



REPUBLIC OF NAURU
TRUSTS BILL 2018

No. of 2018

A Bill for an Act to provide for the registration of express trusts and charitable trusts in the Republic and for related purposes

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short Title

This Act may be cited as the *Trusts Act 2018*.

2 Commencement

This Act commences on certification by the Speaker.

3 Objective

The objective of this Act is to provide for the:

- (a) creation, establishment and registration of registrable trusts;
- (b) registration of charitable trusts having charitable purposes and public benefits; and
- (c) registration of trusts for the protection of minors' interests in a trust.

4 Interpretation

In this Act:

'beneficiary or beneficial owner' in relation to an express trust, means a natural person exercising ultimate effective control over the trust or having the ultimate beneficial interest;

'minor' means a person under the age of 18 years;

'register' means any register established and maintained under this Act;

'registered trust' means a trust that is registered under Part 5;

'registrable trust' has the meaning given in section 5;

'Registrar' means the Registrar of Trusts appointed under section 16;

'settlor' means a person who creates or establishes a trust;

'trustee' means a person who holds or deals with the trust property on behalf of the beneficiary or for the purposes of the trust;

'trustee corporation' means a corporation incorporated in Nauru and permitted to carry on business as a trustee corporation under any written law.

PART 2 – REGISTRABLE TRUSTS

5 Registrable trust

A registrable trust is:

- (a) an express trust within the meaning of section 9; or
- (b) a charitable trust within the meaning of section 10;
- (c) located in the Republic under section 6; and
- (d) not excluded under section 7.

6 Meaning of a registrable trust located in the Republic

For the purposes of this Act, a registrable trust is located in the Republic where:

- (a) the settlor of the trust is a citizen of or ordinarily resident in the Republic;
- (b) at least one of the trustees of the trust is ordinarily resident in the Republic;
- (c) the trust is subject to the jurisdiction and the laws of the Republic; or
- (d) the trust is administered in the Republic.

7 Trusts that are excluded

(1) A trust which is not required to be registered under this Act is:

- (a) a constructive or resulting trust;
- (b) an implied trust;
- (c) a family trust unless the trustees or the beneficiaries intend to register the trust under this Act;
- (d) a trust arising out of co-ownership of land by virtue of a family agreement or a decision of the Nauru Lands Committee under the Nauru Lands Committee Act 1956; or
- (e) an express or implied trust arising out of an intestate estate by virtue of the Regulations Governing Intestate Estates 1938 or formerly known as Administration Order No. 3 of 1938.

(2) A trust is a family trust for the purposes of subsection (1)(c) where the:

- (a) assets or substantially all the assets are located in the Republic; and
- (b) beneficiaries of the trust are:
 - (i) descendants of the settlor; or
 - (ii) otherwise close relatives as contained in the Regulations Governing Intestate Estates 1938;
- (c) purpose of the trust is not a substantive commercial purpose, profit or gain.

(3) This Act does not apply to the fund established under Article 63 of the Constitution.

8 Registrable trust to be registered

- (1) A registrable trust under the Act shall be registered in accordance with Part 5.
- (2) A trustee who fails to register a registrable trust commits an offence under section 26.

PART 3 – EXPRESS TRUSTS

9 Meaning of express trust

A trust is an express trust where:

- (a) a settlor clearly and with reasonable certainty:
 - (i) indicates an intention to create a trust;
 - (ii) identifies the beneficiaries or the permitted purpose of the trust;
 - (iii) identifies the trust property;
 - (iv) identifies, appoints or make provisions for the appointment of a trustee for the trust; and
 - (v) empowers or vests in the trustee the power to have possession, control or title to the trust property; and
- (b) the trust creates a legal relationship by which the trustee holds or deals with the trust property on behalf of the beneficiaries or for the purpose of the trust;
- (c) the trustee has the power and the obligation to deal with the trust property in accordance with the terms of the trust and the duties imposed on the trustee by law; and
- (d) the settlor states the terms of the trust in writing, orally or in any other manner the settlor deems necessary to communicate with the trustee or beneficiaries to deal with the trust property.

