



SAMOA

DEVELOPMENT BANK OF SAMOA ACT 2010

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DEVELOPMENT BANK OF SAMOA ACT 2010
2010 **No.6**

AN ACT to continue the Development Bank of Samoa established under the Development Bank Act 1974 and to provide for the functions, powers, and duties of the Bank under modern and reformed arrangements, and for related purposes.

[Assent and commencement date: 7 April 2010]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Development Bank of Samoa Act 2010.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation – In this Act, unless the context otherwise requires:

“Auditor” means the Controller and Auditor General;

“Bank” or “Development Bank” means the Development Bank of Samoa continued by section 3;

“Board” means the Board of the Bank as provided for in section 3;

“enterprise” means:

(a) a person or body (whether incorporated or unincorporated) that engages or proposes to engage in an agricultural, commercial, or industrial activity, or in any other activity relating to business, economic development or the advancement of the community, whether or not the primary purpose of the activity is profit; and

(b) an undertaking owned, leased, managed, operated, or developed by the Bank by itself or jointly with any other person or body (whether incorporated or unincorporated).

“Government” means the Government of the Independent State of Samoa; and

“Minister” means the Minister responsible for Finance.

PART 2 DEVELOPMENT BANK OF SAMOA

3. Continuation of the Development Bank – (1) The Development Bank of Samoa established under the Development Bank Act 1974 is continued under this Act, and shall operate and be managed under this Act.

(2) The Board of the Bank comprises not more than 7 directors who are to be selected under applicable law relating to the management of public bodies except for the following:

(a) the Chief Executive Officer of the Ministry of Finance who is to be an *ex-officio* director; and

(b) a representative of a joint venture partner of the Bank if appointed under section 9(4).

(2A) Other than the *ex-officio* director under subsection (2)(a), directors of the Bank are to be appointed by the Head of State, acting on the advice of Cabinet, and may be removed from office by Cabinet.

(2B) The *ex-officio* director under subsection (2)(a) shall not receive remuneration or other benefits from the Bank for services as a director.

(2C) Cabinet shall appoint one of the directors to be Chairperson, and may appoint a Deputy Chairperson.

(2D) Unless the Board decides otherwise, the Chief Executive Officer must attend all Board meetings but has no voting rights.

(3) The Bank is a body corporate with perpetual succession and a common seal and:

- (a) may enter into contracts;
- (b) may sue and be sued in its corporate name;
- (c) has the power to acquire, hold and dispose of real and personal property; and
- (d) may generally do all such acts and things that are necessary for or incidental to the performance of its functions under this Act or any other law.

(4) The powers of the Bank is not affected by a vacancy in the membership of the Board.

4. Offices of the Bank – (1) The principal office of the Bank is to be in Apia.

(2) The Bank may establish such branches in Apia and elsewhere, as the Board thinks fit.

5. Functions of the Bank – (1) The functions of the Bank are to promote the expansion of the economy of Samoa for the economic and social advancement of the people of Samoa by:

- (a) making loans and giving financial, technical, and advisory assistance to an enterprise in Samoa, in accordance with the procedures approved by the Board;
- (b) providing commercial, financial, banking and insurance services as approved by the Board;
- (c) undertaking or participating in infrastructure, residential and commercial developments as approved by the Board; and
- (d) entering into partnerships by way of joint venture, agency relationships or any other means approved, by the Board to perform the Bank's functions.

(2) The provision of financial, banking and insurance services by the Bank must be in accordance with the regulatory requirements applying to such services under a relevant law.

(3) The Bank has such other functions as may be lawfully conferred on it by a law or by Cabinet.

