

**REPUBLIC OF NAURU**  
**PARTNERSHIP BILL 2018**  
**EXPLANATORY MEMORANDUM**

The *Partnership Bill 2018* is a Bill for the *Partnership Act 2018*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1- PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Partnership Act 2018*.

**Clause 2** sets out when the Bill's provisions will commence which is 15 January 2019.

**Clause 3** is the definitional section which provides for the meaning of certain words used in the Bill.

**Clause 4** sets out the scope of the Bill ensuring that any firm that seeks to be registered under this law needs to comply with the requirements of the Business Licences Act 2017, Beneficial Ownership Act 2017 and the Business Names Registration Act 2018.

**Clause 5** provides that the Act shall not apply to:

- (a) Nauru Phosphate Royalties Trust;
- (b) any decision as to the joint ownership of land by the Nauru Lands Committee exercising its jurisdiction under the Nauru Lands Committee Act 1956;
- (c) any ownership of land under the Regulations Governing Intestate Estate 1938 also referred to as Administration Order No. 3 of 1938;
- (d) ownership of land as joint tenants or tenants in common whether such ownership results in generation of revenue for profit or gain.

**PART 2 - PARTNERSHIP REGISTRATION**

**Clause 6** establishes an office of the Registrar of Partnerships and provides that the Secretary for Justice shall be the Registrar of Partnerships.

The Registrar shall keep and maintain the Register, perform other duties under this Act and do all things that are necessary to be done for the proper administration of this Act.

The Minister based on the recommendation of the Registrar may appoint a Deputy Registrar.

The Deputy Registrar may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.

**Clause 7** provides that the Registrar shall be responsible for the establishment and maintaining a Register of Partnership under this Bill.

Upon payment of the prescribed fees the Register shall be made available for inspection by the applicant during business hours and certified copies of the entries in the Register shall be provided.

**Clause 8** requires Partnerships to not only register under this Bill and to register a firm name under the Business Names Registration Act 2018.

**Clause 9** provides that a Partnership shall be registered prior to the commencement of the partnership. Where the Partnership intends to trade as a firm, the Partnership's business name to be used to trade as a firm needs to be registered under the Business Names Registration Act after the registration of the Partnership itself but prior to the Partnership commencing its business.

A business licence is also required for a Partnership trading as a firm before it commences its business. Such business licence is to be renewed on an annual basis under the Business Licences Act 2017.

**Clause 10** outlines the process for an application by a partnership to be registered. This clause requires a Partnership to provide to the Registrar the registration form containing the particulars prescribed by regulations after the payment of all fees.

**Clause 11** prohibits the issue of a certificate to a person under the age of 18 years.

**Clause 12** provides for the Registrar to consider each registration form provided and for the Registrar to inform the person of the decision within 7 days of the date when the registration form was submitted. The Registrar shall issue the certificate if he or she is satisfied that the registration form complies with the Act.

**Clause 13** requires the display of the certificate of registration of a Partnership. Where a Partnership registered under the Bill has multiple places of business, the original certificate must be exhibited at the principal place of business. In all other places of businesses a copy of the certificate duly certified by the Registrar to be displayed in such places.

A contravention of this requirement will result in a Partnership being liable to a fixed penalty of \$1,000 which needs to be paid within 7 days of a notice of the breach being

serviced by an authorised officer. A failure to comply with this provision is an offence and upon conviction, a person is liable to a fine of not more than \$10,000 or to an imprisonment term of not more than 2 years or to both.

**Clause 14** makes it an offence if partners or the Partnership fails to provide the required particulars or change to particulars as required under the Act. Whenever changes occur in any of the particulars registered, the Partnership has 7 days to register the changes.

**Clause 15** provides that a Partnership cannot be assigned or permitted to be used by another person.

If any person contravenes this provision, such person commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 16** provides that a Partnership shall not be transferred to other persons without the prior approval of the Registrar.

The application for transfer of the certificate shall be made to the Registrar in the prescribed form and payment of the prescribed fee.

The Registrar shall consider the application and inform the registrant of his or her decision.

If a person does not comply with this clause, such person commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 17** provides that if a certificate is lost or destroyed the partners or Partnership shall notify and may apply to the Registrar for a duplicate certificate to be issued and pay the prescribed fee.

The Registrar shall within 7 days issue a duplicate copy of the certificate.

Failure to notify the Registrar for loss or destruction of certificate without reasonable excuse is an offence and such person is liable to a fixed penalty of \$300.

