



## ANALYSIS

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1987, No. 2

An Act to consolidate and amend the law relating to the Treasury, public money, public securities, and public stores and the audit of the public accounts and certain other accounts

(10 July 1987)

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 Public Money and Stores Act 1987.

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

"Accounting officer" means an imprestee or other person who by any Act or by virtue of any appointment is charged with a duty to, or who actually does, collect, receive, or disburse any public money; or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public stores;

"Agency" means any department, instrument, or agent of the Government; and includes a body corporate or organization that is wholly owned or controlled by the Crown or by any such department, instrument, agent, body corporate, or organisation; but does not include a Government department;

"Appropriation" and "Appropriation Act" include every supplementary Appropriation Act for the same financial year;

"Audit Office" means the Audit Office of New Zealand referred to in Article 71 of the Constitution;

"Books and accounts" or "books or accounts" includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms, photostatic negatives, prints, tapes, discs, computer reels, perforated rolls, and any other type of record whatsoever; and also includes all papers and other records relating to accounting operations and practice;

"Crown" means the Crown in right of the Government of the Cook Islands;

"Director" means the Director of the Office of Audit and Inquiries appointed under section 11;

"Estimates" means the statement of the proposed public revenues and expenditure during any financial year, as approved by Parliament;

"Financial Secretary" means the Financial Secretary appointed under section 4;

"Financial year" means the period of 12 months ending with the 31st day of March in each calendar year;

"Government department" means any department, or instrument of the Government or any branch or division thereof, that -

(a) Has its own vote; and

(b) Does not have an account or accounts established by any Act (other than Part III of this Act) in which all or most of its financial transactions are recorded;-

but does not include a body corporate or other

- legal entity that has power to contract (other than the Cook Islands Government Property Corporation);
- "Imprestee" means a person in whose hands any public money is placed for expenditure;
- "Instructions" means Treasury instructions issued pursuant to section 90;
- "Minister" means Minister of Finance;
- "Office of Audit and Inquiries" means the Department established under section 10;
- "Public Account" means the Cook Islands Government Account referred to in Part V of the Constitution;
- "Public money" means all money, or securities of any kind for the payment of money, received by or for or on account of, or payable to, or belonging to, or deposited with, or held by or on behalf of, the Crown and includes money and securities representing the investment or advance of any public money and also includes money allocated to the use of or received by the Government or agency on behalf of the Government by way of loan, grant, subsidy or gift from any Government, organisation, body corporate, person or any group of persons;
- "Public stores" or "stores" includes books, buildings, cheque forms, other forms, valuable documents, postage stamps, stationery, office requisites, vehicles, machines, implements, livestock, all articles of a consumable or non-consumable nature, and all chattels and personal property in the possession or of under the control of any department on account of the Government, whether they be bought with public money or supplied partially or wholly free of charge;
- "Staff funds" means any social or other fund held by or for and on behalf of staff of any Government department, or agency;
- "Statement of Account" means the statement to be laid before Parliament under Part VII;
- "Supplementary appropriation," means any amendment to the appropriation for any financial year, whether by adding new votes, repealing votes, or by increasing or reducing any vote or votes, and
- "Supplementary Appropriation Act" has a corresponding meaning;
- "Transfer voucher" means a document prescribed by the Financial Secretary and used by a Government department, or agency for claiming funds due to it by any other Government department or agency for goods or services rendered;
- "Treasury" means The Treasury Department established under this Act;
- "Vote" means a sum of money authorised to be spent by the Constitution, an Appropriation Act, or any other Act appropriating the expenditure of public money.

PART I  
TREASURY

3. Treasury Department - There is hereby established a Department of State to be called the Treasury Department, which, under the control of the Minister, shall be charged with the general administration of this Act and with such other functions as may from time to time be lawfully conferred on it.

4. The Financial Secretary - There shall from time to time be appointed as a member of the Public Service a Financial Secretary, who shall be the administrative head of the Treasury, and who shall be the principal financial adviser to the Government.

5. The Financial Controller - (1) There may from time to time be appointed as a member of the Public Service a Financial Controller who, subject to the control of the Financial Secretary, shall have and may exercise all the powers, duties, and functions of the Financial Secretary.

(2) On the occurrence from any cause of a vacancy in the office of Financial Secretary (whether by reason of death, resignation, or otherwise) or in case of the absence from duty of the Financial Secretary (from whatever cause arising); and so long as any such vacancy or absence continues, the Financial Controller shall have and may exercise all the powers, duties, and functions of the Financial Secretary.

(3) The fact that the Financial Controller exercises any power, duty or function of the Financial Secretary shall be conclusive evidence of his authority to do so.

6. Delegation by Minister - (1) Except as otherwise provided in this section, the Minister may from time to time, by writing under his hand, delegate to the Financial Secretary all or any of the powers exercisable by him under this or any other Act.

(2) Every delegation by the Minister under this section shall be revocable at will, and no such delegation shall prevent the exercise by the Minister of any power that has been delegated by him.

(3) Any such delegation may be made subject to such restrictions and conditions (if any) as the Minister thinks fit, and may be made either generally or in relation to any particular case.

(4) Every such delegation shall, unless and until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made or the Financial Secretary to whom it was made may have ceased to hold office, and in any such case every such delegation shall continue in force as if made by or to the successor in office of the Minister or the Financial Secretary, as the case may be.

(5) The appointment of a Financial Secretary under this Act shall be evidence of the delegation to him of the powers of the Minister under this Act, except such powers as this Act provides may not be delegated and such powers as the

Minister, in writing, reserves to himself or on the exercise of which the Minister imposes restraints.

(6) Every such reservation or constraint imposed by the Minister shall continue in force until it is revoked or modified by the Minister in writing.

(7) Nothing in the foregoing provision of this section shall purport to authorise the delegation by the Minister of his authority to borrow money, or to give guarantees under section 50 or 67 of this Act.

7. Other officers and employees - There may from time to time be appointed under the Public Service Act 1975 such other officers and employees of the Treasury as may be necessary for the effective and efficient carrying out of the functions and duties of the Treasury.

8. Financial Secretary may delegate powers - (1) The Financial Secretary may from time to time, by writing under his hand, either generally or particularly, delegate to such officer or officers of the Treasury as he thinks fit all or any of the powers exercisable by him under this or any other Act, including any powers delegated to him under this or any other Act, including this present power of delegation.

Provided that any delegation made under the Public Service Act 1975 shall not be delegated without the approval of the Public Service Commissioner.

(2) Subject to any general or special directions given or conditions attached by the Financial Secretary, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section 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 officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office.

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Financial Secretary.

(6) Every such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Financial Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Financial Secretary.

9. Financial Secretary may authorise accounting officers to perform certain functions - (1) The Financial Secretary may from time to time, by writing under his hand, either generally or particularly, authorise any accounting officer to receive any public money, and to give receipts or acknowledgments in respect of any such money and to endorse any cheque, draft, bill, or other negotiable document received in respect of any such money.

(2) Any accounting officer receiving any money pursuant to any authority conferred on him by the Financial Secretary shall pay the money into such bank or to the credit of such account as the Financial Secretary may direct.

(3) Subject to any general or special directions given or conditions attached by the Financial Secretary, any accounting officer on whom authority is conferred under this section may exercise that authority in the same manner and with the same effect as if it had been conferred on him directly by this section and not by delegation.

