



REPUBLIC OF NAURU

CORPORATIONS (AMENDMENT) BILL 2018

No. of 2018

A Bill for an Act to amend the Corporations Act 1972

Certified: []

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Enacted by the Parliament of Nauru as follows:

1 Short Title

This Act may be cited as the *Corporations (Amendment) Bill 2018*.

2 Commencement

This Act commences on 15 January 2019.

3 Amendment of the Corporations Act 1972

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

4 Amendment of section 2

Section 2 is amended by:

- (a) deleting the words '*nominee corporation*' and its definition;
- (b) deleting the words '*registered corporation agent*' and its definition;
- (c) deleting the words '*registered corporation auditor*' and its definition;
- (d) deleting the words '*registered corporation broker*' and its definition;
- (e) deleting the words '*registered secretary*' and its definition;
- (f) deleting the words '*resident secretary*' and its definition;
- (g) deleting the words '*registered trustee corporation*' and its definition;
- (h) deleting the words '*the Authority*' and its definition;
- (i) inserting the following new definition in alphabetical order:
 - '*beneficial owners*' means a natural person:
 - (a) who has ultimate control, directly or indirectly, of the corporation;
 - (b) who ultimately owns, directly or indirectly, the corporation; or
 - (c) on whose behalf a corporation is incorporated;
 - '*secretary*' means a secretary appointed under section 110 of the Act;" and
- (j) deleting the definition of '*trustee Corporation*' and substituting it with a new definition:

'trustee Corporation' means a corporation which as a whole or a part of its business undertakes or offers to undertake all or any of the duties of a trustee.

5 Amendment of section 5

Section 5 is amended:

- (a) in subsection (1) by deleting the words **'and a nominee corporation'**; and
- (b) by deleting the words **'or nominee corporation'** wherever they appear.

6 Repeal of sections 7, 8, 9 and 11

Sections 7, 8, 9 and 11 are hereby repealed.

7 Amendment of section 12

Section 12 is amended by repealing subsection (6) and replacing it with:

'(6) If the Registrar is of the opinion that any document lodged with him:

- (a) contains matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure; -

he may refuse to file the document and request that the document be appropriately amended or completed and relogged or a fresh document be lodged in its place.'

8 Amendment of section 14

Section 14 is amended:

- (a) by repealing subsection (1) and replacing it with
 - (1) Subject to this Act, any one or more persons or corporations may by subscribing its, his or their name or names to a memorandum and complying with the requirements as to registration of a holding corporation for any lawful purpose.
- (b) in subsection (3) by deleting the words **'or the Authority'** wherever they appear.

This clause should now read:

- (3) If a subscriber to a memorandum is a corporation, the memorandum may be subscribed by that corporation under its seal or by some person duly authorised on its behalf.

9 Amendment of section 15

Section 15 is amended:

- (a) in subsection (1) by deleting the words '*of subsections (10) to (12) and (15) to (33)*';

This clause should now read:

- (1) Subject to the provisions of this section, a person desiring the incorporation of a corporation shall cause to be lodged with the Registrar the memorandum and articles, if any, of the proposed corporation together with an unsigned true copy thereof and the other documents required to be lodged by or under this Act, and the Registrar upon payment of the prescribed fees shall, subject to this Act, register the corporation by filing the memorandum and articles, if any.

- (b) by repealing subsection (2); and

- (c) in subsection (3) by deleting the words '*and shall deliver his certificate to the registered corporation agent who lodged the documents or as such agent in writing requests*';

This clause should now read:

- (3) On the filing of the memorandum the Registrar shall certify under his hand and seal that the corporation is, on and from the date specified in the certificate, incorporated and that the corporation is:

(a) a trading corporation; or

(b) a holding corporation;

as the case may be.

