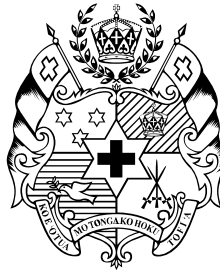


Act No. 19 of 2007



Tonga

**NATIONAL RESERVE BANK OF TONGA
(AMENDMENT) ACT 2007**



NATIONAL RESERVE BANK OF TONGA (AMENDMENT) ACT 2007

Act No. 19 of 2007

AN ACT TO AMEND THE NATIONAL RESERVE BANK OF TONGA ACT

I assent,
GEORGE TUPOU V,
26 October 2007

Commencement [not yet in force]

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

1

- (1) This Act may be cited as the National Reserve Bank of Tonga (Amendment) Act 2007.
- (2) The National Reserve Bank of Tonga Act (CAP. 102), as amended, is in this Act referred to as the Principal Act.

2

Section 2 of the Principal Act is amended under the definition of the word “bank” by deleting —

- (a) the word “business” and substituting “operations”; and
- (b) the words “third party” and substituting “payment”.

3

Section 2 of the Principal Act is amended by deleting the definition “financial institution” and replacing it with the following —

“**licensed financial institution**” means a licensed financial institution doing banking business:

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 licensed financial institution;”

4

Section 3(1) of the Principal Act is amended by inserting the words “to act as the Central Bank of the Kingdom” after the word “established”.

5

(1) Section 4 of the Principal Act is repealed and replaced with the following —

“4 Principal objectives of the Bank

- (1) The principal objectives of the Bank shall be, to —
 - (a) maintain internal and external monetary stability; and
 - (b) promote a sound and efficient financial system.
- (2) Subject to subsection (1), the Bank shall conduct its activities in a manner that supports macroeconomic stability and economic growth.”

(2) The Principal Act is amended by adding a new subsection 4A immediately after section 4 as follows —

“4A Functions of the Bank

The principal functions of the Bank shall be, to —

- (a) issue currency;
- (b) formulate and implement monetary policy;
- (c) regulate as required the supply, availability and international exchange of money;
- (d) hold and manage the external reserves of the Kingdom;

- (e) provide advisory services to the Minister on banking and monetary matters;
- (f) be the principal banker, fiscal agent and depository of the Government;
- (g) undertake banking business, in Tonga or elsewhere, subject to the provisions of this Act;
- (h) regulate and supervise financial institutions; and
- (i) oversee and promote the efficient, sound and safe functioning of the payment system.”

6

Section 5 of the Principal Act is amended by inserting the words “on the recommendation of the Board through the Minister” after the word “Council”.

7

Section 6 of the Principal Act is amended by —

- (a) in subsection (1), deleting the figure “\$2,000,000” and substituting “\$5,000,000 and such amount may be increased by the Board with the approval of the Minister”;
- (b) repealing subsection (2) and replacing it with the following —
 - “(2) Additional amounts of authorised capital may be paid up by the Minister in cash or by transfer from the General Reserve established under section 7 in addition to the existing authorised capital paid up under section 36(2) of this Act.”; and
- (c) adding a new subsection (4) as follows —
 - “(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 negotiable, interest bearing securities issued by the Government for such amount as is necessary to preserve the paid up capital.”

8

Section 8 of the Principal Act is repealed and replaced with the following —

- “(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 to the General Reserve as follows —

- (a) where the General Reserve does not exceed 50 percent of the authorized capital of the Bank, 100 percent;
- (b) where the General Reserve exceeds 50 percent of the authorized capital of the Bank, 50 percent until the General Reserve is equal to the authorized capital of the Bank; and
- (c) where the General Reserve exceeds 100 percent but does not exceed 200 percent of the authorized capital of the Bank, 25 percent or such lesser sum to increase the General Reserve to twice the authorized capital of the Bank,

Provided that upon agreement between the Minister and the Bank the General Reserve may be increased.

- (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.”

9

Section 9 of the Principal Act is repealed and replaced with the following—

“9

- (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.”

10

Section 10 of the Principal Act is repealed and replaced with the following —

“Appointment of Board 10

- (1) The Minister shall, with the consent of His Majesty in Council, appoint 5 directors, to the Board other than the Governor and the Secretary for Finance (or an alternate nominated by the Minister).
- (2) The Governor shall be a member of the Board and shall chair the Board.
- (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 re-appointed.
- (5) Appointments of Directors shall —
 - (a) give regard to person’s knowledge, skills, experiences and recognised standing in agriculture, commercial, financial, industrial or professional matters; 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.”

