

## CHAPTER 2

### **POHNPEI FISHERIES CORPORATION**

#### Section

2-101 Corporation established

2-102 Responsibilities, duties, and powers of the Corporation

2-103 Debts and obligations of the Corporation

2-104 Tax liability

2-105 Composition of Board: removal: vacancies

2-106 Meetings of the Board

2-107 Organization of the Board; quorum; compensation and expenses

2-108 Appointment of chief executive officer; duties; removal

2-109 Powers and responsibilities of the chief executive officer

2-110 Appointment of comptroller and general counsel; duties of each

2-111 Contract-letting by the Board

2-112 Indemnification

2-113 Accounting and reporting

2-114 Budget preparation

2-115 Supplemental budget requests

2-116 Manual of administration

2-117 Preference

2-118 Government assistance to the Corporation in carrying out its functions

2-119 Privatization scheme

2-120 Waiver

36 PC 2-101. Corporation established.

There is hereby established in and for Pohnpei a public corporation to be known as the Pohnpei Fisheries Corporation, hereinafter referred to as the "Corporation."

Source: S.L. No. 3L-28-92 §1, 11/25/92

36 PC 2-102. Responsibilities, duties, and powers of the Corporation.

In performing the responsibilities and duties authorized by this chapter and other laws of this state, the Corporation shall have all of the characteristics of a public corporation and the capacity to exercise all powers normally exercised by a public corporation, including, but not limited to, the following:

- (1) To operate and manage the Fish Processing Plant and any boats owned by the plant to provide the necessary raw material to the plant on the basis of commercially accepted practices; PROVIDED that the Board of Directors shall review the cold storage needs of the Corporation and if determined by the Board that increased cold storage space is required for the successful operation of the Corporation, shall propose to the Legislature its recommendation for cold storage expansion and/or transfer of the cold storage facility from the Economic Development Authority to the Corporation;
- (2) To expand and improve the operation of the Fish Processing Plant to include the construction and operation of new facilities and fishing activities;
- (3) To acquire and maintain from the revenues and grants received by the Corporation a program of liability insurance on all personnel, facilities, and equipment controlled by the Corporation; PROVIDED that if such insurance is not available or is prohibitively expensive, as determined by the Board of Directors of the Corporation, then the Corporation shall establish and maintain a special fund to protect personnel, facilities, and equipment not covered by insurance and to satisfy judgments or settlements on tort claims brought against the Corporation for its operations under this chapter;
- (4) To invest all surplus revenues (after the repayment of all principal and interest on Medium-Term Note loans made to the Pohnpei Fisheries Corporation for the purpose of constructing the Fish Processing Plant, excluding the principal and interest cost of any civil works development of water and sewer systems to the Fish Processing Plant and boat purchases, including accessories) into the expansion and improvement of the Fish Processing Plant and related fishing activities; PROVIDED that repayment on the Medium-Term Note loan shall not begin until one year after the initial full operation of the Fish Processing Plant;
- (5) To adopt, alter, and use a corporate seal;
- (6) To establish trademarks and brand names for its products and services;
- (7) To adopt and amend bylaws and other rules, regulations, and directives governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;

(8) To sue and be sued in its corporate name;

(9) To acquire, in any lawful manner, real, personal or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease, or otherwise dispose of such property upon the condition that no such sale, lease or disposal of the property or assets of the Corporation shall directly result in the closing of the Fish Processing Plant or in the exclusive operation of the Fish Processing Plant by an outside entity, either public or private. A determination to sell the Fish Processing Plant or a significant portion of the assets thereof which would result in the closing of the Fish Processing Plant or the lease of the Fish Processing Plant to a private entity shall require a majority vote of the Legislature in the form of a resolution;

(10) To acquire and take over, in any lawful manner, the business, property, assets, and liabilities of any public entity of Pohnpei to the extent of its operation of the Fish Processing Plant and any related fishing activity;

(11) To borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such terms as may from time to time be deemed necessary for the expansion and improvement of the Fish Processing Plant;

(12) To loan a sum or sums of money necessary to insure continued operation of the Corporation. Loans shall not be made at a rate that would significantly disadvantage the Corporation with respect to its alternative use of the funds in short-term savings interest rates as provided by banks located in the Federated States of Micronesia;

(13) To retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as the Corporation deems appropriate;

(14) To engage in all reasonable business associated with the business of fish processing;

(15) To enter into joint venture arrangements to operate the Pohnpei Fisheries Corporation; PROVIDED that all proceeds from the sale of an interest in the Corporation to a joint venture partner or the sale of stock in the Corporation shall be placed in the capital account of the general fund for appropriation by the Legislature; and

(16) To do all such things as may be incidental to or conducive to the attainment of the responsibilities and duties of the Corporation.

