



## ANALYSIS

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1975, No. 9

An Act to establish the National Development Corporation and to define its functions and powers

(7 March 1975)

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 - (1) This Act may be cited as the National Development Corporation Act 1975.

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

"Corporation" means the National Development Corporation established by this Act:

"Minister" means the Minister appointed under the provisions of the Constitution to be the Minister responsible for the Corporation.

#### PART I - NATIONAL DEVELOPMENT CORPORATION

3. National Development Corporation - (1) There is hereby established a Corporation, to be called the National Development Corporation.

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

4. Board of Directors - (1) The Corporation shall consist of a Board of Directors as follows:-

(a) The Managing Director;

(b) Not less than three nor more than five other members who shall be appointed by the High Commissioner on the recommendation of the Minister and of whom one shall be appointed as Chairman.

(2) No person shall be capable of being appointed or of continuing to hold office as a member of the Board of Directors who is or becomes a member of the Legislative Assembly.

5. Terms of office of Directors - (1) Except as otherwise provided by this Act, every Director other than the Managing Director shall be appointed for a term of two years, but may from time to time be reappointed.

(2) With respect to the first Directors other than the Chairman and the Managing Director, appointed under this Act, the following provisions shall apply:-

(a) Two of those Directors shall retire at the expiration of one year from the date of their appointment.

(b) The Directors so to retire at the end of one year shall be determined by agreement of the Directors; and failing agreement the Directors then to retire shall be determined by lot.

(3) Notwithstanding anything to the contrary in this Act, every Director unless he sooner vacates his office under section 6 of this Act, shall continue in office until his successor comes into office.

6. Alternate Directors - (1) In any case in which the Minister is satisfied that any Director other than the Managing Director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint an alternate to act for that Director during his incapacity.

(2) In the case of the incapacity of the Chairman his alternate may or may not be one of the other Directors, and if the alternate of the Chairman is one of the other Directors some other person may be appointed to act as the alternate of that Director.

(3) Any alternate appointed under this section shall, while he acts as such, be deemed to be a Director of the Corporation.

(4) No appointment of an alternate and no acts done by him as such, and no act done by the Corporation while any alternate is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

7. Extraordinary vacancies - (1) Any Director other than the Managing Director may at any time be removed from office by the High Commissioner for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the High Commissioner, or may at any time resign his office by written notice given to the Minister.

(2) If any Director dies or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(3) An extraordinary vacancy shall be filled by the appointment of a person in the same manner as the appointment of the vacating member.

(4) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(5) The powers of the Corporation shall not be affected by any vacancy in the membership thereof.

8. Meetings of Corporation - (1) The first meeting of the Corporation shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Corporation shall be held at such times and places as the Corporation from time to time appoints.

(3) The Chairman of the Corporation, or any two Directors may at any time call a special meeting of the Corporation.

(4) At all meetings of the Corporation the quorum necessary for the transaction of business shall be three.

(5) The Chairman shall preside at all meetings of the Corporation at which he is present.

(6) In the absence of the Chairman or his alternate from any meeting, the members present shall elect one of their number to preside at that meeting.

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



(8) At any meeting of the Corporation the Chairman or other person presiding shall have a deliberate vote and, in the case of an equality of votes, shall also have a casting vote.

(9) A resolution in writing signed or assented to by letter or telegram, by all members of the Corporation shall be as valid and effectual as if it had been passed at a meeting of the Corporation duly called and constituted.

(10) Subject to the provisions of this Act and of any regulations thereunder, the Corporation may regulate its procedures in such manner as it thinks fit.

9. Committees - (1) The Corporation may from time to time appoint a committee or committees, consisting of two or more members, to advise the Corporation on such matters as are referred to them by the Corporation.

(2) Any person may be appointed to be a member of any committee appointed under this section notwithstanding that he is not a member of the Corporation.

(3) Subject to the provisions of this Act, of any regulations thereunder, or of any general or special directions of the Corporation, any such committee may regulate its procedure in such manner as it thinks fit.

