



Tonga

**FINANCIAL INSTITUTIONS
(AMENDMENT) ACT 2014**

Act 22 of 2014



FINANCIAL INSTITUTIONS (AMENDMENT) ACT 2014

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FINANCIAL INSTITUTIONS (AMENDMENT) ACT 2014

Act 22 of 2014

AN ACT TO CONSOLIDATE THE REGULATORY AND SUPERVISORY FUNCTIONS OF THE NATIONAL RESERVE BANK OF TONGA BY BRINGING NON-BANK FINANCIAL INSTITUTIONS UNDER THE SUPERVISORY FUNCTIONS AND POWERS OF THE RESERVE BANK AND FOR RELATED MATTERS

I assent,
TUPOU VI,
16th October 2014.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title

- (1) This Act may be cited as the Financial Institutions (Amendment) Act 2014.
- (2) The Financial Institutions Act 2004, as amended, is in this Act referred to as the Principal Act.

2 Section 2 amended

Section 2 of the Principal Act is amended –

- (a) by inserting the following new definitions in the appropriate places -
“**acting in concert**” means acting pursuant to an agreement, arrangement or understanding, whether formal or informal;”

“**close relatives**” means any person who is related to a director, officer or employee (“such persons”) of a financial institution- (a) by marriage, blood or kinship, including adopted children or foster children of such persons; and (b) the spouse, father, mother, brother or sister of such persons;”

“**connected parties**” is as defined in subsection 28(1)(b) of this Act;

“**control**” is deemed to exist over a company if a person –

- (i) directly or indirectly, or acting through one or more persons, or acting in concert with such persons, owns, or has the power to exercise the voting power of 10 % or more of the voting shares of the company;
- (ii) has the power to elect a majority of the directors of the company; or
- (iii) exercise a significant influence over the management, operations or policies of the company;”

“**disclosures**” means special information required to be included in the financial statements in accordance with internationally accepted accounting standards and applicable Acts and regulations, as determined by the Reserve Bank.”

“**financial activity**” means an activity as defined under section 27 of this Act;”

“**financial statement**” means the following documents- balance sheet (showing assets, liabilities and equity), income statement, cash flow statement and equity statement (showing changes in equity), in accordance with internationally accepted accounting standards, as determined by the Reserve Bank;”

“**fit and proper**” means a person whose qualifications, background and experience, financial position, or business interests qualify that person in the judgment of the Reserve Bank to be a director, officer, employee, auditor or shareholder of a licensed financial institution, as further prescribed in a prudential statement of the Reserve Bank;”

“**group of interrelated persons**” means two or more persons holding exposures from a licensed financial institution, whether on a joint or separate basis, who are considered as a single borrower because they meet at least one of the following criteria-

- (a) the exposure to those persons constitute a single exposure because of the fact that one of them directly or indirectly exercise control over the others;
- (b) although the persons to whom the financial institution is exposed are different entities, they are so interconnected that if one of them experiences financial difficulties, another one or all of them are likely to experience financial problems;
- (c) the persons are affiliates within the meaning of this Act; or
- (d) those persons have common control.”

“**large credit exposure**” means any advance, credit facility, financial guarantee or other risk exposure or liability granted by a licensed financial institution or its subsidiary to any person or company, or a group of interrelated persons that exceeds 20% but is not more than 25% of the licensed financial institution capital as determined by the Reserve Bank;”

“**minimum capital**” means the capital of a licensed financial institution as prescribed under section 12 of this Act;”

“**person**” means any individual or company, partnership, syndicate, association or body of persons, corporate or unincorporated;”

“**prudential statement**” for the purposes of this Act and the National Reserve Bank of Tonga Act, means a statement issued by the Reserve Bank in accordance with section 15 of this Act;”

“**public holiday**” means a public holiday as defined in the Public Holidays Act;”

