



ANALYSIS

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1977, No. 21

An Act to introduce a development investment incentive scheme and to regulate foreign investment in the Cook Islands
(19 December 1977)

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 Development Investment Act 1977.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

"Activity" includes any single commercial, industrial or trade enterprise carried on with the object of pecuniary gain and "single activity" includes any activity carried on in association with another activity which is normally related with it:

"Book and document" and "Book or document" includes all books, accounts, records, registers, rolls, computer print outs and other documents:

"Business" includes any profession, trade or manufacture or undertaking carried on for pecuniary profit:

"Carrying on business" means carrying on an economic activity pursuant to the objects of the enterprise and includes:

- (a) establishing or using a share transfer or share registration office: and
- (b) administering, managing or otherwise dealing with property as an agent, legal personal representative or trustee, whether by servants or agents or otherwise: and
- (c) maintaining an agent for the purpose of soliciting or procuring orders whether or not the agent is continuously resident in the Cook Islands: and
- (d) maintaining an office, agency or branch whether or not that office, agency or branch is also used for one of these purposes by another enterprise: and
- (e) undertaking a building, construction or assembly project which will not be completed within twelve months:

but an enterprise shall not be regarded as carrying on business by reason solely that it:

- (f) is or becomes a party to an action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of a claim or dispute: or

- (g) maintains a bank account: or
- (h) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts: or
- (i) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time: or
- (j) collects information or undertakes a feasibility study:

and "carry on" in relation to a business, has a corresponding meaning:

"Council" means the Development Investment Council established under this Act:

"Corporation" has the same meaning that it has in the Companies Act 1970/1971:

"Director" means the public servant who holds the post of Director of Commercial and Industrial Development within the Ministry of Trade, Industries, Labour and Commerce:

"Employee" means any person who receives or is entitled to receive a source deduction payment under the Income Tax Act 1972 and its amendments:

"Employer" means any person who pays or is liable to pay a source deduction payment under the Income Tax Act 1972 and its amendments:

"Enterprise" means any person, natural or corporate, or body or association of persons engaged or proposing to become engaged in the carrying on of business for gain:

"Existing activity" means an activity being carried on in the Cook Islands by an enterprise immediately before the commencement of this Act:

"Foreign enterprise" means:

- (a) in the case of an enterprise that is a corporation, an enterprise:
 - (i) in which 33 $\frac{1}{3}$ percent or more of the voting shares or power is held or controlled by persons who are not local persons: and
 - (ii) in which 33 $\frac{1}{3}$ percent or more of the value or number of the shares are beneficially owned by persons who are not local persons: or
 - (iii) that does not have its central management or control in the Cook Islands: or
 - (iv) that is incorporated or established by or under the law of a place outside the Cook Islands: and
- (b) in the case of any other enterprise, an enterprise one third or more of the members or partners of which are not local persons: and
- (c) an enterprise in which one third or more of the beneficial ownership of which is owned by persons who are not local persons:

- (d) an enterprise that is a person other than a local person:

"Individual" means a natural person:

"Local enterprise" means an enterprise other than a foreign enterprise:

"Local person" means:

- (a) A Cook Islander as defined in the Entry, Residence and Departure Act 1971-1972: and
 (b) a person who is a permanent resident pursuant to the Entry, Residence and Departure Act 1971-72:

"Minister" means the Minister in charge of the Ministry of Trade, Industries, Labour and Commerce:

"Ministry" means the Ministry of Trade, Industries, Labour and Commerce:

"Person" includes a company, a corporation sole, a natural person and also a body of persons whether incorporated or not:

"Code" means the Investment Code published under Part III of this Act.

"Share" includes any beneficial interest in the capital or investments of a company and,

"Shareholder" includes any member of a company is divided into shares or not:

"Trustee" includes an executor or administrator.

(2) Where in the opinion of the Minister, after consultation with the Council, the activity in which a person is engaged is primarily and mainly intended for a religious, educational charitable or community purpose or for any other non-profit purpose that is socially desirable, or for a combination of such purposes, the Minister may, by notice published in the Cook Islands Gazette, declare that it is not an enterprise within the meaning of subsection (1).

