



ANALYSIS

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1980, No. 5

An Act to abolish the Housing Corporation and to vest the the functions and powers thereof in the Cook Islands Development Bank.

(4 July 1980)

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

1. Short Title and Commencement - This Act may be cited as the Cook Islands Development Bank Amendment Act 1980, and shall be read together with and deemed part of the Cook Islands Development Bank Act 1978 (hereinafter called "the principal Act") and shall be deemed to have come into force on the 1st day of April 1980.

2. Interpretation - Section 2 of the principal Act is hereby amended by (1) deleting the definition of "The Minister" and substituting the following

"means the Minister responsible for the Cook Islands Development Bank";

(2) deleting the definition of "Recipient" and substituting the following

"means any person or organisation to whom the Bank makes financial assistance".

3. Constitution of Board - Section 4 of the principal Act is amended by (1) deleting in subsection 1 the figure "5" and substituting therefore the figure "7".

(2) adding after subsection 4 the following subsections

"(5) The Board may from time to time elect one of their members to be vice-chairman.

(6) The powers of the Board shall not be affected by any vacancy in its membership.

(7) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1979 by reason of his being a member of the Board."

4. Terms of Office of Directors - Section 5 of the principal Act is amended by (1) deleting from subsection (1) the words "one year" and substituting therefore the words "a period of not less than one year and not more than three years"

(2) adding after subsections (2) the following subsection "(3) notwithstanding any other provision in this Act every member whose office is terminated by the effluxion of time shall continue to hold office until his successor is appointed".

5. Meetings of the Board - Section 8 of the principal Act is amended by repealing subsection (6) and substituting the following

"(6) In the absence of the Chairman and any person appointed pursuant to Section 6 of this Act from any meeting, the vice-chairman shall preside, provided that if the vice-chairman is also absent, then the directors present shall appoint one of their number to be chairman."

6. Committees and Delegation - Section 9 of the principal Act is amended by repealing subsection (4) and substituting the following subsections:

"(4) The Board may from time to time delegate to any such Committee such of the powers or functions of the Board including the power of delegation conferred by this section as it may think fit; provided that in no case shall any power -

(i) to acquire land or buildings; or

(ii) to sell land or building vested in the Board be delegated to such a committee.

(5) The board may from time to time delegate any of its powers to any member, officer or employee of the Bank including the power of delegation conferred by this section.

(6) Subject to any general or special direction given or conditions imposed by the Board or committee or person to whom any powers are delegated as aforesaid the committee or person to whom any powers are so delegated may exercise these powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(7) Every committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(8) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a special class.

(9) Any delegation under this section may be revoked at any time.

(10) The delegation of any power by the Board or by any committee or person shall not prevent the exercise of that power by the Board or as the case may require, by that committee or person."

7. Functions of the Bank - the Principal Act is further amended by repealing section 17 thereof and substituting the following section:

"17. Functions of the Bank - (1) The general functions of the Bank shall be:

- (a) to provide finance for the establishment development, extension or assistance of industry and economic development in the Cook Islands
- (b) to encourage and promote investment in the economic development of the Cook Islands
- (c) to provide dwellings and improved housing and improved living conditions in the Cook Islands
- (d) to provide technical assistance or advice and to generally foster economic development

(2) Without limiting the generality of subsection (1) of this section the Bank shall have the following functions -

- (a) to provide financial assistance on such terms and conditions as the Board thinks fit, to persons engaged or about to be or intending to be engaged in any economic development in the Cook Islands.
- (b) to provide such advisory and technical services either with or without remuneration or fee to the Bank as the Board considers desirable or expedient in the interests of the community and in the interests of the community and its economic development
- (c) to assist in obtaining and placing foreign investment for the purposes of economic development
- (d) to administer on such terms and conditions as may be approved by the Board such special funds as may from time to time be placed at the disposal of the Bank.
- (e) to study and promote investment opportunities for economic development in the Cook Islands.
- (f) with the prior approval of the Minister to acquire by lease or sublease any land or buildings and to develop the same as a building estate by the erection, construction, alteration, maintenance and improvement of dwelling houses or flats, and gardens recreation parks and other works and buildings for or for the convenience of persons occupying such dwelling houses or flats.
- (g) to sell, lease and otherwise dispose of land in the cause of housing and other urban development, improvements and renewal.
- (h) to do all other matters and things incidental to or connected with the foregoing.

