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An Act—

- (a) **to amend the Seabed Minerals Act 2019 to—**
- (i) **provide greater certainty and predictability in applications and other processes under the Act; and**
 - (ii) **expand and clarify the obligations on title holders under the Act; and**
 - (iii) **make minor and technical amendments to the Act; and**
- (b) **to make a minor amendment to a change made by the Act to the Environment Act 2003.**

The Parliament of the Cook Islands enacts as follows—

(30 June 2020)

- 1 Title**
This Act is the Seabed Minerals Amendment Act 2020.
- 2 Commencement**
This Act comes into force on 1 July 2020.

Part 1
Amendments to principal Act

- 3 Principal Act amended in this Part**
This Part amends the Seabed Minerals Act 2019 (the **principal Act**).
- 4 Section 7 (Persons performing functions and duties must apply principles)**
In section 7(2)(g), omit “serious” and substitute “significant”.
- 5 Section 12 (Duties of Authority)**
In section 12(a)(v)(A), omit “actions” and substitute “acts or omissions”.
- 6 Section 17 (Information management)**
- (1) In section 17(2), omit “disclose or publish” and substitute “use, disclose, or publish”.
 - (2) In section 17(2)(d), omit “or is not commercially sensitive” and substitute “and is not commercially sensitive”.
 - (3) In section 17(2)(f), omit “court.” and substitute “court.”.
 - (4) After section 17(2)(f) add:
 - “(g) the information is specifically related to any part of the title area and—
 - “(i) the relevant licence has terminated as described in section 88(1)(a), (b), or (c); or
 - “(ii) the area has been relinquished under section 78.”

- (5) In section 17(3), omit “disclose or publish” and substitute “use, disclose, or publish”.

7 Section 18 (Further provisions about information disclosure)

Repeal section 18 and substitute:

“18 Information disclosure in respect of third party information

- “(1) Nothing in this Act permits public disclosure by any person of third party information that—
- “(a) is prohibited by another law of the Cook Islands or a court order; or
 - “(b) is a trade secret or other commercially sensitive information the disclosure of which, at that time, could reasonably be expected to adversely affect—
 - “(i) the financial affairs or business of the owner of the information; or
 - “(ii) the financial affairs or business of the person who supplied the information.
- “(2) A person submitting third party information to the Authority or another person pursuant to this Act must specify which, if any, of that information may not be publicly disclosed because it is information of a kind described in subsection (1).
- “(3) A person who specifies, under subsection (2), that information may not be publicly disclosed represents that the person—
- “(a) has reviewed the information; and
 - “(b) has determined that maintaining confidentiality of the information is in accordance with guidelines made under section 18A.
- “(4) The Authority must not publicly disclose that specified information unless it determines, in accordance with guidelines made under section 18A, that the information is not of a kind described in subsection (1).
- “(5) A trade secret or other commercially sensitive information referred to in this section includes technical or proprietary information regarding equipment or process innovations.
- “(6) Any person who uses or discloses information knowingly in breach of subsection (1) or being reckless as to whether use or disclosure of the information is lawful, commits an offence and is liable on conviction to a fine not exceeding \$200,000 or 5 years’ imprisonment, or both.
- “(7) Nothing in this section prevents the disclosure of third party information to persons other than the public for the effective administration of this Act

“18A Guidelines about confidential information

“The Authority must establish guidelines governing the classification of confidential information held or received under this Act consistent with sections 17 and 18, including procedures to review a claim under section 18 that information may not be disclosed because it is of a kind described in section 18(1).”

8 Section 19 (Supply of false or misleading information to Authority)

After section 19(4), add:

- “(5) It is a defence to a prosecution for contravening subsection (2) if—

- “(a) the conduct complied with an enactment of the Cook Islands; or
- “(b) the conduct complied with the Government’s published administrative practices in respect of documents or samples; or
- “(c) in the case of alteration, destruction, or disposal of a document, the person retained a copy containing the same documentary information as that contained in the document; or
- “(d) in the case of alteration, destruction, or disposal of a sample,—
 - “(i) the person retained a representative portion of the sample; or
 - “(ii) there is a reasonable expectation that the sample will be destroyed as a consequence of any necessary laboratory testing or scientific analysis; or
- “(e) if the person is or was a licence holder, the conduct was permitted by the terms and conditions of the licence.”

9 Section 25 (Qualifications for appointment as member)

In section 25(1)(b)(i), omit “governance” and substitute “engineering”.

10 Section 31 (Disclosure of information and interests)

In section 31(2)(b), omit “the panel or”.

