

SAMOA

Arrangement of Provisions

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2000, No. 2

AN ACT to make provision for the prevention of money laundering. *[5th June 2000]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Money Laundering Prevention Act 2000.

(2) This Act shall come into force, or any part or section thereof, on such date as may be notified by the Minister by publication of a notice to that effect in the Savali.

2. Interpretation-(1) In this Act, unless the context otherwise requires -

“Authority” means the Money Laundering Authority appointed under section 10:

“business transaction” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person:

“business transaction record” includes where relevant to a business transaction –

- (a) The identification records of all the persons party to that transaction;
- (b) A description of that transaction sufficient to identify its purpose and method of execution;
- (c) The details of any account used for that transaction, including bank, branch and sort code; and
- (d) The total value of that transaction.

“competent authority” means the Attorney General, and includes any person authorised by him in that behalf:

“Court” means the Supreme Court of Samoa:

“document” means any record of information, and includes -

- (a) Anything on which there is writing;
- (b) Anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) Anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) A map, plan, drawing or photograph.

“financial institution” means any person whose regular occupation or business is the carrying out of –

- (a) Any activity listed in the First Schedule to this Act; or

- (b) Any other activity determined by the Minister published by notice in the *Savali*, which activity shall then be deemed to be included in the First Schedule.
- “freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property by order of a court:
- “forfeiture” means the permanent deprivation of property by order of a court:
- “identification record” means –
- (a) Where the person is a corporate body, the details –
 - (i) of the certificate of incorporation, such certificate to be notarized where the corporate body is incorporated outside of Samoa;
 - (ii) of the most recent annual return, if any, filed at the Registry of Companies, such return to be notarized where the corporate body is incorporated outside of Samoa;
 - (iii) of any officer of the corporation as required in subparagraph (b) of this definition;
 - (b) Otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” shall include any person who is a nominee, agent beneficiary or principal in relation to a business transaction:
- “Judge” means a Judge of the Supreme Court of Samoa:
- “Minister” means the Minister of Finance:
- “money laundering” means –
- (a) Engaging directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime; or
 - (b) Receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into Samoa any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime.

“person” means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group, capable of acquiring rights or entering into obligations:

“prescribed offence” means any activity, whenever or wherever carried out, which under the laws of Samoa or any other law, amounts to an offence listed in the Second Schedule to this Act. The Attorney General may from time to time by notice published in the Savali, determine that prescribed offences be added to the Second Schedule:

“proceeds of crime” means the proceeds of unlawful activity wherever committed (and whether derived or obtained directly or indirectly through such activity), and includes any property that is mingled with property that is proceeds of unlawful activity:

“property” includes money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, and includes any interest in such property:

“requesting State” means any State that makes a request under the provisions of Part V:

“unlawful activity” means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than five years, but does not include any crimes that relate, directly or indirectly, to the regulation, imposition, calculation or collection of taxes or the enforcement of exchange control regulations.

(2) A reference in this Act to a document includes a reference to -

- (a) Any part of a document;
- (b) Any copy, reproduction or duplicate of the document or of any part of the document; or
- (c) Any part of such copy, reproduction or duplicate.

PART II
MONEY LAUNDERING PROHIBITED

3. Offence of Money Laundering-(1) A person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

(2) Where a person discloses to the Authority a suspicion or belief that any funds or investments are derived from or used in connection with the proceeds of crime, or discloses to such Authority any matter on which such a suspicion or belief is based-

(a) The disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil or criminal liability; and

(b) If he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if -

(i) the disclosure is made before he does the act concerned; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

4. Offence Committed by a Body of Persons - Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar office, or was purporting to act in such capacity, shall be guilty of that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

5. Attempts, Aiding and Abetting and Conspiracy - Any person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit the offence of, money laundering is guilty of an offence.

6. Penalties - A person guilty of an offence under the provisions of sections 3, 4 or 5 shall be liable on conviction to a fine not exceeding 10,000 penalty units, or to imprisonment for a period not exceeding 7 years, or to both such fine and imprisonment.

