



REPUBLIC OF NAURU

# CENPAC CORPORATION BILL 2018

No. of 2018

A Bill for an Act to establish the Cenpac Corporation and for related purposes

Certified: [ ]

## Table of Contents

<b>PART 1 – PRELIMINARY</b>	<b>3</b>
1 Short Title	3
2 Commencement	3
3 Definitions	3
<b>PART 2 – CENPAC CORPORATION</b>	<b>3</b>
4 Establishment of Corporation	3
5 Functions of the Corporation	3
6 Powers of the Corporation	4
7 Board of Directors	4
8 Qualification of Directors	4
9 Role of the Board	5
10 Meetings of the Board	5
11 Responsibilities and duties of Directors	5
12 Vacation of office	6
13 Remuneration of the Board of Directors	6
<b>PART 3 – ACCOUNTS AND AUDIT</b>	<b>7</b>
15 Account keeping	7

16	Funds of the Corporation .....	7
17	Audit of accounts .....	7
18	Annual report and accounts .....	7
	<b>PART 4 – CHIEF EXECUTIVE OFFICER, OFFICERS AND OPERATIONS.....</b>	<b>8</b>
19	Chief Executive Officer .....	8
20	Officers .....	8
21	Operational manual .....	8
	<b>PART 5 – ASSETS AND LIABILITIES.....</b>	<b>8</b>
22	Assets and liabilities .....	8
	<b>PART 6 – MISCELLANEOUS.....</b>	<b>9</b>
23	Breach of confidentiality.....	9
24	Election candidates – Board of Directors .....	9
25	Regulations.....	9

Enacted by the Parliament of Nauru as follows:

## **PART 1 – PRELIMINARY**

### **1 Short Title**

This Act may be cited as the *Cenpac Corporation Act 2018*.

### **2 Commencement**

This Act commences upon certification by the Speaker.

### **3 Definitions**

In this Act:

**‘Corporation’** means the Cenpac Corporation established under section 4;

**‘Minister’** means the Minister responsible for Telecommunications.

## **PART 2 –CENPAC CORPORATION**

### **4 Establishment of Corporation**

- (1) There shall be established a statutory Corporation to be known as the Cenpac Corporation consisting of a Board, Chief Executive Officer and such number of staff as the Board in consultation with the Minister may from time to time determine.
- (2) The Corporation is a body corporate with perpetual succession and shall have a common seal.
- (3) The Corporation may:
  - (a) sue and be sued;
  - (b) enter into contracts and other legal obligations;
  - (c) acquire, hold, manage and dispose of real or personal properties; and,
  - (d) perform all such powers, functions, duties and responsibilities of a Corporation under the Corporations Act 1972.
- (4) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer.

### **5 Functions of the Corporation**

The functions of the Corporation as a commercial entity are to:

- (a) establish, operate, manage and invest in communication services;
- (b) establish, operate and manage a network for accessing the world wide web and international gateway for communication to and from the Republic;

- (c) establish and operate as an internet service provider for wholesale and retail purposes;
- (d) register, assign and allocate domain names under Nauru's internet country code to –level – domain (ccTLD) “.nr”;
- (e) establish and operate a commercial business associated with the communication and broadcasting sector or such other activities as the corporation deems appropriate;
- (f) make prudent and secured investments to ensure the viability of the corporation;
- (g) perform such other functions or exercise such other powers conferred on the corporation under the Act; and
- (h) make recommendations and advise the Minister on matters connected with its functions.

## **6 Powers of the Corporation**

Subject to this Act, the Corporation has the power to do all things necessary, convenient or appropriate to be done, whether in the Republic or elsewhere, for the fulfilment of its functions.

## **7 Board of Directors**

- (1) The Board shall consist of 3 members who shall be appointed by the Cabinet on the recommendation of the Minister.
- (2) The Cabinet on the recommendation of the Minister shall appoint a member to be the Chairperson of the Board.
- (3) The Directors shall be appointed for a term not exceeding 2 years and may be eligible for reappointment.
- (4) The Directors shall be appointed on such terms and conditions as approved by the Cabinet.