10. General functions of Corporation - The general functions of the Corporation shall be -

- (a) To promote and foster economic development activities through the provision of direct and/or indirect assistance in finance, management and technical expertise.
- (b) To promote and foster economic development activities through the provision of advisory services, directly and/or indirectly, in financing, management, technical, entrepreneurial and other areas.
- (c) To advise the Government of the Cook Islands on general economic activities including the need for new types of industries and the requirements for the establishment of such industries.
- (d) To assist, foster and encourage self employment in the Cook Islands.
- (e) To assist, foster and develop existing and new trading commercial and industrial activities serving a public purpose.
- (f) With the prior approval of the Minister, to operate, manage and carry on trading, commercial and industrial activities serving a public purpose.

- (g) With the prior approval of the Minister, to assist, establish and/or carry on such businesses or services as the Corporation considers desirable in the public interest.

11. Corporation to have regard to directions of Government - In the exercise of its functions and powers the Corporation shall have regard to any representations that may be made by the Minister in respect of any function or business of the Corporation and shall give effect to any decision of the Government on any matter of general policy in relation thereto conveyed to the Corporation in writing by the Minister.

12. Powers of Corporation - The Corporation shall have such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions, and in particular it may from time to time -

- (a) Acquire by purchase, lease, sublease, or otherwise, any land or interest in land other than the fee simple with or without any buildings;
- (b) With the prior approval of the Minister, dispose of by sale, lease, sublease, or otherwise any land or interest in land other than the fee simple:
- (c) Acquire by purchase, bailment, or otherwise any personal property, rights, or privileges that it thinks necessary for the purposes of this Act:
- (d) Dispose of by sale, bailment, or otherwise, or turn to account or otherwise deal with, any personal property, rights, or privileges of the Corporation:
- (e) Take on lease, rent, or purchase houses, or purchase sites and erect houses, for the use of its officers:
- (f) With the prior approval of the Minister, subscribe for, acquire, and hold, and dispose of or otherwise deal with, shares or stock in any company, whether incorporated within or outside the Cook Islands, carrying on or intending to carry on any business service or function which the Corporation is to carry on or perform:
- (g) With the prior approval of the Minister, guarantee loans in such manner and upon such terms as deemed fit by the Corporation:
- (h) Act in combination or association with any person or body whether incorporated or not and whether in the Cook Islands or elsewhere for any of the aforesaid purposes.

13. Managing Director - The Corporation may from time to time appoint a Managing Director who in addition to being a member of the Corporation shall be the chief executive officer of the Corporation, and subject to the control of the Corporation shall be responsible for the administration of this Act and the administration of the functions and powers of the Corporation.

14. Manager of divisions and other officers and employees - The Corporation may from time to time appoint such managers of divisions of the Corporation and other officers and employees including acting or temporary or casual officers and employees as it thinks necessary for the efficient exercise of its functions and powers.

15. Terms and conditions applying to officers and employees - (1) Any person in the service of the Crown may be appointed to be an officer or employee of the Corporation but no such person shall be entitled to hold office concurrently as an officer or employee of the Corporation and as a servant of the Crown except -

(a) In the case of a person subject to the Public Service Act 1969 with the consent of the Public Service Commissioner; and

(b) In any other case with the consent of the Minister of the Crown to whose control he is subject.

(2) Subject to the provisions of this Act the Corporation may with the prior approval of the Minister pay to its officers and employees such salaries and allowances as it thinks fit.

(3) The Corporation may at any time remove any officer or employee from his office or employment.

(4) Without limiting the powers of the Corporation contained in sub section (3) of this section the Corporation may remove any officer or employee from his office or employment for any breach of the terms of his employment.

(5) The Corporation shall out of its funds subsidise or contribute to a National Provident Fund or any other fund or scheme established for the purpose of providing superannuation or retiring allowances for its officers and employees.

(6) Any person who immediately before the date of the commencement of this Act was an officer of the Public Service and who is employed by the Corporation immediately after that date may, at any time within one year after his appointment as an officer or employee of the Corporation, elect to resume employment in the Public Service and, in any such case, notwithstanding the provisions of any enactment to the contrary, his employment in the Public Service shall be deemed to have continued without interruption:

Provided that this subsection shall not apply to any person whose employment by the Corporation is terminated for misconduct or neglect of duty:

Provided also that no person shall be entitled to receive any salary as a member of the Public Service in respect of any period during which he was employed by the Corporation.

