



ANALYSIS

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An Act to establish and regulate Off-Shore Banking
in the Cook Islands and matters related 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 - This Act may be cited as the Off-Shore Banking Act 1981.

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

"Banking business" means the business of banking in all its customary branches and departments including that of a Savings Bank and without limiting the generality of the foregoing also includes borrowing receiving or taking up money at interest or otherwise on current account, savings account, deposit account or other account and which according and subject to arrangement is repayable on the cheque, draft, order or authority of the customer; lending giving credit at interest or otherwise with or without security to any person, company or corporation; discounting, buying, selling and dealing in bills of exchange, promissory notes, coupons, drafts, bills of lading, warrants, debentures, certificates, script, hire purchase agreements, and other instruments and securities whether transferrable or negotiable or not; granting and issuing letters of credit and circular notes; buying, selling and dealing in bullion and specie; dealing in foreign or overseas exchange; acquiring, holding, issuing on commission, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; negotiating of loans and advances; becoming surety for the payment of money or performance of contracts or obligations by any person, company or corporation; receiving money and valuables on deposit or for safe custody or otherwise; collecting and transmitting money and securities; managing property and transacting all kinds of agency business commonly transacted by bankers; carrying on such other business outside the customary scope of the business of banking as the Board may from time to time authorise or approve;

"Chairman" means Chairman of the Board;

"Dollar" means a unit of the currency of the United States of America;

"Holder" means, in relation to a licence, the person to whom it was issued;

"Licence" means a licence granted pursuant to Part III of this Act;

"Licensee" means any body corporate holding a current valid licence pursuant to the provisions of this Act;

"Member" means a member of the Board;
"Minister" means the Minister of Finance;
"Monetary Board" or "Board" means the Monetary Board established by the Monetary Board Act 1981;
"Off-Shore Banking business" means any banking business transacted exclusively by, for, or in respect of any person who -

- (a) Is not a resident of and is not domiciled in the Cook Islands; and
- (b) Does not engage in a trade or business within the Cook Islands;
and includes
- (c) Receiving foreign funds through
 - (i) The acceptance of foreign money deposits payable upon demand or after a fixed period or after notice,
 - (ii) The sale or placement of foreign bonds certificates notes or other debt obligation or other foreign securities and
 - (iii) Any other similar activity involving foreign money or foreign securities; and
- (d) Either in whole or in part using the foreign funds so acquired for
 - (i) Loans, advances, and investments; and
 - (ii) The activities of the person carrying on that business for the account of or at the risk of that person; and
- (e) Any other activity, which may, by regulation, be declared to be an activity related or ancillary to an activity described in paragraph (c) or paragraph (d) of this definition:

"To reside" shall have the same meaning as it is defined in the Constitution, and "residence" and "resident" shall have the corresponding meanings:

"Secretary" means Secretary of the Board.

PART II

LICENSING OF OFF-SHORE BANKS

3. Off-shore banking - A person shall not transact any off-shore banking business or hold himself out as transacting any off-shore banking business, in the Cook Islands, unless that person holds a valid off-shore banking licence issued under this Part.

4. Licensee to be body corporate - Subject to this Act, no person other than a body corporate shall be granted a licence.

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5. Applications for licences - (1) A body corporate which wishes to carry on off-shore banking business in the Cook Islands may apply to the Secretary for one of the classes of licence specified in subsection (2) of this section.

(2) There shall be two classes of off-shore banking licence -

- (a) An 'A' class off-shore banking licence;
- (b) A 'B' class off-shore banking licence.

6. Application for licence - (1) An application for a licence shall be made to the Monetary Board in the prescribed form, and shall be accompanied by -

- (a) A certified copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document or documents by which the body corporate is constituted; and
- (b) Such fee as may be fixed by regulation; and
- (c) Such evidence as the Secretary may require -
 - (i) That the laws of the jurisdiction under which the body corporate is incorporated have been complied with; and
 - (ii) Of the nature and character of the body corporate's business; and
 - (iii) Of the financial standing of the body corporate; and
 - (iv) Of the stock ownership of the body corporate; and
 - (v) Of the shareholding and management of the body corporate; and
 - (vi) Where the licence applied for is an 'A' class off-shore banking licence, that the provisions of section 19 of this Act have been complied with; and
 - (vii) An address for service within the Cook Islands; and
 - (viii) Such references as the Secretary may require; and
 - (ix) Such other information as may be required by regulation.

