

Chapter 02

TERRITORIAL BANK OF AMERICAN SAMOA

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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.

Chapter 08

(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