## **8 Qualification of Directors**

- (1) The Cabinet in appointing Directors shall have regard as to whether the persons so selected to be Directors shall collectively possess the appropriate knowledge, skills and experience to assist the Corporation in the exercise of its powers and performance of its functions.
- (2) A person is disqualified to be appointed or from continuing as a Director if he or she is:
  - (a) an undischarged bankrupt or an individual who has an arrangement with any of his or her creditors;

- (b) an individual who has been sentenced to imprisonment for a term of 12 months or more by a Court of the Republic or any other country and has not received a pardon in or outside of the Republic;
- (c) an individual who lacks capacity in respect of his or her duties as a Director within the meaning of the Mentally-disordered Persons Act 1963; or
- (d) a holder of an elected office.

## **9 Role of the Board**

The Board shall:

- (a) in consultation with the Cabinet, decide the objectives, strategies and policies to be followed by the Corporation; and
- (b) ensure that the Corporation exercises its powers and performs its functions in a manner that is proper, efficient and consistent with sound commercial practice.

## **10 Meetings of the Board**

- (1) Subject to this Act, the Board shall regulate its own procedure for meetings.
- (2) The Board is to hold such meetings as are necessary for performing its functions.
- (3) The Chairperson shall appoint the times and places of the meetings of the Board and the Secretary may serve written notice of such meetings to all the Directors.
- (4) A meeting of the Board may be held by a quorum of two Directors, being assembled together at the time and place appointed for the meeting.
- (5) The Chairperson and in his or her absence any Director appointed by the Minister, shall preside at a meeting of the Board.
- (6) Each Director has one vote and the decision of the Board shall be by majority votes.
- (7) The Chief Executive Officer or in his or her absence an authorised officer of the Corporation shall be required to attend meetings of the Board.
- (8) The Board shall appoint an officer to be the Secretary of the Corporation.
- (9) The Secretary shall maintain records of all minutes, records and proceedings of Board meetings.

## **11 Responsibilities and duties of Directors**

- (1) The Directors shall severally and jointly at all times:
  - (a) act bona fide in the best interests of the Corporation;

- (b) exercise reasonable care and diligence in the performance of his or her responsibilities, duties and functions;
  - (c) take reasonable steps through the processes of the Board to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions; and
  - (d) exercise discretion with respect to all matters to be decided by the Board.
- (2) A Director does not commit a breach of the responsibilities and duties under this section by acting in accordance with a direction or requirement of the Minister or Cabinet under this Act.

## **12 Vacation of office**

- (1) The Cabinet on the recommendation of the Minister may revoke the appointment of a Director.
- (2) The Minister shall by notice in the Gazette declare the office of a Director vacant if the Director:
- (a) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors to assign his or her remuneration for their benefit;
  - (b) resigns from office in writing to the Minister;
  - (c) is elected to public office;
  - (d) is absent from 2 successive meetings of the Board except on leave granted by the Minister;
  - (e) fails to comply with his or her duties under the Act;
  - (f) is considered by a Board of not less than 2 health practitioners, appointed by the Minister, to be incapable of performing his or her duties efficiently;  
or
  - (g) is convicted of any offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of 12 months or more.

## **13 Remuneration of the Board of Directors**

A Director is not entitled to fixed remuneration but shall be paid a reasonable allowance determined by the Cabinet.

## **14 Liability of Directors**

- (1) A Director shall not be personally liable for any act or omission made in his or her official capacity in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Corporation.

- (2) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the Republic shall indemnify or keep the Director indemnified.

### **PART 3 – ACCOUNTS AND AUDIT**

#### **15 Account keeping**

The Corporation shall:

- (a) keep proper accounts and other records in relation to its operations;
- (b) prepare monthly statements of account and reports which shall be provided to the Minister; and
- (c) prepare annual statements of account and reports.

#### **16 Funds of the Corporation**

All monies payable to and received by the Corporation shall be paid into an account with a financial institution that has been approved for that purpose by the Cabinet.

