

REPUBLIC OF NAURU

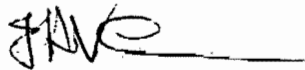
(No. 9 of 1995)

AN ACT

Relating to the Air Services of Nauru.

(Certified: 30th December, 1995)

I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Nauru Air Corporation Act, 1995, that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament
30th December, 1995

Pursuant to Article 47 of the Constitution, I, MAEIN DEIRERAGEA, Speaker of Parliament, HEREBY CERTIFY that the Nauru Air Corporation Act, 1995, a copy of which is attached has been passed by Parliament.



Speaker
30th December, 1995

REPUBLIC OF NAURU

NAURU AIR CORPORATION ACT 1995

(No. 9 of 1995)

AN ACT
RELATING TO THE
AIR SERVICES OF NAURU

(Certified: 30th December, 1995)

Be it enacted by the Parliament of Nauru as follows:

PART I - PRELIMINARY

SHORT TITLE

1. This Act may be cited as the Nauru Air Corporation Act 1995.

COMMENCEMENT

2. This Act shall come into operation on a date to be fixed by Cabinet, by notice in the Gazette.

PARTS

3. This Act is divided into Parts, as follows

Part I -	Preliminary (Sections 1-4)
Part II -	The Nauru Air Corporation
Division 1.	- Establishment of the Corporation and the Board (Sections 5-19)
Division 2.	- Objects and Powers of the Corporation (Sections 20-22)
Division 3.	- Staff (Sections 23-26)
Division 4.	- Finance of the Corporation (Sections 27-33)
Division 5.	- Budget, Reports and Audit (Sections 34-39)
Part III -	Miscellaneous (Sections 40-45)

DEFINITIONS

4. 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;
“ Board ” means the Board of Directors established by section 7 of this Act;
“ Chairman ” means the Chairman appointed under section 9 of this Act;
“ Chief Executive Officer ” means the Chief Executive Officer appointed under Section 23 of this Act;
“ Chief Financial Officer ” means the financial controller appointed by the Board under Section 25 of this Act as the Chief Financial Officer of the Corporation;

- “ Corporation ” means the Nauru Air Corporation;
- “ Financial year ” means the period of twelve months from the first day of July in one year to the thirtieth day of June of the next following year, both days included;
- “ Member ” means a member of the Board, and includes the deputy of a member of the Board;
- “ Minister ” means the member of the Cabinet responsible for the Ministry of Island Development and Industry;
- “ Net profits ” means dividends recommended by the Board and accepted by Cabinet after the application of the funds of the Corporation in fulfilment of Section 32 (a), (b), (c) and (d).
- “ Person ” includes a body corporate or politic as well as an individual;
- “ Public Service Commissioner ” means the Public Service Commissioner appointed under Section 9 of the Public Service Act 1961- 1995;
- “ Secretary ” means the Secretary of the Corporation appointed under Section 24 of this Act;
- “ Vice-Chairman ” means the Vice-Chairman appointed under Section 9 of this Act.

PART II - THE NAURU AIR CORPORATION

Division 1 - Establishment of the Corporation and the Board

ESTABLISHMENT OF THE CORPORATION

5. (1) There shall be a Corporation by the name of Nauru Air Corporation.
- (2) The Corporation
- (a) is a body corporate;
 - (b) shall have a common seal;
 - (c) is capable of acquiring, holding and disposing of both real and personal property; and
 - (d) may sue or be sued in its corporate name.
- (3) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document and shall presume that it was duly affixed.

LIMITATION ON LIABILITY

6. As a result of the operation of air services conducted by the Corporation, where personal injury or death has occurred to a passenger, the liability of the Corporation will be limited in terms of the provisions applicable to a carrier under the Civil Aviation (Carriers' Liability) Act 1995.

BOARD OF DIRECTORS

7. (1) Subject to this Act, the business of the Corporation shall be controlled by a Board of Directors constituted by five members appointed by the Cabinet.
- (2) A member shall hold office for such period, not exceeding four years, as is fixed by the Cabinet at the time of his appointment.
- (3) A member is eligible for re-appointment.

DEPUTY MEMBER

8. (1) In the case of the illness or absence of a member of the Board, the Minister may appoint a person to be the deputy of that member during his illness or absence.
- (2) The appointment of a deputy member shall terminate when the member for whom he is the deputy returns to duty.
- (3) The Minister may terminate the appointment of a deputy member.

