

# **AUTONOMOUS STATE OF ANJOUAN, UNION OF COMOROS**

## **OFFSHORE FINANCE AUTHORITY ACT 003 OF 2005**



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**AN ACT** to establish the Anjouan Offshore Finance Authority and to designate the duties and responsibilities thereof.

**Short title and commencement**

1. This Act may be cited as the Anjouan Offshore Finance Authority Act 003 of 2005 and comes into operation on 20<sup>th</sup> Day of February 2005

**Interpretation and definitions**

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

“Authority” means the Anjouan Offshore Finance Authority created pursuant to section 3(1);

“Authority Board” means the board of directors of the Authority appointed pursuant to section 3(2), which shall be responsible for making all decisions that fall to be made by the Authority;

“Companies Act” means the Anjouan Companies Act and any amendments thereto;

“Comptroller” means the Comptroller of Inland Revenue appointed under of the Income Tax Act and includes any other government employee to whom the Comptroller may delegate his functions under this Act;

“Court” means the High Court of the State of a judge thereof;

“International Banking Notice and Act” means the International Banking Notice 005 of 2005 as the same may be amended from time to time;

“International Banking Company” means a company which is licensed to carry on an offshore banking business in the State pursuant to the International Banking notice and Act or which is continued under that act or the International Business Companies Act;

“International Business Companies Act” means the International Business Companies Act 004 of 2005 as the same may be amended from time to time;

“International Business Companies” means a company incorporated or continued under the International Business Companies Act, and each reference to an “international company” in this Act shall be a reference to an International Business Company;

“International Insurance Company” means an International Business Company which carries on the business of insurance entirely or in common with any other business;

“Minister” means the Minister for Finance of the State;

“Offshore Finance Inspector” means the person appointed pursuant to section 8(2) of this Act;

“Offshore Legislation” means and includes this Act, the International Business Companies Act, the International Banking notice and Act, Gaming act, all other regulations promulgated under any such Act, and any future laws or regulations of the State relating to the provision of offshore financial services or the regulation of entities formed in the State to render such services;

“Registered Agent” means a person holding a valid and subsisting license to engage in the business of Offshore Representation pursuant to the Registered Agent Licensing Act, and

“Registering Agent” means a Registered Agent participating in the making of application for registration on behalf of a proposed International Business Company.

“Registered Agent Licensing Act” means the Registered Agent Licensing Act 2005 as the same may be amended from time to time.

“Resident” means, for the purposes of this Act,

- (1) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation;
- (2) a company, partnership, limited partnership or other body, incorporated, established, formed or organised in the State under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (1) or (3) hereof, or by the State, and
- (3) any corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in the State under general principles of State income taxation; provided that for purposes hereof the term “Resident” shall not include any an

International Business Company that complies with the tax exemption provisions of the International Business Companies Act; or an International Banking Company that complies with the tax exemption provisions of the International Banks Act; so long as and to the extent that such compliance continues under the provisions of the applicable Act;

“State” means the State of Anjouan

### **Establishment of Authority**

3. (1) There shall be established for the purposes of this Act a new body corporate under the laws of the State to be known as the “Anjouan Offshore Finance Authority”. Except as provided elsewhere in the laws of the State, the Authority shall have primary responsibility for the efficient and responsible administration and supervision of offshore legislation.
- (2) The Authority shall be governed in its activities in every respect by the Authority Board, a board of directors consisting of five members, four of whom shall be appointed by the authority in writing signed by the Secretary, and one of whom shall be the Director General of Finance for the State, provided that:
  - (a) no member of the Authority Board shall be a member of the House of Assembly or a minister,
  - (b) each member of the Authority Board shall be a natural person and a citizen of the State at all times he is sitting on the Authority Board, and
  - (c) the Offshore Finance Inspector shall be an ex officio member of the Authority Board, but as such he shall have no right to vote in Authority affairs undertaken by the Authority Board.
- (3) Nominations of persons to serve as members of the Authority Board may be received from persons registered under the Registered Agent Licensing Act.
- (4) Parliament shall appoint a Chairman from among the members of the Authority Board, and the Authority Board shall appoint a Secretary who shall not be a member of the Authority Board.
- (5) A member of the Authority Board shall, subject to the provisions of subsections (7) and (8) of this section, hold the office of the Director for the period of 2 years, but such member shall be eligible for reappointment.
- (6) Parliament may, by instrument in writing, at any time, revoke the appointment of any person serving on the Authority Board for cause, including excessive absences from board meetings, inattention to regular

duties of board members, or a disability that inhibits such member from functioning as an Authority Board member for a continuous period of six months or more.

- (7) Any member of the Authority Board may at any time resign his office in writing addressed to the chairman, and upon receipt of such resignation such member shall cease to be a member of the Authority Board.
- (8) The Chairman may likewise resign from the Authority Board in writing address to the Secretary of the Authority Board.
- (9) The appointment, removal, death, or resignation of a member of the Authority Board shall be the subject of notice to be published in the State's official newspaper.

