



REPUBLIC OF NAURU

# CORPORATIONS (AMENDMENT) ACT No. 2 2016

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No. 21 of 2016

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An Act to amend the *Corporations Act 1972*

Certified: 12<sup>th</sup> May 2016

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Corporations (Amendment) Act No. 2 2016*.

**2 Commencement**

This Act commences upon certification by the Speaker.

**3 Amendment of the *Corporations Act 1972***

The *Corporations Act 1972* is amended by the provisions of this Act.

**4 Amendment of section 2 (Interpretation)**

The term 'Nauruan corporation' is omitted and substituted with the following:

**'Nauruan corporation'** means a corporation which does not issue any debenture to which the provisions of section 66 (12) of this Act relate and of which all shares issued are held beneficially by one or more Nauruan citizens and by no other person or persons and are not subject to any options to purchase them;

**5 Amendment of section 15 (Registration and incorporation)**

Section 15 is amended as follows:

(a) section 15(1) is amended by omitting the numerals '(10) to (23)' and substituting with the following:

'(10) to (12) and (15) to (23)'

(b) repeal of section 15 (13) and section 15 (14);

(c) section 15(15) is amended by omitting the words 'pursuant to subsection (14) has been issued' as they appear throughout the provision.

(d) section 15 (17) is amended by:

(i) repealing section 15 (17) (b); and

(ii) omitting the words 'referred to in paragraph (b) of this subsection' as they appear throughout section 15 (17).

(e) section 15 (20) is amended by omitting the words 'and in subsection (13)' as they appear.

(f) amend section 15 (23) by omitting the words 'notwithstanding the issue of a bearer debenture by the corporation under subsection (13),' as they appear in the subsection.

**6 Amendment of section 29 (Restrictions on membership in holding corporations)**

Section 29 (1) is amended by omitting the current subsection and substituting with the following:

(1) A holding corporation shall not have more than twenty members, counting joint holders of any one share as one person and excluding the holders of share warrants.

**7 Amendment of section 43 (Return as to allotments)**

Section 43 (1) (e) is amended by omitting the current provision and substituting with the following:

(e) subject to subsection (2) of this section, in the case of a trading corporation, the full name and the address of each of the allottees and the number and class of shares allotted to him.

**8 Amendment of section 44 (Calls and forfeiture)**

Section 44(2) is amended by omitting the current subsection and substituting with the following:

(2) A holding corporation may forfeit shares whether fully paid up or not on the happening of a specified event in accordance with the terms of issue of those shares but without releasing the member from present uncalled liability and, if any such shares are not reissued, without releasing him from future uncalled liability.

**9 Repeal and substitution of section 45**

Section 45 is repealed and substituted with the following:

**45 Reserve liability**

A corporation may by special resolution determine that any portion of its share capital which has not been already called up is not capable of being called up except in the event and for the purposes of the corporation being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event and for the purposes of the corporation being wound up, but no such resolution must prejudice the rights of any person acquired before the passing of the resolution.

**10 Repeal and substitution of section 46**

Section 46 is repealed and substituted with the following:

**46 Bearer shares**

A corporation may not issue bearer shares or share warrants.

**11 Amendment of section 51 (Currency of shares, interest-bearing shares, redeemable shares, shares with special rights and gift shares)**

Section 51 (4) is hereby amended by repealing the current subsection and substituting with the following:

(4) Where shares are issued by way of gift and without consideration if at any time within three months from the date of issue of such shares any of such persons to whom notice is required by this subsection to be given objects to the issue of all or any of such shares the shares the issue of which is objected to shall be forfeited and the issue shall be deemed never to have been made.

**12 Amendment of section 66 (Register and votes of debenture holders and copies of trust deed)**

(1) Section 66(1) is amended by omitting the numeral '(7)' as it first occurs in the subsection and substituting it with the numeral '(12)'.

(2) Section 66 (24)(d) is amended by omitting the words 'where the debenture is not issued to bearer'.

**13 Amendment of section 74 (Contents of trust deed)**

Section 74 (1) (c) (i) is amended by omitting the words 'other than debentures payable to bearer,' as they appear in the subsection.

**14 Amendment of section 84 (Loss or destruction of certificate)**

(1) Section 84 (1) is amended as follows:

(a) by omitting the word 'subjection' and substituting with the word 'subsection'; and

(b) by omitting the words 'other than bearer shares or debentures' as they appear in the subsection.

