



Tuvalu

**NATIONAL BANK OF TUVALU
(INSURANCE FUND) ORDINANCE**

Act 2 of 1981



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Tuvalu

NATIONAL BANK OF TUVALU (INSURANCE FUND) ORDINANCE

Act 2 of 1981

**AN ORDINANCE TO MAKE PROVISION WITH RESPECT TO THE
GOVERNMENT MAKING GOOD CERTAIN FINANCIAL LOSSES IF
SUSTAINED BY THE NATIONAL BANK OF TUVALU AND FOR
CONNECTED PURPOSES**

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [1st May 1981]

1 Short title

This Ordinance may be cited as the National Bank of Tuvalu (Insurance Fund) Ordinance.

2 Commencement

This Ordinance shall come into operation on 1st May 1981.

3 Interpretation

In this Ordinance, unless the context otherwise requires —

“the Bank” means the National Bank of Tuvalu established by the National Bank of Tuvalu Ordinance;

Cap. 58

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

“**excess**” means the excess fixed in accordance with section 5 (1);

“**financial year**” means a financial year of the Bank;

“**the Fund**” means the National Bank of Tuvalu (Insurance) Fund established by section 4;

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

“**the premium**” means the premium fixed in accordance with section 5 (1);

“**relevant loss**”, in relation to the Bank, means the amount of any financial loss sustained by the Bank which the Government is liable under this Ordinance to make good.

4 Establishment of Fund

- (1) There is established by this Ordinance a Fund to be known as the National Bank of Tuvalu (Insurance) Fund.
- (2) There —
 - (a) shall be deposited in the Fund the amount of every premium paid pursuant to section 5;
 - (b) shall be paid from the Fund amounts in respect of any relevant loss, as provided in section 7;
 - (c) may be paid from the Fund the amount specified in any order made pursuant to section 8;
 - (d) may be paid from the fund such sums as the Minister certifies to be proper expenses —
 - (i) relating ancillary to claims against the Fund; or
 - (ii) in connection with the maintaining or investing of the Fund.

5 Premiums

- (1) The Minister shall in respect of each financial year, after consultation with the Board, fix by order —
 - (i) the amount of the premium to be paid in that financial year by the Bank; and
 - (ii) the amount of the excess to be applied for the purposes of section 6:

Provided always that in the event that the Bank should establish to the satisfaction of the Minister that the Bank could obtain in respect of the financial year in question insurance giving the Bank no less cover than that given by this Ordinance and on comparable terms including any excess provisions, for a lesser sum than the premium fixed for the financial year then the Minister shall fix that sum as the premium in the place of the premium fixed under paragraph (i).

- (2) The premium payable pursuant to subsection (1) in respect of a financial year shall be paid in accordance with the requirements, with respect to time of payment, specified, either generally or in respect of the financial year, in an order made by the Minister.

6 Government liability

- (1) The liability of the Government to make good any financial loss sustained by the Bank shall, subject to the provisions of this section, be determined under and in accordance with the Schedule.

Schedule

- (2) In this section —
 - (i) a claim or claims shall be considered to be claims in respect of losses arising out of one event if —
 - (a) losses were caused by the acts or omissions of any one person; or
 - (b) such losses were caused by acts or omissions in which one person was concerned or implicated; or
 - (c) such losses arose out of the same event;
 - (ii) “the ultimate net loss” shall mean the net loss to the Bank after making proper deduction for all recoveries and salvages and shall exclude all expenses for salaried employees of the Bank incurred in the investigation or adjustment of claims, actions or proceedings, unless specifically agreed by the Government.
- (3)
 - (i) The Government’s liability in respect of any loss or of any losses arising out of one event shall be limited —
 - (a) to the extent that such loss or losses exceed the appropriate excess for that loss or those losses; and
 - (b) to a sum equal to the appropriate premium for that loss or those losses multiplied by 25.
 - (ii) For the purpose of this subsection the “appropriate premium” or the “appropriate excess” for any loss or for any losses arising out of

one event shall be the premium payable in or the excess fixed for the financial year in which notice of the claim in respect of that loss or those losses is given under section 7 of the Schedule, or if more than one such notice is given in respect of any loss or losses arising out of one event then the “appropriate premium” or the “appropriate excess” in respect of such loss or losses shall be the premium payable in or the excess fixed for the financial year in which the last such notice is given.