- (d) in subsection (4) by deleting the words '*and shall be delivered to the registered corporation agent lodging the annual return or as such agent in writing requests*';

This clause should now read:

- (4) This first certificate of incorporation shall be valid for twelve months from the date of incorporation and shall be renewable thereafter for further periods of twelve months from each anniversary of the date of incorporation upon due lodgement of the annual return of the corporation and payment of the

prescribed fee therefor and such renewal certificate shall be issued by the Registrar within fourteen days after the due lodgement of the annual return and payment of such fee.

(e) by inserting a new subsection after subsection (4):

'(4A) A person who intends to incorporate a corporation or renew the certificate of incorporation, shall comply with the provisions of the Business Licences Act 2017, Beneficial Ownership Act 2017 and Business Names Registration Act 2018 where the corporation intends to trade under a business name.';

(f) in subsection (9), by:

- (i) deleting the words '*Except where a corporation is incorporated by the Authority pursuant to a direction under subsection (10) of this section, every*' and substituting them with '*Every*'; and
- (ii) inserting the words '*and also be issued with a share warrant for the charge in the share*' at the end of paragraph (ii);

This clause should now read:

(9) Every subscriber to the memorandum shall upon its incorporation be a member of the corporation and on the incorporation of the corporation:

- (i) if the articles so permit and the subscriber so desires and has paid in full the nominal value of his shares, he shall be issued with a share warrant or warrants for the shares agreed to be taken by him in the memorandum and the appropriate entry shall be made in its register of members;
- (ii) in any other case, without formal allotment of shares, he shall be entered as a member in its register of members in respect of the shares or shares subscribed for by him in the memorandum and also be issued with a share warrant for the charge in the share.

(g) by repealing subsections (10), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22) and (23).

10 Amendment to section 15A

Section 15A is amended:

(a) in subsection (1) by inserting the words '*as a foreign corporation*' after the second appearance of the word 'Nauru'; and

This clause should now read:

(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 authorised by the laws of that country or jurisdiction, apply to the Registrar to be registered as being continued in Nauru as a foreign corporation as if it has been incorporated under this Act.

(b) by deleting subsection (2) and substituting it with:

‘(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, to such registration has been obtained by the corporation, register such corporation as being so continued 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;
- (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted; and
- (d) it has not complied with the provisions of the Business Names Registration Act 2018, Business Licenses Act 2017 and Beneficial Ownership Act.’

11 Amendment of section 22

Section 22(1) is amended by deleting the words *‘Except where the corporation is incorporated pursuant to a request made to the Authority under subsection (10) of section 15, there’* and substituting it with *‘There’*.

This clause should now read:

There may be lodged with the memorandum of a corporation articles of incorporation signed by the subscribers to the memorandum prescribing regulations for the corporation.

12 Amendment of section 27

Section 27 is amended by deleting the word *‘resident’* wherever it appears.

13 Amendment of section 30

Section 30(4) is amended by deleting the word '*resident*'.

This clause should now read:

A registered director and a secretary shall not be liable for such debts and liabilities unless it is proved that such director or secretary had actual knowledge of the contravention and expressly consented thereto.

14 Amendment of section 33

Section 33 is amended by repealing subsection (2).

15 Amendment of section 41

Section 41 is amended by:

(a) deleting subsection (1) and substituting it with:

'(1) No allotment shall be made of any shares of a corporation offered to the public unless due public notice is given.'

(b) by repealing subsections (2), (3) and (4).

16 Amendment of section 43

Section 43 is amended by repealing subsection (4).

17 Amendment of section 46

Section 46 is amended by deleting the word '*may*' and substituting it with '*shall*' wherever it appears.

This clause should now read:

A corporation shall not issue bearer shares or share warrants.

18 Amendment of section 59

Section 59 (2) is amended by repealing paragraph (d).

19 Amendment of section 71

Section 71 is amended by deleting the words '*registered trustee corporation as*' wherever they appear.

20 Amendment of section 72

Section 72 is amended by deleting the words '*registered trustee corporation*' and substituting them with the word '*trustee*' wherever they appear.

21 Repeal of section 73

Section 73 is hereby repealed.

