

Development Investment Amendment Act 2007



ANALYSIS

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2007, No. 24

An Act to amend the Development Investment Act 1995-96

(15 August 2007)

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 Development Investment Amendment Act 2007 and shall be read together with and deemed part of the Development Investment Act 1995-96 (hereinafter referred to as "the principal Act").

2. Name of Board - (1) The Development Investment Board established by section 5 of the principal Act shall, without affecting the name or Short Title of that Act be known as the "Business Trade & Investment Board".

(2) Subject as provided in subsection (1), every reference in the principal Act to the Development Investment Act or to the Board, and every reference in any other enactment to the Development Investment Board, shall be deemed a reference to the Business Trade & Investment Board.

3. Chief Executive and other employees - Section 9 of the principal Act is repealed, and the following substituted -

"9. Chief Executive and other employees - (1) The Chief Executive shall be appointed by the Minister acting with the concurrence of Cabinet, taking into account advice from such committee or consultants as the Minister or Cabinet may deem necessary or desirable to give advice as to an appropriate appointee.

(2) The remuneration of the Chief Executive shall be fixed by the Board in accordance with a recommendation made by the Higher Salaries Commission pursuant to section 11 of the Higher Salaries Commission Act 1989 and following consultation with the Minister.

(3) The Chief Executive may with the approval of the Board, and within financial and other guidelines as to terms and conditions approved by the Board, engage such other employees as shall be necessary for the proper and efficient carrying out of the Board's objectives and functions."

4. Functions of the Board - Section 16 of the principal Act is amended by deleting subsection (2) and by substituting the following -

- “(2) In the carrying out of its objectives and functions, the Board shall -
- (a) have regard to the Investment Code and to any general or specific direction which may from time to time be –
 - (i) issued by Cabinet and conveyed to the Board by way of Cabinet Minute;
 - (ii) issued by the Minister and conveyed to the Board in writing by the Minister;
 - (b) satisfy itself in respect of every application that every Cook Islander who intends to be a shareholder or the owner of an equity interest in a foreign enterprise understands the nature and effect of his or her intended interest;
 - (c) consult with the Minister prior to the making any decision pursuant to Part V (Regulation of Foreign Enterprises) or Part VI (Control of Takeovers) where the Board or the Chairman are of the opinion, to be recorded in the minutes of the Board, that the decision to be made is likely to involve a matter of significant national or island-wide (as the case may be) importance, cultural or economic impact;
 - (d) consult with the Minister at regular intervals or as the Minister may direct, regarding the general policies and direction of the Board.”

5. Investigative powers - The principal Act is amended by inserting after Part IX, the following new Part -

**“PART IXA
INVESTIGATIVE POWERS**

35A. Board may refer matters for investigation - The Board may from time to time appoint any person or persons having appropriate legal, accounting or other relevant qualifications and 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.

35B. Enforcement - (1) The Board or any person appointed by the Board pursuant to section 35A may for the purpose of assisting any investigation by the Board, or ensuring compliance with this Act or any regulations made hereunder -

- (a) require any person to provide in writing such information or explanation as the Board may reasonably require for the purpose of enabling the Board to perform its functions under this Act, including any information relevant to a matter being investigated pursuant to section 35A, or for the purpose of ensuring compliance with this Act or relevant to the commission of an offence under this Act;
- (b) direct any person that has failed to comply in whole or in part with any obligation under this Act, or with any condition imposed in relation to any approval or concession given under this Act, to take or cease any action to ensure compliance with the obligation, condition or concession.

(2) Whether or not a request has been made pursuant to subsection (1) (a) or a direction made pursuant to subsection (1) (b), a Judge of the High Court may issue a warrant in such form as the Judge may direct if the Judge is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, premises, place, vehicle, vessel, box, receptacle, computer, any thing or record (including any electronic record) document or thing which may be evidence of the commission of any offence under this Act.

(3) Every warrant issued pursuant to subsection (2) shall be directed to a person appointed by the Board pursuant to subsection 35A and shall also be addressed generally to every constable, and any such warrant may only be executed in the presence of a constable.

(4) Every warrant may authorise the person to whom it is addressed and any constable to act in any one or more of the following ways, namely to -

- (a) copy, and remove that copy from any premises, any computer system or data processing system in the premises and thereafter to examine any data contained in or available to the system;
- (b) reproduce any record or cause it to be reproduced from electronic data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;
- (c) use or cause to be used, subject to payment of reasonable compensation for such use, any photocopying or electronic copying equipment in the premises to make copies of any document or record.

(5) Any person who wilfully obstructs or hinders, or fails to co-operate with the lawful exercise of the powers under subsection (1), or who wilfully obstructs or hinders, or fails to co-operate with any person in the lawful exercise of the powers pursuant to a warrant issued under subsection (2) commits an offence punishable on conviction by -

- (a) in the case of an individual, to a fine of up to \$1,000; or
- (b) in the case of a body corporate, to a fine of up to \$5,000.

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

(7) In this Part -

- (a) "document" includes information recorded in any form including on computer disk or other electronic 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; and
- (b) "constable" means a member of the Police of any rank other than a probationary member.

(8) No person shall be required under this Part 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 Court.

(9) For the purpose of this section, but subject to subsection (10), 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 the adviser in connection with the giving by that 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.
- (10) 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 or unlawful purpose.

(11) 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 as if that member were a director of the body corporate.

35C. Offence to supply false information - Any person who supplies or is concerned in supplying to the Board or any person appointed by the Board pursuant to section 35A, or to a constable, any statement, account, document, report or other information pursuant to this Act for any purpose for which any such statement, account, document, 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 to a fine not exceeding \$5,000.

35D. Disposal of copies or reproductions - (1) Where any thing is copied or reproduced pursuant to a warrant issued under this Part it shall be retained in the custody of the person authorised by the Board pursuant to section 35A except during such time or times as it is in the custody of the Court.

(2) In the event that no prosecution is laid within 3 months of the copying or seizure or production of any document, record or information under this Part, or such extended time as the Court on the application of the Board may reasonably allow, the information provided, seized or copied shall be returned to the person from whom it was taken."

This Act is administered by the Development Investment Board