

COOK ISLANDS

LAND (FACILITATION OF DEALINGS) ACT  
NO 7 OF 1970

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Act No 7 1970

An Act to facilitate dealings in land by providing for incorporation of owners of Native land and powers of assembled owners

(22 September 1970)

BE IT ENACTED by the Legislative Assembly 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 Land (Facilitation of Dealings) Act 1970.

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

"Alienation" means, with respect to Native land, the making or grant of any transfer, lease, licence, easement, profit, mortgage, charge, encumbrance, trust or other disposition, whether absolute or limited, and whether legal or equitable (other than a disposition by will), of or affecting customary land or legal or equitable fee simple of freehold land or any share therein; and includes a contract to make any such alienation and also includes the surrender of variation of a lease or licence and the variation of the terms of any other alienation as hereinbefore defined;

"Court" means the Land Court;

"Freehold Land" means land which, or any undivided share in which, is owned by a Native of the Cook Islands for a beneficial estate in fee simple, whether legal or equitable;

"Lease" includes a tenancy at will, and any other tenancy which confers a leasehold interest upon the tenant, whether at law or in equity;

"Order" means an order, judgment, decision or determination of the Land Court and includes a refusal to make an order;

"Registrar" means the Registrar of the Land Court and includes a Deputy Registrar.

3. Relationship of this Act to Cook Islands Act 1915 - Except so far as a contrary intention appears the provisions of this Act shall apply notwithstanding anything contained in the Cook Islands Act 1915.

### PART I - INCORPORATION OF OWNERS OF NATIVE LAND

4. Owners of Native freehold land may be incorporated - When any area of Native freehold land is owned for a legal estate in fee simple by more than three persons as tenants in common (whether any such owner is entitled beneficially or as a trustee) these owners may be incorporated by an order of incorporation made by the Court in accordance with the following provisions of this Part of this Act.

## Objects of Incorporation

5. Objects of Incorporation - An order of incorporation under this Part may be made to enable the body corporate of owners established thereby:

- (a) To occupy and manage as a plantation or farm the land or any portion of the land proposed to be vested in the body corporate, and to carry on any agricultural or pastoral business thereon;
- (b) To use the land or any part thereof for the growing of timber, to engage in the felling and marketing of timber, to establish and carry on timber mills, to grant licences to cut and remove timber, or to engage in any other operations for the production, utilisation, or sale of timber;
- (c) To engage in coal mining or other mining operations on the land, or to grant leases or licences for the production of coal or other minerals;
- (d) To arrange for the lease, of the land or of any portion thereof;
- (e) To carry on any other enterprise or do any other thing in relation to the land that may be specified in the order of incorporation.

6. Modification of objects of incorporation - Upon application made to it by or on behalf of a body corporate, the Court may, from time to time, alter or redefine the objects for which the body corporate was established.

## Mode and Effect of Incorporation

7. Court may incorporate owners - (1) On the application of any person interested, the Court may, in its discretion, make in respect of the owners of any land that is owned in the manner referred to in section 3 hereof an order of incorporation under this Part of this Act:

Provided that the Court shall not make an order of incorporation under this section with respect to any land unless:

- (a) The assembled owners of the land have passed a resolution in accordance with paragraph (a) of subsection (1) of section 51 hereof, for their incorporation under this Part and the same has been duly confirmed; or
- (b) In any case to which paragraph (a) hereof does not apply, the Court is satisfied that the owners of not less than half of the aggregate shares in the land (or their trustees in the case of owners under disability) consent to the making of the order.

(2) Every such order of incorporation shall define the object or the several objects for which the body corporate is established. Every such object shall relate exclusively to the land to be vested in the body corporate by the order of incorporation.

(3) Where the proposed objects have been specified in a resolution of assembled owners the objects defined in the order of incorporation shall be the objects so specified, with such modifications, if any, as may be made by the Court on the hearing of the application for incorporation.

(4) Any such order of incorporation may be made in respect of the whole area of the land owned in common by the several owners or in respect of any defined part thereof.

(5) Where an application is made in respect of two or more pieces of Native freehold land and those pieces, are held under separate titles the Court may if it thinks fit as a preliminary to the making; of the order of incorporation exercise its jurisdiction under section 434 of the principal Act or where the ownership is not common treat those several areas as a single area owned by them in common and make an order or orders of partition accordingly.

8. No appeal from orders under this Part - No appeal to the Land Appellate Court shall lie from any order of incorporation or other order-made under this Part of this Act.

9. Effect of order of incorporation - (1) On an order of incorporation being made under section 7 hereof, the owners of the land in respect of which it is made shall become a body corporate, with perpetual succession and a common seal under the name of "The Proprietors of (Name of the land in accordance with the order of incorporation)", with power to do and suffer all that bodies corporate may do and suffer, and with all the powers expressly conferred upon it by this Act.

(2) On the alteration pursuant to any of the provisions of this Act of the area to which an order of incorporation applies, the Court may make such alterations in the order of incorporation or in the designation of the body corporate created thereby as in the circumstances of the case it deems necessary.

(3) On an order of incorporation being made as aforesaid, the land in respect of which it is made shall vest for a legal estate in fee simple in the body corporate, subject to all leases, mortgages, charges, or other interests to which the title of the owners or any of them was subject at the date of incorporation, and subject to the right of any person to procure the confirmation of any alienation under an instrument of alienation executed before the making of the order.

10. Form, custody, and use of seal - (1) The seal of every body corporate under this Part of this Act shall be in the prescribed form, and the custody thereof shall be determined by regulations.