PART I: GENERAL

3. Purpose of this Act - The purposes of this Act are:

- (a) to promote, foster and assist the establishment of business activities and enterprises generally in the Cook Islands;
- (b) to facilitate the channelling of investment into those fields of business activities that will make the best use of resources consistent with national development and investment policies;
- (c) to regulate and control the direction, extent and scope of foreign investment;
- (d) to facilitate the participation of local persons in investment and in the ownership, management and control of foreign enterprises;
- (e) to identify activities and enterprises that will achieve these purposes.

4. Application of this Act - (1) This Act shall limit the provisions of the Income Tax Act 1972, the Companies Act 1970-71, the Leases Restrictions Act 1976, and the Entry, Residence and Departure Act 1971-72, and the amendments to those Acts and any decision made by Cabinet under this Act shall override any decision made by any Minister under the Acts listed in this section.

(2) Nothing in this Act derogates any other power of control of investment or employment under any other Act, except that no such power shall be exercised in a manner inconsistent with this Act.

(3) Registration of an enterprise under this Act to carry on business in respect of a particular activity does not of itself relieve the enterprise from compliance with any other Act.

(4) In particular, and without limiting the generality of subsection (3), the registration does not extend the powers of a corporation hereof.

5. Administration - This Act shall be administered in the Ministry of Trade, Industries, Labour and Commerce.

PART II: DEVELOPMENT INVESTMENT COUNCIL

6. Establishment of the Council - (1) There is hereby established for the purpose of this Act a Development Investment Council.

(2) The Council shall be responsible to the Minister in the exercise of its powers and the performance of its functions under this Act.

(3) The Director shall act as the executive officer of the Council.

(4) The Ministry shall provide the Council with secretarial and administrative services.

7. Membership of the Council - (1) The Council shall comprise the following members *ex officio*:

- (a) the Secretary of the Ministry;
- (b) the General Manager of the National Development Corporation;
- (c) the Secretary of the Ministry of Planning and External Affairs;
- (d) the Collector of Inland Revenue; and

up to three other members, not being members of the Cook Islands Public Service, who shall be appointed for such terms as the Minister may specify.

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

(3) The Minister shall appoint a member of the Council to be Chairman and another member to be Deputy Chairman who shall, in the absence or unavailability of the Chairman, exercise all the powers and functions of the Chairman.

(4) A member of the Council may, with the approval of the Minister in writing, appoint an alternate who shall, in the absence of the member, stand in the place of that member for all purposes of this Act and who shall be eligible to vote in any meeting of the Council which he attends.

8. Removal of Members - Any person who is nominated as a member by the Minister shall cease to be a member of the Council if he:

- (a) becomes of unsound mind and is so certified by two doctors;
- (b) dies;

- (c) becomes insolvent;
- (d) contravenes section 16 of this Act; or
- (e) is convicted of a criminal offence punishable by a term of not less than one year's imprisonment.

9. Functions of the Council - (1) Generally, the function of the Council shall be to contribute to the achievement of the purposes of this Act.

(2) In particular, the Council shall:

- (a) evaluate applications for investment incentives and concessions;
- (b) provide for the registration of foreign enterprises;
- (c) supervise the performance of any conditions and obligations to which any enterprise is subject by virtue of this Act;
- (d) report to the Minister on the monitoring of any conditions and obligations to which any enterprise is subject by virtue of this Act;
- (e) recommend to the Minister guidelines, criteria and measures to promote desirable investment generally as well as to special areas or activities;
- (f) advise the Minister on national planning for investment;
- (g) advise and draw the attention of investors and potential investors as to the provisions of the Investment Priorities Schedule;
- (h) facilitate and assist the establishment of approved enterprises or investments.

10. Powers of Council - (1) The Council shall have all the powers reasonably necessary for the effective performance of its functions and to give effect to the provisions of this Act.

(2) The Council shall have no power of direction or control of any department of state or agency of Government.

11. Meetings of the Council - (1) The Council shall meet at such times and places as the Chairman may from time to time appoint.

(2) At a meeting of the Council, the Chairman or in his absence the Deputy Chairman shall preside.

(3) The quorum at a meeting of the Council shall comprise the Chairman or Deputy Chairman and two other members.

(4) Every question before a meeting of the Council shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes on the matter the member presiding shall have a casting as well as a deliberative vote.

(5) The Council shall cause minutes of its decisions to be kept.

(6) Except as expressly provided in this Act or in regulations made under this Act, the Council may regulate its procedures in such manner as it thinks fit.

(7) The Minister may, if he so wishes, attend a meeting of the Council and take part in the debate regarding any matter before the Council.

