

DEVELOPMENT INVESTMENT ACT 1995-96

[Reprinted as at 15th August 2007]

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An Act to promote trade, investment and business in the Cook Islands, promote and monitor foreign investment in the Cook Islands, and to encourage the participation of Cook Islanders in trade, investment and business by the establishment of a Development Investment Board.

1. Short Title and commencement - (1) This Act may be cited as the Development Investment Act 1995-96.

(2) This Act shall come into force on a date to be determined by the Queen's Representative by Order in Executive Council.

The Act was brought into force on the 9th September 1996 by the Development Investment (Commencement) Order 1996 [1996/11]

2. Interpretation - (1) In this Act, unless the context otherwise requires -

"Activity" means an undertaking of whatever nature engaged in by an enterprise and includes each and every other undertaking that is associated with or incidental to that undertaking;

"Board" means the [Business Trade & Investment Board] established by Part II of this Act;

"Book and document", and "book or document" includes all books, accounts, records, registers, rolls, computer tapes, discs, and printouts;

"Carry on business" means to be engaged in an activity for the principal purpose of deriving a gain from that activity whether such gain is pecuniary or otherwise,

but does not include -

- (a) an isolated transaction, not being one of a number of similar transactions repeated from time to time;
- (b) maintaining a bank account in the Cook Islands, the principal purpose of which is other than investment for pecuniary gain;
- (c) taking security for or collecting any debt or enforcing any rights relating to any security;
- (d) the letting and renting of residential premises where the principal object is not pecuniary gain;
- (e) the gathering of any information or undertaking a feasibility study.

"Code" means the Investment Code published pursuant to Part VII of this Act;

"Cook Islander" means a person of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander and a person who has been granted the status of a permanent resident of the Cook Islands, and also includes a Cook Islands enterprise;

"Cook Islands enterprise" means an enterprise other than a foreign enterprise;

"Director" means a director of the board of directors of the Board;

"Enterprise" means any person carrying on any activity as defined herein or proposing to carry on business;

"Existing activity" means an activity being carried on immediately before the commencement of this Act;

"Expatriate" means a person who is not a Cook Islander but is lawfully resident in the Cook Islands;

"Foreign enterprise" means -

- (a) in the case of an enterprise that is a body corporate, an enterprise -
 - (i) in which one third or more of the voting shares or power is held or controlled by persons who are not Cook Islanders; or
 - (ii) in which one third or more of the value or number of the shares are beneficially owned or controlled by persons who are not Cook Islanders; or
 - (iii) that does not have its central management or control in the Cook Islands;
- (b) in the case of an enterprise other than a body corporate, an enterprise -

- (i) in which one third or more of the members or partners are not Cook Islanders; or
- (ii) in which one third or more of the beneficial ownership of which is owned by persons who are not Cook Islanders.

"Foreign interest" means -

- (a) in the case of an enterprise that is a body corporate, the interest being -
 - (i) the voting shares or power held or controlled by persons who are not Cook Islanders; or
 - (ii) the value or number of shares beneficially owned or controlled by persons who are not Cook Islanders;
- (b) in the case of an enterprise other than a body corporate the interest in which the beneficial ownership is owned or controlled by persons who are not Cook Islanders.

"Minister" means the Minister of Finance and Economic Management;

"Person" includes a natural person, a corporation sole, and a body of persons whether corporate or unincorporated;

"Share" includes any legal or beneficial interest in the ownership of the assets, capital or investments of a company;

"Shareholder" includes any member of a body corporate whether its capital is divided into shares or not;

"Trustee" includes an executor or administrator.

(2) Where an activity in which an enterprise is engaged is primarily for a religious, educational, charitable or community purpose of a nature approved by Cabinet, Cabinet the Board shall refer that application to the Minister for consideration and the Minister may exempt that enterprise from all or any of the provisions of this Act on such conditions as the Minister thinks fit and the Minister shall inform the Board in writing of his decision.

The definition of "Board" was amended by section 2 of the Development Investment Amendment Act 2007

PART I **GENERAL**

3. Application of Act - (1) The provisions of the -
- (a) Income Tax Act 1972;
 - (b) Entry Residence and Departure Act 1971-72;
 - (c) Customs Act 1913;
 - (d) Customs Tariff Act 1982;

- (e) Private Import Tax Act 1984;
- (f) *Deleted by Leases Restriction Amendment Act 2002*

shall be subject to the provisions of this Act.