(2) Subject to the provisions of subsection (3) of this section, the seal may be affixed to any instrument in the presence of a majority of the members of the committee of management and all the members of the committee present when the seal is affixed shall sign the instrument.

(3) Pursuant to a resolution passed by the committee of management in that behalf, given either in specific or general terms, the seal may be affixed to any instrument in the presence of any two members of the committee. In any such case, the two members of the committee shall sign the instrument and there shall be an endorsement on the instrument stipulating the date and substance of the resolution passed by the committee of management as aforesaid.

(4) Except as provided by this section the seal shall not be affixed to any instrument.

11. Owners to be members of body corporate - (1) Every person who for the time being is entitled to an equitable interest in fee simple, in any land vested in the body corporate as hereinbefore provided shall be a member of that body corporate, and all such persons are in this Part of this Act referred to as the incorporated owners:

Provided that if any such equitable interest is vested in a trustee, the trustee shall be deemed to be one of the incorporated owners and a member of the body corporate to the exclusion of the beneficiary.

(2) Every body corporate shall hold the land for the time being vested in it as aforesaid in trust for the incorporated owners, in accordance with their several interests in that land.

12. Property other than land to be held in trust for owners in accordance with their interests in land -

(1) All other property for the time being owned by a body corporate, shall be held by it in trust for the incorporated owners in proportion to their several interests in the land vested in the body corporate as hereinbefore provided.

(2) The disposition by operation of law or otherwise of the equitable interest of any owner in land vested in the body corporate by virtue of the order of incorporation or of an amending order shall, whether so expressed or not in any instrument of disposition, be and be deemed to be a disposition of his corresponding interest in all other property of the body corporate, and the persons beneficially entitled shall not be competent to dispose of their interest in such property otherwise than as provided in this section.

13. Body corporate may acquire equitable interest of owner on behalf of other owners - (1) The equitable interest of any owner in land vested in the corporation by virtue of an order of incorporation or of an amending order may, by arrangement or agreement with that owner, be acquired by the body corporate on behalf of the other owners of the land in which that interest is comprised.

(2) The acquisition by the body corporate of an equitable interest in land pursuant to this section shall, in accordance with section 11 hereof, include the acquisition of the corresponding interests of the owner in the other property of the body corporate.

(3) The transfer to the body corporate of the equitable interest of an owner in any land pursuant to this section may be effected by means of a vesting order made under this section and not otherwise.

14. General Powers of body corporate - Every body corporate under this Part of this Act shall have all such powers as may be necessary for the purpose of carrying into effect its objects as defined in the order of incorporation.

15. Bodies corporate may be amalgamated - (1) If two or more bodies corporate established under this Part of this Act consent in writing under their respective seals to their amalgamation pursuant to this section, the Court may amalgamate those bodies corporate by making, in respect of the combined area an order of incorporation in substitution for the several orders of incorporation theretofore made with regard to the same areas, and the order shall take effect as if the whole of the land included therein was owned in common by the owners of the several portions thereof.

(2) Upon an order of incorporation being made pursuant to this section, the former bodies corporate shall be deemed to have been dissolved and the lands in respect of which the order is made shall vest in accordance with the provisions of section 6 hereof for a legal estate in fee simple in the new body corporate thereby established. All other property and all rights, powers, and privileges appertaining to the former bodies corporate shall thereupon pass to the new body corporate which shall also become subject to and liable for all claims and liabilities to which the former bodies corporate were respectively subject.

(3) Every order of incorporation made under this section shall define the object or the several objects of the body corporate thereby established.

(4) Upon the appointment of a committee of management under section 28 hereof in respect of the new body corporate, the several committees of management theretofore appointed in respect of the former bodies corporate shall be deemed to have been abolished and the members thereof shall cease to hold office accordingly.

### Inclusion of Separate Areas or Adjoining Areas Within Order of Incorporation

16. Orders of incorporation may be extended to include other areas - When any area of Native freehold land is owned by more than three persons as tenants in common and all or any of those owners are also the owners or any of the owners in common of any other area of Native freehold land in respect of which an order of incorporation has been made under this Part of this Act, the Court may, subject to the provisions of section 20 hereof, make an order to the effect that the first-mentioned area shall be subject to the order of incorporation and that order shall thereafter have effect as if the whole of the land included therein was owned in common by the owners of the several portions thereof.

17. Incorporation of owners of separate areas - (1) When all or any of the owners in common of one area of land in respect of which an order of incorporation could be made under this Part of this Act are also the owners or any of the owners in common of any other area or areas of land in respect of which such an order could be made, the Court may make a single order of incorporation in respect of the whole or a defined part of the several areas owned as aforesaid and the order shall take effect as if the whole of the land include therein was owned in common by the owners of the several portions thereof.

(2) The foregoing provisions of this Part of this Act relating to orders made under section 7 hereof shall apply with respect to orders of incorporation under this section.

18. Inclusion of adjoining land in order of incorporation - (1) Where any Native freehold land (whether owned in common or otherwise) forms a continuous area with any other Native freehold land in respect of which an order of incorporation has been made or could be made in accordance with the foregoing provisions of this Part of this Act, an order of incorporation may be made or extended subject to the provisions as to consents contained in section 7 or section 20 hereof, as the case may be, so as to apply with respect to the whole of the continuous area.

(2) Where an order of incorporation is made or is extended pursuant to this section the order shall take effect as if the whole of the land, included therein was owned in common by the owners of the several portions thereof.

(3) For the purposes of this section any land shall be deemed to form a continuous area with any other land although the several portions may be separated by a road, street, river, or stream.

### Exclusion of Area from Order of Incorporation

19. Exclusion of land from order - (1) The Court may at any time by order exclude from any order of incorporation made under this Part any defined portion of the land to which that order of incorporation applies.

