



ANALYSIS

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1999, No. 8

An Act to amend the Cook Islands Investment Corporation Act 1998

(24 March 1999)

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 shall be cited as the Cook Islands Investment Corporation Amendment Act 1999 and shall be read together with and deemed part of the Cook Islands Investment Corporation Act 1998 ("the principal Act").

2. Interpretation - (1) Section 2 of the principal Act is amended by -
- (a) deleting the definition of "Crown assets" and substituting the following definition -

"Crown assets" means real property and personal property vested in the Crown;

- (b) inserting in alphabetical order the following new definitions -

"approved statement of corporate intent" shall mean a statement of corporate intent which shall, from time to time, have been both approved by Cabinet and published by the Corporation in each case in accordance with the provisions of section 13 of this Act;

"Crown Agency" has the same meaning it is given in section 2 of the Ministry of Finance and Economic Management Act 1995-96";

"Financial year" means a period of 12 months ending 30 June;

"Government Department" has the same meaning it is given in section 2 of the Ministry of Finance and Economic Management Act 1995-96;

"Minor asset" means any asset which is:

- (a) a mortgage;
- (b) personal property;
- (c) lease, licence and concession which is for a term, inclusive of the term of any right or rights of renewal, not exceeding five years;
- (d) a chose in action whether legal or equitable, which runs with or affects the rights of the Crown or the Cook Islands Government Property Corporation in respect to any land;

"Personal property" means any asset which is a Crown asset or which is owned by the Cook Islands Government Property Corporation but is not real property;

"Real property" means any asset which is a Crown asset or which is owned by the Cook Islands Government Property Corporation and is -

- (a) an estate or interest in land, whether legal or equitable, and includes the fixtures thereon and the flora attached thereto;
- (b) a licence in respect to land, whether legal or equitable;

- (c) a right vested in the Crown by any international convention or treaty, or by international law, and shall include the Crown's rights in respect to airspace, and the exploitation of the living and non-living resources of the sea and the seabed;
- (d) a mortgage or other charge, whether legal or equitable, over land;
- (e) a chose in action, whether legal or equitable, which runs with or affects the rights of the Crown or the Cook Islands Government Property Corporation in respect to any land but does not include -
 - (i) any crops;
 - (ii) customary land as that term is defined in the Cook Islands Act 1915;

"Statutory corporation" means -

- (a) the Airport Authority established under the Airport Authority Act 1985;
- (b) the Cook Islands Broadcasting Authority established under the Broadcasting Act 1989;
- (c) the Cook Islands Development Bank established under the Cook Islands Development Bank Act 1978;
- (d) the Ports Authority established under the Ports Authority Act 1994-95;
- (e) Te Aponga Uira O Tumu-Te-Varovaro established under the Te Aponga Uira o Tumu-Te-Varovaro Act 1991;

"Vaka Councils" mean the Konitara Vaka established under the Rarotonga Local Government Act 1997;

3. Application - The principal Act is amended by inserting after section 3 the following new section -

"3A. Application - This Act shall have no application to Cook Islands Telecommunication Holdings Limited or any company shares in which, are wholly or partially owned by Cook Islands Telecommunication Holdings Limited."

4. Cook Islands Investment Corporation - Subsection (2) of section 4 of the principal Act is amended by deleting after the words "disposing of", the words "real and personal".

5. Functions of Corporation - Section 5 of the principal Act is amended by -

- (a) deleting from paragraph (a) immediately after the word "manage" the words "Crown assets" and substituting the words "real property";
- (b) by repealing paragraph (c) and substituting the following -
 - "(c) to negotiate the disposal of real property, and any property or undertaking of a statutory corporation;"
- (c) by adding after paragraph (c), the following new paragraphs -
 - "(d) to facilitate the disposal of personal property;
 - (e) to give directions on the management of personal property."

6. Control of statutory corporations - The principal Act is amended by repealing section 8 and substituting the following section -

"8. Control of statutory corporations - Every statutory corporation shall be deemed to be a subsidiary of the Corporation."

7. Management of personal property - The principal Act is amended by adding after section 8, the following new section -

"8A. Local Governments, Government Departments, Crown Agencies and Statutory Corporations - personal property management - Every Outer Islands Council, Vaka Council, Government Department, Crown Agency and Statutory Corporation, which has or is vested with the control, management or administration of any personal property shall exercise that right, power or entitlement subject to the direction of the Corporation:
Provided that no such direction shall be given without prior consultation with the relevant authorities."

8. Powers of the Board - Section 11 of the principal Act is amended by adding after paragraph (h) the following new paragraph -

- "(i) notwithstanding sections 58 and 68 of the Ministry of Finance and Economic Management Act 1995-96, lend money to any statutory corporation or subsidiary for the purposes of the Corporation."

