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1978, No. 11

An Act to establish the Cook Islands Development Bank

(18 December 1978)

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 - This Act may be cited as the Cook Islands Bank Act 1978.

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

"Board" means the Board of Directors of the Cook Islands Development Bank

"Commitment fee" means a fee imposed on the allocated but the unwithdrawn portion of the principal of any loan

"Bank" means the Cook Islands Development Bank

"economic development" means the development, in conformity with the priorities of national development goals made by the Government from time to time, of

- (a) agriculture, livestock, forestry and fishing;
- (b) manufacturing and processing industries;
- (c) engineering, construction, transport and tourism;
- (d) commercial activities;
- (e) housing.

"financial assistance" means any -

- (a) equity participation in a company;
- (b) loan; or
- (c) guaranteeing of finance.

"the Minister" means the Minister of Finance or such other Minister or Associate Minister as he may in writing appoint

"recipient" means any body, to whom the Bank makes available financial assistance.

PART I - ESTABLISHMENT AND ADMINISTRATION OF THE COOK ISLANDS DEVELOPMENT BANK

3. Cook Islands Development Bank - (1) There shall be a Bank called the Cook Islands Development Bank.

(2) The Bank 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 body corporates may lawfully do and suffer.

(3) The Bank shall be the successor to the National Development Corporation established under the National Development Corporation Act 1975.

(4) On the commencement of this Act -

- (a) Every director of the National Development Corporation shall retire from office; and
- (b) All real and personal property that immediately before the commencement of this Act was vested in the National Development Corporation shall, without conveyance, transfer, or assignment, vest in the Cook Islands Development Bank for the estate and interest of the National Development Corporation subject to all liabilities, charges, obligations, and trusts affecting the property; and
- (c) All the contracts, debts, and liabilities of the National Development Corporation immediately before the commencement of this Act (including every guarantee and indemnity continuing to have effect, immediately before the commencement of this Act) shall become the contracts, debts, and liabilities of the Cook Islands Development Bank.

(5) The Registrar of the Land Court shall, on written application by the Cook Islands Development Bank substitute upon any documents of estate or interest or upon any register for the name of the National Development Corporation the name of the Cook Islands Development Bank.

(6) In the financial year ending with the 31st day of March 1979 the Cook Islands Development Bank and the National Development Corporation shall be deemed to be the same body corporate for the purposes of section 27

of this Act, so that one set of accounts and one general report may be prepared delivered to the Minister, and laid before the Legislative Assembly by the Cook Islands Development Bank.

4. Constitution of Board - (1) There shall be a Board of Directors of the Bank 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) of this section.

(3) At least two of the persons appointed as directors under subsection (1) of this section shall be appointed out of the private business sector.

(4) The appointment of directors and chairman shall be publicly notified in the Cook Islands Gazette

5. Terms of Office of Appointed Directors - (1) Except as otherwise provided by this Act, every appointed director shall hold office for one year commencing on the date of publication of notice of appointment in the Cook Islands Gazette.

Provided that directors may from time to time be reappointed for further terms by the Minister.

(2) A member of the Board who is not an employee of the Public Service or any ad-hoc body of the Government shall be paid from the funds of the Bank such remuneration and allowances as the Board may from time to time determine.

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 acts 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 the 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 appoints.

(3) The Chairman of the Board, 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.

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

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

(7) At any meeting of the Board 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 telegram, by all members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

(9) Subject to the provisions of this Act and of any regulations thereunder, the Board may regulate its procedures in such manner as it thinks 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 directly or indirectly a pecuniary interest apart from any interest in common with the public.

Any Director who knowingly offends against this subsection shall commit an offence and be liable on conviction to a fine not exceeding \$250.00.

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 members, 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 member of the Board.

(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 delegate to any committee appointed under this section such of its powers as it thinks fit.

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

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

(3) A copy of every direction given by the Minister to the Bank under this section in any financial year shall be included in the annual report of the Bank for that year laid before the Legislative Assembly under section 27 of this Act.

11. General Manager and Deputy General Manager - (1) The Board shall employ at such remuneration and on such terms and conditions as it 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) If the general manager is not also a director of the Board then he shall attend all Board meetings unless his presence at any meeting is excused by the Chairman or when any matter in which he is directly or indirectly privately interested is to be considered at such meeting.

(3) 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.

(4) The Board may employ a Deputy General Manager at such remuneration and on such terms and conditions as it may determine, who shall perform such duties and exercise such powers as the Board may from time to time prescribe, including in the absence of the General Manager, those of the General Manager.

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 business of the Bank.

(2) Any person in the public service may be appointed to be an officer or employee of the Bank but no such person shall be entitled to hold office concurrently as an officer or employee of the Bank 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 he is subject.