7. Jurisdiction - Any act –

- (a) Done by a citizen of Samoa anywhere;
- (b) Done by a person on a ship or aircraft registered in Samoa; or
- (c) Done by a person outside Samoa with intent to do that act within Samoa,

shall, if it would be an offence by that person within the jurisdiction of Samoa under the provisions of this Act, be an offence under those provisions.

8. Secrecy Obligations Overridden - The provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

9. Disclosure Protected - It shall not be unlawful for any person to make any disclosure in compliance with this Act. A financial institution, its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil and/or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the disclosure, where the disclosure was made in good faith.

PART III

ANTI-MONEY LAUNDERING SUPERVISION

10. Minister of Finance to Appoint a Money Laundering Authority-(1) The Minister may appoint a person or persons to be known as the Money Laundering Authority to supervise financial institutions in accordance with this Act.

(2) Until such time as the Minister makes an appointment under subsection (1), the functions of the Money Laundering Authority as provided in this Act shall be carried out by the Governor of the Central Bank of Samoa, or by any person authorised by him in writing in that behalf.

11. Powers and Duties of the Money Laundering Authority-

(1) The Money Laundering Authority –

- (a) Shall receive the reports issued by financial institutions pursuant to the provisions of section 12(b);
- (b) Shall send any such report to the Attorney General and the Commissioner of Police if, having considered the report, the Authority also has reasonable grounds to suspect that the business transaction involves proceeds of crime/or that a money laundering offence is being, has been or is about to be committed.

(2) A person authorised by the Authority for such a purpose, may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to the provisions of section 12(a) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record.

- (c) Shall send to the Attorney General and the Commissioner of Police any information derived from an inspection carried out pursuant to the provisions of subsection (2) of this section if it gives the Authority reasonable grounds to suspect that a business transaction involves proceeds of crime or that a money laundering offence is being, has been, or is about to be committed;
- (d) Shall destroy any note or copy thereof made or taken pursuant to the provisions of subsection (2) within three years of the inspection save where any such note or copy has been sent to the Attorney General and the Commissioner of Police;

- (e) May instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority following a report or investigation made under the provisions of this section;
- (f) May -
 - (i) compile statistics and records, provide information to law enforcement agencies and regulatory bodies within or without Samoa in accordance with Part V;
 - (ii) make recommendations arising out of any information received;
 - (iii) issue guidelines to financial institutions; and
 - (iv) advise the Minister and the Attorney General with regard to any matter relating to money laundering;
- (g) Shall create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sections 12(a) and 12(b);
- (h) May consult with any relevant person, institution or organisation for the purposes of the exercise of its powers or duties under subparagraphs (f), (g) and (h);
- (i) Shall not conduct any investigation into money laundering other than for the purpose of ensuring compliance by a financial institution with the provisions of section 12.

12. Obligations of Financial Institutions - A financial institution shall –

- (a) Keep a business transaction record of any new business transaction exceeding \$30,000 for a period of seven years after the termination of the business transaction so recorded;

- (b) As soon as the suspicion hereinafter referred to is formed, report to the Authority, any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves proceeds of crime;
- (c) Comply with any instruction issued to it by the Authority pursuant to section 11(f);
- (d) Permit any member of the Authority upon request to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to the provisions of subsection (1) and to make any notes or take any copies of the whole or any part of any such record or to answer any questions of the Authority in relation to such records;
- (e) Develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and controls;
- (f) Comply with the guidelines and training requirements issued and provided by the Authority respectively in accordance with sections 11(f), 11(g) and 11(h);
- (g) Develop a procedure to audit compliance with this section.

13. Offence of Wilful Failure to Make Report-(1) An offence is committed by a financial institution or its employees, staff, directors, owners or other authorised representatives who, acting as such, wilfully fail to comply with the obligations in section 12(b), or who wilfully make a false or falsified report to the Authority.

(2) Without prejudice to criminal and/or civil liabilities for offences connected to money laundering, a person guilty of an offence under the provisions of subsection (1) shall on conviction be liable to a fine not exceeding 500 penalty units and in addition the licence of such financial institution to operate as such may be revoked by the Central Bank of Samoa or the Minister, as

the case may be, pursuant to the provisions of the Offshore Banking Act 1987 and the Financial Institutions Act 1996.