6. Operating principles – (1) In determining whether or not a loan or financial, technical, or advisory assistance is to be given to an enterprise, the Bank shall have regard to the following considerations:

- (a) the prospects of the enterprise being successful, or becoming or remaining successful, and the prospects of any money lent to it by the Bank being repaid to the Bank;
- (b) the degree to which the enterprise is, or will become or remain, of value to the economy of Samoa;
- (c) the degree to which the enterprise is, or will be or will remain, owned or effectively controlled by persons who are either citizens of Samoa, or who are ordinarily resident in Samoa;
- (d) the minimisation of impacts to the environment of Samoa, and the extent to which the enterprise complies with environmental requirements applying in Samoa and to the Pacific region;
- (e) the compliance by the enterprise with laws applying in Samoa to the employment of workers, and to their safety and welfare in the workplace;
- (f) the compliance by the enterprise with all other lawful requirements, including those relating to planning and development controls, building regulation, fair trading and the protection of the rights of consumers;
- (g) the contribution of the enterprise to the alleviation of poverty; and
- (h) the extent to which the public interest of Samoa will be otherwise served by assisting the enterprise.

(2) In lending any money or giving a guarantee in respect of an enterprise, the Bank shall obtain security for the repayment of the loan to the Bank or for indemnity of the Bank for a liability (actual or contingent) of the Bank under the guarantee, in

accordance with normal commercial practice in the banking industry.

(3) Nothing in subsection (2) prevents the Board from approving arrangements that are aimed to ensure that adequate funding is provided for:

- (a) the development of the agriculture sector;
- (b) the development of enterprises in the primary industry sector; and
- (c) the enhancement of economic growth in other sectors of significant national interest.

7. Bank to follow general economic policy of Government

– In exercising its functions and powers under a law, the Bank shall give effect to the general economic policy of the Government as communicated to the Bank in writing by the Minister for Public Enterprises or Cabinet.

8. Powers of the Bank – (1) The Bank has all the powers that are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting subsection (1), the Bank may:

- (a) make loans to an enterprise, and give guarantees in respect of an enterprise in a manner which is consistent with the requirements of this Act;
- (b) provide finance for an enterprise by investing in equities;
- (c) subscribe for, purchase, underwrite, or sub-underwrite shares, debentures, bonds, or other securities issued or guaranteed by the Government, or by an enterprise;
- (d) buy, lease, or otherwise acquire, hold, manage, improve, or develop a real and personal property;
- (e) develop, sell, let, mortgage, charge, or otherwise deal with or dispose of any of its property;
- (f) execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiable or transferable instruments, and buy, sell, or otherwise deal in such instruments;

- (g) accept money on deposit at rates of interest to be determined by the Board;
 - (h) participate in the management of enterprises to which it has given, or is to give, a loan or financial, technical, or advisory assistance;
 - (i) place funds not immediately required by it on deposit with a bank, or invest such funds in government securities or other approved government investments;
 - (j) take such steps as may be necessary to protect or recover its financial interest in any enterprises;
 - (k) make such charges for the provision of its services as it thinks fit;
 - (l) subject to the other provisions of this Act, borrow money from the Government or from a bank or lending institution (whether in Samoa or overseas) on such terms and conditions as the Board approves;
 - (m) enter into joint ventures, partnerships, agency relationships and any other appropriate arrangement for the performance of its functions; and
 - (n) create a subsidiary and operate a special account for the purposes of paragraph (m).
- (3) The exercise of any power under this section must be in accordance with the regulatory requirements imposed by the Central Bank of Samoa and applying under a relevant law.

9. Appointment of directors – (1) to (3) *Repealed by the Composition of Boards of Public Bodies Act 2012.*

(4) A representative of a joint venture partner of the Bank may be appointed to the Board by Cabinet in accordance with a joint venture agreement.

(5) No person may be appointed under section 3(2) to be a director, or may continue to hold office, while the person is holding a full-time office in the Bank.

(6) From 1 July 2010:

- (a) no Member of Parliament or a person employed in the public service shall be a director or be re-appointed as a director unless Cabinet has certified that such appointment or re-

appointment, as the case may be, is necessary;
and—

- (i) in the national interest; and
 - (ii) that the Member of Parliament or the person has particular qualifications or business experience which the Bank requires on its Board and such qualifications or business experience cannot be found elsewhere; and
- (b) where a Member of Parliament or a person employed in the public service is appointed or re-appointed under this section, the Member of Parliament or person shall not receive remuneration or other benefits from the Bank for services as a director.