“**regulatory capital**” means the amount of capital resulting from the application of the ratio of Total Capital-to-Risk-Weighted Assets or “capital adequacy ratio”, which shall be maintained at all times by a licensed financial institution, individually or on a consolidated basis, as determined by the Reserve Bank;”

“**significant influence**” means having any interest in a person that makes it possible to exercise a direct or indirect power to determine the management or policies of such person;”

“**subsidiary**” means any legal person in which another person or group of persons acting in concert- (1) holds the equivalent of 50 % or more of the voting shares of such legal person; or (2) may exercise a significant influence that permits such other person or group of persons to determine the management or policies of such legal person;”

- (b) in the definition of “**affiliate**” the word “significant” is inserted before the word “influence”;
- (c) deleting the definition “**credit institutions**”;
- (d) deleting the definition “**financial institution**” and replacing it with the following –

“**financial institution**” means an institution -

- (i) carrying out banking business as prescribed by this Act or the National Reserve Bank of Tonga Act;
- (ii) carrying out any financial activity listed in section 27 of this Act;
- (iii) prescribed by subsection 2(2) of the National Reserve Bank of Tonga Act; or
- (iv) approved by the Reserve Bank as prescribed by this Act or any other Acts or Regulations;

- (e) deleting the definition "**licensed financial institution**" and replacing it with the following -
- "licensed financial institution"** means a financial institution carrying out any banking business, as determined in a license granted by the Bank-
- 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 entity and regarded by the Reserve Bank as a single licensed financial institution"; and
- (f) deleting the definition "**Ministry**" and replacing it with the following –
- "Ministry"** means the Ministry responsible for finance;”.

3 Section 3 amended

Section 3 of the Principal Act is amended -

- (a) in the title insert the words “and other financial activities” after the word “business”.
- (b) by deleting subsection (1) and replacing it with the following –
- “(1) No person shall conduct banking business or any of the financial activities referred to in section 27, for which a licence is required, unless he has been issued with a licence under this Act or Regulation or any other Act or Regulation.”.

4 Section 3A inserted

The Principal Act is amended by inserting a new section 3A as follows –

“3A Pyramid schemes

Any person, who directly or indirectly, initiates, offers, advertises, conducts, finances, manages, supervises or directs a scheme where profits earned by participants in the scheme largely depend on increases in the number of participants in the scheme or in the size of their contributions to the scheme, commits an offence and such person shall be liable upon conviction to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding 30 years or both.

5 Section 5 amended

Section 5 is amended by deleting the section and replacing it with the following -

"5 Existing financial institutions deemed licensed

- (1) The financial institutions specified in the Schedule to this Act are licensed financial institutions for purposes of this Act.

- (2) Notwithstanding the provisions of any other law, a Notice by the Reserve Bank shall be published in the Gazette to add or remove a licensed financial institution.”

6 Section 6 amended

Section 6 of the Principal Act is amended by deleting subsection (1) and replacing it with the following –

- “(1) Any person may apply for a licence under this Act to operate a banking business or to perform any of the financial activities referred to in section 27, for which a license is required, as determined by the Reserve Bank.”

7 Section 8 amended

Section 8 is amended by inserting a new subsection (5) as follows -

- “(5) The Reserve Bank may charge and collect a licence fee for each year that a license is in effect and which shall be paid by a licensed financial institution on the anniversary of the date of its licence being granted.”

8 Section 9 amended

Section 9 of the Principal Act is amended by deleting subsection (2) and replacing it with the following –

- “(2) Financial institutions shall be licensed either as banks or as non-bank financial institutions where non-bank financial institutions are required to be licensed as determined by the Reserve Bank in accordance with this Act or Regulations or any other Act or Regulations.”