14. Money Laundering Authority's Power to Obtain Search Warrant - The Money Laundering Authority, or a commissioned officer of the Police Service, upon application to a Judge and satisfying him that there are reasonable grounds to believe that –

- (a) A financial institution has failed to keep a business transaction record as provided by the provisions of section 12(a);
- (b) A financial institution has failed to report any business transaction as provided by the provisions of section 12(b); or
- (c) An officer or employee of a financial institution is committing, has committed or its about to commit a money laundering offence,

may obtain a warrant to enter any premises belonging to, in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Authority or the Police Service as ordered by the Judge and specified in the warrant.

15. Property Tracking and Monitoring Orders - The Money Laundering Authority or a commissioned officer of the Police Service upon application to a Judge and satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence may obtain an order -

- (a) That any document relevant to -
 - (i) identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property;

belonging to, or in the possession or under the control of that person be delivered forthwith to the Authority or Commissioner of Police; and

- (b) That a financial institution forthwith produce to the Authority or Commissioner of Police all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Judge directs.

16. Mandatory Injunction to Enforce Compliance-(1) All officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this Part of this Act.

(2) The Authority upon application to a Judge and satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations as provided in sections 12(a), 12(b), 12(c), 12(d) or 12(e) may obtain an injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(3) In granting an injunction pursuant to subsection (2) of this section the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

17. Tipping-off-(1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(2) It is an offence for any person who knows or suspects that a disclosure by a financial institution has been made to the Authority under section 12(b) to divulge that fact or other information to another whereby any investigation that might be conducted following the disclosure is likely to be prejudiced.

(3) A person guilty of an offence under the provisions of subsection (1) or subsection (2) of this section shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

18. Falsification, Concealment of Document-(1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering.

(2) A person guilty of an offence under the provisions of subsection (1) above shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

19. Currency Reporting at the Border-(1) Any person who leaves or enters Samoa with more than \$10,000 in cash or negotiable bearer instruments (in Samoan currency or equivalent foreign currency) without first having reported the fact to the Money Laundering Authority commits an offence and shall be liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

(2) For the purpose of this section, the term –

(a) “authorised officer” means -

(i) a commissioned officer of the Police Service;

or

(ii) a Customs Officer; or

(iii) an employee of the Central Bank authorised by the Governor; or

(iv) an employee of the Airport Authority authorised by the Airport Manager.

(b) “negotiable bearer instrument” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, made payable to the bearer.

(3) Where a person –

(a) Is about to leave Samoa or has arrived in Samoa; or

(b) Is about to board or leave, or has boarded or left, any ship or aircraft,
an authorised officer may, with such assistance as is reasonable and necessary –

(c) Examine any article which a person has with him or in his luggage; and

(d) If the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person,

for the purpose of finding out whether the person has with him or on him or in his clothing, any cash or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) A person shall not be searched except by a person of the same sex.

(5) An authorised officer, and any person assisting such officer, may board any ship or aircraft for the purposes of exercising the powers conferred by subsection (3).

(6) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (3), may afford evidence as to the commission of an offence under this section, the officer may seize the cash or negotiable bearer instruments.

PART IV FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

20. Freezing of Property-(1) Where a person (hereinafter referred to as the “defendant”) has been charged or is about to be charged with a money laundering offence, the competent authority may make an application to a Judge in accordance with subsection (2) for an order (hereinafter referred to as a “freezing order”) freezing the property of, or in the possession or under the control of that person, which is alleged to be the proceeds of crime, wherever such property may be.

(2) An application made under subsection (1) may be made ex parte to a Judge in chambers and shall be accompanied by an affidavit sworn on the information and belief of the competent authority or any other person deposing to the following matters, namely –

- (a) The offence or matter under investigation;
- (b) The person who is believed to be in possession of the property;
- (c) The grounds for the belief that a freezing order may be made under this Act; and
- (d) A description of the property.

