

No. 17848

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**MULTILATERAL**

**Memorandum of Understanding on the establishment of the Pacific Forum Line Limited (with schedule). Concluded at Suva on 16 June 1977**

*Authentic text: English.*

*Registered by the Director of the South Pacific Bureau for Economic Co-operation, acting on behalf of the Parties, on 8 June 1979.*

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**MULTILATÉRAL**

**Mémorandum d'accord portant création de la Pacific Forum Line Limited (avec annexe). Conclu à Suva le 16 juin 1977**

*Texte authentique : anglais.*

*Enregistré par le Directeur du Bureau de la coopération économique pour le Pacifique Sud, agissant au nom des Parties, le 8 juin 1979.*

## MEMORANDUM OF UNDERSTANDING<sup>1</sup> ON THE ESTABLISHMENT OF THE PACIFIC FORUM LINE LIMITED

The Contracting Parties to this Memorandum,  
 Having regard to the decision of the South Pacific Forum that a regional shipping line be established,  
 Recognizing the importance of shipping services as life lines for the existence of and for the development of the South Pacific region,  
 Considering the need to ensure regular shipping services and encourage economic development,  
 Recognizing the desirability of containing escalating freight rates, and  
 Agreeing to co-operate in the establishment of regular fully rationalized shipping services among ports of the Contracting Parties to this Memorandum and also among other ports,  
 Have agreed as follows:

### *Article I. INTERPRETATION*

In this Memorandum unless there is something in the subject matter or context inconsistent therewith or repugnant thereto:

1. "Board" means the Board of Directors of the Line.
- "Contracting Party" means a party to this Memorandum.
- "Council" means the Council referred to in clause 1 of article IV.
- "Dollar" and the sign "\$" means the Western Samoan Tala.
- "Financial year" means the financial year determined by the Board.
- "Forum" means the South Pacific Forum.
- "Line" means the Pacific Forum Line Limited.
- "Non-Shipping Member" means a Contracting Party which is not a Shipping Member.
- "Ship evaluation factor" means the factor determined in accordance with the formula set out in the schedule.
- "Shipping Member" means a Contracting Party which by itself or through a nominee provides for charter or otherwise contributes a ship or ships to the Line for the purpose of this Memorandum.

<sup>1</sup> Came into force in respect of the following States and territories on 20 August 1978, i.e., one month from the date on which seven signatory Governments had deposited their instruments of ratification or accession with the Director of the South Pacific Bureau for Economic Co-operation, in accordance with article XI (5):

<i>State or territory</i>	<i>Date of deposit of the instrument of ratification</i>
Fiji .....	8 July 1977
Western Samoa .....	4 August 1977
Tonga .....	16 August 1977
New Zealand .....	29 August 1977
Papua New Guinea .....	4 April 1978
New Zealand .....	9 June 1978
(On behalf of the Cook Islands.)	
United Kingdom of Great Britain and Northern Ireland .....	7 July 1978
(On behalf of the Gilbert Islands.)	

“SPEC” means the South Pacific Bureau for Economic Co-operation.

“Unit charter rate” means the rate referred to in article IX.

2. Any question of interpretation or application of the provisions of this Memorandum, not being a dispute within the provisions of article XIV, shall be submitted to the Council whose decision thereon shall be final.

#### Article II. ESTABLISHMENT OF LINE

1. There shall be established a regional shipping line to be known as the Pacific Forum Line Limited which shall have its registered office in and shall be constituted by the laws of Western Samoa as a private company of limited liability with a Memorandum of Association and Articles of Association as may be approved by the Contracting Parties.

2. Each Contracting Party shall, on becoming a Contracting Party, contribute a sum of ten thousand dollars (\$10,000) which shall represent the payment for shares in the share capital of the said private company of limited liability. On such payment being made shares shall be issued to the Contracting Party which shall not be permitted to dispose of such shares by sale or otherwise other than to all the other Contracting Parties jointly *inter se* by way of gift for no consideration. And, furthermore, if any Government should subsequently become party to this Memorandum, that Government shall also contribute \$10,000 for shares and the then existing Contracting Parties shall then be required to transfer to all the Contracting Parties (including the Government so becoming party) jointly *inter se* by way of gift for no consideration all the shares (if any) then held by the existing Contracting Parties jointly *inter se*.

#### Article III. OBJECTS OF LINE

The principal objects of the Line shall be to:

1. Operate a viable shipping service with ships owned chartered or subchartered by the Line;
2. Charter or subcharter from Contracting Parties on such basis and at charter rates fixed in accordance with article IX or, where necessary, charter or subcharter from other sources on a commercial basis ships which will provide the services envisaged;
3. Collect through or from agents or principals or otherwise revenue from freight earned or services rendered and from the proceeds pay charter fees and other operating and administration expenses;
4. Provide in special circumstances and in the interests of the Contracting Parties shipping services designed to meet the special requirement of a particular area;
5. Having regard to safety, efficiency and economy of operation pursue a policy directed towards making a profit in each year;
6. Allocate in accordance with the provisions of this Memorandum the profits arising from the operations of the Line.