16. Contracts for professional and technical services - The Corporation may from time to time enter into any contract with any person or association of persons (whether incorporated or not) for the provision of professional or technical services in connection with any function of the Corporation.

17. Delegation of powers of Corporation - (1) The Corporation may from time to time delegate to the officers of the Corporation such of its powers as the Corporation thinks fit, including the power of delegation conferred by this subsection.

(2) Every such delegation may be revoked at any time, and no such delegation shall prevent the exercise of any power by the Corporation.

(3) Any such delegation may be made subject to such conditions and restrictions (if any) as the Corporation thinks fit, and may be made either generally or in relation to any particular matter.

(4) The fact that an officer of the Corporation exercises any power of the Corporation shall, in the absence of proof to the contrary, be sufficient evidence of his authority to do so.

## PART II - FINANCIAL PROVISIONS

18. Appropriation by the Legislative Assembly - (1) There shall be paid to the Corporation such sums of money as may be appropriated by the Legislative Assembly from time to time for the purposes of the Corporation.

(2) Any such sums of money shall be spent in accordance with the estimates as approved by the Legislative Assembly and as between items of expenditure in the approved estimates, the Corporation may exercise a power of virement to an extent not exceeding twenty per cent of the item to which funds are transferred.

19. Borrowing powers - The Corporation may from time to time, with the consent of the Minister, and subject to such terms as he thinks fit, borrow money and issue debentures or mortgage or charge any of its property for the purpose of meeting its obligation or discharging its functions under this Act.

20. Accounts - (1) The Corporation shall cause to be kept proper books of account and proper records in respect of all the activities of the Corporation.

(2) The Corporation shall establish such accounts at such banks as may be expedient for the transaction of its business.

(3) The bank accounts of the Corporation shall be operated by such officers of the Corporation as the Corporation shall from time to time approve.

21. Investment of surplus funds - Surplus funds of the Corporation may be invested by the Corporation with the approval of the Minister in such securities and investments as the Corporation thinks fit.

22. Annual report and accounts - (1) The Corporation shall, as soon as practicable after the end of each financial year, furnish to the Minister a report covering its activities for the year and including financial statements showing estimated and actual receipts and expenditure together with such commercial accounts as are appropriate to the nature of its financial operations.

(2) The accounts and financial statements of the Corporation's activities shall be presented for examination in conjunction with the audit required pursuant to Article 71 of the Constitution and a copy of the annual report shall be laid before the Legislative Assembly as soon as practicable after the presentation to the Legislative Assembly of the annual report of the Audit Office.

### PART III - MISCELLANEOUS

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

(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 Corporation, be either under the common seal of the Corporation or signed on behalf of the Corporation by the Chairman of the Corporation or by any member of the Corporation authorised in that behalf by the Chairman.

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

24. Execution of documents - (1) Every document to which the common seal of the Corporation is affixed shall be signed by the Chairman of the Corporation and shall be countersigned by another member of the Corporation.

(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 Corporation by the Chairman or by any member of the Corporation authorised in that behalf by the Chairman.

25. Evidence of documents - Every document purporting to be a document executed by or on behalf of the Corporation in a manner provided in section 24 of this Act shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.



26. Remuneration and travelling allowances of members - The members of the Corporation shall be paid out of the funds of the Corporation such remuneration and travelling allowances as shall be fixed from time to time by the Corporation with the prior approval of the Minister.

27. Disqualification of members - (1) A member of the Corporation shall not vote or take part in the discussion of any matter before the Corporation or before any committee thereof in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public provided that nothing in this section shall apply to any contract of insurance insuring members against personal accident.

(2) Any member who knowingly offends against this section shall commit an offence and be liable on conviction to a fine not exceeding \$100.00.

28. Members of Corporation not personally liable - No member of the Corporation shall be personally liable for any act of default done or made by the Corporation or by any member thereof in good faith in the course of the operations of the Corporation.

29. Government Departments may provide services for Corporation - The Crown, acting through any Government Department, may from time to time, at the request of the Corporation, enter into contracts or arrangements for the execution or provision by the Department for the Corporation of any work or service, or for the supply to the Corporation of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed upon.

30. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council, after consideration of any recommendations thereon made to him by the Corporation, 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.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the commencement of the next ensuing session.

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This Act is administered in the National Development Corporation.