



REPUBLIC OF NAURU

CORPORATION (AMENDMENT) ACT 1973

(No. 1 of 1973)

ARRANGEMENT OF SECTIONS

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AN ACT

To amend the Corporation Act 1972.

(Certified: 26th January, 1973)

Enacted by the Parliament of Nauru as follows:

SHORT TITLE

1. This Act may be cited as the Corporation (Amendment) Act 1973.

INTERPRETATION

2. In this Act "the principal Act" means the Corporation Act 1972.

AMENDMENT OF SECTION 7 OF THE PRINCIPAL ACT

3. Subsection (2) of section 7 of the principal Act is amended by deleting the words "a public officer appointed by the Chief Secretary with the approval of the Cabinet" and by substituting therefor the words "appointed as such by the Cabinet".

AMENDMENT OF SECTION 15 OF THE PRINCIPAL ACT

4. Section 15 of the principal Act is amended by deleting the full stop at the end of the last line of subsection (23) and substituting a colon therefor and by adding to the said subsection (23) the following proviso -

"Provided that, where by any such request the Authority is specifically requested -

- (a) to file articles with the memorandum, or
- (b) to cause the corporation to adopt new articles before the expiration of three months from the date of its incorporation,

such articles being additional to or in substitution for all or any of the articles as set out in the said Table B, the Authority may, if it thinks fit, notwithstanding the provisions of this subsection, lodge such articles with the Registrar at the same time as it lodges the memorandum or at any time within three months of the incorporation of the corporation and such articles shall, notwithstanding the issue of a bearer debenture by the corporation under subsection (13), be, upon the filing thereof and until altered in any manner provided for this Act, the articles of the corporation."

ADDITION OF A NEW SECTION 15A TO THE PRINCIPAL ACT

5. The principal Act is amended by adding thereto the following new section 15A -
"CONTINUATION IN NAURU OF CORPORATION INCORPORATED OUTSIDE NAURU
 15A. (1) Subject to subsection (6) of this section and to section 247, a corporation incorporated as a company or corporation under the laws of any country other than

Nauru, or of any jurisdiction within such a country, may, if it appears to the Registrar to be so authorised by the laws of that country or jurisdiction, apply to the Registrar to be registered as being continued in Nauru as if it had been incorporated under this Act.

(2) Upon application under the preceding subsection, supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the corporation as may be required by the laws of that country or jurisdiction, and the consent of the proper officer of that country or jurisdiction, to such registration has been obtained by the corporation, register such corporation as being so continued and, if so registered, the corporation shall be deemed thereafter to be a corporation incorporated under this Act and domiciled in Nauru:

Provided that no corporation may be registered under this section if —

- (a) its winding-up has commenced;
- (b) a receiver of its property has been appointed; or
- (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.

(3) A corporation applying under subsection (1) to be registered in Nauru shall state in its application whether it is seeking to be registered as a trading corporation or a holding corporation. The Registrar shall not register any corporation under this section unless he is satisfied that it would be eligible to be incorporated in Nauru as a corporation of the class in which it seeks to be registered and, if he registers it, he shall register it either as a trading corporation or as a holding corporation.

(4) The registration of a corporation under this section shall not operate —

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of the corporation;
- (c) to affect the property of the corporation;
- (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the corporation or any other person; or
- (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligation of the corporation or any other person.

(5) Upon the registration of a corporation under this section —

- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the corporation; and
 - (b) so much of its constitution as does not, by virtue of the preceding paragraph, comprise its memorandum of association shall be deemed to be the registered articles of association of the corporation,
- and shall be binding on the corporation and its members accordingly.

(6) No corporation incorporated by private Act or which could not be incorporated under this Act shall be registered under the preceding subsection.

(7) A corporation registered under subsection (1) shall pay the same fee for registration as if it were being registered upon incorporation in Nauru and the provisions of regulations relating to the changing of names by companies incorporated under the Companies Ordinance 1912 of the Territory of Papua in its application to Nauru and registered under section 3 of this Act shall apply mutatis mutandis thereto."

