



*Tonga*

**TONGA DEVELOPMENT BANK  
(AMENDMENT) ACT 2021**

**Act 8 of 2021**





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# **TONGA DEVELOPMENT BANK (AMENDMENT) ACT 2021**

**Act 8 of 2021**

**AN ACT TO AMEND THE TONGA DEVELOPMENT BANK ACT [CAP  
16.13]**

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I assent,  
TUPOU VI,  
28<sup>th</sup> October 2021.

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

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## **1 Short title and Interpretation**

- (1) This Act may be cited as the Tonga Development Bank (Amendment) Act 2021.
- (2) In this Act, the Tonga Development Bank Act (Cap.16.13), as amended, shall be referred to as the “Principal Act”.

## **2 Section 2 amended**

Section 2 of the Principal Act is amended by –

- (a) repealing the definition of “**licensed financial institution**” in its entirety;

- (b) repealing the definition of the word “**Minister**” and replacing it with the following new definition -  
“**Minister**” means the Minister responsible for finance;”
- (c) repealing the definition of the words “**National Reserve Bank of Tonga**” and replacing it with the following new definition –  
“**National Reserve Bank of Tonga**” means the Reserve Bank established under the National Reserve Bank of Tonga Act (Cap 16.12);”;
- (d) repealing the definition of the words “**public enterprise**” in its entirety;
- (e) inserting the definition of the words “**serious misconduct**” in the appropriate place as follows –  
“**serious misconduct**” for the purposes of section 10(3)(a) shall have the same meaning as prescribed in the Articles of Association of the Bank;” and
- (f) inserting the definition of “**licensed bank**” in the appropriate place as follows –  
“**licensed bank**” means a bank that has been issued a license under Part II of the Banking Act 2020;”.

### **3 Section 3 repealed and replaced - Relationship with other Acts**

Section 3 of the Principal Act is repealed and replaced by the following new section 3 –

#### **“3 Relationship with other Acts**

“The Bank will be subject to requirements under the Banking Act and the National Reserve Bank of Tonga Act.”.

### **4 Section 5 repealed and replaced – Capital and shareholders**

Section 5 of the Principal Act is repealed and replaced with the following new section 5 –

#### **“5 Capital and shareholders**

- (1) The authorized capital of the Bank is such amount as the shareholders may determine from time to time and include in the Articles of Association of the Bank.
- (2) An ordinary share in the Bank confers on the shareholder, proportionate to the shares held by the shareholder —
  - (a) the right to vote on a poll at a meeting of the Bank on any resolution, including any resolution to —

- (i) appoint or remove a Director or auditor;
  - (ii) alter the Bank's Articles of Association;
  - (iii) approve a major transaction as defined under the Bank's Articles of Association;
  - (iv) approve an amalgamation of the Bank under section 230 of the Companies Act; and
  - (v) put the Bank into liquidation;
- (b) the right to a share in dividends authorised by the Board; and
- (c) the right to a share in the distribution of the surplus assets of the Bank.
- (3) Shares held by a shareholder shall entitle the shareholder to participate paripassu in proportion to the capital paid upon their shares respectively –
- (a) in all sums distributed by way of dividend; and
  - (b) in a winding up of all surplus assets,
- and shall belong to and be divided amongst the holders of the said shares paripassu 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 Section 6 repealed and replaced – Policy Directives

Section 6 of the Principal Act is repealed and replaced by the following new section 6 –

### “6 Policy Directives

- (1) The Shareholders may, by joint resolution, issue to the Board written policy directives necessary to give effect to the achievement of statutory objectives of the Bank, as specified under section 7 of this Act.
- (2) The Shareholders shall endeavour to reach an agreement, where there is a difference of opinion between them about whether a policy is appropriate to the achievement of the Bank's statutory objectives.
- (3) In the event that no agreement is reached by Shareholders in accordance with subsection (2), the majority shareholder's view shall prevail.”

**6 Section 7 amended – Functions of the Bank**

Section 7 of the Principal Act is amended by –

- (a) repealing sub-section (2) and replacing it with the following -
  - “(2) The Bank shall also from time to time, offer such banking products and services for the benefit of current and prospective customers and for shareholders of the Bank, while maintaining its general purpose to operate profitably.”; and
- (b) repealing sub-section (3) and replacing it with the following new section (3) –
  - “(3) In carrying out its functions, the Bank shall have due regard to the —
    - (a) general economic and development policies of Government as conveyed in writing by the Minister to the Board from time to time;
    - (b) purpose of the Bank to support the economic and social development of Tonga; and
    - (c) ensuring that the Bank operates successfully and profitably in all its commercial transactions.”.