(2) In addition to the documents, information, and evidence which shall accompany an application under subsection (1) of this section, an applicant shall, if required to do so by the Secretary, furnish such additional documents, information, or evidence as the Secretary may require.

7. Decision of Board - (1) Where an application for a licence is made to the Secretary, he shall refer that application to the Board, which shall after due consideration of that application either grant a licence or reject the application, or defer the application and direct that such enquiries as it considers necessary be made.

(2) In making its decision under subsection (1) of this section, the Board shall have regard to whether the licence is to the advantage of the people of the Cook Islands and to the effect that the grant of that licence would have on the stability and balanced development of the Cook Islands economy.

(3) Where the Board rejects an application, the Board need not give the applicant any reason for such rejection.

8. Licence may be subject to conditions - (1) Where the Board grants a licence, it shall do so subject to such terms and conditions, if any, as it thinks fit.

(2) If terms and conditions are imposed under subsection (1) the Board may, from time to time, vary or revoke any of those terms or conditions or impose any additional conditions.

9. Refund of fee - Where an application for a licence is rejected, any application fee, less a prescribed administration charge, may be refunded.

10. Notification of changes - (1) The holder of a licence shall, within 3 months after the making of an alteration in the Act, charter, deed of settlement, memorandum of association, articles of association or other document by which the licensee was constituted a body corporate, furnish to the Secretary particulars in writing of the alteration verified by a statutory declaration made by a senior officer of the body corporate authorised to do so.

(2) The holder of a licence shall forthwith notify the Secretary, in writing, of any material change in the particulars set out in the application for issue of licence or in the documents, information, or evidence accompanying that application or in any documents, information, or evidence, if any, given under section 6(2) of this Act.

11. Licence not transferable - (1) In this section "transfer" in relation to a body corporate, shall include -

- (a) The sale, transfer, or other disposition whatsoever of the shares in the capital of the body corporate, or any issue or allotment of any new shares in the capital of the body corporate, or the happening of any other matter or event whatsoever, the effect of which is to transfer directly or indirectly the effective ownership, management, and control of the body corporate; and
- (b) Any of the events referred to in paragraph (a) of this subsection occurring to any holding company of the body corporate or any holding company of any holding company of the body corporate.

(2) The holder of a licence shall not transfer the licence and any such purported transfer shall be void and of no effect.

12. Cancellation or suspension of licence - (1) A licence may be cancelled or suspended by the Board, for such period as the Board deems fit where the holder of a licence -

- (a) Fails to furnish any documents, information or evidence under subsection (1) or subsection (2) of section 6 of this Act.
- (b) Gives a notification to the Secretary under section 10(2) of this Act; or

(c) Where that licence is an 'A' class off-shore banking licence, submits to the Secretary an annual report under section 19(1) of this Act or information under section 19(2) of this Act, as the case may be, which is false in any material particular.

(2) The holder of a licence which is cancelled or suspended under this section shall return that licence to the Secretary forthwith.

(3) The Board shall give notice in writing to the licensee of the cancellation or suspension of the licence.

13. Licence may be cancelled - (1) The Board may cancel a licence if the licensee -

- (a) Does not within six months after the issuance of its licence commence business; or
- (b) Fails to comply with a condition of its licence; or
- (c) Is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or
- (d) Ceases to carry on business under its licence.

(2) When the Board intends to cancel a licence under subsection (1) of this section it shall give the licensee notice of its intention and a reasonable opportunity to show cause why the licence should not be cancelled.

(3) The Board shall give notice in writing to the licensee of the cancellation of the licence.

14. Appeal against cancellation or suspension - Any person who is aggrieved by the cancellation or suspension of a licence may, within fourteen days of the giving of the notice under section 12(3) or section 13(3) appeal against the cancellation or suspension to a Judge of the High Court, in chambers, whose decision thereon is final.

