

SAMOA

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An Act to amend the Off-Shore Banking Act 1987.*(16 July 1998)*

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

1. Short title and commencement-(1) This Act may be cited as the Off-Shore Banking Amendment Act 1998 and shall be read together with and deemed part of the Off-Shore Banking Act 1987 (hereinafter referred to as the principal Act).

(2) This Act shall come into effect on the day after the date of assent (in this Act referred to as the commencement date).

(3) Any reference in this Act to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

2. Interpretation - Section 2 of the principal Act is amended by-

(a) Inserting before the term “Banking business” and its definition, the following term and definition:

“Authorised person” means any person authorised by the Inspector pursuant to section 3A (4).

(b) Inserting after the term “Company” and its definition, the following terms and definitions:

“Court” means the Supreme Court of Samoa;

“Director” means any person occupying the position of director by whatever name called and includes any person in accordance with whose directions and instructions the directors of a company are accustomed to act or who has been held out by a company to be a director;

(c) Inserting after the term “Holder” and its definition,

the following terms and definitions;

“Inspector” means the Inspector of Off-Shore Banks appointed under section 3A and includes any officer or employee in his department acting under his authority:

“Judge” means a Judge of the Supreme Court of Samoa:

(d) Inserting after the term “Licensee” and its definition, the following term and definition;

“Magistrate” means a Magistrate who is appointed under, or whose appointment is continued by, the Magistrate’s Courts Act 1969:

(e) Inserting in the definition of Non-resident after the words “registered under the Trustee Companies Act 1987, the words “and any international trust registered under the International Trusts Act 1987 and any successor legislation and any international partnership or limited partnership registered under the International Partnership and Limited Partnership Act 1998;

(f) Inserting after the term “Off-shore banking business” and its definition, the following term and definition;

“Officer”, in relation to a licensee, includes any director, secretary or employee of the licensee:

(g) Repealing the term “Registrar” and its definition.

3. Inspector of Off-Shore Banks - The principal Act is amended by inserting after section 3 the following new section:

“3A. Inspector of Off-Shore Banks-(1) The Inspector of Off-Shore Banks shall be appointed by the Minister for the regulation and supervision of licensees.

(2) It is the duty of the Inspector -

- (a) To maintain a general review of off-shore banking practice in Samoa;
 - (b) Whenever he thinks fit or when so required by the Minister, to examine by way of the receipt of regular returns or in such other manner as he thinks necessary the affairs or business of any licensee for the purpose of satisfying himself that the provisions of this Act are being complied with and that the licensee is in a sound financial position and whenever he thinks fit or when so required by the Minister, to report to the Minister the results of every such examination;
 - (c) When required by the Minister, to assist in the investigation of any offence against the laws of Samoa which he has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such;
 - (d) To examine audited annual accounts, statements and returns forwarded to him under section 19 and 20 and to report on them to the Minister whenever he thinks fit or when so required by the Minister; and
 - (e) To examine and make recommendations to the Minister with respect to applications for licences or licence renewals.
- (3) In the performance of his functions under this Act and, subject to section 25, the Inspector is entitled at all reasonable times-
- (a) To have access to such books, records, vouchers, documents, cash and securities of any licensee;
 - (b) To request any information, matter or thing from any person who he has reasonable grounds to believe is carrying on off-shore banking business in contravention of section 3; and
 - (c) To call upon any officer of the licensee for such information and explanation,
- as the Inspector may reasonably require for the purpose of

enabling him to perform his functions under this Act:

Provided that the Inspector shall only have access to the name or title of an account of a depositor of a licensee under the authority of an order of a Judge of the Court made on the ground that there is no other way of obtaining the information required by him.

(4) The Inspector, with the approval of the Minister, may, in writing, authorise any other person to assist the Inspector in the performance of his functions under this Act.

(5) If it appears to him that there is reasonable grounds for suspecting that an offence against this Act has been or is being committed by any person, the Inspector may, with the approval of the Court, take such action as he considers necessary in the interests of the depositors or other creditors of the licensee concerned, to preserve any assets held by that licensee.

(6) Whoever fails to comply with any requirement under subsection (3) by the Inspector or any authorised person commits an offence against this Act.”

4. Directions - The principal Act is amended by inserting after section 3 the following new section:

“3B. Directions - The Inspector may, from time to time, issue, by notice to all licensees, directions in relation to the implementation of the provisions of this Act. Failure by any licensee to comply with such directions shall be taken into consideration when any action is proposed to be taken under section 33.”

