



Tonga

TONGA DEVELOPMENT BANK ACT

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Arrangement of Sections

Section

1	Short title.....	5
2	Interpretation.....	5
3	Incorporation of Tonga Development Bank.	6
4	Capital and shareholders.....	6
5	Commencement of business.	6
6	Functions of the Bank.	7
7	Powers of the Bank.	7
8	Board of directors.	10
9	Managing Director.	11
10	Accounts and dividends.	11
11	Articles of Association.....	12
12	Take over of special Funds.	12
13	Exemption from taxation and duties.	13



TONGA DEVELOPMENT BANK ACT

Acts 3 of 1977, 12 of 1979, 19 of 1984 and 15 of 1985

AN ACT TO ESTABLISH THE TONGA DEVELOPMENT BANK AND TO REGULATE ITS FUNCTIONS, POWERS AND OBJECTS AND MATTERS RELATIVE THERETO

Commencement [31st August 1977]

1 Short title.

This Act may be cited as the Tonga Development Bank Act.

2 Interpretation.

In this Act, unless the contrary intention appears —

“**Bank**” means the Tonga Development Bank constituted under this Act;

“**Enterprise**” means:

- (a) any person, group of persons or body (whether incorporated or unincorporated) that engages or proposes to engage in economic or socio-economic development, including any activity in agriculture, commerce or industry, whether or not the primary purpose of the engagement is profit; and
- (b) any undertaking owned, leased, managed, operated, promoted or developed by the Bank itself or jointly with any other person, group of persons or body (whether incorporated or unincorporated);

“**Minister**” means the Minister of Finance;

“**Shareholder**” means a holder for the time being of shares in the Bank.

3 Incorporation of Tonga Development Bank.

- (1) There is hereby constituted for the purposes of this Act a corporation to be called the Tonga Development Bank which shall have its head office at Nuku'alofa, Tonga.
- (2) The Bank is a body corporate having perpetual succession and a common seal with power from time to time to make, alter, and renew the same with power to sue and with power for the purposes of this Act to acquire, hold, manage, turn to account, and to sell, let, lease, and dispose of real and personal property of all kinds in any manner in any part of the world, and further with such constitution, objects, and powers as are contained in this Act and subject to such Articles for the government of the Bank and the management of its business and other matters as are provided for in this Act or as may from time to time be lawfully altered.

4 Capital and shareholders.

- (1) The authorised capital of the Bank is seven million pa'anga (T\$7,000,000) divided into seven hundred thousand (700,000) shares of ten pa'anga (T\$10.00) each. (*Substituted by Act 15 of 1985.*)
- (2) The initial subscribed capital of the Bank shall be two hundred and fifty thousand pa'anga (T\$250,000) divided into 25,000 shares each of ten pa'anga (T\$10).
- (3) The said shares shall entitle the holders thereof to participate *pari-passu* in proportion to the capital paid upon their shares respectively in all sums distributed by way of dividend and in a winding up all surplus assets shall belong to and be divided amongst the holders of the said shares *pari-passu* in proportion to the amounts paid up on such shares at the commencement of the winding up.
- (4) No shareholder shall be liable to contribute to the debts or liabilities of the Bank any sum exceeding the amount (if any) for the time being unpaid on the shares held by such shareholder.

5 Commencement of business.

- (1) It shall not be lawful for the Bank to commence any business or exercise any of its borrowing powers until all the shares in the initial subscribed capital of the Bank have been allotted and fully paid up in cash in terms of

the last preceding section and until the Articles provided for in section 11 of this Act have been made.

- (2) Any contract made by the Bank before the date at which it is entitled to commence business shall be provisional only and shall not be binding upon the Bank until that date, and on that date it shall become binding.
- (3) A certificate in writing by the Bank certifying what is or was the date upon which the Bank is or was entitled to commence business (hereinafter referred to as “the commencement date”) shall be conclusive evidence thereof. A copy of the certificate shall be published in the Gazette and the production of the Gazette containing that publication shall be proof for all purposes of the original certificate.

6 Functions of the Bank.

- (1) The functions of the Bank are to promote the expansion of the economy of Tonga for the economic and social advancement of the people of Tonga by giving financial and advisory assistance in its discretion to any enterprise operating or about to operate in Tonga.
- (2) In carrying out its functions the Bank shall have due regard to: —
 - (a) the prospects of the enterprise being or continuing to be successful and the prospects of repayment of any finance made available to it by the Bank;
 - (b) the general economic policies of Government as conveyed in writing by the Minister to the Bank from time to time.

