



ANALYSIS

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1986-87 No. 23

An Act to establish the Bank of the Cook Islands

(6 March 1987)

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 and Commencement - (1) This Act may be cited as the Bank of the Cook Islands Act 1987.

(2) The provisions of Part IV shall come into force on a date or dates to be appointed by the Minister by notice in the Gazette and different dates may be so appointed in respect of different provisions.

(3) Sections 27 to 33 of Part VI shall come into force on the date specified in the Order in Executive Council made pursuant to section 26.

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

"Bank" means the Bank of the Cook Islands constituted under this Act;

"Board" means the board of directors of the Bank appointed pursuant to section 8 of this Act;

"Companies Act" means the Companies Act 1955 of New Zealand as applied in the Cook Islands;

"Corporation" means the Government Property Corporation established pursuant to the Government Property Corporation Act 1969;

"Development Bank" means the Cook Islands Development Bank constituted pursuant to the Cook Islands Bank Act 1978;

"Minister" means the Minister of Finance;

PART 1CONSTITUTION FUNCTIONS AND POWERS

3. Bank of the Cook Islands - (1) There is hereby established a body corporate called the Bank of the Cook Islands.

(2) The Bank shall have perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and subject to the provisions of this Act of doing and suffering all such other acts and things as bodies corporate may do and suffer.

4. Share Capital - (1) The capital of the Bank shall be fifteen million dollars (\$15,000,000) divided into 15,000,000 shares of \$1.00 each, all of which shall be vested in the Crown.

(2) The Queen's Representative may by Order in Executive Council increase the share capital of the bank and may, by such Order provide that such increased capital be divided into such classes and issued upon such terms and conditions as may be specified therein.

(3) The share capital shall be deemed to be paid up to the extent of the net value of the assets vested in the bank pursuant to Part IV and from time to time. The Minister may determine in respect of any balance of capital unpaid, the extent to which such balance shall be paid up, and the manner in which such balance shall be paid.

5. Functions of Bank - The functions of the Bank shall be,-

- (a) to carry on in the Cook Islands and in any other part of the world the business of banking in all its aspects, including all financial, monetary, agency, and other business that is at any time carried on in any part of the world by banks, merchant banks, financial intermediaries, discount houses, or financiers; and
- (b) with the approval of the Minister to carry on in the Cook Islands and in any other part of the world any other business or activity that in the opinion of the board is capable of being advantageously carried on in connection with the businesses referred to in paragraph (a) of this section or of enhancing the profitability of the Bank or the value of its undertaking or assets.

6. Powers of Bank - (1) The Bank shall have,-

- (a) all such powers, rights and authorities as may be reasonable, necessary or expedient to enable it to carry out its functions; and
- (b) all such other powers, rights and authorities as the board may consider it appropriate for the Bank to exercise or have.

(2) Without limiting the generality of subsection (1) of this section, a resolution of the board to the effect that the Bank shall do or undertake or enter into any act or transaction shall be conclusive evidence that the Bank has power to do so.

(3) Notwithstanding any provision to the contrary the Board shall not, except in accordance with terms and conditions set by the Minister, sell, dispose or otherwise divest the bank of any interest in any real or personal property. This subsection shall apply to such real or personal property as may be designated by the Queen's Representative by Order in Executive Council.

7. Relationship with the Crown - (1) The Crown shall not be liable to contribute towards the payment or satisfaction of any debts or liabilities of the Bank any sum other than,-

- (a) any sum payable to the Bank in respect of shares in the capital of the Bank that are not fully paid up;
- (b) any sum that the Crown is liable to contribute by virtue of any express guarantee, indemnity, or similar obligation entered into by the Crown and evidenced by a written instrument signed on behalf of the Crown.

(2) Notwithstanding any enactment or rule of law to the contrary, it is declared that the Bank is not a department or instrument of the Executive Government of the Cook Islands.

PART II

MANAGEMENT OF BANK

8. Constitution of Board - (1) There shall be a board of directors of the Bank consisting of not less than three nor more than seven persons.

(2) Each director shall be appointed by Cabinet and shall hold office for a term of two years and upon the expiry thereof shall tender his written resignation to the Secretary of Cabinet but shall be eligible for reappointment.

(3) The powers of the board shall not be affected by any vacancy in its membership.

(4) The Minister shall from time to time appoint one of the directors to be Chairman of the board and another of the directors to be Deputy Chairman of the board.