12. Disclosure of interest by members - (1) Where a member of the Council or alternate has a direct or indirect material or pecuniary interest on a matter being considered or about to be considered by the Council, he shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at the meeting.

(2) At such a meeting those members present who are not interested members shall resolve in relation to each interested member:

- (a) that he be excluded from the Council while the relevant matter is being considered; or
- (b) that he be permitted to take part in the deliberations of the Council with respect to the relevant matter but not to vote; or
- (c) that he be permitted to take part in the deliberations or decisions of the Council as if he were not an interested member;

and shall record and give effect to the resolution accordingly.

13. Other persons to be invited - The Council may, if it considers appropriate or desirable, invite any person to attend a meeting of the Council to give such advice, evidence, information or objection which may assist the Council in considering any matter before it.

14. Protection of members and officers - A member of the Council or an alternate or an officer of the Council shall not be liable for any act or omission done or made bona fide and without negligence by such member, alternate or officer under or for the purpose of this Act.

15. Council to have regard to directions of Cabinet - In the exercise of its functions and powers the Council shall have regard to any representations that may be made by the Minister in respect of any function or business of the Council and shall give effect to any decision of Cabinet in relation thereto conveyed to the Council in writing by the Minister.

16. Members and officers to maintain secrecy - (1) Every member of the Council or alternate member, every officer of the Council and every other person engaged or employed in connection with the work of the Council, shall maintain and aid in maintaining the secrecy of all matters which come to his knowledge when carrying out his functions or duties under this Act, and shall not communicate any such matters to any person except for the purpose of carrying this Act into effect.

(2) Every person who wilfully acts in contravention of subsection (1) of this section commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$200 and if he is a member of the Council other than an ex-officio member the Minister may revoke his appointment to the Council.

17. Remuneration and allowances of members - There may be paid, from monies out of the Public Account, to each member who is not a full-time salaried employee of Government such remuneration and travelling allowances as shall be fixed from time to time by the High Commissioner on the recommendation of the Minister.

PART III: INVESTMENT PRIORITIES AND INCENTIVES

18. Investment Code - (1) Cabinet shall determine from time to time an Investment Code.

(2) The Council shall from time to time publish the Investment Code approved by Cabinet.

(3) The Council shall at the direction of the Minister advise and make recommendations to the Minister concerning the Investment Code.

(4) The purpose of the Code shall be to inform potential investors as well as persons or bodies responsible for planning, promoting or encouraging investment of the priorities and reservations attached by Cabinet to investment in particular areas or activities.

(5) The Code shall set out:

- (a) investment areas or activities which merit encouragement;
- (b) specific enterprises or activities which shall be eligible for incentives and concessions pursuant to sub-section (2) of section 19 of this Act;
- (c) general criteria by which investment or new enterprises are evaluated to determine the extent of encouragement;
- (d) criteria by which foreign investment or enterprises are evaluated;
- (e) activities or areas reserved for local enterprises;
- (f) such other matters as Cabinet directs.

19. Investment incentives and concessions established

(1) Incentives and concessions as specified in the Schedule to this Act are hereby established and shall, notwithstanding any other legislation, override and supercede the effects of any provisions therein where and when any or all of these have been granted by Cabinet and, where necessary approved by the Executive Council to any enterprise.

(2) Cabinet may decide from time to time what specific enterprises or activities set out in the Investment Code shall be eligible for any of the incentives and concessions specified in the Schedule to this Section.

20. Application for incentives and concessions - (1) Any enterprise which qualifies under the Investment Code shall be eligible for consideration, on application to the Council, to be granted such incentives and concessions as provided for under section 19 of this Act.

(2) Every application to the Council shall provide, wherever applicable, the following information:

- (a) the nature of the enterprise, the output or service to be provided, how it is to be marketed, the proposed price of the product;
- (b) the market potential for the product or service;
- (c) the shareholding and shareholders of the enterprise together with details of directors and key management personnel;
- (d) the sources and forms of financing of the enterprise;
- (e) the locality of the enterprise and the title to the site held or expected to be obtained;
- (f) the persons to be employed and in particular details of expatriate personnel and the provision for the training of local persons;
- (g) the nature and sources of raw materials intended to be used;

- (h) details of proposed capital expenditure;
- (i) the proposed dates the work on the enterprise will commence and the enterprise will commence business;
- (j) the types and extent of incentives, concessions or benefit being sought;
- (k) financial feasibility and, or, cash flow statement;
- (l) such other information as the Council or Minister may require;

(3) The Council, where it is of the opinion that the application merits approval, shall recommend to Cabinet through the Minister what incentives and concessions if any, including such terms or conditions as shall apply, should be granted to such application. In considering such matters and in making its recommendation Council shall have regard to the Investment Code as approved by Cabinet and to the criteria as set out in that Code.