(2) Nothing in this Act shall derogate from any other power of control of investment or employment under any other Act, except that no such power shall be exercised in a manner inconsistent with this Act.

(3) Registration of a foreign enterprise under this Act shall not of itself relieve the enterprise from compliance with any other Act.

In subsection (1), paragraph (f) was deleted by the Leases Restriction Amendment Act 2002

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

PART II **BUSINESS TRADE & INVESTMENT BOARD**

5. Business Trade & Investment Board - (1) There is hereby established an agency of the Crown to be called the Business Trade & Investment Board.

(2) The Board shall comprise the directors together with the chief executive and employees of the Board.

The words "Business Trade & Investment Board" were substituted for the words "Development Investment Board" by section 2 of the Development Investment Amendment Act 2007.

6. Procedure for filing applications - Every application made pursuant to this Act shall be made to the Board and shall be accompanied by the prescribed fee.

7. Directors - (1) There shall be not less than 3 nor more than 5 Directors of the Board who shall be appointed by and responsible to the Minister for the proper functioning of the Board, one of which Directors shall be appointed by the Minister as chairperson.

(2) The qualifications and term of office and remuneration of the Directors shall be prescribed by regulation.

(3) No Director shall be deemed to be employed in the public service by reason only of being a director of the Board.

8. Proceedings of Directors - Regulations may prescribe the manner of calling meetings of Directors and the procedure at such meetings including the quorum at such meetings.

PART III **ADMINISTRATION AND FINANCE**

[9. Chief Executive and other employees – (1) The Chief Executive shall be appointed by the Minister acting with the concurrence of Cabinet, taking into account advice from such committee or consultants as the Minister or Cabinet may deem necessary or desirable to give advice as to an appropriate appointee.

(2) The remuneration of the Chief Executive shall be fixed by the Board in accordance with a recommendation made by the Higher Salaries Commission pursuant to section 11 of the Higher Salaries Commission Act 1989 and following consultation with the Minister.

(3) The Chief Executive may with the approval of the Board, and within financial and other guidelines as to terms and conditions approved by the Board, engage such other employees as shall be necessary for the proper and efficient carrying out of the Board's objectives and functions.]

Section 9 was substituted for the original section 9 by section 3 of the Development Investment Amendment Act 2007

10. Powers of Board to engage consultants and advisers - Regulations may prescribe the powers of the Board to engage consultants and advisers and to form committees, (whether such persons are directors or employees of the Board or otherwise) and the manner in which the remuneration of such persons shall be determined.

11. Disclosure of conflicting interest - (1) A director, employee, consultant, adviser or committee member engaged pursuant to this Act who, otherwise than as a director, employee, consultant, adviser or committee member as the case may be, has directly or indirectly any pecuniary interest or is otherwise interested (apart from an interest in common with the public) in any application before the Board, shall as soon as possible after the relevant facts have come to his notice, disclose to the Directors the nature of his interest.

(2) A disclosure under this section shall be recorded in the minutes of the Directors and the person making the disclosure shall not take part in any decision relating to the matter to which the interest relates but shall be counted as present for the purposes of forming a quorum.

(3) Every person who contravenes the provisions of subsection (1) commits an offence and on conviction shall be liable to a fine not exceeding \$2,000 or, where that person has derived personal gain in respect of any pecuniary interest not disclosed, a fine equivalent to that pecuniary gain, whichever amount is the higher.

12. Personal liability - No director, employee, consultant, adviser, or committee member appointed or engaged pursuant to this Act shall be personally liable for any act or default done or omitted to be done in good faith in the exercise or performance of the functions, powers and duties of the Board or for any debt or other liability lawfully incurred by the Board.

13. Confidentiality - (1) Every director and employee of the Board and every other person engaged by or assisting the Board in connection with the purposes of this Act, including a consultant, adviser or committee member appointed pursuant to this Part) shall maintain and

aid in maintaining the secrecy of all matters which come to his or her knowledge when carrying out any function or duty under this Act, and shall not use or communicate any such matter to any other person, except for the purpose of carrying out a lawful function under this Act.

