



I assent,

TAUFA'AHAU TUPOU IV,

29th October, 1997

AN ACT

TO AMEND THE FINANCIAL INSTITUTIONS ACT 1991

[1ST October, 1997.]

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 Financial Institutions (Amendment) Act 1997.
- (2) The Financial Institutions Act 1991 is in this Act referred to as the Principal Act.
2. Section 2 of the Principal Act is amended by adding the following definitions:

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

“**credit institution**” has the meaning given to it by the National Reserve Bank of Tonga Act 1988.”
3. Section 7 of the Principal Act is amended by:
 - (a) deleting the comma and the words “, in which case the application fee shall be refunded in full” in subsection (3)(b);
 - (b) adding the following new subsections:

“(8) The Ministry may from time to time, with the approval of His Majesty in Council and at the request of the Reserve Bank, specify new or additional conditions of a licence issued pursuant to this Act, or vary or remove any conditions already specified.

- (9) Before making a request under subsection (8) the Reserve Bank shall, by notice in writing to the licensed financial institution concerned, inform it of the changes proposed and afford it an opportunity to make submissions in writing to the Reserve Bank regarding such changes. The submissions must be received by the Reserve Bank no later than 14 days from the date of the notice. The Reserve Bank shall take into account any such submissions received in deciding whether or not to proceed with the request.”

4. (1) Section 8(1)(a) of the Principal Act is amended by adding sub-paragraph (vi) as follows:

- “(vi) was licensed on the basis of any information or document which is false or misleading in any material particular.”.

(2) Subsection (2) of section 8 of the Principal Act is repealed and substituted with a new subsection (2) as follows:

- “(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, within 14 days of the date of the notice, reasons why the licence should not be revoked; provided that a licence may be revoked without notice in the circumstances specified in section 15.
- (b) The Ministry shall, as soon as received, forward to the Reserve Bank for consideration any submission received under subsection (2)(a). After consideration of such submission the Reserve Bank may either confirm its recommendation made under subsection (1) or withdraw it.”.

5. Section 9(1) of the Principal Act is amended by deleting the words “in such minimum proportion of its liabilities to the public as the Reserve Bank may specify” and substituting therefor the words “in such minimum proportion in relation to its assets, liabilities or risk exposures, and in such amount, as the Reserve Bank may specify from time to time”.

6. The Principal Act is amended by adding new sections 11A and 11B after section 11 as follows:

Information to be supplied to Reserve Bank “11A.(1) The information which may be required to be supplied by licensed financial institutions under section 11 is as follows –

- (a) not later than 10 working days after the last business day to which it relates, a monthly statement of assets and liabilities in such form as is specified by the Reserve Bank;
- (b) not later than 15 working days after the last business day to which it relates, a statement of profit and loss for the quarter ended March, June, September and December, in such form as is specified by the Reserve Bank;
- (c) not later than 3 months after the end of each financial year of the licensed financial institution, a copy of its audited balance sheet and profit and loss account for that year;
- (d) a certificate that there has been compliance with section 13(1) of the Act and verifying that no director or manager (or person specified by the Reserve Bank as a person who, in the opinion of the Reserve Bank, is employed in a management capacity), holds office contrary to section 13;

- (e) such information regarding its business, or that of any related company in Tonga or elsewhere, as the Reserve Bank may require for the purposes of the Act;

(2) The Reserve Bank may require a certificate from the auditor of a licensed financial institution, verifying the accuracy of any information supplied under the Act.

(3) Not later than 4 months after the end of each financial year of each licensed financial institution, it shall publish in the Gazette and in the Tonga Chronicle or such other newspaper circulating in Tonga as the Reserve Bank may direct, a copy of its audited balance sheet and profit and loss account.

Auditing of Information

11B.(1) A licensed financial institution must for each financial year appoint an auditor who is approved by the Reserve Bank.

(2) The auditor of a licensed financial institution shall –

- (a) carry out each year an audit of the accounts of the licensed financial institution, or if the licensed financial institution is a branch of a foreign company, an audit of the operations of the branch and of the operations of the company within Tonga;
- (b) provide to the Reserve Bank a certificate, to be attached to the balance sheet and profit and loss accounts of the licensed financial institution and verifying that such balance sheet and profit and loss accounts give a true and fair view of the financial position of the licensed financial institution;
- (c) perform such other functions as are required under this Act, any other Act, and under any regulations made under this Act;
- (d) disclose to the Reserve Bank any information relating to the affairs of the licensed financial institution that the auditor has obtained whilst acting as auditor, if in the opinion of the auditor the licensed financial institution is insolvent or is in serious financial difficulties.

(3) No civil, criminal or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Reserve Bank pursuant to this Act.”

7. Section 12 of the Principal Act is amended by renumbering subsection (2) as subsection (4) and inserting the following new subsections:

“(2) The Reserve Bank’s powers of inspection under this section may be delegated to any person authorised by the Reserve Bank.

(3) In exercise of its powers of inspection under subsection (1), the Reserve Bank or authorised person may –

- (a) conduct the inspection with or without notice;
- (b) require explanations and the production of other material from the licensed financial institution;
- (c) make copies of and take away for further scrutiny, any papers or electronically stored data it requires.”