#### Article IV. ADMINISTRATION OF THE LINE

The Line shall be administered through:

1. The South Pacific Regional Shipping Council established in accordance with the Memorandum of Understanding done in Nuku'alofa on the 28th day of August 1974;

2. A Board of Directors to be established in accordance with article VI of this Memorandum.

*Article V. FUNCTIONS OF THE COUNCIL*

The functions of the Council with respect to the Line shall be to:

1. Determine the general policies of the Line and to communicate these to the Board;
2. Review the operations of the Line in the light of the principal objects set out in article III;
3. Determine the basis for the contractual arrangements which shall be entered into by the Line;
4. Determine policies for the establishment of tariffs;
5. Approve criteria for the provision of non-viable services in special circumstances.

*Article VI. BOARD OF DIRECTORS*

1. There shall be a Board of Directors of the Line consisting of seven (7) members being a representative of each of the Shipping Members and if at any time there are less than seven (7) of such members, the members shall be supplemented by sufficient representatives of Non-Shipping Members to bring the number of members of the Board up to seven (7) and each member may appoint an alternate to act in his place.

2. A representative of a Shipping Member shall cease to be a member of the Board *ipso facto* upon the Shipping Member which he represents becoming a Non-Shipping Member.

3. The representatives of Shipping Members shall be appointed by their respective Governments for a term not exceeding two (2) years (subject to earlier cessation under the provisions of clause 2 hereof) and may be eligible for reappointment for a further term or terms.

4. Subject to clause 1 of this article the Non-Shipping Members shall be elected by the Council from Non-Shipping Members for a term not exceeding one (1) year and may be eligible for reappointment for a further term or terms.

5. The members of the Board shall elect from among the representatives of Shipping Members a Chairman and a Vice-Chairman.

6. The Board shall hold such meetings as in the opinion of the Chairman are necessary for the efficient conduct of the Line, provided that:

- a) The Council may at any time by giving twenty-one (21) clear days' notice to all members of the Board direct the Board to meet;
- b) The Chairman shall, on receipt of a written request from not less than five (5) members of the Board, call a meeting of the Board;
- c) In any event the Board shall meet at least quarterly.

7. In the event of the absence of the Chairman from any meeting the Vice-Chairman shall preside.

8. In the event of the absence of both the Chairman and the Vice-Chairman the Board shall elect from among the representatives of the Shipping Members a Chairman.

9. At any meeting of the Board five (5) members shall constitute a quorum.

10. The person presiding at a meeting of the Board shall have a deliberative vote and, in the event of an equality of votes in a case where a simple majority is required, also a casting vote.

11. The determining of the unit charter rate or Ship Evaluation Factor in accordance with article IX shall be decided by a unanimous vote of the members of the Board present in person or by alternate at that meeting of the Board.

12. The following matters shall be decided by five (5) affirmative votes:

- a) The entry of the Line into any shipping service;
- b) Any recommendation as to the allocation of profits in accordance with article X.

13. A member of the Board who is directly or indirectly interested in a contract or charter party requiring the approval of the Board or which has been approved by the Board shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.

14. A disclosure under the previous provision shall be recorded in the minutes of the Board and the member shall not take part in voting on a matter in respect of that contract or charter party.

#### *Article VII. FUNCTIONS OF THE BOARD*

The principal functions of the Board shall be:

1. To implement the general policies of the Council;
2. To appoint a General Manager who shall be the chief executive officer of the Line and to fix the terms and conditions of his employment;
3. To advise and direct the General Manager in the general management of the Line;
4. To receive the Annual or Interim Reports of the General Manager on the operations of the Line and to transmit such reports to the Council and to all Contracting Parties;
5. To approve:
  - a) The frequency of routes and scheduling of the services to be provided by the Line;
  - b) The number, type and class of ships to be operated;
  - c) General charter rates;
  - d) The appointment and the general conditions of engagement of agents and stevedores;
  - e) The establishment, salary scales and general conditions of engagement and employment of employees of the Line;
  - f) The appointment of a bank or banks at which the Line may operate accounts;
  - g) The subchartering of any ship which is on charter or subcharter to the Line subject to the consent of the chartering party;
  - h) The Line acting as substantive agent for other persons;
  - i) The borrowing of moneys from time to time in such amounts as may be found to be necessary for the purposes of the business of the Line and the giving of security therefor over the whole or any part of the assets of the Line;

6. With the approval of the Council to enter into long-term contractual arrangements with other shipping interests for the pooling of cargo and shipping space, but, subject thereto, the Board and the Management of the Line shall be free to enter into arrangements and to co-operate with such other interests where commercially expedient and in order to promote the development and facilitate the day to day operations of the business of the Line;
7. To appoint an Auditor.