(3) Where an application for a freezing order is made under subsection (1), the Judge may make an order -

- (a) Prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in such manner as may be specified in the order; and

- (b) At the request of the competent authority where the Judge is of the opinion that the circumstances so require –

- (i) appointing a person to take control of and to manage or otherwise deal with all or part of that property in accordance with directions of the Judge; and

- (ii) requiring any person having possession of that property to give possession of the property to the person appointed under subparagraph (i).

(4) The Judge in making any order freezing the property of the defendant may give directions as to -

- (a) The period of effect of the freezing order; or

- (b) The disposal of the property for the purpose of -

- (i) determining any dispute as to the ownership of or other interest in the property or any part thereof;

- (ii) its proper administration during the period of freezing;

- (iii) the payment of debts incurred in good faith due to creditors prior to the making of the order;

- (iv) the payment of moneys to the defendant for his reasonable subsistence and that of his family;

(v) the payment of the reasonable business and legal expenses of the defendant; and

(vi) permitting the use of the property in order to enter into a recognizance required of the defendant by a court.

(5) For the purpose of determining the reasonableness of business and legal expenses referred to in subsection (4)(b)(v), a Judge may hold a hearing in chambers.

(6) An order made under the provisions of this section shall provide for notice to be given to persons affected by the order in such manner as the Judge directs or as may be prescribed by the Rules of Court.

(7) An order made under the provisions of this section shall cease to have effect at the end of the period of seven days, following the hour the order was made, if the person against whom such order was made has not been charged with a money laundering offence within that time.

(8) The Government of Samoa, the competent authority, the Money Laundering Authority or any of their staff shall not be liable for any damages or costs arising directly or indirectly from the making of a freezing order unless it is proved that the application for the freezing of the property was not made in good faith.

(9) Where the Court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the Court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.

(10) Any person who knowingly acts in contravention of or fails to comply with the provisions of an order made under this section is, without prejudice to any other remedy provided at law, guilty of an offence and any act so made shall be null and void and without effect at law.

21. Forfeiture of Property-(1) Upon application by the competent authority to a Judge, any property of or in the possession or under the control of any person who is convicted of a money laundering offence and any property of that person the subject of a freezing order shall, unless proved to the contrary, be deemed to be derived from money laundering, and forfeited by order of the Court.

(2) In determining whether or not any property is derived from money laundering the Court will apply the standard of proof required in civil proceedings.

(3) In making a forfeiture order the Court may give directions -

(a) For the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof; and

(b) As to the disposal of the property.

(4) Upon application to a Judge by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

22. Property Tracking and Monitoring-(1) For the purpose of determining whether any property belongs to, is in the possession or under the control of any person, the Court may upon application by the competent authority and if satisfied that there are reasonable grounds for so doing, order -

(a) That any document relevant to -

(i) identifying, locating or quantifying property of that person; or

(ii) identifying or locating any document necessary for the transfer of property of that person, be delivered forthwith to the competent authority; and

(b) That a financial institution forthwith produces to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the Court directs.

(2) Upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with the provisions of subsection (1), the Court may order that the competent authority may enter any premises of that person, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

(3) Where a person produces or delivers a document pursuant to an order made under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against that person in any proceedings, except a proceeding for an offence of failing to comply with an order of a Court.

23. Offences-(1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of section 22(1).

(2) It is an offence for a person who is the subject of an order made under section 22(1) to disclose the existence or operation of the order to any person except to an officer of the law enforcement authority named in the order, an officer or agent of the financial institution, for the purposes of ensuring that the order is complied with or a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(3) A person guilty of an offence under the provisions of subsection (1) or subsection (2) shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

24. Limitations on Freezing and Forfeiture of Property -

The provisions of sections 20 and 21 shall only apply to property coming into the possession or under the control of a person after the commencement of this Act.

25. Appeals - Nothing in this Part of this Act shall prevent the operation of any appeal normally available against orders made by the Court.

**PART V
MUTUAL ASSISTANCE IN RELATION
TO MONEY LAUNDERING**

26. Co-operation with a Foreign State - Subject to the provisions of section 31, where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offence, the competent authority shall -

- (a) Take all action necessary to implement the request forthwith; or
- (b) Inform the foreign State making the request of any reason -
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

27. Competent Authority's Power to Obtain Search Warrant - The competent authority upon application to a Judge and upon production to the Judge of a request may obtain a warrant -

- (a) To enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises; and
- (b) To search the person of any person named in the warrant, and remove any document, material or other thing for the purpose of executing the request as directed in the warrant.

