

RONPHOS (Amendment) Bill 2012

EXPLANATORY MEMORANDUM

OBJECTIVES

The *RONPHOS (Amendment) Bill 2012* proposes to amend the *RONPHOS Act 2005* to replace the Executive Committee with a governing Board of directors and a Chief Executive Officer. This amendment will bring an important separation of the governance and the operation of RONPHOS. The Bill also enlivens the authority of the Director of Audit under the Audit Act 1973 to inspect, examine and audit the books, records and accounts of RONPHOS.

EXPLANATION OF CLAUSES

Clauses 1 to 4 are formal provisions.

Schedule 1 contains the substantive amendments.

Item 1 updates the long title of the Act to include reference to the RONPHOS Corporation and the other purposes that the Act contemplates.

Item 2 repeals the preamble to the Act.

Item 3 repeals section 3.

Item 4 repeals section 4.

Item 5 substitutes the Interpretation section with new definitions that are consequential to the substitution of the Board for the Executive Committee, such as **'Board'**, **'director'** and **'Chief Executive Officer'**. A definition of **'associate'** is included for the purposes of the conflict of interest provisions.

Item 6 amends the heading of Division 1 of Part II consequential to the substitution of the Board for the Executive Committee.

Item 7 substitutes paragraph 6(2)(b) to provide for perpetual succession of the Corporation and to simplify the provision in relation to the Corporation's common seal.

Item 8 repeals section 7 which provides for the creation of the Executive Committee and substitutes new sections 7 and 7A which provide for the establishment of the Board and the use of the Corporation's common seal.

- Proposed new section 7 provides that the Board is to consist of 5 directors appointed by Cabinet of which 1 will be appointed as the Chair of the Board. At least 3 directors must be Nauruan.
- Proposed new section 7A provides for the use and application of the common seal of the Corporation and the circumstances in which a document is duly executed by the Corporation.

Item 9 substitutes a reference to the Executive Committee with a reference to the Board.

Item 10 substitutes references to the Executive Committee with references to the Board.

Item 11 inserts 2 new divisions of Part II which are the central part of this Bill.

Proposed Division 2A provides for the role and responsibilities of the Board and the meetings of the Board.

- Proposed section 11A provides that the Board is to be responsible for overseeing the operations of the Corporation and includes a list of responsibilities that apply to the Board which include the following:
 - to set goals, strategic objectives and policies of the Corporation;
 - to actively monitor and enquire into the performance of the Corporation and the performance of the management of the Corporation;
 - to ensure that appropriate systems and practices are established for management and financial planning and control;
 - to ensure that appropriate internal controls are in place to promote accountability and transparency;
 - to ensure that the Minister receives regular reports on the performance of the Corporation;
 - to ensure that all information furnished to the Minister is accurate and comprehensive.
- Proposed section 11B provides that 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. This is the same provision that applies to the Executive Committee.
- Proposed section 11C provides for the timing of meetings of the Board which must be held at least monthly, with provision for extra meetings as required by the Chair for the effective and efficient conduct of business, or by 2 other directors or the Minister.
- Proposed section 11D provides for the procedure of meetings of the Board. These procedures and voting rules are the same as apply to the Executive Committee.

Proposed Division 2B provides for the conditions of office of directors, their roles and responsibilities (including honesty and accountability) and for the requirements to

disclose conflicts of interest that may arise in the performance of their functions. These provisions are substantially the same as those that apply to the members of the Executive Committee.