(4) After receipt of the recommendation Cabinet shall consider the application having regard to the Investment Code and shall:

- (a) refer the matter back to the Council for further consideration; or
- (b) approve with or without modification the recommendations with respect to the application together with any terms or conditions if any as Cabinet may specify; or
- (c) reject the application.

(5) The Council shall be responsible for notifying the applicant of the decision of Cabinet on the application.

- (6) (a) where the applicant accepts the concessions and conditions approved by Cabinet, the concessions and conditions as agreed shall be incorporated in heads of agreement to be signed by the Minister and the applicant; or
- (b) where the applicant does not so accept, the application shall be deemed to be withdrawn.

(7) An application may be resubmitted to the Council for reconsideration where;

- (a) the application has been rejected pursuant to subsection (4)(c) hereof; or
- (b) the application has been withdrawn pursuant to subsection (6)(b) hereof.

21. Formulation of proposals - On the receipt of an inquiry or notice to establish an enterprise or receipt of an application or re-application for concessions, the Council or the Minister may formulate proposals for consideration by or negotiation with the inquirer or applicant with respect to the proposed enterprise.

*22. Registration of foreign enterprise not waived -

Approval of an application by a foreign enterprise under Section 20 (4) of this Act shall not waive the requirement for that applicant or enterprise to be registered as a foreign enterprise.

23. Government departments or agencies to be informed -

The Council shall, as soon after an application has been approved, notify such departments or agencies of Government which have a direct or relevant interest on the matter:

- (a) what concessions including any conditions thereto have been granted, where the administration of such concessions ordinarily falls within its jurisdiction; or
- (b) what assistance would be required of the department or agency in order to facilitate the establishment of the venture or project.

24. Variation of Concessions - (1) Where an incentive, concession or benefit is granted to an enterprise pursuant to Section 20 (6)(a) of this Act for a finite term it shall not be varied within the currency of that term unless the enterprise or recipient has breached a term or condition of such agreement.

(2) Where an incentive, concession or benefit has been granted pursuant to Section 20 (6)(a) of this Act for an indefinite term and it has been in effect for not less than two years, it shall be varied only after the Minister has given twelve months' notice in writing to the enterprise of his intention provided however, the Minister may vary the agreement at any time where the enterprise or recipient has breached a term or condition of such agreement.

(3) Any existing agreement in relation to any incentive concession or benefit shall not be affected by this Act coming into effect but may be varied in accordance with subsections (1) and (2) of this section.

PART IV: REGULATION OF FOREIGN ENTERPRISES

25. Guarantees to foreign enterprises - The Crown shall extend the following guarantees to any foreign enterprise registered in accordance with this Act:

- (a) There shall be no compulsory acquisition or expropriation of the property of the enterprise or its investors situated in the Cook Islands except:
 - (i) in accordance with due process of law; and
 - (ii) for a public purpose defined by law; and
 - (iii) in payment of compensation as defined by law.
- (b) Subject to any law of the Cook Islands the enterprise and its investors shall be allowed the right:
 - (i) to remit overseas, earnings and expatriate capital;
 - (ii) to remit amounts necessary to meet payment of principal, interest and service charges, and similiar liabilities on foreign loans and the cost of other foreign obligations;
 - (iii) to remit overseas compensation received in accordance with paragraph (a) hereof.

26. Restriction of foreign enterprises - (1) No foreign enterprise shall carry on business in the Cook Islands in any activity unless that foreign enterprise is registered in respect of that activity pursuant to this Act.

(2) Subsection (1) hereof shall not apply to any foreign enterprise carrying on any existing activity until the expiration of the period provided in section 27 of this Act for application for registration in respect of the existing activities.

27. Registration of existing activities - (1) A foreign enterprise that was immediately before the commencement of this Act carrying on business in the Cook Islands shall be registered by the Council in respect of its existing activities if the foreign enterprise applies to the Council for such registration pursuant to this section within four months from the date of commencement of this Act or such further period as the Council may permit pursuant to subsection (5) hereof.