- (4) For the purpose of ascertaining the relevant loss the ultimate net loss of the Bank shall be ascertained before the deduction of the excess.

7 Payments in respect of relevant loss

- (1) To the extent that funds are available in the Fund, the Minister shall cause to be paid from the Fund to the Bank the amount required to make good any relevant loss of the Bank.
- (2) To the extent that funds are not available in the Fund to make good any relevant loss of the Bank, the Minister shall cause to be paid to the Bank from the Consolidated Fund, as statutory expenditure, the amount necessary for that purpose.

8 Payment to Consolidated Fund

Where the amount of the funds for the time being available in the Fund is in excess of a sum equivalent to the premium for the current financial year multiplied by 15 the Minister may, by order, direct that a sum shall be paid into the Consolidated Fund, and it shall be so paid but no such payment shall be paid which results in the fund immediately after the payment is made being less than a sum equivalent to such premium multiplied by 15.

9 Subrogation

On the payment out of the Fund pursuant to section 7 (1), or out of the Consolidated Fund pursuant to section 7 (2), of an amount in respect of any relevant loss of the Bank, the Government shall acquire by subrogation the rights of the Bank against any person who, either directly, or indirectly, occasioned the loss, and the Bank shall not, to the extent of any such payment, be entitled to enforce those rights.

SCHEDULE

(Section 6)

RELEVANT LOSS**1 Interpretation**

In this Schedule —

“**premises**” means the head office, of the Bank and any branches and/or agencies from which the Bank carries on business and shall extend to any temporary premises used by the Bank for this purpose;

“**employee**” means respectively one or more of the Bank’s officers, clerks, servants and other employees whilst employed by the Bank;

“**property**” means cash (i.e. currency, coins and bank notes), bullion, precious metals of all kinds and in whatsoever form and articles made there from, gems, (including uncut gem stones), precious and semiprecious stones, certificates of stock, bonds, coupons and all other type of securities, bills of lading, warehouse receipts, cheques, bills of exchange, acceptances, drafts, certificates of deposit, letters of credit, promissory notes, money orders, orders upon public treasuries, stamps, insurance policies, title deeds, certificates of title and all other negotiable and non-negotiable instruments or contracts representing money or other property (real or personal) or interests therein and other valuable papers, including books of accounts and other records used by the Bank in the conduct of its business, in which the Bank has an interest, or which are held by the Bank for any purpose or in any capacity and whether so held gratuitously or otherwise and whether legally liable or not;

“**cheque**” means a bill of exchange, drawn on a bank, payable on demand; “**bill of exchange**” means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a certain sum in money to or to the order of a specified person or bearer;

“**acceptance**” means a bill of exchange, upon which is signified by the drawee his assent to the order of the drawer;

“**draft**” means a draft payable on demand drawn by or on behalf of a bank upon itself whether payable at the head office or other office of the bank; “**certificate of deposit**” means a written acknowledgement by a bank of a

deposit with promise to pay to the depositor, to his order, or to some other person or to his order;

“**letter of credit**” means an engagement by a bank made at the request of a customer that the issuer will have drafts or other demands for payments upon compliance with the conditions specified in the credit;

“**withdrawal receipt**” means a written instrument acknowledging receipt of funds from a savings account maintained with the Bank by a depositor;

“**promissory note**” means an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

2 Insuring Clauses

Subject to this Schedule and to the provisions of section 6 of this Ordinance, the Government shall make good to the Bank any financial loss sustained by the Bank as stated in the Insuring Clauses listed hereunder.

INSURING CLAUSE 1

By reason of an event solely and directly caused by one, or more than one, dishonest or fraudulent act of any of the employees of the Bank, committed with the manifest intent of making, and resulting in, improper financial gain for themselves, wherever committed and whether committed alone or in collusion with others, including loss of property through any such act.

For the purposes of this Insuring Clause, salary, fees, commissions and other emoluments, including salary increases and promotions, shall not constitute financial gain.

