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1998, No. 12

An Act to establish an Office of the Commissioner of Offshore Financial Services, and to provide for the appointment of a Commissioner for the administration and management of offshore financial services.

(7 September 1998)

PRICE 4.50

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

1. Short Title and commencement - (1) This Act may be cited as the Offshore Financial Services Act 1998.
(2) This Act shall come into force on a date to be specified by Order in Executive Council.
2. Interpretation - In this Act, unless the context otherwise requires, -
 - "Commissioner" means the person for the time being appointed pursuant to section 4;
 - "Licensee" means a trustee company or the holder of an offshore banking licence or an offshore insurance licence;
 - "Local body" means an island council or konitara vaka;
 - "Office" means the Office of the Commissioner for Offshore Financial Services;
 - "Offshore financial services" means services provided by a licensee in the ordinary course of business;
 - "Offshore legislation" means the International Companies Act 1981-82, the International Partnerships Act 1984, the International Trusts Act 1984, the Offshore Banking Act 1981, the Offshore Insurance Act 1981-82, the Trustee Companies Act 1981-82, the Offshore Industry (Criminal Provisions) Act 1995-96 and any other enactment for the provision of offshore financial services;
 - "Minister" means the Minister responsible for Finance;
 - "Registrar" includes the Registrar of International Companies, Registrar of International Trusts and the Registrar of International Partnerships and every other Registrar provided for by the offshore legislation;
 - "Trustee Companies Association" means the Cook Islands Trustee Companies Association, an unincorporated body representing trustee companies licensed pursuant to the Trustee Companies Act 1981-82, or such other body whether incorporated or otherwise, which shall represent the majority of trustee companies licensed as such under the Trustee Companies Act 1981-82 from time to time.

PART I
OFFICE AND COMMISSIONER FOR OFFSHORE
FINANCIAL SERVICES

3. Office of the Commissioner for Offshore Financial Services - There is established a department of State to be known as the Office of the Commissioner for Offshore Financial Services.
4. Appointment of Commissioner - (1) There shall be appointed by the Minister with the approval of Cabinet, a Commissioner for Offshore Financial Services who shall be the administrative head of the Office and who shall, subject to this Act and any regulations made hereunder, exercise the functions and powers vested in the Commissioner by this Act and by the offshore legislation.

(2) No person shall be appointed as Commissioner other than a person whom the Minister is satisfied is of good character and who -

- (a) has a qualification and not less than 5 years experience in the practise of either law, accounting or commerce; or
- (b) has wide knowledge of or experience in the provision of offshore financial services.

5. Commissioner Registrars and other staff to hold no other office - The Commissioner and any other person appointed under section 8 shall not accept or continue to hold or discharge the duties of any other paid office or be engaged (whether as principal or agent) or employed in any other occupation which is incompatible with or which may give rise to a conflict of interest in the due performance and proper discharge of their functions and powers.

6. Term of office of Commissioner - (1) The Commissioner shall hold office for a term not less than one year nor more than two years, but may from time to time be reappointed.

(2) Except where the office of Commissioner becomes vacant or the Commissioner is removed from office under section 7, the Commissioner shall, notwithstanding subsection (1), continue in office until a successor comes into office, notwithstanding that the term of appointment may have expired.

7. Vacation, removal or suspension of Commissioner from office - (1) The Commissioner may at any time resign from office by delivering a notice in writing to that effect to the Minister.

(2) The Commissioner shall be deemed to have vacated office if the Commissioner dies or is adjudged bankrupt, or becomes a candidate for or a member of Parliament or a local body.

(3) The Commissioner may at any time be removed from office by the Minister for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(4) The Commissioner may be suspended from office with or without remuneration where the Minister has reasonable grounds to suspect the existence of circumstances for the Commissioner to be removed from office pending an investigation into those circumstances, but any such suspension shall not continue beyond two months from the date of suspension and in the event that the grounds are not made out the Commissioner shall be reinstated and paid any remuneration not paid during the period of suspension.

(5) If the Commissioner dies or resigns or is removed from office, or his office becomes vacant, the vacancy created shall be filled in accordance with section 4.

8. Registrar and other staff of Commissioner - (1) The Commissioner shall be responsible for the appointment and termination of appointment of such Registrars as are necessary for the purposes of administering the offshore legislation, and who shall, in the performance of their statutory functions and duties, be responsible to the Commissioner.

(2) Subject to the provisions of this section, the Commissioner may appoint such officers and employ such persons as may be necessary for the efficient carrying out of the Commissioner's functions and powers.