10. Terms of office of appointed directors – A director appointed under section 3(2A) holds office for the term stated in the instrument of appointment or until replaced in accordance with this Act.

11. Remuneration of appointed directors – A director is to be paid such remuneration and allowances as may be fixed by Cabinet.

12. Meetings of directors – (1) Meetings of directors are to be held at such times and places as the Chairperson appoints.

(2) The Chairperson shall call a meeting whenever required to do so in writing by at least 3 directors.

(3) At any meeting 4 directors shall form a quorum.

(4) The Chairperson shall preside at every meeting at which he or she is present.

(5) If the Chairperson is for any reason absent from a meeting, the directors present shall elect 1 of the directors to preside at that meeting.

(6) In the absence from any meeting of a director appointed under section 3(2)(a), (d), (e) or (f), the director may authorise any other officer of his or her ministry or agency, to attend the meeting.

(7) An officer authorised under subsection (6) is taken, for all purposes, to be a director of the Bank while he or she attends that meeting as authorised, but shall not preside at the meeting.

(8) At a meeting, the Chairperson or other person presiding has a deliberative vote, and in the case of an equality of votes, the Chairperson also has a casting vote.

(9) A question arising at a meeting is to be decided by a majority of the votes.

(10) Subject to this Act, the Board may regulate its procedure in such manner as the Board thinks fit.

13. Disclosure of interest – (1) No director shall act as a delegate of a business interest or receive or accept directions from a business interest in respect of duties to be performed under this Act:

PROVIDED THAT this restriction does not apply to a director who is appointed to represent the interests of a joint venture partner of the Bank.

(2) A director who, otherwise than as a director, is directly or indirectly interested in an arrangement entered into, or proposed to be entered into by the Bank, shall as soon as possible after the relevant facts have come to his or her notice, disclose the nature of such interest at a meeting of the Board.

(3) A disclosure under this section must be recorded in the minutes of the meeting of the Board and the director must not take part after the disclosure in any deliberation or decisions relating to the arrangement, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

(4) No director or an officer or employee of the Bank may accept a gift or advantage for himself or herself, or for a person with whom the member may have family, business, or financial connections if the acceptance of it would result, or give the appearance of resulting in a diminishment of his or her impartial devotion to functions, duties or responsibilities under this Act.

(5) Where a director acts contrary to the provisions of this Act, or uses information obtained through the Bank for personal gain (or the gain of any other person), and Cabinet is satisfied that such a breach has occurred, that member must be immediately terminated as a director of the Bank.

(6) A person terminated under subsection (5) is not eligible for reappointment as a director of the Bank at any time.

14. Contracts by the Bank – (1) Contracts on behalf of the Bank may be made:

- (a) in the form of a deed which must be in writing and be under the common seal of the Bank;
- (b) in the form of a written contract, which must be in writing and be either —
 - (i) under the common seal of the Bank; or
 - (ii) signed by a person or persons acting in accordance with a general or specific direction of the Board.

(2) The common seal of the Bank shall not be affixed to a document except under a resolution of the Board, and the execution of a document so sealed shall be attested by 2 directors.

15. Committees – (1) To assist the Bank to discharge its functions, the Board may appoint such advisory, audit, regulatory and technical committees as it determines, and the Board may:

- (a) determine the functions of the committees; and
- (b) delegate to the committees such powers of the Board as are necessary for the committees to perform their functions.

(2) Members of committees appointed under subsection (1) may include directors, officers of the Bank and such other persons as the Board considers appropriate for the committees to perform their functions.

(3) Members appointed to a committee established under subsection (1) may be paid fees, allowances and reimbursement of expenses as determined by the Board.

(4) Subject to the other provisions of this Act and to any directions given to it by the Board, a committee may regulate its procedure in such manner as it thinks fit.

16. Delegation of powers – (1) The Board may delegate to any of its committees, or to the Chief Executive Officer, or to any other officer of the Bank any of its powers under this Act, including this power of delegation.

(2) Subject to any general or special directions given by the Board, a committee or person to whom any powers is so delegated may exercise the powers in the same manner and with the same effect as if the powers had been conferred directly by this Act, and not by delegation.