PART 4 – CHARITABLE TRUSTS

10 Meaning of charitable trust

- (1) A charitable trust shall be for a charitable purpose, for:
 - (a) the relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) any other matter beneficial to the community or the public at large; or
 - (e) a combination of one or more of subsections (1)(a), (b), (c) and (d).

- (2) The purpose of a charitable trust shall be for the benefit of the public.
- (3) The Cabinet may prescribe any additional requirements of establishing, registering, auditing and reporting of a charitable trust or purpose.

PART 5 – PROCEDURE FOR REGISTRATION

11 Effect of registration of a trust

- (1) A registrable trust once registered shall constitute a legal entity which may:
 - (a) sue and be sued;
 - (b) enter into contracts and other legal obligations; and
 - (c) acquire, hold, manage and dispose of real or personal properties.
- (2) The certificate of registration shall be conclusive evidence that the trust is a legal entity.
- (3) Where there is more than one trustee of a trust, the trustees may delegate their duties, powers and functions to one or more of the other trustees unless the settlor specifically excludes such delegation of powers.
- (4) In exercising the duties, powers and functions of a trust, the trustees shall exercise such duties, powers and functions vested to the trustees by the settlor and shall where necessary have the same rights, obligations and liabilities as the directors of a corporation registered under the Corporations Act 1972.
- (5) The trustees shall on behalf of a registered trust have the power to:
 - (a) execute any contracts, instruments and documents;
 - (b) commence, continue or defend any proceedings by an agent; or
 - (c) represent the trust.

12 Application for registration of trust

- (1) A person who applies to register a registrable trust shall comply with the requirements under section 13.
- (2) In the case of an existing trust that becomes a registrable trust on the commencement of this Act, an application to register such trust shall be filed within 30 days after the commencement of this Act.
- (3) In the case of a registrable trust that is created after the commencement of this Act, an application to register such trust shall be filed within 30 days after it is created.

- (4) In the case of any other trust that becomes a registrable trust after the commencement of this Act, an application to register such trust shall be filed within 30 days after it becomes a registrable trust.

13 Requirements for application for registration of registrable trust

An application for the registration of a registrable trust shall:

- (a) be in the prescribed form;
- (b) contain the information required by the prescribed form;
- (c) be accompanied by the documents required by the prescribed form;
- (d) be accompanied by any additional information or documents that may be prescribed;
- (e) be signed by the person filing it; and
- (f) be accompanied by the prescribed fee.

14 Registration

In an application for registration under section 12, the Registrar shall:

- (a) register the trust; and
- (b) issue a certificate of registration of the trust in the prescribed form, -

provided the application is correct in form and substance and complies with any written law.

15 Annual returns to be filed

- (1) The trustees shall file annual returns of the registrable trust on the anniversary of the date of the registration of the trust.
- (2) The annual return under subsection (1) shall be:
 - (a) in the prescribed form;
 - (b) accompanied by the documents required by the prescribed form;
 - (c) signed by the trustees or an authorised person; and
 - (d) accompanied by the prescribed fee.

PART 6 –TRUSTS REGISTER

16 Registrar of Trusts

The Secretary for Justice and Border Control shall be the Registrar of Trusts.

17 Power of Registrar to delegate

- (1) The Registrar may from time to time delegate to any person all or any of the functions, duties and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) A delegation under this section:
 - (a) may be revoked by notice in the Gazette; and
 - (b) does not prevent the concurrent exercise of any function, duty, or power by the Registrar.

18 Power of Registrar to inspect information of trusts

- (1) For the purpose of ascertaining whether a trustee of a registered trust is complying with the provisions of this Act, the Registrar or any authorised officer may inspect and take copies of any information, including any document, account or record, relating to any activity of the trust.
- (2) A trustee of a registered trust or a person authorised by a trustee, shall on being required by the Registrar or authorised person, produce any information, including any document, account or record, relating to any activity of the trust.

