



ANALYSIS

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1998, No. 22

An Act to establish Cook Islands Tourism Marketing Corporation as a statutory corporation and to set out its functions and powers.

(11 December 1998)

1. Short Title and commencement - (1) This Act may be cited as the Cook Islands Tourism Marketing Corporation Act 1998.

(2) This Act shall come into force on the day that it is assented to by the Queen's Representative.

(3) Notwithstanding subsection (2), and without limiting the application of section 12 of the Acts Interpretation Act 1924, upon the passing of this Act, the power to appoint the Board, Chief Executive Officer and other officers and employees of Cook Islands Tourism Marketing Corporation may be exercised for the purpose of bringing this Act into operation on the date of its coming into force.

2. Interpretation - In this Act, unless the context otherwise requires -

"Accredited operator" means a tourism operator accredited pursuant to a scheme referred to in section 16(d)(ii);

"Board" means the Board of directors established pursuant to section 4;

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

"Ground operators" includes ground transport operators and other operators providing recreational services for visitors;

"Minister" means the Minister responsible for Tourism;

"the Corporation" means Cook Islands Tourism Marketing Corporation, established by this Act.

PART I

COOK ISLANDS TOURISM MARKETING CORPORATION

3. Cook Islands Tourism Marketing Corporation - (1) There is established a statutory corporation, to be called Cook Islands Tourism Marketing Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring holding and disposing of real and personal property, of suing and being sued and of doing and suffering all such acts and things as bodies corporate may

lawfully do and suffer.

4. Directors - (1) There shall be a board of directors of the Corporation which shall, subject to the provisions of this Act, have overall control of the Corporation.

(2) The Board shall comprise 7 directors –

- (a) five of whom shall be appointed by the Minister from amongst persons nominated by accredited operators and members of the Cook Islands Chamber of Commerce who shall represent all sectors within the tourism industry; and
- (b) two of whom shall be appointed by the Minister acting in his discretion.

(3) For the purpose of receiving nominations of members to be appointed pursuant to subsection (2)(a), the Chief Executive Officer shall by public notice to accredited operators and members of the Cook Islands Chamber of Commerce, convene a meeting of them on a date not less than 7 days after the date of the public notice at which -

- (a) there shall be present, in person or by proxy in writing, not less than 60 percent of all accredited operators and members of the Cook Islands Chamber of Commerce; and
- (b) nominations of not less than 5 persons shall be called for, seconded other than by the nominator and nominee, and if accepted by the nominee either orally or in writing, received by the Chairman elected at that meeting and conveyed to the Chief Executive Officer.

(4) All nominations of members to be appointed pursuant to subsection (2)(a) shall be forwarded by the Chief Executive Officer to the Minister, who shall determine which nominees are best able to, -

- (a) contribute relevant skills and experience to the Board;
- (b) plan strategically;
- (c) provide balanced representation of all the sectors of the tourism industry;
- (d) in the performance of the Board's functions and powers, co-operate with other Board members.

(5) In making a determination under subsection (4), the Minister shall have regard to the recommendations of an independent consultant experienced in the selection of commercial executives and who shall be engaged for that purpose by the Minister.

(6) The Minister may decline to appoint a person nominated pursuant to subsection (2)(a), only if -

- (a) the appointment of a nominee would result in that nominee having a significant conflict of interest;
- (b) the appointment would result in the disproportionate over-representation on the Board by a particular sector of the industry;
- (c) the nominee has been convicted during the previous 5 years of an offence carrying a maximum sentence of more than 12 months imprisonment;

- (d) the nominee materially lacks one or more of the qualities referred in subsections (4)(a) to (d).

(7) If the Minister declines to appoint 5 directors from amongst those nominated, or recommended by the person appointed under subsection (5), the Minister shall advise the Chief Executive Officer in writing of his reasons for doing so, and in the event that there remains insufficient nominees from which appointments can be made, the Chief Executive Officer shall request further nominations in accordance with subsection (3).