'A' CLASS LICENCES

15. 'A' Class off-shore banking licences - (1) An 'A' class off-shore banking licence shall, subject to this Act, be valid for a period of 5 years from the date of granting.

(2) The holder of an 'A' class off-shore banking licence shall subject to subsection (4) of this section, transact only off-shore banking business.

(3) The holder of an 'A' class off-shore banking licence shall, subject to compliance with the provisions of the Entry, Residence and Departure Act 1971-72, be permitted to maintain a permanent establishment within the Cook Islands.

(4) The holder of an 'A' class licence may apply to the Board to establish a Company to transact on-shore banking business pursuant to the Banking Act 1969.

16. Licence fee - The fee payable in relation to an application for an 'A' class off-shore banking licence and of any renewal thereof shall be fixed by regulation.

17. Asset backing - An applicant for and a holder of an 'A' class off-shore banking licence shall -

- (a) Where the applicant or holder, as the case may be, is not a body corporate incorporated under any Act for the time being in force relating to the incorporation of international companies, have at all relevant times, a surplus of tangible assets over liabilities in an amount of not less than \$10,000,000 or an equivalent amount in a currency approved by the Board; and
- (b) Where the applicant or holder, as the case may be, is a body corporate incorporated under any Act for the time being in force relating to the incorporation of international companies, have at all relevant times -
 - (i) A paid-up capital of not less than \$10,000,000 or an equivalent amount in a currency approved by the Board; or
 - (ii) A bank guarantee in a form and from a bank acceptable to the Board of that applicant's or that holder's obligations in an amount of not less than \$10,000,000 or an equivalent amount in a currency approved by the Board.

18. Transactions in New Zealand Currency - (1) The holder of an 'A' class off-shore banking licence shall not without the prior written permission of the Board, conduct any transaction in New Zealand currency.

(2) A licensee wishing to conduct a transaction or a class of transactions in New Zealand currency shall make written application to the Secretary and give such information of the proposed transaction or class of transactions as the Secretary may require.

(3) Subject to subsections (4) and (5) of this section, the Board may give its permission for a particular transaction to be conducted in New Zealand currency, or for a class of transactions to be conducted in New Zealand currency, and such permission may be given on such terms and conditions as the Board thinks fit.

(4) The Board shall not give permission under this section to the holder of an 'A' class off-shore banking licence to conduct a transaction or class of transactions in New Zealand currency without previously having obtained the written approval of the Reserve Bank of New Zealand to its giving such permission, and if that approval is not forthcoming the Board shall not give permission.

(5) Any term or condition specified by the Reserve Bank of New Zealand in its approval shall be included in the terms and conditions notified by the Board when giving its permission under subsection (3) of this section.

(6) The Board's permission to a transaction, or class of transactions, as the case may be, given under subsection (3) of this section is revocable at any time, and the Board may impose such further terms and conditions as it sees fit at any time.

19. Annual Report and Audit - (1) The holder of an 'A' class off-shore banking licence shall submit to the Board within 6 months of the end of its financial year audited accounts in the form prescribed by regulation.

(2) For the purposes of section (1), the audit shall be carried out by a competent auditor approved for the purpose by the Board.

'B' CLASS LICENCE

20. 'B' Class off-shore banking licences - (1) A 'B' class off-shore banking licence shall, subject to this Act, be valid for a period of 1 year from the date of granting; and may be renewed upon application.

(2) The holder of a 'B' class off-shore banking licence shall transact only off-shore banking business, and such business shall be transacted only in the currencies specified in the licence.

(3) The holder of a 'B' class off-shore banking licence shall only transact business through a Trustee Company registered under the Trustee Companies Act 1981, unless that licence holder applies for and receives the prior written permission of the Board to maintain a permanent establishment in the Cook Islands and the Board may grant that permission upon such terms and conditions as it thinks fit. X

21. Currency stipulation in licences - A 'B' class off-shore banking licence shall specify -

- (a) One currency; or
- (b) Two, three, four or five currencies; or
- (c) No restriction on the number of currencies (other than New Zealand currencies), -

in which the licensee may conduct its off-shore banking business.