(2) By the same or any subsequent order the land so excluded may be vested for an estate in fee simple, in one or more lots, in any person or persons whom the Court finds to be beneficially entitled thereto.

(3) When an order under subsection (1) hereof becomes operative the land thereby excluded from the order of incorporation shall cease to be subject thereto, but no order for the exclusion of any land from an order of incorporation shall invalidate or prejudicially affect any lawful alienation or the right to procure confirmation or registration of any instrument executed before the making of the order of exclusion.

(4) All rights, obligations or liabilities arising from any lease, licence, mortgage, or charge to which the area included in the order of incorporation was subject immediately prior to the date of any order

of exclusion made hereunder may be apportioned in such manner as the Court thinks fit among the several parcels of land that were theretofore included in the order of incorporation and any such apportionment shall have effect according to its tenor as if all necessary releases, covenants, and all other dispositions had been duly made in that behalf by all parties concerned.

(5) The Court may also, if necessary, make an order amending the list of incorporated owners and declaring the persons who are beneficially entitled to the land remaining subject to the order of incorporation.

(6) On the making of an order under subsection (1) hereof, or at any time thereafter, the Court may by order make such provisions as in the circumstances of the case it thinks necessary with respect to interests in any property of the body corporate other than the land to which the order under subsection (1) hereof applies.

20. Consents required for amendment of order of incorporation by inclusion of additional area - An order of incorporation shall not be extended to include any additional area, pursuant to section 16 or section 18 hereof, except:

- (a) With the consent under seal of the body corporate affected; and
- (b) With the consent of the owner if the land to be included in the order is owned in severalty, and in any other case pursuant to a duly confirmed resolution of the assembled owners in that behalf or on proof to the satisfaction of the Court that the owners of not less than half of the shares in the area proposed to be included in the order of incorporation (or their trustees in the case of owners under disability) consent to the making of the order.

#### General Provisions as to Bodies Corporate

21. Application of revenues of body corporate - (1) The revenues derived from its operations by any body corporate may be applied:

- (a) In furtherance of the objects of the body corporate or otherwise in defraying the cost of the administration of the affairs of the body corporate;
- (b) In payment of all rates, taxes, and other assessments and outgoings payable in respect of the land or other property of the body corporate;
- (c) In repayment of any moneys borrowed by the body corporate, and the payment of interest thereon;
- (d) In the making of investments or loans as provided in subsection (2) hereof;
- (e) In setting aside reserves for contingencies or for capital expenditure or for expansion in accordance with the objects of the body corporate or in retaining in an accumulated profit account any portion of the profits which the committee of management thinks it prudent to distribute to incorporated owners;
- (f) In payment for any purpose authorised by resolution passed at a general meeting of owners;



(g) In payment of the residue from time to time to the incorporated owners in accordance with their several shares or in payment to such other person as may be entitled thereto.

(2) A body corporate, if expressly authorised so to do by resolution passed at a general meeting of owners, and with the approval of the Court in each case, may invest any moneys belonging to it in Cook Islands Government securities or in debentures issued by any local authority or public body; or may invest any moneys by way of loan secured by a mortgage of any real or personal property (either with or without collateral security).

(3) No loan shall be granted under this section to any person who is a member of the committee of management or one of the incorporated owners.

(4) Before any revenues of a body corporate are applied for any of the purposes authorised by paragraph (f) or paragraph (g) of subsection (1) of this section, it shall be the duty of the committee of management of the body corporate to determine the total amount which may, at the date of the determination, be made available for any such purposes after adequate and prudent provision has been made for payment of the amounts authorised to be paid under paragraphs (a) to (e) of that subsection and the total payments under the said paragraphs (f) and (g) shall not exceed the total amount determined by the committee of management as aforesaid.

22. Power to alienate land - (1) Subject to the provisions of this Part, a body corporate under this Part of this Act (whether so authorised by its objects or not) may alienate by way of lease the land vested in it in such manner as if it were an alienation by a Native owning the land in severalty.

(2) Notwithstanding any rule of law or equity to the contrary, a body corporate may alienate any land vested in it to any one or more of the beneficial owners thereof, including a beneficial owner who may be a member of the committee of management.

(3) Every alienation of Native freehold land by a body corporate shall require to be confirmed by the Court in the same cases and in the same manner as if it were an alienation by a Native owning the land in severalty.

(4) Every instrument of alienation shall be under the seal of the body corporate.

(5) Unless the Court directs otherwise, the proceeds of any alienation confirmed by the Court under this section shall be paid to the committee of management of the body corporate.

23. Power to accept surrenders of leases - A body corporate under this Part of this Act may, under its seal, accept a surrender of any lease to which any land vested in it is subject whether that lease was granted before or after the establishment of the body corporate, and may, with the consent of the Court, reduce, remit, or postpone the payment of any rent.

24. Borrowing powers of body corporate - (1) A body corporate under this Part of this Act shall have the same powers of borrowing as a Native under the Cook Islands Act 1915 and shall be subjected to the same restrictions as to mortgaging or charging of property.

(2) No person lending money to a body corporate under this Part of this Act shall be concerned to inquire as to the necessity for the loan or as to the application of the proceeds thereof.

25. Body corporate may acquire land - (1) Subject to the provisions of the Cook Islands Act 1915 a body corporate under this Part of this Act may, by leave of the Court, acquire any land or interest in land, whether by way of purchase, lease or otherwise.

(2) The Court, in considering any application under subsection (1) of this section, shall have regard to the objects of incorporation of the body corporate as specified in this Part, to the financial position of the body corporate, and, where the purpose of purchasing the land is to provide an investment of surplus funds, whether or not the investment is a suitable one in the circumstances.

