



# NIUE BANK AMENDMENT ACT 2013

No. 322

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### **An Act to amend the Niue Bank Act 1994--**

- (a) to enable agents of banks registered in New Zealand to be authorised to provide certain banking services in Niue; and
- (b) to provide for certain other matters relating to banking

### **The Assembly enacts as follows --**

#### **1 Title**

This Act is the Niue Bank Amendment Act 2013.

#### **2 Commencement**

This Act comes into force on the day after the date on which it becomes law under Article 34 of the Constitution.

#### **3 Principal Act amended**

This Act amends the Niue Bank Act 1994.

#### **4 Section 2 amended**

The following definitions are inserted in section 2 in their appropriate alphabetical order:

“**acquiring services** means services that enable merchants to do either or both of the following things:

“(a) receive payment for goods or services provided to the holder of a payment device:

“(b) be reimbursed for cash advanced to the holder of a payment device

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“**issuing services** means services that enable the holder of a payment device to do any or all of the following things:

- “(a) pay for goods or services:
- “(b) withdraw cash from a bank account:
- “(c) borrow cash

“**issue**, in relation to a payment device, (but not for the purposes of the expression “issuing services”) means give, lend, or rent (or otherwise provide on the basis of the periodic payment of a charge)

“**payment device**--

- “(a) means a credit card, debit card, or EFTPOS card (however described by its issuer) that enables its holder to do either or both of the following things:
  - “(i) obtain goods or services on the basis of payment made or to be made by means of the card:
  - “(ii) obtain cash (whether by withdrawal from an account or as an advance); and
- “(b) includes any device or program issued to a person that performs some or all of the functions of a payment device within the meaning of paragraph (a)”.

**5 Section 35 amended**

- (1) Section 35(1) is amended by inserting the following paragraphs after paragraph (b):

- “(ba) an approved agent, in respect of the provision of any authorised agency banking service;
- “(bb) a designated bank, in respect of the provision of any authorised direct banking service;”.

- (2) Section 35(1) is amended by replacing paragraph (e) with the following paragraph:

- “(e) a person that--
  - “(i) does not carry on banking business in Niue; but
  - “(ii) does either or both of the things stated in section 40A(1)(a) and (b);”.

- (3) Section 35 is amended by adding the following subsection:

“(5) In paragraphs (ba) and (bb) of subsection (1), **approved agent, designated bank, provision of any authorised agency banking service, and provision of any authorised direct banking service** have the meanings given to those expressions by section 84A.”

**6 New section 40A inserted**

The following section is inserted after section 40.

“**40A Provision of acquiring services and issuing services**

- “(1) For the purposes of section 40(1), a person does not carry on banking business in Niue just because the person does any or all of the following:

- “(a) provides acquiring services in Niue, or to customers in Niue:
  - “(b) provides issuing services in Niue, or to customers in Niue:
  - “(c) offers to do, or advertises, markets, or otherwise makes known the person’s ability to do, either or both of the things stated in paragraphs (a) and (b).
- “(2) For the purposes of the law of Niue, acquiring services or issuing services provided in Niue by any person (whether directly, or with the help or involvement of an approved agent (within the meaning of section 84A)) must be treated as having been supplied--
- “(a) in New Zealand and
  - “(b) subject to the rules that apply to those services in New Zealand (including the payments standards that the person is subject to in New Zealand and those imposed by any applicable credit card schemes).”

7 **New Part 7A inserted**

The following Part is inserted after Part 7:

**“Part 7A**

**“Authorising provision of certain banking services**

**“84A Interpretation**

In this Part,--

**“approved agent--**

“(a) means a body corporate that is for the time being approved under section 84F as the agent in Niue of a designated bank; and

“(b) in relation to a designated bank, means an approved agent of the bank

**“customer** includes prospective customer

**“designated bank--**

“(a) means a New Zealand bank that is for the time being designated by regulations to provide banking services under this Part; and

“(b) in relation to an approved agent, means the designated bank as whose agent the approved agent is approved

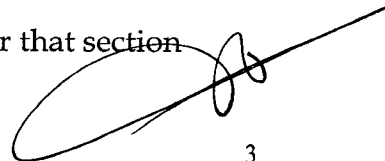
**“merchant** includes service-provider and financial institution

**“New Zealand account**, in relation to a designated bank, means an account at the bank in New Zealand whose operation is governed by the law of New Zealand

**“New Zealand bank** means a registered bank within the meaning of--

“(a) section 2 of the Reserve Bank of New Zealand Act 1989 (New Zealand); or

“(b) any provision enacted in substitution for that section



**"New Zealand contract** means a contract that is governed by the law of New Zealand

**"provision of any authorised agency banking service** means doing of any thing of a kind described in section 84H(1)

**"provision of any authorised direct banking service** means doing of any thing of a kind described in any of paragraphs (b) to (d) of section 84D(1).