(8) The Chief Executive Officer shall be an *ex-officio* member of the Board and shall attend at every meeting of the Board but shall not be entitled to vote.

(9) The Minister shall, from amongst all persons appointed as directors, appoint one of them (other than the Chief Executive Officer) as chairperson of the Board.

(10) If there are less than 5 nominations made pursuant to subsection (2)(a), the Minister shall appoint persons to fill any vacancy so arising.

5. Term of office and remuneration of directors - (1) Except as provided in subsection (2), every director shall hold office for a term of two years but may from time to time be re-appointed.

(2) Three of the first directors appointed pursuant to section 4(2) shall be appointed for a term of 3 years, but thereafter every director succeeding in office to those three directors shall be appointed for a term of 2 years.

(3) Notwithstanding anything in this section, every director whose office is terminated by effluxion of time shall continue to hold office until that director's successor comes into office.

(4) The directors shall be paid out of the funds of the Corporation such remuneration and allowances as shall from time to time be determined by the Queen's Representative by Order in Executive Council.

6. Extraordinary vacancies - (1) A director may resign at any time by written notice to the Minister.

(2) A director may at any time be removed from office by the Minister for incompetence, disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Minister.

(3) If a director dies, resigns from office or is removed from office, the vacancy shall be deemed to be an extraordinary vacancy.

(4) In the case of an extraordinary vacancy the Minister shall call for not less than three nominations for a new appointee, and the provisions of section 4 shall apply *mutatis mutandis* for the purpose of filling the vacancy from amongst the persons nominated.

(5) A director appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of that director's predecessor, but may be re-appointed.

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

7. Meetings of Board - (1) The first meeting of the Board shall be held on a day to be appointed by the chairperson.

(2) Subsequent meetings shall be held at such times and places as the Board or the Chairperson may from time to time appoint.

(3) The Chairperson or any three directors may at any time by notice in writing to the other directors call a special meeting of the Board. Notice of every meeting shall be given to every director present at the time of giving notice, in the Cook Islands.

(4) At all meetings a majority of four directors who are for the time being members of the Board shall constitute a quorum.

(5) The Chairperson shall preside at all meetings at which he is present. In the absence of the Chairperson from any meeting, the directors present shall appoint one of their number to be Chairperson of that meeting.

(6) At any meeting the Chairperson shall have a deliberative vote only.

(7) All questions arising at any meeting shall be decided by a majority of the votes of directors recorded thereon.

(8) Subject to the provisions of this Act and of any regulations made hereunder, the Board may regulate its procedure in such manner as it thinks fit.

8. Minutes of meetings - (1) The Board shall cause minutes to be kept in a book provided for the purpose, of all resolutions and proceedings of its meetings.

(2) The minutes shall be signed by the Chairperson at the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be furnished to every director and to the Chief Executive Officer.

9. Disclosure of conflicting interest - (1) A director who has a direct pecuniary interest in any matter before the Board or any committee thereof, apart from an interest in common with other members of the sector of the tourism industry in which that director is engaged, shall as soon as possible after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the director disclosing the interest shall not take part in any deliberation or vote upon any decision relating to the matter, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

(3) Notwithstanding subsection (2), a decision made by the Board at which a director has taken part in deliberation or in decision-making in breach of that subsection, shall be as valid as if the breach had not occurred.

10. Board may refer matters for investigation - The Board may from time to time appoint one or more of its directors or any other person or persons having appropriate qualifications or experience to investigate and report to the Board on such matters as are referred to him or them by the Board, for the purpose of the proper exercise of the Board's powers or its primary objective,

or its functions under this Act.

11. Delegation of powers of Board - (1) The Board may from time to time delegate to any directors, officers or employees of the Corporation or any other person, any of the powers or functions of the Board, including the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions imposed by the Board or person to whom any powers are delegated pursuant to this section, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(3) Every 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.

(4) 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 specified class.

(5) Any delegation under this section may be revoked by the Board at any time.