(3) A committee or person purporting to act under a delegation under this section is presumed, until the contrary is proved, to be acting under the terms of the delegation.

(4) A delegation is revocable at will, and no delegation prevents the exercise of any power by the Board itself.

(5) Until a delegation is revoked, it continues in force according to its terms, even if there is any change in the membership of the Board, or of any committee of the Board.

PART 3 STAFFING PROVISIONS

17. Chief Executive Officer – (1) The Head of State, acting on the advice of Cabinet, shall appoint a Chief Executive Officer of the Bank:

- (a) for such period as may be specified in the appointment, which may not exceed 3 years; and
- (b) on such other terms and conditions as are approved by Cabinet or the Board.

(2) The Chief Executive Officer is the administrative head of the Bank, and is responsible to the Board for the effective and efficient management of the Bank, and for the execution of the Bank's functions.

(3) The Chief Executive Officer may be removed from office by a decision of Cabinet to that effect.

(4) In carrying out his or her duties, the Chief Executive Officer shall follow any general or special directions given by the Board.

(5) The Chief Executive Officer is eligible for re-appointment.

(6) All remuneration and other allowances and expenses payable to the Chief Executive Officer must be in accordance with any approved policy of Cabinet applying and must be paid out of the funds of the Bank.

(7) The Chief Executive Officer shall not engage in any other business or occupation without the prior written consent of the Board.

18. Acting Chief Executive Officer – (1) The Board may on such terms and conditions as it specifies, appoint a suitable person to be the Acting Chief Executive Officer of the Bank during a temporary vacancy in the office of the Chief Executive Officer, or

while the Chief Executive Officer is for any reason unable to carry out the duties of the office.

(2) During any such vacancy in office or incapacity of the Chief Executive Officer, the person appointed to be the Acting Chief Executive Officer may exercise all the functions and powers of the Chief Executive Officer, and shall perform all the duties of the office.

19. Bank staff – (1) The Bank may appoint such other officers and employees of the Bank as it may consider necessary for the purposes of carrying out of the Bank's functions.

(2) Officers may be engaged under contract for fixed periods or appointed to hold office under policies of employment and terms and conditions approved by the Board.

(3) The Bank may make personal loans or advances to its officers and employees for housing and domestic purposes in accordance with a policy approved by the Board, which shall:

- (a) ensure that the entitlements of staff are not less than those enjoyed by employees of other government owned financial institutions; and
- (b) be adequate to encourage the recruitment and retention of suitably qualified and experienced staff to the Bank.

20. Other staffing provisions – (1) The Board may approve other staff entitlements and incentives for the purposes of attracting and retaining experienced officers, and such incentives may include:

- (a) bonus schemes based upon performance;
- (b) pension or retirement entitlements; or
- (c) subsidised interest on loans provided to officers of the Bank, which may be extended to periods after the retirement of the officer.

(2) All entitlements applying under this section must be in accordance with an applicable determination of Cabinet and consistent with any other legal obligation relating to the payment of pensions and contributions to retirement schemes.

PART 4

FINANCIAL PROVISIONS

21. Capital of the Bank – (1) The capital of the Bank is the amount of approved capital as at the commencement of this Act.

(2) The Board may, by resolution, recommend to the Minister that the share capital of the Bank be increased.

(3) In any such case, the Cabinet may authorise the increase of the share capital of the Bank to such amount as the Cabinet determines.

(4) The share capital of the Bank shall not be increased except under subsections (2) and (3).

(5) This Act applies despite any provision of the Companies Act 2001 and any other applicable law to the contrary.

22. Shares to be held by Government – (1) All shares of the Bank must be held by the Government, or on behalf of the Government in accordance with any law.

(2) Shares of the Bank may only be transferred in accordance with any law making provision for the corporatisation or privatisation of the Bank.

(3) A transfer of a share that is not in accordance with subsection (2) is void.

23. Disposition of profits – (1) Subject to subsection (2), the Bank shall apply its profits under a requirement imposed under any law.

