



**REPUBLIC OF NAURU**

**THE REPUBLIC OF NAURU FINANCE CORPORATION (AMENDMENT) ACT 1998**

(No. 7 of 1998)

***ARRANGEMENT OF SECTIONS***

Section

1. Short title
2. The Principal Act
3. Repeal and replacement of section 27
4. Repeal and replacement of section 30



**AN ACT**

*to amend The Republic of Nauru Finance Corporation Act 1972*

(Certified: 13/12/1998)

*Enacted by the Parliament of Nauru as follows:*

**SHORT TITLE**

1. (1) This Act may be cited as The Republic of Nauru Finance Corporation (Amendment) Act 1998.

**THE PRINCIPAL ACT**

2. (1) In this Act, "the Principal Act" means The Republic of Nauru Finance Corporation Act 1972 as amended from time to time.

(2) The Principal Act, as amended by this Act, may be cited as The Republic of Nauru Finance Corporation Act 1972-1998.

**REPEAL AND REPLACEMENT OF SECTION 27**

3. Section 27 of the Principal Act is repealed and replaced with the following new section:—

**"POWER TO BORROW, GUARANTEE AND ENTER INTO FINANCIAL ARRANGEMENTS**

"27. (1) The Corporation may borrow moneys for carrying on its business and affairs in such amounts and upon such terms and conditions as the Board thinks fit.

(2) The Corporation may, upon the direction of the Cabinet, execute a guarantee, or guarantee and indemnity, in favour of any person guaranteeing the due satisfaction of —

- (a) amounts that become payable; and
- (b) other actions required to be performed,

as a result of or in connection with any money borrowed by or financial accommodation provided to any other person as described in section 30(1).

(3) The Corporation may, with the written approval of the Cabinet, enter into and perform financial arrangements to hedge, protect or manage the value of its assets or liabilities, or prospective assets and liabilities, against movements in —

- (a) currency rates, interest rates or prices of shares, property or commodities;
- or

(b) any other rates, costs or other factors specified by the Cabinet, including rates, costs or other factors that affect, or could affect, the value of its assets or liabilities, or prospective assets or liabilities.

“(4) In this section —

“borrow” means to borrow money or to obtain any form of financial accommodation, either alone or jointly with any other person, including, without limitation, the raising of funds by means of drawing, accepting, endorsing, discounting or otherwise dealing in bills of exchange, promissory notes or other negotiable instruments;

“financial arrangement” means any arrangement establishing rights and obligations to receive or deliver property the value of which, or to receive or make a payment in an amount which, or the value of which —

(a) depends on, or is derived from, the value or price at a specified future time or during a specified future period, of specified property, rights or liabilities; or

(b) depends on, or is derived by a reference to, a specified rate, index or other factor at a specified future time or during a specified future period.”

#### REPEAL AND REPLACEMENT OF SECTION 30

4. Section 30 of the Principal Act is repealed and replaced with the following new section:—

##### “POWER OF THE CABINET TO DIRECT SECURITY OVER TRUST FUNDS

“30. (1) The Cabinet may, where it considers it expedient to do so, direct either or both of the following:—

(a) that any property, wherever situated, whether real or personal, and whether present or future, of any of the funds established by sections 4, 5, 6, and 7 of the Nauru Phosphate Royalties (Payment and Investment) Act 1968-1970, by Article 62 of the Constitution and by sections 18 and 19 of the Nauru Phosphate Royalties Trust Act 1968-1997 may be mortgaged, charged, deposited or pledged to secure amounts which are payable, owing but not payable, or contingently owing by —

(i) the Corporation; or

(ii) any other person,

to any person, including, without limitation, the payment of the expenses of enforcing or attempting to enforce the mortgage, charge, deposit or pledge to obtain the repayment of those amounts;

(b) that a guarantee, or guarantee and indemnity, may be executed in respect of any obligations of —

(i) the Corporation; or

(ii) any other person,

in respect of any obligations secured by the mortgage, charge, deposit or pledge referred to in paragraph (a).

“(2) Where the Cabinet has directed the property of any fund to be mortgaged, charged, deposited or pledged under subsection (1)(a), or a guarantee, or guarantee and indemnity, to be executed in respect of any obligations under subsection (1)(b), the Nauru Phosphate Royalties Trust or any other holder of the property shall, notwithstanding any law which may explicitly or by necessary implication forbid or prohibit it from doing so —

(a) execute, in accordance with the direction —

- (i) a Charge over the property; and
  - (ii) a guarantee, or guarantee and indemnity, in respect of the obligations; and
- (b) perform its obligations accordingly.

"(3) Notwithstanding subsection (2), the members of the Nauru Phosphate Royalties Trust and the directors of the holder of the property shall not be personally liable for any loss which may be suffered by any fund as a result of the mortgaging, charging, depositing or pledging of any property in accordance with a direction of the Cabinet under subsection (1).

"(4) Where a Charge is made pursuant to the direction of the Cabinet under subsection (1), the Registrar of Corporations shall register that Charge, in accordance with subsection (5), in a register to be known as the Nauru Phosphate Royalties Trust Charges Register, and all such Charges shall have and take priority in accordance with the order in which they are registered.

"(5) In respect of any Charge, the Registrar —

- (a) upon production of evidence of the creation of the Charge — shall immediately register the Charge; and
- (b) upon registering the Charge — shall deliver to the chargeholder a certificate of the registration; and
- (c) upon being satisfied that the Charge has been discharged or otherwise satisfied — shall amend the register accordingly; and
- (d) subject to subsection (6) — may deliver or cause to be delivered to any person appearing to have sufficient grounds for requiring it a certificate specifying —
  - (i) the date of registration of the Charge; and
  - (ii) any amounts secured by the Charge; and
  - (iii) the property mortgaged, charged, deposited or pledged; and
  - (iv) the names of the parties to the Charge; and
  - (v) any agreement or undertaking contained in the Charge not to create any other mortgage, charge, deposit or pledge.

"(6) No certificate under subsection (5)(d) shall be delivered to any person in Nauru other than to a member of the Cabinet, a member of the Board, a member of the Nauru Phosphate Royalties Trust or the holder of the property the subject of the Charge, without an order in writing by the Minister authorising the delivery.

"(7) Where —

- (a) the Corporation or any other person fails to discharge its or his obligations in respect of amounts which are payable, owing but not payable, or contingently owing by it or him; and
- (b) the chargeholder enforces his rights under the Charge, guarantee or guarantee and indemnity against the Nauru Phosphate Royalties Trust or any other holder of the property,

then notwithstanding section 4(6), the payment recoverable by the chargeholder shall be a charge upon the fund from which the Charge was provided.

"(8) In this section, "Charge" means a mortgage, charge, deposit or pledge made pursuant to the direction of the Cabinet under subsection (1)."

I hereby certify that the above is a fair print of a Bill for an Act entitled the Republic of Nauru Finance Corporation (Amendment) Act 1998 that has been passed Parliament of Nauru and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament  
13<sup>th</sup> December, 1998

Pursuant to Article 47 of the Constitution, I, **Ludwig D. Keke**, Speaker of Parliament, **hereby certify** that the Republic of Nauru Finance Corporation (Amendment) Act 1998 has been passed by Parliament of Nauru.



Speaker  
13<sup>th</sup> December, 1998