11

Section 11 of the Principal Act is repealed and replacing it with the following —

“Appointment and removal of the Governor 11

- (1) The Governor shall be a person of recognised experience in financial and banking matters, and shall be appointed by His Majesty in Council 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 he may be removed from office by His Majesty in Council, on the recommendation of the Minister made at the request of the Board.”

12

Section 12 of the Principal Act is amended by deleting the words “His Majesty in Council” and substituting “the Minister”.

13

Section 13(2) of the Principal Act is amended by —

- (a) in paragraph(d), inserting the words “the Minister with the consent of” after the word “if”; and
- (b) adding new paragraphs (e), (f), (g), (h) and (i) immediately after paragraph (d) as follows —
 - “(e) who is a director, officer or employee or who holds or exercises power over 10 percent of the voting stock of, a licensed financial institution;
 - (f) who is a member of the Public Service (other than the Secretary of Finance or his alternate);
 - (g) who is a member of staff of the Bank (other than the Governor);
 - (h) who is a Director or member of staff of a licensed financial institution; or
 - (i) who is a member of the Legislative Assembly.”

14

Section 15 of the Principal Act is amended by —

- (a) in subsection (1)(a), inserting the word “prudent” after the fourth appearance of the word “the”;
- (b) in subsection (2), deleting the words “His Majesty in Council” and substituting “the Minister on the recommendation of the Board”;

- (c) in subsection (4), inserting the words “the Minister, on the recommendation of the Board and with the consent of” after the word “duties,”.

15

Section 16(3) of the Principal Act is amended by repealing that subsection and replacing it with the following —

“(3) When there is an equality of votes cast, the Chairman shall have an additional casting vote which shall be decisive.”

16

Section 19 of the Principal Act is amended by —

- (a) in subsection (1), deleting the word “material” in the English version only;
- (b) in subsection (2), deleting the figure “\$2,000” and substituting “\$20,000”;
- (c) in subsection (2), deleting the figure “2” and substituting “4”;
- (d) in subsection (3), deleting the figure “\$5,000” and substituting “\$40,000”; and
- (e) in subsection (3), deleting the figure “4” and substituting “8”.

17

Section 23(2) of the Principal Act is amended by deleting the figure “\$200” and substituting “\$50,000 or imprisonment for not exceeding 5 years or both”.

18

Section 30 of the Principal Act is amended by —

- (a) in subparagraph (g), deleting the words “His Majesty in Council” and substituting “the Minister”;
- (b) renumbering the current section as subsection (1); and
- (c) adding a new subsection (2) as follows —
 - “(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.”

19

Section 31 of the Principal Act is amended by —

- (a) renumbering the current section as subsection (1);
- (b) in subsection (1), deleting the words “His Majesty in Council” and substituting “the Minister”; and
- (c) adding a new subsection (2) as follows —
“The Minister shall submit this report to Privy Council and the Legislative Assembly.”

20

Section 32(e) of the Principal Act is amended by inserting the word “guarantees” after the words “which are essential to the functions of the Bank”.

21

Section 33(3) of the Principal Act is repealed and replaced with the following —

- “(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.”

22

Section 34 of the Principal Act is amended by deleting the words “His Majesty in Council and which has” and substituting “the Board, after consultation with the Minister, having”.

23

Section 35(2) of the Principal Act is amended by deleting the figure —

- (a) “\$2000” and substituting “\$50,000”;
- (b) “2” and substituting “5”.

24

Section 39(1) of the Principal Act is amended by deleting the words “with the approval of His Majesty in Council”.

25

- (1) Section 40 of the Principal Act is amended by —
 - (a) in subsection (1), deleting the words “with the approval of His Majesty in Council,”;
 - (b) in subsection (3), deleting the words “His Majesty in Council” and substituting “the Minister”;
 - (c) in subsection (5) —
 - (i) inserting after the figure “(1)” the word and figure “or (4)”;
 - and
 - (ii) deleting the figure “\$2,000” and substituting “\$50,000 and \$1,000 for every day during which the offence continues”;
 - (d) in subsection (7)(a), deleting the figure “\$2,000” and substituting “\$50,000”; and
 - (e) in subsection (7)(b), deleting the figure “\$200” and substituting “\$1,000”.

