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An Act to establish the Cook Islands Monetary Board and to define its objectives, functions, and powers and to provide for matters relating thereto (1 December 1981)

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

PART I

PRELIMINARY

1. Short title - (1) This Act may be cited as the Cook Islands Monetary Board Act 1981.

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

"Appointed member" means a member of the Board appointed under paragraph (e) of subsection (1) of section 3;

"Bank" means any person or body carrying on in the Cook Islands the business of banking;

"Board" means the Cook Islands Monetary Board established by section 3 of this Act;

"Chairman" means the Chairman of the Board;

"Financial institution" means a person or body who engages in the Cook Islands in, -

(a) The business of receiving funds from the public or any section or member of the public whether within the Cook Islands or elsewhere through the acceptance of repayable deposits of money; or

(b) The business of receiving funds through the sale or placement of bonds, certificates, or other securities - and also in the use of such funds, wholly or partly for advances, investments, or any other lawful operation for its own account and at its own risk;

"Minister" means the Minister of Finance;

"Secretary" means the Secretary of the Board.

PART II

THE COOK ISLANDS MONETARY BOARD

3. Establishment of Board - (1) There is hereby established the Cook Islands Monetary Board.

(2) The Board shall consist of the following:

- (a) The members of the Cabinet Economic Committee, each of whom shall have a vote, and the Chairman of which shall be the Chairman of the Board;
- (b) Two other members to be appointed from time to time by Order in Executive Council for such period as may be stipulated in any such Order;
- (c) Not more than four members, who shall not be entitled to vote at any meeting of the Board, and who shall be appointed from time to time by Order in Executive Council for such period as may be stipulated in any such Order;

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

(4) The Board may from time to time elect one of the voting members to be Deputy Chairman.

4. Remuneration of appointed members - Every member who is not in receipt of a salary payable from the Cook Islands Public Account or any other agency of Government shall be paid such remuneration and allowances as may from time to time be fixed by Cabinet.

5. Meetings of members - (1) Meetings of the Board shall be held at such times and places as the Chairman of the Board directs.

(2) The Chairman shall call a meeting whenever required to do so in writing by any 2 members.

(3) At any meeting 3 voting members shall form a quorum.

(4) The Chairman shall preside at every meeting at which he is present.

(5) If the Chairman is for any reason absent from a meeting -

(a) The Deputy Chairman shall preside at that meeting if he is present; and

(b) If the Deputy Chairman is not present, the members present shall appoint one of the voting members to preside at that meeting.

(6) At every meeting, the Chairman or other person presiding shall have a deliberative vote, and in the case of an equality of votes, he shall also have a casting vote.

(7) Every question arising at a meeting shall be decided by a majority of the votes recorded on the question.

(8) Subject to the other provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit.

6. Disclosure of conflicting interest - (1) Any member who, otherwise than as a member, is directly or indirectly interested in any business of the Board shall, as soon as possible after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the Board, and the member shall not take part after the disclosure in any deliberations or decisions relating to the business, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

7. Secretary and Other Employees - (1) There may be appointed pursuant to the Public Service Act 1975 a Secretary and such other officers or employees as may be necessary to carry out the functions of the Board.

(2) If the Secretary is not also a member 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 interested is to be considered at such meeting.

(3) The Board may confer on the Secretary 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.

8. 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 Secretary or the Board generally or specifically and such persons shall be retained upon such terms and conditions as the Board determines.

9. Personal Liability - Every member or employee of the Board shall be protected from civil liability in respect of any act or default done or made by the Board or by any member or employee of the Board in good faith in the course of the operations of the Board.

PART III

OBJECTIVES AND FUNCTIONS OF THE MONETARY BOARD

10. Objectives of Board - The Board shall have the following general objectives:

- (a) To control and regulate the issue, supply, and availability of money in the Cook Islands;
- (b) To promote and foster the internal and external monetary stability of the Cook Islands;
- (c) To promote and foster a sound banking and financial structure for the Cook Islands;
- (d) To promote and foster credit and currency exchange conditions that are conducive to the orderly and balanced economic development of the Cook Islands;
- (e) To promote and foster the establishment of sound business activities in the Cook Islands, to facilitate the channelling of investment into those business activities and to regulate foreign investment in the Cook Islands.

11. Functions of Board - In pursuance of its objectives, the Board shall have the following general functions:

- (a) From time to time to advise the Government on the formulation of appropriate monetary and banking policies for the Cook Islands and to keep under review and, where necessary, recommend modifications or changes to such policies;

- (b) To license banking and other financial institutions in the Cook Islands.

12. Powers of Board - (1) The Board shall have all the powers that are reasonably necessary or expedient to enable it to achieve its objectives and perform its functions.

(2) Without limiting the generality of subsection (1) of this section, the Board may from time to time give to any banking or financial institution such directions or instructions as are reasonably necessary to enable the Board to carry out its functions.

13. Board to follow directions of the Government - In pursuing its objectives and performing its functions, the Board shall have due regard to the economic, monetary, and financial policies of the Government and shall give effect to such policies as may be communicated in writing to the Board from time to time by the Minister.