**"84B Designation of New Zealand banks to provide banking services in Niue**

Cabinet may by regulations designate a New Zealand bank to provide banking services under this Part.

**"84C Revocation of designation**

**"(1)** Regulations revoking any regulations designating a New Zealand bank to provide banking services under this Part may come into force no earlier than the day 6 months after the day on which they are made.

**"(2)** On the revocation of regulations designating a New Zealand bank to provide banking services under this Part,--

**"(a)** the New Zealand bank to which they relate ceases to be designated to provide banking services under this Part; and

**"(b)** every approved agent ceases to be approved as the agent in Niue of the New Zealand bank.

**"(3)** Subsection (2) does not prevent--

**"(a)** the designation to provide banking services under this Part for a second or later time of a New Zealand bank that has earlier (by virtue of that subsection) ceased to be designated to provide banking services under this Part; or

**"(b)** the approval of a body corporate as the agent in Niue of a designated bank for a second or later time of a body corporate that has earlier ceased to be approved as the agent in Niue of a designated bank by virtue of that subsection.

**"(4)** Subsection (3)(b) applies whether the second or later approval applies to the same designated bank or some other designated bank.

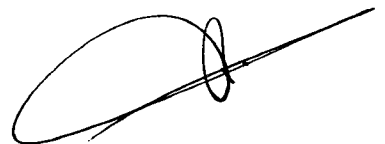
**"84D Effect of designation of banks**

**"(1)** Whether or not it is registered as a bank under this Act, a designated bank--

**"(a)** may, by the agency of an approved agent, undertake the provision of any authorised agency banking service; and

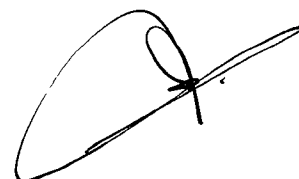
**"(b)** may (directly, or with the help or involvement of an approved agent) do any or all of the following:

**"(i)** enable customers of the bank in Niue to open electronically from Niue New Zealand accounts at the bank:



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- “(ii) enable customers of the bank in Niue to operate electronically from Niue New Zealand accounts at the bank (whether opened directly under the authority of subparagraph (i) or by the agency of an approved agent):
  - “(iii) enable customers of the bank in Niue to close electronically from Niue New Zealand accounts at the bank (whether opened directly under the authority of subparagraph (i) or by the agency of an approved agent):
  - “(c) may do in Niue (directly, or with the help or involvement of an approved agent) any other thing the doing of which is provided for in a contract that--
    - “(i), is a New Zealand contract between the bank and an approved agent; and
    - “(ii) has been approved by the Minister for the purposes of this paragraph by written notice to the bank:
  - “(d) may provide in Niue (directly, or with the help or involvement of an approved agent) acquiring services, issuing services, or both:
  - “(e) may by any means or medium, offer to do, or advertise, market, or otherwise make known its ability to do, the things stated in paragraphs (a) to (d) (or any of them):
  - “(f) may do any other thing reasonably necessary to enable the bank to do any of the things stated in paragraphs (a) to (e).
- “(2) Notwithstanding any enactment of Niue to the contrary, subsection (1) is complete authority for a designated bank to do any or all of the things described in that subsection.
- “(3) Notwithstanding subsection (2), for the purposes of the law of Niue, any thing of a kind described in any of paragraphs (a) to (c), (e), or (f) of subsection (1) that is done in Niue by a designated bank must be treated as having been done in New Zealand.
- “(4) Subsections (1) and (2)--
- “(a) do not authorise a designated bank that is not registered as a bank under this Act to undertake, otherwise than by the agency of an approved agent, the provision of any authorised agency banking service; but
  - “(b) do not prevent a designated bank that is not registered as a bank under this Act from becoming registered as a bank under this Act and (while registered) carrying on banking business in Niue.



**"84E Application of section 40(1) to designated banks**

Section 84B overrides section 40(1); but does not limit or affect the application to a designated bank of section 40(1) so far as it relates to--

- "(a) the carrying on in Niue by the agency of an approved agent of banking business that does not constitute the provision of an authorised agency banking service; or
- "(b) the carrying on in Niue by the bank directly of banking business of a kind that is not described in section 84D(1)(b) or (c).

**"84F Approval of agents**

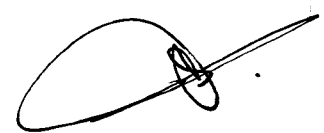
Cabinet may, by regulations stating the name of the agent and the name of the bank, approve a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank.