INSURING CLAUSE 2

By reason of —

- (1) property being lost through theft, larceny, burglary, robbery, false pretences, hold-up or mysterious unexplainable disappearance or being damaged, destroyed or misplaced, howsoever or by whomsoever caused, while the property is (or is supposed to be) in or upon any premises of the Bank; or
- (2) property being lost through any of the perils specified in paragraph (1) of this Insuring Clause while in the possession of a customer or any representative of a customer, when on the premises of the Bank, whether or not the Bank is legally liable for the loss, but excluding any loss caused

by the customer or representative. This Insuring Clause does not cover loss of or damage to property while in the mail.

INSURING CLAUSE 3

By reason or property being lost or damaged from any cause while in transit anywhere in the custody of any employee of the Bank.

This Insuring Clause does not cover loss of or damage to property while it is in the mail.

For the purposes of this Insuring Clause —

- (a) transit shall be deemed to commence from the time the employee of the Bank receives the property from or on behalf of the Bank and shall be deemed to end immediately on the handing over by the employee at the destination;
- (b) when the Bank undertakes payroll or similar operations on behalf of a customer the transit shall be deemed to terminate immediately on arrival at the customer's premises.

INSURING CLAUSE 4

By reason of —

- (1) the forgery or fraudulent alteration of, or in any cheques, bills of exchange, acceptances, drafts, certificates of deposit, letters of credit, withdrawal receipts for the withdrawal of funds, money orders, orders upon public treasuries; or
- (2) the payment by the Bank of forged or altered promissory notes or of promissory notes bearing forged endorsements.

Those instruments may be in any script with which the employee acting upon the instruments is conversant. Mechanically reproduced facsimile signatures shall be treated as being the same as handwritten signatures.

This Insuring Clause does not cover any loss sustained by reason of forgery of any of those instruments if they are genuinely signed or endorsed but are false as to contents. The words 'forgery' or 'forged' do not mean nor include such genuinely signed or endorsed instruments which are false as to contents.

The word 'payment', in relation to promissory note, means the discharge by the Bank of the promissory note and does not include the purchase, discount, sale, loan or advance of or on the promissory note.

INSURING CLAUSE 5

By reason of the receipt by the Bank in good faith of any counterfeited or altered paper currency or coin issued or purported to have been issued by or to be legal tender in Tuvalu.

INSURING CLAUSE 6

By reason of —

- (1) loss of or damage to furnishings, fixtures, stationery, supplies or safes and vaults within any office of the Bank caused by burglary, robbery, hold-up, theft or larceny, or any attempt thereat, or by vandalism or malicious mischief; or
- (2) loss through damage to any such office caused by burglary, robbery, hold-up, theft or larceny, or any attempt thereat, or to the interior of any such office by vandalism or malicious mischief:

Provided that the Bank is the owner of those furnishings, fixtures, equipment, stationery, supplies or safes and vaults or offices or is liable for any such loss or damage.

This Insuring Clause does not cover loss or damage through fire.

3 Conditions precedent to liability of Government

It is a condition precedent to any liability under this Schedule that the Bank shall comply in all material respects with the following requirements, namely- .

- (a) the duties of each employee of the Bank are arranged so that no one employee is permitted to control any transaction from commencement to completion;
- (b) joint custody shall be established and maintained for the safeguarding of —
 - (i) property while in safes or vaults;
 - (ii) all keys to safes and vaults; and
 - (iii) codes, cypher and test keys.

In this paragraph “joint custody” means the handling of the above in the presence of, and under the observation of, at least one other person, the person being equally accountable for the physical protection and safeguarding of the various items or records involved. Locks and combinations on vaults and safes must be so arranged that no person can open them alone;

- (c) dual control shall be established and maintained for the handling of —

- (i) all types of securities, negotiable and non-negotiable instruments and unissued and blank forms of any such items;
 - (ii) the reserve supply of official cheques, drafts and unissued travellers cheques;
 - (iii) documents or accounts of depositors; and
 - (iv) codes, cyphers and test keys;
- (d) each employee of the Bank shall be required to take uninterrupted holiday of at least two weeks in each calendar year during which the employee of the Bank shall perform no duties and shall stay away from the Bank's premises.

In this paragraph "dual control" means the work of one person in processing transactions being verified by a second person and both sharing the accountability.