(2) Every person who acts in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$2,000.00

14. Finance and Accounts - (1) There shall be funds appropriated by Parliament for the administration of the Board.

(2) The Board shall have the power to seek and secure other sources of funds and assistance for the purpose of carrying out its objectives and functions, and to negotiate, borrow, enter into contracts or do such other things as are necessary to secure such funds and assistance.

(3) Procedures and requirements regarding expenditure of monies, books of account, estimates and audit shall be prescribed by regulation.

PART IV **OBJECTIVES AND FUNCTIONS OF THE BOARD**

15. Objectives of the Board - The objects of the Board are to -
- (a) promote, foster and assist the establishment of investment generally in the Cook Islands;
 - (b) encourage and advise the private sector in order to make the best sustainable use of resources consistent with national development and investment policies;
 - (c) promote, co-ordinate and facilitate trade to, from and within the Cook Islands;
 - (d) regulate, monitor and control the direction, extent and scope of foreign investment in the Cook Islands;
 - (e) encourage and facilitate the participation of Cook Islanders in investment and in the ownership, management and control of investment and business;
 - (f) provide and facilitate training in business related skills as well as provide advisory and other business services to encourage and assist Cook Islanders in business development.
16. Functions of the Board - The functions of the Board shall be to -
- (a) As to development generally -
 - (i) monitor and review private sector development;
 - (ii) advise the Minister and Cabinet on policies and means to encourage development through private sector investment;
 - (iii) promote and encourage the efficient and sustainable utilisation of resources by the private sector;

- (iv) liaise and co-operate with Government agencies and other sectors of the community in planning and encouraging development and in facilitating the streamlining of processes in the development sector;
 - (v) develop and provide such services to assist, facilitate and co-ordinate investment, trade and business development.
- (b) As to investment -
- (i) promote, facilitate and coordinate private sector development and investment;
 - (ii) encourage, monitor and regulate foreign investment;
 - (iii) advise the Minister and Cabinet on policies and strategies to encourage investment in desired or priority development areas;
 - (iv) promote the Cook Islands as a desirable and attractive investment area;
 - (v) assist, facilitate and co-ordinate the speedy and efficient processing of investment proposals.
- (c) As to trade -
- (i) advise the Minister and Cabinet on measures to ensure the optimum benefit to the Cook Islands from trade;
 - (ii) promote and encourage exports from the Cook Islands and trade within the Cook Islands as well as the development of industries and businesses involved in export or trade;
 - (iii) promote and facilitate public and private sector co-operation for the development and expansion of export and trade;
 - (iv) give advice to and liaise between the appropriate Government departments and agencies and the private sector in respect of any matter concerning the taxation, fees, import duties and levies effects of duties, levies, fees and tariffs which may be an impediment to or desirable for increased export and trade or for the regulation thereof.
- (d) As to business -
- (i) provide business training in business skills and the provision of advisory and other business services to assist Cook Islanders to develop businesses and to acquire business skills;
 - (ii) encourage assist and facilitate the private sector to provide and undertake the training of Cook

- Islanders and to further their skills and qualifications through in-house training programmes, scholarships and trade training within the Cook Islands and overseas;
- (iii) promote and foster the participation by Cook Islanders in the ownership, management and other financial benefits arising out of business generally.

- [(2) In the carrying out of its objectives and functions, the Board shall -
- (a) have regard to the Investment Code and to any general or specific direction which may from time to time be –
 - (i) issued by Cabinet and conveyed to the Board by way of Cabinet Minute;
 - (ii) issued by the Minister and conveyed to the Board in writing by the Minister;
 - (b) satisfy itself in respect of every application that every Cook Islander who intends to be a shareholder or the owner of an equity interest in a foreign enterprise understands the nature and effect of his or her intended interest;
 - (c) consult with the Minister prior to the making any decision pursuant to Part V (Regulation of Foreign Enterprises) or Part V1 (Control of Takeovers) where the Board or the Chairman are of the opinion, to be recorded in the minutes of the Board, that the decision to be made is likely to involve a matter of significant national or island-wide (as the case may be) importance, cultural or economic impact;
 - (d) consult with the Minister at regular intervals or as the Minister may direct, regarding the general policies and direction of the Board.]

Subsection (2) was substituted for the original subsection (2) by section 4 of the Development Investment Amendment Act 2007

PART V

REGULATION OF FOREIGN ENTERPRISES

17. Restriction on carrying on business by foreign enterprise - (1) No foreign enterprise shall carry on business in the Cook Islands in any activity unless that foreign enterprise is registered pursuant to this Act to carry on business in respect of that activity.

