

SAMOA

Arrangement of Provisions

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2012, No. 23**AN ACT to amend the Financial Institutions Act 1996 and for related purposes.** *[26th July 2012]*

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 Financial Institutions Amendment Act 2012.

(2) This Act commences on the date it is assented to by the Head of State.

(3) In this Act, the Financial Institutions Act 1996 is referred to as the “principal Act”.

2. Section 2 amended - Section 2 of the principal Act is amended by adding the following definitions in their alphabetical positions:

“bank” means a bank regulated under the laws of Samoa;

“security” means:

- (a) any evidence of indebtedness, share, investment contract, certificate of interest or participation in a profit-sharing agreement, limited partnership interest, collateral-trust certificate, pre-organisation subscription or voting-trust certificate; or
- (b) any put, call, straddle, option or warrant on a security, or group of securities or index of securities; or
- (c) any other form of security interest or security instrument; but
- (d) does not include any obligation of a bank that -
 - (i) is entered into by the bank in the ordinary course of its banking business directly with customers other than through an intermediary; and
 - (ii) is not transferable.

“securities broker” or “securities dealer” means a person engaged in the business of buying or selling of securities;”.

3. Section 4 amended - Section 4 of the principal Act is amended:

- (a) in subsection (1), by adding “or do business as a securities broker or securities dealer” after “banking business”;
- (b) in subsection (2)(a), by adding “or carries on business as a securities broker or securities dealer” after “banking business”;
- (c) in subsection (2)(b), by adding “or to carry on business as a securities broker or securities dealer” after “banking business”;

- (d) in subsection (2)(c), by adding “or the business as a securities broker or securities dealer” after “banking business”;
- (e) by adding after subsection (2) the following new subsection:

“(2A) A person is taken to be carrying on business in Samoa as a securities broker or securities dealer if the person regularly solicits business in Samoa as a securities broker or securities dealer through the telephone, post, electronic mail, or any other form of electronic or communication medium regardless of whether the person is located in or outside Samoa or whether the person has a place of business in Samoa.”.

4. Section 6 amended - Section 6 of the principal Act is amended by repealing subsection (1) and substituting the following new subsection:

“(1) A person desirous of commencing banking business, or business as a securities broker or securities dealer, in Samoa shall, before commencing business, apply for and obtain a licence to do so.”.

5. New sections 16A to 16G added - The principal Act is amended by adding after section 16 the following new sections:

“Securities brokers and securities dealers

16A. Objectives - The objectives of regulating securities brokers and securities dealers are:

- (a) to protect investors; and
- (b) to ensure that markets are fair, efficient and transparent; and
- (c) to reduce systemic risk.

16B. Duties of securities dealers - A securities dealer shall:

- (a) minimise the risks of its operations and diversify its securities activities pursuant to regulations;
- (b) limit its exposure so that the securities of an issuer do not constitute more than the prescribed percentage of its portfolio;
- (c) have regulatory capital prescribed under the regulations;
- (d) value its securities portfolio in terms of market price.

16C. Duties of securities brokers-(1) A securities broker shall:

- (a) ensure that -
 - (i) it maintains the highest standards of integrity and fair dealing in all transactions with its customers;
 - (ii) any investment opportunity it recommends to or affects any customer is suitable for the customer in terms of net worth, station in life and tolerance for risk;
 - (iii) the customer is provided with or has access to sufficient current information regarding the investment opportunity to enable the customer to make an informed decision as to whether or not to participate in that investment; and
- (b) provide customers with a customer agreement setting out in plain terms the contractual relationship between the securities dealer and a customer, and any other information that may be required by regulations.

- (2) A securities broker shall not:
- (a) deal in the securities of an issuer immediately prior to recommending the purchase of securities of the issuer to customers; or
 - (b) prefer some customers over others, including, by giving other customers earlier access to information or by executing their orders first or at better prices; or
 - (c) recommend investments to customers, or trade for customers for the primary purpose of making brokerage commissions.

16D. Customers assets-(1) A security broker shall not have access to customers' cash or securities.

(2) A securities broker that is not a bank shall clear any transaction with customers in Samoa through a bank in Samoa with assets of at least \$100m that acts as escrow agent for securities purchases and sales whereby securities will be delivered against payment.

(3) Securities must be kept by bank custodian in Samoa with assets of at least \$100m or a foreign custodian accredited by a security commissioner that is a member of the International Organization of Securities Commissions.

16E. Bond for foreign corporations - A securities broker or securities dealer registered as a foreign corporation in Samoa that wishes to conduct securities brokerage or dealing in Samoa must post a fidelity bond in an amount determined by the Bank.

16F. Insider trading - The following persons shall not deal or get other persons to deal in securities of an issuer if those persons have information about the issuer that is confidential, material, non-public or information about the plans of another person:

- (a) officers and employees of the issuer or the other person;
- (b) persons associated in a professional capacity with the issuer or the other person;

- (c) persons who obtain the information, directly or indirectly, from officers, employees or persons mentioned in paragraph (a) or (b).

16G. Regulations - The Head of State acting on the advice of Cabinet may make regulations to give effect to or for the purposes of sections 16A to 16F, and in particular may make the following regulations:

- (a) to regulate capital adequacy of securities brokers or securities dealers;
- (b) to regulate conduct of business rules and prudential requirement;
- (c) to regulate action for any financial failure of securities brokers or securities dealers.”.

6. Consequential amendments-(1) Section 2 of the Central Bank of Samoa Act 1984 is amended in the definition of “financial institution” by adding “or a person doing business as a securities broker or securities dealer” after “such person”.

(2) The Securities Act 2006 is amended by adding after section 22 the following section:

“22A. Prospectuses and information memorandum-

(1) Without affecting the powers of the Registrar to process and register an information memorandum, the Central Bank of Samoa shall first carry out the duties under this Act with regard to the receipt, review and authorisation for distribution, of prospectuses and information memoranda that are intended for use in connection with public offerings of securities proposed to be made in Samoa by any offeror.

(2) Subsection (1) does not apply:

- (a) to prospectuses of public mutual funds that have been registered with the Samoa International Finance Authority; or
- (b) to prospectuses of private or professional mutual funds that are not intended for sale to residents of Samoa.”.

7. Transitional - Securities brokers and securities dealers currently operating in Samoa at the commencement of this Act continue as if they were licensed under the principal Act but shall be licensed as such within three (3) months from the commencement of this Act.

**The Financial Institutions Amendment Act 2012
is administered by the Ministry of Finance.**

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