(3) The Court may make orders, under Part XIII of the Cook Islands Act 1915, for the exchange of any Native freehold land vested in a body corporate, for other lands or interests in land.

(4) All lands acquired by or vested in a body corporate under this section shall be held by it in trust as if they had been vested pursuant to the provisions of section 9 hereof.

26. Body corporate may acquire certain shares - A body corporate under this part of this Act may with the consent of the Court acquire and hold shares in any company carrying on business relating to or affecting any business carried on or proposed to be carried on by the body corporate.

27. Powers of incorporated owners may be restricted - (1) All powers conferred by this Part of this Act upon a body corporate shall be subject to such restrictions, conditions, and exceptions as may from time to time be imposed by the Court.

(2) Any restrictions, conditions, or exceptions so imposed by the Court may at any time be removed by it either wholly or in part.

(3) No alienation by a body corporate under this Part of this Act shall, if duly confirmed, be thereafter questioned or invalidated on the ground that it was contrary to any restriction, condition, or exception imposed in pursuance of this section.

28. Committee of management to be appointed - (1) Upon the making of an order of incorporation under this Part of this Act, the Court shall, having regard to but not being bound by any nominations of members which may be made by or on behalf of the owners who have applied for incorporation, appoint a committee of management consisting of not less than three and not more than eleven persons.

(2) The Court may from time to time, on the application of the incorporated owners, appoint additional members to a committee of management:

Provided that at no time shall the number of members exceeds eleven.

(3) The incorporated owners (or their trustees in the case of owners under disability) of any body corporate shall from time to time as may be required and in the manner prescribed elect members to fill vacancies on the committee of management.

(4) No person shall be disqualified from being elected or from holding office as a member of the committee by reason of his employment as a servant or officer of the body corporate or of his being interested or concerned in a contract made by the body corporate:

Provided that a member of the committee shall not vote or take part in the discussion of any matter before the committee that directly or indirectly affects his remuneration or the terms of his employment as a servant or officer of the body corporate or that directly or indirectly affects any contract in which he may be interested or concerned.

(5) The persons so elected need not be members of the body corporate.

(6) The persons so elected shall be appointed by order of the Court as a committee of management, and shall not commence to hold office until an order of appointment has been so made.

(7) The Court may, on sufficient cause being shown, refuse to appoint any person so elected, and may thereupon either order that a new election shall be made by the incorporated owners or appoint such other person as the Court thinks fit in the place of the person so elected.

(8) The Court for sufficient cause may at any time, whether on application or of its own motion, remove from office any member of a committee.

(9) Without limiting the powers of the Court under subsection (7) or subsection (8) hereof, no person shall be appointed or shall continue to hold office as a member of a committee of management who is or becomes-

(a) A person of unsound mind within the meaning of Part XXI of the Cook Islands Act 1915;

(b) A person convicted of any offence punishable by imprisonment for a term of six months or longer, unless he has served his sentence or otherwise suffered the penalty imposed upon him.

(10) If the incorporated owners at any time make default in electing a committee, the Court may appoint a committee, and any committee so appointed may consist of such number of persons being not less than three or more than eleven, as the Court thinks fit.

(11) If any person elected by the owners to be a member of the committee of management dies before he has been appointed, the Court may appoint any other person in his place.

(12) If any member of a committee of management dies, or resigns, or is removed from office, the Court may appoint any other person in his place.

29. Rotation of members of committee - (1) The members of every committee of management shall hold office in accordance with this section.

(2) On the expiration of the first period of three years after the members of a committee of management have come into office one-third of the members shall retire on the expiration of the fourth year an equal number of the remaining original members shall retire. The members so to retire in any year, shall, where necessary, be determined by agreement or by lot.

(3) Where in accordance with subsection (2) of this section any members are to retire at the end of a period and no determination as to which of those members shall retire has been made under that subsection, the term of office of all the members required to make the determination shall expire on the fourteenth day after the end of the period.

(4) For the purpose of this section a member appointed to fill the vacancy caused by the death, resignation, or removal from office of an original member shall be deemed to be an original member.

(5) Where the total number of members of a committee is not three or a multiple of three, one-third of the members shall, for the purposes of this section, be deemed to be one-third of the next highest number which is a multiple of three.

(6) Where the number of members of a committee of management is increased after the first appointment of members the new members shall be appointed for a term of three years.

(7) All members of a committee of management appointed to fill vacancies caused by the retirement of members pursuant to this section shall be appointed for a term of three years.

(8) Any member of a committee who vacates office pursuant to this section shall be eligible for re-election.

(9) The provisions of section 28 of this Part of this Act shall, with the necessary modifications, apply to the appointment of members of a committee of management pursuant to this section.

(10) Subject to the provisions of this section, the retirement of members in any year shall be in accordance with regulations made under this Act.

(11) Notwithstanding anything to the contrary in this section, every member of a committee of management, unless he sooner vacates his office, shall continue in office until his successor, comes into office, or until the expiration of four months after the date when he is due to retire in accordance with the foregoing provisions of this section, whichever is the sooner.

(12) Any person who acts or attempts to act as a member of a committee of management when no longer entitled to do so under this section commits an offence and shall be liable on conviction to a fine not exceeding twenty dollars.

30. Validity of order of appointment - No order appointing any person as a member of a committee of management shall be questioned or invalidated on the ground of any error or irregularity in the mode of his election or appointment, and no act of the committee shall be questioned or invalidated on the ground of any vacancy in the membership thereof.