(2) Every person who does any act in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$25,000 and to a further fine of \$1,000 for every day or part of a day during which the offence continues.

18. Approval to carry on business - (1) Every foreign enterprise wishing to carry on business in the Cook Islands in any activity shall make application to the Board for approval to carry on business in that activity.

(2) The procedure by which the Board shall consider and approve or decline an application made pursuant to subsection (1) shall be prescribed by regulation.

(3) Every person who for the purpose of obtaining for himself or any other person registration of an enterprise or any activity pursuant to this Act, makes a false or misleading statement in any material particular or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding \$5,000.

19. Issue of certificate of registration - On approval being granted to a foreign enterprise to carry on business in respect of an activity or activities under this Part, the Board shall issue to the enterprise a certificate of registration setting out the name of the foreign enterprise and the activity or activities in respect of which it is approved to carry on business.

20. Register of approvals - The Board shall keep and maintain a register of every approval granted pursuant to this Part and of all terms and conditions attaching to such approvals.

21. Variation of registration - Upon application being made by a foreign enterprise approved under this Act, the Board may vary all or any of the terms or conditions of the registration of the foreign enterprise.

22. Revocation of registration - (1) The Board may revoke the registration of an enterprise of a foreign enterprise either wholly or in respect of any approved activity where a foreign enterprise has -

- (a) contravened any law in force in the Cook Islands (including this Act); or
- (c) failed to comply with any term or condition of its registration as a foreign enterprise.

(2) The procedure by which the Board may revoke the registration of a foreign enterprise under subsection (1) shall be prescribed by regulation.

(3) The revocation of the registration of a foreign enterprise pursuant to subsection (1) shall not in any way affect any liability of that foreign enterprise to its creditors or to any person interested in the affairs of the foreign enterprise, or the rights of such creditors or persons, whether or not the liability or right shall have arisen before or after the date that the revocation shall take effect.

23. Continuation of business where registration revoked - No foreign enterprise shall carry on business in the Cook Islands in any activity after revocation of registration in respect of that activity has taken effect, except insofar as is necessary for the enterprise to wind up its affairs in relation to that activity, but in any event not exceeding 3 months, or such extended time as the Board may allow.

[PART VA
APPEAL COMMISSION

23A. Appeal Commission – (1) Subject to subsection (4), there shall from time to time be appointed an Appeal Commission, which shall exercise the duties, functions and powers of the Commission under this Part.

(2) The Commission shall comprise 5 members appointed by Cabinet, consisting of 3 members recommended by the Minister and 2 members recommended by the Leader of the Opposition.

(3) Cabinet shall, from amongst all persons appointed as members, appoint one of them as chairperson of the Commission.

(4) The Commission shall only be convened upon the Minister receiving an appeal in writing under subclause (5) and the term of appointment of the Commission shall expire upon such appeal being determined by the Commission.

(5) Any person or enterprise dissatisfied with a decision of the Board where that person has applied for registration as a foreign enterprise and for approval to carry on a particular activity or activities, may within 28 days of receiving written advice of the Board's decision, appeal in writing through the Minister to the Commission.

(6) Upon receiving notice of the appeal pursuant to subsection (1), the Commission may, if it considers the registration of that person or enterprise as a foreign enterprise in respect of the activity or activities applied for to be a matter of national importance, or of importance to a particular island or islands, reverse the decision of the Board, subject to such conditions as the Commission may in its discretion impose.

(7) A decision of the Commission made pursuant to this Part shall be conveyed in writing to the Board and where the Commission upholds the appeal, the Board shall register the person or enterprise as a foreign enterprise with approval to carry on the activity or activities approved by the Commission, subject to such conditions as the Commission may have imposed.

(8) A decision of the Commission pursuant to this Part shall be available in respect of every decision of the Board to which this section applies made after the 1st June 2003 and shall in every case have the same effect and shall be subject in all respects to the provisions of this Act, as if the decision was made by the Board pursuant to Part V.

(9) Every decision of the Commission made pursuant to this Part shall be tabled in Parliament by the person appointed as chairperson under subclause (3), within 14 days when parliament is sitting and as soon as possible at the next Parliament session after the decision has been conveyed to the Board under subclause (7).]