9 Section 11 amended

The Principal Act is amended by deleting section 11 and inserting the following -

“11 Reserve Bank to authorise changes to the constitution

- (1) A licensed financial institution, who intends to alter its constitution concerning a matter prescribed under this Act, shall obtain prior authorisation from the Reserve Bank. The licensed financial institution shall furnish any other information required by the Reserve Bank.
- (2) A licensed financial institution shall provide a copy of its amended Constitution to the Reserve Bank within 7 days of the amendment being adopted.
- (3) A licensed financial institution that purports to amend its Constitution without first obtaining the approval of the Reserve Bank for a matter that requires prior approval of the Bank, the amendment will be deemed to be void.

- (4) A licensed financial institution that acts in contravention of this section is, if convicted, guilty of an offence and is liable to a fine not exceeding \$2,000."

10 Section 11A inserted

The Principal Act is amended by inserting a new section 11A as follows -

“11 A Reserve Bank to authorise changes

- (1) A licensed financial institution shall obtain prior authorisation from the Reserve Bank, in the event of an application to the Court under the Companies Act to propose a compromise or arrangement involving that licensed financial institution. A licensed financial institution shall also furnish the Reserve Bank, as the case may be, with –
 - (a) a notice of every meeting ordered by the Court; and
 - (b) a statement explaining the effect of the compromise or arrangement under the Companies Act.
- (2) A licensed financial institution incorporated in Tonga may, with the written consent of the Reserve Bank —
 - (a) effect a merger;
 - (b) amalgamate;
 - (c) consolidate; or
 - (d) purchase and assume assets of, any other licensed financial institution.
- (3) The applicant under subsection (1) shall furnish the Reserve Bank with any information required.
- (4) The Reserve Bank shall consider whether —
 - (a) the proposal will result in a substantial lessening of competition, in financial services;
 - (b) the licensed financial institution will comply with this Act as a result of the transaction; and
 - (c) the transaction is consistent with the public interest.
- (5) Any licensed financial institution, its directors or managers, who act in contravention of this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.

11 Section 14 amended

Section 14 of the Principal Act is amended in subsection (1) by inserting the words “and section 14A,” after the words “subsection (2),”.

12 Section 14A inserted

The Principal Act is amended by inserting a new subsection 14A as follows –

“14A Acquisition of control, significant ownership or increase in existing ownership

- (1) Any person, acting directly, indirectly by or through related persons, or acting in concert with other persons, or who proposes to acquire a control, significant ownership or increase in existing ownership in a licensed financial institution in a manner that would reach or exceed a threshold of 10 % of the entity’s capital or the voting rights, shall obtain prior approval of the Reserve Bank, by application to the Reserve Bank at least 90 days prior to the proposed acquisition.
- (2) The application under subsection (1) shall include such documents and information as the Reserve Bank may require.
- (3) In determining an application under subsection (1), the Reserve Bank shall –
 - (a) assess the expected effects on the financial soundness of the licensed financial institution; and
 - (b) conduct a background check of the applicants and satisfy itself as to the identity and character of the proposed owners.”
- (4) The Reserve Bank shall not approve any application if -
 - (a) it is not satisfied as to any of the matters in subsection (3);
 - (b) anti-competitive effects will be clearly outweighed by the transaction’s expected positive effects;
 - (c) the proposed change will result in an environment of unhealthy competition or monopolistic practices; or
 - (d) the transaction will be detrimental to the banking or financial system of the Kingdom.
- (5) A licensed financial institution that –
 - (a) is or becomes aware of a proposed acquisition of control under subsection (1) shall give a notice to the Reserve Bank, as soon as practicable, but no later than 30 consecutive days from the date of its awareness, indicating in such notice the grounds of the respective proposed transaction; or
 - (b) becomes aware of circumstances that indicate that any of the proposed owners or the present owners and, in particular, owners exercising a control over the licensed financial institution, are no longer fit and proper persons, shall notify the Reserve Bank within 10 days of such knowledge.”

