

THE REPUBLIC OF NAURU

(No. 8 of 1972)

AN ACT

To establish the Republic of Nauru Finance Corporation.

(Certified)

Be it enacted by the Parliament of Nauru as follows :

PART I - PRELIMINARY

SHORT TITLE

1. This Act may be cited as the Republic of Nauru Finance Corporation Act 1972.

COMMENCEMENT

2. This Act shall come into force on a date to be notified by the Minister in the Gazette, and different dates may be so notified for different Parts of this Act.

INTERPRETATION

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

"Board" means the Board of Directors of the Corporation appointed by the Cabinet under section 6 of this Act;

"Corporation" means the Republic of Nauru Finance Corporation incorporated by section 4 of this Act;

"Manager" means the company or corporation appointed by the Board under section 16 of this Act to be the Manager of the Corporation;

"Registrar of Corporations" bears the same meaning as in the Corporation Act 1972;

"special manager" means a special manager appointed by the Minister under section 17 of this Act;

"subsidiary corporation" means a subsidiary corporation created by the Corporation under section 35 of this Act.

PART II - THE CORPORATION

DIVISION 1 - ESTABLISHMENT OF THE CORPORATION

INCORPORATION

4. (1) There is hereby incorporated a corporation by the name of the Republic of Nauru Finance Corporation.

(2) For the purposes of this Act the corporator of the Corporation is and shall be deemed to be the Republic.

(3) The Corporation is a body corporate with a corporate seal and perpetual succession.

(4) The Corporation may sue and be sued in and by its corporate name.

(5) The Corporation has the powers, rights, obligations, duties, facilities and functions set forth in the First Schedule hereto in addition to such as are set forth in the body of this Act.

(6) The liabilities of the Corporation are hereby guaranteed by the Republic; any payment which it may be necessary for the Republic to make in order to discharge its obligations under this subsection shall be made from, and be a charge upon, the Treasury Fund.

(7) The provisions of the Corporation Act 1972 shall not apply to the Corporation except insofar as such provisions are expressly made applicable to the Corporation by this Act.

DIVISION 2 - OBJECTS AND POWERS OF THE CORPORATION

OBJECTS AND POWERS

5. The objects of the Corporation are to carry on the business of finance and investment and the Corporation is empowered and entitled to do all things necessary or convenient to be done to pursue or to achieve its objects and shall have the powers necessary or convenient for the pursuit or achievement of its objects.

DIVISION 3 - THE BOARD OF THE CORPORATION

BOARD OF DIRECTORS

6. (1) Subject to this Act, the business of the

Corporation shall be controlled by a Board of Directors appointed by the Cabinet by notice in the Gazette, such Board being constituted by such number of persons, not being less than four, as the Cabinet may from time to time determine.

(2) The Board may act notwithstanding a vacancy in its membership and the presence or participation of a person not entitled to be present at, or to participate in, the proceedings of the Board shall not invalidate those proceedings.

(3) Subject to the provisions of section 11, a member shall hold office for such period, not exceeding four years, as is fixed by the Cabinet at the time of his appointment.

(4) A member is eligible for re-appointment.

ACTING MEMBERS

7. (1) Where any member of the Board is unable to perform his duties by reason of illness or because he has been granted leave of absence or for any other reason, the Minister may, by notice in the Gazette, appoint a person to act as a member in place of that member during his illness or absence.

(2) The appointment of an acting member shall terminate when the member in place of whom he is acting is again able to perform his duties.

(3) The Minister may, by notice in the Gazette, terminate the appointment of an acting member.

CHAIRMAN AND VICE-CHAIRMAN

8. (1) The Cabinet shall, by notice in the Gazette, appoint a member to be Chairman, and another member to be Vice-Chairman, of the Board.

(2) The Chairman shall exercise such powers and perform such functions as are prescribed.