#### **17 Audit of accounts**

- (1) The accounts of the Corporation are subject to inspection and audit by the Auditor General.
- (2) The Corporation shall provide to the Auditor General the accounts of the Corporation for a financial year within:
  - (a) 2 months after the end of the financial year; or
  - (b) another period determined by Parliament.
- (3) The Auditor General shall:
  - (a) audit the accounts; and
  - (b) report to the Corporation on the accounts within:
    - (i) 2 months after receiving the accounts; or
    - (ii) another period determined by Parliament.

#### **18 Annual report and accounts**

- (1) The Corporation shall, in accordance with the prescribed procedures, cause to be prepared an annual report of its activities during the previous financial year.
- (2) The Corporation shall forward a copy of its annual report to the Minister who shall table it in Parliament.
- (3) The Minister shall lay the annual accounts and reports before Parliament.

- (4) The annual report of the Corporation shall incorporate its annual audited accounts.

## **PART 4 – CHIEF EXECUTIVE OFFICER, OFFICERS AND OPERATIONS**

### **19 Chief Executive Officer**

- (1) The Cabinet shall, upon the recommendation of the Minister, appoint a person to be the Chief Executive Officer of the Corporation.
- (2) The Chief Executive Officer shall hold office on the terms and conditions determined by the Cabinet at the time of the appointment.
- (3) The Chief Executive Officer shall be responsible for the administration and management of the operations and business of the Corporation and the administrative control of its officers.
- (4) The salary and benefits of the Chief Executive Officer shall be fixed by the Cabinet.

### **20 Officers**

- (1) The Corporation may employ such persons as may be necessary for the operations of the Corporation.
- (2) The terms and conditions of employment of the officers shall be determined by the Board on the recommendation of the Chief Executive Officer.

### **21 Operational manual**

- (1) Subject to subsection (2), the Board shall establish an operational manual for the conduct of the business of the Corporation.
- (2) The operational manual shall be approved by Cabinet.

## **PART 5 – ASSETS AND LIABILITIES**

### **22 Assets and liabilities**

- (1) Cenpac Inc Corporation is a corporation incorporated under the Corporations Act 1972 and subject to this Act, shall continue its operations as a corporation under this Act.
- (2) The Cenpac Inc Corporation is novated and reconstituted as a statutory corporation under this Act with the following consequences:
  - (a) all funds previously in the custody, possession or control of Cenpac Inc Corporation shall vest in the Corporation;
  - (b) all property, assets, charges and interests of Cenpac Inc Corporation, whether within or outside the Republic, shall vest to the Corporation;



- (c) all liability for the payment of loans and funds borrowed from creditors by Cenpac Inc Corporation, whether within or outside the Republic, shall be the debts of and be paid by the Corporation;
- (d) all contracts and agreements with Cenpac Inc Corporation which are in force shall be deemed to have been novated to the Corporation established under this Act;
- (e) all obligations of Cenpac Inc Corporation under any written law of the Republic is transferred to the Corporation by this enactment; and
- (f) subject to subparagraph (c), the Corporation shall not be liable or responsible for any debt or liability of the Cenpac Inc Corporation other than such debt or liability duly approved by the Cabinet.

## **PART 6 – MISCELLANEOUS**

### **23 Breach of confidentiality**

- (1) A Director shall not for any purpose use or knowingly disclose any information or the contents of any communication of which he or she becomes aware through his or her connection with the Corporation, except to the extent:
  - (a) that the use or disclosure is authorised or required under this Act or any other law;
  - (b) that the person providing the information authorised its disclosure at the time of providing the information;
  - (c) necessary to enable the Minister, the Board or the Chief Executive Officer to publish statistical information concerning the subject matter of the functions of the Corporation; or
  - (d) necessary to enable the Board to give advice to the Minister.
- (2) A Director who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or both.
- (3) A Director who is convicted of an offence under subsection (1) is liable to the Corporation for any profit made in consequence of any damage suffered by the Corporation as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

### **24 Election candidates – Board of Directors**

Any Board Director, including the Chairperson and Chief Executive Officer, who intends to submit a nomination as a candidate in the country's general elections must at least three months before he or she submits their nomination, resign from their position as a member of the Board.

### **25 Regulations**

Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for giving effect to this Act.