(3) Any person who was an officer of the Public Service and who is employed by the Bank, may at any time within one year after his appointment as an officer or employee of the Bank, 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 Bank 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 Bank.

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 General Manager or the Bank generally or specifically and such persons shall be retained upon such terms and conditions as the Board thinks fit.

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

PART II - CAPITAL

15. Authorised Capital - (1) The initial authorised capital of the Bank shall be four million dollars (\$4,000,000.00) divided into four hundred shares each having a par value of ten thousand dollars (\$10,000.00).

(2) The Board may from time to time, by resolution, recommend to the Minister that the share capital of the Bank be increased, and in such case the High Commissioner on the advice of the Minister may by Order in Executive Council increase the share capital of the Bank to such amount as may be prescribed in the order.

(3) The share capital of the Bank shall not be increased otherwise than in accordance with subsection (2) of this section.

16. Subscription of Shares - (1) The Bank shall not allot any of its unissued shares to any person other than Her Majesty the Queen or a nominee holding the shares on behalf of Her Majesty.

(2) For the purposes of subsection (1) of this section the Minister may hold and subscribe for shares on behalf of Her Majesty and any statutory body in which the Government of the day holds a controlling interest or ad-hoc body of Government may be a nominee of Her Majesty for the purpose of subscribing for and being allotted shares on Her behalf.

(3) The shares of the Bank shall not be pledged or encumbered in any manner whatsoever and shall not without the prior approval of the Minister be transferred or assigned and then only, on such terms and conditions as he in his absolute discretion may impose.

(4) The liabilities of the shareholders shall be limited to the unpaid portion of the par value of shares for which they have subscribed.

PART III - THE FUNCTIONS POWERS & FUNDS OF THE BANK

17. Functions of Bank - (1) The general functions of the Bank shall be to provide finance for the establishment, development, extension or assistance of industry and economic development in the Cook Islands and to encourage and promote investment in the economic development of the Cook Islands and to provide technical assistance or advice and to generally foster economic development.

(2) Without limiting the generality of subsection (1) of this section the Bank shall have the following particular functions -

(a) To provide financial assistance on such terms and conditions as the Board thinks fit, to persons engaged or about to be or intending to be engaged in any economic development in the Cook Islands.

(b) To provide such advisory and technical services either with or without remuneration of fee to the Bank as the Board considers desirable or expedient in the interests of the community and its economic development.

(c) To assist in obtaining and placing foreign investment for the purpose of economic development.

(d) To administer on such terms and conditions as may be approved by the Board such special funds as may from time to time be placed at the disposal of the Bank.

(e) To study and promote investment opportunities for economic development in the Cook Islands.

(f) To do all other matters and things incidental to or

connected with the foregoing.

18. Powers of Bank - (1) The bank shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions, and in particular, and without limiting the generality of the foregoing provisions of this subsection but subject to the provisions of this Act, it may from time to time do all or any of the following things -

- (a) Sell, purchase or subscribe for shares debentures, bonds or other securities including securities which the Bank has issued or guaranteed or make loans, with or without security, or acquire any other interest.
- (b) Finance the purchase, sale, or hire of machinery, plant, equipment, materials, goods, and articles of every description by means of any arrangement whatsoever, including but without limiting the generality of the foregoing, the purchase and resale and hire thereof or such terms as the Board thinks fit; and discount hire purchase or conditional sale agreements or hire agreements, and lend money on the security of a mortgage or an assignment of any such agreement.
- (c) Execute, make, draw, accept, endorse, discount, issue and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons and other negotiable or transferable instruments, and buy, sell, or otherwise deal in the same, and accept deposits of money.
- (d) Underwrite or subunderwrite issues of securities, give and receive guarantees, or participate with others in any such activities.
- (e) Participate, in the discretion of the Board, in the management of enterprises to whose finances it has contributed whether by loan or otherwise.
- (f) Organise, participate in, or act as agent for consortium arrangements for the assistance of economic development.
- (g) Act as agent for the Government of international financial institutions in the financing of economic development.
- (h) Borrow funds and place funds not immediately required on deposit with any bank.
- (i) Take such steps as may be necessary to protect or recover its financial interest in any business.
- (j) Make such charges for the provision of its services as the Board thinks fit.
- (k) Acquire such assets as may be requisite for the operation of the Bank.
- (l) Borrow money required by it for the purpose of meeting any of its obligations of discharging any of its functions under this Act provided that the aggregate of the liabilities of the Bank outstanding at any one time, including bonds and debentures if any, issued by the Bank, shall not exceed three times the amount of its paid-up share capital and reserves.

19. Funds - (1) The funds of the Bank shall consist of -

- (a) Such sums of money as may be received by the Bank under section fifteen.