**"84G Revocation of approval**

- "(1) Regulations revoking any regulations approving a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank may come into force no earlier than the day 6 months after the day on which they are made.
- "(2) On the revocation of regulations approving a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank, the body corporate ceases to be approved as the agent in Niue of the designated bank concerned.
- "(3) Subsection (2) does not prevent the approval as the agent in Niue of a designated bank for a second or later time of a body corporate that has earlier (by virtue of that subsection) ceased to be approved as the agent in Niue of a designated bank.
- "(4) Subsection (3) applies whether the second or later approval applies to the same designated bank or some other designated bank.

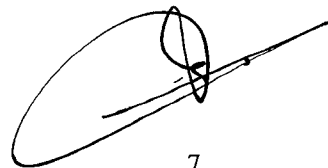
**"84H Approved agents may provide certain services**

- "(1) Whether or not it is registered as a bank under this Act, an approved agent may,--
  - "(a) on behalf of the designated bank, do any or all of the following things:
    - "(i) enable customers of the bank in Niue to open and close New Zealand accounts at the bank:
    - "(ii) accept cash in Niue to be credited to a New Zealand account at the bank, in accordance with a New Zealand contract between the account-holder and the bank:
    - "(iii) in Niue, pay cash out of funds held in a New Zealand account at the bank, in accordance with a New Zealand contract between the account-holder and the bank:



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- “(iv) do any or all of the things described in section 84D(1)(c):
  - “(v) provide in Niue, in accordance with a New Zealand contract with the bank, services of a kind approved for the purposes of this section by Cabinet by regulations (being services that relate to accounts, products, or services of the bank of a kind offered to the public in New Zealand by the bank):
  - “(b) help the designated bank to do, or involve itself in the doing by the designated bank of, any or all of the things described in section 84D(1)(b), (c), or (d):
  - “(c) with the consent of the designated bank (given generally or in relation to the particular customer), provide to any customer in Niue of the bank any information relating to the customer that is held by the agent or bank:
  - “(d) act as a channel of communication between the designated bank and its customers in Niue:
  - “(e) on behalf of the designated bank, do in Niue any other thing the doing of which is provided for in a contract that--
    - “(i) is a New Zealand contract between the bank and an approved agent; and
    - “(ii) has been approved by the Minister for the purposes of this paragraph by written notice to the approved agent:
  - “(f) on behalf of the designated bank, enter into contracts with its customers in Niue to do any of the things stated in paragraphs (a) to (d):
  - “(g) by any means or medium, offer to do, or advertise, market, or otherwise make known its ability to do, the things stated in paragraphs (a) to (e) (or any of them):
  - “(h) do any other thing reasonably necessary to enable the agent to do any of the things stated in paragraphs (a) to (f).
- “(2) Regulations approving services of any kind for the purposes of subsection (1)(a)(iv)--
- “(a) may apply to all approved agents; or
  - “(b) may apply only to approved agents of stated kinds or descriptions; or
  - “(c) may apply only to stated approved agents.
- “(3) Notwithstanding any enactment of Niue to the contrary, subsection (1) is complete authority for an approved agent to do any or all of the things described in that subsection, even if it is not registered as a bank under this Act.
- “(4) Subsection (1)--



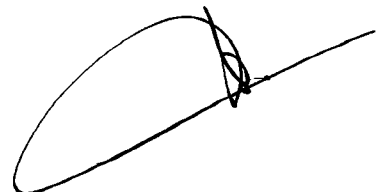
- “(a) does not authorise an approved agent that is not registered as a bank under this Act to carry on in Niue any banking business that is not the provision of an authorised agency banking service; but
- “(b) does not prevent an approved agent that is not registered as a bank under this Act from becoming registered as a bank under this Act and (while registered) carrying on banking business in Niue.

**“84I Effect of agency arrangement**

- “(1) The provision of an authorised agency banking service in Niue by an approved agent on behalf of its designated bank does not constitute the carrying on of banking business in Niue by the bank.
- “(2) The laws of Niue apply to every action (or failure or refusal to act) by an approved agent as if the agent acts (or fails or refuses to act) in its own right, rather than on behalf of the designated bank; and--
  - “(a) the agent is liable for the action (or failure or refusal) accordingly; and
  - “(b) the bank is not liable, either directly or vicariously, for the action (or failure or refusal).
- “(3) Subsection (2)--
  - “(a) overrides section 84H(1); and
  - “(b) applies even though, as between an approved agent and the designated bank, the agent and bank may be agent and principal.
- “(4) Subsection (3)(b) does not prevent the bank, or an officer or employee of the bank, from being liable (civilly or criminally) as a party to an action, or a failure or refusal to act, of the agent that the bank, officer, or employee participated in, directed, authorised, assented to, or knowingly acquiesced in, knowing that the action, failure, or refusal--
  - “(a) (in the case of civil or criminal liability) was contrary to the law of Niue; or
  - “(b) (in the case of civil liability only) gave rise to civil liability under the law of Niue.