(2) For the purpose of registration, the enterprise shall furnish to the Council the following information:

- (a) the date the enterprise commenced business;
- (b) its existing activities;
- (c) details of its shareholding with respect to:
 - (i) authorised, issued and paid-up shares;
 - (ii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder;

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of any person or a trustee of any beneficiary:

- (d) the financial year of the enterprise and the date of annual balance;
- (e) copy of evidence of any agreement with Government or any agency of Government in respect of any concession, benefit or approval granted;
- (f) any other information the Council may require.

(3) On receipt thereof the Council shall examine the information furnished and if, in the opinion of the Council, the information is not correctly completed or relevant information is not provided the Council shall reject the information and inform the enterprise of the defects therein.

(4) Where the Council accepts the information it shall within the prescribed period register the enterprise and its activities.

(5) The Council may, on the written application of an enterprise and if the Council deems necessary after considering the circumstances of the request, extend the period for application of registration specified in subsection (1) of this section by not more than two months.

(6) The Council may refuse to register an enterprise under this section where the enterprise has been duly incorporated under any law of the Cook Islands but has not commenced to carry on business within three months of the date of incorporation.

29. Registration of new activities - (1) Any foreign enterprise intending to carry on business in the Cook Islands in any activity in respect of which it is not registered pursuant to this Act or which it is not included in the existing activities of that foreign enterprise shall apply to the Council for registration of that activity pursuant to this section.

(2) The applicant shall furnish to the Council the following information:

- (a) the name of the company;
- (b) the address of its registered office;
- (c) the proposed activities of the enterprise;
- (d) the names and addresses of its directors, chief executive officer, secretary, accountant and auditor or of the persons carrying out any or all of these functions;
- (e) details of its shareholding with respect to:
 - (i) authorised, issued and paid-up capital;
 - (ii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder;

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of any person or a trustee of any beneficiary.

- (f) any other information the Council may require.

(3) The Council shall examine the application and if, in the opinion of the Council, the application is not correctly completed or relevant information is not provided, the Council shall decline to accept the application and inform the applicant of the defects therein.

(4) The applicant may reapply with the defects corrected.

(5) Where the application is accepted, the Council shall evaluate it in terms of any investment criteria as established in the Investment Code.

(6) Where the Council is of the opinion that the application merits approval it shall forward its recommendation together with any proposed conditions or stipulations, if any to the Minister for the consideration of Cabinet. If the Council is not of the opinion that the application merits approval it shall inform the Minister accordingly.

(7) After receipt of the recommendation Cabinet shall:

- (a) refer the matter back to the Council for further consideration; or

- (b) approve the application together with such conditions as may be specified; or
- (c) reject the application.

(8) Where an application has been approved, the Council shall notify the applicant of the decision and shall request the applicant to advise within a period of time whether or not the applicant will accept registration on those terms.

- (9) (a) Where the applicant advises within the prescribed period he will accept registration on the proposed terms, the Council shall proceed to register the enterprise in respect of those activities; or
- (b) Where the applicant does not so advise or fails to do so within the prescribed period, the application shall be deemed to be withdrawn.

29. Issue of certificate of registration - On registration of an enterprise under this Part the Council shall issue to the enterprise a certificate of registration and shall give notice of such registration in the Cook Islands Gazette.

30. Carrying on business following registration - Pursuant to this Act, a registered foreign enterprise may carry on business in an activity in relation to which it is registered.

31. Formulation of proposals - On receipt of an inquiry to establish an enterprise or an application for registration, the Council or the Minister may formulate proposals for the consideration of or negotiation with an inquirer or applicant with respect to the proposed enterprise.

32. Variation of registration - (1) If the Minister, after receiving a report or recommendation from the Council, is of the opinion that a registered enterprise has contravened or failed to comply with a term or condition of its registration and the Minister considers that the registration should be varied, the Minister may notify the enterprise of his opinion and invite the enterprise to make representations within a prescribed period as to why its registration should not be varied.

(2) On receipt of the representation from the enterprise or expiry of the prescribed period, the Minister shall, subject to any direction from Cabinet, vary or refuse to vary the terms or conditions of registration.

(3) Where the terms of registration of a registered enterprise is varied, the Minister shall give notice of such variation in the Cook Islands Gazette.

33. Variation of registration at the request of an enterprise - (1) A registered enterprise may apply to the Council for variation of any or all of the terms and conditions of its registration.