(2) The Bank is not obliged to declare and distribute any profits if:

- (a) such a requirement might compromise the ability of the Bank to obtain funds for purposes consistent with this Act from an appropriate source of such funds; or
- (b) the payment of dividends would prevent the Bank from performing its functions under the operating principles applying to its operations.

24. Management of Funds by the Bank – (1) The monies of the Bank must be held in such accounts or Funds as the Board may determine.

(2) The Board may approve the management of monies in Special Funds dedicated for purposes associated with:

- (a) a pension scheme or other arrangement for staff benefits under sections 19 and 20; or

(b) a joint venture, agency or other relationship between the Bank and a partner of the Bank.

(3) The management of a pension scheme under this section must not be inconsistent with the requirement for employees of the Bank to be registered as contributors to the National Provident Fund, and for the required contributions to be paid on behalf of employees.

25. Powers of the Auditor – (1) The Auditor, or a person authorised to act by the Auditor, is entitled at all reasonable times:

- (a) to have full and free access to all accounts, papers, records and other documents relating to the activities of the Bank;
- (b) to take copies of such materials, or to require copies to be provided; and
- (c) to require and receive any information or materials from a person, for the purpose of carrying out duties in accordance with section 26.

(2) A person who hinders or obstructs the Auditor, or an authorised person under subsection (1) in the carrying out of duties under this Act, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months, or both.

26. Accounts, audit, and annual report – (1) The Bank shall:

- (a) keep full and proper accounts and other records of its operations at all times; and
- (b) prepare a balance sheet and such other statements of accounts as are necessary to fully and accurately show the financial position of the Bank and the financial results of its operations during that year, as soon as reasonably practicable after the end of each financial year.

(2) The accounts of the Bank must be audited each year by the Auditor.

(3) As soon as reasonably practicable after the end of each financial year, the Bank shall send to the Minister for Public Enterprises:

(a) a report of its proceedings and operations for that year together with a copy of its audited accounts for that year; and

(b) the report of the Auditor on its accounts.

(4) A copy of the report and the audited accounts of the Bank, together with a copy of the Auditor's report on the accounts, shall be laid before the Legislative Assembly by the Minister for Public Enterprises as soon as practicable after the Minister for Public Enterprises has received them.

(5) The Chief Executive Officer and the chief financial officer of the Bank must sign off on all accounts and reports kept or prepared under this section, and must certify that:

(a) proper books of account have been maintained by the Bank;

(b) the accounts and reports accurately reflect the financial affairs of the Bank, and the accounts maintained by the Bank; and

(c) adequate procedures of internal control have been applied by the management of the Bank.

27. Director's responsibilities in relation to accounts and reports – All directors must sign off on the accounts of the Bank and the report prepared by or on behalf of the Bank under section 26.

28. Raising of funds – **(1)** Subject to this Act, the Bank may, with the prior written permission of the Minister for Public Enterprises, raise funds required to meet any of its obligations or for discharging any of its functions, and may secure the repayment of such funds in a manner the Board determines.

(2) The Head of State, acting on the advice of Cabinet, may guarantee, in such manner and subject to conditions, the repayment of loans raised by the Bank, including the payment of interest.

PART 5

OVERSIGHT AND RISK MANAGEMENT CONTROLS

29. Obligations of Directors – **(1)** All directors of the Bank must prepare and submit annual disclosure statements to the

Chairperson in a form and manner required by the Ministry of Public Enterprises.

(2) The Minister for Public Enterprises may require that such statements from the Directors of the Bank include all relevant details so as to make full and accurate disclosure of:

- (a) the remuneration received by the director from the Bank during the year to which the statement applies;
- (b) the number of meetings of the Board, and a committee of the Board of which the director is a member, attended by the director during the year to which the statement applies;
- (c) the reasons for failing to attend a Board or committee meeting;
- (d) all disclosures made by the director of a conflict of interest during the year to which the statement applies;
- (e) all loans from the Bank held by —
 - (i) the director;
 - (ii) a company in which the director holds shares, a directorship or employment of any nature; and
 - (iii) a spouse, parent or child of the director;
- (f) any arrears in the repayment of all loans referred to in paragraph (e) during the year to which the statement applies;
- (g) any other position held by the director which may give rise to a potential conflict of interest; and
- (h) any other matter required to be disclosed by the Minister for Public Enterprises, or in accordance with the requirements of the Public Finance Management Act 2001.