31. Committee of management to exercise powers of body corporate - (1) The powers and functions of a body corporate under this Part exercised on its behalf by its committee of management and not otherwise:

Provided that the committee shall not exercise any of the powers or functions of the body corporate except in accordance with the terms of and subject to any conditions imposed by a resolution passed at general meeting of the owners.

(2) Notwithstanding the provisions of subsection (1) hereof the body corporate shall be bound by every acts of the committee purporting to be one pursuant to a general or special authority conferred on it by resolution of the owners, and no person shall be concerned to inquire whether or not the committee has been duly authorised by resolution of the owners, or as to the terms and conditions of any such resolution.

(3) The powers of the committee may be exercised by a majority of the members thereof for the time being in office, but no decision of the committee shall be effective unless at least three members concur therein.

(4) Except as may be provided by regulations under this Act, and subject to any conditions that may be imposed on the committee by resolution passed at a general meeting of owners, the committee may regulate its procedure as it thinks fit.

32. Contracts - A contract made by the committee of management on behalf of the body corporate, other than an alienation of land, need not be under the seal of the body corporate but may be made in the same manner as the like contract made between individuals.

33. Accounts - (1) The committee of management shall at all times keep true and proper accounts of its receipts and payments, and of the income and expenditure and the assets and liabilities of the body corporate.

(2) The account shall be audited by a person approved in writing by the Registrar of the Land Court for that purpose and a duly audited statement of accounts, with a profit and loss account and balance sheet, shall in each year be submitted to a general meeting of landowners to be held not later than six months after the end of the period to which the accounts relate.

(3) With respect to the assets of the body corporate other than land that has been vested in it by virtue of the original order of incorporation or of an order amending or extending that order or made in substitution therefore, the balance sheet shall be accompanied by a statement setting forth the estimated current market value thereof, together with a statement of the liabilities (if any) of the body corporate charged on or relating particularly to those assets.

(4) The incorporated owners shall at general meeting in each year appoint a person approved in writing by the Registrar of the Land Court for the purpose, to audit the accounts for the ensuing year.

(5) A copy of the statement of accounts and other documents shall be filed in the court within fourteen days after their submission as hereinbefore required to a general meeting of owners and shall during office hours be open to public inspection on payment of the fee (if any) prescribed in respect thereof.

(6) For the purpose of subsections (2) and (5) of this section, the expression "statement of accounts" shall be deemed to include any report made by the auditor in respect of the account of the body corporate or of the operations to which those accounts relate.

34. Expenses and remuneration of members of committee - Members of the committee of management shall be entitled to receive reasonable travelling allowances, at a rate to be fixed at a general meeting of owners, or a refund of the expenses actually and reasonably incurred by them in attending or returning from meetings of the committee and shall, in addition, be entitled, subject to the consent of the court to receive such fees (if any) in respect of their services as may be authorised at a general meeting of owners.

#### General Meetings of Incorporation Owners

35. Conduct of meetings of incorporated owners - (1) General meetings of incorporated owners shall from time to time be held as required by this Act or by regulations thereunder.

(2) The Court may at any time by order direct the holding of a special general meeting of incorporated owners.

(3) All general meetings shall be summoned in manner prescribed by regulations made for the purposes of this Act.

(4) Subject to any regulations under this Act, any owner may attend and vote at any meeting of the incorporated owners either personally or by a proxy appointed by him in writing.

(5) Any owner who is under disability and for whom a trustee is in office under Part XVII of the Cook Islands Act 1915 shall, for the purposes of this section, be represented by his trustee who may attend, vote, and act at any meeting either personally or by a proxy, in the same manner and on the same conditions as if the trustee were an owner.

(6) Unless on any question submitted at a general meeting to a vote of the owners, a poll demanded by not less than five persons present in person at the meeting, or by any person or persons entitled to exercise not less than one tenth of the total votes of those presents in person or by proxy at the meeting, every owner present in person or by proxy shall have one vote only, and a resolution shall be carried if a majority of the votes is in favour thereof.

(7) If on any question submitted to a vote of the owners a poll is demanded in accordance with subsection (6) hereof, the voting powers of the owners shall be determined as follows:

(a) If the land vested in the body corporate of owners by the order of incorporation, or by an order amending or extending the same, consists wholly of an area or of separate areas of land owned by the same owners, the voting powers of the several owners shall be in direct proportion to their interests in the land;

(b) In any case to which the provisions of paragraph (a) hereof do not apply, the voting powers of the owners shall be determined separately in respect of each separate area. If the undertaking of the body corporate is a joint undertaking the voting powers of the owners in respect of all the areas shall be apportioned between the several areas in the same manner as the assets and liabilities are apportioned under that section. In any other case the voting powers shall be apportioned between the several areas by order of the court;

(c) When the voting powers of the several areas have been apportioned as hereinbefore provided, the value of the votes for each such area shall be determined in accordance with the provisions of paragraph (a) hereof.

(8) A person acting as proxy for more than one owner, or a trustee or his proxy acting for a person under disability shall be entitled to vote separately for each person or whom he so acts.

(9) No person shall be competent to act as the proxy for any owner at a meeting of incorporated owners if that person is either a member of the committee of management or has consented, before or at that meeting, to be nominated as a member of the committee of management.

(10) The Court may from time to time fix the quorum for any general meeting of incorporated owners. Unless and until a quorum has been so fixed, the quorum for any such meeting shall be twenty persons (whether members or proxies for members) or a number of persons equal to two-thirds of the total number of members (whichever is the less). For the purposes of this subsection, where the total number of members is not a multiple of three, two-thirds of the number of members shall be deemed to be two-thirds of the next highest number which is multiple of three.