(5) During any vacancy in the office of Chairman, or in the absence of the Chairman from any meeting of the board, the Deputy Chairman shall have and may exercise all the powers of the Chairman, provided that if the Deputy Chairman is also absent, then the directors present shall appoint one of their number to be Chairman.

9. Extraordinary vacancies - A director shall cease to hold office if,-

- (a) he is at any time removed from office by the Minister; or
- (b) he resigns his office by notice in writing to the Minister.

10. Remuneration - The Bank shall pay to the directors such remuneration as the Minister may determine from time to time.

11. Personal liability - No director shall be personally liable for any act or default done or made by him or by the board in the course of operations of the Bank so long as that director acts in good faith.

PART III

PROCEEDINGS OF THE BOARD

12. Proceedings - (1) Subject to the provisions of this Act, the board may exercise its powers and regulate its proceedings in such manner as it thinks fit.

(2) Ordinary meetings of the board shall be held at such intervals as the board shall determine. Special meetings of the board may be summoned by any director.

(3) At all meetings of the board the quorum shall be a number of directors being not less than one half of the number of directors in office.

(4) Subject to the provisions of section 13(2), all questions arising at a meeting of the board shall be decided by a majority of the votes of the directors present and if there shall be an equality of votes the Chairman, or in his absence the Deputy Chairman or other person acting as Chairman for the time being, shall have a casting vote.

(5) A resolution in writing signed or assented to by letter, telegram, telex, facsimile machine message, or other written message (whether consisting of one document or several documents) by all the directors for the time being, other than any directors who would not be entitled to vote at a meeting of the board in respect of the matter under consideration by reason of section 13(2), shall be as valid and effectual as if it had been passed at a meeting of the board duly called and held.

(6) The board shall keep minutes of all its meetings. A minute purporting to be signed by the Chairman of a meeting of the board or by the Chairman of the next succeeding meeting of the board shall be evidence of the proceedings of, and decisions made at, the meeting.

13. Interests - (1) Any director who is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into by the Bank shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the board.

(2) A director who has a material pecuniary interest in any matter to be considered by the board shall not be entitled to vote in respect of that matter but may form part of the quorum of the board at the meeting at which that matter is considered.

14. Delegation of Powers - (1) The board may by resolution, notice of which has been given to all directors appoint committees comprising two or more directors to investigate, carry out and report to the board upon, such matters, as the board may by such resolution determine.

(2) The board may from time to time delegate to

any employee or officer of the Bank any of its powers, and any such delegation may be made to a specified person or to persons of a specified class, or to the holder or holder for the time being of a specified office or appointment, or class of officers or appointments.

(3) Any committee, employee, or officer to whom any power is delegated pursuant to this section may exercise that power in the same manner and with the same effect as if it had been conferred on it or him directly by this Act and not by delegation.

(4) Where a committee, employee or officer purports to act pursuant to a delegation made pursuant to this section, it or he shall be presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

(5) Any delegation made under this section may be revoked at any time, and no delegation of any power under this section shall prevent the exercise of that power by the board.

15. Officers - (1) Without limiting the generality of the powers conferred upon the Bank or the board under this Act, the board may from time to time appoint such officers or employees of the Bank as the board shall deem appropriate, and may from time to time remove any of such officers or employees for neglect of duty, misconduct or inability for any other reason to properly discharge such duties as may be lawfully imposed on them.

(2) Officers and employees of the Bank shall not by virtue of their appointment as such be members of the Cook Islands Public Service, and nothing in the Public Service Act 1975 shall apply in respect of any officer or employee of the Bank.

16. Representations of Minister - The board shall give due consideration to any representation in writing made by the Minister to the board in respect of the policy, business or activities of the Bank.

PART IV

VESTING OF ASSETS IN BANK

17. Development Bank - (1) The Development Bank is hereby dissolved.

(2) All moneys and real and personal property belonging to the Development Bank are hereby vested in the Bank.

(3) All liabilities, contracts and engagements, and all rights and authorities of any nature whatever of the Development Bank are hereby declared to be liabilities, contracts, engagements, rights and authorities of the Bank.

(4) Without limiting the generality of subsections (2) and (3) of this section,-

(a) all moneys payable to the Development Bank shall henceforth be payable to the Bank;

- (b) all proceedings pending by or against the Development Bank may henceforth be carried on, completed, and enforced by or against the Bank.

(5) All references to the Development Bank in any security or other document whatever as at the date upon which this section comes into force, or in any notice or other communication served, given or sent before, on, or after that date shall unless the context otherwise requires, be read as references to the Bank.

