



## ANALYSIS

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Price \$8.50

37. Consequential amendments

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2003, No. 11

An Act to establish the Financial Supervisory Commission and to set out its functions and powers  
(7 May 2003)

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 Financial Supervisory Commission Act 2003.

(2) This Act shall come into force on a date to be determined by the Queen's Representative by Order in Executive Council.

(3) Notwithstanding subsection (2), and without limiting the application of section 12 of the Acts Interpretation Act 1924, upon the passing of this Act, the powers to appoint Board members, the Commissioner, Registrars and other officers and employees of the Financial Supervisory Commission may be exercised prior to the date of this Act coming into force for the purpose of bringing this Act into operation on the date of its coming into force.

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

"Board" means the Board of the Financial Supervisory Commission appointed pursuant to section 4;

"Commission" means the Financial Supervisory Commission established by this Act;

"Commissioner" means the person appointed as Commissioner pursuant to section 13;

"financial year" means a year ending on the 30<sup>th</sup> June;

"licensed financial institution" means a licensee licensed pursuant to the Banking Act 2003 to carry on banking business, a Trustee Company licensed pursuant to the Trustee Companies Act 1981-82, an Offshore Insurance Company licensed pursuant to the Offshore Insurance Act 1981-82, and a person carrying on "insurance business" as defined in the Insurance Companies Deposits Act 1970-71;

"Minister" means the Minister responsible for Finance;

**PART 1**  
**FINANCIAL SUPERVISORY COMMISSION**

3. Financial Supervisory Commission- (1) There is established a statutory body, to be called the Financial Supervisory Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring holding and disposing of real and personal property, of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

4. Board members - (1) There shall be a Board of the Commission which shall, subject to the provisions of this Act, have overall control of the Commission and which shall exercise the duties, functions and powers of the Commission.

(2) The Board shall comprise 5 members appointed by the Minister, all of whom must have qualifications and experience in, and have shown capacity in financial or commercial matters, law or accounting.

(3) No person who is -

- (a) a member of Parliament; or
- (b) employed in the service of the Crown or any agency of the Crown; or
- (c) a director, legal or beneficial shareholder or employee of a licensed financial institution, or the spouse or immediate family of any such person,

shall be eligible for appointment as a member of the Board.

(4) The Minister shall, from amongst all persons appointed as Board members, appoint one of them as Chairperson of the Board.

5. Term of office and remuneration of Board members - (1) Except as provided in subsection (2), every Board member shall hold office for a term of two years but may from time to time be re-appointed.

(2) Three of the first Board members appointed pursuant to section 4(2), shall be appointed for a term of 3 years, but thereafter every Board member succeeding in office to those Board members shall be appointed for a term of 2 years.

(3) Notwithstanding anything in this section, every Board member whose office is terminated by effluxion of time shall continue to hold office until that Board member's successor comes into office.

(4) The Board members shall be paid out of the funds of the Commission such remuneration and allowances as shall from time to time be determined by the Queen's Representative by Order in Executive Council.

6. Extraordinary vacancies - (1) A Board member may resign at any time by written notice to the Minister.

- (2) The Minister shall terminate the appointment of any Board member who –
- (a) becomes of unsound mind or incapable of carrying out his or her duties;
  - (b) becomes bankrupt, suspends payment to or compounds with his or her creditors;
  - (c) is convicted in any jurisdiction of an offence involving dishonesty or fraud;
  - (d) is guilty of serious misconduct in relation to his or her duties;
  - (e) is absent, without leave of the chairperson from three consecutive meetings of the Board; or
  - (f) fails in the opinion of the Minister to have complied with his or her obligations under section 9; or
  - (g) is convicted of any offence under this Act.

(3) A person whose appointment is terminated pursuant to subsection (2) shall not be eligible for reappointment.

(4) If the appointment of a Board member is terminated, the vacancy shall be deemed to be an extraordinary vacancy.

(5) In the case of an extraordinary vacancy the Minister shall subject to sections 4(2) and 4 (3) appoint a person to fill that vacancy.

(6) A Board member appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of that Board member's predecessor, but may be re-appointed.

(7) The powers of the Board shall not be affected by an extraordinary vacancy in its membership.

7. Meetings of Board - (1) The first meeting of the Board shall be held on a day to be appointed by the Chairperson, such day to be in any event not later than one month after the coming into force of this Act.