19 Register of trusts

- (1) The Registrar shall ensure that there is established and maintained:
 - (a) a register of trusts under Part 3; and
 - (b) a register of charitable trusts under Part 4.
- (2) The registers shall be kept in the form that the Registrar considers expedient, which may include electronic form.

20 Access to information contained in register

- (1) A trustee of a registered trust or a person authorised by a trustee, is entitled to inspect and obtain a copy of all entries in the register relating to the trust.
- (2) An entry in the register is not a public record and a member of the public does not have a right to inspect or obtain a copy of an entry in a register.

21 Recording in the register

- (1) The Registrar shall record an entry in the register:
 - (a) a change or variation:
 - (i) by the trustees at any time; or
 - (ii) in the annual return.

- (b) in accordance with a change of information notified to the Registrar in the annual return; or
 - (c) otherwise if the Registrar is satisfied after proper inquiry that the information contained in the entry is incorrect.
- (2) The Registrar shall not record an entry under subsection (1)(b) unless the Registrar has first:
- (a) notified the person who filed the most recent annual return of the Registrar's proposed variation; and
 - (b) given that person a reasonable opportunity to make a submission to the Registrar as to whether the information is incorrect and whether the proposed variation is appropriate.

22 How to bring a trust to an end

- (1) A registrable trust may come to an end where:
- (a) all the beneficiaries consent to requiring the trustee to distribute the trust properties and wind up the trust;
 - (b) if the court has made an order distributing the trust property and approving the winding up of the trust on behalf of any of the beneficiaries who:
 - (i) lacks capacity;
 - (ii) may acquire beneficial interest at a future date or on the happening of a future event or on becoming a member of a certain class of persons; or
 - (iii) is a future person who may acquire a beneficial interest; and
 - (c) in case of a dispute or disagreement amongst the trustees or beneficiaries or both, by an order of the Court.
- (2) A beneficiary with the approval of the trustees may take all the interest in a trust, in which he or she will cease to be the beneficiary of the trust.

23 Removal from register

- (1) The Registrar may remove a registered trust from the register if the Registrar is satisfied after proper inquiry that the trust:
- (a) has ceased to be a registrable trust; or
 - (b) is otherwise defunct.
- (2) The Registrar shall give notice of the removal of a trust to the person who filed the most recent annual return and if the person fails to respond, the Registrar may remove the registered trust under subsection (1).

PART 7 – OFFENCES

24 Offence of filing false or misleading information

- (1) A person shall not lodge or cause to be lodged an application form or annual return that is false or misleading in a material respect.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or to both.

25 Obligation to keep and maintain accounts and records

- (1) A trustee of a registered trust shall ensure that:
 - (a) records including the underlying documentation such as proper accounts and records relating to the affairs of the trust are kept and maintained; and
 - (b) those accounts and records are kept for not less than 7 years from the end of the period to which the information relates.
- (2) The records that shall be kept under subsection (1) shall include underlying documentation such as but not limited to invoices and contracts for the following:
 - (a) all sums of money that the trust receives and expends;
 - (b) items or matters for which the trust receives or expends money;
 - (c) all sales and purchases of goods and services by the trust;
 - (d) all assignments of rights or assumptions of liabilities by the trust;
 - (e) all transactions by the trust affecting its assets or liabilities; and
 - (f) the assets and liabilities of the trust.
- (3) A trustee who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$5,000.

26 Offence of failure to register trust or file annual return

- (1) If a trust is not registered in accordance with sections 12 and 13, each trustee commits an offence and upon conviction is liable to:
 - (a) a penalty not exceeding \$5,000; and
 - (b) a penalty not exceeding \$50 for each day that the failure continues.
- (2) If an annual return is not filed for a registered trust in accordance with section 15, each trustee commits an offence and upon conviction is liable to:
 - (a) a penalty not exceeding \$5,000; and

(b) a penalty not exceeding \$50 for each day that the failure continues.