- (6) On the day this section comes into force,-
 - (a) every employee of the Development Bank shall become an employee of the Bank;
 - (b) the terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Development Bank immediately before the day this section comes into force and be capable of variation in the same manner;
 - (c) no such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the Development Bank.

18. Government Property Corporation - There shall be vested in the Bank such of the money and real and other personal property of the Corporation as may be designated by the Queen's Representative by Order in Executive Council acting on the advice of the Minister.

19. Transfer of other assets - There may at any time and from time to time be transferred to the Bank such other assets of the Crown as may be designated by the Queen's Representative by Order in Executive Council acting on the advice of the Minister.

20. General - (1) All assets vested in the Bank pursuant to sections 18 or 19, shall be vested in the Bank subject to all charges, obligations and trusts affecting the same, and the Bank shall be bound by such charges, obligations and trusts in the same manner and to the same extent as the previous owner of such assets.

(2) the Registrar of the High Court of the Cook Islands shall, on written application by the Bank, substitute upon any documents of estate or interest or upon any register, the name of the Bank for the name of the previous owner in respect of any assets vested in the Bank pursuant to this Act.

(3) the Bank shall take all steps necessary in respect of any assets vested in the Bank pursuant to this Act to cause the name of the Bank to be substituted for the name of the previous owner upon any register kept in any part of the world wherein the ownership of such assets is recorded.

PART V

FINANCIAL PROVISIONS

21. Financial Year of Bank - The financial year of the Bank shall be the period of 12 months beginning on 1st April in each year, or on such other date in each year as may be appointed by the Minister by notice in the Gazette.

22. Annual Accounts - (1) The board shall cause true and full accounts and records to be kept of the business and transactions of the Bank, and shall cause to be prepared within 2 months after the end of each financial year a balance sheet and profit and loss statement of the Bank showing the financial position of the Bank at the end of that year and the result of its trading for that year.

(2) The balance sheet and profit and loss statement specified in subsection (1) of this section shall be audited and reported on by the auditor appointed pursuant to section 23.

23. Auditor - (1) The Minister may from time to time appoint one or more persons (whether as individuals or as the members from time to time of any firm or firms) being persons qualified for appointment as auditors of a company under the Companies Act, as auditor of the Bank.

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

(3) Every auditor shall have a right of access at all times to the books and papers of the Bank, and shall be entitled to require from the officers of the Bank such information and explanation as he thinks necessary for the performance of his duties as auditor.

24. Annual Report - (1) Within 2 months after the end of each financial year of the Bank, the board shall prepare a general report on the operations of the Bank during that year.

(2) The board shall submit its report, together with the balance sheet and profit and loss statement prepared pursuant to section 22, and the auditor's report thereon, to the Minister. The Minister shall lay a copy of the board's report, the accounts, and the auditor's report before Parliament not later than the fourteenth sitting day of Parliament after the day upon which he receives them.

25. Distribution of Profits - The board may from time to time resolve that a specified amount be paid to the Crown by way of dividend from the net gains and profits of the Bank; and, if the Minister agrees to the payment of that amount, it shall thereupon be paid to the Crown.

PART VI

CONVERSION OF BANK TO LIMITED COMPANY

26. Limited Company - The Queen's Representative, by Order in Executive Council, may provide that the Bank shall, on a day to be specified in such Order, be registered as a limited company pursuant to the provisions of the Companies Act, and on the day so specified, the provisions of section 27 to 33 shall come into force.

27. Incorporation of Company - (1) Notwithstanding anything in the Companies Act or any other enactment or rule of law, the Bank shall form and register under the Companies Act a public company limited by shares that,-

(a) has the name "Bank of the Cook Islands Limited" or such other name as the Queen's Representative may by Order in Executive Council determine; and,

(b) has an authorised capital divided into such number of shares of having a nominal value of \$1.00 each, and, has Memorandum and Articles of Association in such form, as the Queen's Representative may by Order in Executive Council determine upon the recommendation of the Minister acting upon the prior recommendation of the board. (2) There shall be

(2) There shall be deemed to be allotted shares in the capital of the company having a nominal value equal to the amount of the capital of the Bank, and paid up to the extent of the paid up capital of the Bank. (3)

(3) The shares shall be allotted to the Corporation or to such nominees as the Corporation may appoint in respect of all or any of the shares, and the expression "Corporation" in section 30 shall include such nominees.

(4) Nothing in section 60 of the Companies Act which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for consideration other than cash) shall apply to shares which are deemed to have been allotted pursuant to subsections (2) and (3) of this section.

