranteed by, the Government of Tonga or such foreign government as the Reserve Bank may specify;
- (b) lend against the security of its own shares;
- (c) grant to any of its directors any advance, credit facility or guarantee unless granted on substantially the same terms, including interest rates and security, as those prevailing at the time for comparable transactions by the financial institution with members of the general public;
- (d) deal in the buying, selling or bartering of goods except in connection with the realisation of security given to or held by it, or engage in trade;
- (e) own, to an aggregate value exceeding 25 percent of the sum of its paid up capital and unimpaired reserves, the share capital of or other ownership interest in any commercial, agricultural, industrial or other undertaking except -
 - (i) those formed to undertake nominee, executor or trustee functions for the account of customers, if approved in writing by the Reserve Bank; and
 - (ii) in connection with the realisation of security given to or held by it and any such ownership interest shall be disposed of at the earliest suitable opportunity.

(2) Any financial institution specified in the Schedule which is in contravention of subsection (1) shall rectify such contravention within 18 months of the coming into force of this Act, or such further period as the Reserve Bank may allow.

PART V - CONTROL OVER FINANCIAL INSTITUTIONS

Powers of
Reserve
Bank

- 15. (1)** Where -
- (a) a licensed financial institution informs the Reserve Bank that it is insolvent or likely to become so, or is likely to suspend payment; or
 - (b) an inspection carried out in terms of section 12(2) reveals that action needs to be taken to protect the interests of depositors or in the public interest;

the Reserve Bank shall exercise one or more of the powers specified in subsection (2).

- (2) The powers referred to in subsection (1) are -
- (a) to require the licensed financial institution to take whatever action in relation to its business as the Reserve Bank may specify;

- (b) to appoint a person to advise the licensed financial institution on the proper conduct of its business;
- (c) to take control of, or appoint a person to take control of, the business of the licensed financial institution;
- (d) to present a petition to the Supreme Court for the winding up of the licensed financial institution by the court;
- (e) to recommend to the Ministry the revocation of the licensed financial institution's licence;
- (f) to fix the remuneration to be paid by the licensed financial institution to a person appointed under paragraph (b) or (c) of this subsection.

PART VI - MISCELLANEOUS

16. (1) All cheques and bank drafts in the possession of the licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution and made payable at that institution shall be retained by that institution until the expiration of the period of 7 years from the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

Retention of cheques etc. for 7 years

(2) This section shall apply to cheques, drafts, bills and notes received by a licensed financial institution either before or after the commencement of this Act.

17. (1) No person who has acquired knowledge in his capacity as director, manager, officer, employee, auditor or agent of any licensed financial institution, or when exercising any function or performing any duty under section 11 or 15, shall disclose to any person any information in respect of a customer of that financial institution except -

Disclosure of acquired knowledge

- (a) with the written authorisation of the customer or his legal personal representative; or
- (b) when lawfully required to do so by any court of competent jurisdiction in Tonga or under the provisions of any written law; or
- (c) for the purpose of the performance of his duties under this Act; or
- (d) to provide a person, upon a legitimate business request, a general credit rating a copy of which shall be provided to the customer concerned upon his request.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a period not exceeding one year.

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- Non-application to credit unions etc.** **18.** (1) Subject to the provisions of subsection (2), this Act shall not apply to -
- (a) credit unions established under the Credit Union Act 1977; or
 - (b) cooperative societies established under the Cooperative Societies Act 1973.
- (2) Notwithstanding the provisions of subsection (1) His Majesty in Council may by order apply any section or subsection of this Act to a credit union or cooperative society referred to in subsection (1).
- Indemnity** **19.** No director or officer of the Reserve Bank, or person duly appointed or authorised by the Reserve Bank, shall incur any liability as a result of anything done in good faith in the exercise of any power or the performance of any duty under this Act.
- Operation of Companies Act.** **20.** Nothing in this Act shall exempt a licensed financial institution from the provisions of the Companies Act, save that where there is any conflict between the provisions of this Act and the provisions of the Companies Act, the provisions of this Act shall prevail.
- Regulations** **21.** His Majesty in Council may make regulations, not inconsistent with this Act, generally for giving effect to this Act, and in particular but without limiting the generality of the foregoing, for or in relation to -
- (a) the procedures to be followed if a licence is revoked pursuant to section 8;
 - (b) the format, audit requirements, timing of submission and publication of returns and financial accounts to be supplied by licensed financial institutions pursuant to section 11;
 - (c) the procedures to be followed if all or any of the powers referred to in section 15(2) are exercised;
 - (d) compliance by licensed financial institutions with the provisions of section 16 and the admissibility in evidence of copies of documents referred to therein.

PART VII - REPEAL

- Repeal** **22.** Section 9(7) and section 10 of the Bank of Tonga Act 1972 are hereby repealed.

Schedule

The Bank of Tonga established under the Bank of Tonga Act 1972.

The Tonga Development Bank established under the Tonga Development Bank Act 1977.

Passed in the Legislative Assembly this 30th day of October, 1991.