5. “A” Class Off-Shore banking Licences. Section 6 of the principal Act is amended by-(1) Repealing subsection (3) and substituting the following subsection:

“(3) The holder of an “A” class off-shore banking licence may apply to the Central Bank of Samoa to establish a domestic company to transact on-shore banking business pursuant to the Financial Institutions Act 1996.”

(2) Inserting in subsection (4) after the words “of an

“A” class off-shore banking licence” the words “or the holder of a “B” class licence issued pursuant to section 7 (1) (a) who has obtained the permission of the Minister to establish, maintain and operate a business office of the licence holder in Samoa”

(3) Inserting in subsection (5) after the words “an “A” class off-shore bank”, the words “or licensed as a “B” class off-shore bank pursuant to section 7 (1) (a) and who has obtained the permission of the Minister to establish, maintain and operate a business office of the licence holder in Samoa.”

(4) Repealing subsection (6) and substituting the following new subsections:

“(6) An “A” class off-shore banking licence shall, subject to this Act, be valid for a period of two years from the date of granting and may be renewed for further periods of two years each.

(7) Any “A” class off-shore banking licence issued prior to the commencement date of this Act shall be valid until the expiration date specified in the said licence. Such licence may then be renewed for further periods of two years each.”

6. “B” Class Off-Shore Banking Licences. Section 7 of the principal Act is amended by-(1) Deleting from paragraphs (a) and (b) of subsection (1) the word “it” wherever it appears and substituting the words “the holder”.

(2) Inserting in subparagraph (iii) of paragraph (a) of subsection (1) after the words “such specified business” the word “only”.

(3) Deleting from subparagraph (ii) of paragraph (b) of subsection (1) the words “only from those persons specified in the licence” and substituting the words “only from those persons or entities whose names are listed in the undertaking accompanying the licence application.”

7. Consequential Amendments - Sections 8, 11, 14, 17, 19, 21, 22, 24, 25, 26, 31, 34, 45 and 46 of the principal Act are amended by deleting the word “Registrar” wherever it appears and substituting the word “Inspector”.

8. Application for Licence-(1) Paragraph (c) of subsection (1) of section 8 of the principal Act (as amended by section 7 of this Act) is amended by inserting after the words “as the Minister”, the words “or the Inspector”.

(2) Subsection (2) of section 8 of the principal Act (as amended by section 7 of this Act) is amended by inserting after the words “as the Minister”, the words “or the Inspector”.

9. Licence Renewal. Section 11 of the principal Act is amended by-(1) Repealing subsection (1) and substituting the following:

“(1) An application by a licensee for renewal of a licence granted under this Act must be received by the Inspector not later than two months prior to the expiration of the said licence.”

(2) Inserting in paragraph (b) of subsection (2) after the words “as the Minister”, the words “or the Inspector”.

(3) Inserting after paragraph (b) of subsection (2) the following new paragraph -

“(c) The prescribed annual licence fee and any penalty fees.”

(4) Deleting from subsection (3) the words “on payment of the prescribed annual renewal fee on or before the date of expiration of the licence”.

10. Licence not transferable - Subsection (3) of section 12 of the principal Act is amended by deleting the words “Unless otherwise authorised pursuant to section 6 (3)”.

11. Shares not to be issued or transferred without approval - The principal Act is amended by inserting after section 12 the following section:

“12A. Shares not to be issued or transferred without approval-(1) No shares in or other securities whatsoever of a licensee shall be issued and no issued shares or beneficial interests in shares or other securities of any licensee shall be transferred or disposed of in any manner without the prior written approval of the Inspector:

Provided that the Minister may exempt any licensee from the provisions of this section, subject to such terms and conditions, if any, as he may deem necessary.

(2) In subsection (1) of this section, the reference to shares of any licensee being transferred or disposed of includes any transfer or disposition that would result in any change in beneficial ownership of the licensee.

(3) Notwithstanding the provisions of subsection (1) of this section, the prior written approval of the Inspector shall not be required where shares or other securities are issued to existing shareholders on a pro-rata basis.

(4) No bearer shares or share warrants to bearer may be issued by a licensee.”

12. Approval of Directors - The principal Act is further amended by inserting after section 12 the following section:

“12B. Approval of Directors-(1) Unless exempted from such a requirement by the Minister, a licensee shall, before the appointment of a director apply to the Inspector for his written approval of such appointment as a fit and proper director of the licensee.