(3) The remuneration and terms and conditions of employment of the Registrars and other staff employed pursuant to this section shall be determined by the Commissioner.

9. Access to records - Notwithstanding any provision in the offshore legislation to the contrary, the Commissioner shall for the purposes of performing the functions duties and powers imposed on the Commissioner, be entitled to have access to all records, documents, files and papers lodged with the Minister and every Registrar pursuant to the offshore legislation whether before or after the coming into force of this Act and the Monetary Board before the coming into force of this Act.

10. Delegation of powers by Commissioner - (1) The Commissioner may from time to time in writing delegate to a Registrar or to any officers or employees of the Commissioner, any of the powers or functions conferred on the Commissioner by this Act or by the offshore legislation, except this power of delegation.

(2) Subject to any general or special directions given or conditions imposed by the Commissioner on a person to whom any powers are delegated, that person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or to the holders of offices of a specified class.

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

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

(7) The Commissioner may, in addition to delegating his powers pursuant to this section, contract out to any other persons or organisations of established competence and reputation, any of the functions to be performed by the Commissioner pursuant to section 12(2)(b) and (c).

11. Confidentiality - (1) The Commissioner, a Registrar, persons employed by the Commissioner pursuant to section 8 and persons contracted under section 10(7) who except where permitted under this Act or any other Act, directly or indirectly discloses or uses or permits the use of any information acquired in the course of the performance of their duties, commits an offence and shall be liable on conviction to a fine of \$10,000.00 or a term of imprisonment not exceeding two years. A person convicted pursuant to this section shall, in addition to such fine or imprisonment also be liable to forfeit to the Crown any personal gain or benefit resulting from the commission of the offence.

(2) The Commissioner may, for the purpose of determining whether to grant a licence under the Offshore Banking Act 1981, the Offshore Insurance Act 1981-82 or the Trustee Companies Act 1981-82, conduct due diligence of and make enquiries concerning the applicant and the applicant's officers and employees, as the Commissioner deems fit, and all such due diligence and enquiries shall not be an offence under subsection (1) or any provision of the Offshore legislation prohibiting the disclosure of information.

(3) Without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before a Court against any person for any offence against this section, application is made for an order that all or any portion of the public should be excluded during all or any part of the hearing, by the prosecution, or any other person (whether a party to the proceedings or not) on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interests of a licensee or the interests of a person for whom the licensee acts or to whom the licensee provides services, the Court may make an order to that effect, provided that no such order shall relate to the passing of sentence.

PART II FUNCTIONS AND POWERS

12. Functions and powers of Commissioner - (1) It shall be the function of the Commissioner to ensure the efficient co-ordination and delivery of services provided to licensees by the Crown.

- (2) It shall be the further function and power of the Commissioner -
- (a) to receive and consider applications for licenses under the offshore legislation and to grant licenses in accordance with that legislation;
 - (b) to monitor compliance by licensees with their obligations under the offshore legislation, and any conditions that may be imposed on licensees under that legislation;
 - (c) from time to time to recommend to the Minister legislative, administrative or other action that will -
 - (i) better facilitate the provision of offshore financial services;
 - (ii) ensure better compliance with statutory obligations and administrative conditions imposed upon licensees;
 - (iii) ensure better compliance with conditions imposed upon the grant of any exemptions under the offshore legislation;
 - (iv) avoid acts or practices that may be detrimental to the reputation of the Cook Islands or inconsistent with the responsible delivery of offshore financial services;
 - (d) to co-ordinate and supervise the functions and activities of Registrars and other employees.

(3) In exercising the functions conferred on the Commissioner by subsection (2)(c), the Commissioner shall consult with the Trustee Companies Association.

PART III
MISCELLANEOUS

13. Regulations - The Queen's Representative may by Order in Executive Council make regulations as are necessary or expedient for the purposes of giving effect to the provisions of this Act and its administration including regulations prescribing the fees to be paid for applications and approvals under the offshore legislation.

14. Transitional - (1) The monies appropriated and specified in the Appropriation Act 1998 for the purposes of the Monetary Board outputs contained within the vote of the Prime Minister's Office shall without further appropriation than this section be deemed to be appropriated to the outputs of the office of the Commissioner under this Act.

(2) Every Registrar appointed under the offshore legislation before the coming into force of this Act shall continue to be so appointed on the same terms and conditions before the coming into force of this Act as if that appointment were made and the terms and conditions determined by the Commissioner under section 8.

