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An Act to amend the Cook Islands Investment Corporation Act 1998 by—

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

The Parliament of the Cook Islands enacts as follows—

(18 December 2019)

- 1 Title**
This Act is the Cook Islands Investment Corporation 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 Cook Islands Investment Corporation Act 1998 (the **principal Act**).
- 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 20
 - “director” means a director of the Corporation.

- (2) In section 2(1), replace the definition of Corporation with:
“Corporation” means the Cook Islands Investment Corporation”.
- (3) In section 2 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 Corporation”.

5 Section 3A repealed
Repeal section 3A.

6 Sections 9 and 10 replaced
Replace sections 9 and 10 with:

“9 Board of directors of Corporation

“(1) There is a Board of directors of the Corporation (the “Board”) which—
“(a) has overall control of the Corporation; and
“(b) exercises the powers and performs the functions of the Corporation.

“(2) The Board consists of not less than 5 nor more than 7 members who are appointed by the Minister.

“(3) One of the members of the Board who satisfies the criteria in section 10C must be appointed as Chairperson by the Minister.

“(4) The Minister may at any time choose 1 member to be vice Chairperson and that person may perform all the functions of the Chairperson in the Chairpersons absence.

“(5) The members of the Board must include members of different genders.

“(6) The directors of the Board must collectively satisfy all the criteria listed in section 10A(2).

“(7) Subsection (2) and (3) are subject to sections 10A, 10B, and 10C.

“10 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 Minister 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.

“10A Qualification for appointment as director

“(1) A person may be of any nationality to be appointed as a director, but must—

“(a) be at least 21 years old; and

“(b) be registered on a database maintained by the Corporation on the basis that the person has an appropriate mixture of skills and experience to indicate that the person is suitable for appointment as a director of the Board of the Corporation; and

- “(c) has at least 2 years’ experience as a director of a statutory corporation or state owned enterprise.
- “(2) Each director of the Board must satisfy at least one or more of the following criteria:
- “(a) experience in governing organisations or in advising on public policy, and preferably in an organisation that performs regulatory functions:
- “(b) has a degree with a major in accounting or finance or both:
- “(c) former or current experience as a lawyer and knowledge of Cook Islands legislation and statutory entities:
- “(d) former or current experience as the owner of 1 or more private sector businesses, with a track record of successfully operating those businesses:
- “(e) a good understanding of relevant socio-economic matters such as the impact of the business of the Cook Islands Investment Corporation and the Cook Islands Government Property Corporation on the community, and experience in social services or in working for a non-government organisation:
- “(f) experience in the development of large scale infrastructure, or large scale strategic investment, or both.

“10B Disqualifications for appointment as director

A person must not be appointed as a director of the Corporation 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 a history of failing to pay debts on time to statutory corporations:
- “(e) has had more than a 30% shareholding or has been a director or manager of a company at the time when it entered into receivership or liquidation:
- “(f) is a shareholder, director, or manager of a company or other business that—
- “(i) conducts similar activities to the business of the Corporation; and
- “(ii) is likely to involve the person in recurring conflicts of interest.

“10C Qualifications for appointment as chairperson of Board of Corporation

A person must, in order to be appointed as the Chairperson of the Board, in addition to satisfying the criteria in section 10A have their primary place of residence in the Cook Islands.

“10D Remuneration of directors

- “(1) The Minister must in accordance with an approved remuneration framework determine the remuneration to be paid for services as a director of the Corporation.
- “(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 Corporation.
- “(4) Despite subsection (1) if a director is a public servant—
 - “(a) his or her service as a director 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 must be determined in accordance with that Act.

“10E Extraordinary vacancies

- “(1) Any director, including the Chairperson, may at any time be removed from office by the Board for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Board.
- “(2) The Board must consult with the Minister before removing any person from office.
- “(3) A director ceases to hold office by operation of law if—
 - “(a) he or she is elected as 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 had more than a 30% shareholding or is a director or manager of a company that 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 Minister that—
 - “(i) the company or other business conducts similar activities to those of the Corporation; and
 - “(ii) the director’s involvement in that 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 Minister.
- “(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 purposes of subsection (1), misconduct, without limitation, includes conduct by a director that brings the Corporation into disrepute.