(3) The Board shall have such other functions as are conferred on it by this Act or by any other enactment."

8. Powers of the Bank - The principal Act is amended by repealing Section 18 thereof and substituting the following section:

"18. Powers of the Bank - The Bank shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions.

(2) Without limiting the generality of subsection (1) of this section the Board shall have the following specific powers:

- (a) sell, purchase or subscribe for shares, debentures, bonds or other securities including securities which the Bank has issued or guaranteed or make loans, with or without security, or acquire any other interest.
- (b) finance the purchase, sale, or hire of machinery, plant, equipment, materials, goods and articles of every description by means of any arrangement whatsoever, including but without limiting the generality of the foregoing, the purchase and resale and hire thereof on such terms as the Board thinks fit; and discount hire purchase or conditional sale agreements or hire agreements and lend money on the security of a mortgage or an assignment of any such agreement.
- (c) execute, make, draw, accept, endorse, discount, issue and negotiate cheques, promissory notes, bills or exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons and other negotiable or transferable instruments, and buy, sell, or otherwise deal in the same, and accept deposits of money.
- (d) underwrite or subunderwrite issues of securities, give and receive guarantees, or participate with others in any such activities.
- (e) participate, in the discretion of the Board, in the management of enterprises to whose finance it has contributed whether by loan or otherwise.
- (f) organise, participate in, or act as agent for consortium arrangements for the assistance of economic development.
- (g) act as agent for the Government of international financial institutions in the financing of economic development.
- (h) borrow funds and place funds not immediately required on deposit with any bank.
- (i) take such steps as may be necessary to protect or recover its financial interest in any business.
- (j) to accept gifts of leases or subleases of any land, money or other property.
- (k) to subdivide or develop any land acquired by or vested in it.
- (l) subject to the provisions of any enactment applicable to the Board, to fix, regulate or make such charges as may be determined from time to time for the use of any dwelling house, flat, building or other facility provided, maintained, controlled or operated by the Board.

- (m) to make advances from time to time in accordance with provisions of this Act.
- (n) to negotiate and enter into arrangements with and between landowners and householders, and assist by advice and otherwise the development of private housing conditions.
- (o) to contract for the execution or provision by any person of any work or services authorised by this or any other enactment to be executed or provided by the Board in such manner and subject to such terms and conditions as the Board thinks fit.
- (p) borrow money required by it for the purpose of meeting any of its obligations of discharging any of its functions under this Act provided that the aggregate of the liabilities of the Bank outstanding at any one time, including bonds and debentures if any, issued by the Bank shall not exceed three times the amount of its paid-up shares capital and reserves.
- (q) make such charges for the provision of its services as the Bank thinks fit."

9. Vesting of property in Bank - The principal Act is amended by inserting after Section 18 the following section:

"18A. Vesting of property in Bank - (1) Her Majesty the Queen may grant, transfer, assign or lease to the Bank or in the name of the Bank any land or interest in land (other than the fee simple in any land and land comprised in a public reserve) and any personal property, rights or privileges, vested in or held on behalf of the Crown and used or administered or to be used or administered for the purposes of or in connection with any housing or industrial projects or town planning schemes subject to any leases, rights, easements and interests subsisting in respect of the land or property at the date of the grant, transfer or assignment.

(2) Any lease by the Crown pursuant to subsection (1) of this section may be for such term and provide for such rent and other conditions as the Bank with the prior written approval of the Minister shall accept or approve."

10. Funds - Section 19 of the principal Act is amended by adding the following proviso to subsection (3):

"Provided (a) that where in any Appropriation Act or in any estimate of expenditure and revenue accompanying the Appropriation Act for any year any vote or item to which the section applies is noted as being for a specified purpose, it shall not be competent for the Bank to use moneys so appropriated for any purpose other than that specified in the said Act or estimate, and

(b) that where any appropriation is made for the purposes of the Board, the Minister may direct the manner in which the moneys appropriated shall be paid to the Board and may require that any such appropriation be used first in payment of any debt due to the Public Account or to any account within the Public Account".

11. Financing of projects - Section 21 of the principal Act is amended by (1) inserting before the words "The Bank" the number "(1)" and

(2) adding the following subsection:

"(2) For the purposes of this section the term "project" has not application to housing".

