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An Act to establish the Pacific Catastrophe Risk Insurance Facility and to provide for related matters.

(10 June 2016)

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Pacific Catastrophe Risk Insurance Facility Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Queen's Representative's Assent.

Part 1**Preliminary matters****3 Purpose**

(1) The purpose of this Act is to—

- (a) establish the Pacific Catastrophe Risk Insurance Facility as agreed at the 2015 Forum Economic Ministers' Meeting held on 27 to 30 October 2015 at Rarotonga; and
- (b) facilitate funding to the Pacific Catastrophe Risk Insurance Facility from external sources, including, but not limited to, the member countries and developing partners.

(2) To that end, this Act—

- (a) establishes a Foundation within which member countries from the Pacific, in partnership with developing partners, can provide strategic guidance and oversight of its catastrophe insurance programme; and
- (b) establishes a company to undertake captive insurance activities on behalf of the Foundation for the benefit of the member countries.

4 Interpretation

In this Act, unless the context otherwise requires,—

Board means the Board of Directors of the company

Commission means the Financial Supervisory Commission

Company means the Company established by section 16

constituting documents means constituting documents of the company established under section 18

council means the Foundation's council established under section 8

court means the High Court of the Cook Islands

developing partner means a country or an organisation that is given the status of a developing partner by or under the foundation rules

Facility means the Foundation and the Company

Foundation means the Pacific Catastrophe Risk Insurance Foundation established by section 6

foundation rules means the foundation rules established under section 9

member or **council member** means the representative of the member country or the developing partner appointed to the council

member countries means the countries of the Pacific region as provided for in the foundation rules

record means a record of information whether in digital format or hard copy format, and includes any—

- (a) map:
- (b) plan:
- (c) graph drawing:
- (d) photograph

share, in relation to the Company, means a share in the share capital of the Company

5 Act binds the Crown

This Act binds the Crown.

Part 2**Pacific Catastrophe Risk Insurance Foundation**

Subpart 1—Constitution and rules

6 Pacific Catastrophe Risk Insurance Foundation

- (1) The Pacific Catastrophe Risk Insurance Foundation is established, but has operational effect only on and from the endowment of capital to the value of \$NZ500.
- (2) This Act is to be regarded as the founding instrument of the Foundation.
- (3) The Foundation is a legal person and is capable of suing and being sued in its own name and holds its assets for its objectives.

- (4) The Foundation, acting through its council, may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

7 Objectives of the Foundation

Unless otherwise provided by the foundation rules, the objectives of the Foundation are to—

- (a) establish and own a company to undertake captive insurance activities on behalf of the Foundation for the benefit of each of its member countries; and
- (b) develop, review, and approve the strategic plan for the Pacific Catastrophe Risk Insurance Facility.

8 Foundation council

- (1) The Foundation must have a council to—

- (a) to carry out its objectives; and
- (b) administer the assets of the Foundation; and
- (c) conduct the operations and activities of the Foundation; and
- (d) if necessary, to delegate the day to day management of the Foundation's activities; and
- (e) approve the new members to the Foundation; and
- (f) approve the annual audited accounts of the Company; and
- (g) review and amend the foundation rules.

- (2) The council consists of—

- (a) a representative from each member country; and
- (b) 4 additional members to represent the developing partners.

- (3) The council members must conduct the Foundation's affairs in accordance with this Act and the foundation rules.

- (4) The members must—

- (a) act honestly and in good faith with a view to furthering the best interests of the Foundation; and
- (b) exercise the care, diligence, and skill that reasonably prudent persons would exercise in comparable circumstances.

- (5) To avoid doubt, the duties of the members are owed to the Foundation and not to its members.

- (6) An act of a member of the council is valid despite any defect that may afterwards be found in—

- (a) the appointment of the member; or
- (b) the member's qualifications.