28. Property Tracking and Monitoring Orders - The competent authority upon application to a Judge and upon production to the Judge of a request may obtain an order -

- (a) That any document relevant to -
 - (i) Identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property,

belonging to, in the possession or under the control of any person the subject of the request be delivered to the competent authority; and

- (b) That a financial institution forthwith produces to the competent authority all information obtained by the institution about any business transaction conducted by or for a person the subject of the request with the institution during such period before or after the date of the order as the Judge directs.

29. Freezing and Forfeiture of Property – Subject to the provisions of section 31, the competent authority upon application to a Judge and upon production to the Judge of a request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the request may obtain an order in accordance with sections 20 and 21.

30. Request Accompanied by an Evidence Order-(1) Subject to the provisions of section 31, the competent authority may upon application to a Judge and upon production to the Judge of a request accompanied by an order issued by a court of the requesting State directed to any person within the jurisdiction of the Supreme Court of Samoa to deliver himself or any document or material in his possession or under his control to the jurisdiction of the court of the requesting State for the purpose of giving evidence in specified proceedings in that court, obtain an order directed to that person in the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with the provisions of subsection (1), the person served shall for the purposes of the order either -

- (a) Deliver himself to the jurisdiction of the Supreme Court of Samoa; or
- (b) Deliver himself to the jurisdiction of the court of the requesting State, in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with the provisions of subsection (1), elects to deliver himself to the jurisdiction of the court of the requesting State and fails to comply with any direction in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the Supreme Court of Samoa as provided in subsection (2)(a).

(4) The Supreme Court of Samoa shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the Court pursuant to the provisions of subsection (2)(a). Such evidence shall subsequently be transmitted by the competent authority to the foreign State.

31. Limitations on Compliance with Request-(1) Assistance to a foreign State referred to in this Part of this Act shall be provided only to those States with whom Samoa has entered into mutual assistance arrangements on a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such arrangements.

(2) The competent authority may refuse to comply with a request if -

- (a) The action sought by the request is contrary to any provisions of the Constitution of Samoa; or
- (b) The execution of the request is likely to prejudice the national interest or existing laws, policy or procedure of Samoa.

(3) The provisions of section 29 shall apply to property coming into the possession or under the control of a person after the commencement date of this Act.

32. Requests to Other States - The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 33.

33. Issuing Evidence Order Against Foreign Resident - The competent authority upon application to a Judge may, in respect of any proceedings for a money laundering offence, apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to

the jurisdiction of the Court or, subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings.

34. Evidence Pursuant to a Request - Evidence taken pursuant to an evidence order under section 33 in any proceedings in a court of a foreign State shall be received as prima facie evidence in any proceedings to which such evidence relates.

35. Form of Requests - A request shall be in writing, including facsimile transmitted writing, and shall be dated and signed by or on behalf of the person making the request.

36. Content of Requests - The request shall -

- (a) Confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;
- (b) State the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in subparagraph (a) or give details of the convictions of the person referred to in subparagraph (a);
- (c) Give particulars sufficient to identify any person referred to in subparagraph (b);
- (d) Give particulars sufficient to identify any financial institution or other person believed to have information, documents or material of assistance to the investigation or prosecution referred to in subparagraph (a);
- (e) Request the competent authority to whom the request is addressed to obtain from a financial institution or other person referred to in subparagraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in subparagraph (a);
- (f) Specify the manner in which and to whom any information, documents or material obtained pursuant to the request is to be produced;

- (g) State whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) Contain such other information as may assist the execution of the request.

37. Request for Forfeiture - A request for forfeiture shall have attached to it a copy of the final forfeiture order made by the court of the foreign State and a statement signed by a Judge of that court to the effect that no further appeal against such order can be made.