CHAIRMAN AND VICE-CHAIRMAN

9. (1) The Cabinet shall 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

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

APPOINTMENT OF MEMBERS

11. A member of the Board shall be appointed on such terms and conditions as are approved by the Cabinet.

VACATION OF OFFICE

12. (1) The Cabinet may terminate upon three months notice the appointment of a member of the Board.
- (2) Where a member -
- (a) becomes bankrupt, 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 succeeding section;
 - (e) is considered by a Board consisting of not less than three legally qualified 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 with imprisonment for three months or more,

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

13. (1) A member of the Board who is directly or indirectly interested in a contract made or proposed to be made by the Corporation, otherwise than as a member of a statutory corporation, trust, or other statutory body of the Republic of Nauru, 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 sub-section shall be recorded in the Minutes of the Board and the member -

(a) shall not take part after the disclosure in any deliberation or decision of the Board 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

14. (1) The Board shall hold meetings at least once in every two months of the financial year or as often, in the opinion of the Chairman, as is necessary for the efficient conduct of its business, provided that where the Chairman receives a written request signed by not less than two members, he shall call a meeting of the Board not later than three weeks after he receives that request.

(2) Where the Minister considers that it is desirable in the interests of the Republic that a meeting of the Board should be held, he may direct the Chairman to convene such a meeting and the Chairman shall do so as directed.

(3) At a meeting of the Board, three members shall constitute a quorum provided one of the members present is the Chairman or Vice-Chairman.

(4) The Chairman shall preside at every meeting of the Board at which he is present, and if he is absent from a meeting and the Vice-Chairman is present, the Vice-Chairman shall preside at the meeting.

VOTING

15. A question before a meeting of the Board is to be determined as follows-

(a) Each member present is entitled to one vote;

(b) Voting must be by a show of hands;

(c) The question is determined by a majority of votes;

(d) If there is an equality of votes the Chairman has a second vote.

CONDUCT OF MEETINGS

16. (1) The conduct of meetings of the Board is in the Board's discretion.

(2) The Board may make rules governing the conduct of meetings of the Board.

VALIDITY OF PROCEEDINGS

17. The proceedings of the Board are not invalidated because of -
- (a) any vacancy in the membership; or
 - (b) any defect in the appointment of a member; or
 - (c) any incapacity to be a member.

PLACE OF MEETINGS

18. (1) The Board shall normally meet at the Head Office of the Corporation.
- (2) The Board may meet in other places as it may from time to time determine.
- (3) Where the place for a meeting has not previously been determined, the meeting shall be held at a place appointed by the Chairman.

HEAD OFFICE

19. (1) The Head Office of the Corporation shall be at Nauru.
- (2) The Corporation shall establish other offices at such places as the Board may, from time to time, determine.

Division 2 - Objects and Powers of the Corporation

OBJECTS OF THE CORPORATION

20. The objects of the Corporation are -
- (a) to maintain and operate air services to and from Nauru and other services in safe, efficient and profitable manner through the national airline known as "Air Nauru".
 - (b) to establish, maintain and operate such activities as are, or may be ancillary to the maintenance and operation of air services to and from Nauru and other services; and
 - (c) to establish, maintain and operate such other activities, including those recommended by the Board to the Cabinet and approved by the Cabinet.

POWERS OF THE CORPORATION

21. (1) Subject to this Act, the Corporation has power to do all things necessary, convenient or appropriate to be done, whether at Nauru or elsewhere, for the fulfilment of its objects.
- (2) Without limiting the generality of the last preceding subsection, the powers of the Corporation include the power -
- (a) to enter into contracts connected with the operation of air services of the Corporation;
 - (b) to enter into contracts for any ancillary services performed by the Corporation or for the purchasing or sale of any products relating to air services of the Corporation or otherwise;

- (c) to purchase, lease, hire or otherwise acquire aircraft, aircraft engines, land, buildings, plant, machinery and any other capital assets subject to limitations expressed in Regulations to this Act;
- (d) to sell or dispose of any capital assets of the Corporation subject to limitations expressed in Regulations to this Act;
- (e) to appoint agents for the purpose of any business conducted by the Corporation and to terminate any such appointment;
- (f) to act as agent for other persons;
- (g) to compound, release or settle claims by and against the Corporation whether in contract or tort;
- (h) to do anything incidental to any of its objects.

DELEGATION OF POWERS

22. (1) By an instrument of delegation the Board may delegate to a member of its staff any power, duty or function of the Board under this Act other than -

- (a) this power of delegation; and
- (b) the power to approve any expenditure not contained in a budget approved by the Board.

