
Development Bank Act 1974

CONSOLIDATED ACTS OF SAMOA 2008

DEVELOPMENT BANK ACT 1974

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THE DEVELOPMENT BANK ACT 1974

1974 No.3

AN ACT to establish the Development Bank of Samoa and to define its functions, powers, and duties.

(28 August 1974)

(Commencement date 1 October 1972)

1. Short title and commencement - (1) This Act may be cited as the Development Bank Act 1974.

(2) This Act shall come into force on the 1st day of October 1974.

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

"Auditor" means the Controller and Chief Auditor of the Independent State of Samoa;

"Bank" or "Development Bank" means the Development Bank of Samoa established by section 3 of this Act;

"Development Branch of the Bank of Samoa" means the branch of the Bank of Samoa established by agreement between the Bank of Samoa and the Government of the Independent State of Samoa for the purpose of administering the Development Loan Fund;

"Development Loan Fund" means the whole funds administered by the Development Branch of the Bank of Samoa;

"Enterprise" means:

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

(b) Any 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;

"Minister" means the Minister of Finance.

CONSTITUTION OF THE BANK

3. Establishment of Bank - (1) There is hereby established the Development Bank of Samoa.

(2) The Bank shall have the following directors:

(a) The Chief Executive Officer of the Ministry of Finance ex officio who is to be Chairperson;

(b) Six persons to be appointed under section 9;

(c) The Chief Executive Officer of the Ministry of Agriculture and Fisheries ex officio;

(d) The Director of Economic Development ex officio;

(e) The General Manager ex officio.

(3) The Bank is a body corporate with perpetual succession and a common seal and may acquire, hold, and dispose of real and personal property, and sue and be sued, and do and suffer all acts and things that bodies corporate may lawfully do and suffer.

(4) The powers of the Bank shall not be affected by any vacancy in its membership.

4. Offices of Bank - (1) The principal office of the Bank shall be in Apia.

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

5. Functions of the Bank - (1) The functions of the Bank shall be to promote the expansion of the economy of Samoa for the economic and social advancement of the people of Samoa by making loans and giving financial, technical, and advisory assistance in its discretion to any enterprises in Samoa.

(2) The Bank shall have such other functions as may from time to time be lawfully conferred on it.

6. Operating principles - (1) In determining whether or not any loan or financial, technical, or advisory assistance shall be given to any 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 extent to which the public interest of Samoa will be served by assisting the enterprise.

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

7. Bank to follow general economic policy of Government - In exercising its functions and powers under any enactment, the Bank shall give effect to the general economic policy of the Government as communicated to the Bank from time to time in writing by the Minister.

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

(2) Without limiting the generality of subsection (1), the Bank may from time to time do all or any of the following things for the purposes of carrying out its functions:

(a) Make loans to any enterprises, and give guarantees in respect of any enterprises;

(b) Provide finance for any enterprises by investing in equities;

(c) Subscribe for, purchase, underwrite, or subunderwrite shares, debentures, bonds, or other securities issued or guaranteed by the Government or by any enterprises;

(d) Buy, lease, or otherwise acquire, hold, manage, improve, or develop any real and personal property;

(e) 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 the same;

(g) Accept money on deposit at rates of interest to be determined by the Bank;

(h) Participate in the management of enterprises to whom it has given or is to give any loan or financial, technical, or advisory assistance;

(i) Place funds not immediately required by it on deposit with any bank, or invest such funds in Government securities or with the National Provident Fund;

(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; or

(l) Subject to the other provisions of this Act, borrow money from the Government, or from the Bank of Samoa, or from any bank or lending institution (whether in Samoa or overseas) on such terms and conditions as it may agree to.

9. Appointment of directors - (1) The Directors specified in paragraph (b) of subsection (2) of section 3 shall be appointed by the Head of State, acting on the advice of Cabinet.

(2) Three persons shall be appointed under subsection (1) of this section to represent interests in agriculture in Samoa.

(3) Three other persons shall be appointed under subsection (1) of this section to represent as far as practicable interests in commerce and industry in Samoa.

(4) No person may be appointed under subsection (1) of this section to be a director or may continue to hold office as a director so appointed, while he is:

(a) A Member of Parliament;

(b) A person holding a full-time office of emolument in the Government or in the Bank;

(c) A person who is a director, officer or employee of any bank (other than the Bank);

(d) A person who is a director, officer or employee of any corporation (other than the Bank) the business of which is wholly or mainly that of the extension of credit.

10. Terms of office of appointed directors - Every Director appointed under section 9 shall be appointed at pleasure.

11 Repealed

12. Repealed

13. Remuneration of appointed directors - Every appointed director shall be paid such remuneration and allowances as may from time to time be fixed by Cabinet.

14. Meetings of directors - (1) Meetings of directors shall be held at such times and places as the Chairperson or the directors appoint.

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

(3) At any meeting 6 directors shall form a quorum.

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

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

(6) In the absence from any meeting of a director ex officio, he/she may authorise any other officer of his/her department or (in the case of the General Manager) of the Bank to attend the meeting in his/her place. Any officer so authorised shall be deemed for all purposes to be a director of the Bank while he/she so attends that meeting, but shall not preside.