(3) The powers and functions of the Chairman shall be exercised and performed by the Vice-Chairman where -

- (a) the office of the Chairman is vacant; or
- (b) the Chairman is for any reason unable to exercise those powers or perform those functions.

LEAVE OF ABSENCE

9. The Minister may, upon such terms and conditions as he determines, grant leave of absence to a member of the Board.

APPOINTMENT OF MEMBERS

10. A member of the Board shall hold his appointment on such terms and conditions as may, from time to time, be prescribed.

VACATION OF OFFICE

11. (1) The Cabinet may, by notice in the Gazette, terminate summarily the appointment of a member of the Board.

(2) Where a member -

(a) is adjudicated bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) resigns his office by writing under his hand addressed to the Minister;

(c) is absent, except on leave granted by the Minister, from three successive meetings of the Board;

(d) fails to comply with his obligations under the next following section;

(e) is considered by a medical board consisting of not less than three medical practitioners appointed by the Minister to be incapable of performing his duties efficiently; or

(f) is convicted of any offence involving fraud or dishonesty punishable on conviction by imprisonment for a period exceeding one year;

the Cabinet shall, by notice in the Gazette, declare the office of that member to be vacant and thereupon the office shall become vacant.

DISCLOSURE OF INTEREST

12. (1) A member of the Board who is, otherwise than as a member of the Board of a subsidiary corporation, directly or indirectly interested in a contract made or

proposed to be made by the Corporation shall disclose the nature of his interest at a meeting of the Board as soon as possible after the relevant facts have come to his knowledge.

(2) A disclosure under the last preceding subsection shall be recorded in the minutes of the Board and the member shall -

(a) not take part in voting on a matter in respect of that contract; and

(b) shall be disregarded for the purposes of constituting a quorum of the Board in that deliberation or decision.

MEETINGS OF THE BOARD

13. (1) The Board shall hold such meetings as, in the opinion of the Chairman, are necessary for the efficient conduct of its business.

(2) The Chairman shall, on the receipt of a written request signed by not less than two members, call a meeting of the Board not later than one month after he receives that request.

(3) At a meeting of the Board, two members shall constitute a quorum.

(4) The Chairman shall preside at meetings of the Board.

(5) Where both the Chairman and the Vice-Chairman are absent from a meeting of the Board, the members present shall appoint one of their number to preside at that meeting.

(6) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

PLACE OF MEETINGS

14. (1) The Board shall meet at such place as it shall from time to time determine.

(2) Where the place for a meeting has not previously been determined, the meeting shall be held at a place appointed by the Chairman.

(3) The Board shall meet at the Head Office of the Corporation not less than once in each financial year.

HEAD OFFICE

15. (1) The Head Office of the Corporation shall be in Nauru.

(2) The Corporation may establish other offices at such places as the Board shall, with the approval of the Minister, from time to time determine.

DIVISION 4 - MANAGEMENT OF THE CORPORATION

APPOINTMENT OF MANAGER

16. (1) The Board is required and empowered to appoint a Manager.

(2) Upon this Part of this Act coming into force, the Board is required and empowered to enter into an agreement in accordance with the provisions of this Act with a company or corporation nominated by the Minister with the approval of the Cabinet for the appointment of such company or corporation to be the Manager for a period of eight years and to make such appointment accordingly.

(3) At the expiration of the period of the appointment of any Manager or where any Manager's appointment is terminated under the provisions of this Act, the Board shall appoint a person nominated by the Minister with the approval of the Cabinet to be Manager for such period not exceeding ten years as it thinks fit.

SUBSTITUTION OF ANOTHER MANAGER

17. (1) Subject to the provisions of this section, the Manager shall act as agent of the Corporation in all matters relating to the business of the Corporation.

(2) Where any circumstance arises which results, or may result, in a conflict between the duties of the Manager under this Act and any interest of the Manager or of any of its directors, officers or members, direct or indirect, in any matter which relates, or may relate, to the business of the Corporation, the Manager shall give notice thereof to the Board.