22. Licence fee - The fee payable in relation to an application for a 'B' class off-shore banking licence shall be fixed by regulation.

23. No transactions in New Zealand currency - (1) The holder of a 'B' class off-shore banking licence shall not conduct any transactions in New Zealand currency.

(2) Any purported transaction in New Zealand currency by the holder of a 'B' class off-shore banking licence shall be deemed to be void ab initio.

24. Asset Backing - An applicant for and a holder of a 'B' class off-shore banking licence shall -

- (a) Where the applicant or holder, as the case may be, is not a body corporate incorporated under any Act for the time being in force relating to the incorporation of international companies; have at all relevant times a surplus of tangible assets over liabilities in an amount of not less than \$2,000,000 or an equivalent amount in a currency approved by the Board; and
- (b) Where the applicant or holder, as the case may be, is a body corporate incorporated under any Act for the time being in force relating to the incorporation of international companies, have at all relevant times -
 - (i) A paid-up capital of not less than \$2,000,000 or an equivalent amount in a currency approved by the Board; or
 - (ii) A bank guarantee in a form and from a bank acceptable to the Board of that applicant's or that holder's obligations in an amount of not less than \$2,000,000 or an equivalent amount in a currency approved by the Board.

25. Annual Report and Audit - (1) The holder of a 'B' class off-shore banking license shall submit to the Board within 6 months of the end of its financial year audited accounts in the form prescribed by regulations.

(2) For the purposes of section (1), the audit shall be carried out by a competent auditor approved for that purpose by the Board.

PART III

TAXATION

26. Profits and dividends - Notwithstanding anything contained in any other enactment; -

(1) No income tax, nor any other direct or indirect tax or impost, shall be levied in the Cook Islands upon the profits or gains of a licensee, or upon any interest earned by a licensee or paid to a depositor by a licensee, in respect of the off-shore banking it does from within the Cook Islands.

(2) No income tax, nor any other direct or indirect tax or impost, shall be levied in the Cook Islands in respect of any dividends or earnings, or upon any interest earned by a licensee or paid to a depositor by a licensee, attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident of the Cook Islands.

PART IV

MISCELLANEOUS

27. Keeping of accounting records - (1) In this section -

"Accounting records", in relation to a body corporate includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the body corporate are made up:

"Accounts" means profit and loss accounts and balance sheets, and includes notes (other than directors' reports) attached to, or intended to be read with, any of those profit and loss accounts or balance sheets.

(2) The holder of a licence shall -

- (a) Keep such accounting records as correctly record and explain the transactions and financial position of the body corporate; and
- (b) Keep its accounting records in such a manner as will enable true and fair accounts of the body corporate to be prepared from time to time; and
- (c) Keep its accounting records in such a manner as will enable the accounts of the body corporate to be conveniently and properly audited.

28. Inspection - (1) In this section "Inspector" means a person appointed, in writing, by the Board, for the purposes of this section.

(2) An Inspector, upon production of proof of his appointment, shall, during the normal office hours of the licensee, have the right to inspect:

- (a) The licensee's accounting records; and
- (b) The licensee's register of shares; and
- (c) The licensee's record of transactions; and
- (d) Any other record kept by the licensee in the course of its off-shore banking business; and
- (e) The premises where the licensee carries on his off-shore banking business.

29. Supply of information - (1) The holder of a licence shall furnish to the Board such information in respect of its overseas banking business conducted in the Cook Islands as the Board directs.

(2) A direction under this section shall not require information to be furnished with respect to the affairs of an individual customer.

30. Use of information by Board and others - No member of the Board, nor the Secretary nor an Inspector appointed under section 28 of this Act, shall reveal any information to any person other than to an officer of the Crown for the purposes of enabling him to carry out his duties as such officer of the Crown, and any such officer of the Crown to whom such information is revealed shall similarly not reveal it to any person other than such a person as is referred to herein.