- Proposed section 11E provides for the term of appointment of the directors of the Board, being not more than 3 years, and the terms and conditions that apply to those appointments. Ineligibility criteria for appointment to the Board are listed, and include
 - being aged under 18 or over 72;
 - being a member of Parliament;
 - having, within the preceding 5 years, been declared a bankrupt or convicted of a criminal offence punishable with imprisonment for 3 months or more;
 - having been prohibited or disqualified from managing a corporation in any country.
- Proposed section 11E also provides for when the office of a director becomes vacant, which includes
 - completion of a term of office without reappointment;
 - absence from 3 consecutive meetings of the Board without leave granted by the Minister
 - on termination of an appointment by Cabinet.
- Proposed section 11F provides for the roles and responsibilities of the directors of the Board who must:
 - act in the best interests of the Corporation;
 - exercise a reasonable degree of care and diligence in the performance of functions;
 - take reasonable steps through the processes of the Board to obtain sufficient information and advice about all matters to be decided by the Board;
 - exercise an active discretion with respect to all matters to be decided by the Board or pursuant to a delegation.
- Proposed section 11F also provides that a director who is culpably negligent in the performance of his or her functions commits an offence which is punishable by a maximum penalty of \$50,000.
- Proposed section 11G provides that a director must at all times act honestly in the performance of the functions of his or her office, a contravention of which is a maximum penalty of \$50,000.
- Proposed section 11H provides how directors must deal with conflicts of interest, both personal and pecuniary, that arise in the performance of their functions, and include the interests of an associate of a director. In such a case a director:

- must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest;
 - must not take part in any discussion by the Board relating to that matter;
 - must not vote in relation to that matter;
 - must be absent from the meeting room when any such discussion or voting is taking place.
- Under proposed section 11H if a director fails to make a disclosure of interest or fails to comply with any other requirement listed above in respect of a proposed contract, the contract is liable to be avoided by the Corporation or by the Minister.
 - Proposed section 11H also provides the power to the Minister to require a director to either divest himself or herself of an interest or office, or to resign from the Board, if the interest or office is of such significance that the holding of it is not consistent with the proper discharge of the duties of the director.

Item 12 repeals sections 12 and 13 of the Act which relate to the staff of the Corporation and the delegation power of the Executive Committee. New sections are substituted that create the position of Chief Executive Officer of the Corporation who will have powers to employ the staff of the Corporation and to delegate his or her functions and powers.

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. The Chief Executive Officer is to be responsible to the Board for:

- giving effect to the Board’s policies and decisions;
- the attainment of performance objectives set from time to time by the Board;
- the effective management of the Corporation and the general conduct of its employees;
- 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.

Proposed section 13 provides for the Chief Executive Officer to employ the staff of the Corporation. The terms and conditions on which a staff member is employed must be approved by the Board.

Item 13 substitutes a reference to the Board for a reference to the Executive Committee.

Item 14 substitutes a reference to the Board for a reference to the Executive Committee.

Item 15 substitutes a reference to the non-executive members of the Executive Committee with a reference to the directors of the Board.

Item 16 substitutes a reference to the Board for a reference to the Executive Committee.

Item 17 substitutes a reference to the Board for a reference to the Executive Committee.

Item 18 repeals and substitutes section 24. Currently section 24 provides for the appointment of auditors by the Corporation to report on the financial statement, accounts and records of the Corporation. Proposed section 24 provides that the Director of Audit may inspect, examine and audit the books, records and accounts of the Corporation in accordance with the powers of the Director under the *Audit Act 1973*.

Item 19 amends section 25 consequential to the substitution of the Board for the Executive Committee and also to provide that the annual report on the finances of the Corporation may be prepared by an approved auditor. An approved auditor is either the Director of Audit or an auditor having internationally recognised qualifications, appointed by the Corporation and approved by the Minister

Item 20 repeals the First Schedule that relates to the establishment, powers and procedures of the Executive Committee.

Item 21 substitutes a reference to the Board for a reference to the Executive Committee.

Item 22 amends the Third Schedule consequential to the substitution of the ‘approved auditor’ for the ‘auditors’.

Schedule 2 contains a transitional provision in relation to the staff of the Corporation. The clause provides for the existing staff of the Corporation to be transferred to the employment of the Chief Executive Officer on the same terms and conditions as they were employed by the Corporation before the commencement of the clause. This clause does not apply in relation to the members of the Executive Committee.