(2) Subsequent meetings shall be held at such times and places as the Chairperson may from time to time appoint.

(3) The Chairperson or any three other Board members may at any time by notice in writing to all Board members call a special meeting of the Board.

(4) At all meetings three Board members shall constitute a quorum.

(5) The Chairperson shall preside at all meetings at which the Chairperson is present. In the absence of the Chairperson from any meeting, the Board members present shall appoint one of their number to be Chairperson of that meeting.

(6) At any meeting the Chairperson shall have a deliberative vote and in the case of an equality of votes, a casting vote.

(7) All questions arising at any meeting shall be decided by a majority of the votes of Board members recorded thereon.

(8) The Commissioner shall, unless excused by the Board, attend all meetings of

the Board and shall be entitled to be heard in respect of any matter being considered by the Board, but shall not be entitled to vote.

(9) Subject to the provisions of this Act and of any regulations made hereunder, the Board may regulate its procedure in such manner as it thinks fit.

8. Minutes of meetings - (1) The Board shall cause minutes to be kept in a book provided for the purpose, of all resolutions and proceedings of its meetings.

(2) The minutes shall be signed by the Chairperson at the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be furnished to every Board member.

9. Disclosure of conflicting interest - (1) If a Board member has any pecuniary interest, direct or indirect, in any contract, proposed contract, licence or other matter and is present at a meeting of the Board at which the contract, proposed contract, licence or other matter is the subject of consideration, that Board member shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract, licence or other matter, or vote on any question with respect to it, and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) A Board member who fails to comply with subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and to imprisonment for a term not exceeding one year unless the Board member proves that he did not know that the contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board.

(4) No act or proceeding of the Board shall be questioned on the ground that a Board member has contravened this section.

10. Conflicts of interest - (1) For the purposes of section 9 a Board member shall be treated, subject to subsections (2) and (3) as having a pecuniary interest, direct or indirect, in a contract, proposed contract, licence or other matter if -

- (a) he or she or any nominee of that Board member, is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration;
- (b) he or she is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or

- (c) he or she or any partner of that Board member is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter.
- (2) Subsection (1) shall not apply to membership of or employment under any public body.
- (3) In the case of married persons the pecuniary interest of one spouse shall be deemed for the purpose of section 9 to be also the interest of the other.

11. Board may refer matters for investigation - (1) The Board may from time to time appoint one or more of its members or any other person or persons having appropriate qualifications or experience to investigate and report to the Board on such matters as are referred to him or them by the Board, for the purpose of the proper exercise of the Board's powers or its duties or functions under this Act.

(2) Without limiting the generality of subsection (1), the Board shall establish and maintain a sub-committee for the purpose of informing the Board of international developments generally affecting or relating to the regulation and supervision of institutions having functions similar to licensed financial institutions.

(3) Notwithstanding subsection (3) of section 4, a person who is otherwise disqualified pursuant to paragraph (c) of that subsection shall be eligible for appointment to the sub-committee established pursuant to subsection (2) for the purposes only of that sub-committee. Any such person shall be deemed not to have a direct or indirect pecuniary interest in any matter by reason alone of participating in discussion on any matter relating to international developments being considered by the sub-committee.

12. Delegation of powers of Board - (1) The Board may from time to time delegate to any Board member, the Commissioner, any officer or employee of the Commission, any of the powers or functions of the Board, including, subject to such limitations as may be imposed by the Board, the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions imposed by the Board or person to whom any powers are delegated pursuant to this section, the 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 appointment, or to the holders of offices or appointments of a specified class.

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

(6) The delegation of any power by the Board or by any person shall not prevent the exercise of that power by the Board or, as the case may require, by the person by whom the delegation is made.

13. Commissioner, other employees - (1) The Board shall appoint as the

administrative head of the Commission, a Commissioner on such terms and conditions as may be determined by the Board, and such registrars as are required to administer the enactments set out in the First Schedule.

(2) The Commissioner shall be responsible to the Board for the proper and efficient administration of the Commission and for its compliance with the provisions of this Act.

(3) A person appointed as Commissioner shall have qualifications and experience in, and shall have shown capacity in financial or commercial matters, law or accounting.