(3) Where the Board receives notice from the Manager under the provisions of the last preceding subsection or, in the absence of such notice, becomes aware of any circumstance of which such notice should be given to it, it shall report thereon to the Minister.

(4) Where the Minister receives a report from the Board under the last preceding subsection, it shall forthwith appoint another person to be a special manager for the purpose of transacting the business of the Corporation in respect of the matter in which the Manager or a director, officer or member of the Manager has an interest and thereupon in relation to such matter the Manager shall cease to act as agent of the Corporation.

(5) No person shall be appointed to be a special manager to transact the business of the Corporation in respect of any matter if he or, in the case of a company or corporation, it or any of its directors, officers or members has any interest, direct or indirect, in that matter.

(6) A special manager appointed under the provisions of this section shall act as agent of the Corporation in the transaction of such business of the Corporation as by the terms of his appointment he is authorised to transact and the provisions of sections 19, 20, 21, 22, 23, 24 and 43 of this Act shall apply mutatis mutandis.

PERIOD OF MANAGER'S APPOINTMENT

18. Subject to the provisions of section 17, the appointment of the Manager shall continue for the period provided for by section 16:

Provided that the Board may terminate the appointment summarily at any time if the Manager or any of its directors, officers or members commits a breach of any of the provisions of this Act, commits any breach of trust, is convicted of any offence involving fraud or dishonesty punishable on conviction by imprisonment for a period exceeding one year or fails to transact the business of the company with reasonable diligence, competence and efficiency.

CONTROL OF THE BUSINESS OF THE CORPORATION

19. (1) The Manager shall, subject to the control of the Board, manage and transact the business of the Corporation.

(2) The Board may, if it thinks fit, and shall, if the Cabinet so directs, direct the Manager not to

commence, or to desist from, transacting any specified business and the Manager shall thereafter not commence to transact such business or, if it has already commenced it, shall thereupon desist from it.

(3) Subject to the provisions of the next following subsection, no liability shall be incurred by the Corporation, otherwise than as permitted by regulations, without the prior written consent of the Cabinet and otherwise than in accordance with any conditions imposed by the Cabinet at the time of giving such consent.

(4) Obligations rendering, or which may possibly render, the Corporation liable to pay in respect thereof an amount not exceeding five thousand Australian dollars may be incurred by the Corporation notwithstanding that the prior consent of the Cabinet thereto has not been given: Provided that no such obligation shall be incurred if the Corporation would be rendered, or might possibly be rendered, thereby liable to pay in respect of such obligation and other undischarged obligations already incurred otherwise than in accordance with regulations or with the prior consent of the Cabinet a total sum exceeding ten thousand Australian dollars:

And provided further that, where an obligation has been incurred without the prior consent of the Cabinet but the consent of the Cabinet is subsequently given, that obligation shall, for the purposes of this section, be deemed not to have been incurred otherwise than with the prior consent of the Cabinet.

(5) Where the Manager appoints any person other than one of its own officers as agent to transact any business of the Corporation, it shall appoint such person to be the agent of the Corporation.

(6) The Manager shall keep such books of account and other records relating to the business of the Corporation as the Board may from time to time direct and the Board and the auditor appointed under section 33 shall be entitled to have access to those books and records at all reasonable times at the Manager's principal place of business.

EXPENSES TO BE PAID BY CORPORATION

20. The Manager shall be entitled to be reimbursed the proper costs, charges and expenses of transacting

the business of the Corporation.

LIABILITY OF MANAGER

21. Subject to the provisions of, and save as otherwise expressly or by necessary implication provided by, this Act, the duties, obligations and liabilities of the Manager to the Corporation shall be those imposed upon trustees by the common law and statute law of England and by the rules of equity in force in England on the date on which this Act becomes law:

Provided that neither the Manager nor any of its officers shall be liable to the Corporation for anything done or omitted by it or him or by its or his servants or agents unless -

(a) it or he has been guilty of wilful misconduct, wilful default or wilful neglect in respect of the doing, or omitting, of that thing; or

(b) it or he did, or omitted, that thing otherwise than in the course of the performance of the duties of the Manager under this Act.

