



**Tuvalu**

# **NATIONAL BANK OF TUVALU ACT**

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Tuvalu

## NATIONAL BANK OF TUVALU ACT

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Tuvalu

## NATIONAL BANK OF TUVALU ACT

### AN ACT TO ESTABLISH A NATIONAL BANK FOR TUVALU, AND FOR RELATED PURPOSES<sup>1</sup>

Commencement [27th June 1980]

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the National Bank of Tuvalu Act.

### 2 Interpretation

In this Act, unless the context otherwise requires —

“**the Bank**” means the National Bank of Tuvalu;

“**the Board**” means the Board of Directors of the National Bank of Tuvalu established under section 6;

“**Director**” means a director of the Board;

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

“**the General Manager**” means the General Manager appointed by the Minister under section 13(1);

“**the Chairman**” means the Chairman appointed by the Minister under section 9(1);

“**the Deputy Chairman**” means the Deputy Chairman appointed by the Minister under section 9(1).

## **PART II - ESTABLISHMENT, FUNCTION AND POWERS**

### **3 Establishment of the Bank**

- (1) There is established by this Act a bank to be called the National Bank of Tuvalu.
- (2) The Bank shall —
  - (a) be a body corporate with perpetual succession;
  - (b) have a common seal;
  - (c) subject to section 5 of the Native Lands Act<sup>2</sup> may acquire, hold and dispose of property of every description;
  - (d) may sue or be sued in its corporate name; and
  - (e) do or perform such acts and things as bodies corporate may by law do and perform.

### **4 Functions and powers of the Bank**

- (1) The Bank shall carry on general banking business to include the business of accepting deposits of money withdrawable and repayable on demand or after a fixed period or after notice and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the Bank.
- (2) Without in any way limiting the generality of subsection (1), the Bank shall have the powers, in addition to any other powers conferred on it by this Act —
  - (a) to receive money on deposit;
  - (b) to borrow money;
  - (c) to lend money;
  - (d) to buy, sell, discount and re-discount bills of exchange and promissory notes;
  - (e) to buy, sell, or deal in securities issued by the Government and any other securities;
  - (f) to buy, sell or deal in foreign currency, foreign exchange, specie, gold and other precious metals;
  - (g) to establish credits and give guarantees;
  - (h) to underwrite loans and issues of capital;
  - (i) to appoint agents or correspondents; and

- (j) to do in Tuvalu or elsewhere, either alone or jointly with any person or institution all things necessary or convenient to be done for or in connection with or consequential upon any of its powers or functions.

## **5 Ministerial directions**

In carrying out its powers, duties and functions under the provisions of this Act the Bank shall act in accordance with any policy directions in the national interest given to it from time to time in writing by the Minister.

# **PART III - BOARD, MANAGEMENT AND EMPLOYEES**

## **6 The Board**

- (1) There shall be a Board of Directors of the National Bank of Tuvalu which shall be constituted as hereinafter provided.
- (2) It shall be the duty of the Board to ensure that the policy of the Bank is directed towards the national interest and has due regard to the stability and balanced development of the economy of Tuvalu.

## **7 Constitution of the Board**

- (1) The Board shall consist of Directors who shall be —
  - (a) The Secretary for Finance, ex-officio, and
  - (b) 4 other Directors appointed by the Minister.
- (2) Directors shall be appointed for a period to be determined by the Minister but shall be eligible for re-appointment.
- (3) Directors shall be paid by the Bank such fees and allowances as may be determined by the Board and approved by the Minister.
- (4) The General Manager shall, unless otherwise directed by the Board or given leave of absence in writing by the Chairman of the Board, be present at all Meetings of the Board but shall not be entitled to any vote.

## **8 Disqualification**

- (1) No person shall be capable of appointment, as a Director, who —
  - (a) is a member of the Parliament of Tuvalu;
  - (b) is an officer or employee of the Bank;
  - (c) has been declared bankrupt or insolvent by a court in Tuvalu or elsewhere and has not received his discharge;

- (d) is found lunatic or becomes of unsound mind;
  - (e) has been convicted anywhere of an offence involving dishonesty.
- (2) A Director may resign his office by giving notice in writing to the Minister.
  - (3) The Minister shall by notice displayed at the Office of the Government, Funafuti, terminate the appointment of a director if —
    - (a) the Director is without the prior written permission of the Chairman absent from 3 successive meetings of the Board;
    - (b) in relation to the Director any circumstances arise which, if he were not a Director would make him incapable of appointment under section 8(1).
  - (4) The Minister, after consultation with the Board, may by notice displayed at the Office of the Government, Funafuti, terminate the appointment of any Director but shall provide that Director with the reason or reasons for so doing.