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

(5) Any authority under this section may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of offices.

(6) Every authority shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Financial Secretary by whom it was given may have ceased to hold office, and shall continue to have the same effect as if made by the successor in office of the Financial Secretary.

## PART II OFFICE OF AUDIT AND INQUIRIES

10. Office of Audit and Inquiries - There is hereby established a Department of State to be called the Office of Audit and Inquiries, which under the control of the Minister, shall be charged with the internal audit functions as provided for under this Act and with such other functions as may from time to time be lawfully conferred on it.

11. Director of Audit and Inquiries - (1) There shall from time to time be appointed by Cabinet for such period as may be determined by Cabinet, a Director of Audit and Inquiries, who shall be the administrative head of that department.

(2) The Director of Audit and Inquiries shall be deemed not to be a member of the Cook Islands Public Service: Provided that the provisions of any law for the time being in force relating to the rights of employees of that service to apply for other positions within that Service and the rights of such employees to join superannuation schemes administered by that Service except as otherwise provided for under this Act shall apply to the Director of Audit and Inquiries as if he were an employee of that Service.

(3) There shall from time to time be appointed pursuant to the provisions of the Public Service Act 1975 such other officers and employees as may be necessary from time to time for the effective and efficient carrying out of the functions and duties of the office.

(4) The Director of Audit and Inquiries shall report directly to the Minister, and shall supply copies of all reports to such persons as the Minister may from time to time in writing direct.

12. Salary and other conditions of employment of Director - (1) There shall be paid to the Director out of the Public Account, a salary at such rate as the Queen's Representative may by Order in Executive Council from time to time determine.

(2) The salary of the Director shall not be reduced during the continuance of his appointment.

(3) Any Order made under this section, and any provision of any such Order, may be made so as to come into force on a date to be specified in that behalf in the Order, being the date of the making of the Order or any other date, (whether before or after the date of the making of the Order or the date of the commencement of this Act). Every Order in Executive Council under this section, and every provision of every such Order in respect of which no date is specified as aforesaid shall come into force on the date of the making of the Order.

(4) There shall be paid to the Director out of the Public Account travelling and other allowances and expenses as if he were a permanent head appointed under the Public Service Act 1975.

(5) The Director shall be entitled to holidays and leave as if he were a permanent head appointed under the Public Service Act 1975.

13. Removal or suspension from office of Director - The Director may be removed or suspended from his office for disability, bankruptcy, neglect of duty, or misconduct.

14. Director may delegate powers - (1) The Director may from time to time by writing under his hand, either generally or particularly, delegate to such officer or officers of the Office of Audit and Inquiries as he thinks fit all or any of the powers exercisable by him under any enactment, including powers delegated to him under any enactment, but not including the power of delegation conferred by this section. Provided that the Director shall not delegate any power delegated to him under the Public Service Act 1975 without the written consent of the Public Service Commissioner.

(2) Subject to any general or special directions given or conditions attached by the Director, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Until a delegation made under this section is revoked, it shall continue in force according to its tenor; and, in the event of the Director by whom any such delegation has been made ceasing to hold office, the delegation shall continue to have effect as if made by the person for the time being holding office as Director.

(4) Where an officer purports to act pursuant to a delegation made under this section he shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified officer or to the officers of a specified class, or may be made to the holder, or holders for the time being



of a specified office or appointment, or class or offices or appointments.

(6) Every delegation made under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Director.

15. Functions and duties of Office of Audit and Inquiries - (1) Subject to Article 71 of the Constitution, the Office of Audit and Inquiries shall be the internal auditor of -

- (a) All public money and public stores; and
  - (b) All money and stores of an agency that is declared by Cabinet to be subject to this section and all books and accounts and transactions relating thereto,
- (2) Without limiting subsection (1), the Director shall, at such times as he thinks fit -
- (a) Audit the books and accounts of every person who is charged with a duty relating to, or who is actually concerned with the accounting, collection, receipt, custody, expenditure, disbursement, or disposal of money or stores subject to such an audit:
  - (b) Make such examination, reviews, and tests as he considers necessary of all books and accounts and transactions relating to money or stores subject to his audit, in order to ascertain whether in his opinion, -
    - (i) The books and accounts have been faithfully and properly kept;
    - (ii) The procedures, including internal controls, applied are sufficient to ensure that there is an effective check on the assessment, collection, and proper allocation of revenue and other receipts, and all money is accounted for;
    - (iii) The procedures, including internal controls, applied are sufficient to ensure that there is effective control over expenditure, that all expenditure is properly authorised, and charged in the case of public money against the proper appropriation by Parliament;
    - (iv) The procedures, including internal controls, applied are sufficient to ensure that there is proper custody and control of stores, and essential stores records are maintained.
- (3) Without limiting subsections (1) or (2) the Director may, whenever he thinks fit, make such examination as he considers necessary in order to ascertain whether, in his opinion, resources of the Crown or an agency subject to subsection (1) have been applied effectively and efficiently in a manner that is consistent with the applicable policy of the Government or agency as the case may be.
- (4) The Office of Audit and Inquiries shall maintain a continual internal audit programme approved by the Minister, in order to ascertain whether -
- (a) Internal controls and operating policies for the area under review are adequate and are being carried out; and

- (b) Income expenses, assets, and liabilities are properly recorded and accounted for; and
  - (c) Assets are properly cared for and guarded against loss or destruction; and
  - (d) Expenditure is correctly authorised and is a proper charge against public money; and
  - (e) Operating statements accurately report information.
- (5) The Office of Audit and Inquiries shall have all such other functions and duties as are lawfully conferred or imposed on it and shall maintain adequate liaison with the Audit Office, and the Financial Secretary.

16. Powers of Office of Audit and Inquiries - For the purpose of fulfilling any function or duty lawfully conferred or imposed on it, the Office of Audit and Inquiries -

- (a) Shall have full access at all convenient times to all books and accounts, money and stores subject to its audit and to any place where any such books and accounts, money, or stores are kept;
- (b) May require any person to supply any information or answer any question relating to books and accounts, money, or stores subject to its audit;
- (c) May, by notice in writing require any person having possession of any books and accounts subject to its audit to deliver to it at a time and place specified in the notice, all or any of such books and accounts.

17. Powers of Audit Office not affected - Nothing in this Act shall affect Article 71 of the Constitution, and the Audit Office shall continue to have all the powers necessary for the proper carrying out of its functions and duties under the Constitution and any other enactment; and the provisions of sections 15 and 16 shall apply mutatis mutandis insofar as they are not inconsistent with the Constitution, to the Audit Office.

18. Power to appoint auditor - (1) The Director may, subject, to the Minister's consent, by writing under his hand from time to time appoint any employee of the Office of Audit and Inquiries or other person to examine or audit any books and accounts, money, or stores that the Office of Audit and Inquiries is required or authorised by any enactment to examine or audit and to report thereon to the Office of Audit and Inquiries.

(2) Any appointment under this section may be made on such terms and conditions as the Director, subject to the Minister's consent, thinks fit.

### PART III BANKING

19. Banking business of Government - (1) The Minister may from time to time agree with any bank upon terms and conditions for the conduct of the banking business of the Government and, in particular, for advances to be made to or by the bank under the authority of and subject to the

provisions of this or any other Act, and for interest to be payable by or to the bank upon balances or advances respectively.