#### **Status of Authority as Body Corporate**

- 4. (1) The Authority shall be a body corporate having perpetual existing and a common seal. The rules and by-laws of the Authority Board shall be prepared by the Minister and approved by the Parliament. Such by-laws shall govern all meetings, functioning and operations of the Authority Board, and the provisions of such by-laws shall at all times be consistent with the provisions of this Act, with the procedures normally governing bodies corporate created by the States, and with the duties of the Authority contained herein and elsewhere in the laws of the State.
- (2) Subject to the provisions of this Act, the decisions of the Authority shall be binding to the extent provided by law.
- (3) The Authority may sue and be sued in its corporate name and may borrow such monies as it may reasonably need from time to time. Service upon the Authority of any notice, order or other document shall be executed by delivering the same or sending it by registered post addressed to the Secretary of the Authority at the Office of the Authority.
- (4) All annual operating expenses of the Authority including salaries to be paid to employees of the Authority and to Authority Board members (if any) shall be funded by the Government of the State pursuant to an annual budget provided to Parliament by the Authority Board as a normal part of the annual Government budget process; provided, however, in the event of the proposed operating expenses for a given year are greater than the anticipated (in the case of the first year of operation of the Authority) or the historical annual (after the first full year the Authority is in existence) gross revenues of the Government from fees paid to the statues under the International Business Companies Act, the International Banking Notice and Act, the Registered Agent Licensing Act, and any other offshore or honorary citizenship laws of

the State from time to time subsisting, Parliament may meet the operating budget shortfall through other resources of the State.

### **Acts of the Authority**

5. (1) The seal of the Authority shall be kept in the custody of the Offshore finance Inspector, and such seal may be affixed, in the presence of the Chairman and the Secretary, to instruments pursuant to resolutions duly adopted by the Authority Board.
- (2) All documents, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Offshore Finance Inspector.
- (3) The Authority may call upon the State to aid it in the carrying out and enforcement of decisions, rulings and resolutions made in the normal course of its operation and in carrying out the duties and responsibilities set forth in this Act and specifically provided for elsewhere in the laws of the State.

### **Remuneration to the Authority Members**

6. The Authority shall pay to each member of the Authority Board, in respect of his office as such, an amount of remuneration (if any) as cabinet may determine, and shall reimburse reasonable ordinary and necessary expenses attendant to approved Authority activities in the manner prescribed by the Authority. The amounts of such remuneration and anticipated reasonable expense allowances (if any) shall be included in the annual budget for the authority submitted under section 4(4).

### **Validity of Authority Acts, Immunity and Indemnification**

7. (1) No act done or proceedings taken under this Act shall be questioned on the ground -
  - (a) of the existence of any vacancy in the member ship on the Authority Board, or any defect in the constitution of the Authority; or
  - (b) of any omission, defect or irregularity not affecting the merits of the case
- (2) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any individual member of the Authority Board in respect of any act done bona fide in pursuance of, or in execution or intended execution of, this Act or of other official duties of the authority as provided elsewhere in the laws of the State.

- (3) Where any member of the authority Board is exempt from liability by reason only of the provisions of this section, the Authority shall be liable to the extent that the member of the Authority Board would have been liable had he not be so exempt.
- (4) The authority may purchase a policy or policies of insurance, insuring the members of the Authority Board and the officers and employees of the Authority against liabilities as provided in the rules and by-laws of the Authority

### **Duties and Rights of Authority**

- 8. (1) Subject to the provisions of this Act which may require prior approval of certain decisions, the Authority shall have the duty, ultimate authority and exclusive right-
  - (a) to administer and undertake the licensing of International Banking companies under the provisions of the International Banks Act, to supervise and regulate the activities of International Banking companies licensed under the Act, and to undertake all responsibilities delegated or reserved to the Authority under such Act;
  - (b) to appoint, and to supervise the activities of, the Offshore Finance Inspector, who shall be an employee of the Authority;
  - (c) to oversee the activities of the Registrar of International Business Companies and to hear appeals from decisions of the Registrar of International Business Companies as to registrations of matters relating to the incorporation and registration of International Business Companies under the International Business Companies Act;
  - (d) to represent and enhance the reputation of the State world-wide through the development of an international market for offshore financial services and opportunities offered by the State, at all times in co-ordination with the rights and effort of the holders of rights to market State offshore services outside the State under pre-existing contracts with the Authority; and
  - (e) to propose and implement regulations for the efficient administration of this Act and other Offshore Legislation from time to time.
- (2) Subject to prior approval of Parliament, the Authority may appoint any natural person to the position of Offshore finance Inspector under terms and conditions of employment that the authority deems proper and necessary. The Offshore Finance Inspector shall, subject to the supervision and control of the

authority Board, manage the day-to-day business of the Authority and of the Authority Board and be responsible for the proper discharge of the duties of the authority that are delegated to him by the Authority under this Act and under other Offshore Legislation.

- (3) The Authority, and the revenues and expenses of the State in connection with the activities provided for in Offshore Legislation, shall be subject to audit under normal State procedures for State agencies.

### **Fees Payable**

9. Each International Business Company and International Banking Company and other Licenses company, registered under Offshore legislation shall pay all fees, fines and penalties due to be paid by it under the terms of any Offshore Legislation to Anjouan Corporate Services, the exclusive appointed agent, marked as received from offshore services, and the agent shall remit the agreed sum in such manner.
10. The Minister, after consultation with the Authority, may make rules for the better carrying into effect of the purposes and provisions of this Act.

Effected this 20th day of February 2005