



ANALYSIS

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1984-85, No. 30

An Act to amend the Off-shore Banking Act 1981

(12 March 1985.

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 - This Act may be cited as the Off-shore Banking Amendment Act 1984-85 and shall be read together with and deemed part of the Off-shore Banking Act 1981 (hereinafter referred to as the "principal Act").

2. Licensee to be body corporate - Section 4 of the principal Act is amended by adding after the word "licence" the following words, "and in the case of a 'C' class off-shore banking licence the licensee shall be an international company registered under the provisions of the International Companies Act 1981-82 or a foreign company registered under the provisions of that Act."

3. Applications for licences - Section 5 of the principal Act is amended in subsection (2) by:

(a) omitting the word "two" and substituting the word "three"; and

(b) adding after paragraph (b) the following paragraph:

"(c) A 'C' class off-shore banking licence."

4. Licences may be subject to conditions - Section 8 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

"(1) The Board may on granting a licence or at any

time after granting a licence impose such terms and conditions as it might think fit and without limiting the generality of the foregoing it may include such terms and conditions as to the name of a licensee and the offshore banking business that may be conducted by a licence."

5. Licence not transferable - Section 11 of the principal Act is amended by adding after subsection (2) the following subsections:

"(3) Notwithstanding subsection (2) the licensee of a 'C' class off-shore banking licence may transfer that licence with the written approval of the Board.

(4) A transfer of a 'C' class off-shore banking licence by a licensee other than in accordance with the provisions of subsection (3) shall be void and of no effect."

6. Cancellation or suspension of licence - Section 12 of the principal Act is repealed and the following section substituted:

"12. Cancellation or suspension of licence (1) The Board may cancel or suspend a licence where it is of the opinion that a licensee or a director or officer of a licensee:

- (a) has failed to comply with or breaches a condition upon which a licence was granted pursuant to section 8; or
- (b) has contravened a provision of this Act; or
- (c) has contravened a provision of any other Act; or
- (d) has committed or is likely to commit a criminal offence prescribed by the law of the Cook Islands, or by any other jurisdiction beyond the Cook Islands being a jurisdiction to which the licensee, director or officer is subject, and that offence is relevant to the business of the licensee, or in the absolute discretion of the Board is prejudicial to the reputation of the Cook Islands.

(2) Where the Board cancels or suspends a licence it shall give notice to the licensee within 7 days of its decision by delivering such notice to the registered office of the licensee and such licence shall be deemed to have been cancelled or suspended as the case may be as from the date of service.

(3) A licence cancelled or suspended pursuant to this section shall forthwith be forwarded to the Secretary by the person who was immediately prior to cancellation or suspension the licensee.

(4) A decision of the Board to cancel or suspend a licence shall not be questioned in any way or in any Court except upon the grounds provided in Section 14."

7. Licence may be cancelled - Section 13 of the principal Act is repealed.

8. Appeal against cancellation or suspension - Section 14 of the principal Act is repealed and the following section substituted:

"14 Appeal against cancellation or suspension - (1) A licensee aggrieved by the cancellation or suspension of a licence may within 14 days of service of notice, appeal against that cancellation or suspension to a Judge of the High Court upon the grounds that the provisions of either paragraphs (a) (b) (c) or (d) of section 12 have not been contravened.

(2) Every appeal, unless otherwise ordered by the Court shall be heard in camera and no details of the proceedings shall be published by any person without leave of the Court.

(3) A prima facie case shall be deemed to have been established upon the production of a certificate signed by the Secretary as to the reasons for suspension or cancellation of the licence.

(4) Every determination or order of the Judge in respect of or in connection with proceedings commenced pursuant to this section shall be final and conclusive and without appeal, whether to the Court of Appeal of the Cook Islands or to Her Majesty the Queen in Council or otherwise, and shall not be questioned in any way."

9. New Heading - The principal Act is amended by inserting after section 25 the following heading:

"'C' CLASS LICENCES"

10. New sections relating to 'C' class licences - The principal Act is amended by inserting after the heading "'C' Class Licence" as inserted by section 9 of this Act, the following sections:

"25A Permitted business - (1) Subject to subsection (2), and subject to such terms and conditions as may be imposed pursuant to section 8, an international company granted a 'C' class off-shore banking licence shall transact only off-shore banking business.