**“84J Status of bank accounts at designated banks**

- “(1) This subsection applies to a bank account in New Zealand at a designated bank that--
  - “(a) was opened directly from Niue under the authority of section 84D(1)(b)(i); or
  - “(b) was opened by a customer in Niue using an approved agent acting on the bank’s behalf.
- “(2) The law of Niue has effect as if--





- “(a) a bank account to which subsection (1) applies is a bank account in New Zealand and is not a bank account in Niue; and
- “(b) the operation of a bank account to which subsection (1) applies occurs entirely in New Zealand and not in Niue.

**“84K Application of section 40(1) to designated banks and approved agents**

Sections 84D(1) and 84H(1) override section 40(1); but--

- “(a) section 84D(1) does not limit or affect the application to a designated bank of section 40(1) so far as it relates to the carrying on in Niue of banking business that does not constitute the provision of an authorised direct banking service; and
- “(b) section 84H(1) does not limit or affect the application to an approved agent of section 40(1) so far as it relates to the carrying on in Niue of banking business that does not constitute the provision of an authorised agency banking service.

**“84L Approved agents to disclose certain information required by Minister**

- “(1) The Minister may by written notice to an approved agent or designated bank require the agent or bank to disclose to the Minister any information described in the notice that is--
  - “(a) information that the Minister, some other Minister, or the Government of Niue would be entitled to require the agent or the bank to disclose under this Act if the agent and bank were each a registered bank; or
  - “(b) information that the competent authorities in New Zealand would be entitled to require the agent or the bank to disclose under New Zealand legislation in respect of anti-money laundering and the countering of financing of terrorism as described in section 84N if the agent and the bank were each carrying on business in New Zealand.
- “(2) The notice must describe the information required to be disclosed with enough particularity to enable the notice to be complied with.
- “(3) If the information required is in the agent’s possession, the agent must promptly disclose it to the Minister.
- “(4) If the information required is in not the agent’s possession, the agent--
  - “(a) must promptly require the designated bank to disclose it to the agent; and
  - “(b) must disclose it to the Minister promptly after the bank discloses it to the agent.
- “(5) Neither the agent nor the designated bank is liable to any person to whom any information disclosed under this section relates for

the disclosure of the information or any consequences of that disclosure.

**"84M Approved agents to keep information confidential**

An approved agent must not disclose to any person any information relating to the provision of any authorised agency banking service unless the disclosure--

- "(a) is made with the consent (given generally or in the particular case) of every person to whom the information relates; or
- "(b) is made to its designated bank; or
- "(c) is permitted or required by the law of Niue or New Zealand.

**"84N Compliance with certain New Zealand financial legislation**

Every designated bank and approved agent must comply with the requirements of New Zealand legislation in respect of anti-money laundering and the countering of financing of terrorism (including, without limitation, any New Zealand legislation Cabinet may specify by regulations), as if such New Zealand legislation, including as to offences and penalties, (with such modifications as Cabinet may specify by regulations) applied in Niue, instead of any Niue legislation in respect of anti-money laundering and the countering of financing of terrorism (including, without limitation, any Niue legislation Cabinet may specify by regulations).

**"84O Tax status of authorised agency banking services**

"(1) The provision of an authorised agency banking service in Niue by an approved agent on behalf of a designated bank--

- "(a) is the conduct of a taxable activity in Niue by the agency; and
- "(b) is not the conduct of a taxable activity in Niue by the bank.

"(2) A designated bank is not required--

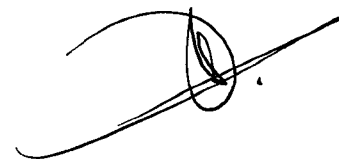
- "(a) to pay income tax, consumption tax, or withholding tax in relation to the provision of any authorised agency banking service on its behalf by an approved agent; or
- "(b) to make any withholding or deduction on account of the payment of income tax, consumption tax, or withholding tax from any money paid or received by an approved agent on its behalf.

"(3) Subsections (1) and (2) override every enactment of Niue to the contrary.

**"84P Tax status of authorised direct banking services**

"(1) The provision of an authorised direct banking service to a person in Niue by a designated bank is not the conduct of a taxable activity in Niue by the bank.