22 Amendment of section 74

Section 74(1)(b) is amended by deleting the words '*or any registered corporation auditor appointed by the trustee*'.

This clause should now read:

- (b) that to the same extent as if the trustee for the holders of the debentures were a director of the corporation the borrowing corporation will:
 - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
 - (ii) give to it or him such information as is normally required with respect to all matters relating to the accounting or other records of the borrowing corporation;

23 Amendment of section 101

Section 101 of the Act is amended by repealing subsection (2).

24 Amendment of section 110

Section 110 is amended:

- (a) by repealing subsections (1), (2), (5) and (7);
- (b) in subsection (3) by deleting the words '*one of whom shall be a resident secretary and such resident secretary shall be a registered secretary*';

This clause should not read:

Every corporation shall have one or more secretaries.

- (c) in subsection (4), (6) and (9) by deleting the word '*resident*' wherever it appears; and
- (d) by inserting the a new subsection (4A) after subsection (4):
 - '(4A) The secretary shall be responsible for retaining for 7 years all accounts information and underlying documents required under section 134 of the Act, after a corporation has been wound up in accordance with this Act and failure to so do constitutes an offence under this Act.'

25 Amendment of section 132

Section 132(6)(b) is amended by deleting the word '*resident*'.

26 Amendment of section 133

Section 133(6) is amended by deleting subsection (6) and substituting it with:

'(6) Every annual return shall in the case of a holding corporation be accompanied by a certificate from an auditor stating:

- (a) that proper accounts of the corporation for the financial period ending on the date specified have been kept and a balance sheet and profit and loss account for that period prepared and audited by such auditor; and
- (b) that the director giving the certificate under the provisions of subsection (7) of this section has been furnished with a copy of such accounts;

and the auditor shall retain for six years a copy of the accounts to which his certificate relates.'

27 Amendment of section 134

Section 134 is amended:

(a) by deleting subsection (1) and substituting it with:

'(1) Every corporation shall cause proper accounts and records to be kept and retained for 7 years, which shall include but is not limited to underlying documentation such as:

- (a) all sums of money received and expended by the corporation, specifying items or matters in respect of which the receipt or expenditure took place;
- (b) all sales and purchases of goods and services by the corporation;
- (c) all assignments of rights or assumption of liabilities by the corporation;
- (d) all transactions of the corporation, or affecting the assets and liabilities of the corporation;
- (e) the assets and liabilities of the corporation;
- (f) bank statements;
- (g) statutory taxes, licence, duties and fees;

- (h) court proceedings;
- (i) invoices;
- (j) contracts;
- (k) audited financial accounts;
- (l) annual returns;
- (m) details of the current and former Shareholders, Directors, Secretary and corporation officers; and
- (n) such other matters prescribed by regulations.'

(b) in subsection (3) by deleting the words '*a registered corporation*' and substituting it with '*an auditor*'.

28 Amendment of section 137

Section 137(1) is amended by deleting the words '*a registered corporation*' and substituting it with '*an auditor*'.

29 Amendment of section 138

Section 138 is amended by deleting the words '*a registered corporation auditor*' and substituting them with '*an auditor*' wherever they appear.

30 Amendment of section 139

Section 139 is amended:

(a) in subsection (1):

- (i) by deleting the words '*a registered corporation*' and substituting it with '*an*'; and
- (ii) by deleting the word '*be*' and substituting it with '*he*'; and

This clause should now read:

Unless the Registrar otherwise directs, or the directors otherwise resolve, if an auditor ceases to be an auditor he shall continue to hold office as auditor of the corporation until completion of the audit work for the audit period during which he ceased to be a registered corporation auditor.

(b) in subsection (2) by:

- (i) deleting the word '*registered*' and substituting it with '*an auditor*'; and

- (ii) deleting the words *'another registered corporation auditor at a fee to be fixed by agreement between such other auditor and the directors and such other auditor shall be the auditor of the corporation for the purposes of this Act for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be an auditor, such other auditor shall be entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the'* and substituting it with 'a'.