Part VA was inserted by section 2 of the Development Investment Amendment Act 2004

PART VI
CONTROL OF TAKEOVERS

24. Transfer of shares or interest - (1) No person shall transfer any of the legal or equitable interest in shares or any proprietary interest in -

(a) an enterprise where that transfer has the effect of the enterprise

- becoming a foreign enterprise; or
- (b) a foreign enterprise where that transfer has the effect of increasing the foreign interest in an enterprise; or
- (c) an enterprise which is in receipt of an incentive or concession granted pursuant to Part VII,

unless the approval of the Board to such transfer or interest has first been obtained.

- (2) No person shall increase the share capital or any proprietary interest of -
 - (a) an enterprise where the increase shall have the effect of the enterprise becoming a foreign enterprise; or
 - (b) a foreign enterprise where that increase has the effect of increasing the foreign interest in an enterprise; or
 - (c) an enterprise which is in receipt of an incentive or concession granted pursuant to Part VII,

unless the approval of the Board to such increase has first been obtained:

Provided that this subsection shall not apply to any case where the increase of capital or proprietary interest in the enterprise is to all existing shareholders or owners in the same proportions as and upon the same terms and conditions as their existing shareholding or proprietary interest.

(3) For the purposes of this section, any matter or thing (whether in the Cook Islands or elsewhere) having the effect of altering the effective ownership or control of any enterprise which has a direct or indirect interest in any enterprise carrying on business in the Cook Islands, including -

- (a) the transfer of shares or any proprietary interest;
- (b) the issue of new shares or proprietary interest;
- (c) any change in the governing rules,

shall be deemed for the purposes of this Act to be a transfer of shares, or proprietary interest, or increase in share capital or proprietary interest (as the case may be) in the enterprise.

(4) Where the approval of the Board is sought for the purposes of this section, the enterprise concerned or any interested party shall apply to the Board in writing, setting out details of the proposed increase or transfer of shares and particulars of the parties involved.

(5) When considering whether to grant or refuse approval under this section, the Board shall be entitled to take into account whether the shares or proprietary interest has first been offered to Cook Islanders.

(6) The Board may in granting any approval pursuant to this section impose such terms and conditions it thinks fit, in furtherance of the objects of this Act.

(7) The approval of the Board to a transfer of shares or proprietary interest, or increase of capital or proprietary interest shall not be unreasonably withheld where in the opinion of the Board, before the transfer or increase or alteration the transferor or the enterprise has taken reasonable steps to endeavour to transfer the shares or proprietary interest or to issue new capital as the case may be, to a Cook Islander. The onus of demonstrating to the Board that reasonable steps have been taken pursuant to this subsection shall lie on the intending vendor.

(8) The approval of the Board shall not be required in the case of the bona fide exercise of powers by a mortgagee, receiver, liquidator, debenture holder or other charge holder acquiring title to shares or a proprietary interest in an enterprise or carrying on any activity

lawfully carried on by that enterprise immediately prior to the exercise of those powers for the purpose of enforcing the security or other charge.

25. Public companies - The provisions of section 24 shall not apply in the case of a public company carrying on business in the Cook Islands in respect of shares traded within or beyond the Cook Islands on a recognised stock exchange and where such trading does not result in a change to the substantial ownership and control of that company.

26. Change in status of enterprise - Where a foreign enterprise registered pursuant to this Act becomes a Cook Islands enterprise, the Board shall on being satisfied of the change in status, deregister the enterprise as a foreign enterprise, and cause the appropriate register to be noted accordingly.

PART VII

INVESTMENT PRIORITIES, INCENTIVES AND CONCESSIONS

27. Investment Code - (1) The Queen's Representative may from time to time by Order in Executive Council establish an Investment Code.

(2) The purpose of the Code shall be to inform potential investors as well as the Board and other persons or bodies responsible for planning, promoting or encouraging investment in the Cook Islands, of the policies, priorities and reservations attached to investment in particular areas.

(3) The Code may include particulars of -

- (a) investments and activities which merit encouragement;
- (b) priorities attached to particular investments and activities in general or in respect of particular geographical areas;
- (c) incentives and concessions available to encourage investment either generally or in respect of particular investments (whether by type or geographical location);
- (d) criteria by which foreign investment or a foreign enterprise may be evaluated;
- (f) the kinds of activities reserved for Cook Islands enterprises.