- (b) Such sums of money as the Bank may acquire by virtue of grants or raised by means of loans.
 - (c) Such sums of money as may be appropriated for it by the Legislative Assembly, and
 - (d) Such other sums of money as may accrue to it in the course and on account of its business except the funds referred to in paragraph (d) of section seventeen.
- (2) The special funds shall be kept separate from the other funds specified in subsection (1).
- (3) No charge or lieu created on any special fund shall operate as a charge or lien upon the funds of the Bank.

20. Application of Funds - The funds of the Bank 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 Bank.
- (b) The repayment of sums raised by way of loan by the Bank and the payment of interest thereon.
- (c) Providing financial assistance in accordance with the provisions contained in this Act.
- (d) The payment of rates, taxes, insurance premiums and other outgoings.
- (e) The payment of such dividends as the Board may authorise, and
- (f) All other payments necessary for or incidental to the business of the Bank authorised under this Act.

21. Financing of Projects - The Bank shall provide financial assistance to or otherwise support only those projects which are economically and financially viable and technically feasible and in the exercise of its functions the Bank shall evaluate each proposal after having regard to the economic worth of the industry concerned, its usefulness to the Cook Islands economy, the extent to which it will be owned or effectively controlled by persons domiciled in the Cook Islands, and the prospects of its becoming profitable within a reasonable time.

22. Principles and Limits on Financing - (1) The Bank may alone or in conjunction with other domestic or foreign investors provide or participate in providing financial assistance in aid of development investment.

- (2) In providing financial assistance the Bank shall -
- (a) Maintain a reasonable diversification in its investments among all sectors of economic activity in the Cook Islands, and
 - (b) Maintain a satisfactory balance between the dates of maturity or its own obligations and those of the loans it grants.
- (3) The Bank's financial assistance shall in the cases of a single recipient or several recipients who are associated with each other in a community of material financial interests, not exceed twenty per centum of the Bank's paid-up shares capital and reserves.
- (4) In the case of funds invested by the Bank in equity participation -

- (a) The aggregate of the amounts so invested shall not exceed twenty per centum of the aggregate of the Bank's paid-up share capital.
- (b) The Bank shall limit such participation, in any recipient or in recipients associated with each other in a community of material financial interests, to a maximum of ten per centum of the Bank's paid-up share capital and to a maximum of twenty-five per centum of the share capital of such recipient, and
- (c) The Bank shall seek to rotate its funds by selling such participations to other investors wherever it can do so on satisfactory terms.

23. Short-Term Investment - The Bank may invest all or any part of its funds not immediately required for the purpose stated in this Act in good and sound investment.

24. Reserve Fund and Allocation of Net Profit - (1) The Bank shall provide against any anticipated losses by establishing and maintaining a reserve fund to which shall be allocated at the end of each financial year of the Bank -

- (a) Not less than fifty per centum of the net profit of the Bank of that year until the total sum standing to the credit of such reserve fund shall amount to a sum equal to the paid-up share capital of the Bank.
- (b) Not less than ten per centum of the net profit of the Bank of that year if the total sum standing to the credit of such reserve fund exceeds a sum equal to the paid-up share capital of the Bank.

(2) The Board shall determine annually on the allocation of the net profit of the Bank after providing for the Reserve Fund.

PART IV - ACCOUNTS AND ANNUAL REPORT

25. Financial Year - The financial year of the Bank shall be the period of twelve months beginning on the 1st April in each year.

26. Accounts and Audit - (1) The Board shall cause true and full accounts and records to be kept of all the transactions with which the Bank is concerned, and the books of account and records shall be kept at the principal place of business of the Bank.

(2) The accounts of the Bank for each financial year shall be audited by an independent person who publicly carries on the profession of accountant.

(3) The auditor shall be appointed by the Minister.

(4) For the purpose of audit, the auditor shall at all reasonable times have access to all books and records relating to the assets, liabilities, income and expenditure of the Bank.

27. Annual Report - The Board shall not later than three months after the end of each financial year, submit to the Minister a report of its operations, including the annual statement of its accounts for that year certified by the auditor and to be laid before the Legislative Assembly.

PART V - MISCELLANEOUS

28. Taxation - The income and revenue of the Bank shall not be subject to taxation under any law.

29. Rules - The Board may make such rules, consistent with the

provisions of this Act, as it considers necessary or appropriate to further the objects and functions of the Bank.

30. Repeals and Savings - (1) The following enactments are repealed -

- (a) The National Development Corporation Act 1975, and
- (b) The National Development Corporation Amendment Act 1976.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the National Development Act 1975 shall not effect any document made or anything whatsoever done under the provisions of that Act or any amendment thereof, and every such document or thing so far as it is subsisting or in force at the time of the repeal of that Act and could have been made or done under this Act shall continue and have effect as if it shall have been made or done under the corresponding provisions of this Act and as if that provision were in force when the document was made or the thing done.

This Act is administered by the Cook Islands Development Bank