This clause should now read:

Where an auditor ceases to be an auditor and does not continue in office, as aforesaid, the corporation shall immediately appoint a new auditor.

31 Amendment of section 141

Section 141 is amended by deleting the words *'a registered corporation auditor'* and substituting it with *'an auditor'* wherever they appear.

32 Amendment of section 147

Section 147(6)(a) is amended by deleting the words *'or registered corporation agents or both'*.

This clause should now read:

(6) Where any such compromise or arrangement, whether or not for the purposes of or in connection with a scheme for the reconstruction of any corporation or corporations or the amalgamation of any two or more corporations has been proposed, the directors of the corporation shall:

- (a) if a meeting of the members of the corporation by resolution so directs, instruct such experts both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and

33 Amendment of section 157

Section 157(2) is amended by deleting the words *'a registered corporation auditor'* and substituting it with *'an auditor'*.

34 Amendment of section 171

Section 171(5) is amended by repealing subsection (5).

35 Amendment of section 183

Section 183(1) is amended by deleting the words *'and within fourteen days thereafter deliver to the liquidator a further copy together with a statement certified by a registered corporation agent that the requirements of this section have been complied with'*.

This clause should now read:

- (1) The petitioner shall within thirty days after the making of the winding-up order lodge a copy of the order with the Registrar and pay the prescribed fee and shall cause a copy thereof to be served upon the corporation.

36 Amendment of section 190

Section 190) is amended by repealing subsection (1) and replacing it with:

- '(1) The holding corporation may be wound up voluntarily if the holders of more than fifty per cent in number or par value of the issued shares being registered shares and whether held by the corporation itself or not, lodge with the Registrar in the prescribed manner notice of their desire that the corporation be wound up voluntarily.'

37 Amendment of section 198

Section 198(1)(f) is amended by deleting the words *'a registered corporation agent'*.

This clause should now read:

- (f) appoint a barrister and solicitor, an accountant or some other expert to assist him in his duties;

38 Amendment of section 210

Section 210(1) is amended by deleting the words *'a registered corporation auditor'* and substituting it with *'an auditor'*.

39 Amendment of section 225

Section 225 is amended:

- (a) in subsection (1)(e) by deleting the words *'of a registered corporation agent in Nauru authorised to accept on its behalf service of process and any notices required to be served on the corporation together with the written consent of such agent to the appointment'* and replacing them with *'its registered office for service in Nauru'*; and

This clause should now read:

(e) a memorandum of appointment or power of attorney under the seal of a foreign corporation or executed on its behalf in such manner as to be binding on the corporation and, in either case, verified in the prescribed manner, stating the name and address;

(b) by deleting subsections (4), (5) and (6).

40 Insert a new section 242A

242A Information sharing

(1) Subject to subsection (2), the Registrar may provide any information including any copy of a document, account or record that the Registrar has obtained under this Act to:

(a) a law enforcement or regulatory agency, whether in the Republic or in an foreign jurisdiction for the purposes of carrying out the agency's duty, power or function;

(b) the competent authority of a foreign government with which the Republic has entered into an agreement providing for the exchange of information to the extent permitted under that agreement;

(c) any treaties or agreements entered into by the Republic for the purposes of exchange of information.

(2) For information sharing under subsection (1), the Registrar shall ensure that necessary protections are in place for maintaining the confidentiality of the information.

41 Repeal of section 250

Section 250 is hereby repealed.

42 Amendment to Second Schedule – Table A

Paragraph 96 of the Second Schedule – Table A of the Act, is amended:

(a) by deleting the words '*in addition to the resident secretary*'; and

(b) by deleting the word '*resident*' wherever it appears.

43 Amendment to Second Schedule – Table B

Paragraph 105 of the Second Schedule – Table B of the Act, is amended:

- (a) by deleting the words *'in addition to the resident secretary'*; and
- (b) by deleting the word *'resident'* wherever it appears.