*Article VIII. FUNCTIONS OF THE GENERAL MANAGER*

1. The functions of the General Manager shall be:
  - a) To develop, manage and operate the Line and its associated services and be responsible for the control, organization, appointment and dismissal of employees of the Line in accordance with the policies and directions of the Board;
  - b) In appointing employees of the Line and subject to the paramount importance of securing the highest standards of efficiency and technical competence to pay due regard to the recruitment of personnel on as equitable a geographical basis as possible;
  - c) To report to and advise the Board on a regular basis upon any matter concerning the Line and to submit an annual report including audited accounts on the operation of the Line.
2. The General Manager shall attend the meetings of the Board.

*Article IX. CHARTER RATE*

1. The charter rate at which ships will be let by Contracting Parties for the operation of shipping services shall be determined on the following basis:
  - a) Each ship shall be given a Ship Evaluation Factor determined in accordance with the Ship Evaluation Formula set out in the Schedule;
  - b) The Ship Evaluation Factor shall be multiplied by a unit charter rate fixed by the Board for that ship.
2. Notwithstanding anything in this article the Board may in exceptional circumstances by unanimous vote decide a Ship Evaluation Factor other than that calculated on the foregoing basis so as to take account of special features of the ship not adequately covered by the Ship Evaluation Formula.

*Article X. ALLOCATION OF PROFITS*

1. An audited profit and loss account of the Line for each financial year shall be obtained and submitted to the Board by the General Manager as soon as practicable after the close of the financial year in question.
2. Upon receipt of the audited accounts for each financial year the Board shall recommend to the Council for approval the manner of allocation and quantum thereof of the net profits as appearing from such audited accounts and in particular by way of transfer to any Reserve Fund and/or by way of supplementary charter payments for that year and/or by way of freight rate rebates or reliefs and/or by way of dividends on shares, provided that any Contracting Party waiving its right to any dividend (including its proportion of any joint dividend) may specify that that dividend shall be allocated for the specific purpose of reserves of the Line or freight rate rebates or reliefs for the lowering of rates on specific routes.

3. "Net profits" for the purposes of this article shall mean profits after the payment of any tax.

*Article XI. SIGNATURE, RATIFICATION AND ACCESSION*

1. This Memorandum shall be open for signature by the Governments of Australia, Cook Islands, Fiji, Gilbert Islands, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Western Samoa, at the Headquarters of SPEC until the 30th day of June 1977.

2. This Memorandum is subject to ratification.

3. Any Government which after the 30th day of June 1977 becomes a member of the Forum may accede to this Memorandum.

4. Other Governments may, with the approval of the Forum, accede to this Memorandum.

5. This Memorandum shall enter into force between the Governments hereinafter referred to in this clause one (1) month from the day on which instruments of ratification or accession have been deposited by the last of a minimum number of seven (7) of the Governments referred to in clause 1 of this article.

6. For Governments subsequently ratifying or acceding to this Memorandum, this Memorandum shall enter into force on the date of deposit with the Director of SPEC of their respective instruments of ratification or accession and as from such date those Governments shall be deemed to be Contracting Parties for the purposes of this Memorandum.

7. The original of this Memorandum shall be deposited with the Director of SPEC who shall transmit certified copies thereof to all Contracting Parties and shall register this Memorandum with the Secretary-General of the United Nations and the Director of SPEC shall also inform Contracting Parties of the entry into force of this Memorandum and shall notify Contracting Parties of the deposit of all instruments of ratification and accession.

8. The signature of a Government shall not be taken as extending the rights and obligations set forth in this Memorandum to the territories for whose international relations that Government is responsible.

*Article XII. WITHDRAWAL FROM MEMORANDUM*

1. A Contracting Party may at any time after having been a Contracting Party for not less than two (2) years by giving one (1) year's prior written notice addressed to the Director of SPEC withdraw from this Memorandum, provided that such Contracting Party shall before the expiration of the said one (1) year transfer its shares in the company to the remaining Contracting Parties jointly *inter se* by way of gift for no consideration.

2. The Director of SPEC shall immediately transmit to the Contracting Parties any notice of intention to withdraw which has been received by him and the date from which any such withdrawal will become effective.

*Article XIII. AMENDMENTS TO THIS MEMORANDUM*

1. This Memorandum may be amended at any time by the unanimous agreement of all the Contracting Parties. The text of any amendment proposed by a Contracting Party shall be submitted to the Director of SPEC who shall transmit it to all Contracting Parties within one (1) month.

2. If three (3) or more Contracting Parties request a meeting to discuss the proposed amendment, the Director of SPEC shall call a meeting of the Council to be held within three (3) months of the date of such request.

