

DEVELOPMENT BANK OF AMERICAN SAMOA

Title 28

FINANCE AND FINANCIAL INSTITUTIONS

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Chapter 01

DEVELOPMENT BANK OF AMERICAN SAMOA

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28.0101 Purpose of Bank.

In order to provide the people of American Samoa with lending and investment facilities and assist in the promotion of private enterprise and meet the needs of developing economy, the corporate body known as the "Development Bank of American Samoa", hereinafter referred to as "the Bank", is empowered under the charter of the Bank to carry out its purposes.

History:1972, PL 12-67 § 1.

28.0102 Charter of Bank-Powers.

The charter of the Bank is as follows in this section and 28.0103 through 28.0105:

- (a) The existence of the Bank shall be perpetual.
- (b) The principal office of the Bank shall be located at Pago Pago, Tutuila, American Samoa.
- (c) Subject to any existing limitation or limitations hereinafter enacted, the Bank, through its officers and agents, is authorized to engage in all banking functions, other than to receive deposits of money that will assist in the economic advancement of American Samoa.
- (d) In performing the functions authorized in subsection (c), the Bank shall have and exercise all lawful powers normally exercised by banking corporations, including the following:
 - (1) to adopt, alter and use a corporate seal;
 - (2) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;
 - (3) to sue and be sued in its corporate name;
 - (4) to acquire in any lawful manner, real, personal, or mixed property, either tangible or intangible, to hold, maintain, use, and operate such property, and to sell, lease, or otherwise dispose of such property.
- (e) The Board may, by majority vote of its entire membership, adopt, amend, or repeal bylaws of the Bank providing for the management of the business of the Bank, the organization, meetings, and procedures of the Board, the duties of the officers of the Bank, the officers required to furnish bonds and the amounts thereof, the form of the seal of the Bank, and the preparation and submission of required reports. Bylaws may not be adopted, amended or repealed except after 1 week's written notice to each Director.

History: 1972, PL 12-67 § 2, 3.

28.0103 Board-President.

(a) The affairs of the Bank must be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as "the Board", which consists of 10 members, 9 of whom are to be appointed by the Governor with the advice and consent of the Senate. The Chairman, who is a Board member, is elected by a majority of the Board. In the event of a vacancy for any reason whatsoever, the Governor may appoint a person to fill the vacancy until the next session of the Legislature. All Directors serve two year terms. All appointees may be reappointed to the Board and may be removed by the Governor for cause, provided the majority of the Board concurs in the cause or causes offered. At least 4 of the Board members are representatives of private business or financial interests in American Samoa. The President of the Development Bank is a nonvoting ex officio member of the Board of Directors. The President may not serve as Chairman of the Board of Directors.

(b) The Governor, with the approval of the Board, appoints a President of the Bank, with the advice and consent of the Senate. The President is responsible for the operation of the Bank with the assistance of such other officers and employees as the Board may authorize. The salary of the President and other officers is established by the Board.

History: 1972, PL 12-67 § 2, 3; 1973, PL 13-28 § 1; amd 1985, PL 19-3 § 1.

Amendments: 1973 Provided for approval by senate and omitted provisions relating to original appointments in subsection (a.).

1985 Increased board membership from 9 to 10; made general amendments to overall language of the section.

28.0104 Audit.

The books and records of the Bank shall be thoroughly examined and audited annually, following the end of the Bank's fiscal year, to show the statement of condition as of that fiscal year end and operations of the Bank for the 12-month period, by qualified independent certified

public accountants, preferably of recognized international standing, appointed by the Board. The government shall have the right through qualified personnel in the Department of Administrative Services, or its auditing offices, to examine the affairs of the Bank at reasonable intervals, to insure that the Bank is operating its affairs on a sound businesslike basis.

History: 1972, PL 12-67 § 2, 3.

28.0105 Capital investment-Loan guarantees.

(a) The capital of the Bank, together with all funds and credits that it may obtain from any loans, credits, grants, or other advances from the United States Government, or any related instrumentality empowered to make funds available to the Bank or any international finance institution or from private financial institutions that may provide loans or credits to the Bank, shall be available for investment by the Bank whether in the form of loans or stock in enterprises controlled by private individuals, partnerships, or corporations engaged in business or industry of whatever nature, that are deemed to conform to the objectives of furthering the economy of American Samoa except as may be limited by subsection (b). The loans or stock investments and all temporary short term investments must be made on the terms and conditions that the management of the Bank may determine and shall be approved by the Board of Directors and must be based on prudent and sound business judgment, as to the capacity of the prospective borrowers to repay, and all stock investments made where, in the judgment of the board, the prospects of successful operation of the business or industry seem warranted. The loans or credits authorized by this section may be only to qualified borrowers who are American Samoans or permanent residents of American Samoa.

(b) The Bank may guarantee loans or equipment leases by qualified lenders or equipment leasing firms, and it may guarantee construction performance bonds by bonding companies to entities fully or majority owned or controlled by American Samoans who although having reasonable assurance of repayment, do not qualify for loans, leases, or performance bonds under the requirements imposed by the original lender, lessor or bonding agency. The guarantees by the Bank may not exceed in the aggregate at any one time a total of fifty percent (50%) of the capital and surplus (excluding undivided profits) of the Bank; nor may the aggregate of Bank loans to and guarantees for any person or entity, or group of persons or entities with a common ownership, business, or financial interest, exceed 10% of the Bank's capital and surplus unless the loan or the performance of a contract is secured directly or under right of assumption of collateral property, tangible or intangible, carrying a written and expert appraisal of at least 35 percent in excess of the amount guaranteed. All guarantees shall be approved by the Bank's Board of Directors. In making guarantees and thus assuming contingent liability, the Bank shall, consistent with conservative Banking principles, keep at all times a portion of its capital funds invested in securities of the Treasury or other agencies of the United States.

(c) Commercial, or non-residential, guarantees under this section shall not exceed 90 percent of the loan amount or the total encumbrance granted to secure such loan and guarantee, whichever is less.

(d) Guarantees of home loans under this section may, in the discretion of the Bank Board of Directors, exceed 90% of the loan amount, provided that such loan and guarantee is fully secured and collateralized by the home to be constructed or improved.

History: 1972, PL 12-67 § 2, 3; amd 1973, PL 13-28 § 1, 2; 1978, PL 15-78; 1980, PL 16-81 § 1; amd 1987, PL 20-21 § 1; amd 2007, PL 30-4.

Amendments: 1973 Subsection (a): amended generally.

Subsection (b): deleted provisions relating to investment of capital funds by Bank.
1978 Subsection (b): amended generally.
1980 Subsection (b): added “of the total encumbrance granted” to next to last sentence.
1987 Replaced “Loans” with “Loan guarantees” in section title. Subsection (b): replaced language concerning loan guarantees with clarifying language and required approval of all guarantees. Subsections (c) and (d): added.

Case Notes:

Common stock issued by government corporation to a Bank in exchange for retirement of debt was not improper and was within authority of corporation’s board of directors. *Fa’atiliga v. Lutali*, 3 A.S.R.2d 139 (1986).

28.0106 Existence for public benefit-Tax exempt status-Government not liable for Bank’s obligation.

The Bank exists and operates solely for the benefit of the public and is exempt from any taxes or assessments on any of its property, operations, or activities. The debts and obligations of the Bank are not debts or obligations of the government, the government may not be responsible for any such debts or obligations.

History:1962, PL 7-11; 1969, PL 11-40.

28.0107 Annual report required.

(a) The Development Bank of American Samoa must prepare and file with the Governor and with the Legislature of American Samoa, annually, within 90 days after the close of its fiscal year, a report sworn to by an officer of the Bank stating:

- (1) the name and address of the Bank;
 - (2) a profit and loss statement of the last fiscal year and a statement of its assets and liabilities as of the close of the year; and
 - (3) the names and addresses of all Directors and officers of the Bank.
- (b) The report must be made available to the public by publication or otherwise.

History:1971, PL 12-6 § 1.

**28.0108 Economic development fund.
Repealed by PL 34-8 §2.**

History: 2008, PL 30-27; 2015, Repealed PL 34-8 § 2.

28.0109 Assets and liabilities existing upon enactment of this chapter.

All assets and liabilities of the Bank existing at the time of the enactment of this chapter inure to the benefit of and are binding upon the Bank created by this chapter.

History:1962, PL 7-11; 2008, PL 30-27.

28.0110 Loans to aliens.

A loan shall be made only if the manager of the Bank believes that there are reasonable prospects for its repayment. Prior to making a loan to an alien who entered American Samoa after 1955, the manager of the Bank shall consult with the immigration officer to determine the status of residency of the alien.

History:1968, PL 10-37; 2008, PL 30-27.

28.0111 Malfeasance of director.

(a) Any director who, under color of his office, violates any law or knowingly or negligently permits any officer, agent, or employee of the Bank to violate any law, or any provision of the Bank’s charter or bylaws, shall be subject to removal from the board.

(b) Any American Samoan who has reasonable grounds to believe that a director is subject to removal under this section may petition the High Court of American Samoa for removal of the director. If the court finds that the respondent director is subject to removal under this section, the court shall order his removal and provide for such other relief as the court deems just and appropriate.

History:1962, PL 7-11; 1969, PL 11-40; 2008, PL 30-27.

28.0112 Larceny and fraud-Penalty.

Any director, officer, employee, or agent of the Bank who, with the intent to injure or defraud the Bank or any other person, embezzles, steals, or misapplies any moneys, funds, credits, or securities; makes any false entry in a book, report, or record; or performs any other fraudulent act; and any person who, with like intent, aids or abets any director, officer, employee or agent in any of the acts described in this section shall be fined not more than \$3,000, or imprisoned for not more than 5 years, or both.

History:1969, PL 11-40; 2008, PL 30-27.

Chapter 02

TERRITORIAL BANK OF AMERICAN SAMOA

Sections:

- 28.0201 Definitions.**
- 28.0202 Purpose of Bank.**
- 28.0203 Reserved.**
- 28.0204 Board of directors.**
- 28.0205 Authority of the board of directors.**
- 28.0206 Charter of the Bank—Powers.**
- 28.0207 Chief Executive Officer.**
- 28.0208 Audit.**
- 28.0209 Reporting requirements.**
- 28.0210 Lending limits—Capital adequacy ratios—Loans to insiders.**
- 28.0211 Name in which business is conducted and titles taken—Execution of instruments.**
- 28.0212 Civil Actions—Venue.**
- 28.0213 Confidentiality of Bank records.**
- 28.0214 American Samoa Government Funds and Income of the Bank.**
- 28.0215 Tax exempt status.**
- 28.0216 Capital of the Bank.**
- 28.0217 Malfeasance of director.**
- 28.0218 Larceny and fraud.**

28.0201 Definitions.

The following definitions apply in this chapter:

- (a) “Territorial Bank of American Samoa” or “Bank” means the financial entity created by this chapter.
- (b) “Board” refers to the Board of directors of the Bank.
- (c) “CEO” refers to the Chief Executive Officer of the Bank.

(d) “Tier 1 Capital” is the core measure of a bank’s financial strength from a regulator’s point of view. It is composed of core capital, which consists primarily of common stock and disclosed reserves (or retained earnings), but may also include non-redeemable non-cumulative preferred stock.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0202 Purpose of Bank.