28. Transfer of Undertaking of Bank - (1) The bank shall be dissolved, and,-

(a) all moneys and real and personal property belonging to the Bank shall be vested in the company; and

(b) liabilities, contracts and engagements, and all rights and authorities of any nature whatever of the Bank shall become liabilities,

contracts, engagements, rights and authorities of the company.

(2) Without limiting the generality of subsection (1) of this section,-

- (a) all moneys payable to the Bank shall be payable to the company;
- (b) all proceedings pending by or against the Bank may be carried on, completed, and enforced by or against the company.

(3) All references to the Bank in any security or other document whatever or in any notice or other communication served, given or sent before, on or after the date that this section shall come into force shall, unless the context otherwise requires, be read as references to the company.

29. Employees - (1) Every employee of the Bank shall become an employee of the Company.

(2) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Bank and be capable of variation in the same manner.

(3) No such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the Bank.

30. Dealings by Corporation - The Corporation shall have the power,-

- (a) to sell, grant options over, or otherwise deal with shares in the capital of the company on such terms as the Corporation may see fit;
- (b) to enter (with or without any such sale or dealing with shares) into any agreement of the nature of a joint venture agreement or an agreement governing the conduct or operations of the company;
- (c) to do all other things of any nature in respect of shares in the company, or the company, which a private person could do as the holder of such shares.

PART VII

GENERAL

31. General - The provisions of section 20 of this Act, insofar as they relate to assets vested in the Bank pursuant to the provisions of Part IV of this Act, shall, with the necessary modifications, apply in respect of assets vested in the company pursuant to the provisions of Part VI, in all respects as if the company rather than the Bank were named therein.

32. Protection of Name - No company or other body shall be incorporated or registered under the name "Bank of the Cook Islands Limited" or under any other name that in the opinion of the Registrar of Companies so resembles that name as to be likely to deceive.

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

(2) Any contract which, if made by private persons, must be in writing signed by the person to be charged therewith may, if made by the Bank, be either in writing under the common seal of the Bank or in writing signed by any person acting on behalf of, and under the express or implied authority of the Bank.

(3) Any contract which, if made by private persons, may be made orally may, if made by the Bank be made in any manner specified in subsection (2) of this section or orally by any persons acting on behalf of, and under the express or implied authority of, the Bank.

(4) Notwithstanding any other provision of this section, no contract made by or on behalf of the Bank shall be invalid by reason only that it was not made in the manner provided by this section, if it was made pursuant to a resolution of the board or to give effect to a resolution of the board in relation to contracts generally or in relation to that particular contract.

(5) The Bank may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute documents on its behalf. A document executed by such attorney shall bind the Bank, and if executed as a deed shall have the same effect as if it were under the common seal of the bank.

34. Common Seal - (1) The board shall provide for the safe custody of the common seal of the Bank, which shall only be used by the authority of the board or of a committee of the board authorised by the board in that behalf, and every instrument to which the seal is affixed shall be signed by one director and shall be countersigned by a second director or some other person authorised by the board for that purpose.

(2) The board may from time to time alter or replace the common seal of the Bank.

(3) A person dealing in good faith with the Bank shall be entitled to rely on any document if,-

(a) that document is sealed with the seal of the Bank; and

(b) the affixing of the seal appears to have been witnessed by two persons of whom one is a director of the Bank;

and the Bank shall not be entitled to dispute as against such persons the validity of that document or of the transaction evidenced thereby, or to allege that the Bank was without power to enter into that transaction,

or that any provision of this Act has not been complied with, or that that transaction or the execution of that document was not authorised by the board.

35. Secrecy - (1) Every director, auditor, officer, and employee of the Bank shall maintain secrecy in respect of all transactions of the Bank with its customers, the state of the account of any customer, the extent of the assets or liabilities of any customer, and all other matters that come to his knowledge in the performance of his duties to, or in the course of his employment by the Bank; and no director, auditor, officer, or employee of the Bank shall communicate any such matter to any person except for the purpose of performing his duties to the customer or the Bank, or when required to do so by the board, or by an auditor by written notice.

(2) Every director, officer, and employee of the Bank shall, before taking up such office or employment, sign a declaration to the effect that he will comply with subsection (1) of this section.

(3) Any person who fails to comply with subsection (1) of this section shall be guilty of an offence against this Act and on conviction shall be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

36. Repeal - The Cook Islands Bank Act 1978 is repealed upon the coming into force of Part IV of this Act.

This Act is administered by the Bank of the Cook Islands.