



ANALYSIS

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1999, No. 13

An Act to amend the Cook Islands Government Property Corporation Act 1969 and to make provision for the administration, management and disposal of property vested in the Corporation

(25 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 Government Property Corporation Amendment Act 1999 and shall be read together with and deemed part of the Cook Islands Government Property Corporation Act 1969 (hereinafter referred to as "the principal Act").

2. Interpretation - Section 2 of the principal Act is amended by deleting the definitions of "Licence or authority", "Minister" and "Property" and inserting in alphabetical order the following definitions -

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

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

"Minister" means the Minister responsible for the Cook Island Investment Corporation

"Property" includes -

- (a) an estate or interest in real property and any grant of a licence or tenancy thereof and vested in or held on behalf of the Crown but does not include customary land as defined in the Cook Islands Act 1915;
- (b) shareholding interests;

- (c) the Crown's ownership rights to minerals and natural resources and any fishery or fishery waters as those terms are defined in section 2 of the Marine Resources Act 1989;
- (d) other property not included in paragraphs (a), (b) or (c), the ownership of which is vested in or held on behalf of the Crown, and expressly referred to in this Act or Order in Executive Council made under this Act;

"Shareholding interest" means the shareholding which is vested in or held on behalf of the Crown in a company and every right and entitlement deriving from that shareholding;

3. Functions of Corporation - The principal Act is amended by inserting after section 3 the following new section -

"3A. Functions of Corporation - It shall be the function of the Corporation to hold property vested in the Corporation pursuant to this Act on behalf of the Crown."

4. Management and disposal of property - The principal Act is amended by repealing section 4 (as enacted by section 31(3) of the Cook Islands Investment Corporation Act 1998) and substituting the following section -

"4. Management and disposal of property - (1) Subject to subsection (5) of this section, the property vested in the Corporation pursuant to this Act shall be administered and managed on behalf of the Corporation by the Cook Islands Investment Corporation established by the Cook Islands Investment Corporation Act 1998 and disposed of by the Cook Islands Investment Corporation and Cabinet in accordance with that Act.

(2) The Cook Islands Investment Corporation in its administration and management of property vested in the Corporation, shall, subject to the provisions of this Act, have all the powers conferred on it by section 11 of the Cook Islands Investment Corporation Act 1998 as if those powers were conferred on it by this Act.

(3) Where under the principal Act, the Corporation is authorised to dispose of property or exercise any powers, functions, or rights and undertake and perform any liabilities in respect of or in connection with property then the disposal of property shall be in accordance with subsection (1) of this section and the exercise of the functions, powers or rights and the undertaking and performance of any liabilities shall be done on behalf of the Corporation by the Cook Islands Investment Corporation.

(4) The Corporation shall be bound by the statement of corporate intent of the Cook Islands Investment Corporation and the administration, management and disposal of property of the Corporation shall be consistent with that statement.

(5) Nothing in this section shall have application to the shareholding interest in Cook Islands Telecommunication Holdings Limited or any company, the shares in which are wholly or partially owned by Cook Islands Telecommunication Holdings Limited and that shareholding interest may be dealt with by the Corporation including any transfer, assignment, sale or mortgage thereof and any dividends received in consequence of that shareholding interest, in such manner as the Corporation may determine."

5. Property to vest in Corporation - Section 5 of the principal Act (as amended by section 31(4) of the Cook Islands Investment Corporation Act 1998) is repealed and the following section substituted -

"5. Property to vest in Corporation - (1) All property as defined by this Act held in the name of the Crown or on behalf of the Crown and not already vested in the Corporation shall on the passing of this Act and without further conveyance, transfer or assignment vest in the Corporation for the estate, interest, grant, right and entitlement of the Crown subject to all liabilities, charges, obligations and trusts affecting that property.

(2) After the coming into force of this Act all property that shall be acquired, conveyed, transferred or assigned to the Crown or the government or a person on behalf of the Crown shall be deemed to be an acquisition, conveyance, transfer or assignment in the name of the Corporation and shall vest in the Corporation for the estate, interest right and entitlement of the transferee subject to all liabilities, encumbrances, charges, obligations and trusts affecting that property.

(3) Notwithstanding the repeal of section 5 of the principal Act, all property as defined by this Act and vested in the Corporation pursuant to that section shall continue to be so vested as if section 5 had not been repealed by this Act.