13 Section 15 amended

Section 15 of the Principal Act is amended -

- (a) in subsection (1) by inserting the words “clients, and investors, and the general public.” after the words “the interests of”.
- (b) in subsection (2) by inserting the words “or those persons exercising control as defined under this Act,” after the words “associated persons”.
- (c) by deleting subsection (3) and replacing it with the following -
 - “(3) The Reserve Bank may issue in writing prudential statements, guidelines, directives, and other acts on regulatory and supervisory matters, including requirements for licensing, ownership and management of licensed financial institutions.”

14 Section 16 amended

Section 16 of the Principal Act is amended -

- (a) in subsection (1)(a) by repealing the subsection and replacing it with the following –
 - “(a) not later than 15 business days after the last working day to which it relates, or within such other time period as may be prescribed by the Reserve Bank, a monthly statement of assets and liabilities;”.
- (b) in subsection (1)(b) by repealing the subsection and replacing it with the following –
 - “(b) not later than 15 business days after the last working day to which it relates, or within such other time period as may be prescribed by the Reserve Bank, a monthly statement of profit and loss;”.
- (c) in subsection (1)(d) by inserting the words “or any directive, prudential statements, or any act or decision issued by the Reserve Bank on the matter concerned;” after the words “section 26”.

15 Section 17 amended

Section 17 of the Principal Act is amended -

- (a) in subsection (b) by deleting the word “or”.
- (b) in subsection (c) by deleting the “.” at the end and replacing it with “; or”;
- (c) by inserting a new subsection (d) as follows –
 - “(d) contravened any prudential statements, directive, any act or decision issued by the Reserve Bank in accordance with this Act or any other Act.”.

16 Section 23 amended

Section 23(2) of the Principal Act is amended by deleting paragraphs (a) and (b) and replacing them with the following -

- "(a) carry out each year an audit of the financial statements, including disclosures, as applicable in accordance with international accounting and auditing standards;
- (b) provide the Reserve Bank with an opinion, attached to the financial statements verifying that they are complete and give a true and fair view of the financial condition of the licensed financial institution;”.

17 Section 24 amended

Section 24 of the Principal Act is amended -

- (a) by deleting subsection (1) and replacing it with the following -
 - “(1) A licensed financial institution shall, no later than 4 months after the end of each financial year —
 - (a) forward to the Reserve Bank 30 days prior to publication; and
 - (b) publish in any newspaper circulated in Tonga, once every week, for four consecutive weeks a copy of its audited balance sheet and profit and loss account.”; and
- (b) by renumbering subsection (3) as subsection (4) and inserting the following new subsection (3) —
 - “(3) The Reserve Bank may specify the format for disclosing financial statements of licensed financial institutions on an individual or consolidated basis.”.

18 Section 25 amended

Section 25 of the Principal Act is amended in subsection (2) by inserting the words “or request the assistance of technical experts in exercising such powers” after the word “section”.

19 Section 26 amended

Section 26(1) of the Principal Act is amended -

- (a) in paragraph (b) by deleting the word “or”;
- (b) in paragraph (c) by deleting “.” at the end and replacing it with “,”;
- (c) by inserting new paragraphs (d) – (j) as follows –
 - “(d) a certificate of compliance as required by the Reserve Bank in accordance with section 16(1)(d) has not been submitted by the licensed financial institution;
 - (e) has acted in similar positions in a licensed financial institution and has been removed in accordance with section 33;

- (f) has been disqualified or suspended from practicing a profession on grounds of personal misconduct;
- (g) does not possess sufficient financial competence and expertise;
- (h) is an officer or employee of another licensed financial institution unless both entities are commonly owned;
- (i) does not reside in the place where the licensed financial institution is located except as otherwise authorised by the Reserve Bank; or
- (j) falls under such other criterion or criteria as may be established by the Reserve Bank in a directive, prudential statement or other acts or decisions.”.

20 Section 26A inserted

The Principal Act is amended by inserting a new section 26A as follows –

“26A Special liability of directors and managers

- (1) In addition to any liability imposed by the provisions of this Act or any other Act, any director or manager of a licensed financial institution may be held liable by a court of law for any loss or damage sustained by the licensed financial institution, as a result of gross negligence or wilful misconduct in the performance of his functions or duties as director or manager of that institution, as the case may be.