(2) By an instrument of delegation the Chief Executive Officer may delegate to a member of the Corporation staff any power, duty or function of his or her office other than this power of delegation.

(3) A delegation under this section is revocable and does not prevent the exercise of a power, duty or function by the Board or the Chief Executive Officer.

(4) The Secretary shall keep a register of delegations to members of Corporation staff.

Division 3 - Staff

CHIEF EXECUTIVE OFFICER

23. (1) The Board shall appoint a person to be the Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer shall be required to attend meetings of the Board.

(3) The Chief Executive Officer shall not engage, or continue to engage, in any other paid remuneration or office except with the approval of the Board.

SECRETARY

24. (1) The Board shall appoint a person to be Secretary of the Corporation.

(2) The Secretary of the Corporation will be an officer of the Corporation.

(3) The Secretary of the Corporation will be primarily responsible for -

- (i) the preparation of agendas and papers of meetings of the Board
- (ii) the maintenance of Board Minutes
- (iii) matters relating to the Board
- (iv) records and official papers of the Board

CHIEF FINANCIAL OFFICER

25. (1) The Board shall appoint a person to be the Chief Financial Officer of the Corporation.
(2) The Chief Financial Officer shall not engage, or continue to engage, in any other paid remuneration or office except with the approval of the Board.

OFFICERS AND STAFF

26. (1) For the conduct of its business, the Corporation shall establish and maintain an appropriate management structure.
(2) The Corporation may,
(a) appoint, engage or employ;
(b) apply such terms and conditions of service in respect of; and
(c) dismiss or suspend such officers, staff or labour
as the Board considers necessary or appropriate.

Division 4 - Finance of the Corporation

CAPITAL OF THE CORPORATION

27. The capital of the Corporation shall be such amount as the Cabinet from time to time determines.

SUBSCRIPTION OF CAPITAL

28. (1) The initial capital of the Corporation shall be subscribed by the Republic.
(2) Where Cabinet approves subscription of capital by persons other than the Republic, Cabinet shall determine the amount of capital that may be subscribed and the terms and conditions under which it is to be subscribed.

BORROWINGS BY THE CORPORATION

29. (1) Subject to this section, the Corporation may borrow money on such terms and conditions, and in such amounts, as the Board, with the approval of the Cabinet, determines.
(2) The Corporation shall not charge, pledge or grant a lien over any of its assets, or acquire any asset subject to a charge, pledge or lien, except with the approval of the Cabinet.

INVESTMENT AND GUARANTEE

30. The Corporation shall not -
(a) lend moneys;
(b) invest moneys, except with the approval of the Cabinet; or
(c) act as guarantor for other persons, except in accordance with the approval of the Cabinet.

BANK ACCOUNTS

31. (1) The Corporation shall open and maintain an account or accounts with a bank or banks determined by the Board.

(2) The Corporation shall deposit all moneys received by it into a bank account referred to in this section.

(3) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Corporation shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board determines by resolution from time to time.

APPLICATION OF FUNDS

32. The funds of the Corporation shall be applied as follows-

(a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Corporation;

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

(c) in payment of principal and interest on borrowings of the Corporation;

(d) in repayment of the capital of the Corporation;

(e) in the creation of such reserves as may be determined by the Board and approved by the Cabinet; and

(f) in payment to the shareholders of dividends that may be declared from the accumulated net profits of the Corporation as recommended by the Board and approved by the Cabinet.

BOOKS OF ACCOUNT

33. The Corporation shall keep proper books of account and records in accordance with accounting principles generally accepted and applied in international commercial and airline practice and in such manner as may be prescribed.

Division 5 - Budget, reports and audit

BUDGET

34. (1) The Corporation shall, not less than one month, before the commencement of each financial year, submit to the Minister a report on its planned operations for that financial year incorporating -

(a) projected balance sheets;

(b) projected profit and loss accounts;

(c) projected source and application of funds statements; and

(d) its budget, including capital expenditure and moveable plant expenditure, for that financial year.

(2) Upon submission of the report by the Minister to Cabinet within fourteen days of its receipt, the Cabinet may approve or seek a variation of the budget and planned operations.

(3) Where the Cabinet has sought a variation, the Board will meet and resubmit its report through the Minister taking into account the variations sought by the Cabinet.

MONTHLY REPORTS

35. The Corporation shall, on or before the twenty-fifth day of each month, submit to the Minister a financial statement for the last accounting month, together with a report comparing the results achieved by the Corporation to the end of that accounting month with the corresponding information in the budget and projected accounts for that financial year submitted pursuant to the last preceding section.