(4) The Commissioner may from time to time, within policy guidelines established by the Board, appoint such other officers and employees of the Commission including acting or temporary or casual officers and employees, as are necessary for the efficient exercise of the duties, functions and powers of the Commission.

(5) No person who is –

- (a) a member of Parliament; or
- (b) employed in the service of the Crown or any agency of the Crown; or
- (c) a director, legal or beneficial shareholder or employee of a licensed financial institution, or the spouse or immediate family of any such person,

shall be eligible for appointment as the Commissioner.

14. Personal liability - No Board member, Commissioner, employee, officer, registrar or other person acting under the authority of the Commission, shall be personally liable for any act or default done or omitted to be done in that capacity in good faith.

## **PART 2**

### **DUTIES, FUNCTIONS AND POWERS**

15. Duties of the Commission - (1) It shall be the duty of the Commission to administer this Act and the enactments set out in the First Schedule (which shall include for the purposes of this Act, regulations and orders made thereunder) and to regulate licensed financial institutions in the Cook Islands in a manner which is to internationally-accepted standards.

(2) Without limiting subsection (1), the Commission is charged with the following duties –

- (a) to keep under review, the operation of the Cook Islands legislation relating to licensed financial institutions and the effectiveness of supervision of licensed financial institutions;
- (b) to continually monitor the extent to which Cook Islands legislation and the supervision of licensed financial institutions comply with internationally accepted standards;

16. Functions of the Commission - (1) In the carrying out of its duties, the Commission shall have the following functions -

- (a) to administer the enactments set out in the First Schedule;
- (b) to licence licensed financial institutions and monitor their compliance with their obligations under the enactments set out in the First Schedule and any conditions that may be imposed on licensed financial institutions by those or any other enactment, or imposed by any licence granted pursuant to those enactments;
- (c) from time to time to recommend to the Minister legislative, administrative or other action that will -
  - (i) better facilitate the responsible provision of services provided by licensed financial institutions;
  - (ii) ensure better compliance with statutory obligations and licensing or administrative conditions imposed upon licensed financial institutions;
  - (iii) ensure better compliance with conditions imposed upon the grant of any exemptions under the enactments set out in the First Schedule;
  - (iv) avoid acts or practices that may be detrimental to the reputation of the Cook Islands or inconsistent with the responsible provision of services by licensed financial institutions;
- (d) monitor the effectiveness of the enactments set out in the First Schedule in providing for the supervision and regulation of services provided by licensed financial institutions to internationally accepted standards;
- (e) to make recommendations to the Minister on such amendments or revisions to existing legislation or new legislation relating to licensed financial institutions as the Commission considers necessary or appropriate in developing and regulating the integrity of licensed financial institutions;
- (f) to provide the Minister with periodic reports, advice and assistance on policy matters relevant to the administration of this Act;
- (g) to consult with, develop and maintain regular contact with licensed financial institutions with a view to -
  - (i) encouraging the development of high professional standards within licensed financial institutions ; and
  - (ii) initiating, promoting and maintaining codes of conduct for licensed financial institutions ;
  - (iii) developing and maintaining for persons engaged by licensed financial institutions, a system of continuing education in respect of issues relating to financial crime and money laundering.



- (h) to develop such measures as may be necessary to appropriately inform the general public regarding its functions and regarding matters relating to or affecting licensed financial institutions.

(2) In the exercise of its functions under paragraphs (c) and (e) of subsection (1), the Commission shall, before making recommendations to the Minister, consult with licensed financial institutions.

17. Condition that licensed financial institution must have Compliance Officer - (1) It shall be a condition of every licence issued to a licensed financial institution that the licensed financial institution must have a person appointed and holding office as a Compliance Officer in accordance with qualifications and criteria prescribed by regulation.

(2) A Compliance Officer shall be responsible for ensuring that the licensed financial institution by whom that Compliance Officer is employed shall establish and maintain such office and accounting procedures as shall enable the financial institution to meet its obligations under any enactment applicable to it, in respect of -

- (a) customer identification;
- (b) record keeping and retention; and
- (c) any other matters as may be prescribed by regulation.

18. Powers of the Commission - (1) The Commission shall have all the powers reasonably necessary for the effective performance of its functions.