(6) The delegation of any power by the Board or by any person shall not prevent the exercise of that power by the Board or, as the case may require, by the person by whom the delegation is made.

12. Chief Executive Officer and other employees - (1) The Board shall appoint a Chief Executive Officer of the Corporation on such terms and conditions as may be determined by the Board.

(2) The Chief Executive Officer shall be responsible to the Board for the proper and efficient operation of the Corporation and for its compliance with the provisions of this Act.

(3) The Chief Executive Officer may from time to time, within policy guidelines established by the Board, appoint such other officers and employees of the Corporation including acting or temporary or casual officers and employees, as are necessary for the efficient exercise of the primary objective and the functions and powers of the Corporation.

(4) Subject to subsection (3), the Corporation may pay to its officers and employees such salaries and allowances as it thinks fit and may, subject to any contractual obligations, at any time remove any officer or employee from office or employment.

13. Confidentiality - Any director, officer, employee, or other person engaged or employed by the Corporation who, except in the course of his duties hereunder -

(a) directly or indirectly discloses; or

(b) for private purposes uses,

any information acquired in the course of such duties, commits an offence and shall be liable on conviction to a fine not exceeding \$2,000 and shall in addition to such fine be liable to forfeit to the Crown any personal gains directly resulting from the commission of the offence.

PART II
PRIMARY OBJECTIVE, FUNCTIONS AND POWERS

14. Primary objective of the Corporation - The primary objective of the Corporation shall be to encourage and promote the development of tourism in the Cook Islands in such manner as will achieve sustained growth, and in a manner which is economically viable, socially acceptable and environmentally sustainable.

15. Functions of the Corporation - In pursuing its primary objective, the Corporation shall have the following functions -

- (a) As to policy and planning -
 - (i) provide advice to the Government and the tourism industry of the Cook Islands on marketing policies and strategies to generate and promote tourism to the Cook Islands;
 - (ii) develop and update each year, a rolling five-year strategic marketing plan to provide the direction and priorities to guide the tourist industry;
 - (iii) assist in the implementation of national and sectoral tourism policy;
- (b) As to marketing and promotion -
 - (i) formulate, implement and manage marketing strategies and activities to promote the Cook Islands internationally as a desirable tourist destination;
 - (ii) undertake market research and surveys (being research and surveys not being undertaken by any other agency or department of the Government of the Cook Islands) as may be required to formulate marketing strategies and plans for the achievement of its objectives;
 - (iii) develop, provide and co-ordinate national destinational information, materials and marketing services as may be required to ensure the effective promotion of tourism in overseas tourist source markets;
 - (iv) operate and manage offices in tourist source markets to market and represent the Cook Islands as a tourist destination;
 - (v) appoint or engage representatives under contract or by other arrangements to market promote and represent the Cook Islands in tourist source markets;
 - (vi) operate and manage a visitor centre to provide information to visitors;
 - (vii) develop and provide publicity, public relations and

- information services to promote travel to and within the Cook Islands;
- (viii) develop and participate in joint marketing activities, as well as obtain co-operative funding, with other industry partners to achieve maximum return on marketing resources;
 - (ix) facilitate tourism, trade and media visits to the Cook Islands;
 - (x) develop and maintain effective linkages and relationships with airlines, travel agents, tour operators and others engaged in the business of encouraging tourists to visit the Cook Islands;
 - (xi) establish and maintain linkages with international and regional organisations involved with the marketing and development of tourism to and within the South Pacific.
- (c) As to the outer islands -
 - (i) promote and market the outer islands as an integral part of the Cook Islands as a tourist destination;
 - (d) As to general administration and other matters -
 - (i) carry out its functions and the management of its resources in a commercial and businesslike manner;
 - (ii) prepare an annual marketing plan consistent with the rolling 5 year strategic marketing plan, setting out the targets, activities, and anticipated results from each source market;
 - (iii) prepare an annual budget to support the annual marketing plan;
 - (iv) prepare and submit to the Minister each financial year proposals to bid from the Government of the Cook Islands and other co-operative partners, for finance and resources in return for the provision of outputs.