In order to provide the residents of American Samoa with deposit, lending and investment opportunities, and to assist in the promotion of commerce and industry, the American Samoa Government shall engage in the business of banking under the name of the Territorial Bank of American Samoa.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0203 Reserved.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0204 Board of Directors.

The Bank Board of Directors shall consist of 7 voting members and the Bank CEO, who shall serve in an ex-officio capacity, and shall not have voting rights. The seven voting members shall be nominated by the Governor and confirmed by the Legislature.

The at-large members shall each serve for a four year term, and should possess knowledge of the financial services and banking industries. The initial at-large members shall be nominated for staggered terms.

The directors shall be compensated at the rate of \$5,000 per annum, except for the Chairman who shall be compensated at the rate of \$6,000 per annum, and the CEO of the Bank, who shall receive no additional compensation beyond his salary as CEO.

The Chairman and other officers of the Board of Directors as may be called for in the by-laws of the Bank shall be selected from among the board members by a majority vote of the Board.

Duties of the Chairman:

- (1) The Chairman shall determine the times and places for the holding of Board meetings.
- (2) The Chairman shall preside at all meetings at which he or she is present.
- (3) In the event of a tie vote the Chairman or other presiding board member shall be entitled to cast the tie-breaking vote.

Recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause of an at-large director if the vacancy occurs while the Legislature is not in session. Recess appointments expire at the conclusion of the next following regular or special session of the Legislature if they are not confirmed during that session. Incumbents may continue to serve after the expiration of a term until a successor is appointed and confirmed. The at-large members may be re-appointed to the Board and may be removed by the Governor provided the majority of the Board concurs.

All Board business shall be conducted at meetings duly called by the Chairman. At any meeting a quorum shall be four board members. No business may be conducted unless a quorum is present.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0205 Authority of the Board of Directors.

The Board of Directors shall have the authority:

(a) To meet regularly with the management of the Bank to review the Bank's operations generally and to determine whether changes should be made to improve overall bank performance, management performance, customer service, and internal policies and procedures of the Bank.

(b) To review and implement as necessary recommendations relating to the establishment of additional objectives for the operation of the Bank.

(c) To appoint the CEO of the Bank as provided in Section 28.0207.

(d) To act and provide direction and guidance to the Bank management with respect to the powers and functions of the Bank. The CEO and the management team are responsible for the management of the Bank.

(e) To determine policy and objectives for the Bank.

(f) To form committees consisting of any three or more directors or officers of the bank, or both, to carry out any directives given to the committees by the Board. At the minimum there shall be an Audit Committee, a Loan Committee, and an Asset and Liability Management Committee.

(g) To determine, after the close of each fiscal year, the allocation of any net earnings between retained earnings and the payment of a dividend to the American Samoa Government. The payment of any dividend to the government shall be subject to appropriation by the Legislature in the same manner as any other public funds.

Before taking office, and annually at the end of each fiscal year, each Board member shall certify to and file a personal financial statement with the Bank. This statement shall include disclosure of any personal financial interests that the Board member, or his or her immediate family (spouses and children), has in any business entity that is a customer of the bank.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0206 Charter of Bank—Powers.

The charter of the Bank is as follows:

(a) The existence of the Bank shall be perpetual.

(b) The principal office of the Bank shall be located in Tutuila, American Samoa with offices throughout the Territory of American Samoa.

(c) Subject to any existing limitations hereinafter enacted, the Bank, through its officers and agents, is authorized to engage in all banking and trust company functions, including receiving deposits of money.

(d) In performing the functions authorized in subsection (c), the Bank shall have and exercise all lawful powers normally exercised by banking and trust corporations, including the following:

(1) To adopt, alter and use a corporate seal;

(2) To adopt and amend bylaws governing the conduct of its business and the exercise of its powers;

(3) To sue and be sued;

(4) To acquire in any lawful manner, real, personal, or mixed property, either tangible or intangible, to hold, maintain, use, and operate such property, and to sell, lease, mortgage, charge, or otherwise dispose of such property.

(5) To conduct and transact generally the business of a trust company and do all things, exercise all powers, and perform all functions that a trust company is authorized or empowered

to do, exercise, or perform under and by virtue of the laws of the Territory of American Samoa, or that it may be, by law, hereafter authorized to do, exercise or perform. This includes but is not limited to, the following:

(A) To take, receive and hold in trust, property both real and personal, for individuals, firms, companies, association, corporations, or other entities; and accept and execute trusts of every description that may be committed to it by any person, executor, administrator, administrator with will annexed, guardian, trustee, assignee, receiver, or by any corporation or other entity, or by any State or Territory of the United States, or by the United States, or by the courts of this or any other State or Territory, or of the United States;

(B) To accept employment and act as executor of any last will and testament and as administrator, or administrator with will annexed of the estates of deceased persons, and as assignee, receiver, trustee, or depository in all such matters; in a legal manner, attend to the management and settlement of estates, guardianships, assigneeships, and receiverships, and act as trustee, agent, or attorney for individuals, firms, companies, associations, corporations, or any other entity, and attend to any and all manner of trusts;

(C) Act as agent for the purpose of registering or countersigning the certificates of stock, bonds, or other indebtedness of any corporation, company, association, municipality, state, or public authority, on such terms as may be agreed on; act as transfer agent and registrar of certificates, stocks, or bonds;

(D) Purchase, hold, sell, and take such property, real and personal, as may be mortgaged, pledged, and hypothecated or conveyed to it in trust, or for its benefit for money loaned in pursuance of its regular business, and as may be purchased by it at sales under mortgages, pledges, hypothecations, or deeds of trust made for benefit for money so loaned or as may be conveyed to it by borrowers of money in satisfaction or in discharge of loans made; purchase, hold, own, and sell such personal property as may be legally done under the Revised Constitution and laws of the Territory of American Samoa; and do all of the above things and as such trust company in such manner as is consistent with the laws of the Territory of American Samoa.

(6) The Board, by majority vote, adopts, amends, and repeals bylaws of the Bank and provides direction and guidance to management on Bank business. This includes the organizational structure of the Bank, meetings and procedures of the Board; reviewing the duties and responsibilities of the Bank's senior management team; the bonding of Bank officers; the form of the Bank seal; and preparation and submission of Bank reports.

(7) To execute, make, draw, accept, endorse, discount, issue, and negotiate checks, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiable instruments and buy, sell, or otherwise deal in the same;

(8) Accept money on deposit at rates of interest as set by the Bank from time to time.

(e) The debts and obligations of the Bank are not the debts or obligations of the American Samoa Government.

History: 2015, PL 34-4; 2017, PL 35-1.

28.0207 Chief Executive Officer.

(a) The Chief Executive Officer (CEO) shall be the administrative head of the Bank and shall be responsible for the effective and efficient management of the Bank in accordance with this chapter and any bylaws, directives and policies set forth by the Board. The CEO position shall be selected by the Board of Directors based on criteria that show that the applicant has the necessary

qualifications, skills and experience to run a commercial bank. The terms and conditions of the employment of the CEO shall be determined by the Board.

(b) The CEO is responsible for the hiring of all Bank employees, including members of the senior management team, based on position descriptions as approved by the Board.

History: 2015, PL 34-4.

28.0208 Audit.

The Board shall contract with an independent certified public accounting firm for an annual audit of the Bank in accordance with generally accepted government auditing standards. The audit shall be conducted following the end of the Bank's fiscal year. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the Audit and Accounting guide for Depository and Lending Institutions as issued from time to time by the American Institute of Certified Public Accountants.

The American Samoa Government shall have the right through its Office of Financial Institutions to examine the affairs of the Bank at reasonable intervals to ensure that the Bank is operating in a safe and sound environment and is in compliance with applicable Federal and local banking laws and regulations.

History: 2015, PL 34-4.

28.0209 Reporting requirements.

(a) The Bank shall prepare and file annually with the Governor, the Legislature of American Samoa, and the Office of Financial Institutions, within 120 days after close of its fiscal year, a report of its condition sworn to by the CEO and the Chairman of the Board including:

- (1) The name and address of the Bank;
- (2) The Audited Financial and Profit and Loss Statement required by Section 28.0208; and
- (3) The names and addresses of all directors and officers of the Bank.

This report shall also be made available to the general public by publication or otherwise.

(b) The Bank shall prepare and file quarterly with the Office of Financial Institutions, within 30 days of the end of each calendar quarter, a report substantially in the form of the Consolidated Report of Condition and Income as requires by the Federal Financial Institutions Examinations Council.

History: 2015, PL 34-4.

28.0210 Lending limits—Capital adequacy ratios—Loans to insiders.

(a) Lending limits: The Bank's total outstanding loans and extensions of credit to one borrower, as defined at 12 CFR 32.2, shall conform to its bylaws and internal policies and procedures, which shall be developed by the Board with due regard for the lending limits imposed by Federal law and regulation upon federally-related financial institutions. The Office of Financial Institutions shall examine the lending limits including concentrations of credit to a particular borrower as part of its safety and soundness and compliance examinations.

(b) Capital ratios: The Bank's Capital Adequacy Ratios of risk-weighted assets to common equity Tier 1 Capital, to Tier 1 Capital, and to Total Capital must conform to its policies and procedures and be in compliance with the Office of Financial Institution's minimum capital ratio requirements.

(c) Loans to insiders: The Bank shall make no extension of credit to Insiders, as defined in 12 CFR Chapter II, Subchapter A, Part 215, also known as “Regulation O”, except in compliance with all the provisions, including reporting provisions of Regulation O, as they may be amended from time to time.

History: 2015, PL 34-4.

28.0211 Name in which business is conducted and titles taken—Execution of instruments.

All business of the Bank must be conducted in the name of the Territorial Bank of American Samoa. Title to property pertaining to the operation of the Bank shall be obtained and conveyed in the name of the Territorial Bank of American Samoa. All instruments shall be executed in the name of the Territorial Bank of American Samoa.

Within the scope of authority granted by the Board, the CEO may execute instruments of the Bank, including any instrument granting, conveying or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of the Bank may execute instruments on behalf of the Bank when authorized by the Board.

History: 2015, PL 34-4.

28.0212 Civil actions—Venue.

Civil actions may be brought against the Bank on account of claims for relief to have arisen out of transactions connected with the operation of the Bank upon condition that the provisions of this section are complied with. The action must be brought in the High Court of American Samoa.

In the case of vendor and service provider agreements, and loan participations involving multiple banks, the Bank may agree by contract to venue outside of American Samoa upon approval of its Board of Directors.

History: 2015, PL 34-4.

28.0213 Confidentiality of Bank records.

The following records of the Bank are confidential:

(a) Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by legal process. As used in this subsection, “customer” means any person who is transacting business with the Bank, including counter-parties, or has used or is using the services of the Bank, or for whom the Bank has acted as a fiduciary with respect to trust property.

(b) Internal or inter-agency communications which would not otherwise be available by law to a party other than in litigation with the Bank.

(c) Information contained in or related to Bank examinations, operating or condition reports prepared by, on behalf of, or for the use of the Office of Financial Institutions or any federal agency responsible for the regulation or supervision of any Bank activity.