(2) The Council shall consider the application as soon as practicable and shall make a recommendation to the Minister.

(3) After receipt of the recommendation, the Minister shall, subject to any direction of Cabinet, vary or refuse to vary the terms or conditions of registration.

(4) Where the terms of registration of a registered enterprise is varied, the Minister shall give notice of such variation in the Cook Islands Gazette.

34. Cancellation of registration - (1) If the Minister, after receiving a report from the Council, is of the opinion that a registered enterprise has contravened or failed to comply with a condition or term of its registration and the Minister considers that, having regard to the nature of the contravention or failure, it is undesirable that the enterprise should continue to be registered, he shall notify the enterprise of his opinion and invite the enterprise to make representations within a prescribed period as to why its registration should not be cancelled.

(2) On receipt of the representation from the enterprise or expiry of the prescribed period, the Minister shall refer the matter to Cabinet for consideration.

(3) Cabinet shall, after consideration of the matter, either cancel or refuse to cancel the registration.

(4) Where the registration of a registered enterprise is cancelled, the Minister shall give notice of that cancellation in the Cook Islands Gazette.

35. Status of enterprise following cancellation -

Subject to section 37 of this Act an enterprise shall cease to carry on business within the period of one month after cancellation of its registration.

36. Notification - After the end of the period of one month after the cancellation of the registration of an enterprise or the date last fixed under section 37 in relation to an enterprise, whichever last occurs, the Council shall forward to any person who in its opinion is affected, a notification that the registration of the enterprise has been cancelled.

37. Temporary continuation for winding-up - The Council may at its discretion fix a later date on which the enterprise shall cease to carry on business for the purpose only of winding-up its affairs in relation to the activity.

PART V: CONTROL OF TAKE-OVERS

38. Transfer of Shares - (1) No transfer of shares in or proprietary interest of a foreign enterprise registered pursuant to this Act or a local enterprise shall be valid and of any effect unless the approval of Cabinet to such transfer has first been obtained."

(2) Nothing in subsection (1) hereof shall apply to any transfer of any shares or proprietary interest to any local enterprise or person.

(3) Where the approval of Cabinet is to be sought for the purposes of this section the enterprise concerned or any interested party shall notify the Council in writing of the transfer or proposed transfer including details of the parties involved and the consideration for the transfer.

(4) On receipt of any notification pursuant to subsection (3) hereof the Council shall refer the matter to the Minister and make its recommendation thereon. The Minister shall as soon as practicable submit the matter to Cabinet for decision.

(5) Cabinet may in granting an approval pursuant to this section impose any conditions that it thinks fit to ensure that the purposes of this Act are satisfied.

(6) The approval of Cabinet to a transfer of shares or proprietary interest shall not be refused solely by reason of a change in ownership where before the transfer the transferor has taken all reasonable steps to endeavour to transfer the shares or proprietary interest to a local enterprise or person or to the Government of the Cook Islands for a reasonable consideration.

39. Change in status of enterprises - Where a registered foreign enterprise becomes a local enterprise the Council shall, on being satisfied of the change in status, de-register the enterprise as a foreign enterprise and notify the same in the Cook Islands Gazette.

PART V: MISCELLANEOUS

40. Disclosure and filing of information - (1) Every enterprise receiving a concession, incentive or benefit pursuant to section 19 of this Act shall, during the currency of such concession or benefit, file with the Director within a period or date as may be stipulated by the Council such returns, information or documents which have been specified as a term or condition to any approval or agreement pursuant to section 20 (6)(a) of this Act in relation to such concessions, incentives or benefits.

(2) In addition to subsection (1) of this section, every registered foreign enterprise shall file with the Director within five months after the completion of each financial year the following information:

- (a) the name of the enterprise;
- (b) the address of the registered office of the enterprise;
- (c) the activities of the enterprise;
- (d) the names and addresses of its directors, chief executive officer, secretary, accountant and auditor or the persons carrying out any or all of these functions;
- (e) details of its shareholding as at the date of filing together with changes therein since the last date of filing with respect to:
 - (i) authorised, issued and paid-up shares; and
 - (ii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder or on behalf of a beneficiary:

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficiary.

41. Right of inspection - For the purposes of obtaining information required to be filed pursuant to section 40 of this Act the Director, or an officer of the Ministry to whom the Council has delegated this authority in writing, shall have:

- (a) the right of reasonable access to inspect books of accounts, register of shares or records of transaction; and
- (b) the right of reasonable access to premises where the process of manufacture is carried out, stock is stored or the business of the enterprise is carried on.