14. Statistical information - (1) The Monetary Board may from time to time by notice in writing require any bank or other financial institution to deliver to the Secretary within a time to be specified in the notice any statistical or other information specified in the notice that is necessary to enable the Board to perform its functions and duties under this Act.

(2) No information delivered to the Board under this section shall be disclosed to any person who is not either a member of the Board or an officer or employee of the Board, except insofar as the disclosure is necessary to carry this Act into effect.

(3) Any person who discloses to any other person any information that has been delivered to the Board under this section shall be guilty of an offence and be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000, or to both, unless he proves -

- (a) That the disclosure was made pursuant to subsection (2) or was necessary to carry this Act into effect; or
- (b) That the bank or financial institution by whom the information was delivered consented or does consent to the disclosure.

PART IV

ISSUE OF CURRENCY AND EXCHANGE CONTROL

15. Board to control issue of currency - The Board shall be the authority for the issue of currency notes and coins in the Cook Islands.

16. Exchange control - (1) The Board may from time to time require any person (including any bank or other financial institution) to surrender all foreign currency held by that person to any other bank or financial institution specified by the Board, to be converted into the equivalent amount of Cook Islands currency.

(2) Every bank or financial institution designated by the Board under subsection (1), shall administer the foreign currency surrendered to them under that subsection in accordance with any conditions that the Board may from time to time impose.

17. Control of overseas exchange and other transactions - The Board shall administer the provisions of Part II of the Banking Act 1969.

PART V

BANKS AND FINANCIAL INSTITUTIONS

18. Banks and financial institutions to be licensed - No bank or other financial institution shall carry on business as such in the Cook Islands otherwise than in accordance with a licence issued by the Board under the Banking Act 1969 or the Off-Shore Banking Act 1981.

PART VI

GENERAL PROVISIONS

19. Regulations - The High Commissioner may from time to time by Order in Executive Council make all such regulations as may be deemed necessary or expedient to give full effect to the provisions of this Act and for the due administration thereof.

20. Offences - Every person (including a bank or financial institution) who commits any of the offences contained in the First Schedule to this Act is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$2,000 and if the offence is a continuing one to a further fine not exceeding \$100 for each day on which the offence has continued.

21. Mode of exercise of Board's powers - (1) Without limiting any other way by which the Board may exercise its powers under this Act, the Board may give a direction or instruction to any person (including any bank or other financial institution), or impose a requirement or condition on or in relation to any such person -

- (a) By notice in writing signed by the Chairman, or Deputy Chairman, or any 2 other members of the Board, and delivered to such person; or
- (b) By notice in the name of the Board, signed by the Secretary and published in the Cook Islands Gazette.

(2) Any notice referred to in paragraph (a) of subsection (1) may be delivered to any person (including any bank or other financial institution).

- (a) By delivering it to that person personally;
- (b) By leaving it at the registered office or any other place of business or the last known place of business of that person;
- (c) By posting it by registered letter to that person addressed to him or it at any place referred to in paragraph (b); or
- (d) Where the person is a body corporate, be delivering it personally to any director, manager, or other officer of the body corporate.

(3) Every notice posted in accordance with paragraph (c) of subsection (2) shall be deemed to have been delivered at the time when the registered letter would be delivered in the ordinary course of post.

(4) The Board may revoke the licence of any person who wilfully fails to comply with any direction or instruction given by the Board.

22. Acts to be administered by Board - The Acts and Regulations contained in the Second Schedule to this Act shall be administered by the Board.

23. Consequential amendments - (1) The Banking Act 1969 is amended by deleting the words "the Minister" wherever they appear and substituting therefore the words "the Cook Islands Monetary Board".

(2) The Development Investment Act 1977 is amended by:

- (a) deleting from section 5 the words "Ministry of Trade, Industries Labour and Commerce" and substituting the words "Cook Islands Monetary Board";
- (b) deleting the word "council" and its definition from section 2;
- (c) deleting the words "the Council" wherever they appear and substituting the words, "the Cook Islands Monetary Board" therefore;
- (d) repealing Part II.

(3) The Exchange Control Regulations 1948 are hereby amended by -

- (a) deleting the words "the Minister of Finance" or "the Minister" and substituting the words "the Cook Islands Monetary Board";
- (b) by revoking subsection (1) of Regulation 15 and substituting the following:

"(1) Every person who commits an offence against these Regulations is liable on conviction to imprisonment to a term not exceeding six months or to a fine not exceeding \$2,000 and if the offence is a continuing one to a further fine not exceeding \$100 for each day in which the offence has continued."

FIRST SCHEDULE

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| (Section 6) | Non-disclosure of conflicting interest. |
| (Section 14(i)) | Failure to provide statistical or other information to the Board. |

SECOND SCHEDULE

- (a) This Act
- (b) Banking Act 1969
- (c) Insurance Companies Deposits 1970/1
- (d) Life Insurance Act 1970-71
- (e) Asian Bank Act 1975
- (f) Loan Authorisation Act 1975
- (g) Overseas Exchange Fees Act 1975
- (h) Development Investment Act 1977
- (i) Off-Shore Banking Act 1981
- (j) Exchange Control Regulations 1948

This Act is administered by the Cook Islands Monetary Board