(4) All property that was immediately before the coming into force of this Act vested in the Corporation pursuant to section 5 of the principal Act and which will not continue to be vested in the Corporation by virtue of subsection (3) of this section shall, on the coming into force of this Act and without further transfer, conveyance or assignment, vest in the transferor in whom or which it was vested immediately before the coming into force of section 5 of the principal Act for and on behalf of the Crown together with all rights, interests, entitlements, liabilities, charges, obligations, and trusts that shall have accrued to and affecting that property as of the date that this Act shall come into force.

(5) Notwithstanding subsection (1) of this section, where a shareholding interest represents all of the shares in a company then one share shall, on the passing of this Act, vest in the Minister and every successor in office to the Minister for the time being without further conveyance transfer or assignment than this subsection.

(6) This section shall apply to property situated beyond the Cook Islands."

6. New Sections - The principal Act is amended by inserting after section 5 the following new sections -

"5A. Other property of Corporation - On the passing of this Act and notwithstanding the Housing Corporation (Abolition) Act 1997 every estate or interest in real property together with all loans made whether fully or partly drawn and liabilities resulting therefrom and every security given for those loans of the Housing Corporation shall without conveyance, transfer or assignment vest in and become assets of the Corporation subject to all liabilities, charges, obligations and trusts affecting those assets immediately before the passing of this Act.

5B. Other assets of Crown may vest in Corporation - (1) The Queen's Representative may by Order in Executive Council and on behalf of the Crown or the legal owner for such consideration and on terms and conditions as may be set out in the Order, transfer or assign to the Corporation either in part or in whole any assets and liabilities of the Crown for the purposes of enabling the administration and management or disposal of those assets and liabilities in accordance with the provisions of this Act.

(2) Assets that are fixed to, or are under or over, any land may be transferred or assigned pursuant to this section whether or not any interest in the land is also transferred or assigned. Where any such asset is so transferred or assigned, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(3) Any asset or liability of the Crown may be transferred or assigned pursuant to this section whether or not any Act or agreement relating to the asset or liability permits such transfer or assignment or requires any consent to such a transfer or assignment; and

- (a) the transfer or assignment shall not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown, or the Corporation under any Act or agreement;
- (b) any satisfaction or performance by the Corporation in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown;
- (c) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the Corporation shall be deemed to be also to the benefit of the Crown."

7. Section 14 repealed - Section 14 of the principal Act is repealed and the following section substituted -

"14. Statements of financial position, annual reports and fiscal updates - Each statement of financial position, annual report and fiscal update of the Corporation required under sections 12, 14 and 15 of the Cook Islands Investment Corporation Act 1998 shall be prepared for and on behalf of the Corporation by the Cook Islands Investment Corporation and shall be included with and consolidated in the statement of financial position, annual report and fiscal updates of the Cook Islands Investment Corporation as if the statements reports and updates of the Corporation were those of the Cook Islands Investment Corporation."

8. New Sections - The principal Act is amended by inserting after section 14, the following new sections -

"15. Proceeds of disposal of property - All monies to be paid and being -

- (a) proceeds from the disposal of property of the Corporation including a disposition of property before the coming into force of this Act; or
- (b) dividends (other than dividends received from Cook Islands Telecommunications Holdings Limited or any company, the shareholding in which is wholly or partially owned by Cook Islands Telecommunications Holdings Limited), rents or other payments received from property of the Corporation,

shall be deposited in a bank account of the Cook Islands Investment Corporation and shall without further appropriation by Parliament or authority of the Corporation than this section be expended at the discretion of the Board of the Cook Islands Investment Corporation in the performance of the Cook Islands Investment Corporations' functions and powers under the Cook Islands Investment Corporation Act 1998 and this Act.

16. Registration - Where the ownership of property is registrable, the person responsible for keeping the register shall, upon receiving written notice from the Cook Islands Investment Corporation of property vested in the Corporation, record on the register, the name of the Corporation.

17. Act to bind the Crown - This Act shall bind the Crown."

9. Consequential amendments - Subsections (3), (4) and (5) of section 31 of the Cook Islands Investment Corporation Act 1998 are repealed.

This Act is administered by the Cook Islands Investment Corporation.