42. Offences - (1) Every foreign enterprise which carries on business in contravention of subsection (1) of section 26 of this Act commits an offence and shall be liable on conviction to a fine not exceeding \$5,000 and where the offence is a continuing one to a further fine not exceeding \$500 for every day or part of a day during which the offence continues.

(2) Every enterprise which for the purpose of obtaining or retaining any incentive concession or advantage pursuant to this Act, or for the purpose of obtaining registration of the enterprise or any activity in respect of the enterprise pursuant to this Act, makes any false or misleading statement in any material particular or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(3) Every enterprise which without reasonable excuse refuses or fails to comply with any provision of section 40 of this Act commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(4) Every enterprise which without reasonable excuse refuses or denies reasonable access to the Director or any officer of the Ministry having authority to exercise reasonable access as provided in section 41 of this Act commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(5) Every director officer or member of any enterprise who is a party to any offence contained in subsections (1) to (4) of this section commits an offence and shall be liable on conviction to -

- (a) Imprisonment for a term not exceeding one year in the case of any offence contained in subsections (1) or (2) of this section or to a fine not exceeding \$2,000 or to both;
- (b) A fine not exceeding \$500 in the case of any offence contained in subsections (3) or (4) of this section.

43. Refund of concessions - Where any enterprise is convicted of any offence pursuant to subsection (2) of section 42 of this Act relating to obtaining or retaining any incentive concession or advantage pursuant to this Act the enterprise shall in addition to any other penalty provided by this Act be liable to refund to the Government of the Cook Islands the value of any incentive concession or advantage obtained by that enterprise at any time pursuant to this Act as determined by the Minister, and the amount so determined shall be recoverable as a debt due to the Crown.

44. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council make all such regulations as may, in his opinion, be deemed necessary or expedient to giving full effect to the purposes or provisions of this Act and for the due administration hereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session, and if not shall be laid before the Legislative Assembly within twenty-eight days after the date of the commencement of the next ensuing session.

45. Binding the Crown - This Act shall bind the Crown and shall apply to all departments and agencies of the Crown.

Section 19SCHEDULE

A schedule of incentives and concessions to encourage the establishment of enterprises and development investments

Tariff Protection:

Import duty and/or import levy may be increased by any amount on a class of commodity presently or proposed to be produced or supplied by an enterprise to protect an approved activity where:

- (i) the activity is import substituting; and
- (ii) the protection is essential for the initial survival of the approved activity; or
- (iii) there is threat of excessive or unreasonable trade competition by a foreign exporter into the Cook Islands of such a commodity.

Import Duty and Import Levy Concessions:(a) Capital items:

Partial or full exemption from import duty and/or import levy may be granted to an enterprise on the importation of, or refund of duty and/or levy granted to an enterprise on plant, equipment, machinery or construction materials used or to be used in an approved activity provided:

- (i) in the case of a new investment by an existing enterprise which is primarily engaged in commercial agricultural or livestock production or commercial fishing, the capital expenditure is not less than \$1,000;
- (ii) in the case of a new investment by any other existing enterprise, the capital expenditure is not less than \$5,000;
- (iii) in the case of an investment by a new enterprise, the capital expenditure may be of any amount;
- (iv) where the establishment of a project extends over several years, the concession or exemption shall not extend for more than three years;
- (v) in the case of an existing or established enterprise, the replacement of capital items due to normal wear and tear or other causes together with consumable stocks shall not qualify.

(b) Raw Materials:

Partial or full exemption from import duty and/or import levy may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time.

Tax Incentives:(a) Tax concessions:

Partial or full tax concession may be granted for any period not exceeding five years to an enterprise engaged in an approved activity and may in special circumstances be renewed or extended up to another five years.

(b) Recruitment of skilled local persons domiciled overseas

(1) 120 percent of the allowable expenditures and costs on the recruitment of an employee who is a local person ordinarily domiciled overseas may be granted to any enterprise as a deduction against the taxable income of the enterprise in the year it is incurred, provided the enterprise satisfies the Council that:

- (i) the person possesses the skill and expertise for the job or position designated; and
- (ii) the person will be employed by the enterprise; and
- (iii) the person intends to reside permanently or to be domiciled in the Cook Islands.