**7 Section 8 amended – Powers of the Bank**

Section 8(3) of the Principal Act is amended by deleting reference to the “Financial Institutions Act” where it appears and replacing this with the “Banking Act 2020”.

**8 Section 9 repealed and replaced – Appointment of the Board of Directors**

Section 9 of the Principal Act is repealed and replaced by the following new section 9 –

**“9 Appointment of the Board of Directors**

- (1) The Board of Directors of the Bank, including the Chair, shall be appointed by the shareholders in accordance with the Articles of Association.
- (2) There shall be no less than 5 directors appointed to the Board in proportion to each Shareholder’s shares.
- (3) A person shall not serve as a director who is, or later becomes a member of Cabinet or the Legislative Assembly, or who registers as a candidate for the Legislative Assembly.
- (4) A person who –
  - (a) is under 18 years of age;

- (b) is an undischarged bankrupt or enters into a scheme of arrangement with his creditors;
- (c) is prohibited from being a director under the Companies Act;
- (d) is not a natural person;
- (e) is a director, officer or employee or who holds or exercises power over the voting stock of a locally registered Bank;
- (f) has acted in a similar position in a licensed bank in Tonga or abroad which has had its license revoked or which has been wound up by a court;
- (g) has, in Tonga or abroad, been convicted of an offence involving dishonesty; or
- (h) has, in the case of a person having professional qualifications, been disqualified or suspended from practising his profession by the order of any competent authority,

shall be disqualified from being appointed to, or continuing to act as, a director.

- (5) Each Director shall hold office for a term of up to 3 years and may be reappointed.
- (6) At the time of appointment, a Director shall receive a written letter of appointment from the Chair of the Board, or in the case of the Chair from the Minister, setting out the duration of his appointment, skill sets for which he has been appointed, remuneration and monetary benefits, duties of a Director, and any other terms which the Board or the Minister may deem relevant from time to time.
- (7) A Director shall act in good faith in the best interests of the Bank and shall not —
  - (a) act, or agree to the Bank acting, in a manner that contravenes the law;
  - (b) agree to, cause or allow the business of the Bank to be carried on in a manner likely to create a substantial risk or serious loss to the Bank; or
  - (c) agree to the Bank incurring an obligation unless the director believes at the time on reasonable grounds that the Bank shall be able to perform the obligation when it is required to do so.



- (8) All directors shall be paid such remuneration in respect of their services as may be determined by the Minister with the consent of Cabinet.”.

## **9 Section 10 repealed and replaced – Director ceasing to hold office**

Section 10 of the Principal Act is repealed and replaced by the following new section 10 –

### **“10 Director ceasing to hold office**

- (1) The position of a Director is vacated if the person holding that office –
- (a) resigns in accordance with subsection (2);
  - (b) is removed from office in accordance with subsection (3);
  - (c) is replaced by the shareholder that he represents;
  - (d) becomes disqualified from being a Director pursuant to section 9(3) or 9(4) of this Act; or
  - (e) dies.
- (2) A director may resign his office by giving one month’s notice, in writing, to the chair of the Board.
- (3) A shareholder may remove a Director of the Board for one or more of the following reasons –
- (a) serious misconduct;
  - (b) violation of the “fit and proper” Prudential Statement of the National Reserve Bank of Tonga;
  - (c) failure to attend a meeting of the Board for 3 consecutive meetings without formally notifying the Secretary; or
  - (d) failure to carry out the duties of a Director competently.
- (4) If a director is removed, resigns, dies or otherwise vacates his office before the expiry of the term for which he has been appointed, a suitably qualified and experienced person will be appointed at the earliest opportunity to fill the vacancy in accordance with the Articles of Association of the Bank.
- (5) Notwithstanding subsection (3), a decision of the Board shall not be nullified by reason only of a vacancy on the Board.”.

