



ANALYSIS

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1993, No. 6

An Act to establish the Cook Islands Pearl Authority

(10 November 1993)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Cook Islands Pearl Authority Act 1993.
2. Interpretation - In this Act, unless the context otherwise requires -
 - "Authority" means the Cook Islands Pearl Authority established by this Act;
 - "Board" means the board of directors of the Authority;
 - "The Industry" means the Cook Islands pearl farming industry;
 - "Minister" means the Minister of Finance.

PART I

**ESTABLISHMENT AND ADMINISTRATION OF THE COOK ISLANDS
PEARL AUTHORITY**

3. Cook Islands Pearl Authority - (1) There shall be an authority called the Cook Islands Pearl Authority.
 - (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of real and personal property, suing and being sued and, subject to the provisions of this Act, of doing and suffering all such other acts and things as a body corporate may lawfully do and suffer.
4. Board of directors of Authority - (1) There shall be a board of Directors of the Authority consisting of not less than 3 nor more than 5 persons who shall be appointed by the Minister.
 - (2) The Minister shall appoint a Chairman who shall be one of the directors appointed under subsection (1).
 - (3) The Chairman and at least two of the persons appointed as directors under subsection (1) of this section shall be appointed out of the private sector, being persons having recognised business acumen and expertise.
 - (4) The General Manager of the Cook Islands Development Bank and the General Manager of the Authority shall be ex-officio members of the Authority.
 - (5) The Authority may from time to time elect one of their members to be vice-chairman.
 - (6) The powers of the Authority shall not be affected by any vacancy in its membership.
 - (7) No person shall be deemed to be employed in the Public Service for the purposes of the Public Service Act 1975 by reason only of being a director of the Authority.

5. Terms of Office of Appointed Directors - (1) Except as otherwise provided by this Act, every appointed director shall hold office for a period of not less than one year and not more than three years, commencing on the date of appointment.

Provided that directors may from time to time be re-appointed for further terms.

(2) Every appointed director of the Authority who is not an employee of the Public Service or any agency or ad-hoc body of the Government shall be paid from the funds of the Authority such remuneration and allowances as may from time to time be prescribed.

(3) Notwithstanding any other provision in this Act every member whose office is terminated by the effluxion of time shall continue to hold office until his successor is appointed.

6. Alternate Directors - (1) In any case in which the Minister is satisfied that any 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.

(4) No appointment of an alternate and no act done by him as such, and no act done by the Board 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 appointed director including the Chairman may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty or mis-conduct proved to the satisfaction of the Minister.

(2) An appointed director may at any time resign his office by delivering a notice in writing to that effect to the Minister.

(3) 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.

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

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

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

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

(2) Subsequent meetings of the Board shall be held at intervals of not less than one month, at such times and places as the Board from time to time appoint.

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

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

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

(6) In the absence of the Chairman and any person appointed pursuant to Section 6 from any meeting, the Vice-Chairman shall preside, provided that if the Vice-Chairman is also absent, then the directors present shall appoint one of their number to be Chairman at that meeting.

(7) At any meeting of the directors the Chairman or other person presiding shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.

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

(9) Subject to the provisions of this Act and of any regulations thereunder, the Board may regulate procedure in such a manner as the directors think fit.

(10) A director shall not vote or take part in the discussion of any matter before the Board or before any committee thereof in which he has a direct pecuniary interest apart from any interest in common with the public.

9. Committees - (1) The Board may from time to time by resolution appoint, discharge, alter, continue or reconstitute a committee or committees, consisting of two or more directors, to advise the Board on such matters as are referred to any committee by the Board.

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

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

(4) The Board may from time to time delegate to any such Committee such of the powers or functions of the Authority including the power of delegation conferred by this section as they may think fit; provided that in no case shall any power -

- (i) to acquire land or buildings; or
- (ii) to sell land or building vested in the Authority;

be delegated to such a committee.

(5) The Board may from time to time delegate any of its powers to any member, officer or employee of the Authority including the power of delegation conferred by this section.

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

(7) Every committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(8) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a special class.

(9) Any delegation under this section may be revoked at any time.

10. Directions by Minister - (1) The Minister may from time to time give the Authority in writing such general policy directions as he thinks fit as to the policy to be followed by the Authority in the exercise of the functions of the Authority.

(2) The Authority shall, in the exercise of its functions and powers, give effect to any directions given to it by the Minister under subsection (1).

(3) A copy of every direction given by the Minister to the Authority under this section in any financial year shall be included in the annual report of the Authority for that year laid before Parliament under section 25 of this Act.

11. General Manager - (1) The Board may employ at such remuneration and on such terms and conditions as the Board may determine, a General Manager (who may be a Director) who shall perform such duties as may from time to time be prescribed by the Board.

(2) The Board may confer on the General Manager any of the powers exercisable by it, on such terms and subject to such restrictions as it thinks fit, and may from time to time revoke, withdraw, or vary any power so conferred or any such terms or restrictions.