4 General exclusions

This Schedule does not apply in respect of —

- (a) any loss resulting directly or indirectly from anyone or more dishonest or fraudulent acts of any of the employees of the Bank unless such loss is covered by Insuring Clause No 1;
- (b) any loss resulting from the complete or partial non-payment of or default upon —
 - (i) any loan or transaction in the nature of, or amounting to, a loan made by or obtained from the Bank; or
 - (ii) any note, account, agreement or other evidence of debt assigned or sold to or discounted or otherwise acquired by the Bank, whether procured in good faith or through trick, artifice, fraud or false pretences unless the loss is covered by Insuring Clause No 1 or No 4, in which event the amount of the loss shall be determined to be the amount of monies paid out, advanced or withdrawn less all monies received from any source whatsoever, including payments and receipt of interest commissions and the like;
- (c) any loss resulting from payments made or withdrawals from any depositor's account by reason of uncollected items of deposit having been credited by the Bank to such account, including without limiting the generality of the foregoing, cheque kiting and cross-firing, whether the payments or withdrawals were procured in good faith or through forgery, trick, artifice, fraud or false pretences or through any other means, including one or more dishonest or fraudulent acts of any of the employees of the Bank;

- (d) any loss resulting from payments or withdrawals from any depositor's account by reason of funds having been credited erroneously by the Bank to the account, unless the loss is covered by Insuring Clause No 1;
- (e) any loss resulting from any shortage in any teller's cash due to error, regardless of the amount of the shortage; and any shortage in teller's cash which is not in excess of the normal shortage in the teller's cash in the office where the shortage shall occur shall be assumed to be due to error;
- (f) any loss of or damage to any property including property contained in a customer's safe deposit box, unless the loss or damage is covered by Insuring Clause No 1;
- (g) any loss through the surrender of property away from premises of the Bank as a result of a threat —
 - (i) to do bodily harm to a Director or employee of the Bank or to any other person, except loss of property in transit in the custody of any employee provided that when such transit was initiated, there was no knowledge by the Bank of any such threat; or
 - (ii) to do damage to the premises or to any property whatsoever of the Bank or of any other person;
- (h) any loss resulting directly or indirectly by reason of forgery or fraudulent alteration unless such loss is covered by Insuring Clause No 1, No 4 or No 5;
- (i) any loss resulting directly or indirectly by reason of the forgery or fraudulent alteration of, on or in any travellers cheques, travellers letters of credit, accounts receivable or assignments thereof, bills of lading, warehouse or trust receipts, or bills or covered by Insuring Clause No 1:
- (j) any loss of unsold travellers cheques placed in the custody of the Bank with authority to sell unless the Bank is legally liable for the loss and the cheques are later paid or honoured by the issuer thereof;
- (k) any loss resulting from credit or charge cards, whether such cards were issued, or purported to have been issued by the Bank or by anyone other than the Bank;
- (l) any and all damages of any type (whether punitive, exemplary or other) for which the Bank is legally liable, except damage representing reimbursement for direct financial loss covered by this Schedule:

- (m) any loss or deprivation of potential income including but not limited to interest and dividends because of a loss covered under this Schedule;
- (n) any loss of or damage to any property whatsoever by reason of wear, tear, gradual deterioration, moth or vermin;
- (o) any loss of or damage to any property whatsoever resulting directly or indirectly from typhoon, hurricane, cyclone, volcanic eruption, earthquake, subterranean fire or other convulsion of nature flood (including any water damage) and contemporaneous or ensuing loss or damage by fire or looting;
- (p) any loss or damage which arising directly or indirectly by reason of or in connection with war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority. In any claim, and in any action, suit or other proceeding to enforce a claim under this Schedule for loss or damage, the burden of proving that the loss or damage does not fall within this exclusion shall be upon the Bank;
- (q)
 - (i) any loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting therefrom or any consequential loss; or
 - (ii) any legal liability of whatsoever nature; directly or indirectly caused by or contributed to by arising from —
 - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (r) any loss of destruction of or damage to property resulting directly or indirectly from an act or omission occurring before the commencement of this Ordinance.