9 Foundation rules

- (1) The foundation rules may, as amended from time to time, provide for all or any of the following—

- (a) the appointment, retirement, removal, and qualifications of council members and observer members; the addition of new members and fees to be paid by new members; and the remuneration (if any) of council members:
 - (b) the functions, duties, and powers of members:
 - (c) the development and review of the objectives and strategic plan for the Facility, including the process for the governance and performance review of the Company:
 - (d) the functions and procedures of the council, including procedures for foundation council meetings (whether in person, or by teleconferencing or email exchange where appropriate):
 - (e) the rights and interests of members of the Foundation:
 - (f) the appointment of an enforcer of the Foundation and the role of the enforcer:
 - (g) procedures for the dedication of assets to the Foundation, including the amount to be endowed for the purpose of making the Foundation operational:
 - (h) procedures for the administration of the Foundation's assets, including the appointment of any third party service providers which may include, but are not limited to, auditors, legal and tax advisors, investment advisers, custodians, managers, and insurance managers:
 - (i) procedures for dispute resolution, including the resolution of disputes about the interpretation or application of the rules or this Act:
 - (j) procedures for the winding up and dissolution of the Foundation:
 - (k) the development, approval, review, and amendment of the Company's constituting documents:
 - (l) the appointment of the Board and removal of directors of the Company:
 - (m) the appointment of an insurance manager for the Company:
 - (n) establishing investment principles and guidelines:
 - (o) the business address for the Foundation:
 - (p) any other matters that the council considers necessary to meet the objectives of the Foundation:
 - (q) matters that may be adopted by special resolution only, including the voluntary winding up and dissolution of the Foundation or the Company, or both:
 - (r) the manner in which the rules may be amended, and the publication of the rules and minutes and decisions of the council.
- (2) The exercise by the council of a power under this Act or the foundation rules must be approved by—
- (a) a resolution at a meeting of the council; or
 - (b) a written resolution, if so required by the foundation rules; or
 - (c) a special resolution.

- (3) A resolution of the members of the council is passed at a meeting of the council if it is approved by a majority of the members, as may be specified in the foundation rules, who are present at the meeting and are entitled to vote on the matter.
- (4) Unless otherwise provided by the foundation rules, a special resolution of the council is taken to have been passed at a meeting of the council only if not less than two-thirds of the council members are present and the resolution is approved by a two-thirds majority of the council members entitled to vote on the matter.

10 Enforcer

- (1) The Foundation may appoint an enforcer.
- (2) If the Foundation has an enforcer, the foundation rules may provide for—
 - (a) the enforcer's appointment, removal, and resignation; and
 - (b) the enforcer's functions, duties, and powers, which may include—
 - (i) the powers to direct and disapprove specified actions of the council; and
 - (ii) the adjudication of disputes between council members or on matters of interpretation and the application of the foundation rules and this Act; and
 - (iii) the power to require the production of financial statements to cover such matters for such period as directed; and
 - (c) the enforcer's remuneration (if any).

11 Liability of council members, and other persons.

A council member, and any officer or employee of the Foundation, is not personally liable for any act or default done or made by him or her or by the council or by any other council member or officer or employee of the Foundation in the course of the operations of the council or Foundation, unless that person acted in bad faith.

Subpart 2—Administration of Foundation

12 Service of documents

A document that is required to be served on the Foundation must be served in person or by sending the document by post to the Foundation's business address.

13 Documents to be kept at business address

- (1) The Foundation must keep accurate reliable records that—
 - (a) enable the financial position of the Foundation to be determined with reasonable accuracy at any one time; and
 - (b) allow the financial statements to be prepared and audited; and
 - (c) record minutes of meetings, transactions, and decisions made by the council.
- (2) The Foundation must keep copies of its records at its business address.
- (3) The Foundation must keep each record (or a copy of it) for at least 7 years after the date on which the record is made.

14 Right to require financial statements to be prepared

If the Foundation has not prepared financial statements for a continuous period of 18 months or more, a member of the council or the enforcer may, by a written notice in any form to the council, demand that financial statements be prepared for the financial period specified in the notice.

15 Powers of the Court

- (1) If any available procedures for dispute resolution in the foundation rules have been exhausted in any case, a council member or the enforcer may apply to the Court in the final instance to seek directions or orders for all or any of the following purposes—
 - (a) to assist the Foundation to administer its assets or to carry out its objectives;
 - (b) to determine the meaning and effect of a provision or term in this Act or the foundation rules;
 - (c) to determine any other matters that the court considers relevant to the Foundation, its objectives, the foundation rules, or the administration of its assets.
- (2) There may be an appeal on issues of law to the Court from any earlier binding determinations.
- (3) The Court may make orders on any terms and conditions that the court thinks fit.
- (4) Any application made under this Part must be determined in accordance with the law of the Cook Islands.

