

Foreign Trusts, Estates and Wills Act 1972

REPUBLIC OF NAURU

FOREIGN TRUSTS, ESTATES AND WILLS ACT 1972

(No. 7 of 1972)

CORRIGENDA

In the Arrangement of Sections, in the details of section 5 "inalienability" should be substituted for "inalienability".

In section 6(5) 1.8 "corporations" should be substituted for "corporation".

In the head note to section 9 "WILLS" should be substituted for "WILL".

In section 9(9) (b) 1.2 "immediately" should be substituted for "immediately".

Note: These corrections are necessary in order to make the printed Foreign Trusts, Estates and Wills Act 1972 conform with the Act by the Speaker.

AN ACT

To abolish the rule against perpetuities and the rule against accumulations for some purposes, to provide for the establishment of non-charitable purpose trusts and to make provision in relation to the investment of trust funds and to wills and estates of non-residents.

(Certified: 17th February, 1972)

Enacted by the Parliament of Nauru as follows:

SHORT TITLE

1. This Act may be cited as the Foreign Trusts, Estates and Wills Act 1972 and shall come into force on a date to be notified by the Minister in the Gazette.

INTERPRETATION

2. In this Act "trustee corporation" means a corporation incorporated in Nauru and permitted to carry on business as a trustee corporation pursuant to the provisions of the Corporation Act 1972 or pursuant to the provisions of any other Act.

ABOLITION OF THE RULE AGAINST PERPETUITIES

3. Subject to Section 7 of this Act, the rule of law known as the Rule Against Perpetuities is hereby abolished.

ABOLITION OF RESTRICTIONS ON DIRECTIONS FOR ACCUMULATION OF INCOME

4. Subject to Section 7 of this Act, the restrictions imposed on the periods for which accumulations of income under a settlement or other disposition of property are permitted are hereby abolished.

ABOLITION OF THE RULE OF LAW AGAINST INALIENABILITY OF TRUSTS OF PERPETUAL DURATION

5. Subject to Section 7 of this Act, the rule of law rendering void for remoteness dispositions under which property is limited to be applied for purposes other than the benefit of any persons or class of persons in cases where the property may be so applied after the end of the perpetuity is hereby abolished.

ESTABLISHMENT OF PURPOSE TRUSTS

6. (1) Notwithstanding any rule of law to the contrary to but subject to Section 7 of this Act, any person may create in Nauru a trust in perpetuity or for any lesser duration for a purpose or purposes, whether charitable or not, but no such trust may be created except in accordance with the provisions of the next following subsection.

(2) A trust in perpetuity or for any lesser duration for a purpose or purposes other than a charitable purpose or purposes shall be valid only if -

- (a) (i) the sole trustee, or at least one of the trustees, of the trust is a trustee corporation which has acknowledged in writing its acceptance of the appointment;
- (ii) the trust is created or evidenced by a deed situate in Nauru;
- (iii) the deed creating the trust and any deed varying that deed makes provision for the person or persons entitled to enforce the trust;
- (iv) where the trust is not a perpetual trust or where it may be terminated, deed creating or evidencing the trust and any deed varying such deed shall specify the event or the events upon which the trust determine and shall provide for the disposition of surplus assets of the trust upon its termination; and
- (v) the deed creating such trust and any deed varying the same shall provide that it is not to take effect until it is delivered to the trustee corporation or, if more than one, to every trustee corporation, which is trustee of such trust or one of the trustees of such trust; or
- (b) (i) the sole trustee or at least one of the trustees of the trust is the trustee corporation which has acknowledged in writing its acceptance of the appointment; and
- (ii) the trust is created by will admitted to probate or in respect of which letters of administration have been granted in Nauru:

Provided that, if in respect of any trust created by a will no trustee corporation has been appointed as a trustee or a trustee corporation has been so appointed but has not

acknowledged in writing its acceptance of the appointment, the Supreme Court may, upon application by the executor of the will or the administrator to whom letters of administration in respect of the will have been granted, appoint as trustee a trustee corporation which is willing to accept the appointment and such trustee shall be deemed to have been appointed by the testator in his will.

(3) Any such trust shall be enforceable by the person or persons provided in the deed or will creating such trust or the deed varying such trust as the case may be notwithstanding that such person or persons are not beneficiaries under the trust and, in default of there being any such persons to enforce the trust; it may be enforced by a person appointed by the Court upon the application of any person and the court may order that the costs of the application be paid out of the assets of the trust, if it thinks fit.

(4) Nothing in this section affects the creation, variation, determination of validity of a Purpose Trust created pursuant to the provisions of any other Act but, save as aforesaid, trusts for purposes other than charitable purposes which do not comply either with paragraph (a) or paragraph (b) of subsection (1) of this section shall be invalid.

