



ANALYSIS

| 1. | Title Short Title | 2. | Consequential amendment Schedule |
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1999, No. 11

An Act to amend the Cook Islands Development Bank Act 1978 and ensure consistency between its provisions and the provisions of the Cook Islands Investment Corporation Act 1998.

(24 March 1999)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Cook Islands Development Bank Amendment Act 1999 and shall be read with and deemed part of the Cook Islands Development Bank Act 1978 (the principal Act).

2. Consequential amendments - The provisions of the principal Act set out in the first column of the Schedule are amended in the manner set out in the second column of that schedule.

This Act is administered by the Cook Islands Development Bank

Section 2

SCHEDULEColumn 1Column 2

Section 2

By inserting in alphabetical order the following definitions -

"Corporation" means the Cook Islands Investment Corporation established by the Cook Islands Investment Corporation Act 1998;

"Crown" means the Crown in right of the Government of the Cook Islands;

"Financial year" means the period of 12 months ending with the 30th day of June;".

Section 4(1) and 2

By deleting the word "Minister" and substituting the words "Board of the Corporation".

Section 5(1)

By omitting the words "by the Minister".

Section 6(1)

By omitting the word "Minister" wherever it appears and substituting the words "Board of the Corporation".

Section 7(1) and (2)

By omitting the word "Minister" and substituting the words "Board of the Corporation".

Section 10

By repealing that section and substituting the following section -

"10. Directions by Corporation - (1) The Board of the Corporation may from time to time give the Bank in writing general directions as to management strategies to be followed by the Bank in the performance of the Bank's objectives, functions and powers and which directions shall be consistent with the Corporation's statement of corporate intent.

(2) The Bank shall, in the exercise of its functions and powers give effect to any written directions given to it by the Board of the Corporation under subsection (1) of this section.

(3) A copy of every direction given by the Corporation to the Bank under this section in any financial year shall be included in the annual report of the Bank for that year."

Section 12

By repealing subsections (2) and (3).

Section 15(2)

By repealing that subsection and substituting the following subsection -

"(2) The Board may from time to time by resolution and with the prior consent of the Board of the Corporation increase the share capital of the Bank to such amount as may be approved by the Board of the Corporation."

Section 16(1), (2) and (3)

By repealing those subsections and substituting the following subsections -

"(1) The Bank shall not allot any of its unissued or issued shares to any person other than the Cook Islands Government Property Corporation on behalf of the Crown.

(2) The shares of the Bank shall not be pledged or encumbered in any manner whatsoever except with the prior consent of the Board of the Corporation and shall not be transferred or assigned except in accordance with the provisions of the Cook Islands Investment Corporation Act 1998.

(3) Notwithstanding anything to the contrary, all issued and allotted shares of the Bank as of the date of the coming into force of this Act shall without further conveyance, transfer or assignment then this subsection, vest in and become the property of the Cook Islands Government Property Corporation subject to all liabilities, charges, obligations and trusts affecting those shares immediately before the passing of this Act."

Section 17(2)(f)

By omitting the words "with the prior approval of the Minister".

- Section 18 By adding at the end of that section the following paragraph
- "(r) pay to the Corporation a dividend calculated in accordance with the principles required by section 25(2)(f) of this Act and as may be stated in the annual report of the Bank in accordance with section 26(3) of this Act "
- Section 19(1)(c) By omitting the words "for it by the Legislative Assembly" and substituting the words "by Parliament".
- Section 19(3) By omitting the word "lieu" and substituting the word "lien".
- Section 24 and Part IV By repealing that section and that Part and substituting the following Part –

"PART IV

STATEMENT OF CORPORATE

INTENT AND FISCAL REPORTS

24. Statement of financial position - Within 3 months of the coming into force of this Act, the Board will deliver to the Corporation, in accordance with generally accepted accounting practice, a statement of financial position of the Bank that shall include the estimated value of assets and the estimated value of the Crown's investment in the Bank.

25. Statement of corporate intent - (1) The Board will on behalf of the Bank deliver to the Minister for the purposes of enabling the Minister to make a determination under section 27B of this Act and to the Corporation for approval a statement of corporate intent of the Bank not later than 1 month before the commencement of each financial year, the first statement to be delivered within 21 days of the date of this Act coming into force, or such other period as the Board of the Corporation may allow.