**Clause 18** provides that the Registrar may suspend or cancel a certificate where:

- (a) the certificate was obtained by fraud or deliberate or negligent submission of false information;
- (b) in case of an individual as a partner, he or she is adjudged to be bankrupt;
- (c) in case of a corporation as a partner, the corporation is wound up;
- (d) the partnership fails to file annual returns for 2 consecutive years;
- (e) the partners or partnership contravenes this Act;

- (f) any registered partnership ceases to carry on its business activity and the registrant fails to notify the Registrar of such cessation of business; or
- (g) the registrant fails to commence business under the business name:
  - (i) from the date of the registration of the business; or
  - (ii) from the date of giving notice to the Registrar for temporary cessation business.

Before the Registrar suspends or cancels a certificate, the Registrar shall:

- (a) give a written notice to the partners;
- (b) provide reasons for the intention to suspend or cancel; or
- (c) require the registrant to show cause within 14 days as to why the certificate shall not be suspended or cancelled.

The certificate may not be suspended or cancelled by the Registrar if the partnership takes remedial measures to the satisfaction of the Registrar within 14 days of the requirement to give notice.

If the Partnership fails to show cause the Registrar may suspend or cancel the certificate from the Register.

**Clause 19** provides that it is the duty of the partners who intend to cease to continue the Partnership to notify the Registrar of the cessation of the Partnership on either a temporary or permanent basis. Where the Partnership is to cease permanently, the partners are required to notify the Registrar within 3 months after the Partnership ceases to continue.

Failure to notify the Registrar is an offence and upon conviction such person is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both such fine and term of imprisonment.

**Clause 20** makes it an offence where the Partnership fails to provide the required particulars or variation of particulars under the Bill. The Registrar may order that a statement of the required particulars be done within a certain timeframe.

### **PART 3 - NATURE OF PARTNERSHIP**

**Clause 21** sets out the rules that determine whether a partnership exists. The following need to be considered:

- (a) joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

- (b) the sharing of gross return does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that the person is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not itself make the person a partner in the business.

#### **PART 4 – RELATIONS OF PARTNERS WITH PERSONS DEALING WITH THEM**

**Clause 22** clarifies that a partner's acts for carrying on the business of the Partnership binds the Partnership unless if the partner doing the act has no authority to act for the firm on a particular matter and the person the partner is dealing with either knows the partner has no authority or, does not know or believe the person to be a partner.

**Clause 23** provides that the Partnership is not bound where a partner pledges the credit of the Partnership for a purpose not connected with the Partnership's business unless the partner is authorised by the other partners.

This however does not affect any personal liability incurred by the individual partner.

**Clause 24** ensures that when a restriction is placed on a power of any partner to bind the firm on agreement of the partners, an act done by a partner in contravention of such agreement is not binding on the firm where partners have had notice of the agreement.

**Clause 25** provides for the joint liability of partners. Such liability is for all debts and obligations of the Partnership incurred while a person is a partner. Additionally, after a partner's death, the partner's estate is severally liable in due course of administration for such debts and obligations so far as they remain unsatisfied. This is subject to the prior payment of the partner's separate debts.

**Clause 26** provides for the liability of the Partnership for wrongful acts or omission of any partner acting in the business for the Partnership or with the authority of the Partnership's co-partners, causing loss or injury to any person not being a partner.

The Partnership is liable to the same extent as the partner who committed the wrongful act or omission where any penalty is incurred.

**Clause 27** requires the Partnership to rectify any loss in situations where:

- (a) one partner acting within the scope of his or her apparent authority receives the money or property of a third person and misapplies it; and

(b) the partnership trading as a firm in the course of its business receives money or property of a third person; and

(c) the money or property so received is misapplied by one or more of the partners while it is in the custody of the partnership.

**Clause 28** provides that a partner is jointly and severally liable with his or her co-partners for everything the firm becomes liable.

**Clause 29** provides that a partner who is a trustee uses the trust property in an improper manner on behalf of the Partnership, no other partner is liable.

**Clause 30** provides that a person who holds himself or herself out to be a partner in writing or by his or her conduct, is liable to a person who in good faith gave credit to the firm regardless of whether the representation has or has not been made to the person giving the credit or with the knowledge of the apparent partner making the representation.

If after a partner's death the Partnership business continues in the old firm name, the continued use of that name or of the deceased partner's name shall not of itself make his or her executors or administrators estate or effects liable for any partnership debts contracted after his or her death.

**Clause 31** provides that an admission or representation made by any partner concerning the partnership affairs and in the ordinary course of its business is evidence against the Partnership.

**Clause 32** provides that a notice to a partner who often acts in the partnership business relating to partnership affairs, operates as a notice to the firm. This is except where a fraud is committed on the firm by or with the consent of such partner.