(2) Without limiting the powers conferred on the Minister by subsection (1) the Financial Secretary may from time to time make arrangements with any bank for the receipt, custody, payment, and transmission of public money within, or outside the Cook Islands.

20. Public account to be kept at banks appointed by Financial Secretary - Notwithstanding the provisions of any other enactment the Public Account shall be kept at such banks as the Financial Secretary may from time to time direct and the Financial Secretary may transfer money within the Public Account from one bank to another.

21. Honouring of drafts - The Financial Secretary may from time to time agree with any bank for the honouring by it of sight drafts drawn in accordance with directions from time to time given by him.

(2) Any amount paid by any bank on any such draft shall be repaid to that bank out of money available for payment for the purposes for which the amount has been applied.

22. Banks to furnish statements - (1) Every bank at which any Government account of any nature is kept, shall send to the Treasury, Director, or to the Audit Office statements of such accounts as the Financial Secretary, Director or the Audit Office may from time to time require.

(2) All such statements shall show such particulars of the accounts concerned as the Financial Secretary, Director or the Audit Office may direct.

#### PART IV PUBLIC FUNDS

23. Public money (1) All public money is the property of the Government, and shall, except as herein otherwise provided, be kept in one account to be known as the Public Account.

(2) All money paid into any bank to the Public Account shall be deemed to be public money the property of the Government, and to be money lent by the Government to that bank, and may not be removed therefrom except as provided by the Constitution or this Act.

24. Funds in the Public Account - Notwithstanding that all public money shall as far as possible, be kept in one bank account, there shall be maintained such subsidiary accounts and separate funds as are required by this or any other Act or which are necessary to make better provision for accounting for money in the Public Account.

25. Balances may be invested - (1) The Financial Secretary may from time to time invest any balances of the Public Account, or any part thereof, at call or for such period and on such terms as he thinks fit at any bank appointed under section 20 and in such other securities as

the Minister may from time to time declare to be securities in which such money may be invested.

(2) Interest earned on investments shall be credited to the several funds within the Public Account in such proportions as the Financial Secretary may from time to time determine.

(3) The Financial Secretary may from time to time sell and convert into money any such securities, and cause that money to be paid into the Public Account to the credit of the proper fund to which it belongs.

(4) The Financial Secretary may from time to time delegate all or any of his powers under the foregoing provisions of this section in respect of any balance in an account outside the Cook Islands to any person or persons authorised to operate on that account.

26. Temporary transfers from one fund to another - (1) The Minister may from time to time transfer any balances or any part thereof or any fund or account within the Public Account to another fund or account within the Public Account for such periods and on such terms as he may authorise. This authority shall not be delegated.

(2) The money so transferred shall be considered to have been borrowed from the fund from which the transfer has been made, and shall be paid out and restored to the fund or account from which the transfer was made within one year of the date on which the transfer was made.

(3) There may be paid out of any fund or account which has so borrowed interest at such a rate as the Minister may from time to time determine on the amount borrowed or such portion as he may think fit. Any such interest shall be credited to such funds or accounts within the Public Account as the Minister may from time to time determine.

(4) Particulars of every such transfer made in any financial year shall be laid before Parliament in the statement of accounts for that year.

27. Account or fund may be overdrawn - An account or fund within the Public Account may be overdrawn at any time during a financial year:  
Provided that it shall not be lawful for any such account or fund to be in overdraft at the end of a financial year.

#### PART V APPROPRIATION OF PUBLIC REVENUES

28. Estimates - (1) A detailed statement of the estimated receipts and expenditure for every financial year, showing the separate votes for each government department by programmes and items, shall accompany each statement of proposed expenditure laid before Parliament pursuant to Article 70 of the Constitution.

(2) Where in the course of any financial year a supplementary appropriation is made, the following provisions shall have effect, unless other provision is made;

(a) Sub-section (1) shall be deemed to have been complied with if the detailed statement specifies the amounts by which votes,

- programmes, and items have been increased or reduced or the amounts for any new votes or programmes or items, as the case may require;
- (b) The total appropriation for the financial year shall be deemed to be increased or reduced by the nett amount of the supplementary appropriation;
  - (c) The amount of each vote, programme, and item shall be deemed to be increased or reduced by the amounts shown in the supplementary appropriation and the detailed statement referred to in paragraph (a);
  - (d) Every new vote, programme, or item contained in a supplementary appropriation or the detailed statement referred to in paragraph (a) shall be deemed to have been incorporated into and have formed part of the appropriation measure for that financial year.

29. Expenditure in anticipation of appropriation - All expenditure in any financial year authorised under Article 70

(3)(a) of the Constitution -

- (a) Shall accord with the provisional estimates for that year; and
- (b) Shall be set off against the amount provided for the Ministry on which it has been spent in an Appropriation Act for that financial year when that Act comes into force.

30. Unauthorised expenditure - All sums issued and paid under article 70 3(b) of the Constitution shall be charged as unauthorised expenditure to such funds or accounts as the Minister may direct.

31. Over-expenditure of items - (1) Where the administrative head of a government department is of the opinion that the amount shown in the estimates for any item of a programme will be insufficient to meet expenditure chargeable to that item he shall report the matter to the Minister in charge of the vote which includes that programme, who may authorise the over-expenditure of the item only if he is satisfied that by reason of reduction in other items in the same programme or other programmes within the same vote the additional expenditure incurred in respect of an item will not result in that exceeding the amount shown in the estimates for that vote.

(2) Every approval given under subsection (1) shall be in writing and shall set out the conditions upon which it is granted.

(3) A copy of every approval immediately after it is given under subsection (1) shall be forwarded to the Financial Secretary who may refer the approval to the Minister who may over-rule that approval.

(4) Every approval given under subsection (1) shall have the same effect as if the amended amounts of programmes or items had appeared in the Estimates.

(5) Where in the opinion of the Minister in charge of the vote which contains the programme to be over-expended,

the provisions of subsection (1) cannot be complied with, that Minister shall, before any such over-expenditure is incurred, refer the matter through the Financial Secretary to the Minister of Finance, who may authorise the over-expenditure subject to such conditions as he thinks fit to impose, and any sum so approved shall be unauthorised expenditure under article 70 3(b) of the Constitution.

32. Emergency expenditure - (1) In the event of any emergency arising that affects the public interest, or safety of the Cook Islands or any part thereof, or in the event of any state of national emergency or state of civil defence emergency being declared, the Cabinet may approve the expenditure out of the Cook Islands Government Account, or any account outside the Cook Islands Government Account, of such sum or sums as considers necessary to meet the cost or any part thereof of the emergency or of providing supplies in connection therewith. The Cabinet may approve such expenditure whether or not any money appropriated by Parliament is available for the same purpose.

(2) All sums issued and applied under this section shall be charged to such accounts or funds as the Minister directs.

(3) All money recovered in respect of any expenditure under this section shall be credited to the account or fund from which the expenditure was made.

(4) Without affecting the validity of any expenditure lawfully made under the foregoing provisions of this section, a statement of any expenditure under this section in any financial year that has not been appropriated shall be included in-

- (a) The public accounts for that year; and
- (b) The Appropriation Bill for the next financial year for sanction by Parliament.

(2) Where any question arises as to which item within a programme a particular amount is to be charged, the decision of the Financial Secretary, whether on the reference of the person authorising expenditure or on his own motion, shall be final and binding on all persons.