“10F Corporation not affected by vacancies in membership

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

“10G 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 Corporation.
- “(3) A special meeting must be called by the Chairperson 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 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.

“10H 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 the provisions of this Act and of other applicable laws.
- “(3) A copy of that written resolution may be in—
 - “(a) digital format; or
 - “(b) hard copy format; or
 - “(c) both formats.

“10I Disclosure of interest

- “(1) This section applies to—
 - “(a) each director;
 - “(b) the CEO;
 - “(c) the secretary of the Board;
 - “(d) every officer and employee of the Corporation who attends a Board meeting.
- “(2) A person to whom this section applies must keep information discussed by 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 Corporation 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 2008.
- “(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.”

“10J Delegations

- “(1) The Board may delegate any of its functions or powers or the functions or powers of the Corporation 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 Corporation 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).

“10K 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 Corporation, unless the director acted in bad faith or without reasonable care.
- “(2) Each director must be indemnified by the Corporation—
 - “(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 Corporation; 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 Corporation.

“10L Risk management reports

- “(1) The Board must deliver quarterly risk management reports to the Corporation as soon as practicable after they are prepared.
- “(2) Each risk management report must—
 - “(a) outline significant events occurring in the quarter covered by the report that may or will have a significant financial impact; and
 - “(b) assess the nature and degree of risk caused by these events; and
 - “(c) include advice on how these risks may be mitigated.
- “(3) The Board must immediately advise the Corporation of any event likely to create a significant financial risk for the Corporation.”

7 Section 20 replaced (Chief executive officer)

(1) Replace section 20 with:

“20 Human resources of the Corporation

- “(1) The Board must appoint a CEO of the Corporation to carry out, under the supervision of the Board, the Corporation’s functions and exercise the Corporation’s powers.
- “(2) The CEO may—
- “(a) employ personnel; and
 - “(b) contract on behalf of the Corporation 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 Corporation’s human resource policies are efficient and cost-effective.”

8 Section 22 amended (Directors)

(1) After section 22(1), insert:

- “(1A) Subsection (1) is subject to the provisions of any other Act creating a statutory corporation that expressly allows the Minister to recommend the appointment of one director (being a person who is not a public servant).
- “(1B) However, the Minister may not recommend the appointment of a person as a director of a statutory corporation unless that person is registered in the database maintained by the Corporation under section 10A(1)(b) under a profile that indicates that the person is suitable for appointment as a director of the particular statutory corporation.
- “(1C) In performing its functions of appointing directors and Board members of statutory corporations under subsection (1) the Board must follow a process set out in a policy from time to time approved by Cabinet.
- “(1D) That policy must—
- “(a) require potential candidates for appointment to be selected from an appropriate profile for the particular corporation from a database of qualified candidates maintained by the Corporation;
 - “(b) set out rules requiring the assessment by the CEO and other employees of the Corporation of prospective candidates for appointment as a director;
 - “(c) set out rules providing for the selection and appointment on merit of qualified candidates as directors;
 - “(d) provide for the vetting of candidates for appointment as a director by the CEO and other employees of the corporation;
 - “(e) provide for the marking of recommendations by the CEO to the Board about candidates preferred for appointment;
 - “(f) set out rules regarding the confirmation of appointment of directors;
 - “(g) provide for the induction of newly appointed directors in their role.

9 Savings provisions

Despite the replacement of section 9 of the principal Act by section 6 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 9 of the principal Act (as replaced by section 6 of this Act):
- (b) paragraph (a) applies even if the majority of the Board do not satisfy the requirements of section 10A of the principal Act (as inserted by section 6 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 9 of the principal Act (as replaced by section 6 of this Act):
- (d) paragraph (c) applies even if the Chairperson does not satisfy the criteria in section 10A or 10C of the principal Act (as inserted by section 6 of this Act):
- (e) the provisions of section 10K (as inserted by section 6 of this Act) apply to any act or omission (whether it occurred before, on, or after the commencement of this section).

This Act is administered by the Cook Islands Investment Corporation.

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