(d) Information obtained from the Office of Financial Institutions which would not otherwise be available from that agency.

(e) The annual financial statement disclosures filed by members of the Bank’s Board, or any of its officers.

History: 2015, PL 34-4.

28.0214 American Samoa Government Funds and Income of the Bank.

Without exception, all governmental funds and deposits, including those earned or received by semi-autonomous agencies of the American Samoa Government, including but not limited to the American Samoa Power Authority, the American Samoa Telecommunications Authority, the American Samoa Community College, the American Samoa Medical Center Authority, the American Samoa Shipyard Authority, the American Samoa Visitors Bureau, the American Samoa Government Employees' Retirement Fund operating accounts, and the Feleti Barstow Public Library, shall be deposited with and maintained at the Bank by the person(s) having control of such funds. All revenues earned by the Bank on such deposits shall be credited to and become a part of the income of the Bank.

History: 2015, PL 34-4.

28.0215 Tax exempt status.

The Bank exists and operates solely for the benefit of the American Samoa Government and its people, and is therefore, exempt from taxes or assessments on any of its property, operations, or activities.

History: 2015, PL 34-4; amd 2017, PL 35-7.

28.0216 Capital of the Bank.

The initial capital for the Bank shall be no less than \$10,000,000.

History: 2015, PL 34-4.

28.0217 Malfeasance of director.

(a) Any director that violates any Federal or local law or knowingly or negligently permits any officer, agent or employee of the Bank to violate any Federal or local law or any provision of the Bank's charter or bylaws shall be subject to removal from the Board.

(b) Any American Samoan who has reasonable grounds to believe that a director is subject to removal under this section may petition the High Court of American Samoa for removal of the director. If the court finds that the respondent director is subject to removal under this section, the court shall order his removal and provide for such other relief as the court deems just and appropriate.

History: 2015, PL 34-4.

28.0218 Larceny and fraud.

Any director, officer, employee or agent of the Bank who, with intent to injure or defraud the Bank or any other person, embezzles, steal, or misapplies any moneys, funds, credits or securities; makes any false entry in a book, report, or record; or performs any other fraudulent act; and any person who, with like intent, aids or abets any director, officer, employee or agent of any acts described shall be subject to termination and prosecution under the laws of American Samoa.

History: 2015, PL 34-4.

(RESERVED)

Chapter 09

U.S. LOAN AGREEMENTS

Section

28.0901 Authorization for implementation of U.S. Public Law No. 106-113.

28.0901 Authorization for implementation of U.S. Public Law No. 106-113.

(a) The Governor, or his designee, is authorized to enter into such agreements, contracts and arrangements with the Secretary of the United States Department of the Interior (and any other officials of the United States Government as may be necessary), and to take all such other legal ministerial actions as may be required to implement Section 125 of “the Act making appropriations for the Department of Interior and related agencies for the fiscal year ending September 30, 2000 and for other purposes (H.R. 2466; P.L. No. 106-113)”, hereinafter referred to as “the Act.”

(b) The Governor is specifically authorized to enter into a loan agreement with the Secretary of Interior in accordance with the terms and conditions of Section 125 of the Act, the repayment of such loan principal and the interest thereon to be derived from an irrevocable assignment of funds as they become due and payable (annually or otherwise) to the American Samoa Government from the Escrow Account established under the terms and conditions of the Tobacco Master Settlement Agreement (and the subsequent Enforcing Consent Decree hereinafter collectively referred to as “the Agreement”) entered into on November 23, 1998, and the judgment granted by the High Court of American Samoa on January 5, 1999 in Civil Action No. 119-98.

(c) The Governor is further authorized to pledge the full faith and credit of the American Samoa Government as additional security for the loan as required by Section 125(b)(1) of the Act.

(d) The Governor, or his designee, shall provide regular monthly reports to the Legislature on the progress of debt payments undertaken, regular quarterly reports to the Legislature on fiscal and managerial reform programs instituted in relation to Section 125(d) of the Act and regular annual reports to the Legislature on the status of repayment of the loan.

History: 2000, PL 26-25.

Chapter 10

BANKS

Sections:

- 28.1001 Short title.**
- 28.1002 Regulations of Banks.**
- 28.1003 Suspension of operations.**
- 28.1004 Power of Governor to adopt rules.**
- 28.1005 Title to or interest in communal land prohibited-Exception.**

28.1001 Short title.

This chapter shall be known and may be cited as the “American Samoa Banking Act of 1975”.

History: 1975, PL 14-16 § 1.

28.1002 Regulations of Banks.

A Bank may not do business in American Samoa unless:

- (1) it is wholly owned by the American Samoa Government; or
- (2) it is a corporation organized under the Banking laws of the United States or the Banking laws of a state of the United States or the general corporation laws of American Samoa, 30.0101 et seq., for the exclusive purpose of engaging in the general Banking business; and
- (3) it is a member of the Federal Deposit Insurance Corporation (FDIC); and
- (4) it has been approved by the Comptroller of the currency and FDIC if a national Bank; and
- (5) it has obtained the approval of the proper official of the state, if a state Bank; and
- (6) it shall have been authorized and licensed to conduct the business of banking in American Samoa by the Office of Financial Institutions and Governor of American Samoa; and
- (7) if a state Bank, the charter, statutes, rules, and regulations under which it operates have been examined and found adequate by the Office of Financial Institutions and the Governor of American Samoa.

History: 1975, PL 14-16 § 1; amd 2015, PL 34-4.

28.1003 Suspension of operations.

(a) In the event a Bank has had an application for FDIC insurance accepted for filing, but not yet approved, the Governor may suspend the operation of subsection (2) of 28.1002 for a period not exceeding one year upon conditions he may determine. The conditions imposed may include, but shall not be limited to, the following general areas of concern:

- (1) public notice;
- (2) accounting and record keeping;
- (3) insurance;
- (4) management and operations expertise;
- (5) Board of Directors membership;
- (6) loan policy and limits;
- (7) dividend policy; and
- (8) investment policy;

and shall be set forth in a public document to be known as “Certificate of Temporary Suspension of Requirement to obtain FDIC Insurance”.

(b) In the event FDIC insurance has not been obtained within one year from the date the above certificate is granted and the application for insurance is still pending, the Governor may grant up to 8, 90-day, extensions within which to comply.

(c) In the event the Bank does not obtain FDIC insurance within the one-year period and any extensions if granted, or if the Bank fails to comply with any of the conditions of the certificate, the Governor may immediately suspend the operation of that Bank, freeze its assets, and liquidate its business in accordance with Banking rules and regulations and generally accepted banking principles.

History: 1979, PL 16-30 § 1; amd 1981, PL 17-13 § 1.

28.1004 Power of Governor to adopt rules.

(a) The Governor has the power to adopt rules under the Administrative Procedure Act, 4.1001 et seq., and from time to time amend, supplement, and revoke, in whole or in part, rules not inconsistent with this act or the laws of this Territory or the laws of the United States of America governing the business of banking in American Samoa.

(b) The Governor shall adopt the rules under subsection (a) by 1 July 1978.

History: 1975, PL 14-16 § 1; amd 1978, PL 15-76 § 1.

Amendments: 1978 Designated existing section as subsection (a) and added subsection (b).

28.1005 Title to or interest in communal land prohibited-Exception.

(a) No bank, or corporation engaged in banking, may acquire or hold title to any land, except that a bank authorized to do business in American Samoa may acquire and hold title to land in trust for beneficial owners who are eligible under the laws of American Samoa to acquire and hold title to land, and may acquire and hold a leasehold interest in land, subject to the general restrictions and limitations on the alienation of land contained in the laws of American Samoa.

(b) This section does not apply to “Freehold lands”, as defined in 37.0201.

History: 1969, PL 11-42; 1975, PL 14-16 § 2; readopted 1980, PL 16-88 § 1, 2; 1982, PL 17-31 § 1, 2.

Reviser’s Comment. The law dealing with alienation of land contained in the A.S.C.A., as recodified by the Legislative Reference Bureau had been questioned as to whether the requirements of Art. 1, § 3 and Art II, § 9. American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-48 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

Chapter 11

SAVINGS AND LOAN INSTITUTIONS

Sections:

- 28.1101 Short title.**
- 28.1102 Regulations of business.**
- 28.1103 Power of Governor to adopt rules.**

28.1101 Short title.

This chapter may be known and cited as the “American Samoa Savings and Loan Act of 1978”.

History: 1978, PL 15-70.

28.1102 Regulations of business.

A savings and loan institution may not do business in American Samoa unless:

(1) it is a corporation organized under the savings and loan laws of the United States (12 U.S.C. § 1461 et seq.), or under the savings and loan laws of a state or territory of the United States, or the general corporation laws of American Samoa (30.0101 et seq.) for the exclusive purpose of engaging in the general business of savings and loan Banking business;

(2) it is a member of the Federal Savings and Loan Insurance Corporation;

(3) it has been approved by the Federal Home Loan Bank Board, if a federal savings and loan association;

(4) it has obtained the approval of the proper official of the state, or territories if a state or territorial savings and loan;

(5) it shall have been authorized and licensed to conduct the business of savings and loan

Banking in American Samoa by the Territorial Planning Commission and Governor of American Samoa;

(6) if a state or Territory savings and loan, the charter, statutes, and rules under which it operates have been examined and found adequate by the Territorial Planning Commission and the Governor of American Samoa; and

(7) it reserves 50 percent of its deposits generated from within the Territory to mortgage loans to be loaned here in the Territory. This subsection specifically applies to all institutions regulated by this chapter, whether in place in the Territory when this act is effective or hereafter admitted.

History: 1978, PL 15-70.

28.1103 Power of Governor to adopt rules.

The Governor has the power to adopt rules under the Administrative Procedure Act, 4.1001 et seq., and from time to time amend, supplement, and revoke, in whole or in part, rules not inconsistent with this chapter or the laws of this Territory or the laws of the United States of America governing the business of savings and loan banking in American Samoa.

History: 1978, PL 15-70.

Chapter 12

OFFICE OF FINANCIAL INSTITUTIONS

Sections:

- 28.1201 Purpose of the Office of Financial Institutions.**
- 28.1202 Selected financial institutions.**
- 28.1203 Powers and duties of OFI.**
- 28.1204 Removal of officers, directors, and employees of Financial Institutions.**
- 28.1205 Cease and desist orders.**
- 28.1206 Assessment of civil money penalties.**
- 28.1207 Taking of testimony and enforcement of orders.**
- 28.1208 Appointment of receivers.**
- 28.1209 Records of OFI.**
- 28.1210 Records—Confidential.**
- 28.1211 Appointment of OFI commissioner—Qualifications.**
- 28.1212 Supervision and examination by OFI of financial institutions.**
- 28.1213 Compensation of the OFI commissioner.**
- 28.1214 Appointment of assistant commissioner and assignment of titles within OFI.**
- 28.1215 Officers and employees to be disinterested.**
- 28.1216 Yearly assessment of financial institutions.**
- 28.1217 Reports and examinations by federal regulatory agencies and local agencies.**
- 28.1218 Commissioner to keep bank record.**
- 28.1219 Obstructing or misleading examiner—Penalty.**
- 28.1220 Licensing.**

28.1201 Purpose of the Office of Financial Institutions.

The Legislature finds that it is in the interest of the people of American Samoa to establish within the Department of Treasury the Office of Financial Institutions (“OFI”) with authority to

regulate and examine any business that engages in lending, investing and deposit activities in American Samoa.