(2) Without limiting the generality of subsection (1), the Commission or any suitably qualified person authorised by the Commission may for the purpose of ensuring compliance with this Act or any regulations made thereunder -

- (a) on an annual basis and at any reasonable time, enter any premises, in which the Commission believes, on reasonable grounds, that there are records relevant to ensuring compliance with this Act;
- (b) require a financial institution or any officer, employee or agent of a licensed financial institution to supply such information or explanation as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions under this Act;
- (c) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (d) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
- (e) use or cause to be used any copying equipment in the premises to make copies of any record;

- (f) direct a licensed financial institution that has without reasonable excuse failed to comply in whole or in part with any obligations under this Act or any licence issued under this Act to implement any action plan to ensure compliance with those obligations.
- (3) Any person who wilfully obstructs or hinders or fails to co-operate with the Commissioner or any authorised person in the lawful exercise of the powers under subsection (2) commits an offence punishable by -
- (a) in the case of an individual, to a fine of up to \$20,000, or a term of imprisonment not exceeding 2 years; or both;
  - (b) in the case of a body corporate, to a fine of up to \$150,000.

19. Government policy - (1) In the exercise of its duties, functions and powers and in the preparation of its statement of corporate intent, the Commission shall have regard to any written policy directions conveyed to it by the Minister in writing and which are not inconsistent with the duties, functions or powers of the Commission.

(2) A copy of every written policy direction given by the Minister pursuant to subsection (1) shall be included in the next ensuing annual report of the Commission.

### PART 3 DISCLOSURE OF INFORMATION

20. Disclosure to the Commission - (1) The Commission may require any licensed financial institution, or any director, other officer or employee of such licensed financial institution, to supply to the Commission in such form and within such time as the Commission may determine, such information as the Commission considers necessary to enable it to carry out its functions.

(2) The Commission may at all reasonable times by notice in writing given to any person reasonably believed to have information relevant to an enquiry by the Commission, require that person to -

- (a) provide specified information or information of a specified description; or
- (b) produce specified documents or documents of a specified description,

as it may reasonably require in connection with the exercise by the Commission of functions conferred on it by this Act or by any other enactment administered by the Commission.

(3) Where, in accordance with section 23 the Commission is satisfied that assistance should be provided in response to a request by an overseas regulatory authority, it may in writing direct any person reasonably believed to have information relevant to enquiries to which the request relates, within a stated time, to -

- (a) provide the Commission with specified information or information of a specified description with respect to any matter relevant to the inquiry to which the request relates;

- (b) produce specified documents or documents of a specified description relevant to that inquiry; or
- (c) give to the Commission such assistance in connection with that inquiry as the Commission may specify in writing.

(4) Where a person fails to comply with a requirement under subsection (2) or a direction given under subsection (3) within seven days of the date of the requirement or direction, or such longer period as the Commission may permit, the Commission may apply to a Judge of the High Court for an order requiring that person to comply with the requirement or direction.

(5) Where, in connection with a requirement under subsection (2) or a direction given under subsection (3), the Commission considers it necessary to examine a person on oath, the Commission may apply to a Judge of the High Court to have that person examined by the court and to have the results of that examination sent to the Commission.

(6) The court shall process an application under subsection (5) as soon as practicable and shall send the result of the examination to the Commission within fourteen days of the examination.

(7) Where documents are produced pursuant to subsection (2) or (3) the Commission may take copies of them or extracts from them.

(8) A person shall not be required under this section to disclose information or to produce a document which that person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in civil or criminal proceedings in the High Court.

(9) Where a person claims a lien on a document, its production under this section shall be without prejudice to that lien.

(10) In this section "document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form.

(11) For the purpose of this section, but subject to subsection (12), any information or other matter is deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by or by a representative of a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by or by a representative of a person seeking legal advice from the adviser; or
- (c) by any person -
  - (i) in contemplation of or in connection with legal proceedings; and
  - (ii) for the purpose of those proceedings.

(12) No information or other matter shall be deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

- (13) A person who without reasonable cause –
- (a) fails to comply with a requirement of the Commission under subsection (2) or a direction of the Commission under subsection (3); or
  - (b) with intent to avoid the provisions of subsections (2) or (3) destroys, mutilates, defaces, hides or removes a document; or
  - (c) wilfully obstructs an inquiry by the Commission made in accordance with the provisions of subsection (2) or (3),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years and in the case of a continuing offence to a fine not exceeding \$1,000 for each day during which the offence continues.

