



Tonga

**NATIONAL RESERVE BANK OF
TONGA ACT**

2007 Revised Edition



NATIONAL RESERVE BANK OF TONGA ACT

Arrangement of Sections

Section

PART I - PRELIMINARY	7
1 Short Title and Commencement	7
2 Interpretation.....	7
PART II - CONSTRUCTION	9
3 Establishment of National Reserve Bank of Tonga.....	9
4 Principal objectives of the Bank	9
4A Functions of the Bank.....	9
5 Offices, branches, agents and correspondents	10
PART III - CAPITAL, RESERVES AND PROFITS	10
6 Capital.....	10
7 General Reserve.....	10
8 Profits.....	10
PART IV - BOARD, MANAGEMENT AND EMPLOYEES	11
9 Board, its powers and responsibilities	11
10 Appointment of Board	12
11 Appointment and removal of Governor	12
12 Remuneration of directors.....	13
13 Resignation and Disqualification.....	13
14 Appointment to fill a vacancy.....	13
15 Duties of the Governor	14

16	Meetings of the Board	15
17	Power to appoint Deputy Governor, officers and employees.....	15
18	Conflicts of interest	15
19	Secrecy	16
20	Personal immunity of directors, officers and employees	16

PART V - CURRENCY **16**

21	Monetary unit	16
22	Sole right to issue currency	17
23	Defacement of notes.....	17
24	Legal tender.....	17
25	Manufacture and characteristics of currency.....	17
26	Power of recall	18
27	Issue, withdrawal and exchange of currency.....	18
28	Recovery of lost, stolen mutilated or otherwise damaged currency.....	18
29	Counterfeit currency.....	19

PART VI - EXTERNAL RESERVE, FOREIGN EXCHANGE OPERATIONS AND REVALUATION RESERVE ACCOUNT **19**

30	External Reserve	19
31	Value of External Reserve.....	19
32	Operations in foreign exchange and precious metals	20
33	Revaluation Reserve Account	20
34	External value.....	21
35	Exchange rates.....	21

PART VII - TRANSFER OF ASSETS AND LIABILITIES **21**

36	Transfer of Assets and Liabilities.....	21
----	---	----

PART VIII - RELATIONS WITH FINANCIAL INSTITUTIONS **22**

37	Opening accounts for financial institutions.....	22
38	Operations with account holders	22
39	Required reserves of financial institutions	22
40	Regulation of interest and credit	23
40A.	Disclosure.....	24
41	Foreign Exchange Positions	25
42	Minimum holdings of unimpaired liquid assets	25
43	Local assets ratio	25
43A	25	

PART IX - SUPPLY OF INFORMATION **26**

44	Supply of Information	26
45	Extension of time limit for provision of documents and information	26

PART X - RELATIONS WITH AND FOR THE GOVERNMENT		27
46	Bank to be principal banker, fiscal agent and depository for the Government	27
47	Agent for the administration of Acts relating to banking and exchange control	27
48	Consultation	27
49	<i>Repealed by Act 19 of 2007</i>	28
50	Policy directives	28
50A.	Policy Statement	29
51	Depository and fiscal agency of international financial institutions and supranational organizations	29
PART XI - ACCOUNTS AND STATEMENTS		29
52	Financial year	29
53	Accounts	29
54	Publication of accounts and annual report and monthly return	30
54A	Performance Audit	30
PART XII - GENERAL		31
55	Exemption from taxes and duties	31
56	Bank of Tonga and Tonga Development Bank	31
57	Prohibited activities	31
57A	Financial Institutions Act 2004	32
58	Prohibited names	32
59	Bank holidays	32
60	Responsibility and communication	32
61	Regulations	33
PART XIII - REPEAL		33
62	Repeal and Saving	33



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

In this Act, unless the context otherwise requires —

“**Bank**” means the National Reserve Bank of Tonga established under section 3;

“**bank**” means any financial institution whose operations include the acceptance of deposits of money transferable by cheque or other means of payment transfer;³

“**banking business**” means:

- (i) the business of receiving funds 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 recognized by the Bank as customary banking practice which a financial institution engaging in the activities described in (i) may additionally be authorized to do by the Bank;

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

“**Chairman**” means the Chairman of the Board;

“**credit institution**” means a financial institution other than a bank;

“**currency**” means currency note or coin;

“**Deputy Chairman**” means Deputy Chairman of the Board;

“**Deputy Governor**” means the Deputy Governor of the Bank appointed under section 17;

“**director**” means a member of the Board;

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

“**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

“**Minister**” means the Minister of Finance;

“**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.