(11) Whether the quorum is fixed by the Court or in accordance with subsection (10) hereof, no general meeting shall be deemed to be properly constituted unless at least three owners are present in person throughout the meeting.

(12) Except as otherwise provided in this section or by regulations, the owners present, either personally or by proxy at a general meeting, may regulate their own procedure.

#### Registration of Bodies Incorporated Under this Part

36. Register of bodies corporate - (1) The Registrar shall keep in the office of the court a register of bodies corporate to be established under this part of this Act.

(2) The register shall, in respect of every body corporate registered therein, disclose the following particulars:-

- (a) The name of the body corporate and the date of its incorporation;
- (b) The name or other description and the area of the land in respect of which the body corporate has been established;
- (c) The object or objects of the body corporate;
- (d) The names of the members for the time being of the committee of management;
- (e) The location of the office of the body corporate or of the secretary of the committee of management;
- (f) Particulars of all orders made by the Court in relation to the body corporate;
- (g) The date of the filing in the court of the annual statement of accounts of the body corporate;
- (h) Such other particulars (if any) as may be prescribed in that behalf by regulations under this Act.

(3) Every register kept pursuant to this section shall during office hours be open to public inspection on payment of the fee (if any) prescribed in respect thereof.

#### Winding up of Bodies Corporate

37. Body Corporate may be wound up by Court - (1) If default is made in the filing of accounts, as required by section 33 hereof, or if for any other reason the Court thinks it expedient so to do, it may at any time order the winding up of any body corporate established under this Part of this Act.

(2) Every such winding up shall proceed in accordance with Rules of Court and, subject to any such Rules, in accordance with the directions of the Court.

(3) On any such winding up the Court may make such orders as are necessary to vest in or transfer to the persons beneficially entitled thereto all land and other property vested in or belonging to the body corporate, in accordance with the respective interests of those persons, and the property shall vest in those persons accordingly. Instead of making a vesting order in respect of any land vested in the corporation the Court may by order direct that the original title or titles shall be revived with such amendments as may be necessary.

(4) On the completion of the winding up the Court may make an order dissolving the body corporate, but if it is subsequently appears that any such order of dissolution has been made in error, the Court may revoke the same as from the making thereof, and the body corporate shall thereupon revive and the same proceedings may be taken thereafter as if no such order of dissolution had been made.

(5) On the revocation of an order for the dissolution of any body corporate as aforesaid, all vesting orders or other orders made under subsection (3) hereof shall be deemed to be revoked as from the making hereof, and, if the land transfer register has been amended in consequence of any such order,

the amendments shall be deleted and the register restored to its condition prior to the making of the amendments.

38. Penalties for non-compliance with statutory provisions relating to bodies corporate of Native owners - (1) Every corporation which commits any offence referred to in subsection (2) of this section, and every officer of a corporation who knowingly or wilfully authorises or permits the commission of any such offence, shall be liable on conviction to a fine not exceeding twenty dollars and, if the offence is a continuing one, to a further fine not exceeding four dollars for every day during which the offence continues.

(2) Following acts or commissions are hereby constituted offences to which the provisions of subsection (1) of this section apply:-

(a) Failure to keep accounts as required by subsection (1) of section 32 of this Part of this Act;

(b) Failure to have accounts duly audited as required by subsection (2) of the said section 32;

(c) Failure to submit to a general meeting of owners a statement of accounts and statement of the value of certain assets as required by subsections (2) and (3) of the said section 32;

(d) Failure to keep, in the prescribed manner, a register of incorporated owners;

(e) Failure to hold, as prescribed, an annual general meeting of the incorporated owners;

(f) The making of any payment from the funds of the body corporate which is not authorised by or pursuant to this Part of this Act.

(3) For the purposes of this section the expression "officer of a body corporate" shall include a member of the committee of management of a body corporate, and the secretary of a body corporate.

(4) Any information for an offence under this section may be laid at any time within three years after the date of the commission of the act in respect of which the proceedings are taken.

### PART III - POWERS OF ASSEMBLED OWNERS

39. Application of this Part - (1) This Part of this Act applies with respect to Native freehold land.

(2) Except so far as may be otherwise expressly provided this Part of this Act shall extend and apply to land that is vested in a body corporate of owners or in any trustee.

40. "Owners" and "assembled owners" defined - (1) In this Part of this Act the term "owners" in relation to any area of land means the persons who are beneficially entitled to that land in fee simple as tenants in common whether legal or equitable and includes but not to the exclusion of the persons entitled in remainder, the owner of a beneficial freehold interest for life or any other beneficial freehold interest less than the fee simple in any land or in any share therein.



(2) In this Part of this Act the term "assembled owners" means with respect to any land the owners thereof as hereinbefore defined assembled together in a meeting called and held in accordance with this Part of this Act and with any regulations relating thereto.

41. Sale of timber, etc., to constitute alienation for purposes of this Part - For the purposes of this Part of this Act, a contract of sale of any timber, minerals or other valuable thing (other than industrial crops) attached to or forming part of any Native Land, or any contract, licence or grant conferring upon any person (whether by way of agency or otherwise) the right to enter upon any Native Land for the purpose of removing therefrom any timber, flax, minerals or other valuable thing (other than industrial crops) attached thereto or forming part thereof shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold or authorised to be removed has been severed from the land before the contract, licence or grant is made or granted.

42. Powers of assembled owners - The assembled owners of any land to which this Part of this Act applies shall have in respect thereof the powers conferred by this Part of this Act.

43. Meetings of assembled owners to be summoned by Court - (1) Meetings of assembled owners shall be summoned by the Registrar by direction of the Court given on application made in accordance with this section:

Provided that where application is made by or on behalf of the Crown the Registrar shall summon a meeting of owners without submitting the application to the Court.