**Clause 33** provides that a new partner shall not be liable to the creditors of the firm for anything done prior to such person becoming a partner. However, a retiring partner is still liable for any debts or obligation incurred before his or her retirement.

**Clause 34** provides for the prioritisation of payments where a firm becomes insolvent. In order of priority, payments shall be made to:

(a) bona fide creditors other than the partners being the creditors of the partnership;

(b) all expenses of the administration of insolvency; and

(c) the partners.

**Clause 35** provides for the revocation of a continuing guarantee or giving to a Partnership or third person where there is a change in the constitution of the Partnership in respect of the transactions where the guarantee or obligation was given.

## **PART 5 – RELATIONS OF PARTNERS TO ONE ANOTHER**

**Clause 36** provides for the variation by consent the mutual rights and duties of partners provided for by agreement or under this Bill. Such consent can be expressed or implied.

**Clause 37** requires all partnership property to be held and applied by the partners exclusively for the purposes of the Partnership and in accordance with the partnership agreement.

**Clause 38** provides that property bought with money belonging to a Partnership is deemed to have been bought on account of the Partnership.

**Clause 39** provides that where land has become partnership property, it shall be treated as personal or moveable property and not real estate.

**Clause 40** provides that the process for the enforcement of a judgment shall not issue against the partnership property except on a judgment against the firm.

**Clause 41** provides for rules determining the interests of partners in partnership property and the rights and duties in relation to the Partnership. This is subject to any express or implied between the partners.

Such rules are:

- (a) all the partners are entitled to share equally in the capital and profits of the business and shall contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the Partnership shall indemnify every partner for payments made and personal liabilities incurred by the partner:
  - (i) in the ordinary and proper conduct of the business of the Partnership; or
  - (ii) in or about anything necessarily done for the preservation of the business or property of the Partnership;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he or she has agreed to subscribe is entitled to interest at the rate of 5% per annum from the date of payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital of the firm subscribed by him or her;
- (e) partner may take part in the management of the partnership business;

- (f) a partner shall not be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced into a firm as a partner without the consent of all the existing partners;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners; and
- (i) the partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he or she thinks fit, have access to and inspect and copy any of them.

**Clause 42** provides that a partner cannot be expelled by a majority of the partners unless the power to expel a partner was conferred by an express agreement between the partners.

**Clause 43** provides for when there was no fixed term agreed to for the duration of the partnership, a partner may determine the partnership by giving notice of the intention to do so to all the other partners.

Where the partnership was created by a deed, a signed notice in writing shall be sufficient.

**Clause 44** provides that where a partnership created for a fixed term is continued after the term has expired and without a new express agreement, the rights and duties of the partners do not change so far as is consistent with the incidents of a partnership at will.

**Clause 45** mandates that partners have a duty to render accounts and full information of all things affecting the partnership to any partner or to the partner's legal representative.

A firm is required to keep and maintain proper accounts and records including underlying documentation such as invoices and contracts in relation to:

- (a) all sums of money received and expended by the partnership, specifically the items or matters in respect of which the receipt took place;
- (b) all sales and purchases of goods and services by the partnership;
- (c) all assignments of rights or assumption of liabilities by the partnership;
- (d) all transactions of the partnership, or affecting the assets or liabilities of the partnership;
- (e) the assets and liabilities of the partnership.

Such documents must be retained by the firm for a minimum period of 7 years.

**Clause 46** provides for the accountability of partners for private profits in that an account of any benefit gained by the partner without the consent of the other partners resulting from a transaction concerning the firm. This also relates to any use by the partner of the partnership property, name or any business connection.

**Clause 47** provides that a partner is duty bound to not compete with the firm by carrying on a business of the same nature as that of the firms' business without the consent of the other partners.

**Clause 48** provides that the assignment by a partner of shares in the partnership only entitles the assignee during the continuance of the Partnership to receive the share of the profits and not to:

- (a) interfere in the management or administration of the partnership business or affairs;
- (b) require any accounts of the partnership transactions;
- (c) inspect the partnership books.

## **PART 6 – DISSOLUTION OF PARTNERSHIP**

**Clause 49** provides for the dissolution of a partnership by the expiration of the fixed term of a partnership or by termination of the single adventure or by notice given by any partner to other partners.

**Clause 50** provides for the dissolution of a partnership by the bankruptcy, insolvency or death of a partner.

**Clause 51** provides for the dissolution of a partnership where a charge has been placed on a partner's share of the partnership property for such partner's separate debt.