12. Accounts and Audit - The principal Act is further amended by repealing Section 26 and substituting the following:

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

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

13. Securities - The principal Act is further amended by repealing Part V thereof and substituting the following new Part:

"PART V - SECURITIES

28. Security for advances - (1) Advances made by the Bank shall be secured in such manner and on such terms as the Bank thinks fit.

(2) For the purposes of determining whether an application for an advance should be granted, the Bank shall not be bound to insist upon any fixed or definite margin of security.

29. Securities to be taken in name of Bank - Every security for an advance shall be taken in the name of the Bank.

30. Assignment of money as security may be irrevocable - (1) The Bank may require any order on or assignment of money given as security for the repayment of any advance to be expressed to be irrevocable, notwithstanding the death of the person giving the order or assignment, and the order or assignment shall be irrevocable accordingly except with the consent in writing of the Bank.

(2) Notwithstanding anything in any enactment to the contrary, any company corporate body, or person upon whom any notice of any such order or assignment has been served shall be bound to accept and to act upon the order or assignment and to pay to the person nominated in that behalf in the order or assignment all money from time to time payable thereunder.

31. Alienation and assignment as security for advances - (1) Notwithstanding anything in Section 470 or Section 471 or Section 473 of the Cook Islands Act 1915, it shall be competent for any Native or descendant of a Native to alienate any Native freehold land or things growing on or attached to any such land or the rents and profits from any such land as security for any advance made by the Bank for any housing or other purpose.

(2) Notwithstanding anything in the Property Law Act 1952 of the New Zealand Parliament, no power of sale shall be contained or implied in any charge given on any interest in land (not being a leasehold interest) to secure the repayment of any advance made by the Bank for any housing or other purpose.

32. Assignments of money from land vested in trustees -

(1) For the purpose of securing the repayment of any advance made by the Bank for any housing or other purpose, it shall be competent for any Native or descendant of a Native to give an order on or an assignment of the proceeds of the alienation of any land (including compensation money for land taken) whether the land is vested in a trustee or not.

(2) Any such order or assignment shall be valid and enforceable for all purposes, notwithstanding the provisions of Section 464 of the Cook Islands Act 1915 or of any other enactment.

33. Advances to be paid as Bank directs - Every advance shall be expended or applied by the Bank, or at its direction, for any one or more purposes for the benefit or on behalf of the applicant, and, unless the Bank otherwise determines, shall not be paid direct to the applicant.

34. Charging order may be made - (1) Notwithstanding anything in Section 470 of the Cook Islands Act 1915, where a charge on any interest in land has been given as security for the repayment of any advance, the Land Court, on proof to its satisfaction that the advance has been made, may make an order charging the land or any interest therein or any part thereof or any undivided or partial interest therein with repayment of the amount advanced with interest, and by such instalments and with such directions for giving effect to the charge as the Court thinks expedient.

(2) The certificate of the Bank shall for all purposes be prima facie proof of the amount of the advance and of the rate of interest payable, and may be accepted by the Court accordingly.

(3) The Court may make a further order varying any former order in respect of any additional advance or by way of apportioning charges in such manner as it thinks expedient or for any other purpose it thinks fit, and every subsequent order shall supersede all prior charging orders so far as it is inconsistent therewith. Where any charge is apportioned, each portion shall be deemed to be a separate charge.

(4) Every order made under the provisions of this section shall be registered or recorded, as the case may require, in such manner as the Court directs.

35. Discharging of charging orders - The Land Court may at any time, on the application of the Bank wholly or partially discharge any charging order made under section 34 of this Act, whether or not the money secured by the charge has been repaid.

36. Appointment of receiver to enforce charges -

(1) When by Section 47 of this Act any charging order has been made in respect of any land or any interest therein, or upon the revenues thereof or the proceeds of the alienation thereof, the Land Court may at any time and from time to time, for the purpose of enforcing that charge, appoint a receiver in respect of the property so charged.

(2) A receiver appointed under this section shall have all such rights, powers, duties and liabilities as may be expressly conferred or imposed on him by the Court and such other incidental powers as may be reasonably necessary for the exercise of the powers so conferred: provided that a receiver appointed under this section shall not have power to sell any Native land, or to lease any such land otherwise than as provided in subsection (3) of this section.

(3) Notwithstanding any of the provisions of the Cook Islands Act 1915 as to the alienation of Native land, a receiver appointed under this section for the purpose of enforcing a charge may, in his own name and with the leave of the Court, grant leases of any land so charged for any term not exceeding twenty one years, on such conditions and for such rent or other consideration as he thinks fit."

