



REPUBLIC OF NAURU

RONPHOS (Amendment) Bill 2012

Serial No. 22 of 2012

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REPUBLIC OF NAURU

RONPHOS (Amendment) Bill 2012

Serial No. 22 of 2012

A Bill for:

An Act to amend the *RONPHOS Act 2005*.

Certified on []

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *RONPHOS (Amendment) Act 2012*.

2 Commencement

This Act commences on a date fixed by the Minister by Gazette notice.

3 Act amended

Schedule 1 amends the *RONPHOS Act 2005*.

4 Transitional provision

Schedule 2 provides a transitional provision.

SCHEDULE 1 – AMENDMENT OF RONPHOS ACT 2005

section 3

[1] Repeal and substitution of Long title

Long title

omit, substitute

An Act to provide for the establishment of the RONPHOS Corporation and for other purposes.

[2] Repeal of Preamble

Preamble

repeal

[3] Repeal of section 3 (Repeal)

Section 3

repeal

[4] Repeal of section 4 (Parts)

Section 4

repeal

[5] Repeal and substitution of section 5 (Definitions)

5.1 Section 5

repeal, substitute

5 Interpretation

In this Act, unless the contrary intention appears:

'annual accounts' means the balance sheet and profit and loss account of the Corporation for a financial year;

'associate' – a person is an associate of another person if:

- (a) one is a relative of the other; or
- (b) they are members of the same household; or
- (c) they are partners; or
- (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
- (f) one is a body corporate and the other is a shareholder in the body corporate; or
- (g) a chain of relationships can be traced between them under one or more of the above paragraphs;

'beneficiary' of a trust includes an object of a discretionary trust;

'Board' means the Board of directors established under section 7;

'Chair' means the chair of the Board appointed under section 7(4);

'Chief Executive Officer' means the Chief Executive Officer under section 12;

'Corporation' means the corporation, RONPHOS, established under section 6(1);

'director' means a director of the Board appointed under section 7(2);

'Director of Audit' has the same meaning as in the *Audit Act 1973*;

'financial year' means a period of 12 months ending on 30 June;

'relative' of a person means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person.

[6] Amendment of Part II, Division 1 heading

Part II, Division 1 heading

omit

the Corporation and Executive Committee

substitute

Corporation and Board

[7] Amendment of section 6 (Establishment of Corporation)

Section 6(2)(b)

omit, substitute

(b) has perpetual succession and a common seal;

[8] Repeal and substitution of section 7

Section 7

repeal, substitute

7 Establishment of Board

- (1) A board of directors is established as the governing body of the Corporation.
- (2) The Board is to consist of 5 directors appointed by Cabinet.
- (3) At least 3 directors must be Nauruan.
- (4) Cabinet will appoint one director to chair meetings of the Board.
- (5) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

7A Common seal and execution of documents

- (1) The common seal of the Corporation must not be affixed to a document except in accordance with a decision of the Board, and the affixing of the seal must be attested by the signature of the Chair or a person authorised under subsection (2).
- (2) The Corporation may, by instrument under its common seal, authorise a director, an employee (whether nominated by name or by duties or position) or any other person to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument.
- (3) Without limiting subsection (2), an authority may be given authorising 2 or more persons to execute documents jointly on behalf of the Corporation.
- (4) A document is duly executed by the Corporation if:
 - (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of the Corporation by a person or persons in accordance with an authority conferred under this section.

[9] Amendment of section 8 (Head office)

Section 8(2)

omit

Executive Committee shall, with the approval of the Minister, from time to time determine

substitute

Board, with the approval of the Minister, from time to time determines

[10] Amendment of section 9 (Objects of the Corporation)

Section 9(3)

omit (all references)

Executive Committee

substitute

Board

[11] Insertion of Part II Division 2A and 2B

After section 11

insert

Division 2A — Board

11A Responsibilities and role of Board

- (1) The Board is responsible for overseeing the operations of the Corporation.
- (2) Without limiting the effect of subsection (1) the Board must:
 - (a) set goals, strategic objectives and policies of the Corporation that are consistent with the objects of the Corporation; and
 - (b) actively monitor and enquire into the performance of the Corporation in achieving the goals, strategic objectives and policies of the Corporation; and
 - (c) ensure that appropriate systems and practices are established for management and financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the Corporation;
 - (d) actively monitor and enquire into the performance of the management of the Corporation; and
 - (e) ensure that appropriate internal controls are in place to promote accountability, transparency and the role of the Board in monitoring the Corporation; and
 - (f) ensure that the Corporation operates within the limits of its objects and complies with the requirements imposed by or under this or any other Act or law; and
 - (g) ensure that the Corporation observes high standards of corporate and business ethics; and

- (h) ensure that the Minister receives regular reports on the performance of the Corporation; and
- (i) ensure that the Minister is advised, as soon as practicable, of any material development that affects the financial or operating capacity of the Corporation or gives rise to an expectation that the Corporation may not be able to meet its debts as and when they fall due; and
- (j) ensure that all information furnished to the Minister by the Corporation is accurate and comprehensive.

