



SAMOA

**ASIAN DEVELOPMENT BANK LOAN
ACT 1971**

Arrangement of Provisions

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ASIAN DEVELOPMENT BANK LOAN ACT 1971
1971 **No.6**

AN ACT to provide for the raising of loans from the Asian Development Bank and for matters connected therewith.

[Assent and commencement date: 15 July 1971]

1. Short title – This Act may be cited as the Asian Development Bank Loan Act 1971.

2. Interpretation – In this Act, unless the context otherwise requires:

“Bank” means the Asian Development Bank;

“enactment” includes every Act, Ordinance, order, proclamation, notice, rule and regulation which are in force in Samoa or in New Zealand, and every part thereof;

“Government” means the Government of Samoa;

“Minister” means the Minister of Finance.

3. Authority to borrow from the Bank – (1) Despite anything contained in the Public Finance Management Act 2001 or any other enactment, the Government may, in such manner and on such terms and subject to such conditions as may be agreed between the Government and the Bank, borrow from the Bank such sums as may be required by the Government.

(2) Any sums borrowed by the Government under the powers conferred by subsection (1) for the requirements of the Government shall be paid into such special fund as may be designated by the Minister, and shall be expended only for the purposes for which they are borrowed as specified in the relevant agreement concluded between the Government and the Bank and all such expenditures shall be charged on and be made from the fund designated by the Minister and shall be statutory expenditures.

(3) Any agreement between the Government and the Bank in respect of sums borrowed under the powers conferred by subsection (1) shall be made in the name of the Government and may be signed on behalf of the Government by the Minister or by any person authorised in writing by the Minister.

(4) The Minister shall submit to the Legislative Assembly a report on each loan as soon as possible after the relevant agreement has been signed on behalf of the Government.

(5) Nothing in this section affects or derogates from any other power to borrow money possessed by the Government.

4. Power to issue instruments, including bonds – (1) Despite anything contained in an enactment, the Government may issue such bonds, promissory notes or other instruments on such terms as may be necessary for the purpose of giving effect to the terms of an agreement which may be entered into by it with the Bank in respect of any borrowing authorised by section 3(1).

(2) Any such bond, promissory note or other instrument may be signed on behalf of the Government by the Minister or by any other person authorised in writing by the Minister.

(3) Despite the provisions of the Public Finance Management Act 2001, it is not necessary to issue or register stock in respect of any loan borrowed from the Bank, nor to set aside or pay any amount in any half year during the currency of such loan as a contribution to the National Loans Sinking Fund.

5. Repayment of principal and payment of interest – All principal, interest, and other money repayable or payable in respect of sums borrowed by the Government from the Bank is declared to be:

- (a) a charge on the public revenues of Samoa and on the Treasury Fund or such other fund or account as the Minister may decide; and
- (b) a statutory expenditure; and
- (c) payable out of any such fund or account at the time or times provided in any agreement concluded with the Bank in respect of the sums so borrowed.

6. Implementation of obligations under agreements –

(1) Despite anything contained in any other enactment, any agreement concluded between the Government and the Bank in respect of sums borrowed by the Government from the Bank and any bond, promissory note or other instrument issued under any such agreement is valid and enforceable and has full force and effect in Samoa in accordance with its terms.

(2) Without prejudice to subsection (1):

- (a) no stamp duty or other tax shall be payable on such agreement and any bond, promissory note or other instrument issued under any such agreement; and
- (b) the principal of the loan obtained and the bond issued shall be repayable and the interest and other charges thereon shall be payable without deduction for and free from liability for income tax and any other tax and free from any currency or exchange control restrictions.

(3) The Public Finance Management Act 2001 shall not apply to any borrowing by the Government from the Bank in accordance with this Act.

(4) The Government shall not, except as otherwise agreed between the Minister and the Bank, create any lien on any of its assets as security for an external debt, unless it is expressly provided that the lien will *ipso facto* equally and rateably secure the payment of the principal of an interest and other charges on any loan made by, or any bond, promissory notes or instruments issued under any loan made by the Bank to the Government,

PROVIDED however that subsections (1) to (3) do not apply to:

- (a) a lien created on property at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or
 - (b) a lien arising in the ordinary course of banking transactions and securing a debt maturing not more than 1 year after its date.
- (5) In subsection (4):
- “lien” includes mortgages, pledges, charges, privileges and priorities of any kind;
 - “external debt” means a debt payable in a medium other than currency which at the time in question is legal tender for the payment of private and public debt in Samoa whether such debt is payable absolutely or at the option of the creditor in such other medium.

7. Arbitration – If a dispute between the Bank and the Government arises under an agreement concluded in exercise of the powers conferred by this Act or under a bond, promissory note or an instrument issued under any such agreement, it is determined by arbitration in manner agreed between the parties, and an award made in such arbitration is enforceable in Samoa in all respects as if it had been validly made in an arbitration under the provisions of the Arbitration Act 1976 or any other written law relating to arbitration for the time being in force in Samoa, and for the purposes of this section the provisions of such Act or law is binding on the Government.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;

- (b) Amendments have been made to up-date references to offices, officers and statutes (reference to *Public Finance Management Act 2001*);
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “shall be” changed to “is” and “shall have” changed to “has”;
 - (ii) “notwithstanding” changed to “despite”;
 - (iii) “hereby”, “from time to time” (or “at any time”) and “the generality of” removed.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Finance.*