27 Civil claim

A proceeding in any Court or imposition of any penalty shall not prohibit a beneficiary or contributor from seeking any relief or remedy in a civil claim against the trustees.

PART 8 – BENEFICIARIES WHO ARE MINORS IN AN EXPRESS TRUST

28 Beneficiaries who are minors in an express trust

A minor is a beneficiary of an express trust whether or not the beneficiary's interest is a contingent interest:

- (a) on attaining the age of majority;
- (b) at any later age; or
- (c) upon the happening of any event.

29 Power of accumulation of income and of advancement

- (1) The trust may direct or permit, at the trustee's discretion, accumulation of all or any part of the income of the trust for any period or until the happening of any specified event.
- (2) Subject to the trust and to any prior interests or charges affecting the trust property, the trustee of an express trust where the minor is a beneficiary under subsection (1) may:
 - (a) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or the later age or the happening of the event;
 - (b) apply the income or part of it to or for the maintenance, education or other benefit of the beneficiary; or
 - (c) advance or appropriate for the benefit of the beneficiary the interest or part of the interest.
- (3) The receipt of income by a parent or legal guardian of the beneficiary who is a minor is sufficient discharge to the trustee for a payment made under this section.

30 Variation

- (1) The Court may vary or revoke a trust on behalf of a minor.
- (2) The Court may not reduce or remove any vested interest or any other proprietary rights held by a beneficiary:
 - (a) even if unambiguous, to conform with the settlor's intention if it is provided by clear and convincing evidence that both the settlor's intent

and the trust were affected by a mistake of fact or law, whether in expression or inducement;

- (b) if because of circumstances not anticipated by the settlor, modification will further the purpose of the trust; or
 - (c) if continuation of the trust in its existing provisions would be impracticable or wasteful or impair the trust's administration.
- (3) An application under subsection (1) may be made by the trustee or the legal guardian or representative of a beneficiary who is a minor.
- (4) Where the court deems appropriate, it may appoint the Curator to be the trustee for a minor.

31 Recording of minors' interests

- (1) The Registrar shall specifically record the interests of minors in a registrable trust.
- (2) The Cabinet may prescribe the particulars of the registration of minors' interests.

PART 9 – MISCELLANEOUS

32 Authorised officer

The Secretary for Justice and Border Control may by notice in the Gazette authorise an officer of the Department of Justice and Border Control to be an authorised officer for the purposes of this Act.

33 Information sharing

- (1) Subject to subsection (2), the Registrar may provide any information, including any copy of a document, account or record that the Registrar has obtained under this Act to:
 - (a) a law enforcement or regulatory agency, whether in the Republic or in an overseas jurisdiction, for the purposes of carrying out the agency's duty, power or function; or
 - (b) the competent authority of a foreign government with which the Republic has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement.
- (2) For information sharing under subsection (1), the Registrar shall be satisfied that there are or will be in place protections for maintaining the confidentiality of the information except for the extent necessary to achieve the purpose for which the information is provided.

34 Regulations

- (1) The Cabinet may make regulations prescribing all matters necessary or convenient to give effect to this Act.

- (2) Without limiting subsection (1), the Cabinet may make the following regulations:
- (a) prescribing the application form for the registration of a registrable trust;
 - (b) prescribing additional information or documents that shall be filed with the application to register a registrable trust;
 - (c) prescribing the form of the annual return;
 - (d) prescribing additional information or documents that shall be filed with the annual return;
 - (e) prescribing the circumstances in which fees are payable for the purposes of this Act and the amounts of those fees;
 - (f) specifying information or documents that shall be contained in the register;
 - (g) making provision for the filing of an application to register a registrable trust or annual return by electronic means, including provision for an electronic signature or other means of verification in place of a physical signature; and
 - (h) in respect of any other matters necessary or expedient for the proper administration of this Act.