(7) At every meeting, the Chairperson or other person presiding shall have a deliberative vote, and in the case of an equality of votes, he/she shall also have a casting vote.

(8) Every question arising at a meeting shall be decided by a majority of the votes recorded on the question.

(9) Subject to the other provisions of this Act, the Bank may regulate its procedure in such manner as it thinks fit.

15. Disclosure of conflicting interest - (1) Any director who otherwise than as a director, is directly or indirectly interested in any arrangement or agreement entered into, or proposed to be entered into, by the Bank shall, as soon as possible after the relevant facts have come to his/her notice, disclose the nature of his/her interest at a meeting of the Bank.

(2) A disclosure under this section shall be recorded in the minutes of the Bank and, except as otherwise provided by a resolution of the Bank, the director shall not take part after the disclosure in any deliberation or decisions relating to the arrangement or agreement, but shall be counted as present for the purpose of forming a quorum of the Bank for any such deliberation or decision.

16. General Manager - (1) The Head of State, acting on the advice of Cabinet, shall from time to time appoint a General Manager of the Bank, for such period (not exceeding 5 years) as may be specified in the appointment, and on such other terms and conditions as may be determined by the Head of State, acting on the advice of Cabinet.

(2) The General Manager shall be the administrative head of the Bank, and shall be responsible to the Bank for the effective and efficient execution of the Bank's functions. In carrying out his/her duties, he/she shall follow any general or special directions given to him/her by the Bank.

(3) The General Manager may from time to time be re-appointed.

(4) All remuneration and other allowances and expenses payable to the General Manager shall be paid out of the funds of the Bank.

(5) The General Manager shall not engage in any other business or occupation without the prior written consent of the Bank.

17. Acting General Manager - (1) The Bank may from time to time on such terms and conditions as it specifies, appoint a suitable person to be the Acting General Manager of the Bank during any temporary vacancy in the office of General Manager, or while the General Manager is for any reason unable to carry out his/her duties.

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

18. Bank staff - (1) The Bank may from time to time, on such terms and conditions as it thinks fit, appoint such other officers and employees of the Bank as it may consider necessary for the carrying out of the Bank's functions.

(2) The Bank may from time to time make personal loans or advances to its officers and employees for housing and domestic purposes, but the total amount of money so loaned or advanced to its officers and employees at any time shall not exceed 2 percent of the total funds of the Bank that are available for loans or financial, technical, or advisory assistance.

19. Contracts by the Bank - (1) Contracts on behalf of the Bank may be made as follows:

(a) Any contract which, if made between private persons, must be by deed shall, if made by the Bank, be in writing under the common seal of the Bank;

(b) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Bank, be in writing either under the common seal of the Bank or signed by any person on behalf and by direction (either general or specific) of the Bank;

(c) Any contract which if made between private persons, may be made orally, may if made by the Bank, be made orally by any person on behalf and by direction (either general or specific) of the Bank:

PROVIDED THAT so far as is reasonably practicable, contracts of the Bank shall be made in writing.

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

20. Committees - (1) The Bank may from time to time appoint committees consisting of any 3 or more directors or officers of the Bank.

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

21. Delegation of powers - (1) The Bank may from time to time delegate to any of its committees, or to the General Manager, or to any other officer of the Bank any of its powers under this Act, including this present power of delegation.

(2) Subject to any general or special directions given to it or to him/her by the Bank, any committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on it or him/her directly by this Act and not by delegation.

(3) Every committee or person purporting to act under any delegation under this section shall be presumed, until the contrary is proved, to be acting in accordance with the terms of the delegation.

(4) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Bank itself.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor, notwithstanding any change in the membership of the Bank or of any committee.

FINANCIAL PROVISIONS

22. Capital - (1) The initial capital of the Bank shall be \$5,000,000 divided into 5,000,000 shares of \$1 each.

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

(3) In any such case, the Head of State, acting on the advice of Cabinet, may by Order published in the Gazette increase the share capital of the Bank to such amount as may be prescribed in the Order.

(4) The share capital of the Bank shall not be increased except in accordance with subsections (2) and (3) of this section.

23. Subscriptions for shares - (1) On the commencement of this Act, the Government shall subscribe for 400,000 shares in the Bank.

(2) The Government may from time to time subscribe for or otherwise acquire such other shares in the Bank as the Head of State, acting on the advice of Cabinet, may resolve.

(3) The Bank may from time to time, with the prior written approval of the Minister, offer any shares not subscribed for or otherwise acquired by the Government to the public, or to such other persons as it may determine, on such terms and conditions as may determine.

(4) All money required to be paid by the Government in respect of the subscriptions for or acquisition of shares in the Bank shall be paid out of money appropriated by Parliament for the purpose or out of any other money that may lawfully be used for the purpose.

24. Transfer of existing scheme - On the commencement of this Act:

(a) 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 shall be deemed 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 shall thereupon become the rights and obligations of the Bank;

(b) All money standing to the credit of the Development Loan Fund immediately before such date shall be transferred to the Bank; and

(c) All other assets (including real and personal property of every kind) and liabilities of the Development Branch of the Bank of Samoa shall cease to be assets and liabilities of the Bank of Samoa and shall without conveyance, transfer, or assignment vest in and become assets and liabilities of the Bank.