5 Other insurance

This Schedule does not cover any loss which at the time when such loss is discovered is insured by or would but for the existence of this Schedule, be insured by any existing policy or policies except in respect of any excess (not exceeding the limits contained in section 6 of the Ordinance) beyond the amount

which would have been payable under such policy or policies applicable thereunder had this Ordinance not been in force.

6 Limit of liability

Non cumulative liability, regardless of the number of years this Ordinance has been in force or may continue to be in force and of the premiums paid or payable, the liability of the Government shall not be cumulative in amount from year to year or from period to period and in no case shall exceed the limits stated in section 6.

7 Legal proceedings

- (1) As a condition precedent to their right to be indemnified under this Schedule, the Bank shall, as soon as possible and in any event within 30 days after discovery by the Bank of any loss thereunder, given written notice thereof to the Government.
- (2) The Bank shall within 6 months after any such discovery, furnish to the Government affirmative proof of loss together with full particulars.
- (3) Legal proceedings for the recovery of any loss hereunder shall not be brought after the expiration of 2 years from the discovery of the loss, except that any action or proceeding to recover hereunder on account of any judgement against the Bank in any suit shall be commenced within 2 years from the date upon which the judgement in such shall become final.

8 Legal fees

- (1) The Government shall indemnify the Bank for all such reasonable legal fees, costs and expenses incurred and paid by the Bank in the defence of any demand, claim, suit, or legal proceeding with respect to which the Bank established that the act or acts which were committed would entitle the Bank to recover under this Schedule if any loss resulted therefrom. Such indemnity shall be in addition to the Limits specified in Section 6:

Provided that such indemnity shall only apply if the Attorney-General has received written notice in advance that action is being taken by the Bank that might result in liability under this Section and has not given notice to the Bank that the Government will not indemnify under the provisions of this proviso.

- (2) The Government shall be entitled at any time to take over and conduct in the name of the Bank the defence of any such demand, claim, suit or legal proceeding made against the Bank, it being understood, however, that the Bank shall not be required to contest any legal proceedings unless the

Attorney General shall give notice in writing that such proceedings should be contested.

- (3) If such loss, claim or damage does not exceed the excess the Government are not liable for such legal fees, costs, and expenses. However, if such loss, claim or damage should exceed the excess then subject to the proviso to paragraph (1) of this section the Government are liable for the preparation of such legal fees, costs and expenses that the amount of such loss, claim or damage recoverable under this Schedule bears to the sum of such amount and the excess.
- (4) The Government shall not indemnify the Bank for fees, costs or other expenses (whether such fees, costs and expenses be for legal, accounting or other services) incurred by the Bank in establishing the existence of or amount of loss covered by this Schedule.

9 Basis of valuation

- (a) The value of any securities or foreign funds or currencies for the loss, in respect of which a claim is made shall be determined by their closing market value on the last business day prior to the date of discovery of the loss or in the event of the discovery of the loss after the close of the market, by their closing market value on the day of the discovery of the loss.

If there is no market price or value for the same on the day as stated in the preceding paragraph then the value shall be as agreed between the Government and the Bank or in default of agreement by arbitration by an arbitrator to be nominated by agreement or in the absence of agreement by the President for the time being of the Institute of Bankers. If, however, such securities or foreign funds or currencies shall be replaced by the Bank with the approval of the Government, the value shall be the actual cost of replacement.

- (b) In the case of loss of or damage to property consisting of books of account or other records used by the Bank in the conduct of the Bank's business, the Government shall be liable under this Schedule only if the books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour for the actual transcription or copying of data which shall have been furnished by the Bank in order to reproduce the books and other records.

10 Salvage and recovery

In the case of recovery of any sums on account of any loss covered under this policy the amount recovered after deducting the actual cost of obtaining or

making any such recovery but excluding the Bank's own labour or establishment costs, or both, shall be applied in the following order, namely —

- (a) to reimburse the Bank in full for the part, if any, of such loss which exceeds the amount of coverage provided by this Schedule (disregarding the amount of the excess applicable);
- (b) the balance, if any, or the entire net recovery if no part of such loss exceeds the amount of coverage provided by this Schedule, to reduction of that part of the loss covered by this Schedule, or if payment thereof shall have been made, to the reimbursement of the Government; and
- (c) to that part of the loss sustained by the Bank by reason of the excess.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References