3. If all the Contracting Parties agree to any proposed amendment, it shall then be open for ratification.

4. An amendment shall come into force when the Director of SPEC has received instruments of ratification in respect thereof from all Contracting Parties.

*Article XIV. APPOINTMENT OF ARBITRATORS IN CASE OF DISPUTE*

1. If at any time a dispute should arise between any of the Contracting Parties (including any former Contracting Parties) or between any of the Contracting Parties (as aforesaid) and the Line such dispute submitted to arbitration by a tribunal of arbitrators.

2. Each party to a dispute shall appoint one (1) arbitrator, and the arbitrators so appointed shall appoint a further arbitrator who shall be Chairman.

3. If, within thirty (30) days of the submission to arbitration, any party to a dispute has not appointed an arbitrator or if, within fifteen (15) days of the appointment of the arbitrators, the further arbitrator to be the Chairman has not been appointed, any party to a dispute may request the Director of SPEC to appoint an arbitrator or arbitrators as the case may be.

4. The procedure for the arbitration shall be fixed by the arbitrators provided that the Chairman shall decide on and settle all questions of procedure in case of any disagreement with respect thereto.

5. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties to a dispute, and in the event of an equality of votes the Chairman shall have a second or casting vote.

DONE at Suva this 16th day of June 1977 in a single copy which shall remain deposited with SPEC which shall transmit certified copies to all signatories hereto.

[Hon. G. F. ELLIS]<sup>1</sup>

For the Government of the Cook Islands

[Hon. J. MAVOA]

For the Government of Fiji

[Hon. B. ARIETA]

For the Government of the Gilbert Islands

[Hon. K. AROI]

For the Government of Nauru

[Hon. C. C. A. MCLACHLAN]

For the Government of New Zealand

<sup>1</sup> Names of signatories appearing between brackets were not legible and have been supplied by the South Pacific Bureau for Economic Co-operation — Les noms des signataires données entre crochets étaient illisibles et ont été fournis par le Bureau de la coopération économique pour le Pacifique Sud.



[A. MONG]

For the Government of Papua New Guinea

For the Government of the Solomon Islands

[Hon. BARON VAEA]

For the Government of Tonga

[Hon. ASI EIKENI]

For the Government of Western Samoa

### SCHEDULE

#### SHIP EVALUATION FORMULA

The ship evaluation factor shall be:

$$A + B + C + D + E \pm F - G.$$

Where:

*A* is a number calculated in relation to the cargo bale space of the ship in cubic metres ( $m^3$ ) in accordance with the following:

- Where  $m^3$  is 5,000 or less,  $m^3 \div 1\frac{1}{2}$ ;
- Where  $m^3$  is over 5,000 but not more than 8,000,  $m^3 \div 2$ ;
- Where  $m^3$  is 8,001 or more,  $m^3 \div 2\frac{1}{2}$ .

*B* is a number calculated in relation to the speed of the ship in knots (*s*) and *A* above in accordance with the following formula:

$$\frac{2A}{100} \times (s - 12\frac{1}{2}).$$

*C* is determined as follows:

- Where *r* is  $50m^3$  or less,  $C = 0 + 20q$ ;
- Where *r* is over  $50m^3$  but not more than  $100m^3$ ,  $C = 100 + 20q$ ;
- Where *r* is over  $100m^3$  but not more than  $200m^3$ ,  $C = 150 + 20q$ ;
- Where *r* is  $201m^3$  or more,  $C = (X) + 20q$ ;
- Where *r* is reefer space in  $m^3$  and *q* is the number of reefer plugs provided, and *X* is reefer space rounded down to the nearest  $100m^3$  below.

$$D = (ha \times 50) + (ho \times 100),$$

Where *ha* is the number of open hatchways provided and *ho* the number of holds designed to accommodate containers.

*E* is a number calculated in relation to the cargo gear provided in a ship in the following manner:

For a ship which has:

- a) Conventional gear and mechanical hatches,  $E = 100 + Y$ ;
- b) Automatic gear and conventional hatches,  $E = 100 + Y$ ;
- c) Automatic gear and mechanical hatches,  $E = 150 + Y$ ;
- d) Side ports,  $E = 150 + Y$ ;

where  $Y$  is given only if the ship is equipped with gear suitable for handling containers; and  $Y = 250$ .

$F$  is a number calculated in relation to the deck cargo space available on the ship calculated in accordance with the following formula:

$$F = \frac{(d - 100)}{2} + cl,$$

Where  $d$  is the area of deck space in square metres on which the ship is permitted to carry deck cargo provided that each deck container permitted shall be calculated as if it were  $10\text{m}^2$ , and, where  $cl$  is 50 if the ship is equipped with patent lashing equipment for the securing of containers ( $F$  may have a plus or minus value).

$G$  is 150 in the case of a ship which is over 15 years of age.

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