[27A. Investment incentives and concessions established - (1) Incentives and concessions as specified in the Schedule to the Development Investment Act [1977] are hereby established and shall, notwithstanding any other legislation, override and supercede the effects of any provision therein where and when any or all of these have been granted by Cabinet and, where necessary approved by the Executive Council to any enterprise.

(2) Cabinet may decide from time to time what specific enterprise or activity set out in the Investment Code shall be eligible for any of the incentives and concessions specified in the Schedule to the Development Investment Act 1977.

(3) Except where an application for the incentive or concession relating to the assessment or payment of tax under the Income Tax Act 1997 or the Value Added Tax Act 1997

has been made to the Development Investment Board and received before 28 May 1997, the Development Investment Board may not grant any incentive or concession which would reduce the amount of income tax or value added tax but any grant made by the Board of an incentive or concession in respect of an application made before that date will continue to take effect according to its terms.]

Section 27A was inserted by Paragraph 3 of the Fourth Schedule of the Income Tax Act 1977.

28. Investment Guide - The Board may from time to time publish an investment guide which may contain particulars of the Investment Code and such other information as the Board thinks desirable for the purpose of promoting the objects of this Act.

29. Application for incentives and concessions - (1) An enterprise carrying on business in an activity which is eligible for such incentives and concessions as may from time to time be prescribed may apply to the Board to be granted the incentives and concessions established by this Act.

(2) The information to be provided by an applicant, the application fee and procedure by which the Board shall consider and approve an application made pursuant to subsection (1) shall be prescribed by Regulation.

(3) Every person who for the purpose of obtaining for himself or any other person or retaining any incentive or concession, or makes a false or misleading statement in any material particular, or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding \$5,000.

30. Registration of foreign enterprise not waived - The grant of an incentive or concession to a foreign enterprise under this Part shall not waive the requirement for that enterprise to be registered pursuant to this Act as a foreign enterprise.

31. Register of incentives and concessions - The Board shall establish and maintain a register of every incentive or concession granted pursuant to section 36, which register shall include wherever possible an estimate of the monetary value to the enterprise of the incentive or concession.

32. Government departments or agencies to be informed - (1) The Board shall notify in writing such departments or agencies of Government as shall have an interest in the matter, of every decision made by it under this Part, and in particular -

- (a) the incentives and concessions (including any terms and conditions relating thereto) which have been granted, where the administration of such incentives and concessions ordinarily falls within the jurisdiction of that department or agency; and
- (b) the assistance the Board requires of the department or agency in order to facilitate the benefit by the enterprise of any incentive or concession.

(2) Every department and agency of the Government shall provide the Board with such assistance as the Board may require in order to promote the policy and objectives of

this Act and the Board, and to facilitate the implementation of any object, function or decision of the Board.

33. Variation suspension and revocation of concessions - (1) The Board may vary or revoke in whole or in part any incentive or concession granted to an enterprise pursuant to this Act where the Board is satisfied that the enterprise has contravened or failed to comply with any law in force in the Cook Islands (including this Act) or has contravened or failed to comply with any term or condition of the granting to it of any incentive or concession.

(2) The procedure by which the Board may vary suspend or revoke any incentive or concession pursuant to subsection (1) shall be prescribed by regulation.

PART VIII **ANNUAL FILING OF INFORMATION**

34. Annual filing of information - (1) Every enterprise registered as a foreign enterprise pursuant to this Act, and every enterprise in receipt of a concession, incentive or benefit granted pursuant to the Development Act 1977 or this Act shall, during the currency of such registration concession or incentive or benefit, file with the Board such particulars as shall be prescribed by Order on or by such date in each year as shall be prescribed.

(2) Every person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine of not less than \$200 nor more than \$2,000.

PART IX **GUARANTEES TO FOREIGN ENTERPRISES**

35. Guarantees to foreign enterprises - There is extended to every foreign enterprise registered pursuant to this Act, the following guarantees -

- (a) there shall be no compulsory acquisition or expropriation of the property of any foreign enterprise in the Cook Islands except -
 - (i) in accordance with due process of law; and
 - (ii) for a public purpose defined by law; and
 - (iii) for payment of compensation in a manner prescribed by law.
- (b) subject to any law of the Cook Islands, every foreign enterprise shall be entitled -
 - (i) to remit overseas, earnings and foreign capital;
 - (ii) to remit amounts necessary to meet payment of principal, interest and service charges, and similar liabilities on foreign loans and the cost of other foreign obligations;
 - (iii) to remit overseas, compensation received in accordance with subparagraph (a)(iii).