11B Minister may give directions to Board

- (1) The Minister may, after consultation with the Cabinet, give directions to the Board in relation to the exercise of any of its powers or the performance of any of its functions.
- (2) The Board must comply with a direction of the Minister under subsection (1).

11C Meetings of Board

- (1) The Board must hold a meeting:
 - (a) monthly; and
 - (b) whenever reasonably required by the Chair for the effective and efficient conduct of its business.
- (2) The Chair must, on receipt of a written request signed by not less than 2 directors, call a special meeting of the Board not later than 3 days after he or she receives that request.
- (3) If the Minister considers that it is desirable in the interests of the Republic that a meeting of the Board be held, he or she may direct the Chair to convene such a meeting.
- (4) The Board will meet:
 - (a) at the Head Office of the Corporation; or
 - (b) at another place determined by the Board; or
 - (c) if the place for a meeting has not previously been determined, at a place determined by the Chair.

11D Proceedings of Board meeting

- (1) The Chair will preside at each meeting of the Board at which he or she is present.
- (2) If the Chair is absent from a meeting of the Board, a director chosen by the directors present at the meeting will preside at the meeting.
- (3) A quorum of the Board consists of 3 directors.
- (4) A question before a meeting of the Board is to be determined as follows:
 - (a) each director present is entitled to one vote;
 - (b) voting must be by a show of hands;
 - (c) the question is to be determined by a majority of votes;
 - (d) the director 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.
- (5) The Chair may direct that an employee of the Corporation or other person engaged as a consultant to the Corporation may attend a meeting of the Board.
- (6) The proceedings of meetings of the Board are not affected by any vacancy in the membership of or by any defect in the appointment of a director or any incapacity of a director.
- (7) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the Board at which the participating directors are present if:
 - (a) notice of the conference is given to all directors in the manner determined by the Board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (8) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if:

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the Board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, email, fax, or other written communication setting out the terms of the resolution.
- (9) The Board must cause accurate minutes of each meeting to be kept and the Minister must be provided with a copy of the minutes of each meeting of the Board.
- (10) Subject to this Act, the Board may make rules governing the conduct of meetings of the Board.

Division 2B — Directors

11E Conditions of office of director

- (1) A director will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the end of a term of appointment, be eligible for reappointment.
- (2) The terms and conditions of appointment are those determined by Cabinet.
- (3) The Cabinet may at any time terminate the appointment of any director.
- (4) The names of all directors must be published in the Gazette at each change in the membership of the Board.
- (5) A person is ineligible for appointment to the Board if he or she;
 - (a) is under the age of 18 years or over the age of 72 years; or
 - (b) is a Member of the Parliament of Nauru; or
 - (c) has within the preceding 5 years been declared a bankrupt, applied to take the benefit under the law of any country for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
 - (d) has within the preceding 5 years, been convicted in any country of a criminal offence punishable with imprisonment for 3 months or more; or

- (e) has been prohibited or disqualified from managing a corporation in any country.
- (6) The office of a director becomes vacant if the director:
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board; or
 - (e) is no longer eligible for appointment under subsection (5);
or
 - (f) is removed from office under subsection (3).

11F Responsibilities and role of directors

- (1) Each director must, at all times:
 - (a) act in the best interests of the Corporation; and
 - (b) exercise a reasonable degree of care and diligence in the performance of his or her functions; and
 - (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 or, under a delegation, to enable him or her to make conscientious and informed decisions; and
 - (d) exercise active discretion with respect to all matters to be decided by the Board or under a delegation.
 - (2) A director is not bound to give continuous attention to the affairs of the Corporation but is required to exercise reasonable diligence in attendance at, and preparation for, Board meetings.
 - (3) In determining the degree of care and diligence required to be exercised by a director, regard must be had to the skills, knowledge or acumen possessed by the director and to the degree of risk involved in any particular circumstances.
-

- (4) If a director is culpably negligent in the performance of his or her functions, the director commits an offence.

Maximum penalty: \$50,000.

- (5) A director is not culpably negligent for the purposes of subsection (4) unless the court is satisfied the director's conduct fell sufficiently short of the standards required of the director under this Act to justify a criminal penalty.

- (6) A director does not commit any breach of duty under this section by acting in accordance with a direction or requirement of the Minister under this Act.

11G Director's duty to act honestly

- (1) A director must at all times act honestly in the performance of the functions of his or her office.

Maximum penalty: \$50,000.

- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the Corporation.

11H Conflict of interest

- (1) A director who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board:

- (a) must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest; and
- (b) must not take part in any discussion by the Board relating to that matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.