(2) Every application made for the purposes of this section shall specify the purpose or the several purposes for which a meeting of owners is sought; and shall be accompanied by a copy of the resolution or the several resolutions proposed to be submitted to the meeting.

(3) Application for the summoning of a meeting of assembled owners may be made by any person interested.

(4) Every application made under this section other than an application made by or on behalf of the Crown shall be accompanied by the prescribed fee.

(5) Except in cases where the application for a meeting of owners is made by or on behalf of the Crown the summoning of a meeting shall be in the discretion of the Court.

(6) Every such meeting shall be held at such time and place as the Court or Registrar appoints and shall be summoned by the Registrar in the prescribed manner.

(7) No meeting duly summoned in the prescribed manner and no resolution passed thereat shall be invalidated or otherwise affected by the circumstance that any owner has not in fact received notice of the holding of that meeting.

44. Notice of proposed resolutions to be given to owners - (1) Every notice summoning a meeting of the assembled owners shall have incorporated therein or attached thereto a statement of the terms of every proposed, resolution that is to be submitted to the meeting. Except as provided in subsection (2) hereof no resolution shall be proposed at the meeting unless notice thereof has been given in accordance with this section.

(2) Where a resolution in accordance with paragraphs (b) and (c) of subsection (1) of section 51 hereof is rejected by the meeting a resolution in accordance with paragraph (e) thereof may be submitted to the meeting notwithstanding that notice thereof may not have been given in accordance with this section.

45. Procedure at meetings - (1) No meeting of assembled owners shall be deemed to be properly constituted unless at least five individuals entitled to vote and representing at least one quarter of the beneficial freehold interest in the land are present during the whole time of the meeting.

(2) Subject to the provisions of this section an owner may attend or vote at any such meeting either personally or by a proxy appointed by him in writing.

(3) Any owner who is under disability and for whom a trustee is in office under Part XVII of the Cook Islands Act 1915 shall for the purposes of this Part of this Act be represented by his trustee who may attend, vote and act at any meeting either personally or by a proxy in the same manner and on the same conditions as if he were an owner.

(4) No person claiming to be beneficially interested in the estate of a deceased owner shall be entitled to attend or vote at any such meeting until and unless a vesting order in respect of his interest has been made by the Court.

(5) No person shall act as proxy at any such meeting after the death of the person who has given the proxy.

(6) Any adult of full mental capacity shall be qualified to act as a proxy at any meeting of assembled owners.

(7) Except so far as determined by this Act the procedure at any such meeting shall be determined by regulations under this Act.

46. Recording officer to attend meetings - (1) For the purposes of every meeting of assembled owners there shall be an officer to be called the Recording Officer who shall act as Chairman of the meeting and as such shall keep a sufficient record of the proceedings.

(2) The Registrar of the court or some other officer of the Land Court appointed for the purpose by the Registrar shall be the Recording Officer.

47. Voting at Meeting - (1) Every resolution which a meeting of assembled owners is authorised by this Act to pass shall be deemed to be carried -

(a) where the relative interests have been defined if the owners who either personally or by proxy vote in favour of the resolution own a larger aggregate share of the land affected thereby than the owners who vote either personally or by proxy against the resolution;

(b) where the relative interests have not been defined if the number of owners who either personally or by proxy vote in favour of the resolution is greater than the number of owners who vote either personally or by proxy against the resolution.

(2) For the purpose of this section the value of the vote of the owner of a beneficial freehold interest less than the fee simple shall be computed as if he were the owner in fee simple of one half of his share and the value of the vote or votes of the person or persons entitled in remainder shall be similarly computed as if they were the owners in fee simple of the other half share.

(3) A person acting as proxy for more than one owner or a trustee or his proxy acting for more than one person under disability shall be entitled to exercise one vote in respect of each person for whom he so acts.

48. Assembled owners may accept or reject or vary form of resolution submitted - (1) All resolutions shall be submitted to the meeting in the form in which they were set forth in the notice summoning the meeting.

(2) In considering any such resolution the owners may accept or reject the same or may adopt any such resolution with such modifications as they think fit.

(3) Nothing in this foregoing provisions of this section shall be construed to limit the provisions of subsection (2) of section 44 hereof.

49. Resolutions to be in writing and signed - (1) Every resolution passed at a meeting of assembled owners shall be reduced to writing by the recording Officer and shall be certified by him as being a correct transcription of the resolution or shall be otherwise authenticated in manner prescribed by regulations.

(2) Any owner, trustee or proxy who voted against the resolution may if he so desires sign a memorial of dissent in the presence of the Recording Officer at any time within fourteen days after the date of the meeting.

50. Resolutions to be reported to Court - As soon as practicable after the holding of any such meeting the Recording Officer shall in writing under his hand report the result thereof to the Court and shall deposit among the records of the Court a statement under his hand of the proceedings of the meeting together with a copy of every resolution and memorial of dissent.

51. Resolutions which may be passed by assembled owners - (1) The assembled owners of any land may pass in manner aforesaid any one or more of the following resolutions:-

(a) That the owners of the land or of any part thereof shall either by themselves or together with the owners of any other land, become incorporated under Part I of this Act for such object or objects as may be specified in the resolution or that any defined land of the owners be included in an existing order of incorporation pursuant to section 17 or section 18 hereof.

(b) That a propose alienation of the land or any part thereof to the Crown be agreed to.

(c) That a proposed alienation of the land or any part thereof to any person other than the Crown be agreed to.