31. Breaches of professional secrecy - (1) Every person commits an offence who, -

- (a) Divulges any information, in the Cook Islands or elsewhere, in relation to -
 - (i) Any off-shore banking business in the Cook Islands; or
 - (ii) The transfer of monies and property into or out of the Cook Islands in the course of any off-shore banking business; or
 - (iii) The account of any person with a licensee or any item of such an account or the fact of any person having, or having had such an account, -

which he has become aware of in his capacity as an officer, employee, or authorised agent of a licensee, or as an officer or employee of an auditing company; or

- (b) Attempts to induce others to breach professional secrecy in relation to any such matters.

(2) An offence under subsection (1) of this section may be committed either during or after the termination of the official or employment relationship or the exercise of the profession.

(3) Notwithstanding subsection (1) of this section, it shall not be an offence under this section to divulge such information -

- (a) To an Inspector pursuant to section 28 of this Act or if directed to do so by the Board pursuant to section 29 of this Act; or
- (b) To the person on whose behalf the off-shore banking business is being carried out; or
- (c) In the Cook Islands, to an officer or employee of the same licensee in the performance of his duties as an officer or employee; or
- (d) To an officer or employee of a bank or other such financial institution outside the Cook Islands, if all the persons concerned in the banking business or in whose name the account stands, consent in writing to his doing so; or
- (e) To an officer or employee of the licensee outside the Cook Islands, so long as the names of the persons concerned in the banking business and any information which might identify them and the names in which accounts stand and the balances therein, are not divulged; or
- (F) With the prior written approval of the Minister, to the Government of or to a public officer of any other country, provided such information is used only as part of -
 - (i) An amount representing the total assets of the licensee in the Cook Islands; or
 - (ii) An amount representing the total sum of monies transferred to the Cook Islands from that country or from the Cook Islands to that country and the currencies in which such monies were transferred, -

and the amounts of individual banking transactions, the names in which accounts stand, and the balances therein are not divulged.

(4) For the purposes of subsection (3)(d) of this section, all the persons concerned in off-shore banking business and in whose names accounts stand shall be deemed to have consented to an officer or employee of a licensee divulging to an officer or employee of a bank or other such financial institution outside the Cook Islands such information of the off-shore banking business being carried out as is essential to the carrying out of that banking business, but the consent deemed to be given pursuant to this subsection shall not apply to any other particulars.

(5) Nothing in this section shall prevent the High Court from requiring any person to give evidence or produce documents in any proceedings in the Court of any facts relevant in those proceedings which the person could otherwise be required to give or produce.

32. Breach of secrecy by officer or employee deemed to be breach by licensee - (1) For the purposes of section 31 of this Act, an offence by an officer or employee of a licensee or of an auditing company, as the case may be, or by a person after termination of his employment as an officer or employee of a licensee or of an auditing company, as the case may be, whether such offence occurs in the Cook Islands or elsewhere, shall be deemed also to be an offence by that licensee or by that auditing company.

(2) Notwithstanding subsection (1) of this section an offence under section 31 of this Act by a person after termination of the official or employment relationship or the exercise of the profession with a licensee or an auditing company shall not be deemed also to be an offence by the licensee or by the auditing company, where the licensee or auditing company, as the case may be, can demonstrate, on the balance of probabilities, that it has taken all reasonable steps to prevent an offence by the person.

33. Banking hours - A holder of an 'A' class off-shore banking licence shall maintain such banking hours for the conduct of his off-shore banking business as are prescribed by regulation.

34. Penalty - Every person who commits an offence against this Act, where no other penalty is provided, shall be liable upon conviction to imprisonment for a term not exceeding 1 year, or to a fine of \$10,000.00, or both.

35. Winding Up - The provisions of the Companies Act 1971-72 relating to the winding-up of companies shall apply to companies licensed under this Act, as if those companies were incorporated under the Companies Act 1971-72.

36. Relationship of this Act to other Acts - Where the provisions of this Act conflict with the provisions of any other Act, then the provisions of this Act shall prevail.

37. Regulations - The High Commissioner may by Order in Executive Council make regulations prescribing all matters that by this Act are required or permitted to prescribe by regulation or that are necessary for carrying out or giving full effect to the purposes or provisions of this Act and for the due administration thereof.

This Act is administered by the Monetary Board