(14) Where –

- (a) an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person, as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly;
- (b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

21. Offence to supply false information - Any person who supplies or is concerned in supplying to the Minister or the Commission or any other person any statement, account, report or other information pursuant to this Act or any purpose for which any such statement, account, report or information is lawfully required thereunder, knowing the same to be false in a material particular, shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years.

22. Confidentiality - (1) Subject to subsection (2), any person who is a Board member, the Commissioner, a registrar or other officer, employee, agent or adviser of the Commission and who discloses any information relating to –

- (a) the affairs of the Commission;
- (b) any application made to the Commission;
- (c) the affairs of a licensed financial institution; or
- (d) the affairs of a customer, client or policyholder of, or a company or fund managed by a licensed financial institution,

that he has acquired in the course of his or her duties or in the exercise of the Commission's functions under this or any other enactment, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years.

- (2) Subsection (1) shall not apply to a disclosure –
- (a) lawfully required or permitted by Cook Islands law;
  - (b) for the purpose of assisting the Commission in the exercise of any of the functions conferred on it by this Act or by any other enactment;
  - (c) in respect of the affairs of a licensed financial institution or of a customer, client, policyholder of, or a company or fund managed by a financial institution, with the authority of the licensed financial institution, customer, client, policyholder, company or fund as the case may be (which consent has been voluntarily given);
  - (d) if the information disclosed is or has been available to the public from any other source;
  - (e) where the information disclosed is in a manner that does not enable the identity of any licensed financial institution or of any customer, client, or policyholder of, or company or fund managed by a licensed financial institution to which the information relates to be ascertained;
  - (f) to a person with a view to the commencement of, or for the purpose of –
    - (i) criminal proceedings;
    - (ii) disciplinary proceedings, whether within or outside the Cook Islands, relating to the exercise by a barrister or solicitor, auditor, accountant, valuer or actuary of his or her professional duties; or
    - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his or her duties; or
  - (g) for the purposes of any legal proceedings in connection with –
    - (i) the winding-up or dissolution of a licensed financial institution; or
    - (ii) the appointment or duties of a receiver of a licensed financial institution.

23. Disclosure to overseas regulatory authority - (1) Subject to subsection (4), the Commission may disclose to an overseas regulatory authority, information including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(2) In deciding whether or not to exercise its power under subsection (1), the Commission may take into account -

- (a) whether the inquiry relates to the possible breach of a law or other requirement which has no close parallel in the Cook Islands or involves the assertion of a jurisdiction not recognised by the Cook Islands.

- (b) the seriousness of the matter to which the inquiry relates and the
- (c) importance to the inquiry of the information sought in the Cook Islands.

(3) The Commission may decline to exercise its powers under subsection (1) unless the overseas regulatory authority undertakes to pay the Commission for its costs of the exercise in such amount as the Commission considers reasonable.

(4) Nothing in subsection (1) shall authorise a disclosure by the Commission unless -

- (a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Commission has been given an undertaking by the recipient authority to not, without the consent of the Commission, disclose the information provided; and
- (c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's lawful regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
- (d) the Commission is satisfied that information provided pursuant to the exercise of its powers under subsection (3) will not be used in criminal or other proceedings against the Commission or any other person providing the information.

(5) Where in the opinion of the Commission it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Judge of the High Court in the manner contemplated by subsections (4) and (5) of section 20, the Commission shall immediately notify the Solicitor-General with particulars of the request, and shall send the Solicitor-General copies of all documents relating to the request, and the Solicitor-General shall be entitled, in a manner analogous to amicus curiae, to appear or take part in any proceedings in the Cook Islands or in any appeal from such proceedings, arising directly or indirectly from any such request.

**PART 4**  
**ACCOUNTABILITY**

24. Funds of the Commission - (1) The funds of the Commission shall comprise –
- (a) all license fees and registration fees payable under the enactments set out in the First Schedule which, without further authority than this section, shall be and are appropriated to the Commission for the lawful carrying out of its functions and powers under this Act;
  - (b) any other monies appropriated by Parliament for the purposes of the Commission;
  - (c) monies donated to the Commission or to the Government of the Cook Islands for the purposes of the Commission, by any regional or international agency or by any foreign Government.