33. Authorisation and certification of expenditure - (1) Upon the passing of an Appropriation Act, the Minister responsible for a vote therein may authorise expenditure on any programme within that vote, up to but not in excess of -

- (a) The amount of that programme in the estimates supporting the vote; or
- (b) The amended amount of that programme following an approval given under section 31.

(2) In anticipation of provision to be made in an Appropriation Act, the Minister may authorise any expenditure not of a recurring nature within a programme which has been approved by Cabinet for inclusion in the estimates in support of such proposed appropriation.

(3) The Financial Secretary may determine that any expenditure within a programme is of a recurring nature, and in that case the expenditure shall be deemed to have been authorised up to the limit for the time being of the item within the programme to which such expenditure is chargeable.

Provided that recurrent expenditure incurred in anticipation of an Appropriation Act shall be deemed to have been authorised by the Minister within the limit prescribed by Article 70 (3) (a) of the Constitution.

(4) The Financial Secretary shall appoint certifying officers, who shall examine each account for payment to ensure that it has been properly authorised, that additions and computations are correct, and that funds are available according to the provisions of this Act, within the programme to be charged for the supplies or services for which payment is to be made.

(5) No money may be withdrawn from the Public Account otherwise than in payment of expenditure that has been duly authorised and certified in accordance with this section.

34. Imprests - (1) Money may be issued by way of imprest from the Public Account for the purpose of effecting payment of amounts payable by the Government to such persons or to such accounts within or outside the Cook Islands, in the name of the the Government or of the imprestee, and otherwise in such manner as the Financial Secretary from time to time may authorise.

(2) The Financial Secretary in such cases as he thinks fit may authorise an imprest or official account to be opened at a bank and operated in the name of any person, either personally or by his official designation, or in the name of an office.

(3) With the prior approval in writing of the Financial Secretary, more than one person may be authorised to operate any such account.

(4) Money required to be issued by way of imprest shall as far as practicable be charged against the vote, or other authority for the service for which the imprest is required; but the Financial Secretary may charge money by way of general imprest against the relative fund or account instead of a vote, or other authority, and in any such case the amount so charged shall be issued accordingly. Money so impressed on a charge to general imprest shall in due course be transferred to the several votes or authorities for the purposes for which the money is expended, and the amounts so transferred shall be credited to general imprest in respect of the relative fund or account:

Provided that money issued by way of general imprest shall not at any time exceed 10 per cent of the total amount of all sums appropriated by the Appropriation Act then last passed.

(5) All such money wherever deposited shall be deemed to be public money for the purposes of this Act if the original source is public money and if the sources for periodical replenishment of such imprests are public money.

35. Refunds and corrections - (1) The Minister shall, on application being made at any time within 6 years of any sum being paid to any government department, refund as statutory expenditure all or so much of any such sum as was not properly payable to the Government.

(2) Where any person has become indebted to the Government and it is subsequently discovered that the amount

of the debit or the identity of the debtor is in error, the Financial Secretary on being satisfied as to the facts, may make or cause to be made all such entries in his records necessary to procure the true position appearing. The cancelling in whole or in part of any debt under the authority of this section shall not be deemed to be expenditure.

36. Transfer and subsequent expenditure of unexpended appropriations- (1) Where provision has been made in any Appropriation Act for expenditure in the nature of a grant or for a purpose that does not normally recur, but expenditure cannot be made during the financial year to which that Act relates, the Minister on being satisfied that it is desirable to do so, may direct that any unexpended balance of the provision shall be transferred during that financial year to a separate fund account, or deposit account, to be held there until payment is required, when the amount may be expended without further appropriation than this section for the purpose for which it was originally appropriated.

(2) Any amount transferred under this section and not required for the purpose for which it is provided shall be re-transferred to the fund or account from which it is originally appropriated.

37. Writing off losses - (1) No losses of public money or public stores shall be written off without the authority of Parliament:

Provided that this subsection shall not apply to -

- (a) Any money the payment of which has been remitted pursuant to any statutory authority or by any Court or other tribunal;
- (b) Any stores that have been lost in circumstances determined by the Minister to be normal and unavoidable.

(2) The writing off of public money or public stores shall not discharge any person or organisation (other than the debtor, when a debt is remitted) from any liability that he or it may have in respect of the money or stores.

#### PART VI PUBLIC MONEY OUTSIDE COOK ISLANDS

38. Overseas imprest and other special accounts - (1) Subject to the prior approval of the Cabinet, the Financial Secretary may from time to time direct that any public money received outside the Cook Islands shall be paid into a bank for the credit of such imprest account or other special account as he may determine.

(2) Any such bank account may be operated on by any person appointed for that purpose by the Financial Secretary, who may cancel the appointment of any person to operate on any such bank account, and may remove the money in any such account, or such part of it as he thinks fit, from any bank to any other bank.

(3) No money shall be withdrawn from any such bank account except in the manner provided by this Act.



(4) Any money in an overseas account may be utilised for expenditure approved under the provisions of the Constitution or this or any other Act, and shall be deemed to have been issued by way of imprest under section 34 and that section shall, with the necessary modifications, apply accordingly.

(5) All such money wherever deposited shall be deemed to be public money for the purposes of this Act if the original source is public money and if the sources for periodical replenishment are public money.

39. Notices of issue of cheques - Notice of the issue of every cheque drawn under section 38 shall be given by the person who issues it to the Financial Secretary in such form as he may from time to time direct. The Financial Secretary shall record the issue of the amount against the appropriate vote or other authority and fund or account.

#### PART VII STATEMENT OF ACCOUNTS

40. Statement of accounts - (1) The Financial Secretary shall as soon as practicable after the end of each financial year, but not later than the end of the fourth month of the next succeeding financial year, prepare and send to the Audit Office a financial statement of transactions affecting the Public Account.

(2) The financial statements together with the report thereon by the Audit Office as required by Article 71(2) of the Constitution shall be forwarded to the Speaker of Parliament.

41. Appropriation account - The Financial Secretary shall include in the statement of accounts for each financial year an account to be called "The Appropriation Account", showing the several sums appropriated by Parliament under the Appropriation Act or Acts for the year, and the expenditure thereon during the year, with the amount under-expended or over-expended on each vote severally or expended under the authority of Article 70(3) of the Constitution.

42. Payments to be included in statement - (1) Every such statement of accounts shall comprise all payments brought to charge by the Treasury during the period to which the statement relates.

(2) Imprests unaccounted for at the end of any accounting period shall not be included in the payments but shall be shown as balances in hand.

43. Departmental accounts - There shall be prepared after the end of each financial year, in such form and by such Government departments as the Minister may from time to time direct or approve, statements of accounts showing the income and expenditure or profit and loss of the activities or operations conducted by the department, together with such balance sheets and particulars of costs as the Minister may require, whether the costs were appropriated by Parliament or not. All such accounts shall be examined and reported upon by the Audit Office and laid before Parliament.

PART VIII  
REVOLVING FUNDS AND OPERATING ACCOUNTS

44. Revolving funds and operating accounts - (1) The Financial Secretary, may, without further appropriation than this section, establish such revolving funds and operating accounts as he considers necessary or desirable, and shall define the purposes and limitations thereof.