15. Consequential amendments - The enactments and the provisions of those enactments set out in the first column of the Schedule are amended in the manner set out in the second column to that Schedule.

This Act is administered by the Commissioner for Offshore Financial Services.

(Section 16)

SCHEDULE**International Trusts Act 1984**

Section 2(1)

By deleting the definition "Monetary Board";

Schedule

By deleting the reference to the Monetary Board Act 1981 and inserting the following Acts -
"Offshore Financial Services Act 1998, Offshore Industry (Criminal Provisions) Act 1995-96".

International Partnership Act 1984

Section 2

By deleting the definition "Monetary Board";

Section 72(1)

By deleting the words "the Cook Islands Monetary Board Act 1981" and substituting the words "the Development Investment Act 1995-96, the Offshore Financial Services Act 1998, Offshore Industry (Criminal Provisions) Act 1995-96,".

International Companies**Act 1981-82**

Section 2(1)

By inserting in alphabetical order the following definition:
"Commissioner" means the Commissioner for Offshore Financial Services appointed pursuant to section 4 of the Offshore Financial Services Act 1998;"

Section 8(1)

By deleting the words "Public Service Act 1995-96" and substituting the words "Offshore Financial Services Act 1998";

Section 224

By deleting the word "Registrar" and substituting the word "Commissioner";

Section 249(2)

By deleting the words "Cook Islands Monetary Board Act 1981" and substituting the words "Development Investment Act 1995-96, the Offshore Financial Services Act 1998, Offshore Industry (Criminal Provisions) Act 1995-96,";

Section 249A(3)(b)

By deleting the words "Cook Islands Monetary Board" and substituting the word "Commissioner".

Offshore Banking Act 1981

Section 2

By inserting in alphabetical order the following definition: "Commissioner" means the Commissioner for Offshore Financial Services appointed pursuant to section 4 of the Offshore Financial Services Act 1998;"

By deleting the definitions of "Member", "Monetary Board" or "Board" and "Secretary";

Section 5(1)

By deleting the word "Secretary" and substituting the word "Commissioner";

Section 6

By deleting the words "Monetary Board" and substituting the word "Commissioner";

Section 7

By deleting the word "Secretary" wherever it appears and substituting the word "Commissioner";

By deleting from the heading the word "Board" and substituting the word "Commissioner";

(1)

By deleting the words "to the Secretary, he shall refer that application to the Board, which," and substituting the words "to the Commissioner, the Commissioner";

(2)

By deleting the words "In making its decision under subsection (1) of this section, the Board" and substituting the words "In making a decision under subsection (1), the Commissioner";

(3)

By deleting the word "Board" wherever it appears and substituting the word "Commissioner";

Section 8

By deleting the word "Board" wherever it appears and substituting the word "Commissioner";

By deleting the word "it" wherever it appears and substituting the words "the Commissioner";

Section 10

By deleting the word "Secretary" wherever it appears and substituting the word "Commissioner";

Section 11(3)

By deleting the word "Board" and substituting the word "Commissioner";

- Section 30 By deleting from the heading the word "Board" and substituting the word "Commissioner";
- By deleting the words "member of the Board, nor the Secretary nor an Inspector appointed under section 28 of this Act, shall" and substituting the words "The Commissioner, a member of the staff of the Commissioner and an Inspector appointed under section 28 shall not";
- Section 31(3)(a) By deleting the word "Board" and substituting the words "Commissioner".
- Offshore Insurance Act 1981-82**
- Section 2 By inserting in alphabetical order the following definition:
" "Commissioner" means the Commissioner for Offshore Financial Services appointed pursuant to section 4 of the Offshore Financial Services Act 1998;"
- By deleting the definitions of "Monetary Board" and "Secretary";
- Section 5 By deleting the words "Monetary Board" and substituting the word "Commissioner";
- By deleting the word "Secretary" wherever it appears and substituting the word "Commissioner";
- Section 6 By deleting from the heading the word "Board" and substituting the word "Commissioner";
- (1) By deleting the words "to the Secretary, he shall refer that application to the Board, which shall," and substituting the words "to the Commissioner, the Commissioner shall";
- (2) By deleting the words "In making its decision under subsection (1) of this section, the Board" and substituting the words "In making a decision under subsection (1), the Commissioner";
- (3) By deleting the word "Board" wherever it appears and substituting the word "Commissioner";