(2) Where in any financial year the Board is of the opinion that the funds of the Commission will be in excess of the amount which the Board considers will be sufficient to enable the Commission to carry out its functions, the Board shall authorise the excess to be paid to the Cook Islands Government Account.

25. The Commission account - (1) Notwithstanding section 43 of the Ministry of Finance and Economic Act 1995-96, the Commission may with the approval of the Minister keep such bank account or accounts as may from time to time be approved by the Board.

(2) No money shall be withdrawn from any bank account except by cheque or other instrument signed by such person or persons in such manner as the Board may from time to time determine.

26. Financial reporting and fiscal updates - The Commission shall deliver to the Ministry of Finance and Economic Management, financial reports and fiscal updates in accordance with Parts II and V of the Ministry of Finance and Economic Management Act 1995-96, as if the Commission was a government department as defined in that Act.

27. Statement of corporate intent - (1) The Board will on behalf of the Commission deliver to the Minister not later than 3 months before the commencement of each financial year, a statement of corporate intent, the first statement to be delivered within 45 days of the date of this Act coming into force, or such longer period as the Minister may allow.

(2) The statement of corporate intent shall each year contain Government's policy as it affects the Commission and in addition specify in respect of the next financial year, and insofar as is practicable, for the next immediately succeeding financial year, the following information -

- (a) the objectives of the Commission;
- (b) the nature and scope of the activity to be undertaken;

- (c) the performance targets and other measures by which the performance of the Commission may be judged in relation to its objectives;
- (d) the financial resources required to achieve performance targets;
- (e) the costs, if any, to the Commission in recognising Government's policies;
- (f) the accounting policies of the Commission;
- (g) such other matters as are agreed between the Minister and the Commission.

(3) The statement of corporate intent may from time to time be revised by agreement between the Board and the Minister.

(4) The statement of corporate intent and any revised statement of corporate intent agreed on pursuant to subsection (3) shall be printed and made available to the public at a fee calculated to recover the cost of printing, within 14 days of being approved by the Board.

28. Annual report - (1) Within 3 months after the end of each financial year the Board shall deliver to the Minister a report of the operations of the Commission during that financial year, including statements of -

- (a) financial position;
- (b) financial performance;
- (c) cashflows;
- (d) commitments;
- (e) specific fiscal risks;
- (f) accounting policies;
- (g) outputs and outcomes actually achieved,

together with such other statements as are consistent with generally accepted accounting practice.

(2) The annual report made under subsection (1) shall state the information necessary to enable an informed assessment of the operations of the Commission including a comparison of the performance of the Commission with the statement of corporate intent.

(3) The Minister shall, as soon as an annual report is received by him, table a copy in Parliament if Parliament is then in Session and if Parliament is not then in Session, shall table the report at the commencement of the next ensuing Session.

29. Application of Ministry of Finance and Economic Management Act - Notwithstanding the provisions of section 68 of the Ministry of Finance and Economic Management Act 1995-96, the provisions of that Act shall apply to the Commission except to the extent that those provisions are inconsistent with this Act.

30. Office of the Public Expenditure Review Committee and Audit to be auditor of the Commission - (1) The Office of the Public Expenditure Review Committee shall be the auditor of the Commission, which office will have and may exercise the functions, duties and powers it has under the Public Expenditure Review Committee and Audit Act 1995-96.



(2) Without limiting subsection (1), the Board may with the agreement of the Office of Public Expenditure Review Committee and Audit, appoint a person or a firm to conduct audits of the Commission.

31. Protection from disclosure of sensitive information - Nothing in this Act shall be construed as requiring the inclusion in any report required under this Act, any information that could be properly withheld if it would otherwise damage the national interests of the Cook Islands or the commercial interests of licensed financial institutions, or any person who is a member, director or other officer, or an employee of a licensed financial institution, or is information that may be withheld under any Act in force concerning the disclosure of information.

#### PART 5 MISCELLANEOUS

32. Seal - (1) The Commission shall have a seal which shall be kept in the custody of the Commissioner and shall be used only pursuant to a resolution of the Board.

(2) The Commissioner shall be responsible for keeping a record of every occasion on which the seal is used.

