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An Act to amend the Airport Authority Act 1985 by—

- (a) **modernising the requirements for the appointments of directors of the Authority;**
- (b) **and making other reforms to the arrangements governing directors and the Board of Authority**

(18 December 2019)

The Parliament of the Cook Islands enacts as follows:

- 1 Title**
This Act is the Airport Authority Amendment Act 2019.
- 2 Commencement**
This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.
- 3 Principal Act amended**
This Act amends the Airport Authority Act 1985.
- 4 Section 2 amended (Interpretation)**
 - (1) In section 2(1), insert in the appropriate alphabetical order:

CEO means the chief executive officer appointed under section 14
 Corporation means the Cook Islands Investment Corporation.

- (2) In section 2(1), replace the definition of “Minister” with:
 Minister means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the Cook Islands Investment Corporation.
- (3) In section 2(1), delete the definition of “airport manager”.

5 Section 4 replaced (Board of Directors of Authority)

Replace section 4 with the following new section:

“4 Board of directors of Authority

- “(1) There is a Board of directors of the Authority (the “Board”) which—
 - “(a) has overall control of the Authority; and
 - “(b) exercises the powers and performs the functions of the Authority.
- “(2) The Board consists of not less than 5 nor more than 7 members who, subject to subsection (7), are appointed by the Board of the Corporation.
- “(3) One of the members of the Board who satisfies the criteria in section 4D must be appointed as Chairperson by the Board of the Corporation.
- “(4) The members of the Board may at any time choose 1 member to be vice Chairperson and that person may perform all the functions of the Chairperson in the Chairperson’s absence.
- “(5) The members of the Board must include persons of different genders.
- “(6) The Board must have directors who collectively satisfy all the criteria listed in section 4B(3).
- “(7) The Board of the Corporation must, if the Minister recommends the appointment of a person (other than a public servant) with the area of expertise specified in section 4B(3)(f) (socio-economic expertise) as a director, appoint that person as a director.
- “(8) Subsections (2), (3) and (7) are subject to sections 4B, 4C, and 4D.

“4A Term of office of directors

- “(1) A director must be appointed for a term not exceeding 3 years as specified in his or her instrument of appointment, and may from time to time be reappointed.
- “(2) However, no person may serve for more than 12 successive years as a director of the Board.
- “(3) A director whose term of office expires continues in office until—
 - “(a) his or her successor is appointed; or
 - “(b) he or she is given notice in writing from the Chairperson of the Board of the Corporation that he or she will not be reappointed.
- “(4) A director is not entitled to compensation, severance or other benefits on, or because of, ceasing to be a director for any reason.

“4B Qualification for appointment as director

- “(1) A person must be at least 21 years old before he or she can be appointed as a director.
- “(2) A person must be registered on a database maintained by the Cook Islands Investment Corporation under a profile that indicates that the person is suitable for appointment as a director of the Board before he or she can be appointed as a director.

- “(3) Each director of the Board should preferably satisfy at least one of the following criteria:
- “(a) knowledge and experience in—
 - “(i) the civil aviation industry; or
 - “(ii) in managing or governing an airport:
 - “(b) experiencing in governing organisations or policy expertise, preferably in an organisation that performs regulatory functions:
 - “(c) former or current experience as a lawyer and knowledge of statutory entities in the Cook Islands:
 - “(d) a degree with a major in accounting or finance:
 - “(e) former or current experience as the owner of 1 or more private sector businesses, with a track record of successfully operating those businesses:
 - “(f) a good understanding of relevant social-economic matters such as land tenure in the Cook Islands and social impacts on the business of the Authority.

“4C Disqualification for appointment as a director

A director must not be appointed as a director of the Board if the person—

- “(a) has a medical or other condition that impairs his or her judgment, skills, or intellectual capacity:
- “(b) is a member of Parliament:
- “(c) has been convicted of an offence, committed in any country, punishable by a maximum term of imprisonment of 2 years or more:
- “(d) has had more than a 30% shareholding, or has been a director or manager of a company at the time when it entered receivership or liquidation:
- “(e) is a shareholder, director, or manager of a company or other business that—
 - “(i) conducts similar activities to the business of the Authority; and
 - “(ii) is likely to involve the person in recurring conflicts of interest.