History: 2015, PL 34-3.

28.1202 Selected financial institutions.

OFI shall have the authority to regulate all financial institutions that operate or conduct business within American Samoa including but not limited to banks, holding companies, credit unions, trust companies and retirement funds, consumer money lenders, money brokers, mortgage loan originators, collection agencies, money service bureaus, debt settlement service providers, deferred presentment service providers, and any ASG-owned financial and depository institutions.

History: 2015, PL 34-3.

28.1203 Powers and duties of OFI.

OFI may adopt rules for the regulation of financial institutions doing business in American Samoa to the extent that the rules do not conflict with any law or regulation of the American Samoa Government or that of the United States. OFI shall make and enforce such orders as are necessary or proper to protect the public depositors, other customers, shareholders, members, or creditors of those financial institutions named in this chapter. OFI will be headed by a commissioner as appointed by the Governor.

History: 2015, PL 34-3.

28.1204 Removal of officers, directors, and employees of Financial Institutions.

(a) OFI may issue and serve, upon any current or former officer, director, or employee of a financial institution subject to its jurisdiction a complaint stating:

(1) That the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:

(A) Violating any law, regulation, order, or written agreement with OFI.

(B) Engaging or participating in any unsafe or unsound practice.

(C) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

(D) Breaching any local or federal compliance obligations.

(2) The term of the suspension or removal from employment and participation in the conduct of the affairs of the financial institution.

(b) The complaint must contain a notice of opportunity for hearing. The date for the hearing shall be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of a financial institution. The current or former officer, director or employee may waive the thirty-day notice requirement.

(c) If no hearing is requested within twenty days of the date the complaint is served upon the current or former officer, director, or employee, or if a hearing is held and OFI finds that the record so warrants that a financial institution has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, customers, members, or creditors could be seriously prejudiced, it may enter a final order suspending or removing the current or former officer, director, or employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.

(d) A contested or default suspension or removal order is effective immediately upon service on the current or former officer, director, or employee and upon a financial institution. A consent order is effective as agreed.

(e) Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial institution or other entity licensed to do business in the territory until the suspension or removal is terminated by the OFI.

History: 2015, PL 34-3.

28.1205 Cease and desist orders.

(a) OFI may issue and serve upon any financial institution, subject to its jurisdiction, a complaint stating the factual basis for the OFI's belief that the financial institution is engaging in any of the following conduct:

(1) An unsafe or unsound practice or breach of local or federal regulatory compliance obligations.

(2) A violation in the past or on a continuing basis of any law, regulation, OFI order, or written agreement entered into with the financial institution.

(b) The complaint must contain a notice of opportunity for hearing. The date for the hearing shall be set not less than thirty days after the date the complaint is served upon the financial institution. The financial institution may waive the thirty-day notice requirement.

(c) If the financial institution fails to respond to the complaint within twenty days of its service, or if a hearing is held and OFI concludes that the record so warrants, OFI may enter an order directing the financial institution to cease and desist from engaging in the conduct which was the subject of the complaint and to take such corrective action as may be ordered.

(d) OFI may enter an emergency, temporary cease and desist order if it finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial institution, or substantial prejudice to the depositors, other customers, shareholders, members, or creditors of the financial institution. An emergency, temporary cease and desist order is effective immediately upon service on the financial institution, and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner.

(e) An emergency, temporary cease and desist order may be issued without an opportunity for hearing. The financial institution, upon which such an order is served, may apply to the High Court of American Samoa for an order enjoining the operation of the emergency, temporary order.

History: 2015, PL 34-3.

28.1206 Assessment of civil money penalties.

(a) OFI may assess a civil money penalty against a financial institution, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial institution, upon finding any failures to comply with this chapter or the rules promulgated hereunder, which includes but is not limited to:

(1) Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued;

(2) Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings;

- (3) Payment of dividends prohibition due to safety and soundness concerns;
- (4) Loans to directors, officers, and employees in violation of local and federal laws;
- (5) The intentional filing of inaccurate or misleading financial reports;
- (6) Violations of loan limitations as set by local and federal laws; or
- (7) Failure to file notice of change of control of the institution.

(b) OFI commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for their belief that a violation has occurred and the amount of civil penalties that the complaint seeks to impose. The complaint must contain notice of an opportunity for an administrative hearing. The date for the hearing shall be set not less than thirty days after the date the complaint is served upon the respondent. The assessment of civil money penalties may not be imposed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.

(c) If the respondent fails to answer the complaint within twenty days of service, OFI may enter an order imposing civil money penalties upon the respondent. If a hearing is held and the OFI concludes that the record so warrants, OFI may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of OFI or by the High Court of American Samoa.

(d) In determining the amount of civil penalty imposed, the commissioner shall consider whether good faith was exercised, the gravity of the violation and any previous violations. The OFI may not impose a civil money penalty in excess of twenty-five thousand dollars for each occurrence and one thousand dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to OFI and deposited in a special regulatory fund account with the Territorial Bank of American Samoa.

History: 2015, PL 34-3.

28.1207 Taking of testimony and enforcement of orders.

OFI has the power to subpoena witnesses, administer oaths, and generally to do and perform any and all acts and things necessary to execute the powers and duties imposed upon it in this statute and to enforce the provisions of law relating to financial institutions.

History: 2015, PL 34-3.

28.1208 Appointment of receivers.

Except as otherwise provided in this chapter, OFI shall have the authority to appoint a receiver for any insolvent financial institutions under its regulatory supervision. Such receiver shall have the same power and authority, and their acts shall have the same validity, as if they had been appointed under and by the direction of the High Court of American Samoa. Nothing herein contained may be construed so as to limit the power of the High Court of American Samoa to appoint receivers of such financial institutions at any stage of the proceedings and thus to terminate the receivership ordered by the OFI.

History: 2015, PL 34-3.

28.1209 Records of OFI.

OFI shall keep a full and complete record of all their proceedings and of all orders made by them. All reports, except supervisory reports of examination, made by or filed with OFI relating to any financial institution, must be open to inspection and examination by stockholders, shareholders, depositors, creditors, and sureties on any bonds of any such institution or on the bonds of any officer or employee thereof, subject, however, to the following restrictions:

(1) A stockholder, shareholder, depositor, creditor, or surety of any institution desiring to inspect the information specified above of any institution shall make a written request for the inspection.

(2) A written request must:

(A) Specify the information to which access is requested; and

(B) Give the reasons for the request.

(3) Upon written request, OFI may disclose information only upon determining to the extent that good cause exists for the disclosure.

(4) Either prior to or at the time of any disclosure, OFI shall impose such terms and conditions it deems necessary to protect the confidential nature of the information, the financial integrity of the financial institution to which the information relates, and the legitimate privacy interests of any individual named in the information.

History: 2015, PL 34-3.

28.1210 Records—Confidential.

(a) All facts and information obtained by OFI in any of the following manners are confidential, except as provided in this chapter:

(1) In the course of examining financial institutions and other licensed entities under the supervision of OFI, or in the course of receiving audit reports, reports of examinations and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of OFI.

(2) From the Federal Reserve System, Federal Deposit Insurance Corporation, or any other Federal or local financial supervisors.

(3) In the course of investigating an institution under the supervision of, or licensed by OFI until such investigation is complete.

(4) In the form or nature of an application for a charter, license, or permission in which the information meets any of the following criteria:

(A) Trade secrets and commercial or financial information.

(B) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(C) Information contained in the application form which is in the nature of any examination report information. Determination of what required application information falls within each category shall be made by OFI.

(b) When OFI is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under OFI's supervision, OFI shall divulge only such information as allowed in certain subsections as is necessary and sufficient for the action taken or to be taken.

(c) OFI may furnish information to the Attorney General, other agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations. Information furnished to any third party which is confidential in OFI's possession remains confidential in the possession of the third party. Information received by OFI

from any third party which is confidential in the third party's possession remains confidential in OFI's possession.

(d) OFI may furnish information and enter sharing agreements as to matters of mutual interest to an official or examiner of the Federal Reserve System, FDIC or any other Federal and local regulators or oversight arms.

(e) OFI shall not be required to disclose the name of any debtor of any financial institution, or licensed entity reporting to or under the supervision of OFI or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided.

(f) This section does not limit the right of access of stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent provided by sections this chapter.

(g) The standards for confidentiality and disclosure by OFI as set forth shall apply equally to Federal and local regulators as well as staff of OFI.

History: 2015, PL 34-3.

28.1211 Appointment of OFI commissioner—Qualifications.

The commissioner shall be appointed by the Governor and confirmed by the Legislature. The commissioner shall hold office for a term of four years unless the commissioner is removed sooner as herein provided. The commissioner must possess knowledge of the financial services industry with a preferred experience as a federal, state or territorial regulator, or be experienced as a result of holding a senior management position with a federal, state, or territorial regulated institution.

The commissioner may not be an incumbent of any other public office within the American Samoa Government and may not own, hold, or control any stocks, capital, or bonds, or hold the office of trustee, assignee, officer, agent, or employee of any financial institution under the OFI's jurisdiction, or of any corporation engaged in the business of guarantying or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries.

The Governor may remove from office any commissioner who violates or fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

History: 2015, PL 34-3.

28.1212 Supervision and examination by OFI of financial institutions.

OFI shall exercise supervision over the business affairs of all financial institutions conducting business within the Territory of American Samoa. Either the commissioner or one or more examiners shall visit each financial institution at least once each twenty four months to examine its affairs and ascertain its financial condition including determining its safety and soundness under the regulation promulgated pursuant to this chapter. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books.

OFI shall also examine the validity of mortgages held by the financial institutions and shall see that all of the mortgages are properly recorded. OFI shall investigate the method of operation and conduct of the institutions and their systems of accounting to ascertain whether the methods conform to the law and with safe and sound banking usage and principles.

OFI shall inquire into and report any infringement of the federal and local laws governing those financial institutions and for that purpose may examine the officers, agents, and employees of the institutions and all persons doing business therewith.

OFI may examine, or cause to be examined, or review the books and records of any subsidiary or parent corporation of a bank under its jurisdiction and may require the bank to provide information on the holding company that owns the bank.

OFI shall prepare at least annually a report on the state of financial institutions conducting business in American Samoa. This report must be submitted to the Governor and the Legislature.

History: 2015, PL 34-3.

28.1213 Compensation of the OFI commissioner.

The compensation of the commissioner is to be determined by the Governor. The commissioner is allowed actual expenses incurred in the discharge of the commissioner's official duties.

History: 2015, PL 34-3.

28.1214 Appointment of assistant commissioner and assignment of titles within OFI.

The commissioner may appoint, remove, and assign appropriate titles to such deputy examiners and such other employees as in the commissioner's judgment may be necessary for the proper discharge of the business of the Office of Financial Institutions.