REMUNERATION

22. The Manager shall be paid annually as its remuneration for transacting the business of the Corporation such amount as may be fixed from time to time by the Cabinet, after receiving the advice of the Board.

USUAL FEES MAY BE CHARGED

23. Any director, officer or member of the Manager, being qualified to practise a profession in Nauru or in any State of the Commonwealth of Australia or being recognised by the Board by resolution as an expert in financial management, shall be entitled to charge and retain proper fees, charges and emoluments for any professional services which he may render, or any advice on financial management which he may give, to the Corporation.

BANK ACCOUNTS

24. (1) The Manager shall open such bank accounts in the name of the Corporation in such banks, outside as well as within Nauru, as are necessary or convenient for the transaction of the business of the Corporation and, subject to any directions relating thereto given by the

Board, shall operate those accounts from time to time as required for the business of the Corporation.

(2) The Manager shall, within forty-eight hours of opening any bank account, notify the Board by telegram, cable or telex and shall immediately thereafter send to the Board by airmail post a letter in which shall be set out details of the account and the business of the Corporation for which it is, or is expected to be, required.

(3) Upon receipt by the Manager of money for or on behalf of the Corporation, it shall immediately pay that money, in accordance with any direction given by the Board, into an account opened under the provisions of this section.

DIVISION 5 - FINANCE, ACCOUNTS AND AUDIT OF THE CORPORATION

CAPITAL

25. (1) The Republic shall be the sole member of the Corporation.

(2) The capital of the Corporation shall be such sum as the Cabinet may from time to time decide.

(3) The Cabinet is hereby authorised and empowered to pay from the Treasury Fund such amounts as may from time to time be required to be subscribed as the capital of the Corporation.

DIVIDEND

26. The Board shall from time to time recommend to the Cabinet what amount of dividend, if any, should be declared in favour of the Republic, shall furnish to the Cabinet with such recommendation audited accounts made up to a date not less than six months before the date of the recommendation and shall thereafter declare and pay into the Treasury Fund such dividend as the Cabinet shall direct.

POWER TO BORROW

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

POWER TO LEND

28. The Corporation may in the course of its business lend moneys in such amount, at such rates of interest and upon such other terms and conditions as the Board thinks fit.

NO CHARGE WITHOUT APPROVAL

29. The Corporation shall not charge, pledge or grant a lien over any of its assets, or acquire any assets subject to a charge, pledge or lien, otherwise than as permitted by regulations, except with the approval of the Cabinet.

POWER OF CABINET TO DIRECT CHARGING OF TRUST FUNDS

30. (1) The Cabinet may, if it considers it expedient to do so, direct that the assets of any one or more of the funds established by sections 4, 5, 6 and 7 of the Nauru Phosphate Royalties (Payment and Investment) Act 1968-1970 and by sections 18 and 19 of the Nauru Phosphate Royalties Trust Ordinance 1968 are to be charged or deposited to secure the repayment of any moneys borrowed by the Corporation or any credit granted to it.

(2) Where the Cabinet in exercise of its powers under the preceding subsection directs that any fund is to be charged, the Nauru Phosphate Royalties Trust shall, notwithstanding any provision of any law which might explicitly or by necessary implication forbid or prevent its doing so, execute the charge or deposit the assets as directed:

Provided that the Trust and its members shall not be liable for any loss which may be suffered by any fund as the result of its charging or depositing assets thereof in accordance with the directions of the Cabinet.

OTHER BANK ACCOUNTS

31. (1) The Board may, without prejudice to the right and obligation of the Manager to open bank accounts, open and maintain an account or accounts in the name of the Corporation with a bank or banks, within or outside Nauru, approved by the Minister.