(5) In this section "a trust for a purpose or purposes" means a trust other than -

(a) a trust for the benefit of particular individual persons whether or not immediately ascertainable; and

(b) a trust for the benefit of some aggregate of individual persons ascertained by reference to some personal relationship.

For the purposes of this subsection the expression "individual persons" includes both natural persons and bodies corporate, corporation and incorporated companies.

ACT NOT TO APPLY TO LAND IN NAURU OR TO CERTAIN TRUSTS

7. This Act shall not apply to -

(a) any settlement, disposition or trust of any land or of any interest in any land where such land is situate in Nauru; or

(b) any fund established by or under the Nauru Phosphate Royalties Trust Ordinance 1968 or the Nauru Phosphate Royalties (Payment and Investment) Act 1968-1970 or to any interest therein.

INVESTMENTS

8. (1) A trustee unless expressly forbidden by the instrument, if any, creating the trust, may invest any trust funds in his hands, whether at the time in a state of investment or not, in any of the securities authorised by this Act.

(2) The securities authorised by this Act are such securities as the trust funds may be invested in pursuant to the instrument creating the trust deposits with the Republic of Nauru Finance Corporation or with any subsidiary of that corporation and such other investments as may be

expressed to be trustee investments by regulations made under this Act.

PROBATE AND LETTERS OF ADMINISTRATION OF FOREIGN WILL AND ESTATES

9. (1) For the purpose of this section "a foreign will" means a will of a person who, at the date of his death, was not a citizen of Nauru nor domiciled in Nauru nor permanently resident in Nauru:

Provided that "a foreign will" shall include the will of a citizen of Nauru or a person domiciled or permanently resident in Nauru if such will is expressed to be a foreign will for the purpose of this section.

(2) For the purposes of this section "a foreign estate" shall mean the estate in Nauru of any person who was not at the time of his death a citizen of Nauru nor domiciled in Nauru nor permanently resident in Nauru.

(3) Probate of a foreign will shall be granted only if the executor or one of the executors appointed thereby is a trustee corporation.

(4) Letters of administration of a foreign estate shall be granted only if the administrator or one of the administrators is a trustee corporation.

(5) (a) The probate of a foreign will shall not be re-sealed in Nauru unless the executor or one of the executors appointed by the will is a trustee corporation;

(b) letters of administration of a foreign estate shall not be re-sealed in Nauru unless the administrator or one of the administrators is a trustee corporation;

(c) in any case where the probate of a foreign will cannot be re-sealed in Nauru only because no executor is a trustee corporation, letters of administration cum testamento annexo may be granted in Nauru to a trustee corporation solely or jointly with the executor or executors names in the will as administrators;

(d) in any case where letters of administration of a foreign estate granted outside Nauru cannot be re-sealed in Nauru only because no administrator appointed under the grant made outside Nauru is a trustee corporation, letters of administration may be granted in Nauru to a trustee corporation solely or jointly with administrators appointed under the grant made outside Nauru.

(6) If by any foreign will the testator appoints as executors persons or corporations none of whom is a trustee corporation, letters of administration cum testamento annexo may, subject to subsection (7) of this section, be granted if a trustee corporation is either the sole administrator or a joint administrator with one or more of the executors named in such will but not otherwise.

(7) A foreign corporation registered in Nauru or a corporation incorporated in Nauru other than a trustee corporation may, notwithstanding that it is not permitted to carry on business as a trustee, be a co-executor of a foreign will or co-administrator of a foreign estate with a trustee corporation but save as aforesaid a foreign corporation or a corporation incorporated in Nauru other than a trustee corporation shall not act as executor or administrator of any will or

estate in Nauru.

(8) No commission shall be allowed or payable out of, or in respect of the administration of, a foreign estate or an estate under a foreign will except corporation, unless the will being so administered otherwise provides and then only in accordance with such provision; in any such case a commission payable to a trustee corporation shall not be reduced by reason of any provisions in the will for commission to be payable to an executor or administrator who is not a trustee corporation.

(9) For the purposes of this section, a natural person shall whether or not he was actually in Nauru at the time of his death be deemed to have been permanently resident in Nauru at the time of his death if -

(a) he was, at the time of his death or within six months of his death, employed by the Republic, the Council, the Nauru Phosphate Corporation, the Nauru Co-operative Society, any instrumentality of the Republic or any other body corporate or unincorporated specified by the Minister by notice in the Gazette on a contract of service the duration of which was to be not less than twelve months or indefinite; and

(b) he was required to reside in Nauru for the purpose of his employment whole or the major part of the twelve months immediately preceding his death:

Provided that the provisions of this section shall be construed so as not to derogate from the natural meaning of the expression "permanently resident" insofar as it may apply to any other person.

TAX AND DUTIES NOT PAYABLE

10. No succession, probate or estate taxes or duties shall be payable on account of any will admitted to probate in Nauru or any estate in respect of which letters of administration are granted in Nauru.