(3) A director is taken to be suspended from office if he or she fails to comply with the requirements of subsection (1).

(4) Subject to subsection (5), the matters disclosed in all disclosure statements submitted under this section may be reported upon in all audit and annual reports prepared by or on behalf of the Bank.

(5) The information provided in statements submitted under this section shall be kept confidential in accordance with the

requirements of the Public Finance Management Act 2001 or as stipulated by the Minister for Public Enterprises.

30. Directors with loans in arrears – (1) A director is taken to be suspended from office if a loan that the director has obtained from the Bank, or which a director has guaranteed for a customer of the Bank, falls into arrears in accordance with the Bank's usual terms for payment of the loan.

(2) Subsection (1) applies:

- (a) even if the loan was obtained at a time before the director was appointed to that office; or
- (b) if the loan in arrears has been made to a company in which the director is a shareholder or director.

(3) This section applies to a loan from the Bank to a spouse or child of a director.

31. Audit Committee and Risk Management Committee –

(1) An Audit Committee is to be established by the Board, and its membership may include 1 or more qualified persons who is not a director of the Bank.

(2) The functions of the Audit Committee are:

- (a) to undertake or oversee all aspects of the internal audit of the Bank's operations, management and financial procedures;
- (b) to assess the extent of compliance by the Bank with the prudential guidelines and other supervisory requirements of the Central Bank of Samoa, and to report to the Board on a failure by the Bank to achieve such compliance;
- (c) to ensure that the Bank complies with accepted international best practice of corporate management and reporting, and to report to the Board on a failure by the Bank to achieve such compliance; and
- (d) to assess a proposal by the management of the Bank to recommend the writing off of a debt owed to the Bank, and to provide its recommendation to the Board on all such proposals.

(3) A Risk Management Committee is to be established by the Board, comprising:

- (a) such number of directors as the Board determines;

- (b) the Chief Executive Officer;
 - (c) the Internal Auditor;
 - (d) the Bank's internal lawyer; and
 - (e) any other appropriately qualified persons who are not directors or employees of the Bank, and whom the Board considers may assist the Committee to discharge its functions.
- (4) The functions of the Risk Management Committee are:
- (a) to identify and assess all risks applying to the operations and management of the Bank;
 - (b) to develop policies of risk management for the Bank's operations and management;
 - (c) to oversee and report on any matter associated with the identified risks, and the application of the risk management policies;
 - (d) to ensure that all aspects of the risk management policies, and of their application, are disclosed to the Board, and to its management and staff, and are reported on in all reports required to be prepared and submitted by the Bank; and
 - (e) to review any matter associated with the recovery by the Bank of monies owed to it through the sale of a land or other property held as security, and any other process which the committee considers to constitute some risk to the proper management of the Bank's debt recovery procedures.

32. Inquiries into malpractice – (1) For the purposes of conducting an audit or investigation in relation to any functions provided for in section 31, the Audit Committee and the Risk Management Committee has the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections under sections 5 and 9 of that Act;
- (b) powers as provided by section 6 of that Act;
- (c) power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act; and
- (d) power to summons witnesses and require the production of documents.

(2) A person who, after being summoned to attend before the Audit Committee or the Risk Management Committee, or to produce to the Bank any books, papers, writings, or documents:

- (a) fails to appear according to the terms of the summons; or
- (b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by the Committee, or a member of the Committee relating to the subject of the inquiry; or
- (c) fails to produce any such books, papers, writings, or documents, –

is liable for every such default to a fine not exceeding 50 penalty units.

33. Protection of informants – No action may be taken to affect the employment within the Bank, or the status of an officer of the Bank, who:

- (a) provides information to the Audit Committee or the Risk Management Committee; or
- (b) provides a report or information to a person concerning a breach of section 13 or 30.