## **9 Chairman and Deputy Chairman**

- (1) The Minister shall appoint two Directors to be Chairman and Deputy Chairman respectively of the Board for such periods as the Minister determines but any such appointment shall cease immediately on the Chairman or Deputy Chairman ceasing to be a Director.
- (2) The Chairman or the Deputy Chairman may resign his respective appointment by giving notice in writing to the Minister.

## **10 Meetings of Board<sup>3</sup>**

- (1) The Board shall meet as often as the business of the Bank may require but not less frequently than once in every 2 months.
- (2) Such meetings shall be at such times and places as the Board shall determine or as the Chairman, or, in his absence, the Deputy Chairman shall direct.
- (3) The Chairman or, in his absence, the Deputy Chairman shall be chairman at meetings of the Board and in the absence of both the Chairman and the Deputy Chairman from any meeting or any part of any meeting one of the other Directors shall be appointed by the Board at or during such meeting to be chairman of such meeting or part thereof.
- (4) 3 Directors shall form a quorum at any meeting of the Board.
- (5) Each Director shall have one vote.
- (6) Questions arising at a Board meeting shall be resolved by a simple majority of the votes of the Directors present and voting, except that in the event of an

equality of votes, the chairman of the meeting or part thereof shall have a second or casting vote.

## 11 Conflict of interest

- (1) A Director shall fully disclose to the Board at the first meeting after, or at any meeting during the course of which the relevant facts have come or come to his knowledge, any interest direct or indirect in any matter before the Board:

Provided that the provisions of this subsection shall not apply to the Secretary for Finance in his official capacities.

- (2) After a Director has in pursuance of the last preceding subsection of this section disclosed any interest in any matter before the Board, he shall not take part in any further deliberation or in any decision of the Board on that matter:

Provided that the holding of any such interest shall not disqualify the interested Director for the purpose of constituting a quorum at any meeting or part thereof.

## 12 Management

The Bank shall be managed by the General Manager.

## 13 General Manager

- (1) The General Manager shall be appointed for a period not to exceed 5 years and may be removed by the Board but no appointment or removal shall be made without the approval of the Minister. A General Manager shall be eligible for reappointment.
- (2) Where the General Manager is precluded by illness, absence from Tuvalu or any other cause from exercising his functions as General Manager, the Minister may appoint an acting General Manager who shall act as the General Manager until such time as the General Manager is able to resume his functions.
- (3) The General Manager shall, except as may otherwise be provided in this Act, or by any resolution of the Board, have the power to act and to enter into contracts and to sign instruments and documents on behalf of the Bank, and may with the approval of the Board, delegate such powers to other officers of the Bank.
- (4) The General Manager shall devote the whole of his services to the Bank and shall not while holding office, without the approval of the Minister —
  - (a) receive any remuneration from any office or any employment other than with the Bank;

- (b) hold any other office or employment, whether for remuneration or not, except as a nominee of the Bank.
- (5) The General Manager shall be paid by the Bank such salary and allowances as determined by the Board and approved by the Minister.

#### **14 Appointment of officers**

The Bank may appoint on such terms and conditions as it shall determine such permanent employees as are necessary for the purpose of this Act to be officers of the Bank.

#### **15 Casual employees**

The Bank may also appoint such temporary and casual employees as are necessary from time to time.

### **PART IV - CAPITAL, PROFITS AND RESERVES**

#### **16 Capital**

- (1) The authorised capital of the Bank shall be one million dollars and may be increased from time to time by such amounts as may be proposed by the Board and approved by the Minister.
- (2) The issued capital of the Bank shall be —
  - (a) such sums as are contributed to be issued capital of the Bank as the Minister determines from time to time;
  - (b) such other sums as are transferred from the reserve fund.

#### **17 Profits**

- (1) The net profits of the Bank in any financial year shall be determined by the Board after meeting all current expenditures for that year and making provisions for such contingencies and purposes as are usually made by banks.
- (2) The net profits of the Bank in any financial year shall be allocated as the Board with the approval of the Minister determines.