The commissioner may select and designate one of said deputy examiners to be the assistant commissioner to act during the absence or disability of the commissioner, and in such cases the assistant commissioner so designated has charge of the office and shall administer its affairs. OFI's organizational chart is to be reviewed and approved by the Treasurer and the Governor.

History: 2015, PL 34-3.

28.1215 Officers and employees to be disinterested.

No officer or employee of OFI may have any interest, directly or indirectly, in any financial institution under the jurisdiction of OFI. However, this prohibition does not apply to being customers of local financial institutions or membership in a credit union or savings and loan association. For purposes of this section, "interest" means ownership of or investment in such institutions.

History: 2015, PL 34-3.

28.1216 Yearly assessment of financial institutions.

Every financial institution under the jurisdiction of OFI, shall pay a yearly assessment. This assessment is to be determined by OFI and ASG to help defray that portion of the Office's budget relating to the regulation and supervision of financial institutions subject to the jurisdiction of OFI.

If any such corporation or institution or branch is delinquent more than twenty days in making such payment, the commissioner may issue an order suspending the functions of such delinquent institution, or branch until payment of the amount due.

The commissioner may assess a penalty of one hundred dollars for each day that the assessment fee is delinquent. All fees and penalties under this section must be deposited with the treasurer and deposited in the financial institutions regulatory fund.

History: 2015, PL 34-3.

28.1217 Reports and examinations by federal regulatory agencies and local agencies.

The commissioner may accept, in lieu of any examination authorized or required by this title, to be conducted by the Office of any banking institution, the examination that may have been made of the institution within a reasonable period by the Federal Deposit Insurance Corporation, Federal Reserve System or other federal regulatory agency. A copy of any examination is to be furnished to the commissioner.

The commissioner also may accept any report relative to the condition of any banking institution which may have been obtained by that institution within a reasonable period in lieu of any similar report that the commissioner is authorized by this title to require of the institution.

The commissioner may also furnish to the federal regulators copies of OFI examinations conducted on financial institutions.

History: 2015, PL 34-3.

28.1218 Commissioner to keep bank record.

The commissioner and OFI shall keep a record of each institution under its jurisdiction, which shall include name and location of each financial institution; its capitalization and any changes thereof; its directors and officers if a corporation or principle owners if a partnership or other form of business entity; its shareholders unless a publically-owned and traded institution; and any other information deemed relevant.

History: 2015, PL 34-3.

28.1219 Obstructing or misleading examiner—Penalty.

Every person who, when required to do so, shall refuse or neglect to make any return or exhibit, or to make or give any information required by the examiner, or who willfully shall obstruct or mislead an examiner in the execution of the examiner's duties, or who in any manner shall hinder a thorough examination by the examiner, shall be guilty of a Class "D" felony.

History: 2015, PL 34-3.

28.1220 Licensing.

All financial institutions identified by this chapter must register with OFI at least annually to do business in American Samoa. OFI will notify all covered institutions of the requirement and the procedure to be followed through the publication of rules promulgated hereunder.

History: 2015, PL 34-3.

Chapter 13

MONEY SERVICES BUSINESSES

Sections:

- 28.1301 Purpose.
- 28.1302 Authority.
- 28.1303 Definitions.
- 28.1304 Money services business license.
- 28.1305 Money services business license application.
- 28.1306 Denial of money services business license.
- 28.1307 Issuance of money services business license.
- 28.1308 Expiration and renewal of money services business license.
- 28.1309 Registration of authorized agents.
- 28.1310 Examination.
- 28.1311 Reporting requirements.
- 28.1312 Confidentiality of information.
- 28.1313 Maintenance of forms.
- 28.1314 Forwarding of funds.
- 28.1315 Security deposit.
- 28.1316 Trust fund.
- 28.1317 Order to cease unlawful practice.
- 28.1318 Suspension or revocation of license.
- 28.1319 Criminal and civil penalties.
- 28.1320 Fees.
- 28.1321 Money transmission fee.
- 28.1322 Schedule of requirements.
- 28.1323 Rulemaking.

28.1301 Purpose.

The purpose of this chapter is to establish policies and procedures to implement and provide uniform enforcement of money services businesses; to require, administer, comply and enforce all financial licenses issuable under this chapter; and to establish administrative and appeal procedures.

History: 2019, PL 36-4 § 1.

28.1302 Authority.

The authority to administer this statute is given to the Commissioner of the Office of Financial Institutions or their designee.

History: 2019, PL 36-4 § 1.

28.1303 Definitions.

- (a) “Applicant” means a person filing an application for a license under this chapter.
- (b) “Authorized agent” means a person designated by the licensee under this chapter to engage in the money service business on behalf of a licensee.

(c) “Commissioner” means the Commissioner of Office of Financial Institutions or their designee.

(d) “Foreign currency exchanger” means the business of receiving and/or selling foreign currency notes.

(e) “Key shareholder” means a person, or group of persons acting in concert, who is the owner of 20% or more of a class of an applicant’s stock.

(f) “Licensee” means any person or business entity licensed pursuant to this statute to engage in the money service business.

(g) “Money transmission” means engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.

(h) “Money transmitter” means any person engaging in the business of money transmission.

(i) “Money services business” includes each agent, agency, branch, or office within the Territory of American Samoa of any person doing business, whether or not on a regular basis or as an organized business concern, as a money transmitter, a foreign currency exchanger or in one or more of the capacities otherwise identified by the Commissioner through regulation. The term “money services business” shall not include a “bank” as that term is defined in Title 31, Code of Federal Regulations, Chapter X, nor shall it include a person registered with and regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(j) “Treasurer” means the Treasurer of the American Samoa Government.

(k) “Treasury” means the Department of Treasury.

History: 2019, PL 36-4 § 1.

28.1304 Money services business license.

(a) No person shall engage in the money services business without first obtaining a license from the Office of Financial Institutions. The applicant must also obtain a general business license after the issuance of a money services business license.

(b) Authorized agents operate under a licensee and are not required to obtain a license.

(c) Provisions of this chapter and regulations promulgated under this chapter shall not apply to bank licensed to do business in the territory.

History: 2019, PL 36-4 § 1.

28.1305 Money services business license application.

(a) The application for a license shall be in writing and shall contain the following information:

(1) exact name of applicant, the applicant’s principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant’s business records;

(2) the address from which the business is to take place and telephone number and if the applicant is a business entity, the names and addresses of the directors, officers, and any key shareholder;

(3) the history of the applicant’s material litigation and criminal convictions for the seven-year period before the date the application is submitted;

(4) a description of the activities conducted by the applicant and a history of operations;

- (5) a description of the business activities in which the applicant seeks to be engaged in the territory;
- (6) the name and address of every authorized agent of the applicant; and
- (7) any other information which the Commissioner may require.

History: 2019, PL 36-4 § 1.

28.1306 Denial of money services business license.

- (a) The Commissioner may deny an application for a license under this chapter if:
 - (1) granting of the license will be against the public interest;
 - (2) applicant has been convicted of, or pled guilty or no contest to, a felony:
 - (A) during the seven years preceding the day on which the individual files an application; or
 - (B) at any time if the felony involves an act of:
 - (i) fraud;
 - (ii) dishonesty;
 - (iii) breach of trust; or
 - (iv) money laundering;
 - (3) the applicant does not intend to actively and in good faith carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;
 - (4) the applicant, and if a business entity, a key shareholder, director or officer thereof, is not of good business reputation or is lacking in integrity; or
 - (5) the applicant has knowingly or willfully made a misstatement in an application to the Commissioner for a license, or any document filed in support of such application, or any other person acting on behalf of the applicant has made a false statement.

History: 2019, PL 36-4 § 1.

28.1307 Issuance of money services business license.

- (a) Upon the filing of a complete application, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant.
- (b) The Commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this territory if the Commissioner finds that:
 - (1) applicant paid all required fees;
 - (2) applicant has fulfilled the requirements imposed by this chapter; and
 - (3) applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community.
- (c) A licensee shall conduct its business at its designated office location. The license is location specific. A licensee is prohibited and restricted from conducting or performing transactions or the collection of funds outside the premises of its designated business office location.

History: 2019, PL 36-4 § 1.

28.1308 Expiration and renewal of money services business license.

- (a) The license is not transferrable or assignable.
- (b) License shall expire one year following the date of issuance.

- (c) The licensee shall include in its renewal application:
 - (1) notification of any litigation involving money transmission;
 - (2) a copy of the licensee's most recent annual financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position; financial statements must be certified to be true and correct by licensee and supported by a tax return; if financial statements are insufficient or unreliable, Commissioner reserves right to request other financial statements, including audited statements, as needed; and
- (d) any other information which Commissioner may require in order to renew a license must be submitted.
- (e) Failure to comply shall be just cause for the non-renewal of licensee's license and may be subjected to other sections of this chapter.

History: 2019, PL 36-4 § 1.

28.1309 Registration of authorized agents.

- (a) A licensee desiring to conduct licensed activities through authorized agents shall authorize each agent to operate pursuant to an express written contract, which shall, at a minimum, provide the following:
 - (1) that the licensee appoints the person as its agent with authority to sell payment instruments or transmit money on behalf of the licensee in compliance with territory and federal law;
 - (2) that neither a licensee nor an authorized agent may authorize a subagent without the written consent of the Commissioner;
 - (3) that licensees are subject to supervision and regulation by the Commissioner;
 - (4) an acknowledgment that the authorized agent consents to the Commissioner's inspection, with or without prior notice to the licensee or authorized agent, of the records of the authorized agent or agents of the licensee; and
 - (5) that an authorized agent is under a duty to act only as authorized under the contract with the licensee and that an authorized agent who exceeds its authority is subject to cancellation of its contract by the licensee and disciplinary action by the Commissioner.
- (b) Every authorized agent of a licensee shall register with the Commissioner by:
 - (1) paying a registration fee of \$100; and
 - (2) submitting a copy of their authorized agent contract with licensee in compliance with subsection (a).
- (c) If an authorized agent is a nonresident worker, they must obtain approval from Immigration and/or other proper authorities. The agent must submit copies of their immigration permit or other evidence proving lawful residence.
- (d) Registration of authorized agents shall be denied if applicant fails to meet the requirements of this section or any other applicable requirement in this chapter or one promulgated by rule.

History: 2019, PL 36-4 § 1.

28.1310 Examination.

- (a) Commissioner may at any time and from time to time examine the business of any licensee or its authorized agents in order to ascertain whether such business is being conducted in a lawful manner including compliance with federal anti-money laundering laws and whether all

monies received for transmission are properly accounted for. Each licensee and its authorized agents shall keep books, records and accounts in such form or manner as the Commissioner may prescribe.

(b) In conducting an examination, the Commissioner:

(1) shall have full and free access to all the records of the licensee and its authorized or apparent agents; and

(2) may summon and qualify as witnesses, under oath, and examine the directors, officers, members, agents, and employees of a licensee or authorized or apparent agent, and any other person concerning the condition and affairs of the licensee.

History: 2019, PL 36-4 § 1.

28.1311 Reporting requirements.

(a) Quarterly reports to the Commissioner are required along with any accumulated fees or assessments. Forms along with instructions will be provided.