AMENDMENT OF SECTIONS 42 AND 200 OF THE PRINCIPAL ACT

6. (1) Subsection (3) of section 42 of the principal Act is amended —

- (a) by deleting the words "carrying on the business of banking in Nauru" and by inserting in substitution therefor the words "carrying on business as a commercial and trading bank in Nauru"; and
- (b) by deleting the words "carrying on the business of banking outside Nauru" and by inserting in substitution therefor the words "carrying on such business outside Nauru."

(2) Section 200 of the principal Act is amended by adding the following new subsection:

"(2) For the purposes of this section "bank account" means such an account with a corporation or foreign corporation lawfully carrying on business as a commercial and trading bank in Nauru or with any corporation or institution carrying on such business outside Nauru and approved for the purposes of this section by the Registrar.";

and by numbering the present section as subsection (1).

ADDITION OF A NEW SECTION 232A TO THE PRINCIPAL ACT

7. The principal Act is amended by adding thereto the following new section 232A –
"CONTINUATION OUTSIDE NAURU OF CORPORATION INCORPORATED UNDER THIS ACT

232A. (1) A corporation incorporated under this Act may, upon obtaining the approval of the Minister apply to the proper officer of a country other than Nauru, or of a jurisdiction within such a country, by the laws of which such continuation is authorised for an instrument of continuation continuing the corporation as if it had been incorporated under the laws of that other country or jurisdiction; and on and after the date of the instrument of continuation the corporation shall become a corporation under the laws of that country or jurisdiction and be domiciled therein.

(2) A corporation shall not apply to the Minister for approval under the preceding subsection unless –

(a) such application is authorised by –

(i) where any shares of the corporation are in existence, holders of not less than three-quarters of such shares of each class; and

(ii) the holders of not less than three-quarters of the corporation's debentures, if any, of each class;

(b) the corporation, not less than 28 days before applying to the Minister for such approval, has published in the Gazette a notice of its intention to make the application; and

(c) it lodges with the Minister an affidavit sworn by a director of the corporation in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

(3) The Minister shall not give his approval to a corporation applying for its continuation in another country or jurisdiction unless he is satisfied that –

(a) the requirements of the last preceding subsection have been complied with;

(b) the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the corporation's members, debenture-holders or creditors; and

(c) the corporation has not failed to comply with any provision of this Act with which it should have complied;

and may make his approval conditional upon such provision as he thinks necessary being made by the corporation to safeguard the rights and proper interests of any member, debenture-holder or creditor of the corporation or any class of such members, debenture-holders or creditors or upon the corporation taking such steps as he considers necessary to remedy any failure to comply with any provision of this Act.

(4) Upon an instrument of continuation continuing the corporation in another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the corporation shall forthwith notify the Registrar of the details and the corporation shall be deemed to have ceased to be a corporation incorporated in Nauru from the date when its continuation in that other country or jurisdiction takes effect, and the Registrar shall remove its name from his register: Provided that nothing in this subsection shall –

(a) prevent such a corporation from being registered in Nauru as a foreign corporation at any time after it has ceased to be a corporation incorporated in Nauru; or

(b) take away or affect the jurisdiction of any Court in Nauru to hear and determine any proceedings commenced therein by or against the corporation before it

ceased to be a corporation incorporated in Nauru.

(5) For the purposes of this section –

(a) a person who has, in Nauru or elsewhere, commenced proceedings against a corporation, other than proceedings to recover a debt alleged to be owed by the corporation to the taxation or revenue authority of any country or jurisdiction, or has counterclaimed against a corporation in proceedings commenced by the corporation, shall be deemed to be a creditor of the corporation;

(b) no person shall be deemed to be a creditor of a corporation in respect of any debt owed, or alleged to be owed, to the taxation or revenue authority of any country or jurisdiction.”

ADDITION OF A NEW SECTION 250A TO THE PRINCIPAL ACT

8. The principal Act is amended by adding thereto the following new section 250A –
- “APPLICATION OF RULE AGAINST PERPETUITIES IN CERTAIN CASES**
- 250A. Notwithstanding the provisions of section 3 of the Foreign Trusts, Estates and Wills Act 1972, the rule of law known as the Rule against Perpetuities shall apply to any contract, deed, settlement or limitation to which a corporation is a party if it is in such contract, deed, settlement or limitation expressed to apply thereto and for that purpose and to that extent only it shall be deemed to be a rule of law in force in Nauru.”