(2) Approval granted under subsection (1) -

(a) *Ipsa facto* lapses if the director becomes bankrupt, makes an arrangement or composition with his creditors or is convicted of an offence involving dishonesty;

(b) May be revoked by the Inspector with the approval of the Minister.”

13. Certain approvals required - The principal Act is further amended by inserting after section 12 the following new

section:

“12C. Certain approvals required - A licensee incorporated under the International Companies Act 1987 shall not, without the prior written approval of the Minister -

- (a) Open outside Samoa a subsidiary bank, branch office, agency or representative office; or
- (b) Change its name.”

14. Insurance Policy - The principal Act is further amended by inserting after section 12 the following new section:

“12D. Insurance Policy - The Minister may require a licensee to effect a policy of insurance with an approved insurance company against -

- (a) The dishonesty of employees of the licensee;
- (b) Loss of documents; and
- (c) Such other risks as the Minister may stipulate,

in such amount and of such nature as the Minister determines to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Minister and shall cease to carry on its business until the insurance has been reinstated or replaced.”

15. Prohibited activities-(1) Subsection (1) of section 13 of the principal Act is amended by repealing paragraph (a) and substituting the following paragraph -

- “(a) Transact any banking business with any persons other than non-residents of Samoa;”

(2) Subsection (2) of section 13 of the principal Act is amended by -

- (a) Inserting after the words “A holder” the words “of an “A” class off-shore banking licence or a”;
- (b) Inserting in subparagraph (i) of paragraph (c) after

the words “of any one of its directors,” the words “shareholders, beneficial shareholders or beneficial owners” and by deleting the words “such director” and substituting the words “such person”;

- (c) Repealing subparagraph (ii) of paragraph (c) and substituting the following paragraphs:

“(ii) to or on behalf of any firm, partnership or company in which the licensee, or any one or more of its directors, shareholders, beneficial shareholders or beneficial owners, is interested as director, partner, manager, agent, shareholder, beneficial shareholder or beneficial owner; or to or on behalf of any individual, firm, partnership or company of whom or of which any one of its directors, shareholders or beneficial shareholders or beneficial owners is a guarantor;

(iii) For the purposes of this paragraph, a director, shareholder, beneficial shareholder and beneficial owner shall include the wife, husband, father, mother, brother, sister, son or daughter of such a person.”

- (3) Section 13 of the principal Act is further amended by inserting after subsection (3) the following subsection:

“(4) Notwithstanding subsection (3), any licensee, licensed as at the commencement date of this Act, shall be allowed a period of eighteen months from the said date to comply with the amended provisions of paragraphs (a) and (c) of subsection (2).”

16. Business presence or representation in Samoa-(1)

Subsection (1) of section 14 of the principal Act is amended by inserting after the words “to any company”, the words “incorporated outside Samoa or”.

- (2) Subsection (2) of section 14 of the principal Act is

amended by inserting after the words “which holds a licence and”, the words “which is incorporated outside Samoa or”.

17. Qualified workers and management - Subsection (1) of section 16 of the principal Act is amended by deleting paragraphs (b) and (c) and substituting the following paragraphs-

- “(b) He has been sentenced by a Court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence;
- (c) He is or becomes bankrupt, suspends payment to or compounds with his creditors; or
- (d) He has been a director of a company which has gone into bankruptcy or insolvency proceedings, other than voluntary winding up proceedings.”

18. Notification of changes-(1) Subsection (1) of section 17 of the principal Act is amended by inserting after the words “provisions of any other Act a licensee”, the words “incorporated outside Samoa or ”.

(2) Subsections (4), (5) and (6) of section 17 of the principal Act are amended by deleting the words “financial institution” and “institution” wherever they appear and substituting the word “company”.

19. Keeping of Accounting Records-(1) Subsection (1) of section 18 of the principal Act is amended by deleting the definition of the term “Accounting Records” and substituting the following definition:

“Accounting records”, in relation to a company includes such working papers and other documents and records kept in a computer, on magnetic tape or by means of any other storage device used in electronic data processing by or on behalf of the company, as are necessary to explain the methods and calculations by which accounts of the company are

made up.”

(2) Paragraph (a) of subsection (2) of section 18 of the principal Act is amended by inserting after the words “in relation to such business”, the words “ and maintain such accounting records at a location in Samoa notified to the Inspector.”

(3) Section 18 of the principal Act is further amended by inserting after subsection (2) the following subsection:

“(3) All licensees licensed as at the commencement date of this Act, shall be required to maintain in Samoa all accounting records for the two financial years prior to the commencement date and all other subsequent accounting records.”