34. Protection from liability – No action for defamation may lie against a person who prepares a report, assists in the preparation of a report or who provides information to assist in the preparation of a report by the Audit Committee or the Risk Management Committee that is consistent with a function of such a committee under this Act.

35. Write-offs – (1) The writing-off of a debt due to the Bank must be in accordance with:

- (a) the requirements of section 120 of the Public Finance Management Act 2001;
- (b) the requirements of any prudential guidelines and other requirements imposed by the Central Bank of Samoa;
- (c) international best corporate management and accounting practice; and
- (d) the procedures stated in subsection (2) of this section.

(2) No debt owed to the Bank shall be written-off except in accordance with a decision of the Board made:

(a) after a recommendation has been made by the Risk Management Committee and the Audit Committee supporting the writing-off of the debt; and

(b) after all available and reasonable steps have been taken to recover the amount outstanding.

(3) This section does not apply to a decision to suspend or write-off the interest component of a loan which is in arrears, if such a decision has been made in accordance with a policy approved by the Board.

(4) An amount that has been lawfully written-off under this section is taken to be a bad debt for the purposes of section 20 of the Income Tax Act 2012, and subject to section 20 of the Income Tax Act 2012, the Bank is not liable to pay tax on any such amount.

PART 6

APPLICATION OF OTHER LAWS TO THE BANK

36. Application of the Public Bodies (Performance and Accountability) Act 2001 to the Bank – (1) The requirements under sections 5 and 6 of the Public Bodies (Performance and Accountability) Act 2001 for registration under the Companies Act 2001 and for the issue of shares, shall only apply to the Bank if Cabinet determines that the Bank is to be the subject of a major reorganisation or is to be prepared for privatisation.

(2) Section 5 of the Public Bodies (Performance and Accountability) Act 2001 which purport to give prevalence of certain laws over others does not apply to this Act, and wherever specific provision is made under this Act then that provision prevails over the Public Bodies (Performance and Accountability) Act 2001 and the Companies Act 2001.

(3) No provision of the Public Bodies (Performance and Accountability) Act 2001 which applies the provisions of the Companies Act 2001 to the management of a public trading body shall apply to the Bank until a determination is made by Cabinet under subsection (1).

(4) For the purposes of section 9 of the Public Bodies (Performance and Accountability) Act 2001, the provision of

loans by the Bank to villages or village leaders for the purposes of providing education and other infrastructure and services in accordance with approved policies of the Government is taken to be a community service obligation performed by the Bank.

37. Application of the Companies Act 2001 to the Bank–

(1) Despite the provisions of the Public Bodies (Performance and Accountability) Act 2001, the only provisions of the Companies Act 2001 which shall apply to the Bank and its directors prior to a determination being made under section 36(1) of this Act are:

- (a) the application of the solvency test to the payment of dividends in accordance with section 28 of the Companies Act 2001;
- (b) the fundamental duties of directors under section 65 of the Companies Act 2001;
- (c) the use and disclosure of information by directors as provided for in section 69 of the Companies Act 2001;
- (d) the standard of care of directors under section 70 of the Companies Act 2001;
- (e) indemnities and insurance for directors as provided for in sections 74 and 75 of the Companies Act 2001;
- (f) disqualifications of directors and managers as provided for in sections 77, 78 and 82 of the Companies Act 2001;
- (g) the rights of shareholders to take action as provided for in section 100 of the Companies Act 2001; and
- (h) controls over the interests of directors in transactions as provided for in sections 111 and 112 of the Companies Act 2001.

(2) No obligation shall arise by reason of section 73 of the Companies Act 2001 from any direction given under section 7 of this Act, or any other act or decision of the Minister or the Cabinet communicated to the Bank under this Act.

38. Modification of the Credit Union Act 2015– (1) The Bank may establish and incorporate Credit Unions under the Credit Union Act 2015 for the purpose of implementing

development projects and making loans that are consistent with the statutory objects applying to credit unions.