(2) The allowable expenditures and costs in each instance shall include:

- (i) one-way fares for the person, spouse and any children under 15 years of age;
- (ii) freight of personal effects up to a value of \$1,000;
- (iii) local establishment and re-location costs of up to \$200.

(c) Counterpart training:

(1) Where an enterprise employing an employee other than a local person or an expatriate designates a local person to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the first three years of training, subject to the following:

- (i) the training shall be undertaken at an institution approved by the Council or the programme of training shall be approved by the Council;
- (ii) a binding agreement shall be effected between the enterprise and the Crown in relation to the training having regard to: the position or job to be replaced, the trainee, details of the training, compatibility of the training with the requirements of the job, the job replacement programme, and other relevant factors;
- (iii) the trainee shall be suitably bonded by the enterprise to the satisfaction of the Council.

- (2) The allowable training costs shall include:
- (i) in the case of overseas training - tuition fee, costs of materials directly associated with the course, fares of the trainee, salary or bursary paid to the trainee during the period of training, provided however, the enterprise first satisfies the Council that the training cannot be adequately carried out in the Cook Islands; or
 - (ii) in the case of local training - tuition fees, costs of materials directly associated with the course, and where on-the-job training is provided by an expatriate the portion of the salary of the expatriate directly related to the on-the-job training:
- (3) Where the enterprise exercises the concession granted under subparagraph (1) of paragraph (c) hereof, the salary and personnel costs of the expatriate employee concerned shall be treated in the following manner:
- (i) for each year during which a concession is claimed for counterpart training, costs shall be fully deductible as a claim against the taxable income of the enterprise; and
 - (ii) for the next year after counterpart training is completed or for the fourth year if the counterpart training concession has been claimed for the first three years, costs shall be fully deductible as a claim against the taxable income of the enterprise; and
 - (iii) for the next year or for the fifth year if the counterpart training concession has been claimed for the first three years, only 75 percent of the costs shall be so deductible; and
 - (iv) for the next year or for the sixth year if the counterpart training concession has been claimed for the first three years, and for every year thereafter, only 50 percent of the costs shall be so deductible.
- (4) Should the selected counterpart dies or, in the opinion of the Council, leave the service of his employer and that termination of employment is not occasioned by any fault on the part of the employer then the Minister, on the advice of the Council, may vary the conditions set out in subparagraphs (3)(ii), (3)(iii) and (3)(iv) of paragraph (c).
- (5) In the event of non-performance of a fundamental term of the Agreement stipulated in subparagraph 1 (ii) of paragraph (c) hereof by the enterprise, the enterprise shall be liable to refund to the Crown the full value of any concession received such value to be assessed by the Minister whose decision shall be final.

Depreciation Allowances:(a) Commercial agricultural, livestock and fishing projects:

An enterprise which is primarily engaged in commercial agricultural or livestock production or commercial fishing may be allowed to set off against taxable income the capital expenditures on plant, machinery, equipment or buildings including any goodwill paid in the acquisition of the land for agricultural or livestock use and any improvement to agricultural land, as follows:

- (i) in the case of a new enterprise or a new investment by an existing enterprise where in either case the capital expenditure exceeds \$20,000, 55 percent of the capital expenditure may be claimed against taxable income in any year until the full percentage is claimed. In addition, the normal rate* of depreciation on plant, equipment, machinery and buildings shall apply concurrently; and
- (ii) in the case where the capital expenditure is \$20,000 or less, the entire expenditure may be set off against the taxable income in the year of expenditure or any subsequent year until the expenditure is claimed in full and no other depreciation allowance shall apply.

(b) Other projects:

Accelerated depreciation allowances up to 200 percent of the normal rate may be granted on plant, machinery, equipment, and buildings used or to be used in any approved activity provided the entire capital expenditure for the project excluding the cost of acquisition of land is \$5,000 or more.

* Note: "normal rate" means the rate of depreciation for plant, machinery, equipment and buildings specified in the Income Tax Act 1972 and its amendments.

Residence Permits:

Subject to such conditions normally applying from time to time, residence and work permits may be granted for periods up to three years without any fee or charge to key personnel or employees of an approved enterprise provided however such permits may be varied where the enterprise has entered into a counterpart training agreement in respect of any expatriate personnel or employee.

Approval of Lease:

Subject to such conditions normally applying in regard to restrictions on leases, approval may be granted to a lease of land to an approved enterprise.