Source: S.L. No. 3L-28-92 §2, 11/25/92

### 36 PC 2-103. Debts and obligations of the Corporation.

Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be the debts or obligations of the Pohnpei Government, nor shall the Pohnpei Government be responsible for any such debts or obligations.

Source: S.L. No. 3L-28-92 §3, 11/25/92

### 36 PC 2-104. Tax liability.

The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments on any of its property, operations or activities imposed by the Pohnpei Government or local governments and, to the extent allowable, the government of the Federated States of Micronesia. Nothing herein shall be deemed to exempt employees and independent contractors of the Corporation from tax liability for services rendered to the Corporation, and the Corporation shall be liable for employers' contributions to existing social security systems in the manner provided by law.

Source: S.L. No. 3L-28-92 §4, 11/25/92

### 36 PC 2-105. Composition of Board; removal; vacancies.

All powers vested in the Corporation shall be exercised by the Board, which shall consist of seven members, called Directors, who shall be appointed by the Governor with the advice and consent of the Pohnpei Legislature. Within 30 days after the passage of this chapter, the Governor shall appoint four members of the Board to four-year terms and three members to two-year terms. Thereafter, persons appointed shall hold membership on the Board for a period of four years, subject to reappointment, and until their successors have been appointed and qualify. Each member of the Board shall be experienced in commerce and public policy relevant to such an industrial scale, export-oriented fish processing business as the Corporation shall be engaged in. Membership on the Board shall not be limited to citizens of the Federated States of Micronesia or of Pohnpei. Members of the Board of Directors may be removed for good cause by the Governor or by a three-fourths majority of the full Board. All vacancies occurring on the Board shall be filled by the Governor with the advice and consent of the Legislature, but only for the unexpired term of the member whose vacancy is being filled. Two ex-officio non-voting members, the Administrator of the Office of Economic Affairs and the Director of the Department of Treasury and Administration or their designated representatives shall also serve on the Board; PROVIDED that a designee of a Director or Administrator shall serve for a period of two years.

Source: S.L. No. 3L-28-92 §5, 11/25/92; S.L. No. 5L-92-03 §1, 2/11/03

### 36 PC 2-106. Meetings of the Board.

Within 15 days after the confirmation of the initial Board, the Governor shall call an organizational meeting, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet pursuant to its bylaws. The Board may create an Executive Committee to meet at more frequent intervals and exercise such specific powers and responsibilities as are delegated to it by the Board and as provided for in the Corporation bylaws.

Source: S.L. No. 3L-28-92 §6, 11/25/92

Note: Due to an error in S.L. No. 3L-28-92 original numbering there is no §7.

36 PC 2-107. Organization of the Board; quorum; compensation and expenses.

The Board shall organize by electing one of its members as Chairman and another as Vice-Chairman. The Board shall also designate from among its members a Secretary to keep the minutes and records of the Board. Any four members of the Board shall constitute a quorum, and a concurrence of four members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board. Directors shall be compensated at the rates as provided for in the State Government Officers Salary Act, Title 9 Chapter 4, as amended or superseded, (9 PC 4-\*), when actually performing the functions of the Board, at the direction of the Chairman. Directors shall also receive travel expenses and per diem at rates established in the bylaws.

Source: S.L. No. 3L-28-92 §8, 11/25/92; S.L. No. 4L-25-96 §12, 7/1/97

36 PC 2-108. Appointment of chief executive officer; duties; removal.

The Board shall appoint a chief executive officer pursuant to the Corporation's articles and bylaws and fix his compensation. The chief executive officer shall have full charge and control of the operation and maintenance of the Fish Processing Plant and related fishing operations and other real and personal property controlled by the Corporation, and of construction of any facilities, and necessary work on vehicles, vessels, and equipment controlled by or required to be rebuilt or repaired by the Corporation. Removal of the chief executive officer shall be pursuant to Corporation bylaws. The Board shall provide, in its bylaws, for the filling of a vacancy of the position of chief executive officer.