**Clause 52** provides for the dissolution of a partnership by the occurrence of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

**Clause 53** provides for the dissolution of a partnership by the Court on an application by a partner where:

- (a) a partner is shown to the satisfaction of the Court to be permanently of unsound mind, in which case the application may be made as well on behalf of that partner by his or her committee or next friend or person having title to intervene as by any other partner;

- (b) a partner, other than the partner suing, has become in any other way permanently incapable of performing his part of the partnership contract;
- (c) a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) the business of the partnership can only be carried on at a loss; or
- (f) in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

**Clause 54** provides for the rights of persons dealing with a firm against apparent members of a firm where there is a change in the firm's constitution, such persons can treat all apparent members of the old firm as being current members of the firm until such persons have notice of the change.

**Clause 55** provides for the rights of partners to notify the dissolution of a Partnership or retirement of a partner.

**Clause 56** provides for the continuing authority of partners for the purposes of winding up the affairs of the Partnership in order to complete transactions begun but unfinished at the time of the dissolution of a partnership.

**Clause 57** provides for the rights of partners as to application of partnership property on the dissolution of a partnership.

**Clause 58** provides that where a partnership is dissolved prematurely and one partner has paid a premium to another on entering into a partnership for a fixed term, the Court may on application, order the repayment of the premium or such part of the premium having regard to the partnership contract and to the timeframe during which the partnership has continued.

**Clause 59** provides for the right of a partner where a Partnership contract is rescinded on the basis of fraud or misrepresentation.

The party entitled to rescind is, without prejudice to any other right, entitled:

- (a) to a lien on or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him or her for the purchase of a share in the partnership and for any capital contributed by the party entitled to rescind;
- (b) to stand in the place of the creditors of the firm for any payments made by him or her in respect of the partnership liabilities; and
- (c) to be indemnified by the person guilty of the fraud or making the representation, against all the debts and liabilities of the firm.

**Clause 60** provides for the right of the outgoing partner in certain cases to share profits made after the dissolution of partnership. An outgoing partner is entitled to such share of profit made since dissolution

**Clause 61** provides for a retiring or deceased's partner's share for a debt where subject to any agreement of the partners, shall be the debt accruing at the date of the dissolution of the partnership or death of such partner.

**Clause 62** provides the rule for distribution of assets of the partnership on final settlement of accounts where subject to any agreement:

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:
  - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
  - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
  - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital; and
  - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

## PART 7- MISCELLANEOUS

**Clause 63** provides that the Minister may by notice in the Gazette authorise officers of the Department or a police officer to be authorised officers for the purposes of this Act.

**Clause 64** provides that any person who obstructs, hinders or any way interferes with an authorised officer in the performance of his or her duties commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 65** provides that the Registrar or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the act or omission was done in good faith or on reasonable grounds.

**Clause 66** provides for records to be kept. The business shall ensure that the records including the underlying documentation such as proper accounts and records relating to affairs of the business operating under the registered business name are kept and maintained.

The accounts and records shall be kept for a period of 7 years from the end of the period to which the information relates.

The records kept under subsection (1) shall include underlying documentation such as but not limited to invoices and contracts for the following:

- (a) financial accounts;
- (b) bank statements;
- (c) business transactions;
- (d) statutory taxes, licences, duties, fees;
- (e) court proceedings;
- (f) invoices;
- (g) contracts;
- (h) audited financial accounts;
- (i) annual returns;
- (j) details of the director, manager, secretary or officer;
- (k) the assets and liabilities of the individual, firm or corporation; and
- (l) other matters prescribed by regulations.

Failure to keep the proper records required is an offence and upon conviction the registrant is liable to a fine of not more than \$5,000.

**Clause 67** provides for information sharing by the Registrar with law enforcement or regulatory agencies whether in the Republic or foreign jurisdictions for the purpose of carrying out the agency's duty, power or function.

The Registrar shall ensure that there are in place necessary protections to maintain the confidentiality of the information.

**Clause 68** requires the firm, corporation trust or foreign business applying for a certificate under this Act to comply with the requirements of the Beneficial Ownership Act 2017.

**Clause 69** vests jurisdiction in the District Court to hear matters relating to any offence committed under the Act.

**Clause 70** provides for general penalty provisions for when a person fails to comply with the requirements of the Bill.

**Clause 71** provides for the Cabinet's regulation making power to prescribe all matters and things required.

#### **PART 8- REPEAL, TRANSITIONAL AND SAVING**

**Clause 72** repeals the Partnership Act 1976 and any regulations made under it.

**Clause 73** provides that the despite the repeal of the Partnership Act 1976, all registration certificates of Partnerships under that Act remains valid until the registered Partnership is removed. The certificate of registration issued under the repealed Act is taken to remain. All fines, proceedings or decisions made under the Partnership Act 1976 remain enforceable.

Any judicial or administrative proceeding taken under the Partnership Act 1976 shall continue as if it had commenced under this Act.