9. Delegation of powers by Board - The principal Act is amended by inserting after section 11, the following new section -

"11A. Delegation of powers by Board - (1) The Board may from time to time, in writing, signed by the Chairman of the Board, delegate to any Island Council, Vaka Council, Government Department or Crown Agency any of the functions conferred on the Corporation or the powers conferred on the Board by this Act, other than the power of delegation in this section.

(2) No delegation under subsection (1) of this section shall have any effect until such delegation is accepted by the delegate in writing by -

- (a) the Mayor in the case of an Island Council or Vaka Council;
- (b) the Head of Department in the case of a Government Department;
- (c) the board, commissioner, chief executive officer or other person or persons with ultimate charge in the case of a Crown Agency.

(3) Subject to any general or special directions given or conditions imposed by the Board on any Island Council, Vaka Council, Government Department or Crown Agency to whom any powers are delegated, the powers of delegation may be exercised in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every 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.

(5) A delegation under this section may be revoked at any time.

(6) The delegation of any power by the Board shall not prevent the exercise of that power by the Board."

10. Statement of corporate intent - Section 13 of the principal Act is amended by -

- (a) deleting from paragraph (c) of subsection (3), the word "Governments" and substituting the word "Crown's";
- (b) deleting from paragraph (f) of subsection (3) the word "Government" and substituting the words "the Crown";
- (c) deleting from paragraph (j) of subsection (3) the words "the Government" and substituting the word "Cabinet";
- (d) inserting after subsection (4), the following new subsections -

"(5) Where the Corporation and Cabinet agree, the statement of corporate intent may be amended or modified at any time after the publication of the statement of corporate intent pursuant to subsection (4) of this section.

(6) Any amendment or modification made to the statement of corporate intent pursuant to subsection (5) of this section, shall be published by the Corporation within 14 days of being agreed to by the Corporation and Cabinet."

11. Directors - Subsection (1) of section 22 of the principal Act is amended by deleting the following -

"(other than the Cook Islands Government Property Corporation)"

12. Corporation to conduct dispositions - Section 25 of the principal Act is repealed and the following section substituted -

"25. Corporation to conduct dispositions - (1) The Corporation shall, subject to the provisions of section 28 of this Act, be exclusively responsible for the disposal of real property and the principal undertaking of a statutory corporation which shall be consistent with the approved statement of corporate intent.

(2) Where the Corporation intends to dispose of any real property or the principal undertaking of a statutory corporation and that disposition would be inconsistent with the approved statement of corporate intent, the Corporation shall not negotiate the terms and conditions of such disposal unless Cabinet first agrees upon a modified statement of corporate intent.

(3) Where Cabinet agrees to such modification as aforesaid, the modified statement of corporate intent shall be published by the Corporation in accordance with section 13 of this Act and shall be deemed for all purposes to amend and form part of the current approved statement of corporate intent".

13. Corporation not to dispose - (1) Section 28 of the principal Act is repealed and the following section substituted -

"28. Corporation not to dispose - (1) No agreement entered into or the terms and conditions agreed in any negotiation by the Corporation which purport to dispose of the principal undertaking of any statutory corporation or of any real property other than a minor asset, shall be valid or of any effect until the approval of Cabinet is obtained pursuant to this section.

(2) Where the Corporation has concluded negotiations or entered into an agreement for the disposal of an asset to which subsection (1) of this section applies, the Corporation shall deliver to the Minister a copy of such agreement or convey in writing the terms and conditions as negotiated, for Cabinet's consideration.

(3) If in the opinion of Cabinet the agreement or terms and conditions as negotiated are in the public interest, Cabinet shall give its approval to the disposal.

(4) If in the opinion of Cabinet the agreement or terms and conditions as negotiated are not in the public interest, Cabinet shall not give its approval to the disposal.

(5) All monies being the proceeds from the disposal of real property or the principal undertaking of a statutory corporation shall be deposited in a bank account of the Corporation and shall without further appropriation than this section be expended at the direction of the Board in the performance of the Corporation's functions and powers under this Act."

14. Corporation empowered to execute documents - The principal Act is amended by inserting after section 28, the following new section -

"28A Execution of documents - (1) Subject to section 28 of this Act the Corporation may execute, for and on behalf of the owner of any asset to which section 25 of this Act applies, any document, including any instrument, required to be executed by the transferor to effect the disposal of an asset.

(2) The Corporation may execute, for and on behalf of the owner of any minor asset any document, including any instrument, associated with the management, administration or disposal of that asset.

(3) Every document shall be signed by at least two of the Chief Executive Officer and the Directors and in the case of a deed, shall be executed under seal of the Corporation.

(4) Where any document is executed under seal it shall be attested to by at least two of the Chief Executive Officer and the Directors."

This Act shall be administered by the Cook Islands Investment Corporation