16. Powers of the Corporation - (1) The Corporation shall have all the powers reasonably necessary for the effective performance of its functions.

- (2) Without limiting the generality of subsection (1), the Corporation may -
 - (a) act in combination or association with any person or body of persons whether in the Cook Islands or elsewhere, or any Government department or agency that may be engaged, concerned or interested in the generation and promotion of tourism to and within the Cook Islands, and contribute to the expenses involved in any such combination or association;
 - (b) contract for execution or provision by any person of any work or service authorised by the Corporation in such manner and on and subject to such terms and conditions as the Corporation thinks fit;
 - (c) notwithstanding sections 53 and 68 of the Ministry of Finance and Economic Management Act 1995-96, borrow money and provide

- security thereon subject to subsection (3) of this section;
- (d) enter into commercial contracts consistent with its functions;
- (e) engage consultants and advisers for the furtherance of its primary objective and its functions.

(3) Any money borrowed by the Corporation under subsection (2)(c) is subject to the approval of Cabinet and the Crown shall not be liable or accountable for any debt or losses that may arise from such borrowings.

17. Government policy - (1) In the exercise of its functions and powers and in the preparation of its statement of corporate intent, the Corporation shall have regard to any general policy directions of Cabinet conveyed by the Minister in writing and not inconsistent with the primary objective of or the functions of the Corporation.

(2) Where the Corporation is requested to give effect to or greater emphasis to a general policy direction not provided for in the statement of corporate intent, or where there are insufficient financial resources available for any of the proposals set out in the statement of corporate intent, then the Minister and the Board shall, subject to the provision of additional finance to implement the policy, or proposals, agree upon a revised statement of corporate intent and the priority to be given to the policy or proposals.

(3) A copy of every written policy direction given by the Minister pursuant to subsection (1) shall be included in the next ensuing annual report of the Corporation.

PART III ACCOUNTABILITY

18. Funds of the Corporation - The funds of the Corporation shall comprise -

- (a) monies appropriated by Parliament for the purposes of the Corporation;
- (b) monies donated to the Corporation or to the Government of the Cook Islands for the purposes of the Corporation, by any regional or international agency or by any foreign Government;
- (c) money provided to the Corporation by private sector interests;
- (d) money borrowed by the Corporation under section 16(2)(c) of this Act.

19. The Corporation account - (1) All money provided to the Corporation pursuant to section 18(c) shall, pending expenditure, be held by the Corporation in trust in a separate trust account with a commercial bank approved by the Financial Secretary upon the recommendation of the Board and the keeping and expenditure thereof shall be separately shown and accounted for in the statement of corporate intent, and in the financial reports and fiscal updates.

(2) For the purposes of section 46(3) of the Ministry of Finance and Economic Management Act 1995-96, the Corporation shall be deemed to be the Ministry appointed on behalf of the Crown to manage the monies referred to in subsection (1) consistent with the purposes for

which it was provided and such monies shall not at any time revert to the Crown.

(3) No money shall be withdrawn from any bank account except by cheque or other instrument signed by such person or persons in such manner as the Board may from time to time determine.

20. Financial reporting and fiscal updates - The Board shall deliver to the Ministry of Finance and Economic Management, financial reports and fiscal updates in accordance with Parts II and V of the Ministry of Finance and Economic Management Act 1995-96, as if the Corporation was a government department as defined in that Act.

21. Statement of corporate intent - (1) The Board will on behalf of the Corporation deliver to the Minister not later than 1 month before the commencement of each financial year, a statement of corporate intent, the first statement to be delivered within 45 days of the date of this Act coming into force, or such longer period as the Minister may allow.