33. Act binding on Crown - This Act shall bind the Crown.

34. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council promulgate such regulations as may be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) All such regulations shall be laid before Parliament within fourteen days after the date of making thereof if Parliament is then in Session, and if Parliament is not then in Session, shall be laid before Parliament at the commencement of the next ensuing Session.

35. Transitional - (1) Upon the date of coming into force of this Act, all assets and liabilities of the Office of the Commissioner for Offshore Financial Services established by the Offshore Financial Services Act 1998 shall be transferred to and vest in the Commission without further assurance than this section and the Commission shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities.

(2) Subject to subsection (5) -

(a) all assets and liabilities of the Office of the Money Laundering Authority established by the Money Laundering Prevention Act 2000, shall be transferred to and vest in the Commission without further assurance than this section and the Commission shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities; and

- (b) all monies appropriated by Parliament for the year ending 30<sup>th</sup> June during which this Act comes into force for the purposes of the Office of the Commissioner for Offshore Financial Services and the Money Laundering Authority shall, without further authority than this subsection, be appropriated to the Commission.

(3) The Commissioner for Offshore Financial Services appointed pursuant to the Offshore Financial Services Act 1998 and every Registrar appointed before the coming into force of this Act by the Commissioner for Offshore Financial Services under any of the enactments set out in the First Schedule shall hold office as Commissioner of the Financial Supervisory Commission and as Registrars respectively for such period and upon such terms and conditions as to remuneration or otherwise as shall be determined by the Commission, but in all other respects as if their appointments were made by the Commission or the Commissioner as the case may be, under section 13 of this Act.

(4) Any assets and liabilities held by the Financial Intelligence Unit set up by the Money Laundering Authority for the purposes of meeting certain of its obligations under the Money Laundering Prevention Act 2000, or any funds appropriated to the Financial Intelligence Unit for the financial year in which this Act comes into force, shall not be transferred to, vest in, or be appropriated to the Commission.

36. Savings - Notwithstanding the repeal by this Act of the Offshore Financial Services Act 1998 -

- (a) every licence issued by the Commissioner for Offshore Financial Services pursuant to the provisions of the Trustee Companies Act 1981 shall continue in force according to its tenor and shall be deemed to have been issued by the Commission;
- (b) every Offshore Insurance Licence issued by the Commissioner for Offshore Financial Services pursuant to the Offshore Insurance Act 1981 shall continue in force according to its tenor and shall be deemed to have been issued by the Commission.

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

38. Repeal - The Offshore Financial Services Act 1998 is repealed.

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This Act is administered by the Financial Supervisory Commission.

**FIRST SCHEDULE**

**Enactments administered by the Commission**

Banking Act 2003  
Trustee Companies Act 1981-82  
Offshore Insurance Act 1981-82  
Financial Transactions Reporting Act 2003  
Insurance Companies' Deposits Act 1970-71  
International Companies Act 1981-82  
International Trusts Act 1984  
International Partnerships Act 1984



**Offshore Insurance Act 1981-82**

## Section 2

By deleting the definition of "Commissioner";  
By inserting in alphabetical order the following definition:  
""Commission" means the Financial Supervisory Commission established by the Financial Supervisory Commission Act;"

## Section 5

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

## Section 6

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

(1) By deleting the words "to the Commissioner, the Commissioner shall", and substituting the words "to the Commission, the Commission shall";

(2) By deleting the words "In making a decision under subsection (1), the Commissioner", and substituting the words "In making a decision under subsection (1), the Commission";

(3) By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";

## Section 7(1)

By deleting the words "Commissioner grants a licence, the Commissioner", and substituting the words "Commission grants a licence, the Commission";

By deleting the words "as the Commissioner thinks fit" and substituting the words "as the Commission thinks fit";

(2) By deleting the word "Commissioner" and substituting the word "Commission";