20. Quarterly statements and other returns-(1) Section 20 of the principal Act is amended by repealing subsection (1) and subsection (2) and substituting the following subsections:

“(1) Subject to subsection (3) of this section, every licensee shall, in relation to its operations in or from within Samoa, submit to the Inspector in such form as the Inspector may from time to time approve, the following statements,-

- (a) In the case of holders of an “A” class banking licence or of a “B” class banking licence issued under section 7 (1) (a), not later than 21 days after the last day of the quarter to which it relates, a quarterly statement of assets and liabilities, cash flow statement, profit and loss statement and a return providing an analysis of customers’ liabilities to the licensee in respect of loans, advances and other assets of the licensee at the close of the last business day of that quarter;
- (b) In the case of holders of a “B” class banking licence issued under section 7 (1) (b), not later than 21 days after the six month period to which it relates, a half-yearly statement of assets and

liabilities, cash flow statement, profit and loss statement and a return providing an analysis of customers' liabilities to the licensee in respect of loans, advances and other assets of the licensee at the close of the last business day of that half-yearly period; and

(c) Such other returns as may be prescribed.

(2) Subject to subsection (3) of this section, the Inspector may require a licensee to submit to him such further information as may be necessary for the proper understanding of any statement or return furnished by that licensee under subsection (1) above and such information shall be submitted within such period and in such manner as the Inspector may require.”

(2) Subsection (4) and subsection (5) of section 20 are amended by deleting the word “Minister” and substituting the word “Inspector” wherever it appears.

21. Inspection - Section 21 of the principal Act is amended by inserting after the words “during the normal office hours of the licensee”, the words “at the registered office of the licensee or principal office of the licensee.”

22. Supply of information-(1) Subsection (1) of section 22 of the principal Act is amended by inserting after the words “the Minister”, the words “or the Inspector”.

23. Power of search - The principal Act is amended by inserting after section 22 the following new section:

“22A. Power of search-(1) A Judge or Magistrate who is satisfied by information on oath of the Inspector or authorised person that -

(a) There is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises,

building or place or in any vehicle, vessel or aircraft so specified; or

- (b) Any books, records, vouchers, documents, cash or securities, that ought to have been produced under section 3A, section 21 or section 22 and have not been produced, are to be found at any such premises or in any such vehicle, vessel or aircraft,

May grant a search warrant authorising the Inspector or authorised person named in the warrant, at any time within one month from the date of the warrant, to enter the premises specified in the warrant or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft; which he has reasonable grounds for believing ought to have been produced under section 3A, section 21 or section 22.

(3) Where by virtue of this section a person has any power to enter any premises, or a vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Every search warrant shall be exercised by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of everyone executing any search warrant to have it with him and to produce it if required to do so.

(6) Whosoever obstructs the Inspector or any other person in the exercise of any powers conferred on him under this section commits an offence against this Act.”

24. False or misleading information - The principal Act

is further amended by inserting after section 22 the following section:

“22B. False or misleading information - Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Minister or the Inspector or any authorised person commits an offence against this Act.”

25. Official examinations - Subsection (4) of section 23 of the principal Act is amended by deleting the words “who shall forward” and substituting the words “ who may forward”.

26. Annual Audit-(1) Subsection (1) of section 24 of the principal Act is amended by deleting the words “true and correct statement” and substituting the words, “true and fair statement”.

(2) Subsection (1) of section 24 of the principal Act is further amended by inserting after the words “whether this is satisfactory” the following sentence:

“In addition, the auditor shall report upon whether the licensee is carrying on business in accordance with the terms of its licence in so far as those terms relate to financial and/or accounting matters. The auditor shall also report whether in his opinion, the quarterly or half-yearly returns filed by the licensee have been completed correctly in accordance with the reporting instructions and accurately reflect the management accounts as prepared by the licensee.”

(3) Section 24 of the principal Act is further amended by repealing subsection (5) and substituting the following subsection:

“(5) For the purposes of this section, an approved auditor is an auditor who has been approved by the Inspector and is a registered company auditor under the provisions of the International Companies Act 1987.”

(4) Section 24 of the principal Act is further amended by inserting after subsection (7) the following subsection:

“(8) Notwithstanding subsection (3) of this section, any licensee, licensed as at the commencement date of this Act, shall be allowed a period of six months from the said date to comply with the provisions of this section.”