(2) The Bank shall be bound by and adopt in its statement of corporate intent the Corporation's policies including policies as to asset management set out in the Corporation's statement of corporate intent where they affect the Bank and in addition the statement shall specify, in respect of the next financial year and each of the two immediately succeeding financial years, the following information -

- (a) the objectives of the Bank; and
- (b) the nature and scope of the activity to be undertaken; and
- (c) estimates of the current commercial value of the Crown's investment in the Bank, and a statement of the manner in which the value was assessed; and
- (d) the accounting policies; and
- (e) the performance targets and other measures by which the performance of the Bank may be judged in relation to the objectives; and
- (f) a statement of the principles adopted in determining the annual dividend of the Bank together with an estimate of the amount that is to be paid to the Corporation; and
- (g) the intention of the Bank regarding the sale and purchase of assets; and
- (h) the costs to the Bank in recognising Government's social policy in the management and any proposed disposal of assets and what appropriation by Parliament is required; and

- (i) such other matters as are agreed by the Corporation and the Bank.

(3) The Bank shall not proceed to implement its statement of corporate intent until it is approved by the Board of the Corporation under subsection (1) of this section.

26. Annual report - (1) Within 3 months after the end of each financial year or such further period as the Board of the Corporation may approve, the Board shall deliver to the Corporation a report of the operations of the Bank during the financial year including -

- (a) a statement of financial position;
- (b) a statement of financial performance;
- (c) a statement of cashflows;
- (d) a statement of borrowings;
- (e) a statement of commitments;
- (f) a statement of specific fiscal risks;
- (g) a statement of accounting policies;
- (h) the auditor's report of the statements referred to in paragraphs (a), (b), (c), (d) and (e);
- (i) other statements as are required to be consistent with generally accepted accounting practice.

(2) The annual report under subsection (1) of this section shall state the information necessary to enable an informed assessment of the operations of the Bank having regard to the matters set out in section 25(2) of this Act including a comparison of the performance of the Bank with the statement of corporate intent.

(3) The annual report under subsection (1) of this section shall state the dividend payable to the Corporation by the Bank for the financial year to which the report relates having due regard to the necessity to maintain adequate reserves and the principles referred to in section 25(2)(f) of this Act and the amount of the dividend payable to the Corporation shall not be more than that amount estimated in the statement of corporate intent except as otherwise agreed to by the Board and the Corporation.

27. Fiscal updates - (1) The Bank shall deliver to the Corporation fiscal update reports of the kind referred to in the Ministry of Finance and Economic Management Act 1995-96.

27A. Audit - (1) The Board shall cause true and full accounts and records to be kept of all the transactions which the Bank is concerned, and the books of account and record shall be kept at the principal place of business of the Bank.

(2) The accounts shall be subject to annual audit.

27B. Bank's social responsibilities - (1) The Minister may from time to time review the Bank's performance to determine if the Bank is giving effect to the social policies of Government insofar as the functions and powers of the Bank permit it to do so.

(2) Where the Minister with the concurrence of Cabinet requires the Bank to give effect or greater emphasis to Government's social policy in the exercise of its functions and powers and that requirement will result in the Bank's stated return on investment being reduced then the amount of the reduction shall be quantified and included as part of the Crown's debt management responsibilities pursuant to section 24 of the Ministry of Finance and Economic Management Act 1995-96 for the purposes of being appropriated to the Bank under the next Appropriation Act and in the absence of all or part of that reduction not being appropriated and paid to the Bank then any future dividend to be paid by the Bank to the Corporation and by the Corporation to the Crown shall be

reduced by the unpaid amount until the unpaid amount of the reduction is recovered by the Bank."

Section 42

By adding to that section the following new subsection -

"(4) Notwithstanding anything in this section to the contrary, where the Bank provides financial assistance to a person, any contract, deed or document evidencing or recording that assistance and any contract, deed or document provided and giving rise to the Bank's security for that assistance shall be valid and binding on the person executing the contract, deed or document notwithstanding that the contract, deed or document is not executed under the common seal of the Bank."