(2) Section 84 (3) and (4) are hereby repealed.

**15 Repeal and substitution of section 85**

Section 85 is repealed and substituted with the following:

**85 Instruments of transfer**

- (1) A corporation must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the corporation, but this subsection may not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the corporation has been transmitted by operation of law.
- (2) A transfer of the share, debenture or other interest of a deceased person made by his or her personal representative is, although the personal representative is not himself or herself a member of the corporation or holder of a debenture or other interest, as valid as if he or she had been such a member or holder at the time of the execution of the instrument of transfer.
- (3) A corporation may refuse to register a transfer of the share or debenture of a deceased person otherwise than by a personal representative of that person who has taken out or obtained probate or letters of administration of the estate of the deceased person.

**16 Amendment of section 87 (Registration of transfer at request of transferor)**

- (1) Section 87 (1) is amended by omitting the words 'other than a bearer share or debenture' as they appear in the subsection.
- (2) A new section 87 (2A) is inserted after section 87(2) as follows:

(2A) All holders of bearer shares or debentures from the date of the Gazette of the *Corporations (Amendment) Act No. 2 2016* are required under this Act to convert their bearer securities to ordinary shares or debentures prior to the next renewal of the respective corporation's annual registration.
- (3) A new section 87 (2B) is inserted after section 87 (2A) as follows:

(2B) Securities not converted within this period will be forfeited in accordance with section 44(2) and (3) and the corporation will from their annual renewal date cancel these securities and issue statements of cancellation in accordance with section 53 with all rights and privileges annulled in their entirety.
- (4) A new section 87(2C) is inserted after section 87(2B) as follows:

(2C) Any securities cancelled will carry no right of reinstatement.

**17 Amendment of section 98 (Trading corporations to keep copies of charging instruments and register of charges)**

Section 98 (2) is amended by repealing the current subsection and replacing with the following:

(2) Every trading corporation shall keep at the registered office of the corporation a register of charges and enter therein all charges specifically affecting property of the trading corporation and all floating charges on the undertaking or any property of the trading corporation, giving in each case a short description of the property charged, the amount of the charge.

**18 Amendment of section 119 (Circulation of members' resolutions, etc)**

Section 119 (1) is amended by:

- (a) placing the word 'and' after the semicolon in subsection (1)(a);
- (b) removing the semicolon and the word 'and' as they appear at the end of subsection (1)(b) and placing a full stop after the second occurrence of the word 'meeting' in subsection (1)(b); and
- (c) repealing subsection (1)(c).

**19 Amendment of section 126 (Register and index of members)**

Section 126 (1) is amended by omitting the words 'except in respect of any bearer shares issued by it,' as they appear.

**20 Amendment of section 134 (Accounts to be kept)**

Section 134 is amended as follows:

- (a) section 134 (1) (b) is amended by inserting the words 'and services' after the word 'goods';
- (b) section 134 (1) (d) is amended by omitting the word 'and';
- (c) section 134 (1) (e) is amended by removing the full stop and substituting a semicolon after the word corporation and inserting the word 'and' after the semicolon;
- (d) a new section 134 (1) (f) is inserted as follows:
  - (f) the documents, records and accounts must be retained for a minimum of 5 years.

**21 Amendment of section 162 (Effect of winding-up)**

Section 162 (3) is amended by omitting the words ‘other than the transfer of a bearer share,’.

**22 Amendment of section 187 (Settlement of list of contributories and application of assets)**

Section 187 (1) is amended by omitting the words ‘, in the case of a corporation which issued bearer shares,’.

**23 Amendment of section 190 (Circumstances in which holding corporation may be wound up voluntarily)**

Section 190 (1) is amended by omitting the words ‘whether bearer shares or’.

**24 Amendment of section 225 (Documents, etc. to be lodged by foreign corporations)**

Section 225 (1) is amended as follows:

(a) section 225 (1) (f) is amended by removing the word ‘and’;

(b) section 225 (1) (g) is amended by inserting the word ‘and’ after the semicolon;

(c) a new section 225 (1) (h) is inserted as follows:

‘(h) section 134 in its entirety will apply to Foreign Corporations.’

**25 Amendment of Second Schedule – Table B**

(1) Item 38 is amended by omitting the words ‘other than bearer shares’ as they occur in the provision.

(2) Item 122 (1) (b) is amended by omitting the words ‘,other than a bearer share,’.