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.⁵
- (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.

4 Principal objectives of the Bank⁶

- (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.

4A Functions of the Bank⁷

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.

5 Offices, branches, agents and correspondents⁸

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.⁹
- (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.¹⁰
- (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 negotiable, interest bearing securities issued by the Government for such amount as is necessary to preserve the paid up capital.¹¹

7 General Reserve

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.

8 Profits¹²

- (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.

PART IV - BOARD, MANAGEMENT AND EMPLOYEES

9 Board, its powers and responsibilities¹³

- (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 Appointment of Board¹⁴

- (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.¹⁵
- (2) The Governor shall be a member but shall not chair the Board.¹⁶
- (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 3 to 5 years and may be re-appointed.¹⁷
- (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 Appointment and removal of Governor¹⁸

- (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 he may be removed from office by Cabinet, on the recommendation of the Minister made at the request of the Board.

12 Remuneration of directors¹⁹

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

13 Resignation and Disqualification

- (1) A director may resign his office on giving notice in writing to the Cabinet through the Minister.²⁰
- (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 office²¹
 - (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;²²
 - (f) who is a member of the Public Service (other than the Secretary of Finance or his alternate);²³
 - (g) who is a member of staff of the Bank (other than the Governor);²⁴
 - (h) who is a Director or member of staff of a licensed financial institution;²⁵ or
 - (i) who is a member of the Legislative Assembly.²⁶

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.

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;²⁷
 - (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.
- (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.²⁸
- (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.²⁹
- (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.

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 once every 2 months.
- (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.³⁰
- (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.³¹
- (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.

17 Power to appoint Deputy Governor, officers and employees

The Board may appoint and employ, at such remuneration and on such terms and conditions as it may determine, one or more officers of the Bank as Deputy Governor and such other officers and employees as the Board considers necessary for the efficient functioning of the Bank.³²

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 any agricultural, commercial, financial, industrial, professional or other interests with which they 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.

- (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.

19 Secrecy³³

- (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, 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) 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 2 years or to both.
- (3) 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.

20 Personal immunity of directors, officers and employees

No director, officer or employee of the Bank or any person 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 negligence in the course of the operations of the Bank.

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 currency

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.

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.³⁴

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.
- (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 and the Minister 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 currency

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.

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

30 External Reserve

- (1) 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) 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 foreign currency and payable at any place outside the Kingdom;
 - (e) treasury bills issued by foreign governments specified from time to time by the Board;
 - (f) 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;
 - (g) such other external assets as the Board, with the approval of the Minister, shall specify.³⁵
- (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.³⁶

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.³⁷

- (2) The Minister shall submit this report to Cabinet and the Legislative Assembly.³⁸

32 Operations in foreign exchange and precious metals

The Bank may, whether in Tonga or elsewhere —

- (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.

33 Revaluation Reserve Account

- (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 non-interest bearing securities issued by the Government to the extent of any deficiency.³⁹
- (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.⁴⁰

- (4) No credit or debit shall be made to the Revaluation Reserve Account except in accordance with the provisions of this section.

34 External value⁴¹

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.⁴²

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,⁴³ 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

The Bank may —

- (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) lend money to holders of accounts with it on such terms and conditions, and against the security of assets which the Bank is authorised by this Act to buy, as may be specified by the Board.

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,⁴⁴ 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.⁴⁵

- (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.

40 Regulation of interest and credit⁴⁶

- (1) The Bank may, specify by publication in the Gazette⁴⁷ 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;
 - (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. Disclosure⁴⁸

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.⁴⁹

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.⁵⁰
- (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

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.⁵¹

43A⁵²

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.

PART IX - SUPPLY OF INFORMATION

44 Supply of Information⁵³

- (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 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.

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.⁵⁴
- (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.

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 Consultation⁵⁵

- (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.⁵⁶
- (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.⁵⁷

49 Repealed by Act 19 of 2007

50 Policy directives⁵⁸

- (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 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 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, 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.

50A. Policy Statement⁵⁹

- (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 AND STATEMENTS**52 Financial year**

The financial year of the Bank shall coincide with the financial year of His Majesty's Government.

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.⁶⁰

- (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.⁶¹
- (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.⁶²

54 Publication of accounts and annual report and monthly return⁶³

- (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.⁶⁴
- (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.⁶⁵

54A Performance Audit⁶⁶

- (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.

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.

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, without the approval of the Minister on the recommendation of the Board, 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.⁶⁷

- (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.⁶⁸

57A Financial Institutions Act 2004⁶⁹

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

58 Prohibited names⁷⁰

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.