38. Request not to be Invalidated - A request shall not be invalidated for the purpose of any legal proceedings in Samoa by virtue of any failure to comply with the provisions of section 36, provided the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

39. Offences-(1) It is an offence -

- (a) For any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of this Part of this Act;
- (b) For any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(2) A person guilty of an offence under the provisions of subsection (1) above shall on conviction be liable to on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

40. Asset Sharing - Where the Minister considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Act, or the value thereof, be given or remitted to the requesting State.

PART VI EXTRADITION

41. Money Laundering an Offence for Extradition Purposes - For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.

PART VII MISCELLANEOUS

42. Regulations-(1) The Head of State acting on the advice of Cabinet, may from time to time make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary or convenient to be prescribed or provided, for the carrying out of, or the giving full effect to, the provisions of this Act and its due administration including all or any of the following particular purposes –

- (a) To provide for the regulation and control of financial institutions for the prevention of money laundering;
- or
- (b) To prescribe procedures and systems for training, identification, record keeping, internal reporting and reporting to the Authority for financial institutions.

(2) Regulations or rules made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine of 100 penalty units or imprisonment for a term not exceeding *one* year or both such fine or imprisonment.

43. General Penalty Provisions - Any person who contravenes or fails to comply with any provision or requirement of this Act for which no offence is specifically created is guilty of an offence and shall be liable on conviction to a fine not exceeding 100 penalty units.

SCHEDULE 1
ACTIVITIES OF FINANCIAL INSTITUTIONS
(SECTION 2)

1. “Banking business” as defined in the Central Bank of Samoa Act 1984 and the Off Shore Banking Act 1987.
2. “Off Shore banking business” as defined in the Off Shore Banking Act 1987.
3. Finance leasing.
4. Venture risk capital.
5. Money transmission services.
6. Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts).
7. Guarantees and commitments.
8. Trading for own account or account of customers in -
 - (a) money market instruments (cheques, bill, certificates of deposit etc.);
 - (b) foreign exchange;
 - (c) financial and commodity based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments, etc.);
 - (d) exchange and interest rate instruments; and
 - (e) transferable or negotiable instruments.
9. Underwriting share issues and the participation in such issues.
10. Money broking.

11. Investment business.
12. Insurance business transactions.
13. Real property business transactions.
14. Bullion dealing.
15. Casinos and other gambling and betting services.
16. Acting as a financial intermediary.
17. Trust business.
18. Certified Public Accountants.
19. Lawyers (Barristers and Solicitors).

SCHEDULE 2
PRESCRIBED OFFENCES
(SECTION 2)

A. Offences Under the Laws of Samoa

Crimes Ordinance 1961 –

- | | |
|--------------|--|
| Section 35: | Official corruption. |
| Section 36: | Perjury. |
| Section 38: | Conspiring to defeat justice. |
| Section 43: | Distribution or exhibition of indecent matter. |
| Section 51J: | Keeping place of resort for homosexual acts. |
| Section 51K: | Brothel keeping. |
| Section 51L: | Living off the earnings of a prostitute. |
| Section 51M: | Procuring sexual intercourse. |
| Section 63: | Murder. |
| Section 73A: | Procuring abortion. |
| Section 79: | Grievous Bodily Harm. |
| Section 83: | Abduction of woman or girl. |
| Section 83A: | Kidnapping. |
| Section 83B: | Abduction of child under 16. |

Part VII
Crimes Against Rights of Property (all sections)

Narcotics Act 1967

All offences prescribed under this Act.

B. Offences under any other law

Any offence committed in any foreign country that involves:

- An offence against the law relating to dangerous drugs or narcotics.
- Illegal dealing in arms and armaments.
- Terrorism.
- Procuring or trafficking in men, women or young persons for immoral purposes.
- Dealing in slaves.
- Piracy.
- Kidnapping, illegal arrest, detention or confinement of a person.
- Homicide.
- Grievous bodily harms.
- Blackmail.
- Counterfeiting.
- Extortion.
- Forgery.
- Fraud.
- Illegal deposit taking.
- Robbery involving more than \$25,000 tala (or its foreign equivalent).
- Thefts involving more than \$25,000 tala (or its foreign equivalent).