FURTHER INFORMATION

36. The Corporation shall submit to the Minister such additional information relating to its operations, or its planned operations, as the Board considers appropriate or as the Minister may from time to time require.

AUDIT

37. The Corporation shall, in respect of each financial year, appoint auditors approved by the Cabinet to inspect, audit and report upon the annual financial statement, accounts and records of the Corporation.

ANNUAL REPORT

38. (1) The Corporation shall, as soon as practicable in the period of ninety days following the close of each financial year, or within such further period as the Minister may allow, submit to the auditors its annual accounts for that financial year, duly annotated in accordance with the First Schedule to this Act, together with a report by the Board signed by the Chairman and another member and reviewing the activities of the Corporation for that year.

(2) The annual accounts shall bear a declaration by the Chief Financial Officer of the Corporation verifying that they are, to the best of his knowledge and belief, correct.

(3) The auditors shall, as soon as practicable within the period of ninety days after the close of each financial year or within such further period as the Minister may allow -

(a) make a similar report on their examination of the Corporation's annual accounts and annotations thereon, including the matters specified in the Second Schedule to this Act; and

(b) submit the annual accounts and annotations thereon and those reports to the Minister.

REPORTS TO PARLIAMENT

39. The Minister shall lay before Parliament the audited annual accounts and annotations thereon and the auditors' report and all other reports referred to in Section 38, not later than one month after he receives them, or at the next meeting of Parliament thereafter, whichever first occurs.

PART III - MISCELLANEOUS

TRANSITIONAL

40. The powers and functions of the Board may, until three members of the Board are first appointed, be exercised and performed by the Minister.

41. Transitional employment provisions relating to staff previously employed in the public service of Nauru who are offered appointment by the Corporation will be determined by the Corporation in association with the Public Service Commissioner on the basis that any accrued rights will be given full recognition.

42. The Corporation is the successor party in any contract where previously the Republic of Nauru when carrying on business as Air Nauru was the party.

43. All properties and assets which, immediately before the commencement of this Act, were vested in the Republic when carrying on business as "Air Nauru", shall hereafter vest in the Corporation and the Corporation shall be liable to pay for the said properties and assets at their proper value to the Republic.

ASSIGNMENT OF CONTRACT

44. Where the Republic has assigned to the Corporation the benefit of the contract for the sale of services, the Republic shall pay any proceeds received by it under that contract following the coming into operation of this Act less any expenses incurred by the Republic to the Corporation and the Treasury Fund is hereby charged.

REGULATIONS

45. The Cabinet may make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing penalties not exceeding one thousand dollars or imprisonment for a period not exceeding three months, or both, for offences against the regulations.

FIRST SCHEDULE

(Section 38)

The Board shall annotate the annual accounts of the Corporation so as to show, inter alia -

- (a) the total of any outstanding capital expenditure commitments;
- (b) the total cost, or valuation and the basis of such valuation, together with accumulated depreciation or amortisation and also the net value as at 30th June in the financial year under review of -
 - (i) the capital of the Corporation;
 - (ii) freehold and leasehold land;
 - (iii) structures and housing;
 - (iv) equipment;
 - (v) construction work in progress
 - (vi) any interest applicable to construction;
- (c) the cost and market value of any investments;
- (d) the method by which inventories have been valued;
- (e) details of any adjustments applicable to previous years;
- (f) details of any contingent liabilities;
- (g) the total amount of any provision for doubtful debts;
- (h) the total amount written off during the year in respect of bad debts; and
- (i) such further matters as the regulations may require.

SECOND SCHEDULE

(Section 38)

The Report of the auditors on their examination of the Corporation's annual accounts and the annotations thereon shall state whether their examination was in accordance with generally accepted auditing standards and included such tests of the accounting records and such other auditing procedures as they considered necessary and whether, in their opinion -

- (a) the balance sheet and profit and loss account are properly drawn in accordance with accounting principles generally accepted and applied in international commercial and airline practice and the provisions of this Act;
 - (b) there are any inconsistencies in accounting principles applied between the balance sheet and profit and loss account and those of the previous year;
 - (c) whether or not the balance sheet and profit and loss account give a true and fair view of the state of affairs and results of the Corporation; and
 - (d) adequate accounting and other related records, including registers, of the Corporation have been properly kept,
- and shall state their opinion on such further matters as the regulations may require.