(2) Unless otherwise exempted by the Board a 'C' class bank licensee, its officers and employees, shall not issue any cheque or draft drawn on the licensee.

(3) Unless otherwise exempted by the Board, all business transacted by a 'C' class bank licensee shall be done with the knowledge of a resident director as defined in section 2 of the International Companies Act 1981-82.

(4) Unless otherwise exempted either in part or in whole by the Board, every document issued by or on behalf of a 'C' class bank licensee shall have endorsed thereon a notice as shall be prescribed by regulation.

25B Licence fees - There shall be paid in respect to a 'C' class banking licence an annual licence fee as may be prescribed by regulation.

25C Deposit required from 'C' class bank licensee
(1) Every licensee of a 'C' class bank shall deposit with the Government of the Cook Islands the sum of \$10,000.

(2) Subject to subsection (3) a deposit shall be refunded:

(a) on the expiration of 6 months from the date of service of written notice advising the Secretary that the licensee has ceased to carry on

off-shore banking business; and

- (b) if the Board is satisfied that within that period referred to in paragraph (a) the licensee has not carried on off-shore banking business; and
- (c) if the Board is satisfied that all liabilities of the licensee are fully liquidated or otherwise provided for.

(3) A deposit may be forfeited by order of the Board where a 'C' class off-shore banking licence is cancelled pursuant to section 12.

(4) Every deposit shall be paid into and form part of the public account and until refunded in accordance with subsection (2) shall be deemed to be the property of the Government of the Cook Islands.

(5) Notwithstanding any provision of any enactment to the contrary, the Government of the Cook Islands shall be entitled to receive all income payable or derived from any deposit and notwithstanding the refund of that deposit such income shall remain the property of the Government of the Cook Islands.

25D Share capital - Notwithstanding the provisions of the International Companies Act 1981-82 a 'C' class bank licensee shall have a paid up share capital of not less than \$100,000.

25E Transactions in New Zealand currency prohibited - (1) A 'C' class bank licensee shall not conduct any transaction in New Zealand currency.

(2) Any transaction in New Zealand currency shall be void and of no effect.

(3) A 'C' class bank licensee who contravenes or attempts to contravene the provisions of this section shall be guilty of an offence.

25F Annual Report and Audit - Notwithstanding section 117 of the International Companies Act 1981-82 a 'C' class bank licensee shall furnish to the Board within 6 months of the end of each financial year audited accounts in such form as may be approved by the Board.

25G Secrecy - Notwithstanding any provisions to the contrary the Board may in its absolute discretion order that the affairs accounts and records of a 'C' class bank licensee be either in part or in whole disclosed to such person or persons as it may determine where the Board is of the opinion that a licensee:

- (a) has contravened or is likely to contravene section 25A; or
- (b) should have its licence cancelled pursuant to paragraph (d) of subsection (1) of section 12; or
- (c) has contravened or is likely to contravene section 25E.

11. New sections relating to Ministers powers - The principal Act is amended by inserting after section 36 the following new sections:

"36A Power of exemption - (1) The Minister of Finance may on his own motion or pursuant to an application in writing lodged with the Registrar by a

licensee or body corporate, exempt that licensee or body corporate from all or any of the provisions of this Act and any regulations made under this Act and may impose such terms and conditions as he thinks fit as a condition under which that exemption is granted. An exemption so granted may be revoked or varied by the Minister of Finance at any time.

(2) In dealing with an application under this section the Minister of Finance shall not be required to act judicially and his decision shall in all cases be final.

(3) Any exemption or condition imposed pursuant to subsection (1) of this section, shall take effect as from the date to be decided by the Minister of Finance in his discretion.

36B Prohibitions by Minister - (1) The Minister of Finance shall have an absolute right of his own motion or otherwise and without assigning reasons to make an order:

- (a) prohibiting the licencing of any body corporate;
or
- (b) directing any licensee to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) An order made under this section may be revoked or varied by the Minister of Finance.

(3) In making an order under this section the Minister of Finance shall not be required to act judicially and such order shall be final."

This Act is administered by the Cook Islands Monetary Board.