



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).