(b) Licensees shall submit quarterly:

(1) a report of total funds transmitted outside of the territory, and report the number of individuals transmitting.

(2) a report of the total amount of foreign currency transacted in the territory.

(3) money transmission fees as found in A.S.C.A. 28.1321.

(4) any other report that the Commissioner may require by administrative rule.

(c) Commissioner may require money transmitters to obtain details of senders of amounts aggregating \$10,000 or more, such details include social security numbers, tax identification.

(d) Within 15 days of occurrence of an event listed in this subsection (d), a licensee shall file a written report with the Commissioner describing the event and its expected impact on the licensee's activities in the state:

(1) the filing for bankruptcy or reorganization by the licensee;

(2) a felony indictment or conviction of the licensee or any of its officers, directors or principals related to money transmission activities; and

(3) any other event that the Commissioner may require by administrative rule.

(e) Federal reporting requirements:

(1) A licensee and an authorized agent shall comply with federal currency reporting record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. 5311, 31 C.F.R. Chapter X and any other federal laws pertaining to money laundering. The timely filing of any required reports with the appropriate federal agency is compliance with the requirements of this section.

(f) A penalty fee of \$100 a day shall be assessed on a money service business each day a required report is late. This fee may be waived at the discretion of the Commissioner.

History: 2019, PL 36-4 § 1.

28.1312 Confidentiality of information.

(a) Information obtained by the Commissioner under this chapter is confidential.

(b) Subsection (a) does not prohibit the Commissioner from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on the licensees and their activities.

28.1313 Maintenance of forms.

(a) Each licensee shall obtain and continue to hold for three years a true copy of every receipt form used by it and by its authorized agents for selling foreign currency notes or for money received for transmission.

(b) A receipt used for the sale of foreign currency notes shall contain not less than the following information:

(1) The amount and country of origin of the foreign currency notes involved in the transactions.

(2) The rate of exchange of the transaction.

(3) The U.S. dollar amount involved in the transaction.

(4) The commission or other charge received by the licensee for carrying out the transaction.

(c) A receipt used for the transmittal of money shall contain in addition to the above information required for the sale of foreign currency notes, the name and address of the beneficiary and the method in which the beneficiary is to receive the funds transmitted.

(d) Every licensee violating the requirement of this section shall be subject to a fine of \$100 for each violation.

History: 2019, PL 36-4 § 1.

28.1314 Forwarding of funds.

Every licensee or its authorized agents shall forward all monies received for transmission or give instructions committing equivalent funds to the person designated by the depositor within 7 days after receiving such money, unless otherwise ordered by his customer. Customers must be provided written disclosure highlighting fees, reporting, cancellation, and compliance prior to each transaction.

History: 2019, PL 36-4 § 1.

28.1315 Security deposit.

(a) As security for the faithful performance of its obligations, each licensee, before engaging in money transmission, shall provide security in the form of a deposit of \$10,000 with the Commissioner; and such value must be maintained at all times.

(b) A separate security deposit is required for each license that is issued.

(c) The following procedures shall apply to security deposits:

(1) Interest earned on such deposit shall accrue to the benefit of the money service business.

(2) Complete the appropriate forms as provided by the Commissioner.

(3) Release of the security deposit shall only be accomplished by authority from the Commissioner.

(d) A security deposit is not required of money services businesses who do not offer money transmission services.

(e) Commissioner shall forward the deposit to the Treasurer for custody and safekeeping and it shall be accomplished by preparing a transmittal form that is acknowledged by the Treasurer.

History: 2019, PL 36-4 § 1.

28.1316 Trust fund.

The money deposited with the Treasurer in A.S.C.A. 28.1316 shall constitute a fund for the benefit of persons in case a licensee or its authorized agents is not able to pay for funds entrusted to them for money transfer.

History: 2019, PL 36-4 § 1.

28.1317 Order to cease unlawful practice.

If, in the judgment of the Commissioner, a licensee is violating or failing to comply with this chapter; the Commissioner shall direct the licensee to comply or face sanctions and penalties if it engages in an unsafe or injurious manner. The Commissioner shall direct the licensee to discontinue this practice via a Cease and Desist Order. The order shall require the licensee to show cause before the Director at the time and place to be fixed by him why the order should not be observed. If the Cease and Desist Order is not followed, Commissioner may remedy the situation by any action found in A.S.C.A. 28.1319.

History: 2019, PL 36-4 § 1.

28.1318 Suspension or revocation of license.

- (a) Commissioner may suspend any license issued if:
- (1) the licensee has violated a provision of this statute or any rule issued;
 - (2) any fact or condition exists which, if it had existed at the time of the original application of such license, would be grounds for denial; or
 - (3) the licensee is conducting his business in an unsound manner.

History: 2019, PL 36-4 § 1.

28.1319 Criminal and civil penalties.

(a) Any person who violates this chapter or who files materially false information with a license application or renewal under this chapter is guilty of a class B misdemeanor.

(b) Subject to Title 4, Chapter 10, Administration Procedures Act, if the Commissioner determines that a person is engaging in the money services business in violation of this chapter the Commissioner may:

- (1) suspend, revoke, or not renew that person's license under this chapter;
- (2) issue a cease and desist order from committing any further violation;
- (3) prohibit the person from continuing to engage in the business of money transmission;
- (4) impose an administrative fine not to exceed \$1000 per violation; or
- (5) any combinations of actions under this subsection (b).

(c) Before a license is suspended or revoked Commissioner shall hold an order to show cause hearing.

(d) In cases involving extraordinary circumstances requiring immediate action, the Commissioner, after meeting with the Treasurer, or his/her designee and the Director of the Department of Commerce, or his/her designee, and arriving at an unanimous decision, may take any enforcement action authorized by this chapter. The accused person shall promptly afford a subsequent hearing upon an application to rescind the action taken, which is filed with the Commissioner within 20 days of the receipt of the notice of the Commissioner's emergency action.

History: 2019, PL 36-4 § 1.

28.1320 Fees.

The following is a schedule of fees required by this chapter:

- | | |
|--|----------------------|
| (1) Money Service Business License | \$1,000/per location |
| (2) Money Service Business License Renewal | \$1,000/per location |
| (3) Authorized Agent License | \$100 |
| (4) Authorized Agent License Renewal | \$100 |

History: 2019, PL 36-4 § 1.

28.1321 Money transmission fee.

(a) Money Transmitters shall collect transaction fees as follows:

- (1) \$5 for each transaction not in excess of \$500; and
- (2) for amounts in excess of \$500:
 - (i) a \$5 base fee; and
 - (ii) 1% of the amount in excess of \$500.

(b) These fees shall be submitted with the quarterly reports required in A.S.C.A.

28.1311.

(c) 50% of fees collected shall be deposited to an enterprise fund earmarked for the operation of the Office of Financial Institutions and the remainder shall be deposited in the general fund.

History: 2019, PL 36-4 § 1.

28.1322 Forms.

Commissioner may provide forms and require that such forms be used in order to comply with this chapter.

History: 2019, PL 36-4 § 1.

28.1323 Rulemaking.

(a) The Commissioner may make a rule authorized by this chapter in accordance with the Administrative Procedure Act including to:

- (1) restrict or prohibit practices that are misleading, unfair, or abusive;
- (2) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and a money service business; and
- (3) any other rule needed for the proper enforcement of this chapter.

History: 2019, PL 36-4 § 1.

Chapter 14

A.S.G. CREDIT FACILITY AGREEMENTS

Sections:

28.1401 Authorization of Credit Facility-Source of Repayment-Reports.

28.1410 Authorization of Loan—American Samoa Medical Center—Reports—Source of funding.

28.1401 Authorization of Credit Facility-Source of Repayment-Reports.

(a) The Treasurer, on behalf of the government, is authorized to enter into a credit facility with the Bank of Hawaii in an amount not to exceed \$5,000,000 to satisfy appropriated obligations of the government. The Treasurer is authorized to negotiate the terms of the credit, including a variable interest rate, repayment terms and such other terms and conditions as may be required to obtain the credit facility, so long as said terms are standard in the lending industry and consistent with standard banking practices and established principles of government borrowing. The Treasurer is further authorized to execute all instruments and documents necessary to conclude the transaction, including promissory notes which evidence indebtedness of the government. Said instruments and documents shall be subject to review and approval by the Attorney General for legal sufficiency prior to execution by the Treasurer.

(b) The principal, plus accrued interest thereon, owing on the credit facility and any charges and fees associated with the facility shall be paid with revenues from the general fund.

(c) Within 30 days of the end of each fiscal year, the Treasurer shall provide a report to the Governor and the Legislature detailing the status of the credit facility and all transactions related thereto which occurred during the prior fiscal year.

History: 2001, PL 27-2.

**28.1410 Authorization of Loan—American Samoa Medical Center—Reports—
Source of funding.**

(a) American Samoa Medical Center (ASMC), on behalf of ASMC, are authorized to enter into a credit facility whereby the government will lend and ASMC will borrow an amount not to exceed \$5,000,000.00 for the purpose of providing immediate financial assistance to ASMC. The Governor, or his designee, and the Board of Directors, or its designee, are authorized to negotiate the terms of the credit, including and interest rate, repayment terms and such other terms and conditions as may be required to obtain the credit facility. The Governor and the Board are further authorized to execute all instruments and documents necessary to conclude the transactions, including promissory notes which evidence indebtedness of the ASMC.

(b) Proceeds of the loan shall be expended to satisfy, or partially satisfy to the extent of the proceeds, current indebtedness of the ASMC in the following priorities:

- (i) U.S. FICA and Medicare taxes;
- (ii) Employee and employer contributions owing to the American Samoa Employees' Retirement Fund;
- (iii) Utility payables;
- (iv) Pharmaceutical company payables;
- (v) Other vendor payables incurred for essential operational services; and
- (vi) ASG withholding taxes.

(c) A.S.C.A., Section 13.0109 notwithstanding, the loan shall be repaid to the government from revenues appropriated by the Legislature for ASMC on such terms as negotiated.

(d) As a condition of the loan, ASMC shall enter into a fiscal and operations reform plan with the government, acceptable to the Governor, whereby ASMC will implement procedures to increase its revenues, reduce its expenditures, achieve a balanced budget and improve operations of L.B.J. Tropical Medical Center. Plans to reduce expenditures shall specifically address reduction of personnel costs.

(e) Within 30 days of the end of each fiscal quarter, the Treasurer shall provide a report to the Governor and the Legislature detailing the status of the credit facility and all transactions

related thereto which occurred during the prior fiscal quarter.

History: 2003, PL 28-10.

Chapter 15

LOANS

Sections:

- 28.1501** Interest rate-Agreements signed and written-Charge for loans.
- 28.1502** Small loans-Interest.
- 28.1503** Business loans.
- 28.1505** Open-end credit.
- 28.1510** Penalty for usury.

28.1501 Interest rate-Agreements signed and written-Charge for loans.

(a) Except as provided in this title, no person may charge more than 15 percent per year as interest on a debt or obligation, and no agreement to pay a rate of interest higher than 6 percent per year shall be enforceable unless the same is in writing and is signed by the party to be charged. The rate of interest when there is no written agreement with respect thereto shall be 6 percent per year, and such interest shall be presumed on overdue debts.