- (2) The Principal Act is amended by adding a new section 40A immediately after section 40 as follows —

“Disclosure 40A. Every licensed financial 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;
- (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.”

26

Section 41 of the Principal Act is repealed and replaced with the following —

- “41 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.”

27

Section 42(1) of the Principal Act is amended by deleting the words “His Majesty in Council” and substituting “the Board”.

28

Section 43 of the Principal Act is amended by deleting the words “with the approval of His Majesty in Council”.

29

The Principal Act is amended by adding a new section 43A immediately after section 43 as follows —

“43A 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.”

30

Section 44 of the Principal Act is amended by —

- (a) in subsection (3), by deleting the figure “\$500” and substituting “\$10,000”;
- (b) in subsection (4), by deleting the figure “5,000” and substituting “50,000”; and
- (c) in subsection (4), by deleting the figure “2” and substituting “5”.

31

Section 46(1) of the Principal Act is amended by deleting the words “in such capacities for any statutory corporation” and substituting “as registrar for any domestic issues of government stocks, bond, promissory notes and treasury bills”.

32

Section 48 of the Principal Act is repealed and replaced with the following —

“Consultation 48

- (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 Privy Council.
- (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 Privy Council."

33

Section 49 of the Principal Act is repealed.

34

Section 50 of the Principal Act is repealed and replaced with the following —

“50

- (1) The Minister may with the consent of His Majesty in Council, 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 shall 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 His Majesty in Council 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 Privy Council and that the Government accepts responsibility for the adoption by the Bank of that policy.
- (6) The Minister shall publish, as soon as practicable —
 - (a) a copy of the order determining the policy;
 - (b) a statement by the Government relating to the difference of opinion between the Board and Government; and
 - (c) a copy of the statement furnished to the Minister by the Board.
- (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.”

35

The Principal Act is amended by adding a new section 50A immediately after section 50 as follows —

“Policy Statement 50A

- (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 Privy Council as soon as practicable.”

36

Section 53 of the Principal Act is amended by —

- (a) in subsection (1), inserting the word “external” after the word “by” where it appears first;

- (b) in subsection (1), deleting the words “His Majesty in Council” and substituting “the Minister on the recommendation of the Board”; and
- (c) in subsection (3), deleting the words “His Majesty in Council” and substituting “the Minister”.

37

Section 54 of the Principal Act is amended by —

- (a) in subsection (1) —
 - (i) inserting the words “transmit to the Minister” after the word “shall”; and
 - (ii) deleting the words “His Majesty in Council may permit, transmit to the Minister” and substituting “the Minister may permit”;
- (b) in subsection (2), inserting the words “, or a newspaper circulating in the Kingdom and on the Bank’s website.” after “Gazette”;
- (c) repealing subsection (3) and replacing it with the following —

“(3) The Minister shall table in Privy Council 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.”
- (d) repealing subsection (4) and replacing it with the following —

“(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.”

38

The Principal Act is amended by adding a new section 54A immediately after section 54 as follows —

“Performance Audit 54A

- (1) The Minister may, from time to time, appoint any person to carry out an assessment of the performance of the Bank of its functions and powers under this Act.

-
- (2) As soon as practicable after completing an assessment the person appointed shall submit a report to the Minister setting out the results of that assessment, and shall provide a copy to the Bank.
- (3) A person appointed to conduct an assessment under subsection (1) —
- (a) shall have full access to all the books and documents that are the property of, or that are under the control of any person relating to the Bank or its affairs;
 - (b) may require any director, officer, or employee of the Bank or any other person to answer any question relating to the Bank and its affairs;
 - (c) may by notice in writing to any person, require that person to deliver any books or documents relating to the Bank or its affairs in the possession or under the control of that person and may take copies of them or extracts from them.
- (4) The expenses of the person appointed under subsection (1) shall be paid out of the funds of the Bank.”

39

Section 57 of the Principal Act is amended by —

- (a) deleting the words “specific approval of His Majesty in Council” and substituting “approval of the Minister on the recommendation of the Board”;
- (b) renumbering the current section as subsection (1) and adding the following new subsection (2) —

“(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.”

40

The Principal Act is amended by adding a new section 57A immediately after section 57 as follows —

“Financial Institutions Act 2004 57A

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

Passed by the Legislative Assembly this 20th day of August 2007.