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.⁷¹

61 Regulations

Cabinet may make regulations, not inconsistent with this Act, generally for giving effect to this Act or for the conduct of the business of the Bank.⁷²

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

Amended by Act 7 of 1990, commencement 12 July 1990

Amended by Act 24 of 2000, commencement 7 November 2000

Amended by Act 7 of 2011, commencement 9 January 2012

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

³ Amended by Act 19 of 2007

⁴ Inserted by Act 19 of 2007

⁵ Amended by Act 19 of 2007

⁶ Substituted by Act 19 of 2007

⁷ Substituted by Act 19 of 2007

⁸ Amended by Act 19 of 2007

⁹ Amended by Act 19 of 2007

¹⁰ Substituted by Act 19 of 2007

¹¹ Inserted by Act 19 of 2007

-
- ¹² Substituted by Act 19 of 2007
- ¹³ Substituted by Act 19 of 2007
- ¹⁴ Substituted by Act 19 of 2007; Amended by Acts 42 of 2010 and 47 of 2010
- ¹⁵ Amended by Acts 47 of 2010 and 7 of 2011
- ¹⁶ Substituted by Act 47 of 2010
- ¹⁷ Inserted by Act 7 of 2011
- ¹⁸ Substituted by Act 19 of 2007; Amended by Act 42 of 2010
- ¹⁹ Amended by Act 19 of 2007
- ²⁰ Amended by Act 42 of 2010
- ²¹ Amended by Acts 19 of 2007 and 42 of 2010
- ²² Inserted by Act 19 of 2007
- ²³ Inserted by Act 19 of 2007
- ²⁴ Inserted by Act 19 of 2007
- ²⁵ Inserted by Act 19 of 2007
- ²⁶ Inserted by Act 19 of 2007
- ²⁷ Amended by Act 19 of 2007
- ²⁸ Amended by Act 19 of 2007
- ²⁹ Amended by Acts 19 of 2007 and 42 of 2010
- ³⁰ Substituted by Act 7 of 2011
- ³¹ Inserted by Act 7 of 2011
- ³² Amended by Act 24 of 2000
- ³³ Amended by Act 19 of 2007
- ³⁴ Amended by Act 19 of 2007
- ³⁵ Amended by Act 19 of 2007
- ³⁶ Inserted by Act 19 of 2007
- ³⁷ Amended by Act 19 of 2007
- ³⁸ Inserted by Act 19 of 2007; Amended by Act 42 of 2010
- ³⁹ Amended by Act 42 of 2010
- ⁴⁰ Substituted by Act 19 of 2007
- ⁴¹ Amended by Act 19 of 2007
- ⁴² Amended by Act 19 of 2007
- ⁴³ 1 July 1989, vide G. 109/1989

⁴⁴ By GS 2/2006, notice was given by the National Reserve Bank, with the approval of Privy Council, that with effect from 3rd March 2006 “each licensed financial institution in Tonga will be required to maintain a deposit with the Reserve Bank equivalent to not less than 12.5 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”

⁴⁵ Amended by Act 19 of 2007

⁴⁶ Amended by Act 19 of 2007

⁴⁷ 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”

⁴⁸ Inserted by Act 19 of 2007

⁴⁹ Substituted by Act 19 of 2007

⁵⁰ Amended by Act 19 of 2007

⁵¹ Amended by Act 19 of 2007

⁵² Inserted by Act 19 of 2007

⁵³ Amended by Act 19 of 2007

⁵⁴ Amended by Act 19 of 2007

⁵⁵ Substituted by Act 19 of 2007

⁵⁶ Amended by Act 42 of 2010

⁵⁷ Amended by Act 42 of 2010

⁵⁸ Substituted by Act 19 of 2007; Amended by Act 42 of 2010

⁵⁹ Substituted by Act 19 of 2007; Amended by Act 42 of 2010

⁶⁰ Amended by Act 19 of 2007

⁶¹ Amended by Act 42 of 2010

⁶² Amended by Act 19 of 2007

⁶³ Amended by Act 19 of 2007

⁶⁴ Substituted by Act 19 of 2007; Amended by Act 42 of 2010

⁶⁵ Substituted by Act 19 of 2007

⁶⁶ Inserted by Act 19 of 2007

⁶⁷ Amended by Act 19 of 2007

⁶⁸ Inserted by Act 19 of 2007

⁶⁹ Inserted by Act 19 of 2007

⁷⁰ Substituted by Act 42 of 2010

⁷¹ Amended by Act 42 of 2010

⁷² Amended by Act 42 of 2010