7 Powers of the Bank.

- (1) The Bank shall be empowered: —
 - (a) to establish, carry on, extend and develop in Tonga the business of a development finance institution in all its branches and departments, and to transact and do all business, matters and things incidental thereto;
 - (b) to lend and advance money to or negotiate loans for or otherwise financially assist any enterprise, and generally to transact or engage in any class of business commonly undertaken by financiers;
 - (c) to guarantee or become liable for the payment of money or for the performance of any obligations undertaken by any enterprise, and generally to carry on guarantee and indemnity business of all kinds;
 - (d) to provide technical, agricultural, engineering, managerial, financial, institutional, marketing and any other advisory extension for the benefit of any enterprise;

- (e) to identify, promote, advise, assist and bring about new endeavours of development or the expansion of existing areas of development for enlargement of the economic productivity of Tonga;
- (f) to take, acquire, underwrite, buy, hold, sell and deal in shares, stock, government securities, mortgages, bonds, obligations, securities and investments of all kinds;
- (g) to establish, subsidise, advise, assist, promote and concur in the promotion and establishment of any enterprise, and to manage or take part in the management of, supervise, conduct or control the business and affairs of any enterprise, and whether promoted by the Bank or not, and whether the Bank is a member thereof or not;
- (h) to act as agents, attorneys and custodians, and to administer and supervise funds for any government, authority, corporation, company, bank, firm, person or persons;
- (i) to appoint agents, attorneys and custodians, and to establish agencies or connections in relation to the business of the Bank in Tonga or elsewhere;
- (j) to act as executors, trustees, custodian trustees, administrators, nominees, receivers, managers, financial managers, committee, liquidators, accountants, treasurers, registrars and secretaries, and to undertake and execute any trusts and obligations;
- (k) to hold, manage, record, advise on and provide services of all kinds relating to the investment of moneys and other property, and generally to conduct the business of investment consultant and manager;
- (l) to carry on the business of and act as managers of provident, benefit, superannuation or retirement funds or trusts, and of fixed and flexible trusts, and of unit trusts, and of investment trusts, and of any other trusts or funds or common interests whatsoever whether of a similar or dissimilar nature, and to act generally as a trust management company;
- (m) to promote and support schemes for the provision of pensions and of guarantee and other funds for or in connection with the employees of the Bank and others;
- (n) to purchase, take on lease or in exchange, hire or otherwise acquire, and hold, administer, carry on as a going concern, turn to account, develop, sell, let, lease, dispose of or otherwise deal with, all assets, business and property of the Bank, and within the limits of its authority, all assets, business and property which the Bank may hold on behalf of other persons in any capacity whatsoever;
- (o) to make deposits, enter into recognisances and bonds, and otherwise give security for the due execution and performance whether by the

- Bank or by any officer of the Bank or by any other person of the duties of executor, administrator, trustee, receiver, manager, committee or liquidator;
- (p) to receive money on loan or otherwise upon such terms as may from time to time seem expedient, and to obtain the use and control of money and to employ and use the same;
 - (q) to borrow, or raise, or secure the payment of money in such manner as the Bank may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other acknowledgement incurred or to be entered into by the Bank in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Bank's property (both present and future) including its uncalled capital, and to purchase, redeem or pay off any such securities;
 - (r) to keep for any government, company, authority or enterprise any register relating to stocks, funds, shares, or securities, and to undertake any duty in relation to the register of transfers, the issue of certificates or otherwise, and to undertake any kind of agency business;
 - (s) to form and assist in forming any company or enterprise for the purposes of carrying on any business which the Bank is authorised to carry on or any other business which may be conducive to any of the interests of the Bank;
 - (t) to buy, sell, discount and rediscount bills of exchange, promissory notes and treasury bills;
 - (u) to provide finance to employees of the Bank whether by making loans or by giving guarantees, for purposes of economic development and for housing, domestic and personal needs;
 - (v) to acquire from any sovereign state or authority in Tonga or elsewhere any concession, decree, right, power and privilege whatsoever which may seem capable of being turned into account by the Bank and to work," develop, carry out, exercise, and turn to account the same;
 - (w) to do all or any of these things in any part of the world and either as principals, agents, trustees, contractors, or otherwise, and either alone or in conjunction with others and either by or through agents, sub-contractors, trustees, or otherwise;
 - (x) to obtain any Act of Parliament or Ordinance or any Order in Council or any judicial or other legal sanction for enabling the Bank to carry any of its objects into effect or for introducing any modification into the constitution of the Bank or for any other purpose which may seem expedient; and

- (y) to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.
- (2) The objects specified in each of the paragraphs of the last preceding subsection shall be regarded as independent objects and shall in no wise be limited or restricted (except where otherwise expressed in such paragraphs) by reference to or inference from the terms of any other paragraph or the name of the Bank.