Part 3**Pacific Catastrophe Risk Insurance Company****16 Pacific Catastrophe Risk Insurance Company**

- (1) A company called the Pacific Catastrophe Risk Insurance Company is established, but the constituting documents may at any time and from time to time change the Company's name in the manner provided in those documents.
- (2) The Foundation is the sole shareholder of the Company.
- (3) The Foundation is not liable for any debts or liabilities owed to any person by the company except in relation to an amount of any unpaid share capital not exceeding \$100,000 or an amount of any unpaid share capital not exceeding such other amount that may be prescribed by the Financial Supervisory Commission under section 12 of the Captive Insurance Act 2013.
- (4) The purpose of the Company is, subject to licensing under the Captive Insurance Act 2013, to undertake captive insurance business within the meaning of that Act.
- (5) Any reference to the Company in any enactment or document is a reference to the company for the time being in existence under subsection (1), whatever its name may be at the relevant time.

17 Legal Status

- (1) The Company is a body corporate with perpetual succession and a common seal.

- (2) The Company may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.
- (3) Without limiting subsection (2) the Company has all the powers and privileges as if it were an international company incorporated under the International Companies Act 1981-82 and it may do any act that any international company may do under the International Companies Act 1981-82, with that act being done in accordance with the International Companies Act 1981-82 with the necessary modification.

18 Constituting documents of the Company

- (1) The council must, in accordance with the foundation rules, approve the constituting documents of the company.
- (2) The constituting documents may provide for, but are not limited to, the following—
 - (a) the particulars of the company, including its name, registered address, and company seal:
 - (b) the calling of general meetings and procedures of general meetings:
 - (c) reporting to the council:
 - (d) the functions, duties, and powers of the Directors:
 - (e) Board meetings and the procedures of Board meetings:
 - (f) the appointment of the chief executive officer (**CEO**) of the company and other company officers and employees:
 - (g) the procedures for the development and approval of policies and procedures of the company, including the delegation of powers of the Board and CEO, and operation manuals:
 - (h) accounts and financial reporting:
 - (i) the appointment and removal of all third party service providers, including, but not limited to, auditors, legal and tax advisors, custodians, managers, investment advisers, and insurance managers:
 - (j) dividends, reserves, and capitalization of profits:
 - (k) the procedure for amending the constituting documents, and publishing copies of the constituting documents and public company documents.

19 Board

- (1) The Company must have a Board that is responsible for making the executive decisions of the company as provided by the constituting documents.
- (2) The council must appoint 5 persons to be directors of the board, and appoint one of the director's to be the chairperson.
- (3) The powers of the Board are not be affected by any vacancy in the membership of the Board.
- (4) The council, unless otherwise provided in the foundation rules, may consult the Board about the Foundation's strategic policies that may affect the company.
- (5) The Board must appoint a person to be the CEO of the company.

20 Directors—general duties

A director must, when acting for the Board, do so in a way that—

- (a) is consistent with this Act and all other relevant laws which apply to the company; and
 - (b) takes into account directions that are properly given by the council; and
 - (c) otherwise advances the best interests of the company.
- 21 CEO—accountability**
The CEO is accountable to the Board in the exercise or performance of his or her functions, duties, and powers.
- 22 Personal liability of directors and others**
A director, officer, or employee of the company is not personally liable for any act or default done or made by him or her or by the Board or by any other director, officer, or employee of the company in the course of the operations of the Board or the company, unless that person acted in bad faith.
- 23 Service of documents**
A document required to be served on the Company must be served on the Company in person or by sending it by post to its registered address.
- 24 Documents to be kept at registered office**
- (1) The Company must keep accurate reliable records that—
 - (a) enable the financial position of the Company to be determined with reasonable accuracy at any one time; and
 - (b) allow financial statements to be prepared and audited; and
 - (c) record minutes of meetings, transactions, and decisions made by the Board.
 - (2) The Company must keep copies of records at its registered address.
 - (3) The Company must keep each record (or a copy of it) for at least 7 years after the date on which the record is made.
- 25 Annual report**
- (1) Unless otherwise provided by the constituting documents, the Board must, no later than 4 months after the end of each financial year, submit to the council a report of the Company’s operations during that financial year.
 - (2) That report must include—
 - (a) statements, current to that financial year’s end, of the Company’s—
 - (i) financial position; and
 - (ii) financial performance; and
 - (iii) cashflows; and
 - (iv) borrowings; and
 - (v) other financial commitments; and
 - (b) the auditor’s report on those statements; and
 - (c) an assessment of specific fiscal risks identified by the Board.
 - (3) The Company must ensure that, when it provides financial data, that information is accurate, full, and transparent.
 - (4) All accounts, reports, and statements must be prepared using generally accepted accounting practices.