## Section 9

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

Section 11(1)	By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
(1)(b)	By deleting the word "Commissioner" and substituting the word "Commission";
(2)	By deleting the words "Commissioner intends to suspend or cancel a licence under subsection (1), the Commissioner", and substituting the words "Commission intends to suspend or cancel a licence under subsection (1), the Commission";
(3) and (4)	By deleting the word "his" wherever it appears and substituting the word "its";
Section 14	By deleting the word "Commissioner" and substituting the word "Commission";
Section 16(b), 17, 19 and 20	By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
Section 21	By deleting from the heading the word "Commissioner" and substituting the word "Commission"; By deleting the words "By deleting the words "The Commissioner, a member of the staff of the Commissioner and an Inspector appointed under section 28 shall not", and substituting the words "A member of the Board of the Commission, the Commissioner and other employees or agents of the Commission shall not";
Section 22(3)(a)	By deleting the word "Commissioner" and substituting the word "Commission";
Section 23A	By deleting the words "Commissioner" and substituting the word "Commission" .
Trustee Companies Act 1981-82 Section 2	By deleting the definition of "Commissioner"; By inserting in alphabetical order the following definition: " "Commission" means the Financial Supervisory Commission established by the Financial Supervisory Commission Act 2003;"

- Section 5(1) By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
- (2) By deleting the words "and the Commissioner may" and substituting the words "and the Commission may";
- By deleting the words "as the Commissioner, in the Commissioner's discretion" and substituting the words "as the Commission, in the Commission's discretion,";
- (3) By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
- Section 5B and 5C By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
- Section 5D By deleting the word "Board" wherever it appears and substituting the word "Commissioner";
- (1) By deleting the words "or on the Commissioner's own motion" and substituting the words "or on the Commission's own motion";
- Sections 5E and 6 By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
- Section 7 By deleting the word "Commissioner" and substituting the word "Commission";
- Section 8 By deleting the word "Commissioner" wherever it appears and substituting the word "Commission";
- By deleting from subsection (1) the words "the Commissioner shall notify the company of that opinion", and substituting the words "the Commission shall notify the company of that opinion";
- By deleting from subsection (4) the word "Commissioner's" and substituting the word "Commission's";

- Section 9(1) By deleting the words "The Commissioner may in the Commissioner's discretion", and substituting the words "The Commission may in the Commission's discretion";
- Section 10(1) By deleting the words "application is made to the Commissioner and the Commissioner's approval is first obtained", and substituting the words "application is made to the Commission and the Commission's approval is first obtained";
- (3) By deleting the words "the Commissioner in considering whether approval should be granted" and substituting the words "the Commission in considering whether approval should be granted";
- (4) By deleting the words "the Commissioner may" and substituting the words "the Commission may";
- By deleting the words "the Commissioner may in the Commissioner's discretion", and substituting the words "the Commission may in the Commission's discretion";
- By deleting the words "approval by the Commissioner" and substituting the words "approval by the Commission";
- Section 27(1) and (2) By deleting the word "Commissioner" wherever it appears and substituting the words "Commission";
- Section 28(2) By deleting the word "Commissioner" and substituting the word "Commission";
- Section 37(1) and 39 By deleting the word "Commissioner" and substituting the word "Commission";
- Section 43(5) By deleting the word "Commissioner" and substituting the word "Commission";
- (6) By deleting the word "Commissioner" and substituting the word "Commission";
- By deleting the words "as the Commissioner may approve" and substituting the words "as the Commission may approve";



- (9) By deleting the word "Commissioner" and substituting the word "Commission";
- Section 45 By deleting the word "Commissioner" and substituting the word "Commission".
- Cook Islands Monetary Board Act 1981**
- Section 18 By deleting section 18
- Insurance Companies Deposits Act 1970-71**
- Section 2 By deleting the definition of "Financial Secretary:  
By inserting in alphabetical order, the following definition – "Commission" means the Financial Supervisory Commission established by the Financial Supervisory Commission Act 2003".
- Section 3 By deleting the words "Financial Secretary" and substituting the word "Commission".
- Section 7  
(1) By deleting the words "Financial Secretary" and substituting the word "Commission".  
(2) By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 8  
(1) By deleting the word "Financial Secretary" and substituting the word "Commission".  
(2) By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 9  
(1) By deleting the word "Financial Secretary" and substituting the word "Commission".

- (2) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (3) By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 10 By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 11  
(1) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (3) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (4) By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 14  
(1) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (2) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (4) By deleting the word "Financial Secretary" and substituting the word "Commission".
- Section 16  
(1) By deleting the word "Financial Secretary" and substituting the word "Commission".
- (3) By deleting the word "Financial Secretary" and substituting the word "Commission".

Section 21

By deleting the word "Financial Secretary" (including in the heading to that section) and substituting the word "Commission".

By deleting the word "remuneration" and substituting the word "fee".

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