(d) That the lessee under any lease to which the land is subject be permitted to surrender the same or that any rent then due and payable under a lease be remitted in whole or in part so that payment thereof be postponed or that payment thereof be postponed or that rent under any lease be reduced or that with the consent of the lessee the terms and conditions of any lease be varied in manner set out in the resolution.

(e) The Registrar be authorised to act as the agent of the owners to negotiate for and to carry into effect the alienation as specified in the resolution of the

land and any part thereof subject to such restrictions or limitations as may be specified in the resolution or that the Registrar be appointed the agent of the owners for any other specified purpose or that any resolution theretofore made for the purposes of this paragraph be revoked.

(f) That any moneys for the time being held by the Registrar in respect of the land may be applied by him for any purpose specified in the resolution.

(2) No resolution passed by the assembled owners pursuant to this section shall have any force or effect unless it is confirmed by the court as hereinafter provided.

52. Resolutions subject to confirmation by court - Application for confirmation by the court of any resolution duly passed at a meeting of assembled owners may without payment of any fee be made by any person interested.

53. Resolutions for alienation of land - (1) Except as may be otherwise provided by Rules of the Court or unless exemption from the requirements of this subsection is granted by the Court, every application for the confirmation of a resolution for the alienation of land to any person other than the Crown shall be supported by a valuation of the land to which the resolution relates.

(2) In determining the adequacy of the consideration the Court shall have regard to the valuation as aforesaid but shall not be bound to determine the adequacy of the consideration in conformity with that valuation.

54. Court may confirm, modify or disallow resolutions - (1) On application for the confirmation of any resolution the Court subject to the provisions of this Act may -

(a) Confirm the resolution either absolutely or subject to any conditions that it is authorised by this Act to impose; or

(b) Disallow the resolution.

(2) If in the exercise of its powers the court proposes to impose conditions or otherwise materially to modify a resolution as passed by the owners for the alienation of any land it shall not proceed to confirm the resolution unless the alienee consents to the proposed alterations or conditions.

(3) If in the opinion of the court there has been undue delay in applying for or in proceeding with an application for confirmation of any resolution the Court may refuse to consider the application.

(4) No appeal to the Land Appellant Court shall lie in from any order made by the court under this section other than an order made for the purposes of paragraph (c) of subsection (1) of section 51 hereof.

55. Court may adjourn proceedings for confirmation to allow partition orders being made - (1) The Court may from time to time postpone or adjourn the hearing of any application for confirmation of a resolution for the alienation of any land so as to permit the making of an application or of applications for partition.

(2) In any such case the Court shall, as soon thereafter as it thinks fit, and notwithstanding the fact that applications for partition may be pending, take the resolution into further consideration and either disallow the same or confirm it with respect to the residue of the land after deducting the shares if any which have been severed or are to be severed by way of partition.

(3) No appeal to the Land Appellate Court shall lie from any order made by the Court under subsection (2) of this paragraph other than an order made for the purposes of paragraph (c) of subsection (1) of section 51 hereof.

56. General provisions as to confirmations as to confirmation of resolutions - (1) No resolution shall be confirmed by the court before the expiration of fourteen days after the day when the same was passed.

(2) Except in cases where the hearing of an application for confirmation of a resolution of assembled owners is postponed or adjourned pursuant to section 55 hereof no such resolution shall be confirmed after the expiration of twelve months from the day on which the resolution was passed and except as aforesaid every such resolution shall be deemed to have lapsed on the expiration of the said period of twelve months:

Provided that the Court may on application made within six months after the lapse of a resolution extended the same period of twelve months by a further period not exceeding twelve months and the resolution shall thereupon be deemed to have been revived as from the date on which it lapsed.

57. Confirmation of resolution for alienation not to constitute contract - The confirmation of a resolution under this part of this Act with respect to the proposed alienation of any land shall not constitute a contract between the owners and any other persons or impose any obligations or confer any rights upon the owners or upon an intending alienee or other person.

58. On confirmation of resolution for alienation the Registrar to become agent of owners to execute instruments, etc. - (1) On the confirmation of a resolution for the alienation of any land to the Crown or to any other persons or for the variation of the terms and conditions of any lease the Registrar shall become the statutory agent of the owners to execute all instruments and to do on their behalf all such other things as may be necessary to give effect to the resolution.

(2) Every instrument of alienation executed by the Registrar as agent of the owners shall without confirmation under Part XVI of the Cook Islands Act 1915 have the same force and effect as if it had been lawfully executed by all of the owners or their trustees and as if those owners or trustees had been fully competent in that behalf.

(3) Every instrument of alienation so executed by the Registrar shall contain a statement or recital that he is duly authorised to execute the same as the agent of the owners under this part of this Act and every such statement or recital shall be accepted by all Courts as prima facie evidence of the facts so stated or recited.

(4) Except as against a person guilty of fraud no instrument of alienation executed by the Registrar as agent of the owners under this section shall be invalidated by any breach or non-observance of the provisions of this Part of this Act prior to the confirmation of the resolution or by any repugnancy between the terms of the resolution and the terms of the instrument of alienation executed in pursuance thereof.

(5) The owners shall not be competent to revoke the authority of the Registrar to act as their agent under this section.

59. Court may cancel resolution if not acted on - (1) If any resolution passed by the assembled owners and confirmed by the Court is not carried into effect within a reasonable time after the date of confirmation the Court may annul the confirmation and hereupon the resolution shall be deemed to be rescinded.

(2) No appeal to the Land Appellate Court shall lie from any order made under this section.

### PART III - GENERAL

60. Regulations -(1) The High Commissioner may from time to time by Order in Executive Council, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act, and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the date of commencement of the next ensuing session.