(2) A statement of the purposes and limitations of any such account or fund shall be annexed to the statement of accounts presented to the Audit Office pursuant to section 43 for the financial year in which the revolving fund or operating account is established, and shall be included in the estimates supporting any proposed appropriation to provide or increase the working capital or a revolving fund or to make provision for the net result of an operating account.

(3) The receipts of the funds or accounts established under this section shall at all times be deemed to have been appropriated for the purposes of the fund or account, and expenditure may be authorised in accordance with section 33 up to the amount of receipts.

(4) All surplus receipts of any fund or account established under this section shall, unless a direction to the contrary is given by the Minister, be transferred to and form part of the revenue received by the Treasury.

(5) On the winding up or termination of any fund or account established under this section, the surplus remaining in the account shall, without further appropriation than this section, be transferred to and form part of the revenue received by the Treasury or such other department as the Minister may direct.

45. Public money - All money paid or payable to any fund that is subject to this Part of this Act shall be deemed to be public money, and the provisions of this Act shall apply accordingly but subject to this Part.

PART IX  
TRUST FUNDS

46. Trust money - Whenever, trust money is collected by the Government, that money, so long as it is held by the Government shall be deemed to be and shall be dealt with as public money within the meaning of this Act;

47. Trust money defined - (1) For the purposes of this Part trust money means any money, cheques, or securities held by a Government department for future payment to any other person.

(2) Without limiting the generality of subsection (1) the following shall be deemed to be trust money -

(a) Money deposited with any accounting officer pending the completion of a transaction whereby the money may become payable to the Government or repayable to the depositor or any other person:

- (b) Money paid into Court by virtue of any Act, rule or authority whatsoever; and
  - (c) Money payable to the Government in trust for any purpose.
  - (d) Money which belongs to or is due to any person but remains unclaimed.
- (3) Subject to this Act, all such trust money shall be paid into a separate account within the Public Account established and kept solely for such money.

48. Investment and payment of deposits and trust money

(1) The Financial Secretary may, without further authority than this section, invest any particular sum or sums of public money subject to section 47 by way of deposit with any bank. The investment of any such sum or sums and the period of the investment shall be at the absolute discretion of the Financial Secretary, and no person shall have any right of action against him or against the Government in respect of the investment or non-investment of any such money.

(2) When any such sum becomes payable or repayable to the depositor or other person entitled thereto, there shall be added any amount of interest certified by the Financial Secretary to have been earned thereon and be deducted therefrom a reasonable charge for the Financial Secretary's services and such fee shall be paid to the Public Account.

PART X  
LOANS AND SECURITIES

49. Crown not to borrow except under statute - Except as provided by this or any other Act, it shall not be lawful for the Crown to raise a loan or for any person to lend money to the Crown.

50. Minister may raise loans - The Minister with the consent of Cabinet on behalf of the Crown may from time to time, if it appears to him to be necessary in the public interest or expedient to do so, raise a loan from any person, organisation, or government, either within or outside the Cook Islands upon such terms and conditions as he thinks fit.

51. Provisions relating to raising of loans - (1) The authority to raise a loan conferred by section 70 shall include authority to -

- (a) Incur a debt in respect of -
  - (i) The purchase or alteration of capital assets; or
  - (ii) The purchase of supplies that are ancillary to such capital assets; or
  - (iii) The construction of works -  
under an arrangement whereby payment is deferred for such period or periods and on such terms and conditions as may be agreed upon between the Minister and the person, organisation, or government to whom the debt is due; and

- (b) Accept subscriptions in advance of the raising of any loan on such terms and conditions as the Minister thinks fit; and
- (c) Borrow the loan money, and pay any money payable under the terms and conditions of the loan, in such currency or currencies as the Minister thinks fit.

(2) Without limiting the power to raise a loan under section 50, the terms and conditions of a loan raised pursuant to that section may provide that the proceeds of the loan, or part thereof, shall be applied by the lender in payment of the whole or any part of the cost of any of the matters specified in subparagraphs (i) and (iii) of subsection (1)(a) of this section.

(3) Money raised by way of loan shall be paid into the Loan Fund, established as a separate fund within the Public Account, and may be expended for the purposes for which such money has been appropriated by Parliament.

52. Mortgage or pledge of securities - (1) Without limiting section 50, the authority to raise a loan shall include authority to borrow money by way of mortgage or pledge of any securities representing the investment or advance of public money.

(2) Any amount borrowed by way of mortgage or pledge of securities under this section shall be credited to the account or fund to which the securities relate.

53. Government stock - (1) Without limiting section 50, the authority to raise a loan shall include authority to borrow money within the Cook Islands by the issue of Government Stock.

(2) The Minister may from time to time with the consent of Cabinet prescribe in respect of any Government Stock -

- (a) The terms and conditions of the issue thereof;
- (b) The dates of commencement and maturity of the loan, and the dates for payment of interest thereon;
- (c) The rate or rates of interest payable thereon; and
- (d) Any other terms or conditions relating to their form or repayment.

54. Registrar of Government Stock - (1) The Minister may from time to time with the consent of Cabinet in writing appoint a person for such period and upon such terms and conditions as he thinks fit to-

- (a) Issue and manage any loan in respect of which Government stock is to be issued, in accordance with any arrangement agreed upon between the Minister and such person; and
- (b) Be the registrar of Government Stock.

(2) The person appointed pursuant to this section shall from time to time supply to the Treasury certified statements, containing such particulars as the Treasury requires, in respect of -

- (a) All Government Stock; and
- (b) The cancellation of any such Government stock, after its discharge by payment, conversion, or in any other manner.

55. Repayment or conversion of loans - The Minister may at any time, on such terms and conditions as Cabinet may approve, and (where necessary) with the consent of the lender, or the holder of any securities issued in respect of the loan as the case may be -

- (a) Repay any loan to the Crown; or
- (b) Convert any loan to the Crown into any other such loan or loans

56. Minister may appoint underwriters and managers for overseas loans - The Minister may from time to time, and on such conditions as Cabinet may approve, enter into an agreement with any bank, financial institution, or other persons providing for that bank, institution, or person to act as underwriter, manager, trustee, or paying, fiscal, or other agent for, or in connection with, any loan or the raising of any loan inside or outside the Cook Islands under this or any other Act.

57. Loan agents for raising of loans outside Cook Islands - (1) The Minister may from time to time with the consent of Cabinet, by warrant under his hand, appoint any person to act on his behalf as loan agent for the raising of a loan outside the Cook Islands under this Act, or the issuing of securities in respect thereof; and may also, in like manner, confer upon such person all such powers as he thinks necessary in order to carry into effect the purposes of this Act.

(2) Any appointment under this section may be of a specified officer or person, or officers or persons of a specified class, or may be of the holder or holders for the time being of a specified office or appointment, or class of offices or appointment.

(3) The Minister may at any time, by instrument under his hand -

- (a) Revoke or amend any warrant issued under this section;
- (b) Reappoint any person as a loan agent; or
- (c) On the revocation or death of any loan agent, appoint another person in his stead.

(4) All or any of the power conferred upon loan agents by the Minister under this section may, subject to the consent of the Minister, from time to time be delegated by them, either jointly or severally, to one or more other persons, in such manner and subject to such conditions as the delegation loan agent or agents think fit.

(5) Notice of any appointment, or revocation of appointment, of a loan agent under this section may be given by any means of communication.

(6) The fact that any powers relating to loans or securities are exercised by loan agents shall, in the absence of proof to the contrary, be sufficient evidence of their authority to do so.