Source: S.L. No. 3L-28-92 §9, 11/25/92

36 PC 2-109. Powers and responsibilities of the chief executive officer.

The chief executive officer of the Corporation shall have the following powers and responsibilities:

- (1) To manage the Corporation and to ensure the efficient operation of the Fish Processing Plant and related fishing operations;
- (2) To attend all meetings of the Board and to submit a general report on the affairs of the Corporation;
- (3) To keep the Board advised on the needs of the Corporation;
- (4) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (5) To prepare or cause to be prepared all plans and specifications for the construction and repair of facilities, vehicles, vessels, and equipment operated by the Corporation;

(6) To devote his entire working time to the business of the Corporation; to select and appoint the employees of the Corporation except as otherwise provided in this chapter; to plan, organize, coordinate, and control the services of such employees in the exercise of the powers of the Corporation under the general direction of the Board; and, in lieu of hiring employees to perform any of the tasks, work or other services required by the Corporation, to contract with independent contractors, as persons, organizations or corporations, to provide such services;

(7) To cause to be published, within 60 days after the end of each fiscal year, a financial and operations statement showing the result of operations for the preceding fiscal year and the financial status of the Corporation on the last day thereof, which publication shall be made in the manner provided by the Board; and

(8) To perform such other and additional duties as the Board may require.

Source: S.L. No. 3L-28-92 §10, 11/25/92

### 36 PC 2-110. Appointment of comptroller and general counsel; duties of each.

The chief executive officer shall appoint a comptroller and a general counsel, both of whom shall report to the chief executive officer. The comptroller and the general counsel may be terminated by the chief executive officer. The comptroller and the general counsel shall be compensated at a rate determined by the Board. Such officers may be full-time employees of the Corporation, shared with Pohnpei Government agencies, or be placed on retainer from the private sector. The chief executive officer may appoint one or more assistants to any such office.

(1) The comptroller shall have custody of all monies of the Corporation and shall pay out such money only in accordance with the direction of the chief executive officer pursuant to rules and procedures established by the Board and as provided in the annual budget of the Corporation. The Board shall appoint an agent as its trustee for payment of bonds issued by it and for such related purposes as the Board may provide.

(2) The general counsel shall advise the Corporation through, and represent the chief executive officer in, all legal matters to which the Corporation is a party or in which the Corporation is legally interested pursuant to rules and regulations set forth in the Corporation's bylaws.

(3) The Corporation may use the services of the attorneys for the Pohnpei Government to serve as attorneys for the Corporation, or it may appoint such attorney or attorneys as it may deem necessary, and it shall provide payment for all legal services rendered. All official documents, contracts, bonds, and other instruments in writing shall be approved as to form and legality by the general counsel for the Corporation. Such approval may be conclusively evidenced by the signature of the general counsel thereon.

Source: S.L. No. 3L-28-92 §11, 11/25/92

### 36 PC 2-111. Contract-letting by the Board.

The purchase of all supplies and materials and the construction of all works by independent contractors, when the expenditure exceeds \$50,000, shall be, by contract, let to the lowest responsible bidder. Notice requesting bids shall be published at least ten days before bids are received. The Board may reject any and all bids and readvertise at its discretion.

(1) If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(2) Where reasonable, preference in the letting of contracts shall be given to local contractors.

(3) No director shall vote on any contract awarded by the Board in which the director has a direct or indirect financial interest. This provision shall not apply to contracts awarded to a corporation in which such director owns less than five percent (5%) of the entire capital stock. The Board shall establish procedures for the timely verification of this restriction by its general counsel.

Source: S.L. No. 3L-28-92 §12, 11/25/92

#### 36 PC 2-112. Indemnification.

The Corporation hereby agrees to indemnify and hold-harmless all Board members, officers, employees or other agents acting for or on behalf of the Pohnpei Fisheries Corporation from any and all claims, causes of action, demands, losses, costs or damages, including all court costs and attorneys' fees, regardless whether suit is actually brought, arising from or relating to any act or omission directly or indirectly related to the matters contained in this chapter. This indemnification and hold-harmless provision covers claims that are foreseeable and unforeseeable, whether the act or omission is deemed to be within or outside the scope of employment or responsibility. This indemnification shall not apply to negligent, intentional or reckless acts.