## **10 Section 12 amended – Powers of the Board**

Section 12 of the Principal Act is amended by repealing sub-section (3) and replacing it with the following new sub-section (3) –

- “(3) Prior to the board giving notice under subsections 2(d) and 2(e), the Board shall —
- (a) except in the case of an emergency, consult with the board of the subsidiary as to the matters to be referred to in the notice;
  - (b) within 14 days after the notice has been issued, provide a copy to the Shareholders.”.

## **11 Section 13 repealed and replaced – Board meetings and quorum**

Section 13 of the Principal Act is repealed and replaced by the following new section 13 –

### **“13 Board meetings and quorum**

- (1) The Board shall meet at least once every 2 months and at such other times as the Chair may require.
- (2) A Board meeting shall have a quorum when at least half of the Directors are present.
- (3) The Chair shall preside at every meeting of the Board at which he is present.
- (4) If the Chair has not yet been appointed under section 9(1) or is absent from a meeting of the Board, the Directors who are present shall appoint one of the appointed directors for the Government as the Acting Chair.
- (5) Subject to this Act, the Board shall determine its own rules and procedures for meetings, which shall be included in the Articles of Association of the Bank.”.

## **12 Section 14 amended – Conflicts of interest**

Section 14 of the Principal Act is amended by repealing sub-section (2) and replacing it with the following new sub-section (2) –

- “(2) The Secretary of the Board shall keep a record of the interests declared by Directors under subsection (1) and make this register available to members of the Board, the Chief Executive Officer and senior management of the Bank, upon request.”.

## **13 Section 15 repealed and replaced – Appointment of the Chief Executive Officer**

Section 15 of the Principal Act is repealed and replaced by the following new section 15 –

### **“15 Appointment of the Chief Executive Officer**

- (1) The Board shall appoint a Chief Executive Officer who shall be responsible for managing the Bank and implementing the decisions of the Board.
- (2) The person appointed under subsection (1) shall be properly qualified in accordance with the requirements of the Board and shall be considered in accordance with criteria set out in the “fit and proper” Prudential Statement of the National Reserve Bank of Tonga.
- (3) The Chief Executive Officer shall be employed under a written performance-based contract of employment with the Bank, which shall contain the following minimum provisions —
  - (a) the objectives to be achieved by the Bank;
  - (b) the performance expected of the Bank;
  - (c) a review of the performance of the Chief Executive Officer; and
  - (d) adherence by the Chief Executive Officer to the Bank’s statement of corporate intent.
- (4) The Board, in consultation with the Remuneration Authority, shall approve the level of remuneration and other monetary benefits of the Chief Executive Officer.
- (5) The Board may, in addition to the provisions in subsection (2), determine the terms and conditions for the employment of the Chief Executive Officer and include these in the Chief Executive Officer’s contract of employment.”

#### **14 Section 18 amended – Accounts and dividends**

Section 18 of the Principal Act is amended by –

- (a) repealing sub-section (1) and replacing it with the following new sub-section (1) –
  - “(1) The financial year of the Bank shall end on the 30th day of June of each year or on such day that the Board may determine:  
Provided that any change to the financial year of the Bank shall be notified in advance in the Tonga Government Gazette and published in at least 2 newspapers of general circulation in Tonga.”;
- (b) repealing sub-section (4) and replacing it with the following new sub-section (4) –
  - “(4) Dividends shall ordinarily be declared annually by the Board, unless restricted by the prudential statements of the National Reserve Bank of Tonga, 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.”.

### **15 Section 19 repealed and replaced – Audits**

Section 19 of the Principal Act is repealed and replaced by the following new section 19 –

#### **“19 Audits**

The Bank shall engage, with the approval of the shareholders and the Governor of the National Reserve Bank of Tonga, an auditor qualified under section 208 of the Companies Act to audit its financial statements.”.

### **16 Section 24 amended – Articles of Association**

Section 24(1) of the Principal Act is amended by repealing subsection 24(1)(a) and replacing it with the following new subsection 24(1)(a) -

“(a) 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, as adopted by shareholders, shall be lodged with the Registrar of Companies and the Governor of the National Reserve Bank of Tonga;”.

### **17 General amendment to Principal Act**

The Principal Act is amended by replacing the word “Chairman” with the word “Chair” wherever it appears.

Passed by the Legislative Assembly this **24<sup>th</sup>** day of **August** 2021.