14. Miscellaneous - The principal Act is further amended by inserting after PART V (as inserted by Section 13 of this Act, the following:

"PART VI - MISCELLANEOUS

41. Taxation - The income and revenue of the Bank shall not be subject to taxation under any law.

42. Contracts of Bank - (1) Any contract which, if made between private persons must be by deed shall, if made by the Bank, be in writing under the common seal of the Bank.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Bank be under the common seal of the Bank.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Bank by any person acting under its authority, express or implied.

43. Execution of documents - (1) Every document to which the common seal of the Bank is affixed shall be signed by the Chairman of the Board or in his absence the vice-chairman and shall be counter-signed by either the Secretary to the Board or the General Manager of the Bank.

(2) Any document which, if executed by a private person, would not require to be executed as a deed may be signed on behalf of the Bank by the chairman or by any member of the Bank authorised in that behalf by the Chairman.

44. Matters referred for investigation - The Bank may from time to time appoint one or more of its members or any other qualified person to investigate and report to the Bank on such matters as are referred to him or them by the Bank for the purposes of the proper exercise of its powers or functions under this Act.

45. Evidence of documents - Every document purporting to be a document executed by or on behalf of the Bank in a manner provided in section 43 of this Act shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.

46. Penalty for misapplication of loan - Any person knowingly applies any loan or part thereof made to him under the provisions of this Act to any purpose other than that authorized by the Bank shall be guilty of an offence against this Act on conviction shall be liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

47. False statements - Any applicant for assistance from the Bank by way of loan or otherwise who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true shall be guilty of an offence and on conviction shall be liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

48. Disclosure of information - Any Board member or employee of the Bank who directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his capacity as an employee of the Bank (except with the approval of the Minister) shall be guilty of an offence against this Act and on conviction shall be liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

49. Breach of Act or Regulations - Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of the provisions of this Act or of any regulations made under this Act for which no special penalty is provided is liable for every offence to a fine not exceeding \$200.

50. Rules - The Board may make such rules, consistent with the provisions of this Act, as it considers necessary or appropriate to further the objects and functions of the Bank.

51. Regulations - The High Commissioner may from time to time by Order in Executive Council, after consideration of any recommendations thereon made to him by the Bank, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

52. Bank to succeed the Cook Islands Housing Corporation -
(1) The Bank shall be the successor to the Housing Corporation of the Cook Islands established under the Housing Corporation of the Cook Islands Act 1978.

(2) On the commencement of this Act -

(a) Every director of the Housing Corporation of the Cook Islands shall retire from office; and

(b) All real and personal property that immediately before the commencement of this Act was vested in the Housing Corporation of the Cook Islands shall, without conveyance, transfer, or assignment, vest in the Cook Islands Development Bank, subject to all liabilities, charges, obligations and trusts affecting the property; and

(c) All contracts, debts, and liabilities of the Housing Corporation of the Cook Islands immediately before the commencement of this Act, (including every guarantee and indemnity continuing to have effect) shall become the contracts, debts and liabilities of the Cook Islands Development Bank.

(3) The Registrar of the Land Court shall, on written application by the Cook Islands Development Bank substitute upon any documents of estate or interest or upon any register for the name of the Housing Corporation of the Cook Islands the name of the Cook Islands Development Bank.

(4) In the financial year ending with the 31st day of March 1981 the Cook Islands Development Bank and the Housing Corporation of the Cook Islands shall be deemed to be the same body corporate for the purposes of Section 29 of this Act so that one set of accounts and one annual report may be prepared, delivered to the Minister and laid before the Legislative Assembly for that financial year.

53. Validation - Every act performed and everything done before the commencement of this Act which would have been valid if this Act had been in force when the act or thing was done or performed is hereby validated and declared to be and always validly done.

54. Repeal and Savings - (1) The Housing Corporation Act 1978 is repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Housing Corporation of the Cook Islands Act 1978 shall not effect any document made or anything whatsoever done under the provisions of that Act, and every such document or thing so far as it is subsisting or in force at the time of the repeal of that Act and could have been made or done under this Act shall continue and have effect as if it shall have been made or done under the corresponding provisions of this Act and as if that provision were in force when the document was made or the thing done."

This Act is administered by the Cook Islands Development Bank