26 Accounts and Audit

- (1) The Company must—
- (a) keep proper accounts and records; and
 - (b) ensure that payments are correctly made and properly authorised; and
 - (c) keep proper control of both its assets (and assets of others held by it) and its liabilities.
- (2) The accounts and records of the Company must be audited annually.

Part 4**Winding up and dissolution of Facility****27 Interpretation**

In this Part, unless the context otherwise requires, **debtor** means,—

- (a) in relation to the winding up of the Foundation, the Foundation;
- (b) in relation to the winding up of the Company, the Company.

28 Foundation or company may be dissolved or wound up

The Foundation or the company may be dissolved by being wound up as follows—

- (a) voluntarily by the council by a special resolution; or
- (b) compulsorily by 1 of more of the following—
 - (i) the council by a special resolution;
 - (ii) the enforcer in accordance with the procedures set out in the foundation rules;
 - (iii) the Financial Supervisory Commission in accordance with section 34 of the Captive Insurance Act 2013;
 - (iv) a creditor in accordance with section 29.

29 Creditor may petition for winding up of Foundation or Company

- (1) This section applies to the rights of a creditor of a debtor to petition the court to wind up that debtor.
- (2) The winding up of a debtor does not, of itself, entitle any person to petition the court to wind up the Facility as a whole.
- (3) A creditor may petition the court to make an order to wind up a debtor if the following conditions are satisfied—
- (a) the debtor owes the petitioner a sum exceeding \$10,000 or any higher sum provided for by the regulations; and
 - (b) the petitioner has served a written demand for payment of the debt on the debtor and, in the case of a debt owed by the company, has given written notice of that service and of the content of the demand to the Foundation; and
 - (c) the debtor has not, within 21 working days after the date of service of the demand, paid the debt or given security for it to the petitioner's satisfaction; and
 - (d) the debt is not disputed by the debtor.

- (4) A creditor is liable to the debtor for full indemnity costs calculated on a solicitor-client basis if—
- (a) the creditor files a petition to wind up the debtor knowing that the debt is disputed; and
 - (b) the court is satisfied the debt is disputed by the debtor in good faith; and
 - (c) the court either dismisses the petition or stays it pending the determination of that dispute.

30 Court may wind up debtor

- (1) On any winding up petition presented, the court may make an order to wind up the debtor only if the following conditions are satisfied—
- (a) the conditions in section 29(3) are met; and
 - (b) there is no other matter of general law or practice that would disentitle the petitioner to the grant of the petition; and
 - (c) the petitioner, on or after filing and serving the petition in relation to the company, has requested the council to advise in writing, within 60 days after the date of receiving that request, whether the council or any of its members are willing or able to advance funds to the debtor to enable it to meet the debt; and
 - (d) the petitioner has filed—
 - (i) the council’s response; or
 - (ii) affidavit evidence of service for a non-response; and
 - (e) the court is satisfied that—
 - (i) all members have either responded or had 60 days’ clear notice of their opportunity to do so; and
 - (ii) generally, each member of the Foundation has been given a reasonable opportunity to advance sufficient funds to the debtor to allow it to meet the claim of the petitioner; and
 - (iii) no member of the Foundation is both willing and able to do so within a time considered reasonable by the court in all the circumstances of the case.
- (2) Nothing in this section imposes legal liability—
- (a) on a council member or on any other person connected to the Foundation or company to meet the obligations of the debtor; and
 - (b) on the Foundation to meet the obligations of the company; and
 - (c) on the company to meet the obligations of the Foundation.

31 General provisions as to winding up

- (1) A petitioner may apply to the court for an order winding up a debtor even if the debtor’s voluntary winding up has begun.
- (2) Subject to this Act, the court may make orders in relation to the winding up of a debtor that it thinks necessary or convenient to ensure that the winding up takes place as quickly and cost-effectively as is practical, having regard to the interests of its creditors and (subject to creditor interests) those of its Foundation council members.