(7) The appointment by the Minister of any loan agents under this section shall in no wise prevent the exercise by him of any power conferred on him by any Act or other rule of law.

58. Power to issue securities for loans - (1) Where pursuant to any Act any loan is raised by the Crown for any purpose, the Minister on behalf of the Crown may issue securities in respect of the loan in such manner and form as he thinks fit.

(2) For the purpose of this section:-  
"securities" includes mortgage, charge, assignment by way of security and any other instrument or arrangement granted or entered into for the purpose of securing repayment of indebtedness or the performance of monetary obligations.

59. Charge on public revenues - All principal interest, declared to be a charge upon and payable out of the revenues of the Crown equally and rateably with all other general loan obligations of the Crown.

60. Power to vary public securities - (1) The Minister may, with any consent of the holder that may be necessary, at any time vary the terms or conditions of any public security.

(2) At the request of the holder of any public security the Minister may in his discretion direct that payment of the principal, or any interest payment thereunder, be made at a place or places, in the Cook Islands or elsewhere, be made at a place or places theretofore provided, and may from time to time revoke any such directions and give other directions.

61. Issue of new public security on loss, damage, or destruction - Where any public security is lost, damaged, or destroyed, the Minister, on receiving evidence to his satisfaction of such loss, damage, or destruction, may, subject to such loss, damage, or destruction, may, subject to such conditions as he thinks fit, direct the issue of a new security in place thereof.

62. Payment of principal and interest of loans - Subject to the provisions of this Act, all principal, interest and other money payable in respect of any loan to the Crown or under any public security (other than a guarantee, indemnity, or security given under section 67) may be paid from such account or fund within the Public Account as the Minister thinks fit.

63. Costs, etc., in respect of loans and public securities - (1) Any costs, charges and expenses incurred in connection with the negotiating raising, managing, servicing, converting or repaying of any loan to the Crown, or the issuing, redeeming, or varying of any public securities, shall at the discretion of the Minister be paid either -

- (a) By deduction from the proceeds of the loan; or
- (b) From such account or fund within the Public Account as the Minister thinks fit.

(2) In subsection (1) of this section the term "costs charges, and expenses" includes stamp duty and other duties, taxes, premiums, bonuses, fees and commissions.

64. Loans to Crown deemed to have been lawfully raised - (1) Subject to subsection (2) all loans to the Crown purporting to be raised and all securities purporting to be

issued, or varied, under this Act shall so far as concerns the lender or holder, as the case may be, be deemed to have been lawfully raised, issued, or varied, as the case may be, within the powers conferred by this Act in that behalf, and no such lender or holder shall be concerned to inquire whether or to what extent authority has been given or occasion has arisen for the exercise or any such powers.

(2) A security purporting to be issued or varied under this Act shall not be deemed by this section to have been lawfully issued or varied if it has not been issued or varied by -

- (a) The Minister; or
- (b) A person acting pursuant to a delegation under section 6 or section 8 of this Act; or
- (c) Loan agents appointed for the purpose under section 57 of this Act.

65. Securities to be in name of Her Majesty - (1)

Wherever a security is taken in respect of an advance of money by the Crown, or given in respect of a loan to the Crown, unless the Act authorising the advance or the raising of the loan provides otherwise, the security shall be taken or given in the name of Her Majesty or in the name of the Cook Islands Government Property Corporation, as the Minister thinks fit.

(2) Where any security is in the name of Her Majesty, the Minister may from time to time, on behalf of Her Majesty, exercise any powers, functions, and rights (including any power of disposal), and undertake and perform any liabilities in respect of or in connection with the security that could be exercised, undertaken, or performed by Her Majesty.

(3) The provisions of this section are in addition to, and not in derogation of, the provisions of the Cook Islands Government Property Corporation Act 1969.

66. Execution of securities - (1) any security requiring execution by Her Majesty for the purposes of this Act shall be executed for and on behalf of Her Majesty by -

- (a) The Minister; or
- (b) A person acting pursuant to a delegation under section 6 or section 8 of this Act; or
- (c) Loan agents appointed for the purpose under section 57 of this Act.

(2) It shall be sufficient compliance with the provisions of this section requiring a security to be executed by a person if a facsimile of the required signature is reproduced on the security.

67. Power to give guarantees - (1) the Minister with the consent of Cabinet may from time to time, if it appears to him to be necessary or expedient in the public interest to do so, give a guarantee, indemnity, or security, upon such terms and conditions as he thinks fit, in respect of the performance of any obligation by any person, organisation, or government.

(2) Any money required to be paid by the Minister by virtue of any guarantee, indemnity, or security given by him under this Section shall, without further appropriation than

this section be paid out of such account or fund (being an account or fund within the Public Account or an account outside the Public Account) as the Minister directs.

(3) Any money paid by the Minister pursuant to any guarantee, indemnity, or security given under this section or any other Act shall constitute a debt due to the Crown from the person, organisation, or government in respect of whom the guarantee, indemnity, or security was given, and shall be recoverable as such in any Court of competent jurisdiction. Any such debt may be repaid over such period of time, and on such terms and conditions, as the Minister specifies.

(4) The Treasury shall include in the public accounts for each year a statement showing all guarantees, indemnities, and securities given under this section during the year.

68. Custody of public securities - (1) The Minister may from time to time issue instructions to provide for:

- (a) The manner in which public securities are to be held;
- (b) The appointment of custodians for any public securities;
- (c) The circumstances in which custodians may part with any public securities.

(2) It shall not be lawful for the custodians to part with any public securities except in accordance with the instructions of the Minister: Provided that nothing herein shall prejudicially affect any person purchasing or acquiring public securities in good faith and without notice.

69. Return of public securities - The Financial Secretary shall at the end of each financial year or so soon thereafter as is practicable provide the Audit Office with a return of public securities held at the end of the immediately preceding financial year. Every such return shall include a full account of all investments made under section 48, and of all securities redeemed or otherwise disposed of during the immediately preceding financial year.

70. Exercise of Powers in relation to securities - (1) Where any security is for the time being vested in the Crown, whether it has become so vested before or after the commencement of this Act, the Minister may from time to time on behalf of the Crown exercise any powers, functions, and rights (including any power of disposal), and undertake and perform any liabilities in respect of or in connection with the security which could be exercised, undertaken, or performed by the Crown.

(2) A document purporting to be executed by the Minister under this section shall be deemed to have been duly executed on behalf of and shall bind the Crown.

71. Expenditure for protection of public securities - (1) Subject to Part V of the Constitution and to this section, money may from time to time be expended out of any fund in the Public Account for the protection, preservation, and improvement of any real or personal property on the security of which any money in that fund has been lawfully



invested, whether before or after the commencement of this Act. The authority conferred by this section may be exercised notwithstanding the prior exercise in respect of any mortgaged property of any power of sale or entry into possession.

(2) The authority conferred by this section shall extend to authorise the expenditure out of any fund in the Public Account of money required for the stocking and cultivation of any land (whether freehold or leasehold), the employment of labour thereon, the making of further advances to mortgagors, the carrying on of any farming business, and for such other purposes as may be considered necessary to prevent or minimise any loss on the realization of any securities as aforesaid.

(3) No amount shall be expended under this section in respect of any property without the specific approval of the Minister on the recommendation of the Minister in charge of the vote to which the amount will be charged, if that amount, together with all other amounts advanced or expended in respect of that property and still outstanding, would exceed the amount of the valuation of the property.