12. Other Employees - (1) The Board may engage at such remuneration on such terms and conditions and in such number as it may determine, other employees for the conduct of the objectives and functions of the Authority.

(2) Any person in the public service may be appointed to be an officer or employee of the Authority but no such person shall be entitled to hold office concurrently as an officer or employee of the Authority and as a public servant except -

(a) in the case of a person subject to the Public Service Act 1975 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 that person is subject.

(3) Any person who was an officer of the Public Service and who is employed by the Authority, may at any time within one year after appointment as an officer or employee of the Authority, elect to resume employment in the Public Service and, in any such case, notwithstanding the provisions of any enactment to the contrary, that person's 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 Authority 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 that person is employed by the Authority.

13. Consultant and Specialist Personnel - (1) Without limiting in any way the provisions of sections 11 and 12 of this Act, the Board may from time to time appoint consultants, advisers and such specialist personnel as it thinks necessary or appropriate to assist the Authority generally or specifically, and such persons shall be retained upon such terms and conditions as the Board thinks fit.

14. Personal Liability - No director or employee of the Authority shall be personally liable for any act or default done or made by the Authority or by any director or employee in good faith in the course of the operations of the Authority.

PART II
OBJECTIVES, FUNCTIONS & FUNDS OF THE AUTHORITY

15. Objectives of the Authority - (1) To promote encourage and assist the development of a sustainable and commercially viable pearl industry in the Cook Islands.

(2) In the carrying out of its objectives the Authority shall -

- (a) endeavour to be a profitable, financially self-sustaining and efficient enterprise; and
- (b) exhibit a sense of social and environmental responsibility by having regard to the interests of the community and environment in which it operates; and
- (c) promote the social and economic well-being of the Cook Islands.

16. Functions of the Authority - (1) The Authority shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its objectives.

(2) Without limiting the generality of subsection (1), the functions of the Authority shall include the following:

- (a) to assist in the carrying out of feasibility studies, and to provide, or to assist in the provision of financial assistance to those persons involved or intending to be involved in the industry;
- (b) to liaise between the pearl industry and agencies of Government, to ensure that the ecology of lagoons continues to be monitored and that environmentally sound practices are made known to the industry;
- (c) to provide services for the grading, measuring and valuation of pearls;
- (d) the preparation and continuing review of strategic management and marketing plans on behalf of the industry;
- (e) promote, organise and conduct sales within and beyond the Cook Islands of Cook Islands pearls;
- (f) assist pearl farmers and the industry generally in the establishment, efficiency and sustainability of pearl farms;
- (g) promote and maintain public awareness of the image of Cook Islands Pearls within the Cook Islands and internationally;
- (h) to obtain and provide the services of seeding technicians and such other expert services as may be necessary or desirable for the benefit of the pearl industry;
- (i) the provision of extension services and training to improve pearl oyster husbandry practices, and the development of new technologies to improve spat collection and propagation;
- (j) to encourage and assist in the establishment of private sector industries within the Cook Islands for the manufacture of jewellery and other by-products of pearls and mother-of-pearl.
- (k) to provide assistance for the training of persons associated with the industry;
- (l) such other functions as may be prescribed.

17. Vesting of property in Authority - (1) Her Majesty the Queen may grant, transfer, assign or lease to the Authority or in the name of the Authority any land or interest in land (other than the fee simple in any land and land comprised in a public reserve) and any personal property, rights or privileges, vested in or held on behalf of the Crown and used or administered or to be used or administered for the purposes of or in connection with any objective or function of the Authority.

(2) Any lease by the Crown pursuant to subsection (1) of this section may be for such term and provide for such rent and other conditions as the Authority with the prior written approval of the Minister shall accept or approve.

18. Funds - (1) The funds of the Authority shall consist of -

- (a) such sums of money as the Authority may acquire by virtue of grants or with the approval of the Minister, raised by means of loans;
- (b) such sums of money as may be appropriated to it by Parliament;
- (c) such other sums of money as may accrue to it in the course of and on account of its enterprise.

(2) No charge or lien created on any special fund which may be administered by the Authority shall operate as a charge of lieu upon the funds of the Authority provided that -

- (a) where in any appropriation Act or in any estimate of expenditure and revenue accompanying the Appropriation Act for any year any vote or item to which the section applies is noted as being for a specified purpose, it shall not be competent for the Authority to use moneys so appropriated for any purpose other than that specified in the said Act or estimate, and
- (b) where any appropriation is made for the general purposes of the Authority, the Minister may direct the manner in which the moneys appropriated shall be paid to the Authority and may require that any such appropriation be used first in payment of any debt due to the Public Account or to any account within the Public Account.

19. Application of Funds - The funds of the Authority shall be applied towards -

- (a) The payment of salaries, fees, remuneration, allowances and expenses due and payable to the members of the Board and the employees of the Authority;
- (b) The repayment of sums raised by way of loan by the Authority and the payment of interest thereon;
- (c) The objectives and functions of the Authority in accordance with the provisions of this Act.