Source: S.L. No. 3L-28-92 §13, 11/25/92

36 PC 2-113. Accounting and reporting. The Board shall adopt and maintain a system of accounting that is in accordance with generally accepted accounting principles applicable to public corporations. The system adopted shall require that:

(1) The Board employs a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Corporation, copies of any such reports to be furnished to the Governor and the Pohnpei Legislature.

(2) The Board shall report to the Governor and Pohnpei Legislature on the affairs of the Corporation. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the Governor or the Pohnpei Legislature, shall present special reports within 30 days after the end of each intervening quarter.

(3) The Public Auditor shall audit the Corporation annually and report to the Governor and the Legislature no later than December 31 each year.

Source: S.L. No. 3L-28-92 §14, 11/25/92

#### 36 PC 2-114. Budget preparation.

The chief executive officer shall prepare, in advance of each fiscal year, under the supervision of the Board, an annual budget for the Corporation, taking into consideration anticipated capital and operational expenditures and anticipated revenues. The Corporation shall have the same fiscal calendar as that of the Pohnpei Government. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation, and such essential requirements as cannot be met without outside financial assistance.

Source: S.L. No. 3L-28-92 §15, 11/25/92

#### 36 PC 2-115. Supplemental budget requests.

To the extent that the Corporation deems it necessary and advisable, the Corporation is authorized to seek appropriations from the Pohnpei Legislature and, to the extent approved by the Governor, grants from sources outside of Pohnpei, of such funds as are necessary to supplement revenues to provide for the operations, maintenance, and expansion of the Fish Processing Plant and related fishing activities.

Source: S.L. No. 3L-28-92 §16, 11/25/92

#### 36 PC 2-116. Manual of administration.

The Board shall establish a manual of administration to include rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Corporation. Employees of the Corporation shall be eligible to participate in any health insurance plan, life insurance plan, retirement fund, and workers' compensation insurance available to Pohnpei Government employees. The Corporation shall contribute to such programs on the basis of periodic billings as determined by the governing authorities thereof.

Source: S.L. No. 3L-28-92 §17, 11/25/92

#### 36 PC 2-117. Preference.

The Board shall attempt to employ qualified legal residents of this jurisdiction, if at all possible. However, the Board shall have as its primary concern the efficient operation of the Fish Processing Plant and related fishing operations.



Source: S.L. No. 3L-28-92 §18, 11/25/92

36 PC 2-118. Government assistance to the Corporation in carrying out its functions.

For the purpose of aiding in the planning, undertaking or carrying out of this chapter and of the projects contemplated herein, and the subsequent operation and maintenance of the Fish Processing Plant and related fishing operations, the Pohnpei Government or any department, division, agency, authority or political subdivision thereof, may, if the chief executive of the respective governmental subdivision determines that such project will benefit and further the public purposes of the respective governmental subdivision and be of advantage to them, and if the intended action is consistent with the laws of the respective jurisdiction:

- (1) Dedicate, sell, convey or lease interests in real or personal properties, rights or privileges that it may have to the Corporation:
- (2) Incur expenses on behalf of the Corporation subject to reimbursement under such terms and conditions as may be agreed upon with the Corporation;
- (3) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers, and obligations of the Corporation;
- (4) Lend or advance, grant or contribute funds to the Corporation, and provide for or waive the repayment of any such funds loaned or advanced;
- (5) Contract with or furnish services to the Corporation upon such terms and conditions as may be agreed upon; or
- (6) Enter into any agreements that may extend over any period of time notwithstanding any rule of law to the contrary applicable to public corporations or other public bodies unless specifically applied to the Corporation.

Source: S.L. No. 3L-28-92 §19, 11/25/92

36 PC 2-119. Privatization scheme.

The Corporation shall establish a privatization scheme for the purchase of stock within six months after the passage of this chapter, which scheme may be implemented within one year.

Source: S.L. No. 3L-28-92 §20, 11/25/92

36 PC 2-120. Waiver.

The Financial Organization and Management Act, Title 11 Chapter 2, (11 PC 2-\*), the Public Service System Act, Title 9 Chapter 2, (9 PC 2-\*), the Contract Review Board Act, Title 11 Chapter 6, (11 PC 6-\*), and the Government Salary Conversion Act, Title 9 Chapter 4, (9 PC 4-\*), shall not be applied to the Pohnpei Fisheries Corporation.

Source: S.L. No. 3L-28-92 §21, 11/25/92

Note: S.L. No. 3L-28-92 §22 transition and §23 severability provisions have been omitted.