8. The Principal Act is amended by adding a new subsection 14A after section 14 as follows:

Unsound or unsafe practices -

“14A. (1) Where the Reserve Bank is of the opinion, either as a result of an inspection carried out pursuant to section 12 or otherwise, that a licensed financial institution –

- (a) is following unsound or unsafe practices in the conduct of its business such that it is likely to jeopardise its obligations to its depositors or other creditors, or adversely affect the operation or stability of the financial system; or
- (b) has contravened or failed to comply with the terms and conditions of its licence or the provisions of this Act.

the Reserve Bank may issue a directive to such licensed financial institution to –

- (i) cease and desist from such practice, contravention or non-compliance; and
- (ii) take such action as may be specified in the directive to correct the conditions resulting from such practice, contravention or non-compliance.”.

9. Section 15(2) of the Principal Act is amended by –

- (a) deleting paragraph (c);
- (b) deleting “or (c)” in paragraph (f).

10. The Principal Act is amended by adding new sections 15A and 15B after section 15 as follows:

Overseas operations

“15A. (1) A licensed financial institution incorporated in Tonga shall not, without the approval in writing of the Reserve Bank, operate a branch office or subsidiary outside Tonga.

- (2) The Reserve Bank shall not grant approval under subsection (1) unless it is satisfied that -
 - (a) the Reserve Bank has the ability and resources to adequately supervise the branch or subsidiary situated outside Tonga;
 - (b) the licensed financial institution has the administrative and financial capacity to conduct banking business at a branch or subsidiary outside Tonga, without affecting the stability of the financial system and the safety of the interests of depositors both within and outside Tonga.

Court supervised management

15B.(1) If the Reserve Bank considers that it is proper to take control of and manage the banking business of a licensed financial institution in order to protect the stability of the financial system, the interest of depositors or in the public interest, it may apply to the Supreme Court under this section.

- (2) The Supreme Court may, if it considers that in the circumstances of the case it is appropriate that the Reserve Bank or its nominee be appointed to take control of and manage the banking business of a licensed financial institution, make any or all of the following orders –
 - (a) that the Reserve Bank, or a person nominated by the Reserve Bank and approved by the Court, be appointed as Court Appointed Manager, to take control of the banking business of a licensed financial institution;

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- (b) that the Court Appointed Manager have such powers and authority as the Court specifies, including the following –
 - (i) power to carry on or cease to carry on, or sell the business of the financial institution and in so doing, to have and exercise all the powers, rights and authorities necessary so to do;
 - (ii) such of the powers of a liquidator under the Companies Act as are specified by the Court;
 - (c) that any subsidiary of the licensed financial institution be subject to control and management under this section in like manner to the licensed financial institution;
 - (d) any order in relation to the licensed financial institution that the Court would be able to make in relation to a company that is in liquidation under the Companies Act, including –
 - (i) a moratorium on actions or enforcement action against the licensed financial institution on such terms as the Court considers appropriate;
 - (ii) a prohibition against the removal or disposal of assets except with the consent of the Court Appointed Manager;
 - (e) that the Court Appointed Manager be entitled to apply to the Court to seek directions;
 - (f) such further or other orders as the circumstances may require.
- (3) If a licensed financial institution that is subject to management and control under this section is incorporated outside Tonga, this section applies to the operations of the licensed financial institution in Tonga and to its property, rights, assets and liabilities relating to its business in Tonga.
- (4) If a licensed financial institution or subsidiary that becomes subject to management and control under this section is already in liquidation or receivership –
- (a) the liquidation or receivership shall cease; and
 - (b) the person appointed as liquidator or receiver shall be discharged,
- provided that if the control and management of the licensed financial institution or subsidiary under this section is terminated, the Court may order that the liquidation or receivership shall be revived, upon such terms as the Court may specify.
- (5) The Court, on the application of the Reserve Bank or of its own motion, may terminate the appointment of a person as Court Appointed Manager for any reason, including the resignation of that person.
- (6) A licensed financial institution or subsidiary shall cease to be subject to control and management under this section if –
- (a) the Court, on the application of the Reserve Bank, so orders;

- (b) the Reserve Bank presents a petition for the winding up of the licensed financial institution.
- (7) In the exercise of its powers, the Court Appointed Manager shall have regard to –
 - (a) the need to avoid significant damage to the financial system;
 - (b) the preservation, subject to paragraph (a), of the position of creditors and the maintenance of the ranking of claims of creditors.
- (8) A Court Appointed Manager shall comply with any written directions of the Reserve Bank relating to the exercise of his powers under this Act unless –
 - (a) such directions conflict with any order of the Court;
or
 - (b) the Reserve Bank is the Court Appointed Manager.
- (9) A Court Appointed Manager, and any employee, director or assistant thereof, shall not incur any personal liability by virtue of the exercise, in good faith, of any power or duty under this Act.
- (10) An application to the Supreme Court under subsection (1) shall be by notice of motion and thereafter the form of the proceedings shall be as directed by the Court.”.

11. The Principal Act is amended by repealing section 21(b).

12. The Principal Act is amended by adding a new section 21A after section 21 as follows:

Offences under this Act “21A. Every person who contravenes or fails to comply with any of the provisions of this Act for which no specific penalty is imposed, or fails to comply with any regulation, order or directive issued pursuant to this Act, commits an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

Passed by the Legislative Assembly this 1 day of October, 1997.