Provided that a director or manager acting under the direction of the Bank shall not be personally liable for an act or default of the Bank done or omitted to be done in good faith.
- (2) Actions to recover damages shall be commenced by the affected licensed financial institution, within three years after the discovery of the negligence or misconduct indicated in the previous subsection.”.

21 Section 27 amended

Section 27 of the Principal Act is amended -

- (a) in the title by deleting the word “banking” and replacing with the word “financial”;
- (b) by repealing subsection (1)(a) and replacing it with the following –
 - “(a) receiving deposits of money or other repayable funds from the public, provided that this activity shall only be performed by banks;”;
- (c) by repealing subsection (3) and replacing it with the following –
 - “(3) The Reserve Bank may authorise by directive or prudential statement, any prudential requirements and measures to be applied to licensed financial institutions, individually or on a consolidated basis, such as those relating to internal control policies, liquidity, capital, net worth, operations, exposures, classification of assets, interest rate risk, credit

risk, currency risk, investment risk or other risks, as required under this Act and any other Act, or as determined by the Reserve Bank in accordance with international sound practices and standards.”.

22 Section 28 amended

Section 28 of the Principal Act is amended -

- (a) in subsection (1)(b)(i) by inserting the words “control or” after the words “or exercising”;
- (b) by repealing subsection (1)(b)(ii) and replacing it with the following –
 - “(ii) close relatives of such directors, employees and shareholders including spouses, parents, children, and other persons referred to in section 2(1).”;
- (c) by repealing subsection (2) and replacing it with the following –
 - “(2) Any licensed financial institution or its subsidiary shall not grant to any person or company, or a group of interrelated persons, any advance, credit facility, financial guarantee or incur any other risk exposure or liability -
 - (a) which in total exceeds 25 % of the licensed financial institution's capital as determined by the Reserve Bank;
 - (b) in the case of unsecured facility, 10 % of the licensed financial institution's capital as determined by the Reserve Bank; or
 - (c) if the aggregate outstanding principal amount of all large credit exposures of the licensed financial institution pursuant to paragraphs (a) and (b) would exceed a percentage of the licensed financial institution's capital as determined by the Reserve Bank.”.

23 Section 29 amended

Section 29 of the Principal Act is amended -

- (a) in paragraph (b) by inserting the words “as determined by the Reserve Bank” after the word “abroad”;
- (b) in paragraph (f) by deleting the word “or”;
- (c) in paragraph (g) by deleting the “.” at the end and replacing it with “; or”;
- (d) by inserting a new paragraph (h) as follows –
 - “(h) related to loans that are fully cash collateralised.”.

24 Section 30 amended

Section 30 of the Principal Act is amended in paragraph (b)(ii) by deleting the words “financial institution’s capital” and replacing them with the words “ financial institution’s regulatory capital”.

25 Section 31 amended

Section 31 of the Principal Act is amended by repealing subsection (2).

26 Section 31A inserted

The Principal Act is amended by inserting a new subsection 31A as follows –

“31A Contravention of restrictions

Any licensed financial institution which contravenes sections 28, 30 and 31 shall rectify the contravention within six months, or any further period as the Reserve Bank may approve in writing, without prejudice of the application of penalties and remedial actions established under section 33 by the Reserve Bank.”.