27. Duties of Auditor - The principal Act is amended by inserting after section 24 the following new section:

“24A. Duties of Auditor-(1) In carrying out an audit of the accounts of a licensee, it shall be the duty of the auditor where necessary to enlarge or extend the scope of his audit of the business and affairs of the licensee and to carry out any other examination or establish any procedure so as to give a true and fair view of the licensee’s financial condition and results of its operations. Any special procedure undertaken must be disclosed in the auditor’s report.

(2) It shall further be the duty of the auditor to report immediately to the Inspector any information relating to the affairs of a licensee obtained in the course of an audit, if he is of the opinion that -

- (a) The licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties;
- (b) A criminal offence involving fraud or dishonesty has been committed;
- (c) Serious irregularities have occurred, including irregularities that jeopardise the interest of depositors and creditors;
- (d) Losses have been incurred which substantially reduce the capital funds of the licensee; or
- (e) He is unable to confirm that the claims of creditors are still covered by the licensee’s assets.

(3) The auditor may be required to discuss the audit directly with the Inspector or be asked to provide additional

information regarding the audit.

(4) The auditor shall, before disclosing any information to the Inspector under subsection (2), take reasonable steps to inform the licensee of his intention to disclose the information and the nature of such information.

(5) The Inspector, may by notice in writing to a licensee, require it to supply him with a report, prepared by its auditor on such matters as the Inspector may determine, which may include an opinion on asset quality, adequacy of provisions for losses, and the adequacy of the accounting and control systems.

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

28. Preservation of Secrecy - Section 25 of the principal Act is repealed and the following section substituted:

“25. Preservation of Secrecy-(1) Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by any court of competent jurisdiction within Samoa neither the Minister, the Inspector nor any officials or officers thereof, including any authorised person and any person appointed under sections 23, 32 or 33, shall disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a licensee or of any customer of a licensee which he has acquired in the performance or exercise of such duties or functions under this Act.

(2) Subsection (1) shall not apply to a disclosure by the Inspector-

- (a) Necessary for the effective regulation of a licensee;
- (b) In respect of the affairs of the licensee or a customer of a licensee with the authority of the licensee or the customer of the licensee which has been voluntarily given, as the case may be;
- (c) Where the information is already in the public domain.

(3) The Inspector may disclose to a foreign banking super-

visory authority or any other like regulatory authority information about the licensee, provided that -

- (a) The Inspector has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking on confidentiality;
- (b) The information provided by the Inspector does not contain any names of individual depositors or customers of the licensee concerned; and
- (c) The information is required for the purposes of banking supervision only and is not related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations.”

29. Breaches of Professional Secrecy-(1) Subsection (1) of section 26 of the principal Act is amended by inserting before the words “Every person commits an offence”, the words “Except as provided in section 25,”.

(2) Subsection (3) of section 26 of the principal Act is amended by inserting after paragraph (f) the following paragraph-

- “(g) To the Inspector by the auditor or former auditor of a licensee with respect to the audited accounts or returns of the licensee.”

30. Profits and Dividends - Paragraph (b) of section 28 of the principal Act is amended by deleting the words “or paid to a depositor by a licensee” and by inserting after paragraph (b) the following paragraph -

- “(c) No income tax, nor any other direct or indirect tax or impost shall be levied in Samoa upon any interest paid to a non-resident depositor (other than interest paid to a trustee company registered under the Trustee Companies Act 1987 in their

own right which is taxable in Samoa) by a licensee.”

31. Suspension of Licence - Section 31 of the principal Act is repealed.

32. Enforcement of examination findings. Section 32 of the principal Act is amended by-(1) Inserting in subsection (1) after the words “in a manner detrimental to” the words “the public interest or”.

(2) Deleting paragraphs (a), (b) and (c) of subsection (1) and substituting the following paragraphs -

- “(a) Require the licensee forthwith to take such measures as he may consider necessary in relation to its business;
- (b) Impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (c) Require the removal and replacement of any director or officer of the licensee;
- (d) Appoint a person who, in his opinion, has had adequate training and experience to advise the licensee in the proper conduct of its business and fix the remuneration to be paid by the licensee to such person;
- (e) Appoint a person to assume control of the licensee’s affairs who shall *mutatis mutandis* have all the powers of a person appointed as receiver or manager of a business under the Bankruptcy Act and fix the remuneration to be paid by the licensee to such person; or
- (f) Unless he is satisfied that the licensee is taking adequate measures to put its affairs in order, make an order under section 33 canceling the licence.”