[PART IXA
INVESTIGATIVE POWERS

35A. Board may refer matters for investigation - The Board may from time to time appoint any person or persons having appropriate legal, accounting or other relevant qualifications and 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 duties or functions under this Act.

35B. Enforcement - (1) The Board or any person appointed by the Board pursuant to section 35A may for the purpose of assisting any investigation by the Board, or ensuring compliance with this Act or any regulations made hereunder -

- (a) require any person to provide in writing such information or explanation as the Board may reasonably require for the purpose of enabling the Board to perform its functions under this Act, including any information relevant to a matter being investigated pursuant to section 35A, or for the purpose of ensuring compliance with this Act or relevant to the commission of an offence under this Act;
- (b) direct any person that has failed to comply in whole or in part with any obligation under this Act, or with any condition imposed in relation to any approval or concession given under this Act, to take or cease any action to ensure compliance with the obligation, condition or concession.

(2) Whether or not a request has been made pursuant to subsection (1) (a) or a direction made pursuant to subsection (1) (b), a Judge of the High Court may issue a warrant in such form as the Judge may direct if the Judge is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, premises, place, vehicle, vessel, box, receptacle, computer, any thing or record (including any electronic record) document or thing which may be evidence of the commission of any offence under this Act.

(3) Every warrant issued pursuant to subsection (2) shall be directed to a person appointed by the Board pursuant to subsection 35A and shall also be addressed generally to every constable, and any such warrant may only be executed in the presence of a constable.

(4) Every warrant may authorise the person to whom it is addressed and any constable to act in any one or more of the following ways, namely to -

- (a) copy, and remove that copy from any premises, any computer system or data processing system in the premises and thereafter to examine any data contained in or available to the system;
- (b) reproduce any record or cause it to be reproduced from electronic data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;
- (c) use or cause to be used, subject to payment of reasonable compensation for such use, any photocopying or electronic

copying equipment in the premises to make copies of any document or record.

(5) Any person who wilfully obstructs or hinders, or fails to co-operate with the lawful exercise of the powers under subsection (1), or who wilfully obstructs or hinders, or fails to co-operate with any person in the lawful exercise of the powers pursuant to a warrant issued under subsection (2) commits an offence punishable on conviction by -

- (a) in the case of an individual, to a fine of up to \$1,000; or
- (b) in the case of a body corporate, to a fine of up to \$5,000.

(6) Where a person claims a lien on a document, its production under this section shall be without prejudice to that lien.

(7) In this Part -

- (a) “document” includes information recorded in any form including on computer disk or other electronic form, and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form; and
- (b) “constable” means a member of the Police of any rank other than a probationary member.

(8) No person shall be required under this Part to disclose information or to produce a document which that person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in civil or criminal proceedings in the Court.

(9) For the purpose of this section, but subject to subsection (10), any information or other matter is deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by or by a representative of a client of the adviser in connection with the giving by that adviser of legal advice to the client;
- (b) by or by a representative of a person seeking legal advice from the adviser; or
- (c) by any person -
 - (i) in contemplation of or in connection with legal proceedings; and
 - (ii) for the purpose of those proceedings.

(10) No information or other matter shall be deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal or unlawful purpose.

(11) Where -

- (a) an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person, as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly;

- (b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member as if that member were a director of the body corporate.

35C. Offence to supply false information - Any person who supplies or is concerned in supplying to the Board or any person appointed by the Board pursuant to section 35A, or to a constable, any statement, account, document, report or other information pursuant to this Act for any purpose for which any such statement, account, document, report or information is lawfully required thereunder, knowing the same to be false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

35D. Disposal of copies or reproductions - (1) Where any thing is copied or reproduced pursuant to a warrant issued under this Part it shall be retained in the custody of the person authorised by the Board pursuant to section 35A except during such time or times as it is in the custody of the Court.

(2) In the event that no prosecution is laid within 3 months of the copying or seizure or production of any document, record or information under this Part, or such extended time as the Court on the application of the Board may reasonably allow, the information provided, seized or copied shall be returned to the person from whom it was taken.]