(b) Lending institutions are empowered to set, from time to time as the cost of money and the cost of lending operations warrant, a minimum charge for their loans where the normal interest is not equal to the average cost of making a loan. In no event may both a minimum charge and interest be collected.

(c) Banks that are authorized and licensed to conduct the business of banking in American Samoa are empowered to charge, contract for, and receive interest on loans at a rate up to 24% per year, provided that:

- (1) The principal amount of the loan is \$5,000.00 or less, and
- (2) The principal amount of the loan and interest rate are disclosed in written agreement that is signed by the parties to be charged.

History: 1962, PL 7-23; 1963, PL 8-13; 1975, PL 14-16 § 3; 1978, PL 15-76 § 2; amd 1980, PL 16-67 § 1; 1980, PL 16-75 § 1, amd 2004, PL 28-24.

Case Notes:

Territorial statute providing that no debtor can be charged interest in excess of 6% unless the amount "is in writing and is signed by the party to be charged" precluded court from holding debtor liable to pay interest at a higher rate in the absence of a signed agreement, even when debtor knew Bank would charge creditor a higher rate of interest on amounts not timely paid by debtor. A.S.C.A. § 28.1501(a). *Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc.*, 7 A.S.R.2d 95 (1988).

Since in the absence of a written agreement specifying the rate of interest applicable to a promissory note the statutory rate of 6% will apply, where a note specified an interest rate of 12.5% "until maturity" the rate after maturity was 6%. A.S.C.A. § 28.1501. *Pritchard v. Amerika Samoa Bank*, 8 A.S.R.2d 157 (1988).

In assessing post-judgment interest, the court set the rate at six per cent, the maximum enforceable rate on unwritten contracts. A.S.C.A. § 28.1501(a). *Samoa Products, Inc. v. A'asa*, 17 A.S.R.2d 66 (1990).

The statutory rate of six percent interest is presumed on overdue debts for which no contractual interest rate is specified. A.S.C.A. § 28.1501(a). *Ghiselli Bros., Inc. v. Ryan, Inc.*, 22 A.S.R.2d 57 (1992).

Amendments: 1978 Subsection (a): raised interest rates. Subsection (b): deleted "normal" from before "interest be collected" at end of subsection.

1980 Subsection (a): raised interest rates.

Subsection (b): amended generally; and added last sentence.

28.1502 Small loans-Interest.

Any bank, savings and loan association, person, firm, corporation or government entity which has been approved by the Governor as a small loan agency may charge a fee of not more than \$8 per \$100 per year on loans, debts and obligations of not more than \$8,000 with an allowable minimum charge to be fixed in an amount not to exceed a current schedule set by any lending institution under the standards prescribed in subsection (b) of 28.1501. Fees charged under this section are not to be levied in addition to the interest or minimum charge allowed under 28.1501. If any loan under this section is paid before its due date, the lender shall credit to the unpaid balance, or shall refund, unearned interest.

History: 1972, PL 12-51 § 1;amd 1978, PL 15-76 § 3; amd 1980, PL 16-67 § 2.

Amendments: 1978 Added “(b)” to reference to section in Amendments: 1980 Amended to conform with penalties pro-first sentence.
1980 Deleted reference to Bank of Hawaii; raised rates of fees vided for in Title 46, Criminal Justice and amount of loans.

28.1503 Business loans.

It is lawful to charge, contract for, and receive any rate or amount of interest or other compensation, not to exceed 18 percent annually, with respect to any loan to any business or commercial organization or to a person or persons owning or desiring to acquire a business as a sole proprietor or joint venture, if the loan is transacted solely for the purpose of carrying on or acquiring a business or commercial investment. Business or commercial organization includes corporations, copartnerships, joint venture, limited partnerships, trusts, and any other bona fide business entity.

History: 1973, PL 13-22; 1975, PL 14-16 § 3; amd 1980, PL 16-67 § 3.

Amendments: 1980 Raised interest rates.

Case Notes:

Section not applicable to 90-day time or usage draft used in arrangement between an importer and a foreign corporation to buy goods on credit; 28.1501 applies *Trans United Marketing, Ltd. v. Max Haleck, Inc.*, ASR (1977).

Use of creditor’s funds to “keep the company afloat” falls within gambit of “carrying on” business”, therefore 28.1503 applies and not subsection (a) of 28.1501. *Max Haleck, inc. v. Trans United Marketing, inc.*, ASR (1977).

Under statute providing that interest on business loans may not exceed 18 per cent annually, creditor whose contract specified 20 per cent interest would have judgment for only 18 per cent. *A.S.C.A. § 28.1503. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc.*, 9 A.S.R.2d 62 (1988).

28.1505 Open-end credit.

(a) Notwithstanding any other provision to the contrary, the maximum rate of interest chargeable on open-end credit issued in American Samoa shall be determined by reference to the law of the creditor’s principal place of business.

(b) Open-end credit means credit extended by a creditor under a plan which:

(1) The creditor reasonably contemplates repeated transactions,

(2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance, and

(3) The amount of credit that may be extended during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(c) Creditor means a person who extends credit that is subject to a finance charge.

(d) Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

History: 1991 PL 22-21; 2004, PL 28-15.

28.1510 Penalty for usury.

Any person who loans money or extends credit in any manner whatsoever and takes, receives, reserves, or assesses interest, fees, or minimum charges thereon at a rate higher than that allowed by law shall upon conviction be sentenced as for a class A misdemeanor; and in addition, shall forfeit to the debtor the full amount of the debt or obligation upon which the unlawful interest, fee, or minimum was charged.

History: 1962, PL 7-23; 1963, PL 8-13; 1975, PL 14-16§ 3; amd 1980, PL 16-90 § 25.

Case Notes:

Under Territorial statute, one who makes a contract within the territory to extend credit at the rate of 20 per cent commits the crime of usury and is liable to imprisonment and to forfeiture of the entire amount of the debt. A.S.C.A. § 28.1510. *Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc.*, 9 A.S.R.2d 62 (1988).

Where debtor did not plead usury as a defense to action on debt, court need not decide whether statutory penalty of forfeiture can be invoked in a civil action. A.S.C.A. § 28.1510. *Shantilal Brothers Limited v. K.M.S.T. Wholesale, Inc.*, 9 A.S.R.2d 62 (1988).

Chapter 16

ESCHEAT OF UNCLAIMED BANK DEPOSITS

Sections:

- 28.1601 Definitions.**
- 28.1602 Certified check or account acquired through merger or otherwise.**
- 28.1603 Fee or charges on inactive or dormant savings or time deposit account.**
- 28.1604 Presumption of no claimants-Eschat.**
- 28.1605 Notice of unclaimed deposit-Mailing-Publication.**
- 28.1606 Annual reports to Treasurer of unclaimed deposits-Failure to make-Inspection by public.**
- 28.1607 Eschat-Deposits of less than fifty dollars.**
- 28.1608 Unclaimed deposits reported on December 31 to eschat-Deposits less than fifty dollars reported separately.**
- 28.1609 Penalty for failure of Bank to pay over unclaimed deposits when payable-Suits.**
- 28.1610 Actions for eschat-Jurisdiction-Procedure.**
- 28.1611 Liability of Bank ceases on payment to Treasurer.**
- 28.1612 Bank records of escheated deposits-Preservation-Copies furnished to Treasurer.**
- 28.1613 Records of Treasurer of escheated deposits-Disposition.**
- 28.1614 Services by salaried officials to be without charge-Expenses of administration.**
- 28.1615 Credit unions.**

28.1601 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "Bank" means any bank, trust company, savings bank, and savings bank having shares of capital stock, organized and existing under any general or special law of this territory, including

any such bank, trust company, savings bank, and savings bank having shares of capital stock, which may be in voluntary dissolution or which may be in the possession of the commissioner of banking and insurance or in receivership, and any private banker including any private banker for whose banking business a receiver has been appointed, and any national banking association organized under the Acts of Congress and doing business in this Territory including any national banking association which may be in voluntary dissolution or in receivership. This definition includes the Development Bank of American Samoa.

(2) (a) "Unclaimed Bank deposit" means and includes an unpaid balance of money to the credit or in the name of: a maker or payee of a certified check held by a Bank, together with all interest accrued thereon whether entitled thereto or not on the records of the Bank, and which after a period of 10 years has remained unclaimed, and a depositor, in any capacity whatsoever, with a Bank in any demand, savings, or time deposit account, together with all interest accrued thereon whether credited thereto or not on the records of the Bank, which after a period of 10 years has remained unclaimed exclusive of:

(i) the unpaid balance in any such account which has been reduced by withdrawal or increased by deposit, exclusive of interest credit, within 10 years;

(ii) the unpaid balance in any such account which is evidenced by a passbook in which entry of interest credit has been made within 10 years or which passbook has been presented for entry of interest credit within 10 year;

(iii) the unpaid balance in any such account with respect to which the Bank has written evidence received within 10 years that the depositor or other person entitled thereto had knowledge thereof;

(iv) the unpaid balance in any such account of a depositor known by an officer or employee of the Bank to be living; and

(v) the unpaid balance in any such account which is evidenced by a passbook, which book has, to the knowledge of the Bank, within 10 years been balanced or verified.

(b) In the case of a time deposit, no account shall be deemed to be an unclaimed deposit until 10 years after its original date of maturity.

(c) "Unclaimed Bank deposit" also means, includes, and refers to credits and deposits of every kind, character or form in any name whatsoever and in any capacity whatsoever, including but not limited to individuals, corporations, companies, associations, societies, firms, partnerships, joint stock companies, and fiduciaries of any nature.

(3) "Treasurer" means the Treasurer of American Samoa.

History: 1988, PL 20-27.

28.1602 Certified check or account acquired through merger or otherwise.

Any bank which, through merger, reorganization, consolidation, or otherwise, acquires any certified check or any account of any depositor in any capacity whatsoever, shall, for the purpose of this chapter, be deemed to have been in existence from the date such check was certified by any other bank or such account originated in any other bank; and such certified check or account constitutes an unclaimed bank deposit if it otherwise accords with the definition of an unclaimed bank deposit.

History: 1988, PL 20-64.

28.1603 Fees or charges on inactive or dormant savings or time deposit account.

During the 10 year period of inactivity or dormancy specified in section 28.1601(2) and until

payment of funds to the Treasurer as provided in section 28.1608, it is unlawful for any Bank to assess, collect, or deduct any fee or charge from any savings or time deposit account because of that inactivity or dormancy, except for the cost of publication in accordance with section 28.1605.

History: 1988, PL 20-64.

28.1604 Presumption of no claimants-Escheat.

It shall be presumed that there is or are no claimant or claimants who or which directly or indirectly has or have any right, title or interest in any unclaimed bank deposit held by a bank, and such unclaimed bank deposit shall be subject to escheat to the Territory.

History: 1988, PL 20-64.

28.1605 Notice of unclaimed deposit-Mailing-Publication.

(a) For the purposes of this section, an unclaimed bank deposit shall be deemed to be one in which as of August 1 of a particular year no transaction has occurred during the preceding 9 consecutive years.