20. Short-Term Investment - The Authority may invest all or any part of its funds not immediately required for the purposes stated in this Act in a bank or financial institution approved by the Minister of Finance.

PART III ACCOUNTABILITY AND ANNUAL REPORT

21. Financial Year - The financial year of the Authority shall be the period of twelve months ending on the 30th June in each year.

22. Statement of corporate intent - (1) The Authority shall deliver to the Minister a draft statement of corporate intent approved by the Board -

- (a) within one month of the coming into force of this Act; and thereafter,
- (b) not later than 1 month after the commencement of each financial year of the Authority.

(2) Each statement of corporate intent shall specify for the Authority in respect of the financial year in which it is delivered, the following information -

- (a) the objectives of the Authority;
- (b) the nature and scope of the activities to be undertaken;
- (c) the accounting policies;
- (d) the financial and other performance targets and other measures by which the performance of the Authority may be judged in relation to its objectives;
- (e) such other matters as are required by the Minister.

(3) The Authority shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the Minister, and shall deliver the completed statement of corporate intent to the Minister within 3 months of the commencement of the financial year.

(4) A statement of corporate intent for the Authority may be modified at any time by written notice from the Authority to the Minister, so long as the Authority has first given written notice to the Minister of the proposed modification and considered any comments made thereon by the Minister within 1 month of the date on which that notice was given.

23. Annual report and accounts - (1) Within 2 months after the end of each financial year, the Board shall deliver to the Minister -

- (a) a report of the operations of the Authority during that financial year; and
- (b) consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, balance sheets and such other statements as may be necessary to show the financial position of the Authority and the financial results of its operations during that financial year; and
- (c) an auditor's report on those financial statements, made by an auditor approved by the Minister.

(2) Every report under subsection (1) (a) and (1)(b) of this section shall contain such information as is necessary to enable an informed assessment of the operations of the Authority including a comparison of the performance of the Authority with the relevant statement of corporate intent.

24. Half-yearly reports - (1) Within one month after the end of the first half of each financial year, the Board shall deliver to the Minister a report of its operations during that half-year.

(2) Each report required by this section shall include the information required by the statement of corporate intent to be included therein.

25. Information to be laid before Parliament - (1) Within 1 month of receiving all the following documents in respect of a financial year of the Authority, the Minister shall lay before Parliament -

- (a) the statement of corporate intent of the Authority for that year; and
- (b) the annual report and audited financial statements of the Authority for the preceding financial year; and
- (c) the auditor's report on those financial statements.

(3) Where a statement of corporate intent has been modified pursuant to section 22(4) of this Act, the Minister shall lay before Parliament a copy of the notice making the modification within 1 month after the date on which the Minister receives the notice.

26. Other information - The Authority shall supply to the Minister such information relating to the affairs of the Authority as the Minister from time to time requests after consultation with the Board, whether or not the information is of a kind referred to in the statement of corporate intent.

PART IV SECURITIES

27. Security for Advances - (1) The Authority may from time to time advance money by way of loan to persons involved in the industry, and such advances may be secured in such manner and on such terms as the Authority thinks fit.

(2) For the purpose of determining whether an application for an advance should be granted, the Authority shall not be bound to insist upon security, or any fixed or definite margin of security.

28. Securities to be taken in name of Authority - Every security for an advance shall be taken in the name of the Authority.

29. Assignment of money as Security may be irrevocable - (1) The Authority may require any order on or assignment of money as security for the repayment of any advance, and any such order or assignment may be expressed to be irrevocable, notwithstanding the death of the person giving the order or assignment, and the order or assignment shall be irrevocable accordingly except with the consent in writing of the Authority.

(2) Notwithstanding anything in any enactment to the contrary, any company, corporate body, or person upon whom any notice of any such order or assignment has been served shall be bound to accept and to act upon the order or assignment, and to pay to the person nominated in that behalf in the order or assignment, all money from time to time payable thereunder.

PART V MISCELLANEOUS

30. Taxation - The income of the Authority shall be subject to taxation.

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

(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 Bank, be under the common seal of the Authority.

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

32. Execution of Documents - (1) Every document to which the common seal of the Authority is affixed shall be signed by the Chairman of the Authority or in his absence the Vice Chairman, and shall be counter-signed by either another director or the General Manager of the Authority.

(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 Authority by the Chairman or by any director of the Authority authorised in that behalf by the Chairman.

33. Evidence of Documents - Every document purporting to be a document executed by or on behalf of the Authority in a manner provided in Section 32, shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.

34. Disclosure of information - any director or employee of the Authority who directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his capacity as a director or employee of the Authority, shall be guilty of an offence against this Act and on conviction shall be liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

35. Breach of Act or Regulations - Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of the provisions of this Act or of any regulations made under this Act for which no special penalty is provided, is liable for every offence to a fine not exceeding \$500.

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

This Act is administered by the Treasury Department