- (2) If a director makes a disclosure and complies with the other requirements of subsection (1) in respect of a proposed contract:
-

- (a) the contract is not liable to be avoided by the Corporation; and
 - (b) the director is not liable to account to the Corporation for profits derived from the contract.
 - (3) If a director fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract:
 - (a) the contract is liable to be avoided by the Corporation or by the Minister; and
 - (b) the Director is liable to pay to the Corporation any profit made by the Director in respect of the contract.
 - (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
 - (5) If a director has, or acquires, a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a director, the director must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest or office.
 - (6) A disclosure under this section must be recorded in the minutes of the Board and reported to the Minister.
 - (7) If, in the opinion of the Minister, a particular interest or office of a director is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the director, the Minister may require the director to either divest himself or herself of the interest or office or to resign from the Board (and non-compliance with the requirement constitutes misconduct and a ground for removal of the director from the Board).
 - (8) Without limiting the effect of this section, a director will be taken to have an interest in a matter for the purposes of this section if an associate of the director has an interest in the matter.
 - (9) This section does not apply in relation to an interest that a director has while the director remains unaware that he or she has an interest in the matter (and the burden will lie in any proceedings on the director to prove that he or she was not, at the material time, aware of his or her interest).
-

[12] Repeal and substitution of sections 12 and 13

Sections 12 and 13

repeal, substitute

12 Chief Executive Officer

- (1) There is to be a Chief Executive Officer of the Corporation.
- (2) The Chief Executive Officer is to be appointed by the Board with the approval of the Minister on terms and conditions approved by the Minister.
- (3) The Chief Executive Officer is responsible to the Board for the operations of the Corporation.
- (4) Without limiting the effect of subsection (3), the Chief Executive Officer is responsible for:
 - (a) giving effect to the Board's policies and decisions; and
 - (b) achieving the performance objectives set from time to time by the Board; and
 - (c) the effective management of the Corporation and the general conduct of its employees; and
 - (d) reporting to the Board on all issues of significance to the Corporation and, in particular, giving the Board the opportunity to consider and approve all major transactions.

12A Delegation by Chief Executive Officer

- (1) The Chief Executive Officer may delegate to a person a function or power under this or any other Act.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

13 Staff

- (1) The Chief Executive Officer may employ such staff as he or she considers necessary for the operations of the Corporation.
-

- (2) Staff employed by the Chief Executive Officer are employed on terms and conditions determined by the Chief Executive Officer with the approval of the Board.

[13] Amendment of section 16 (Borrowing by the Corporation)

Section 16(1)

omit

Executive Committee

substitute

Board

[14] Amendment of section 18 (Bank accounts)

Section 18(3)

omit

Executive Committee determines by resolution

substitute

Board determines

[15] Amendment of section 19 (Application of funds)

Section 19(b)

omit

non-executive members of the Executive Committee

substitute

directors of the Board

[16] Amendment of section 21 (Budget)

Section 21(3)

omit

Executive Committee

substitute

Board

[17] Amendment of section 23 (Further information)

Section 23

omit

Executive Committee

substitute

Board

[18] Repeal and substitution of section 24 (Audit)

Section 24

repeal, substitute

24 Director of audit

The Director of Audit is authorised to inspect, examine and audit the books, records and accounts of the Corporation.

Note—see section 7 of the Audit Act 1973.

[19] Amendment of section 25 (Annual report)

19.1 Section 25(1)

omit

the auditors

substitute

an approved auditor

19.2 Section 25(1)(b)

omit

Executive Committee signed by the Chairman and one Executive Director

substitute

Board signed by the Chair and one director

19.3 Section 25(3)

omit

auditors

substitute

approved auditor

19.4 Section 25(3)(a)

omit

their

substitute

the

19.5 Section 25, after subsection (3)

insert

(4) In this section:

‘approved auditor’, means:

- (a) an auditor having internationally recognised qualifications, appointed by the Corporation and approved by the Minister; or
- (b) if an auditor is not appointed by the Corporation and approved by the Minister—the Director of Audit.

[20] Repeal of FIRST SCHEDULE

FIRST SCHEDULE

repeal

[21] Amendment of SECOND SCHEDULE

SECOND SCHEDULE

omit

Executive Committee

substitute

Board

[22] Amendment of THIRD SCHEDULE

22.1 THIRD SCHEDULE

omit

auditors

substitute

approved auditor

22.2 THIRD SCHEDULE

omit (all references)

their examination

substitute

the examination

22.3 THIRD SCHEDULE

omit

they

22.4 THIRD SCHEDULE

omit

their opinion

substitute

the approved auditor's opinion

SCHEDULE 2 — TRANSITIONAL PROVISION

[1] Transfer of staff

- 1.1** A person appointed, engaged or employed under section 13 of the RONPHOS Act 2005 immediately before the commencement of this clause is transferred to the employment of the Chief Executive Officer of RONPHOS on terms and conditions of employment that are the same as the terms and conditions as applied to the person's appointment, engagement or employment immediately before that commencement.
- 1.2** This clause does not apply to a person who was, immediately before the commencement of this clause, a member of the Executive Committee of the Corporation.