(b) Every bank having any such unclaimed deposits shall, prior to August 15 of the year in which it becomes an unclaimed deposit mail a "notice of unclaimed deposit" to the owner or owners of each such account in the name and to the address of the owner or owners which appears on the records of the bank, provided, however, that the bank need not mail the notice to an owner or owners if any mailings by the bank to that owner or owners within the prior year were returned to the bank as undeliverable. The notice of unclaimed deposit shall be in such form as approved by the Treasurer and must set forth the name of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, it must also set forth the original name and address of the bank in which the deposit originated, the name of the owner or owners and a statement that the balance of the account will be paid over to the Territory on the following January unless the bank is contacted in writing by the owner or his representative. If such a written response is received by the bank, the response is deemed to be a transaction with respect to the account and the account thereafter ceases to be an unclaimed bank deposit for the purposes of advertising as set forth in subsection (c) of this section.

(c) Every bank having any unclaimed bank deposits must advertise once during the second week of the month of October and once during the second week of the month of November, printed in 8-point size type in a newspaper published in American Samoa, a notice entitled "Notice of the names of persons appearing as the owners of unclaimed amounts held by (name of Bank)". Such notice must be in a form approved by the Treasurer and must set forth the name and address of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, the notice must also set forth the original name and address of the bank in which the deposit originated, and must list in alphabetical order the name of each person to whose credit an unclaimed bank deposit stands, but not the amount to the credit of each account, but no account shall be advertised in which the unpaid balance is less than \$50.00. Any amount paid to a newspaper for such publication must be charged by the bank equally against the unclaimed bank deposits so advertised.

History: 1988, PL 20-64.

28.1606 Annual reports to Treasurer of unclaimed deposits-Failure to make-Inspection by public.

(a) Not later than the thirty-first day of January in each year after the year in which this act takes effect and as of December thirty-first of the preceding year, every bank must make in duplicate a written report to the Treasurer containing a true and accurate statement of all unclaimed bank deposits held by the bank as of such date.

(b) The report must set forth the name and address of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, also the original name and address of the bank in which the deposit originated, and must list in alphabetical order the name of each person to whose credit an unclaimed bank deposit stands, the last address of the depositor appearing on the records of the bank, the identification number, if any, of each account, and the amount to the credit of each account.

(c) The report must, where the bank is a corporation, be signed by its president, a vice-president, Treasurer, assistant Treasurer, cashier, or assistant cashier. If such bank is in voluntary dissolution, the report must be signed by one or more of its trustees designated by its Board of Trustees for that purpose. If such bank is in the possession of the commissioner of banking and insurance, the report must be signed by the commissioner or by a special deputy commissioner appointed by him and in actual charge of the business and affairs of the bank. If a receiver has been appointed for a corporate bank or private banker, the report must be signed by such receiver. In the case of a private banker, the report must be signed by such banker.

(d) The person signing the report must certify that such report is a true and accurate statement of all unclaimed bank deposits held by the bank as of the report date to the best of his knowledge, information and belief after diligent inquiry. The person signing the report may, in making the report, rely upon information with respect to unclaimed bank deposits furnished by the officers and employees and records of the bank.

(e) If the bank has no unclaimed bank deposits a written report so stating must be made to the Treasurer.

(f) Any bank which fails to file such a report with the Treasurer shall forfeit to the Territory the sum of fifty dollars (\$50.00) for each day such report is not filed, and if not paid, such penalty must be sued for and be received by the Treasurer in a civil action in the name of the Territory. The Treasurer has the power to waive the penalty and to extend the time within which a report may be filed.

(g) Immediately upon receipt of such report the Treasurer must deliver one duplicate of the report to the attorney and the Treasurer must cause the other duplicate report to be permanently bound with an alphabetical index of the depositors with appropriate references to the bound reports. The bound reports and indices must be open for public inspection during usual business hours and under regulations prescribed by the Treasurer.

History: 1988, PL 20-64.

28.1607 Escheat-Deposits of less than fifty dollars.

All unclaimed bank deposits of less than fifty dollars (\$50.00) held by any bank as of December thirty-first of any year shall escheat to the Territory. When a report thereof is made to the Treasurer pursuant to the provisions of section 28.1606 the funds must be paid to the Treasurer simultaneously with the making of such report.

History: 1988, PL 20-64.

28.1608 Unclaimed deposits reported on December 31 to escheat-Deposits less than fifty dollars reported separately.

(a) All unclaimed bank deposits reported by any bank as held by it as of December thirty-first, one thousand nine hundred and eighty-seven and as of December thirty-first of each year thereafter, regardless of the amount thereof, shall escheat to the Territory. When a report thereof is made to the Treasurer pursuant to section 28.1606 the funds must be paid over to the Treasurer by such bank simultaneously with the making of the report. All unclaimed bank deposits of less than fifty dollars (\$50.00), when reported in any report or revised report or supplemental report filed, must be separately listed under the heading "Deposits of less than fifty dollars (\$50.00)" and the total of all such deposits must be separately indicated.

History: 1988, PL 20-64.

28.1609 Penalty for failure of bank to pay over unclaimed deposits when payable-Suits.

Any bank which fails to pay over to the Treasurer any unclaimed bank deposit as provided in section 26.1608 shall be liable to a penalty of fifty dollars (\$50.000) for each day such payment is not made. If such penalty, is not paid, the Treasurer must file a civil action in the name of the Territory against the Bank to recover it.

History: 1988, PL 20-64.

28.1610 Actions for escheat-Jurisdiction-Procedure.

It is the duty of the Attorney General within a reasonable time after receipt by him of the duplicate report to institute actions for escheat to the Territory of the unclaimed Bank deposits disclosed by such report which are in an amount of fifty dollars (\$50.00) or more and which have not been paid over to the Territory. The High Court has jurisdiction of such actions. In any such action absent defendants may be proceeded against by newspaper publication, upon order of the court.

History: 1988, PL 20-64.

28.1611 Liability of Bank ceases on payment to Treasurer.

No Bank which must pay over to the Treasurer any unclaimed bank deposit shall be held liable to any claimant having or asserting any right, title or interest in or to the same personally or in any capacity whatsoever; and no action or proceedings of any kind for the recovery of money represented thereby, or any part thereof, shall lie against such bank.

History: 1988, PL 20-64.

28.1612 Bank records of escheated deposits-Preservation-Copies furnished to Treasurer.

No bank shall destroy or otherwise dispose of any of its records or files pertaining to any unclaimed bank deposit which is subject to escheat to the Territory or which has escheated to the Territory; but all banks must preserve such records and files, and any of the originals thereof or photostatic copies thereof duly certified by any official of the bank to be true copies, must be furnished to the Treasurer whenever he makes a request therefore in writing.

History: 1988, PL 20-64.

28.1613 Records of Treasurer of escheated deposits-Disposition.

(a) The Treasurer must establish and maintain records of all escheated unclaimed bank deposits received by him, which in the case of deposits with a net balance of fifty dollars (\$50.00) or more, must show in alphabetical order the names of the depositors, the amounts received, the name and address of the bank from which the funds were received, the identification numbers of the accounts, if any, and must also establish and maintain an index thereto, which records and index must at all times during the usual business hours be open to public examination.

(b) The Treasurer must credit seventy-five percent (75%) of the amount of each escheated unclaimed bank deposit received by him to the general fund, and must establish and maintain a separate account to be designed as the "unclaimed bank deposits escheat receive fund" which is hereinafter referred to as the "reserve fund" and credit it with the other twenty-five percent (25%).

(c) The Treasurer must invest and reinvest all moneys credited to the reserve fund in bonds of interest bearing notes or obligations of the United States or in bonds or interest bearing notes or obligations guaranteed as to principal and interest by the United States or in bonds or interest bearing notes or obligations for the payment of the principal and interest of which the faith and credit of the United States are distinctly pledged or in bonds or interest bearing notes or other obligations of this Territory or in bonds or interest bearing notes or other obligations of any county, city, town, township, borough, village or other municipal or political subdivision of this Territory, issued under authority of any law of this Territory.

(d) The income received from the investments and reinvestments of the reserve fund must be added to the reserve fund and be held and retained as part thereof subject to like investment and reinvestment.

(e) The reserve fund must be used and expended by the Treasurer for the payment of expenses and costs incurred by the Treasurer and the attorney general pursuant to the provisions of section 28.1614.

(f) At any time after receipt by the Treasurer of any escheated unclaimed bank deposit anyone claiming to be entitled thereto or to any part thereof may file a claim therefor with the Treasurer who is authorized to pass upon and determine the claimant's claim. If the Treasurer determines the claimant's proof of title is sufficient, he must pay the escheated unclaimed bank deposit or such part thereof to which the claimant is entitled, without interest, out of the reserve fund to the claimant. If the cash balance in the reserve fund is insufficient to make such payment the Treasurer must sell such of the investments of the reserve fund as may be necessary to make such payment.

(g) If the Treasurer determines that the claimant's proof of title is not sufficient to entitle the claimant to such payment, the claimant may, within sixty days after the date of such determination by the Treasurer, file an action in the High Court against the Treasurer, and it shall be the duty of the Treasurer, and of the attorney on his behalf, to take such action with respect thereto as they may deem necessary to protect the interests of the Territory. The court may proceed in the action in a summary manner or otherwise. Upon proof satisfactory to the court of plaintiff's claim of title to the escheated unclaimed bank deposit or any part thereof, judgment must be entered establishing his claim and ordering the Treasurer to pay to the plaintiff the amount specified in such judgment together with such costs as the court may allow the plaintiff. Upon service upon the Treasurer of a copy of such judgment certified to be a true copy by the clerk of the High Court, the Treasurer must pay to the plaintiff out of the reserve fund the amount of amounts specified.

(h) If the court determines that plaintiff's proof of title is not sufficient to establish his claim to the escheated unclaimed bank deposit or any part thereof, a judgment to that effect must be

entered. If on any appeal from the judgment, it is reversed and plaintiff's claim of title to the escheated unclaimed bank deposit or any part thereof is sustained, the Treasurer must pay to the plaintiff, out of the reserve fund, the amount or amounts to which the plaintiff is entitled, together with such costs awarded to the plaintiff.

History: 1988, PL 20-64.

28.1614 Services by salaried officials to be without charge-Expense of administration.

All services required by this chapter to be performed by the Clerk of the High Court, the Marshall and any other salaried public official, shall be without fees, costs, counsel fees or any other charge, but the Treasurer must pay out of the reserve fund all expenses and costs incurred by the Treasurer for the administration of the fund and for the establishment and maintenance of his records relative to escheated unclaimed bank deposits, and also all expenses and costs incurred by the attorney general, including costs and expenses for legal and clerical services. The Treasurer and the Attorney General may each employ such persons as needed to carry out the provisions of this chapter and fix their compensation.

History: 1988, PL 20-64.

28.1615 Credit unions.

When no transaction has occurred in a credit union member's share or deposit account for 12 months and his whereabouts are unknown, as verified by the return of a certified letter addressed to him at his last known address, all sums due to the member shall be credited to a special reserve account. If the sums are not reclaimed within a five year period, they shall escheat to the Territory and be forwarded to the Treasurer in accordance with procedures in this chapter.

History: 1988, PL 20-64.