"(2) A designated bank is not required--



- “(a) to pay income tax, consumption tax, or withholding tax in relation to the provision of any authorised direct banking service to a person in Niue by the bank; or
- “(b) to make any withholding or deduction on account of the payment of income tax, consumption tax, or withholding tax from any money paid or received by the bank by means of an authorised direct banking service.
- “(3) Subsections (1) and (2) override every enactment of Niue to the contrary.

**“84Q Other regulations for purposes of this Part**

- “(1) Cabinet may by regulations make provision for any matter or thing it considers necessary or expedient to ensure any or all of the following:
  - “(a) that this Part provides for the fair and efficient provision in Niue of authorised agency banking services:
  - “(b) that this Part provides for the fair and efficient provision in Niue of authorised direct banking services:
  - “(c) that the powers and responsibilities of designated banks and approved agents are such that--
    - “(i) designated banks and approved agents can with confidence arrange the provision in Niue of authorised agency banking services and authorised direct banking services; and
    - “(ii) the people of Niue can have access to a banking system that supplies their needs.
- “(2) The regulations may do either or both of the following:
  - “(a) modify (unconditionally or subject to conditions) the application of any enactment other than this Part to designated banks, approved agents, or both:
  - “(b) exempt designated banks, approved agents, or both from the application of any enactment other than this Part--
    - “(i) wholly or partially; and
    - “(ii) unconditionally or subject to conditions.
- “(3) Subsection (2) overrides section 84I(2).

**“84R Exchange of information with New Zealand agencies**

The Minister, any other Minister, and any Government or regulatory agency--

- “(a) may disclose to any Government or regulatory agency in New Zealand any information that--
  - “(i) relates to, or arises out of, the doing of anything in relation to or under the authority of this Part; or
  - “(ii) has been disclosed to the Minister under section 84L; and
- “(b) may for the purposes of paragraph (a) enter into agreements with Government and regulatory agencies in New Zealand providing for the exchange of information.”

**8 Section 103 amended**

Section 103 is amended by inserting the following paragraph after paragraph (k):

“(kk) providing for any matter contemplated by Part 7A;”.

**9 Proceeds of Crime Act 1998 amended**

Section 60 of the Proceeds of Crime Act 1998 is amended by inserting the following paragraph in the definition of **financial institution** after paragraph (a):

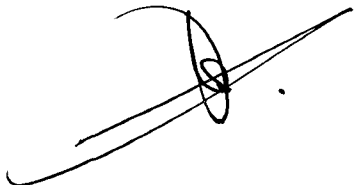
“(aa) an approved agent within the meaning of section 84A of the Niue Bank Act 1994;”.

**10 Financial Transactions Reporting Act 2006 amended**

Section 3 of the Financial Transactions Reporting Act 2006 is amended by inserting the following paragraph after paragraph (a):

“(aa) an approved agent within the meaning of section 84A of the Niue Bank Act 1994;”.

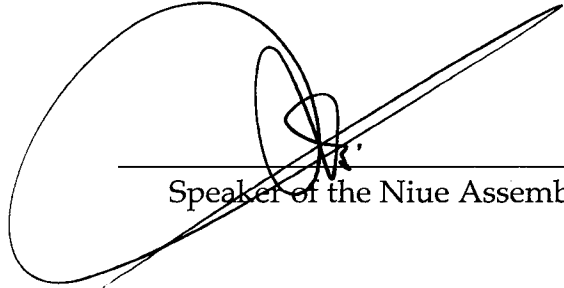
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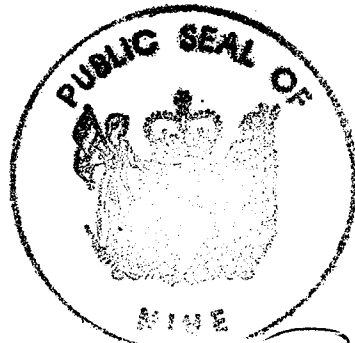
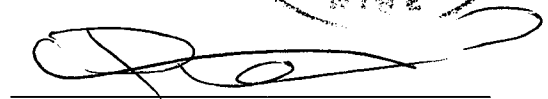
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I, **AHOHIVA LEVI**, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

**SIGNED AND SEALED** at the Assembly Chambers this *25<sup>th</sup>* day of *February* 2013.

  
\_\_\_\_\_  
Speaker of the Niue Assembly

**COUNTERSIGNED** in the presence of the Speaker

  
  
\_\_\_\_\_  
Clerk of the Niue Assembly

\_\_\_\_\_  
This Act is administered by the Treasury Department.

This Act was passed by the Niue Assembly on the 18<sup>th</sup> day of February 2013.