(2) The statement of corporate intent shall each year contain Government's policy as it affects the Corporation and in addition specify in respect of the next financial year, and insofar as is practicable, for each of the four immediately succeeding financial years, the following information -

- (a) the marketing and other objectives of the Corporation;
- (b) the nature and scope of the activity to be undertaken;
- (c) the performance targets and other measures by which the performance of the Corporation may be judged in relation to its objectives;
- (d) the financial resources required to achieve performance targets;
- (e) the costs, if any, to the Corporation in recognising Government's tourism policies;
- (f) the accounting policies of the Corporation;
- (g) such other matters as are agreed between the Minister and the Corporation.

(3) The statement of corporate intent may from time to time be revised by agreement between the Board and the Minister.

(4) The statement of corporate intent and any revised statement of corporate intent agreed on pursuant to section 17(2) or subsection (3) to this section shall be printed and made available to the public at a fee calculated to recover the cost of printing, within 14 days of being approved by the Board.

22. Annual report - (1) Within 3 months after the end of each financial year the Board shall deliver to the Minister a report of the operations of the Corporation during that financial year, including statements of -

- (a) financial position;
- (b) financial performance;
- (c) cashflows;
- (d) borrowings;

- (e) commitments;
- (f) specific fiscal risks;
- (g) accounting policies;
- (h) outputs and outcomes actually achieved,

together with such other statements as are consistent with generally accepted accounting practice.

(2) The annual report made under subsection (1) shall state the information necessary to enable an informed assessment of the operations of the Corporation including a comparison of the performance of the Corporation with the statement of corporate intent.

23. Office of the Public Expenditure Review Committee and Audit to be auditor of the Corporation - (1) The Office of the Public Expenditure Review Committee shall be the auditor of the Corporation, which office will have and may exercise the functions, duties and powers it has under the Public Expenditure Review Committee and Audit Act 1995-96.

(2) Without limiting subsection (1), the Board may with the agreement of the Office of Public Expenditure Review Committee and Audit, appoint a person or a firm to conduct audits of the Corporation.

24. Protection from disclosure of sensitive information - Subject to the provisions of any other Act requiring the disclosure of information to any person, nothing in this Act shall be construed as requiring the inclusion in any report required under this Act, any information that could be properly withheld if it would otherwise damage the commercial interests of the Corporation or any person engaged in tourism, or is information that may be withheld under any Act in force concerning the disclosure of information.

PART IV **MISCELLANEOUS**

25. Cook Islands Investment Corporation - The Cook Islands Investment Corporation Act 1998 shall have no application to the Corporation.

26. Act binding on Crown - This Act shall bind the Crown.

27. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council promulgate such regulations as may be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) All such regulations shall be laid before Parliament within fourteen days after the date of making thereof if Parliament is then in Session, and, Parliament is not then in Session, shall be laid before Parliament at the commencement of the next ensuing Session.

28. Transitional - (1) In this section, "Tourist Division" means that division of the Ministry of Tourism and Transport known as "Cook Islands Tourism Marketing Corporation".

(2) Upon the date of coming into force of this Act -

- (a) All personal assets and liabilities of the Tourist Division pertaining to the function of tourist marketing and promotion shall be transferred to and vest in the Corporation at the end of the month of December 1998 without further assurance than this section and the Corporation shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities;
- (b) Every agreement directly affecting tourism marketing and promotion, whether in writing or not to which the Tourist Division was a party or which affected any marketing and promotion being undertaken by the Tourist Division and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Corporation were a party thereto or affected thereby instead of the Tourist Division and as if for every reference (however worded and whether express or implied) therein to the Tourist Division there were substituted in respect of anything to be done on or after such date of coming into force a reference to the Corporation;
- (c) The person employed as the Director of Marketing of the Ministry of Tourism and Transport shall become the Chief Executive Officer of the Corporation as if appointed by the Board pursuant to section 12(1) and shall continue in office as Chief Executive Officer of the Corporation for the same period and upon the same terms and conditions as that person was employed as Director of Marketing of the Ministry of Tourism and Transport.

This Act is administered by Cook Islands Tourism Marketing Corporation.