- (3) Without limiting subsection (2), the provisions of Part VIII (Receivers and Managers) and Part IX (Winding Up) of the International Companies Act 1981-82, with the necessary modifications, apply in relation to the administration, winding up, and dissolution of a debtor as if the debtor were an international company incorporated as such under that Act.
- (4) Upon the completion of the winding up of the Foundation, this Act ceases to be in force and is repealed.

32 Primacy of Captive Insurance Act 2013

- (1) This section applies if the Company becomes licensed to carry on captive insurance under the Captive Insurance Act 2013.
- (2) While the Company remains licensed, if this Act conflicts in any way with the provisions of the Captive Insurance Act 2013, the provisions of this Act take effect subject to those of the Captive Insurance Act 2013 (as in force from time to time).

Part 5

General and miscellaneous provisions

33 Application of other Cook Islands laws

- (1) No Act of the Cook Islands, or any regulation, by-law, or rule may—
 - (a) impose on the Foundation or the company (or both)—
 - (i) any liability, duty, responsibility, obligation, or restrictions:
 - (ii) any fee, impost, tax, levy, dues, duty, or excise:
 - (iii) any fine or penalty:
 - (b) require, in relation to the Foundation or the Company (or both),—
 - (i) the deposit of any money in any public account:
 - (ii) the filing of any accounts, returns, reports, or records:
 - (iii) the licensing or registration of the Foundation.
- (2) In subsection (1), **Act** does not include this Act, the Crimes Act 1969, the Criminal Procedure Act 1980-81, the Proceeds of Crime Act 2003, the Financial Supervisory Commission Act 2003, the Mutual Assistance in Criminal Matters Act 2003, the Extradition Act 2003, the Financial Transactions Reporting Act 2004, or the Terrorism Suppression Act 2004.
- (3) To avoid doubt, the Development Investment Act 1995-6 does not apply to either the Foundation or the company.

34 Amendments to Captive Insurance Act 2013

The Captive Insurance Act 2013 is amended as set out in Schedule 1.

35 Transitional provisions

- (1) The Foundation Council must approve the initial foundation rules under section 9, and constituting documents under section 18 of this Act within 90 days of the Foundation coming into effect.
- (2) The provisions set out in Schedule 2 have effect according to their terms.

Schedule 1

Amendments to Captive Insurance Act 2013

In section 3(1), definition of **Cook Islands company**, after “under the Companies Act”, insert “, or the company established by section 18 of the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016”.

In section 4(1)(b), after “the Companies Act”, insert “; and”.

In section 4(1), after paragraph (b), insert the following paragraph:

“(c) the Pacific Catastrophe Risk Insurance Company established under the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016.”

In section 5, after subsection (2), insert the following subsection:

“(3) To avoid doubt, members of the Foundation established by the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016 are not to be regarded as directors.”

Repeal section 22 and substitute the following section:

“22 Accounts and audit provisions of the International Companies Act, Companies Act, or Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016

“(1) Except as provided by subsection (2) or by any other provision of this Act or the regulations, sections 18 to 21 do not limit the application of—

“(a) provisions in the International Companies Act or the Companies Act relating to accounts and audit, that apply to a licensed captive insurer; or

“(b) provisions in the constituting documents under the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016 relating to accounts and audit, that apply to the company established by that Act.

“(2) If there is any conflict between the provisions of this Act and any of the other applicable Acts or regulations, this Act prevails.”

In section 33(1), after “International Companies Act” insert “or Part 4 of the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016”.

Section 34(1), after “International Companies Act” insert “or Part 4 of the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016”.

In section 48(1), after “other than this Act,”, insert “the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2016,”.

Schedule 2

Transitional provisions

1. Interpretation

In this Schedule, **commencement date** means the date on which this Act comes into force.

2. Application of Financial Supervisory Commission Act 2003

Sections 20, 21, 22, and 23 of the Financial Supervisory Commission Act 2003 apply on and from the commencement date to a licensed captive insurer to which this Schedule applies as if it were a licensed financial institution.

This Act is administered by the Ministry of Finance and Economic Management.

Printed under the authority of the Cook Islands Parliament—2016.