(4) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by or pursuant to this section.

PART XI  
AUTHORISED BOND ISSUES

72. Interpretation - In this Part, unless the context otherwise requires:

"Authorized Bond" means a bond issued in accordance with the provisions of section 73;

"Bond" means an instrument creating or evidencing indebtedness of the Crown.

"Security" includes mortgage, charge, assignment by way of security and any other instrument or arrangement granted or entered into for the purpose of securing the repayment of indebtedness or the performance of monetary obligations.

73. Authorized Bonds - (1) The authority to raise a loan conferred by section 50 shall include authority to issue authorised bonds.

(2) Every person holding an authorised bond shall with respect to that bond be deemed to be non-resident in the Cook Islands.

(3) Authorised bonds shall -

(a) Be issued in series and all authorised bonds issued in one series shall be designated as being authorised bonds of that series and be identified by a distinctive number or alphabetical letter or a combination thereof; and

(b) In respect of each series, be issued on the same date and upon identical terms and conditions; and

- (c) Have inscribed thereon every term and condition applicable to such authorised bond.
- (d) Be issued in an authorised currency; and
- (e) Have a term to maturity of not more than 7 years from the date of issue; and
- (f) Be signed by the Minister on behalf of the Government of the Cook Islands and countersigned by the Secretary to the Cook Islands Monetary Board or their duly appointed representatives.

(4) An authorised bond shall not be issued if, immediately after its issue, the aggregate face value of all authorised bonds on issue exceeds \$10,000,000,000 or the foreign currency equivalent thereof.

74. Authorised currencies - (1) The lawful currency of each of the countries set out in subsection (2) shall for the purposes of this Part be authorised currencies.

(2) For the purposes of subsection (1), the lawful currencies of the Commonwealth of Australia, Federal Republic of Germany, Japan, Switzerland, United Kingdom of Great Britain and Northern Ireland and the United States of America shall be authorised currencies.

(3) The Queen's Representative may from time to time by Order in Executive Council amend subsection (2) by -

- (i) adding thereto the name of a country in which case the lawful currency of that country shall be authorised currency; or
- (ii) deleting therefrom the name of a country in which case the lawful currency of that country shall cease to be an authorised currency.

75. Application of moneys - (1) The Minister may apply any moneys raised by the issue of any series of authorised bonds in any one or more of the following ways and in no other manner:

- (a) In making deposits, with or without security, in any authorised currency, with any bank or financial institution in the Cook Islands or in any other country or jurisdiction;
- (b) In purchasing or negotiating bills of exchange or promissory notes or securities denominated in any authorised currency where a bank or financial institution is (whether as drawer, acceptor, issuer or endorser) a party to, and liable on, such bills of exchange or promissory notes or securities;
- (c) In purchasing certificates of deposit denominated in any authorised currency issued by a bank or financial institution;
- (d) In making payment under any currency or interest rate swap contract where each obligation under any such contract (other than an obligation of the Crown) is an obligation of, or is guaranteed by, a bank or financial institution;
- (e) In making payment under any currency futures contract, forward exchange contract or currency

option contract where each obligation under any such contract (other than an obligation of the Crown) is an obligation of, or is guaranteed by, a bank or financial institution;

- (f) In meeting any obligations to redeem any of the authorised bonds forming part of the issue in accordance with the terms and conditions upon which such authorised bonds were issued;
- (g) In meeting any obligations to make payment to any person pursuant to any security or agreement entered into in accordance with section 76;

(2) Subsection (1) shall not derogate from the powers of the Minister to apply or invest any interest or other income earned upon the moneys raised by the issue of authorised bonds.

76. Ancillary powers - (1) Subject to the provisions of this Part, the Minister may enter into such agreements as may be appropriate or necessary to carry out or facilitate the issue of any authorised bonds.

(2) Without limiting the generality of subsection (1), the Minister may:

- (a) grant security to or for the benefit of any holder of an authorised bond to secure any obligation pursuant to any authorised bond;
- (b) grant security to any person for the purpose of procuring that person to grant security to or for the benefit of any holder of an authorised bond or, if the holder is a trustee of a trust, for the benefit of any beneficiary of that trust;
- (c) enter into any deed or instrument establishing any trust in respect of which the Crown is the sole or principal beneficiary or amending the terms and conditions of any such trust and consent to the trustee of any such trust granting security over any of the assets of the trust to any person for the purpose of procuring that person to grant security to or for the benefit of any holder of an authorised bond to secure any obligation pursuant to any authorised bond;
- (d) enter into agreements with any person or persons for the management, placement or underwriting of any issue of authorised bonds;
- (e) enter into agreements with any person or persons for the management of moneys raised by the issue of any authorised bonds;
- (f) enter into agreements with any person or persons for the provision of letters of credit or guarantees to support the obligations of the Crown under any authorised bond;
- (g) enter into agreements with any person or persons for the management and maintenance of any register or registers of the holders from time to time of any authorised bonds;
- (h) enter into any agreement which are ancillary or

necessary or desirable to facilitate any of the foregoing.

77. Appropriation - There is hereby appropriated from the Cook Islands Government Account such moneys as are required from time to time to make all payments as and when due in accordance with the terms and conditions of every authorised bond and to make every payment arising pursuant to any security, agreement, deed or instrument authorised by this Part as and when due.

78. Sovereign immunity - Every security, agreement, deed or instrument the entry into which is authorised by this Part shall be binding upon the Crown upon its execution by the Minister, and the Crown hereby waives any rights of Sovereign Immunity which may arise under the laws of the Cook Islands or of any other jurisdiction in respect of the enforcement of any such security, agreement, deed or instrument.

#### PART XII OFFENCES

79. False declarations - Every person who makes any declaration or gives any certificate required to be made or given by this Act, knowing it to be false or misleading, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000 or to both.

80. Offences - Every person commits an offence against this Act who -

- (a) Refuses or wilfully neglects to attend at the time and place required of him by any person pursuant to this Act; or
- (b) Refuses or wilfully neglects to produce any book or account in his possession or under his control when required to do so pursuant to this Act; or
- (c) Refuses to be sworn, or to answer any lawful question put to him by any person pursuant to this Act; or
- (d) Refuses or neglects to pay any public money into the account or fund into which it is payable; or
- (e) Refuses or neglects to make any return, or supply any account, voucher, or other paper, that he is required by or pursuant to this Act to make or supply; or
- (f) Makes any statement, or gives any information or certificate required by or pursuant to this Act, knowing it to be false or misleading; or
- (g) Does any act for the purpose of procuring to himself or to any other person or organisation-
  - (i) The improper payment of any public money or any money of a person or organisation whose accounts are audited by the Audit Office; or

- (ii) The improper supply of any public stores or any stores of a person or organisation whose accounts are audited by the Audit Office; or
- (h) Resists, obstructs, deceives, or attempts to deceive any person acting in the discharge of his functions or duties or in the exercise of his powers under this Act; or
- (i) Aids, abets, counsels or procures, or is in any way knowingly concerned with the commission of an offence under this Act.

81. Penalties for offences - Every person who commits an offence against this Act is liable on conviction -

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$2,000 or to both, and if the offence is a continuing one, to a further fine not exceeding \$200 for every day during which the offence continues:
- (b) In the case of a person or organisation other than an individual, to a fine not exceeding \$2,000 and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day during which the offence continues.