“4D Qualification for appointment as Chairperson of Board

A person must not be appointed as a Chairperson of the Authority unless, in addition to satisfying the criteria in section 4B, the person has—

- “(a) at least 2 years’ experience as a director of a state owned enterprise or statutory corporation; and
- “(b) has their primary place of residence in the Cook Islands.”

6 New sections 5A and 5B inserted

After section 5, insert:

“5A Extraordinary vacancies

- “(1) Any director, including the Chairperson, may at any time be removed from office by the Chairperson of the Board of the Corporation for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Chairperson of the Board of the Corporation.

- “(2) The Chairperson of the Board of the Corporation must not remove any director under subsection (1) without first consulting the Minister.
- “(3) A director ceases to hold office by operation of law if—
 - “(a) he or she is elected a member of Parliament;
 - “(b) he or she is convicted of an offence in any country punishable by a maximum term of imprisonment of 2 years or more;
 - “(c) he or she has more than a 30% shareholding or is a director or manager of a company at the time that it enters into receivership or liquidation;
 - “(d) he or she becomes a shareholder, director, or manager of a company or other business and is informed by the Chairperson of the Board of the Corporation that—
 - “(i) the company or other business conducts similar activities to those of the Authority; and
 - “(ii) the director’s involvement in that company or business is likely to lead to recurring conflicts of interest with his or her duties as a director of the Board.
- “(4) A director may at any time resign from office by giving written notice to the Chairperson of the Board of the Corporation.
- “(5) If a director dies, resigns, is removed from office, or ceases to hold office by operation of law, the vacancy created is an extraordinary vacancy.
- “(6) An extraordinary vacancy must be filled in the same manner as the appointment of the vacating member.
- “(7) Every person appointed to fill an extraordinary vacancy must be appointed for the balance of the term for which that vacating member was appointed.
- “(8) For the purpose of subsection (1), misconduct, without limitation, includes conduct by a director that brings the Authority into disrepute.

“5B Authority not affected by vacancies in membership

The powers of the Authority are not affected by a vacancy in the membership of its Board.”

7 Sections 6 to 9 replaced (Meetings of Authority)

Replace sections 6 to 9 with:

“6 Meetings of Board

- “(1) Meetings of the Board may be held at times and places that the Board or the Chairperson appoints.
- “(2) However—
 - “(a) the Board must meet at least once every three months; and
 - “(b) the Board must meet more often if the directors think that is necessary to make sure the Board has proper oversight and control of the Authority.
- “(3) A special meeting must be called by the chair whenever 2 or more directors, in writing, request a meeting.
- “(4) A Board meeting may only be held if a quorum of the directors is present at the time and place appointed for the meeting.

“(5) The quorum for a meeting of directors is a majority of the directors present in person, but those quorum requirements are deemed to be satisfied if a majority of directors can simultaneously hear and speak to each other although they may not all be in the same place.

“(6) A resolution signed by all directors, whether on one or more copies of that resolution, is deemed to be a resolution duly passed at a meeting.

“7 **Procedures at meeting**

“(1) At any Board meeting—

“(a) decisions may be made by a simple majority of directors present and voting on the matter; and

“(b) the Chairperson of that meeting has a deliberative vote and a casting vote; and

“(c) proper minutes must be kept of proceedings.

“(2) The Board may regulate its procedure as it thinks fit, subject to—

“(a) the provisions of this Act and of other applicable laws; and

“(b) written directives issued by the Corporation under section 23 of the Cook Islands Investment Corporation Act 1998.

“(3) A copy of that written resolution may be in—

“(a) digital format; or

“(b) hard copy format; or

“(c) both formats.

“8 **Remuneration of directors**

“(1) The Board of the Corporation must determine the remuneration to be paid for services as a director of the Board.

“(2) Directors are also entitled to reimbursement of actual and reasonable travelling and other expenses where those have been incurred in performing functions and duties as a director.

“(3) That remuneration and reimbursement must be paid from the operating budget of the Authority:

“(4) Despite subsection (1), if a director is a public servant—

“(a) his or her service is not private sector work or service for the Government under sections 37 or 38 of the Public Service Act 2009; but

“(b) his or her remuneration for services as a director must be determined under that Act.

“9 **Disclosure of interest**

“(1) This section applies to—

“(a) each director of the Board:

“(b) the CEO:

“(c) the secretary of the Board:

“(d) every officer and employee of the Authority or the Corporation who attends a Board meeting.