Part IX was inserted by section 5 of the Development Investment Amendment Act 2007

PART X **MISCELLANEOUS**

36. Service of notices - For the purposes of this Act, any notice to be given by Cabinet or the Board shall be deemed to have been served if delivered or sent by or on behalf of the Board by such means as shall be prescribed by Regulations.

37. General offences and penalty - Every person who does or omits to do any act in contravention of this Act or Regulations made hereunder for which no offence is provided for elsewhere in this Act commits an offence and shall be liable on conviction to a fine not exceeding \$2,000.

38. Offences by corporations - Where a body corporate has committed an offence against this Act, every person who at the time of the commission of the offence was a director, general manager, secretary, or other similar officer of such body corporate, or was acting or purporting to act in any such capacity, shall also be guilty of such offence and shall be punishable accordingly unless that person proves that such offence was committed without his consent or knowledge and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity and in all the circumstances.

39. Refund of concessions - Where any enterprise is convicted of any offence under this Act or Regulations made hereunder, the enterprise shall, in addition to any other penalty provided by this Act be liable to pay to the Crown the value of any incentive concession or advantage obtained by that enterprise at any time pursuant to this Act, and the amount so determined shall be recoverable as a debt due to the Crown.

40. Application of Illegal Contracts Act - (1) A person who is in breach of any provision of this Act who, but for this section, would be entitled to apply for relief under the provisions of the Illegal Contracts Act 1987, shall not be entitled to relief under that Act where that person -

- (a) has deliberately done or made an act or omission in contravention of this Act; or
- (b) knew or ought reasonably to have known that the act or omission done or made by him was in contravention of this Act.

(2) In any case to which subsection (1) applies, the onus of proving that an act or omission was not deliberate, or that he did not or could not reasonably have known that an act or omission was in contravention of this Act, shall lie upon the person seeking relief, provided that ignorance of the law shall not be grounds for relief.

41. Regulations - (1) The Queen's Representative by Order in Executive Council, make all such Regulations as may be necessary or expedient to giving full effect to the purposes or provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), Regulations may prescribe

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- (a) fees in respect of applications made under this Act;
- (b) forms required for the purposes of this Act;
- (c) particulars to be provided by a person making application for registration as a foreign enterprise or in respect of a particular activity;
- (d) particulars to be provided by a person making application for incentives or concessions;
- (e) procedures by which the Board shall consider and approve or decline applications made pursuant to this Act;
- (f) particulars to be filed annually by a foreign enterprise or by an enterprise which is in receipt of an incentive or concession;
- (g) qualifications and term of office of directors;
- (h) the manner of calling meetings of directors, the procedure and quorum for meetings;
- (i) the powers of the Board to engage consultants and advisers and to form committees and the manner in which the remuneration of such persons shall be determined;
- (j) procedures and requirements regarding the expenditure of money, the keeping of stores and books of account, the provision of estimates and the audit of the boards books of account and assets.
- (k) the procedure by which the Board may suspend or revoke the registration of a foreign enterprise or vary suspend or revoke the

- grant of any incentive or concession to an enterprise;
- (l) the manner in which notices to be given under this Act may be served;
 - (m) offences and penalties for such offences not exceeding fines of \$5,000 or imprisonment for up to 12 months or to both.
- (3) Regulations made under this Act shall be laid before Parliament within 28 days of the making thereof if Parliament is then in session, and if Parliament is not then in session, within 28 days of the commencement of the next ensuing session.

42. Consequential Amendments - (1) The Monetary Board Act 1981 is amended by

- (a) deleting from section 10, paragraph (e); and
 - (b) deleting from the Second Schedule, the words "Development Investment Act 1977.
- (2) In every enactment, unless the context otherwise requires, every reference to the Development Investment Act 1977 shall be deemed a reference to this Act.

43. Savings and transitional - (1) The Investment Code published pursuant to the Development Investment Act 1977 shall notwithstanding the repeal of that Act by this Act, continue in force as if prescribed under this Act.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Development Investment Act 1977 by this Act shall not affect any approval granted or anything whatsoever done under the enactment so repealed and every such approval so far as it subsists or is in force at the time of the amendment or repeal shall continue and have effect as if it had been made or done under the corresponding provision of this Act.

44. Repeal - The Development Investment Act 1977 is repealed.

This Act is administered by the Business Trade & Investment Board