82. Offence punishable under different provisions - When any offence is punishable under two or more provisions of this Act or under one or more provisions of this Act and one or more provisions of any other Act, the offender may be prosecuted under any or all of those provisions: Provided that no person shall be convicted of any offence against more than one of those provisions.

83. Offences with respect to invoices - Every person commits an offence who with intent to defraud delivers or sends or arranges for the delivery or sending to any public servant in his capacity as such any invoice or statement in respect of the sale of any goods or the provision of any services to or for the Government which shows an amount as paid or payable that is in excess of the amount due to be payable out of public money.

84. General offence and penalty - (1) Every person commits an offence who wilfully does any act in contravention of or fails to comply with any provision of this Act or any regulations made under this Act.

(2) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable to a fine not exceeding \$1,000.

#### PART XIII GENERAL PROVISIONS

85. Surcharges - (1) In this section, the term "deficiency or loss" means -

- (a) Any deficiency or loss of, or failure to fully and properly account for, public money or stores by reason of -

- (i) The wilful or negligent omission of any person or persons to collect, receive, or account for any public money or stores; or
  - (ii) The application and charging of any public money to any service or purpose for which it was not legally available or applicable; or
  - (iii) The payment of any public money without proper authority or without being properly vouchered; or
  - (iv) The failure to comply with any enactment;
- (b) Any deficiency or loss of public money or stores, or expenditure of public money, or damage to public stores, or expenditure for the replacement or repair of stores, caused through
- (i) The fraud, default, or neglect, or improper or unauthorised use by any person or persons;
  - (ii) The failure to comply with any enactment.
- (2) If it appears to the Financial Secretary that there has been any deficiency or loss in respect of any public money or stores, the Financial Secretary may, by notice in writing, require any person who appears to the Financial Secretary to be in default or responsible to show cause why he should not be surcharged with the amount of the deficiency or loss.
- (3) Every notice under subsection (2) shall
- (a) Include a statement of the grounds upon which it is considered the person has rendered himself liable to be surcharged; and
  - (b) State the date by which the person is required to show cause why he should not be surcharged (such date to be not less than one month from the date of the notice).
- (4) Where the amount of any deficiency or loss cannot be accurately determined, the Financial Secretary may estimate the deficiency or loss and, in the absence of proof to the contrary, that estimate shall for all purposes be deemed to be correct.
- (5) On receipt of an explanation by a person who has been required to show cause why he should not be surcharged, or (where the Financial Secretary is satisfied on reasonable grounds that the notice under subsection (2) has been received by the person) in default of any such explanation, the Financial Secretary shall, if he considers that the circumstances warrant it, -
- (a) Surcharge the person for the amount of the deficiency or loss or such lesser amount as he thinks fit; and
  - (b) Notify the person surcharged in writing of the surcharge and the time within which the surcharge must be satisfied.
- (6) Where the Financial Secretary is of the opinion that 2 or more persons are responsible for any deficiency or loss, he may surcharge each person for the full amount of the

deficiency or loss, and in that event, those persons shall be jointly and severally liable therefor.

(7) The Financial Secretary may at any time revoke, or reduce the amount of, any surcharge made under this section.

(8) Any surcharge unsatisfied at the expiration of the time allowed by the Financial Secretary shall be reported by the Financial Secretary to the Minister.

(9) In the event that the person or persons concerned are public servants or employees of Government the imposition of a surcharge shall be made by the Public Service Commissioner acting on the advice of the Financial Secretary.

(10) The Minister, in receiving the Financial Secretary's report of an unsatisfied surcharge under subsection (8) shall direct the Financial Secretary to take such steps as the Minister thinks fit to recover the amount of the unsatisfied surcharge.

(11) The amount of any unsatisfied surcharge under this section shall be a debt due to the Crown by the person surcharged, and may be recovered accordingly in the High Court.

(12) If the Financial Secretary so directs, no money (other than salary or wages) payable to or claimed by a person surcharged under this section shall be paid to him by the Crown until the surcharge has been satisfied.

(13) Nothing in this section shall prevent the recovery without surcharge from any person liable to be surcharged, of the amount of any deficiency or loss, or of such part thereof as the Financial Secretary thinks fit, as a debt due to the Crown.

(14) All money recovered under this section shall be paid into the account which suffered the deficiency or loss in respect of which the surcharge was made.

(15) Any person who has been surcharged and who is dissatisfied with that surcharge may within one month after the date of service on him or notice of the surcharge, appeal to the High Court which, after making such investigation as it deems equitable, may make such Order as it thinks fit either confirming the surcharge (whereupon the amount of the surcharge which has not been remitted shall become due and payable and subject to the provisions of this section) or directing the relief of the appellant therefrom either wholly or in part.

86. Deficiency or loss of public money or stores - (1) Where there has been a deficiency or loss (within the meaning of section 85) of public money or public stores, the permanent head or administrative head, as the case may be, of the Government department or Government agency responsible for the money or stores shall, as soon as practicable after the deficiency or loss occurs, take all reasonable steps to recover the amount of the deficiency or loss from the person responsible therefor; or from any person who is in possession of the money or stores or from any other person from whom the value thereof can lawfully be recovered.

(2) Nothing in this section shall limit section 85.

87. Financial Secretary may inspect Government offices, etc. - The Financial Secretary and any public servant deputed by him -

- (a) Shall be entitled at any reasonable time to inspect any Government agency, or public body office; and
- (b) Shall be given all available information that he may require with regard to public money and public stores and to all documents and records in respect thereof; and
- (c) Shall be entitled at any time to inspect public money, public stores, documents and records.

88. Register of documents and files - Every head of department in the case of Government Departments and every chief executive officer in the case of an agency shall cause to be kept a Register which shall clearly and fully indicate the name and description of every book, journal, register, file, computer programme or microfiche on which or in which information which is material to the recording of the receipt or disbursement of public monies and stores is kept, and shall make that Register available to the Financial Secretary or the Director or any employee deputed by those persons. In the event that such a Register has not been kept or has been kept inaccurately, the person or persons responsible for keeping that Register shall be deemed to have committed an offence under this Act.

89. Subsidies - Where any person is in receipt of a subsidy by way of payment to him of public money, and that subsidy is granted subject to terms and conditions, the Financial Secretary may, so as to satisfy himself that such terms and conditions are being complied with -

- (a) Require that person to produce for inspection by the Treasury his books and accounts;
- (b) Require that person or any employee of that person to answer any question relating to those books and accounts;
- (c) By notice in writing require any person having possession of such books and accounts to deliver to him at a time and place specified in the notice, all or any of such books and accounts for inspection by Treasury.

90. Treasury instructions - (1) Subject to the provisions of this Act and any regulations made pursuant thereto, the Treasury may from time to time issue instructions relating to the collection, receipt, custody, control, or application of public money, the collection, custody, control, or use of public stores, or the accounting therefor.

(2) Every person (whether an accounting officer or not) having any dealing with, or being in any way responsible for, public money or public stores, whether directly or indirectly, shall comply with all applicable Treasury instructions.



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

92. Repeal - The enactment specified in the schedule are repealed.

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SCHEDULE

Public Moneys Act 1969  
Public Moneys Amendment Act 1975  
Public Moneys Amendment Act 1976

This Act is administered in the Treasury Department.