#### **18 Reserve fund**

- (1) The Bank shall have a reserve fund which shall consist of such sums as are placed to the credit of the reserve fund as the Board with the approval of the Minister determines.

- (2) There may be transferred from the reserve fund to the issued capital of the Bank such sums as the Board with the approval of the Minister determines from time to time.

## **PART V - ANNUAL REPORTS AND FINANCIAL STATEMENTS**

### **19 Financial year**

The financial year of the Bank shall end on the 31st day of December in each year.

### **20 Annual reports and financial statements<sup>4</sup>**

- (1) The Board shall as soon as practicable after the end of each financial year and in any event not later than 6 months from the end of the financial year, prepare —
  - (a) a report on the operations of the Bank during that year; and
  - (b) financial statements, in the appropriate forms, in respect of that year.
- (1a) The report prepared under paragraph (1)(a) shall include details of the financial performance and effectiveness of the Bank as judged by performance measures that are relevant to the banking and finance sector of the Tuvalu economy and are prescribed by the Minister by notice.
- (1b) The initial performance measures referred to in subsection (1a) shall be prescribed by the Minister by notice no later than 31 August, 1996.
- (2) The Auditor General shall inspect and audit and report at least once in every financial year to Parliament on the accounts, transactions, finances and property of the Bank in accordance with section 172 of the Constitution of Tuvalu and subsection 35(1) of the Public Finance Act<sup>5</sup> and must be satisfied that —
  - (a) the accounts of the Bank have been properly prepared in accordance with generally accepted accounting principles, taking into consideration the requirement for good stewardship and developing practices with respect to the reporting of corporate finances; and
  - (b) expenditure has been incurred with due regard to economy and the avoidance of waste.
- (3) The Auditor General in the report required by subsection (2) of this section, shall state —
  - (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the corporation and give a

true and fair view of the financial operations and the current financial position of the Bank;

- (b) whether the books and records of the Bank have been properly kept and contain information adequate for the purposes of the audit;
- (c) whether the financial affairs of the Bank have been properly conducted; and
- (d) all other matters arising out of the accounts and statements which he considers should be made known to the Minister and Parliament.

## PART VI - MISCELLANEOUS

### 21 Guarantee by Government

- (1) The repayment of all moneys deposited in the Bank together with such interest as may be due thereon, is guaranteed by Government and accordingly, if at any time the assets of the Bank are insufficient to pay or meet the lawful claims of every depositor, the Minister shall cause such deficiency to be paid or met out of the Consolidated Fund as Statutory expenditures:

Provided that nothing in this section shall be construed as enabling any person having any claim against the Bank or on its fund to institute proceedings in respect thereof against the Government.

- (2) Where any payment is made out of the Consolidated Fund as Statutory expenditure in accordance with the terms of the preceding subsection the Minister shall, on the first sitting day of Parliament thereafter, lay a report before Parliament stating the amount of money paid and the reasons why the Bank was unable to discharge its functions.

### 22 Regulations

- (1) The Minister may make regulations for the conduct of the business of the Bank.
- (2) In particular and without prejudice to the generality of the foregoing powers such regulations may relate to —
  - (a) the deposit of money with, or the withdrawal of money from, the Bank;
  - (b) interest in deposits with the Bank;
  - (c) the payment out of money standing to the credit of, and to the delivery of bonds or securities held on behalf of, a deceased depositor, without production of probate of his will or of letters of administration to his estate;

- (d) the payment out of money standing to the credit of, and to the delivery of bonds or securities held on behalf of, a person under a legal incapacity.

## **23 Confidentiality**

Except for the purposes of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any law no Director, officer or employee of the Bank shall disclose to any person any information relating to the affairs of the Bank or relating to the amount of any account of any customer of the Bank and any person who contravenes the provisions of this section shall be guilty of an offence and shall on conviction be liable to imprisonment for 6 months or to a fine of \$200.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 58 – Acts 3 of 1980, 11 of 1982

Amended by Act 2 of 1996, commencement 15 April 1996, (by Act 4 of 2009)

Amended by Act 9 of 2002

<sup>2</sup> Cap. 46.20

<sup>3</sup> Amended by Act 2 of 1996

<sup>4</sup> Amended by Acts 2 of 1996, 9 of 2002

<sup>5</sup> Cap. 4.20