(2) Despite any provision of the Credit Union Act 2015 to the contrary:

- (a) the Bank may hold shares in a credit union established for a purpose consistent with subsection (1), and may —
 - (i) appoint Directors, which may constitute a majority of the Board of the credit union;
 - (ii) appoint persons to comprise the credit committee and supervisory committee of the credit union; and
 - (iii) provide support of any nature for the management of the credit union, and the performance of any function of the credit committee or supervisory committee;
- (b) a credit union established for any purpose consistent with subsection (1) may have less than 12 members; and
- (c) the Board of the Bank may approve by-laws for the credit union in accordance with section 11 of the Credit Union Act 2015.

PART 7

GENERAL PROVISIONS

39. Agencies – In the exercise of its powers and the performance of its functions, the Board may:

- (a) appoint, by instrument or otherwise, or arrange with a person to be its attorney or agent in a place, whether within or beyond Samoa, and such person may do an act or execute a power or function which the person is authorised to do under the instrument, or in accordance with the arrangement; and
- (b) approve the Bank to act as agent of the Government or of any other Government, or of a bank or other financial institution carrying on business within or beyond Samoa.

40. Liability for tax and other duties – The Bank is subject to custom and excise duties, income tax and any other taxation or duties.

41. Liabilities of directors and employees – No director, officer of the Bank or a person appointed to a committee of the Bank is personally liable for an act done or omitted to be done in good faith in the performance of the functions of the Bank or of a committee of the Bank, or the exercise of a lawful power in relation to such functions.

PART 8 MISCELLANEOUS

42. Confidentiality of customers' financial information –
(1) Subject to this section, the Bank shall make arrangements for keeping the financial affairs of its customers confidential.

(2) The Bank shall only provide information relating to the financial affairs of its customers if it is required to do so under an order of a court of competent jurisdiction, or in accordance with any law which requires that such information be provided for the purposes of suppressing criminal activity.

(3) This section does not affect the obligations of the Bank to make available information that is on the public record, and that is required to be provided in accordance with any law.

43. Repeal – The Development Bank Act 1974 is repealed.

44. Savings and Transitional Provisions – (1) The directors of the Bank holding office at the time of commencement of this Act shall continue to hold office as Director as if appointed under this Act.

(2) The General Manager of the Bank holding office at the time of commencement of this Act shall continue to hold office as Chief Executive Officer as if appointed under this Act.

(3) All other officers and employees of the Bank holding office at the time of commencement of this Act shall continue to hold the equivalent office in the Bank.

(4) All references to the Development Branch of the Bank of Samoa in a law or legal document may be taken as a reference to the Bank.

(5) All acts, transactions, matters and things lawfully done, determined or entered into by the Development Branch of the Bank of Samoa before the commencement of this Act is taken to have been done, determined and entered into by the Bank; and all rights and obligations of the said Development Branch arising from such acts, transactions, matters and things remain the rights and obligations of the Bank.

(6) All monies standing to the credit of the Development Loan Fund are to be regarded as funds of the Bank.

(7) All other assets (including real and personal property of every kind) and liabilities of the Development Branch of the Bank of Samoa are the property of the Bank, without the need for a conveyance, transfer or assignment.

REVISION NOTES 2010 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2010 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”.
- (e) Part in Roman numerals now changed to decimal numbers.
- (f) Reference to “Credit Union Ordinance 1960” substituted with “Credit Union Act 2015”.

This Act was amended by the Composition of Boards of Public Bodies Act 2012, No.15.

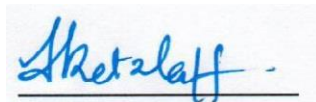
The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Public Bodies (Performance and Accountability) Amendment Act 2015, commenced on 25 April 2014, and as such has retrospective effect:

sections 7, 26(3) & (4), 28(1), 29(2)(h) after “Minister” insert “for Public Enterprises”.

sections 29(2) & (5) delete “of Finance” and substitute “for Public Enterprises”.

section 29(1) delete “Finance” and substitute “Public Enterprises”.



Lemalu Hermann P Retzlaff
Attorney General of Samoa

*This Act is administered by
the Development Bank of Samoa.*