11 Section 55 (Denial of prospecting permit)

In section 55(1), omit paragraph (d), and substitute:

- “(d) the Authority is aware of other grounds that reasonably indicate that the grant of the prospecting permit would be—
 - “(i) contrary to the national interest; or
 - “(ii) contrary to the purpose of this Act.”

12 Section 71 (Role of licensing panel and responsible Minister on reconsideration)

In section 71(5), omit “Authority as”, and substitute “Authority has”.

13 Section 76 (Duration of licence)

Repeal section 76 and substitute:

“76 Duration of licence

- “(1) The responsible Minister may grant an exploration licence for an initial period determined by the responsible Minister, not exceeding 5 years, commencing on the date specified in the licence.
- “(2) An exploration licence may be renewed in accordance with section 86.
- “(3) The responsible Minister may grant a mining licence for an initial period agreed with the applicant, not exceeding 30 years, commencing on the date specified in the licence.
- “(4) A mining licence may be renewed in accordance with section 86.”

14 Section 79 (Right of retention arising from exploration licence)

Repeal section 79 and substitute:

“79 Right of retention arising from exploration licence

- “(1) If the responsible Minister has granted an exploration licence,—

- “(a) any block that is part of the licensed area may, on written request by a licensee at least 90 days before the expiry date of the exploration licence, be retained by the Authority for the licensee for an initial period not exceeding 3 years commencing on the day after the expiry of the licence; and
 - “(b) at least 90 days before the expiry of the initial retention period in paragraph (a), the retention holder may make a written request to the Authority for the retention to be renewed in respect of specified blocks, for a period not exceeding 2 years commencing on the day after the initial retention period expires.
- “(2) A request for retention or renewal of a retention must comply with the prescribed requirements and include the prescribed information.
- “(3) The Authority may approve a request to retain blocks under subsection (1)(a) or renew an initial retention period under subsection (1)(b) if the licensee or retention holder demonstrates or continues to demonstrate to the Authority’s satisfaction that—
- “(a) the licensee or retention holder is taking diligent steps towards applying for a mining licence in respect of the retained area; or
 - “(b) there are good grounds for the licensee or retention holder not yet applying for a mining licence in respect of the area.
- “(4) If the Authority decides to approve the request to retain blocks, the Authority must—
- “(a) notify the licensee or retention holder of the terms and conditions of the retention, not inconsistent with this Act or the regulations, that the Authority considers appropriate, including payment of a prescribed fee; and
 - “(b) publish a notice of the retention in the *Gazette*, and record the retention in the register of titles, and on the website of the Authority.
- “(5) A retention holder has the right to apply for a mining licence under section 59(3)(b) over the blocks retained, subject to this Act and satisfactory compliance with any conditions imposed under the retention.
- “(6) The Authority may at any time during the period of a retention, by notice in writing, require a retention holder within a specified period to demonstrate to the Authority that the criteria under subsection (3)(a) and (b) continue to be satisfied.
- “(7) If the Authority is not satisfied that the retention holder has demonstrated that the criteria in subsection (3)(a) and (b) continue to be satisfied, the Authority may by notice in writing require the retention holder to apply, within a specified period and in accordance with this Act, for a mining licence in respect of all or any of the specified blocks that are the subject of the retention.”

15 Section 80 (Extension of exploration licence during mining licence application)

Repeal section 80 and substitute:

“80 Extension of exploration licence or right of retention during mining licence application

If an application for a mining licence is made by an exploration licensee or retention holder in respect of the exploration licensed area or retained blocks, the exploration licence or retention continues in force after it would otherwise expire until the close of the day on which the applicant receives a final decision on the mining licence application.”

16 Section 86 (Renewal of licence)

Repeal section 86 and substitute:

“86 Renewal of licence

- “(1) A licensee may apply to the Authority for successive renewals of a licence.
- “(2) An application must be made in the prescribed manner at least 90 days before the expiry date of the existing term of the title and must contain the prescribed information and be accompanied by the prescribed fee.
- “(3) On receipt of an application, the Authority and, as the case requires the licensing panel must treat the application as an application for a licence, and section 58 to 80 apply accordingly with any necessary modifications.
- “(4) The responsible Minister must grant a renewal of an exploration licence if the applicant—
- “(a) has complied satisfactorily with—
 - “(i) this Act; and
 - “(ii) the regulations; and
 - “(iii) the terms and conditions of the licence; and
 - “(b) does what is required by subsection (2); and
 - “(c) satisfies the Authority that there is a good reason or reasons why it has been unable to complete exploration under the licence, including circumstances beyond the licensee’s control; and
 - “(d) any other prescribed criteria.
- “(5) An exploration licence may be renewed for successive further periods not exceeding 5 years each but may not be renewed more than 3 times.
- “(6) The responsible Minister, with Cabinet’s approval, may grant a renewal of a mining licence, but only if—
- “(a) the licensed area has been the subject of sustained commercial mining by the licensee in the preceding 24-month period; and
 - “(b) it is necessary to extend the term to provide for continued and sustained commercial mining in the area; and
 - “(c) the applicant has complied satisfactorily with—
 - “(i) this Act; and
 - “(ii) the regulations; and
 - “(iii) the terms and conditions of the licence; and
 - “(d) the applicant does what is required by subsection (2); and
 - “(e) where applicable, the applicant demonstrates to the Authority that there is a good reason why it has been unable to fulfil the requirement in paragraph (a) due to circumstances beyond the licensee’s control or prevailing market conditions; and
 - “(f) any other prescribed criteria are complied with.

- “(7) A mining licence may be renewed for successive further periods not exceeding 10 years each but may not be renewed more than twice.
- “(8) If a renewal is granted after the expiry date of the initial term of the title, the title is deemed to have continued in force during the period between the expiry date and the date the renewal is granted.
- “(9) The responsible Minister may amend the licence conditions on any renewal as determined by the Authority.
- “(10) If a renewal is to be denied, the Authority must follow the processes set out in section 74.”

17 Section 88 (Termination of licences and titles)

Repeal section 88(3).

18 Section 93 (Breach of duties)

In section 93, omit “clause 5, 11(a), 14, 15, 16, 17 of 18(4)”, and substitute “clause 10, or any of clauses 12 to 14,”.

19 Section 101 (Security deposit)

In section 101(4), omit “of 5 years or more,”.

20 Section 102 (Transfer of title)

(1) In section 102(4), omit “the Authority’s”, and substitute “Cabinet’s”.

(2) Repeal section 102(5) and substitute:

“(5) If Cabinet decides not to consent to a transfer, the Authority must make a note of that refusal in the register.”

21 Section 117 (Grounds for variation, suspension, or cancellation of licence)

In section 117(1)(d), omit “public”, and substitute “national”.

22 Section 119 (Interpretation)

(1) Omit the definitions of **sponsored party**, **sponsorship applicant**, and **sponsorship application**.

(2) Insert the following definitions in their appropriate alphabetical order:

“**sponsored party** means a body corporate incorporated in the Cook Islands or a Cook Islands State enterprise that holds a current sponsorship certificate

“**sponsorship applicant** means a body corporate incorporated in the Cook Islands or a Cook Islands State enterprise applying for a sponsorship certificate under this Act

“**sponsorship application** means an application made by a sponsorship applicant for a sponsorship certificate under this Act”.

23 Section 121 (Jurisdiction)

In section 121(e), after “paragraph”, insert “(d)”.

24 Section 123 (Administration)

In section 123(1), omit “state-owned enterprise”, and substitute “Cook Islands State enterprise”.

25 Section 134 (Qualification criteria)

(1) In section 134, number the first subsection as subsection (1).

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- (2) In section 134(1)(c)(ii), omit “public” and substitute “national”.
- (3) Repeal section 134(2)(a)(i), and substitute:
- “(i) is an existing body corporate, incorporated in the Cook Islands, or Cook Islands State enterprise; and”
- 26 Section 148 (Termination of sponsorship)**
In section 148(1)(c), omit “under the sponsorship certificate lease”.
- 27 Section 154 (Seabed Minerals Fund)**
In section 154, omit “Management) to be used directly for the purposes of covering the costs of the Authority and performing its functions under this Part must” and substitute “Management to be used directly for the purposes of covering the costs of the Authority and performing its functions under this Part) must”.
- 28 Section 169 (Change of ownership, constitution or control of title holder)**
In section 169, number the subsection that begins with “The Authority must, within 60 days” as subsection (1A).
- 29 Section 183 (Amendments to enactments)**
Repeal section 183 and substitute:
- “183 Amendments to enactments**
“The Acts listed in Schedule 3 are amended as set out in that schedule.”
- 30 Schedule 2**
- (1) In clause 1, omit “any guidelines” and substitute “the applicable regulations, standards, and guidelines”.
- (2) Repeal clause 2 and substitute:
- “2 Precautionary approach and best environmental practice**
“The title holder must apply the precautionary approach, and employ best environmental practice including best available technology and techniques, in accordance with any standards or guidelines issued by the Cook Islands Government, which must be no less effective than prevailing international standards in order to avoid remedy, or mitigate the adverse effects of regulated activity on the marine environment.”
- (3) In clause 3,—
- (a) omit the heading and substitute “**Pollution control and management of waste**”; and
- (b) omit “including waste material, arising from the regulated activity” and substitute “including the disposal or discharge of waste material, arising from the regulated activity in accordance with any standards or guidelines issued by the Cook Islands Government, which must be no less effective than prevailing international standards.
- (4) In clause 6, after “closure and rehabilitation of the title area” add “in accordance with any approved closure plan”.
- (5) In clause 7, after “in the seabed mineral activities”, add “in accordance with the approved local engagement, training, and business development plan”.
- (6) Repeal clause 9 and substitute:

“9 Records, samples and returns

“(1) A title holder must keep, and give to the Authority for inspection, records and samples that are necessary to comply with this Act, the regulations, the licence, and other relevant Cook Islands enactments.

“(2) A title holder must make returns that are necessary to comply with this Act, the regulations, the licence, and other relevant Cook Islands enactments.”

(7) In clause 10, repeal paragraph (c) and substitute:

“(c) working conditions, including employment rules and health, safety, and security standards, for personnel engaged in regulated activity comply with applicable flag State standards in the case of vessels, and with Cook Islands laws in the case of installations:

“(d) an occupational health, safety, and environmental awareness plan is put in place to inform all personnel engaged in the regulated activity about the occupational and environmental risks that may result from their work and the manner in which the risks must be dealt with:

“(e) a safety management system is implemented and maintained in accordance with any standards or guidelines issued by the Cook Islands Government.”

(8) Repeal clauses 12 to 18 and substitute:

“12 Response to incidents

“The title holder must respond efficiently and responsibly to any incident, including by implementing any applicable incident management plan and following the Authority’s instructions.

“13 Insurances

“(1) The title holder must at all material times during the licence term, and any time after the licence term required by the Authority, maintain, and require its affiliates and associates engaged in the regulated activities to maintain, insurance with respect to the regulated activities in accordance with subclause (2).

“(2) The insurance must be—

“(a) with a financially sound and reputable insurer; and

“(b) against the types of incidents, casualties, and contingencies consistent with good industry practice; and

“(c) on the terms and in the amounts (including deductibles, co-insurance, and self-insurance if adequate reserves are maintained for that purpose) consistent with good industry practice.

“14 Conduct for improper benefit

“The title holder must not engage in, and must take all reasonable steps to ensure that its employees, associates, and affiliates do not engage in, any activity related to the title in exchange for any improper benefit to—

“(a) the title holder, employee, associate, affiliate, or any other person, including a friend or family member, or any person associated with the title by personal or other relationship; and

“(b) any member of the licensing panel or the Committee, inspector, officer, public official, or other person acting for or on behalf of the Crown.

“15 Reporting

“(1) The title holder must advise the Authority in writing at least 30 days before the date of departure of a vessel from port of the schedule of each voyage planned for the purpose of performing the seabed mineral activities under its title.

“(2) At the same time as it notifies the Authority under subclause (1), the title holder must submit to the Authority details of the flag State of the vessel to be used in the regulated activities, as well as certified copies of relevant vessel certification including certificates required under—

“(a) the International Convention on the Safety of Life at Sea (commonly known as SOLAS certificates); and

“(b) the International Convention for the Prevention of Pollution from Ships (commonly known as MARPOL certificates).

“(3) The title holder must submit to the Authority immediately in writing notice of any new information arising or data collected that materially affects the work plan or the title holder’s ability to adhere to the terms of the title.

“(4) The title holder must submit to the Authority immediately by telephone and in writing notice of any incident arising from a regulated activity, and provide regular reports throughout the occurrence of an incident.

“(5) The title holder must submit to the Authority, within 3 months after the end of each calendar year, a written annual report containing any information that is prescribed or reasonably required by the Authority.

“16 Inconsistent obligations

The title holder must notify the Authority in writing immediately on becoming aware that any requirement imposed on it under this Act is inconsistent with any other requirement imposed under this Act or another enactment, or otherwise incompatible with the performance of the seabed mineral activities.”

Part 2

Amendment to Environment Act 2003

31 This Part amends Environment Act 2003

This Part amends the Environment Act 2003.

32 Section 36AA Tier 1 to 3 activities

In section 36AA(2)(b), omit “Authority” and substitute “permitting authority”.