(3) Deleting from subsection (2) and subsection (3) the

words “paragraph (a) of” wherever they appear.

33. Licence May Be Cancelled - Section 33 of the principal Act is repealed and the following section substituted:

“33. Powers of the Minister-(1) Whenever the Minister is of the opinion that a licensee -

- (a) Is carrying on business in a manner detrimental to the public interest, or to the interest of the depositors or other creditors of the licensee;
- (b) Is or appears likely to become unable to meet its obligations as they fall due;
- (c) Has failed to comply with the terms and conditions of its licence;
- (d) Has failed to comply with any directive issued by the Minister under this Act; or
- (e) Is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act,

he may forthwith take one or more of the following actions, as may seem necessary to him, -

- (i) require the licensee forthwith to take such measures as he may consider necessary in relation to its business;
- (ii) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (iii) require the removal and replacement of any director or officer of the licensee;
- (iv) appoint a person who, in his opinion, has had adequate training and experience to advise the licensee in the proper conduct of its business and fix the remuneration to be paid by the licensee to such person;
- (v) appoint a person to assume control of the licensee’s a person appointed as receiver or manager of a business under the Bankruptcy Act

and fix the remuneration to be paid by the licensee to such person; or

(vi) cancel the licence.

(2) A person appointed under subparagraph (iv) or (v) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (3) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Minister and the Inspector of the affairs of the licensee and his recommendations thereon.

(3) On receipt of a report under subsection (2), the Minister may -

- (a) Revoke the appointment of the person appointed under subparagraph (iv) or (v) of subsection (1);
- (b) Extend the period of his appointment;
- (c) Subject to such conditions as he may impose, allow the licensee to reorganise its affairs in a manner approved by him; or
- (d) Cancel the licence.

(4) Notwithstanding any other provisions herein, the Minister may cancel a licence if the licensee -

- (a) Has ceased to carry on offshore banking business or does not within six months after the issuance of its licence commence offshore banking business; or
- (b) Goes into liquidation or is wound up or otherwise dissolved.

(5) When the Minister intends to cancel a licence under subsection (1) of this section, he shall give the licensee notice of his intention and a reasonable opportunity to show cause why the licence should not be cancelled.

(6) The Inspector shall give notice in writing to the licensee and through such means as he deems fit to creditors, depositors, shareholders and employees of the licensee and relevant banking authorities elsewhere of the cancellation of the licence.”

34. Minister may apply to the Court - The principal Act is further amended by inserting after section 33 the following section:

“33A. Minister may apply to the Court - The Minister may, in any case in which a licensee or a person who has at any time been a licensee, is being wound up voluntarily, apply to the Court if he considers that the winding up is not being conducted in the best interests of its depositors or other creditors, and the Court shall make such order as it shall consider appropriate.”

35. Surrender of Licence - The principal Act is further amended by inserting after section 33 the following section:

“33B. Surrender of Licence-(1) A licensee who has ceased to carry on the business in respect of which the licence was granted may apply to the Minister to surrender its licence if it -

- (a) Has ceased to carry on such business, and produces evidence that it has repaid all deposits held by it and has transferred all trust assets held or administered by it; or
- (b) Is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Minister may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1) of this section, the Minister may apply to the Court for the licensee to be wound up by the Court, and on the making of such an order the provisions of the International Companies Act 1987 relating to the winding up of a company by that Court shall *mutatis mutandis* apply.”

36. Appeal against Suspension, Enforcement Action or Cancellation-(1) Section 34 of the principal Act is amended by

deleting the Heading and substituting the following Heading:

“34. Appeals”.

(2) Paragraphs (a), (b) and (c) of subsection (1) of section 34 are repealed and the following paragraphs substituted:

- “(a) Any decision to cancel a licence under section 33(1), (3) or (4);
- (b) Any decision by the Minister to enforce examinations findings under section 32 (1); or
- (c) Any decision by the Minister to take any of the actions under section 33(1).”

(3) Section 34 of the principal Act is further amended by inserting after subsection (4) the following subsection:

“(5) An appeal against a decision of the Minister shall not have the effect of suspending the execution of such a decision.”

37. Immunity - The principal Act is further amended by inserting after section 44 the following section:

“44A. Immunity - No action shall lie against the Government or any statutory body or authority of Samoa, the Minister, the Inspector or any person acting pursuant to any authority conferred by the Minister or the Inspector, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made thereunder.”

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