27 Section 33 amended

Section 33 of the Principal Act is deleted and replaced with the following -

“33 Penalties and Remedial Actions

- (1) The Reserve Bank may impose any of the measures in this section where –
 - (a) a licensed financial institution or any of its officers, directors or shareholders contravenes any provision of this Act or any directive, prudential statements, or any act or decision, issued in accordance with this Act or any other relevant Act; or
 - (b) in the opinion of the Reserve Bank, a licensed financial institution conducts unsafe or unsound activities including any action, or lack of action, which is contrary to international sound practices and standards of banking operation, the possible consequences of which, if continued, would result in risks to itself, its customer or to the financial system.
- (2) Where no specific monetary penalty is prescribed under this Act, the Reserve Bank may impose penalties not exceeding \$1,000 for each day during which the infraction or the unsafe or unsound activities continues.
- (3) In light of the facts relating to the specific contravention, or the unsafe or unsound activities of the licensed financial institution, the Reserve Bank may-
 - (a) issue written warnings;
 - (b) enter into a written agreement with the board of directors of the licensed financial institution providing for a program of remedial action; and

- (c) issue written orders to cease and desist such infractions and the actions referred to in the following subsection.
- (4) The Reserve Bank may also take the following actions-
- (a) call a meeting of the shareholders or other owners and the board of directors of the licensed financial institution to discuss and to agree on remedial measures to be taken by such entity;
 - (b) suspend the licensed financial institution's distribution or payment of dividends or profits in any form;
 - (c) attach any condition to the licensed financial institution's license to the extent required to remedy any violation;
 - (d) request that the chairman of the board of directors convene the board of directors to review and examine the violations to take the necessary measures to eliminate the violations; in such case, one or more representatives of the Reserve Bank shall attend the board of directors' meeting;
 - (e) temporarily suspend or permanently bar from office any manager, officer or employee of the licensed financial institution, depending on the seriousness of the violation;
 - (f) require that the licensed financial institution to remove the chairman or any of the members of the licensed financial institution's board of directors;
 - (g) restrict the powers of any administrator;
 - (h) require that one or more persons having a significant ownership to exercise control over the licensed financial institution to sell or otherwise dispose of such holding within a time period determined by the Reserve Bank;
 - (i) with respect to persons indicated in the previous subsection, to cease and desist communicating with the licensed financial institution, its board, management, officers or employees;
 - (j) appoint an external auditor at the expense of the licensed financial institution to perform a financial or operational audit under terms of reference approved by the Reserve Bank;
 - (k) reduce the capital of the licensed financial institution not represented by its assets or impaired by losses;
 - (l) require the licensed financial institution to submit a capital restoration plan in a form acceptable to the Reserve Bank;
 - (m) facilitate the merger or acquisition of the licensed financial institution with a solvent financial institution;
 - (n) impose restrictions on the operations of the licensed financial institution;
 - (o) revoke the licensed financial institution's licence and order it to dissolve under applicable law;

- (p) revoke the licensed financial institution's licence and appoint a receiver for it under the receivership provisions of this Act; or
 - (q) take any other action in accordance with internationally accepted sound practices and standards applicable to licensed financial institutions.
- (5) The imposition of administrative fines under sections 3(3), 18, 24(4), and 25(5) is without prejudice of the application of provisions stipulated in subsections (2), (3) and (4) of this section.
- (6) Any licensed financial institution to which subsections (1), (2), (3) and (4) apply shall be notified in writing by the Reserve Bank of its decision. The licensed financial institution shall respond in writing to the Reserve Bank within 14 working days.”.

28 Section 80 amended

Section 80 of the Principal Act is amended -

- (a) by repealing the title and replacing it with the following –
“Retention of records, cheques, and other documents for 7 years”;
- (b) in subsection (1) by inserting the words “, including accounting records and management information system (MIS) information, and other related records,” after the words “payable at that institution”.

29 Section 81 amended

Section 81 of the Principal Act is amended in subsection (1) by deleting the words “the Tonga Chronicle or any other newspaper published weekly” and replacing it with the words “at least one local newspaper published weekly”.