(2) Upon receipt by the Board of money for or on behalf of the Corporation it shall immediately pay

such money into an account opened under the provisions of this section.

BOOKS OF ACCOUNT

32. The Board shall cause to be kept such books of account and minute books as are required to be kept by a corporation incorporated under the provisions of the Corporation Act 1972.

AUDITORS

33. (1) The Board shall, as soon as convenient, appoint an auditor or auditors who shall audit the books, records, papers, securities and transactions of the Corporation and report once at least in each audit period to the Board and to the Cabinet thereon:

Provided that no person shall be appointed to be an auditor unless his appointment has been approved by the Cabinet.

(2) The costs of the audit shall be borne by the Republic and the duty of the auditor shall be in the first instance to the Republic but without relieving him from an obligation to report to the Board and to the Manager any matters which ought to be reported thereto and to take reasonable steps to discover and warn the Board and the Manager of any impropriety.

(3) Such auditor shall submit to the Cabinet such further reports from time to time as the Minister may require.

(4) The first audit period for the Corporation shall end on the 30th June, 1973, and thereafter the audit period for the Corporation shall end on the 30th June in each year and shall run for the twelve months preceding such date.

(5) Every report of the auditors shall be laid before Parliament by the Cabinet within the seven days of the first sitting day of Parliament next after the report is received by the Cabinet.

APPLICATION OF FUNDS

34. The funds of the Corporation shall be applied in the following order :

(a) in payment or discharge of the expenses, costs,

charges and obligations properly incurred or undertaken by the Corporation;

(b) in payment of the remuneration and allowances of the members of the Board;

(c) in the creation of any provision which may be required;

(d) in payment to the Republic of dividends in accordance with section 26 of this Act.

PART III - SUBSIDIARY CORPORATIONS

POWER TO CREATE SUBSIDIARY CORPORATIONS

35. (1) The Board is hereby empowered to create by an instrument under its seal in the form set out in the Second Schedule hereto, subject to the written indorsement of the Minister upon such instrument, such number of subsidiary corporations as it thinks fit.

(2) A subsidiary corporation shall have the powers, rights, duties, obligations, facilities and functions set out in this Part of this Act.

(3) Where a subsidiary corporation has been created, the Board shall forthwith lodge with the Registrar of Corporations the instrument by which that subsidiary corporation was created and the Registrar shall thereupon register the subsidiary corporation in the same manner as he is required under the Corporation Act 1972 to register corporations incorporated under that Act but no fee shall be payable to the Registrar.

(4) The provisions of the Corporation Act 1972 shall not apply to a subsidiary corporation created under this Act except insofar as such provisions are expressly made applicable to such a subsidiary corporation by this Act.

INCORPORATION OF SUBSIDIARY CORPORATIONS

36. (1) Every subsidiary corporation is a body corporate with a corporate seal and perpetual succession.

(2) Every subsidiary corporation may sue and be sued in and by its corporate name.

(3) Every subsidiary corporation shall have the powers, rights, obligations, duties, facilities and functions set forth in the First Schedule hereto in addition to such as are set forth in this Part of this

Act.

(4) The liabilities of every subsidiary corporation are hereby guaranteed by the Republic; any payment which it may be necessary for the Republic to make in order to discharge its obligations under this subsection shall be made from, and be a charge upon, the Treasury Fund.

(5) The corporate name of a subsidiary corporation shall be the name set out in the instrument incorporating it and such name may be changed by a supplementary instrument executed in the same manner as the incorporating instrument.

OBJECTS AND POWERS

37. The objects of every subsidiary corporation shall be to carry on the business of finance and investment and every subsidiary corporation shall be empowered and entitled to do all things necessary or convenient to be done to pursue or to achieve its objects and shall have the powers necessary or convenient for the pursuit or achievement of its objects.