- Section 7(1) By deleting the words "Board grants a licence it"" and substituting the words "Commissioner grants a licence, the Commissioner";
- By deleting the words "as it thinks fit" and substituting the words "as the Commissioner thinks fit";
- (2) By deleting the word "Board" and substituting the word "Commissioner";
- Section 9 By deleting the word "Secretary" wherever it appears and substituting the word "Commissioner";
- Section 11(1) By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
- (1)(b) By deleting the word "Secretary" and substituting the word "Commissioner";
- (2) By deleting the words "Board intends to suspend or cancel a licence under subsection (1) of this section it" and substituting the words "Commissioner intends to suspend or cancel a licence under subsection (1), the Commissioner";
- (3) and (4) By deleting the word "its" wherever it appears and substituting the word "his";
- Section 14 By deleting the word "Board" and substituting the word "Commissioner";
- Section 16(b), 17, 19 and 20 By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
- Section 21 By deleting from the heading the word "Board" and substituting the word "Commissioner";
By deleting the words "No member of the Board, nor the Secretary nor an Inspector appointed under section 19 of this Act, shall" and substituting the words "The Commissioner, a member of the staff of the Commissioner and an Inspector shall not";

Section 22(3)(a)	By deleting the word "Board" and substituting the word "Commissioner";
Section 23A	By deleting the words "Monetary Board" and substituting the word "Commissioner".
Trustee Companies Act 1981-82 Section 2	By inserting in alphabetical order the following definition: ""Commissioner" means the Commissioner for Offshore Financial Services appointed pursuant to section 4 of the Offshore Financial Services Act 1998;"
	By deleting the definition of ""Monetary Board" or "Board"";
Section 5(1)	By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
(2)	By deleting the words "and the Board may" and substituting the words "and the Commissioner may";
	By deleting the words "as the Board in its discretion" and substituting the words "as the Commissioner, in the Commissioner's discretion,";
(3)	By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
Section 5B and 5C	By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
Section 5D	By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
(1)	By deleting the words "or on its own motion" and substituting the words "or on the Commissioner's own motion";
Sections 5E and 6	By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
Section 7	By deleting the word "Registrar" and substituting the word "Commissioner";

- Section 8
- By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
- By deleting from subsection (1) the words "it shall notify the company of its opinion" and substituting the words "the Commissioner shall notify the company of that opinion";
- By deleting from subsection (4) the word "Board's" and substituting the word "Commissioner's";
- Section 9(1)
- By deleting the words "The Board in its discretion may" and substituting the words "The Commissioner may in the Commissioner's discretion";
- Section 10(1)
- By deleting the words "upon application to the Board the Board's approval is first obtained" and substituting the words "application is made to the Commissioner and the Commissioner's approval is first obtained";
- (2)
- By repealing that subsection;
- (3)
- By deleting the words "the Board in considering whether its approval should be granted and the Advisory Committee in making recommendations to the Board" and substituting the words "the Commissioner in considering whether approval should be granted";
- (4)
- By deleting the words "the Board may" and substituting the words "the Commissioner may";
- By deleting the words "the Board may in its discretion" and substituting the words "the Commissioner may in the Commissioner's discretion";
- By deleting the words "approval by the Board" and substituting the words "approval by the Commissioner";
- Section 27(1) and (2)
- By deleting the word "Registrar" wherever it appears and substituting the words "Commissioner";
- (3)
- By repealing that subsection;
- Section 28(2)
- By deleting the word "Registrar" and substituting the word "Commissioner";

- Section 37(1) and 39 By deleting the word "Board" and substituting the word "Commissioner";
- Section 43(5) By deleting the word "Board" and substituting the word "Commissioner";
- (6) By deleting the word "Board" and substituting the word "Commissioner";
- By deleting the words "as it may approve" and substituting the words "as the Commissioner may approve";
- (9) By deleting the word "Board" and substituting the word "Commissioner";
- Section 45 By deleting the word "Board" and substituting the word "Commissioner".
- Cook Islands Monetary Board Act 1981**
- Section 18 By deleting the words "or the Offshore Banking Act 1981";
- Second Schedule By deleting from that Schedule reference to the Offshore Banking Act 1981.
- Offshore Industry (Criminal Provisions) Act 1995-96**
- Section 2 By inserting in alphabetical order the following definition: " "Commissioner" means the Commissioner for Offshore Financial Services appointed pursuant to section 4 of the Offshore Financial Services Act 1998;"
- By deleting from the definition of "associated legislation" the words "the Development Investment Act 1977, and the Monetary Board Act 1981" and substituting therefore "the Development Investment Act 1995-96";
- By deleting the definition of "Board";

Section 3

By deleting the word "Board" wherever it appears and substituting the word "Commissioner".