8 Board of directors.

- (1) The Board of Directors shall consist of:
 - (a) the Minister of Finance who shall be Chairman;
 - (b) the Minister of Labour, Commerce and Industries who shall be Deputy Chairman and representative of that Ministry;
 - (c) two persons, appointed by His Majesty in Council to represent the Ministry of Finance, and the Ministry of Agriculture, Forests and Fisheries;
 - (d) two persons, appointed by His Majesty in Council to represent business interests in economic development, including interests in agriculture, commerce and industry;
 - (e) one person, appointed by the Bank of Tonga;
 - (f) the Managing Director appointed under section 9 of this Act.
- (2) No person shall remain a Director of the Bank if he is at the same time a member of any legislative body of any state or territory:

Provided however that such restriction need not apply to the Chairman and Deputy Chairman of the Board of Directors appointed under subsection (1)(a) and (b) of this section or a person appointed under subsection 1(d).

- (3) Subject to the provisions of this Act and the Articles the business of the Bank shall be controlled and managed by the Board, who may pay all expenses incurred in promoting and establishing the Bank and may exercise any and all of the powers conferred on the Bank by this Act or the Articles or by law.
- (4) The Articles shall provide for the appointment of alternate directors, the term and cessation of office of directors, the authority of the Board to delegate its powers and such matters relating to Directors and the Board not inconsistent with the preceding subsections of this section as the shareholders consider appropriate.
- (5) The Chairman shall preside at every meeting of the Board at which he is present.

- (6) If the Chairman is absent from any meeting of the Board then the Deputy Chairman shall be Chairman of the meeting and his alternate Director shall represent the Ministry at that meeting.
- (7) If both the Chairman and the Deputy Chairman are absent from any meeting of the Board, then the representative of the Ministry of Finance, shall be Chairman of that meeting. (*Substituted by Act 19 of 1984.*)

9 Managing Director.

- (1) His Majesty in Council acting on the advice of the Board shall from time to time appoint or reappoint a Managing Director of the Bank for such period and on such terms and conditions as may be specified in the appointment.
- (2) The Managing Director shall be the administrative head of the Bank and shall be responsible to the Board for the day to day effective and efficient execution of the Bank's functions. In carrying out his duties, the Managing Director shall follow any general or specific directions given to him by the Board.
- (3) The Board may from time to time, on such terms and conditions as it specifies, appoint a person to be Acting Managing Director of the Bank during any temporary vacancy in the office of Managing Director, or while the Managing Director is for any reason unable to carry out his duties.

10 Accounts and dividends.

- (1) The financial year of the Bank ends on the thirty-first day of December in each year.
- (2) The Board shall at the end of each financial year cause proper accounts to be prepared in respect of the operations of the Bank for that year.
- (3) In the preparation of such accounts adequate and proper provisions shall be made for bad and doubtful debts, contingencies, depreciation of assets, and all such other matters as shall in the judgment of the Board be necessary or desirable to take into account having regard to normal banking practice.
- (4) Dividends shall from time to time be declared at the discretion of the Board having regard to the profits earned by the whole of the Bank's undertaking, the needs of the Bank to improve or increase its advisory, technical and other resources for a betterment of the carrying out of its functions, the economic circumstances prevailing, and the future prospects and general financial stability of the Bank. (5) No dividends shall be declared otherwise than out of profits.

- (6) The Bank shall make suitable provision for the accounts of the Bank to be audited in the manner customary among banks, such audit to be conducted by some fitting person or persons to be appointed from time to time by the Bank and whose salary or remuneration shall be paid by the Bank.
- (7) 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. As soon as reasonably practicable thereafter the Minister shall present copies of the Bank's report, audited accounts and auditor's report to the Legislative Assembly.

11 Articles of Association.

- (1) Subject to this Act the shareholders of the Bank shall provide for Articles of Association of the Bank to govern and regulate the operation and management of the Bank, and a copy of such Articles subscribed by the initial shareholders shall be lodged with the Registrar of Companies.
- (2) When registered the Articles shall bind the Bank and the shareholders thereof to the same extent as if they respectively had been signed and sealed by each shareholder and contained covenants on the part of each shareholder to observe all the provisions of the Articles.
- (3) The Bank may at any time by resolution passed at a general meeting of shareholders amend its Articles and such amendment shall be notified to the Registrar of Companies.
- (4) Subject to this Act, any amendment to the Articles shall be valid as if originally contained therein and be subject in like manner to amendment.

12 Take over of special Funds.

As on a date to be proclaimed* not being prior to the commencement date: —

- (a) The Bank shall acquire and take over from Government the Agricultural Credit Scheme, the Fisheries Loan Scheme and the Small Scale Industries Fund (all hereinafter referred to as “the Funds”.);
- (b) All acts, transactions, matters and things lawfully done, determined or entered into by the Funds shall be deemed to have been done, determined and entered into by the Bank, and all rights and obligations of the Funds arising from such acts, transactions, matters and things shall thereupon become the rights and obligations of the Bank;
- (c) All moneys standing to the credit of the Funds immediately before such date shall be transferred to the Bank;

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

* 3rd April 1978 (G. 180/78).

13 Exemption from taxation and duties.

The Bank shall for a period of 10 years from the date of commencement of this Act be not liable to income tax, customs duty, or any other taxation or duty including stamp duty.