30 Section 82 amended

Section 82 of the Principal Act is amended –

- (a) by renumbering subsection (3) as subsection (4) and inserting the following new subsection (3) as follows –
“(3) The Reserve Bank shall, within 60 days after the end of each financial year, publish in at least one local newspaper published weekly and circulated in Tonga for four consecutive weeks a statement on all unclaimed moneys paid to the Reserve Bank under subsection (1), until the expiration of the time period specified in subsection (4).”.
- (b) in subsection (4) by inserting the words “within a period no longer than five years from the date of such payment” after the word "government";
- (c) by inserting new subsections (5) – (7) as follows –

- “(5) Once the period indicated in the previous subsection has expired without a claim having been submitted, the money paid to the Government under this section shall irrevocably become the Government’s property.
- (6) Unclaimed moneys included in the statement published by the Reserve Bank remaining unclaimed for a period of three months after publication, shall be forfeited to the Government, after the expiration of the period specified in subsection (4) and after deduction of the costs of publication.
- (7) Subject to this section, the Reserve Bank, upon forfeiting to the Government of any sums due under this section, is discharged from further liability in respect of that amount.”.

31 Section 85 amended

Section 85 of the Principal Act is amended by deleting the current section and replacing it with the following –

“85 Prevailing application of the National Reserve Bank of Tonga Act and the Financial Institutions Act

Unless specified otherwise in another Act, in the event that the provisions of this Act or the National Reserve Bank of Tonga Act conflict with such provisions of other Acts applicable to any financial institutions, then the provisions of this Act and the National Reserve Bank of Tonga Act shall prevail.”.

32 Section 86 amended

Section 86 of the Principal Act is amended by deleting the current section and replacing it with the following –

“86 Indemnity of Reserve Bank

A director, employee, officer, agent, Governor or Deputy Governor of the Reserve Bank, and a person appointed by the Reserve Bank to carry out functions on its behalf, or a technical assistance expert who assists the Bank with conducting supervisory work under section 25, including a person previously holding such positions, shall not be held liable for damages, acts or omissions performed in the course of his duties under this Act, under the same conditions, including indemnification, as established in section 20 of the National Reserve Bank of Tonga Act.

Provided that, this section shall not apply to any of the specified persons, where he has performed his functions and duties with gross negligence or wilful misconduct.”.

33 Section 88 amended

Section 88 of the Principal Act is amended by deleting the current section and replacing it with the following –

“88 Regulations

The Minister, on the advice of the Board and with the consent of Cabinet, shall make Regulations necessary for giving effect to and carrying out the purposes of this Act.”.

34 Section 88A inserted

The Principal Act is amended by inserting a new section 88A as follows -

“88A Close of business for holidays or emergency situations

- (1) All licensed financial institutions shall open their doors for business with the public on all days and during all office hours, excluding public holidays.
- (2) In exceptional circumstances, a licensed financial institution may apply to the Reserve Bank with at least 10 working days’ notice to close its doors for a specified purpose, which may only be done with the written approval of the Reserve Bank
- (3) In the event that an emergency situation requires the suspension of licensed financial institutions’ operations, the Reserve Bank may order one or more licensed financial institutions to close their doors temporarily, cease their operations, and resume them only by order of the Reserve Bank.
- (4) Provisions under the previous subsection shall not preclude the right of an affected licensed financial institution to close its business if it is forced by an emergency situation, subject to notification to, and confirmation by, the Reserve Bank, within the next 24 hours from the closing or as soon as practicable in light of the circumstances.
- (5) For the purpose of this section, an emergency situation is one due to natural disasters, public services’ interruption, internal or external conflicts, war, events of *force majeure*, or other extreme circumstances as determined by the Reserve Bank.”.

35 Schedule amended

The Principal Act is amended by deleting the contents of the Schedule and replacing it with the following -

“Westpac Bank of Tonga established under the Westpac Bank of Tonga Act

Tonga Development Bank established under the Tonga Development Bank Act 2014

Australia New Zealand Banking Group Limited

MBF Bank Limited
Pacific International Commercial Bank”.

Passed by the Legislative Assembly this 26th day of August 2014.