25. Raising of funds - (1) Subject to the provisions of this Act, the Bank may from time to time, with the prior written permission of the Minister, raise funds required by it for meeting any of its obligations or discharging any of its functions, and may secure the repayment of such funds in any manner it deems fit.

(2) The Head of State, acting on the advice of Cabinet, may from time to time guarantee, in such manner and subject to such conditions as the Head of State deems fit, the repayment of loans raised by the Bank, including interests in connection therewith from the Treasury Fund.

26. Disposition of profits - (1) The Bank shall establish a Reserve Fund into which shall be paid the annual surplus of the Bank.

(2) The annual surplus shall consist of so much of the annual income of the Bank as is not required for the payment of expenses, including staff salaries, and provident fund allowances; provision for previous losses, bad and doubtful debts; depreciation of assets; and all such other matters as the Board considers proper.

(3) During the first 2 years after the date of commencement of this Act the whole of the annual surplus shall be paid into the Reserve Fund.

(4) During subsequent years provision may be made by the Bank for the payment from the annual surplus of a dividend of such amount as the Board thinks fit, and any amount of annual surplus remaining after payment of such dividend shall be transferred to the Reserve Fund.

27. Powers of Auditor - (1) The Auditor, or a person authorised by the Auditor to act in his/her stead, shall be entitled at all reasonable times to have full and free access to all accounts, papers, records and other documents relating to the activities of the Bank, to make and have made copies of such materials, and to require and receive any information or

materials from any person, for the purpose of carrying out his/her duties in accordance with section 28 of this Act.

(2) Any person who hinders or obstructs the Auditor, or a person authorised by the Auditor under subsection (1) of this section in the carrying out of his/her duties under this section, commits an offence and is liable on summary conviction to a fine not exceeding 5 penalty units, or to imprisonment for a term not exceeding 3 months or to both.

28. Accounts, audit, and annual report - (1) The Bank shall at all times keep full and proper accounts and other records of its operations, and as soon as reasonably practicable after the end of each financial year, shall prepare a balance sheet and such other statements of accounts as are necessary to show fully the financial position of the Bank and the financial results of its operations during that year.

(2) The accounts of the Bank shall 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 a report of its proceedings and operations for that year together with a copy of its audited accounts for that year and 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 as soon as practicable after he/she has received them.

GENERAL PROVISIONS

29. Agencies - In the exercise of its powers and the performance of its functions, the Bank may:

(a) Appoint, by instrument or otherwise, or arrange with any person to be its attorney or agent in any place, whether within or beyond Samoa, and such person may do any act or execute any power or function which he/she is authorised to do under the instrument, or in accordance with the arrangement; and

(b) 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.

30. Liability for tax and other duties - The Bank shall be liable for custom and excise duties and shall after 1 January 1984 be liable for income tax and any other taxation or duties.

31. Liabilities of directors and employees - No director or officer of the Bank shall be personally liable for any act done or omitted to be done in good faith by any person in the exercise or performance of the functions, powers, and duties of the Bank or of any committee of the Bank.

NOTES

The Development Bank Act 1974 appearing in this reprint comprises that Act as it appears in the 1977 reprint together with the amendments shown below:

Section 3 Subsection (2) was repealed and replaced by a new (2) by the Development Bank Amendment Act 1981 No.4. However, the subsection was later repealed and replaced with the present (2) by section 2 of the Development Bank Amendment Act (No.35) 1984.

Section 9 Was repealed and replaced by new section 9 by section 3 of the 1984 (No.35) Amendment Act.

Section 10 Was amended by section 4 of the 1984 (No.35) Amendment Act but later repealed and a new section substituted by section 3 of the Development Bank Amendment Act 1986 No.7.

Section 11 Repealed by section 4 of the 1986 No.7 Amendment Act

Section 12 Repealed by section 4 of the 1981 No.4 Amendment Act

Section 14 In subsection (6) the words : "or (in the case of the General Manager) of the Bank" were added by section 5 of the 1984 (No.35) Amendment Act.

Section 30 Repealed and replaced by the present section 30 by section 2 of the Development Bank Amendment Act 1984 No.9.

REVISION NOTE 2008

This law has been generally edited as provided for by section 5 of the Revision and Publication of Laws Act 2008. The following general revisions have been made –

- (a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.
- (b) All references to the male gender have been made gender neutral.
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

There were no amendments made to this law since the publication of the Western Samoa Statutes Reprint 1978-1996.

Revised and consolidated by Leilani Pereira-Moeono
Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo
(Parliamentary Counsel)

REVISION NOTES 2008 No. 2

Under section 4 (general powers of the Attorney General) of the Revision and Publication of Laws Act 2008 the commencement date is inserted. There were no amendments made to this law since the publication of the Consolidated and Revised Statutes of Samoa 2007.

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

The Development Bank Act 1974 is administered in the Ministry of Finance.

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