“(2) A person to whom this section applies must keep information discussed at the Board confidential unless—

“(a) the Board has authorised the disclosure of that information; or

“(b) that information is disclosed under any applicable law; or

- “(c) it is in the commercial interests of the Authority for that information to be disclosed; or
 - “(d) a court orders that information be disclosed; or
 - “(e) there is an obligation to disclose that information under the Official Information Act 1998.
- “(3) The directors must maintain an interests register setting out all their other interests, including all directorships and shareholding interests held in the Cook Islands.
- “(4) A person must disclose to a Board meeting any conflict of interest (direct or indirect) in matters discussed, or resolutions put, at that Board meeting.
- “(5) A disclosure must be recorded in the Board minutes and, unless all directors present decide otherwise, the person making that disclosure must leave the meeting while the Board discusses the matter.
- “(6) That absence does not affect the quorum of the Board.”

8 Section 13 amended (Compliance with Directives)

In section 13, replace “Minister” with “Board of the Corporation”.

9 Section 13A amended (Social responsibilities)

In section 13A, replace “Minister may from time to time review the Authority’s performance” with “Board of the Corporation may at any time, with the agreement of the Minister, review the Authority’s performance”.

10 Sections 14 to 16 replaced

Replace sections 14 to 16 with:

“14 Human resources of the Authority

- “(1) The Board must appoint a CEO of the Authority to carry out, under the supervision of the Board, the Authority’s functions and exercise the Authority’s powers.
- “(2) The CEO may—
 - “(a) employ personnel; and
 - “(b) contract on behalf of the Authority with independent contractors.
- “(3) The CEO must approve policies and procedures, not inconsistent with all applicable laws, to make sure—
 - “(a) that he or she acts in all respects as a good employer; and
 - “(b) that he or she uses independent contractors in an open, transparent, and fair way; and
 - “(c) that the Authority’s human resource policies are efficient and cost-effective.”

“15 Delegations

- “(1) The Board may delegate any of its functions or powers or the functions or powers of the Authority to 1 or more directors, or to the CEO, subject to any conditions that it thinks fit.
- “(2) The CEO may delegate any of his or her functions or powers (including any functions or powers delegated to the CEO under subsection (1)) to another employee or a contractor of the Authority subject to any conditions the CEO thinks fit.
- “(3) The Board may at any time revoke a delegation under subsection (1).

“(4) The CEO may at any time revoke a delegation under subsection (2).”

11 Section 19 replaced (Liability of directors and employees)

Replace section 19 with:

“19 Personal liability

“(1) A director is not personally liable for any act or default done or made or omitted by him or her or by the Board or by any director in the course of the operations of the Board or the Authority, unless the director acted in bad faith or without reasonable care.

“(2) Each director must be indemnified by the Authority—

“(a) for costs and damages for any civil liability arising from any action brought by a third party, if the director was acting in good faith and with reasonable care in the course of operations of the Board or the Authority; and

“(b) for costs arising from any successfully defended criminal prosecution, if the prosecution arose in the course of the operations of the Board or the Authority.”

12 Savings provisions

Despite the replacement of section 4 of the principal Act by section 5 of this Act, and without limiting the provisions of the Acts Interpretation Act 1924—

- (a) every appointment of a director made under that section before the commencement of this section, continues in force for the balance of his or her term, if that director is still in office immediately before the commencement of this section, and as if that appointment was made under section 4 of the principal Act (as replaced by section 5 of this Act):
- (b) paragraph (a) applies even if the majority of the Board does not satisfy the requirements of section 4B of the principal Act (as inserted by section 5 of this Act):
- (c) every appointment as Chairperson of the Board made under that section before the commencement of this section continues in force for the balance of his or her term, if that Chairperson is still in office immediately before the commencement of this section, and as if that appointment was made under section 4 of the principal Act (as replaced by section 5 of this Act):
- (d) paragraph (c) applies even if the Chairperson does not satisfy the criteria in section 4B or 4D of the principal Act (as inserted by section 5 of this Act):
- (e) the office holders who are ex-officio members of the Board under section 4(1)(b) of the principal Act (as it read before the commencement of this section) cease to be members of the Board, unless they are appointed as directors under section 4 of the principal Act (as replaced by section 5 of this Act):
- (f) the provisions of section 19 (as inserted by section 10 of this Act) apply to any act or omission (whether it occurred before, on or after the commencement of this section).

This Act is jointly administered by the Airport Authority and Cook Islands Investment Corporation.

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