BOARD OF DIRECTORS OF SUBSIDIARY CORPORATION

38. (1) Every subsidiary corporation shall be controlled by a Board of Directors which shall be the Board of Directors of the Corporation from time to time or such other persons as may be appointed by the Board of the Corporation with the approval of the Minister.

(2) Subsections (2), (3) and (4) of section 6 and sections 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of this Act shall, mutatis mutandis, apply to every subsidiary corporation.

APPOINTMENT OF MANAGER OF SUBSIDIARY CORPORATION

39. (1) Subject to the provisions of the next following subsection, the Manager of the Corporation from time to time shall be the manager of every subsidiary corporation.

(2) Where a special manager has been appointed to transact the business of the Corporation in respect of any matter, he shall also be the special manager of every subsidiary corporation in place of the Manager, for the purpose of transacting its business in so far as

that business relates to such matter.

DISSOLUTION OF SUBSIDIARY

40. (1) Where the Board is satisfied that it is no longer necessary or desirable for a subsidiary corporation to continue in existence, it shall, by an instrument under its seal in the form set out in the Third Schedule hereto, dissolve that subsidiary corporation and shall forthwith lodge the instrument with the Registrar of Corporations who shall thereupon remove the name of that subsidiary corporation from his register.

(2) Where a subsidiary corporation has been dissolved under the provisions of this section, its assets shall immediately thereupon vest in, and its liabilities devolve onto, the Corporation.

PART IV - MISCELLANEOUS

REGULATIONS

41. Regulations may be made by the Cabinet prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

THE CORPORATION AND ITS SUBSIDIARY CORPORATIONS DEEMED NOT TO BE MONEYLENDERS

42. For the purpose of the Moneylenders Acts 1900 to 1927 of England in their application to Nauru the Corporation and all its subsidiary corporations shall be deemed not to be a moneylender or moneylenders and the provisions of those Acts as so applied shall not apply to the Corporation or any of its subsidiaries or to any transaction of the Corporation or of any of its subsidiaries.

CERTAIN APPLIED STATUTES NOT TO APPLY TO THE CORPORATION

43. The provisions of the Prevention of Frauds (Investment) Act 1958 and the Protection of Depositors Act 1963 of England in their application to Nauru shall not apply to the Corporation or any of its subsidiary corporations, the Manager, any officer, servant or agent of the Corporation or of any of its subsidiary corporations as such or any person doing any act on behalf of the Corporation or any of its subsidiary corporations or on behalf of the Manager as such.

FIRST SCHEDULE
(Sections 4 and 36)

POWERS OF THE REPUBLIC OF NAURU FINANCE CORPORATION AND
ITS SUBSIDIARY CORPORATIONS

- (1) To do all things which any trading corporation incorporated under the Corporation Act 1972 may do;
- (2) to carry on the business of finance and investment; and
- (3) without limiting the generality of the foregoing -
 - (a) to promote, establish, form or acquire other corporations, companies or entities formed under or governed by the laws of Nauru or the laws of any other place; and
 - (b) to subscribe for, acquire, deal in, hold or dispose of shares, debentures, securities and other interests in or of any corporation, company or entity formed under or governed by the laws of Nauru or the laws of any other place.


SECOND SCHEDULE
(Section 35)

THE REPUBLIC OF NAURU FINANCE CORPORATION ACT 1972
INCORPORATION OF A SUBSIDIARY CORPORATION

A subsidiary corporation of the Republic of Nauru Finance Corporation is hereby created under the name of


with all the powers facilities duties and functions by the said Act conferred upon a subsidiary corporation of the Republic of Nauru Finance Corporation.

I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Republic of Nauru Finance Corporation Act, 1972 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.


Acting Clerk of Parliament

21/2/72

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENAS AROI, Speaker of Parliament, HEREBY CERTIFY that the Republic of Nauru Finance Corporation Act, 1972 a copy of which is attached has been passed by Parliament.


Speaker

21/2/72