
Administration Act 1969

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

ADMINISTRATION ACT 1969

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SCHEDULE

To consolidate and amend certain enactments relating to the administration of the estates of deceased persons

1 Short title

This is the Administration Act 1969.

2 Interpretation

(1) In this Act –

"administration" means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer;

"administrator" means any person to whom administration is granted, and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer;

"Commonwealth" means the Commonwealth of Nations, and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible;

"Commonwealth country" means a country that is a member of the Commonwealth, and includes every territory for whose international relations the Government of that country is responsible;

"estate" means real and personal property of every kind, including things in action;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"personal chattels", in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, which immediately before his death were owned by him or in which immediately before his death he had an interest as grantor under an instrument by way of security, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, but does not include any chattels used exclusively or principally at the death of the deceased for business purposes or money or securities for money;

"real estate" means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy, and any estate or interest in them or any of them, whether freehold or chattel interests, and any possibility, right, or title of entry or action in or concerning them or any of them;

"Registrar" means the Registrar of the High Court;

"Rules" means rules made under the authority of this Act;

"securities" includes stocks, funds, shares and convertible notes;

"will" includes a codicil.

(2) References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

3 Act to bind Crown

This Act binds the Government.

4 [Spent]

PART 1

ADMINISTRATION BY ADMINISTRATOR

Grant of Administration

5 Probate jurisdiction

(1) The Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

(2) Without restricting subsection (1) or any other enactment, the Court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in Niue or elsewhere, and whether or not the person to whom the grant is made is in Niue.

6 Discretion of Court as to person to whom administration is granted

(1) (a) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part of it, the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale of it, and, in particular, administration with a will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit.

(b) Subject to subsection (2) where the deceased died wholly intestate as to his estate,

administration shall be granted to some one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

(2) Where by reason of the insolvency of the estate or other special circumstances the Court thinks it necessary or expedient to do so, it may –

(a) Grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration;

(b) Grant probate to one or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors.

(3) A grant may be made under subsection (2) notwithstanding that any person excluded from the grant would be competent to take it.

(4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the Court shall have regard to his competency and solvency, his ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the Court is asked to make the grant.

7 Administration pending legal proceedings

(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the Court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he is discharged or removed under section 21, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the Court and act under its direction.

(2) The Court may, out of the estate of the deceased, grant to a temporary administrator appointed under this section reasonable remuneration.

8 Grant of special administration where administrator is out of Niue

(1) (a) If at any time after the death of a person any administrator of his estate is residing out of Niue, the Court may, on the application of any creditor or person interested in the estate, grant to him or some other person special administration of the estate of the deceased in such form and with such powers as the Court may direct or approve.

(b) Unless the Court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 21.

(2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator shall not be liable for acts and things done by the administrator under the

grant of special administration.

(3) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate, and all persons shall obey any such order.

(4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a party to the legal proceedings and the Court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.

(5) Nothing in this section shall restrict section 21.

9 Administration during minority of executor

(1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3), administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him; and on his attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a person who at his death is a minor who is not entitled to a grant of probate under subsection (3) to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him an administrator for any purpose, unless and until probate is granted to him under this section.

(3) Where a testator by his will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant –

(a) The person has attained full age; or

(b) The person has attained the age of 18 years and is or has been married.

(4) A minor to whom probate is granted under subsection (3) (b) shall have the same rights, powers, duties, and obligations as executor as he would have if he were of full age, and shall be liable accordingly for his acts and omissions as executor.

10 Administration with will annexed

Where the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate of it had been granted to an executor.

11 Cesser of right of executor to prove

(1) Where a person appointed executor by a will –

- (a) Survives the testator but dies without having been granted probate of the will; or
 - (b) Is cited to take out probate of the will and does not appear to the citation; or
 - (c) Renounces probate of the will, his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.
- (2) (a) Where a person is appointed by a will to be both executor and trustee and his rights in respect of the executorship wholly cease under subsection (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee.
- (b) Nothing in paragraph (a) shall prevent his subsequent appointment as trustee.

12 Withdrawal of renunciation

- (1) Notwithstanding section 11, an executor who has renounced probate may be permitted by the Court to withdraw the renunciation and prove the will.
- (2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will –
- (a) The probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person to whom administration has been granted, and a memorandum of the subsequent probate shall be endorsed on the original grant of administration;
 - (b) His rights (if any) in respect of the trusteeship shall revive except so far as the Court otherwise orders.

13 Executor of executor represents original testator

- (1) (a) An executor of a sole or last surviving executor of a testator shall be the executor of that testator.
- (b) A person who does not prove the will of his testator shall be deemed not to be an executor notwithstanding his appointment as such by the will, and in the case of an executor who on his death leaves surviving him some other executor of his testator who at the time of the testator's death has not proved but who afterwards proves the will of that testator, paragraph (a) shall cease to apply when probate to the surviving executor is granted.
- (2) So long as the chain of representation is unbroken, the last executor in the chain is the

executor of every preceding testator.

(3) The chain of representation is broken by –

(a) The failure to leave a will; or

(b) The failure of a testator to appoint an executor; or

(c) The failure to obtain probate of a will, but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator –

(a) Has the same rights in respect of the estate of that testator as the original executor would have had if living; and

(b) Is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

14 [Repealed]

15 Administration bond

(1) (a) Every person to whom a grant of administration (other than the probate of a will) is made shall, previously to the issue of it, execute a bond to the Registrar to enure for the benefit of the Registrar for the time being, with 2 sureties approved by the Court, conditioned for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in such form as may be prescribed by rules.

(b) It shall not be necessary for any trustee, corporation or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond, and in any case in which the Court is willing to dispense with sureties under subsection (2) it may dispense with the bond.

(2) In every case in which a bond is required under subsection (1), the bond shall be in a penalty equal to the amount under which the estate of the deceased is sworn, if that amount does not exceed 20,000 dollars, and shall be in a penalty of 20,000 dollars where the amount exceeds that sum; but the Court may dispense with one or both of the sureties, or direct that the penalty be reduced in amount, and may also if it thinks fit direct that more bonds than one be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

(3) The bond required under subsection (2) shall relate to both real and personal estate.

(4) The Court may in place of a bond, accept a security in favour of the Registrar of any corporation or guarantee society approved by Cabinet.

(5) Every such security shall be in such form and under such regulations as the rules direct.

16 Proceedings if condition of bond broken

The Court may, on being satisfied that the condition of any such bond or security has been broken, order the Registrar to assign the bond or security to some person to be named in the order and that person or his administrator may thereupon sue upon the bond or security in his own name as if the bond or security had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond or security.

17 Administration as evidence

Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate, and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

18 Certificates of administration

(1) Subject to subsection (2) at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his hand and seal such number of certificates of administration, in the form set out in the Schedule, as may be required.

(2) [Repealed by 2004/270]

(3) (a) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land or of any securities issued by or property in any bank or company or body or association.

(b) No bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or securities or property, or as to the authority to transfer or deal with the same.

(4) The fee payable to the Registrar in respect of each such certificate shall be \$1 or such other amount as may be prescribed by the Cabinet.

19 Proceedings where executor neglects to prove will

(1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate of it, within 3 months from the death of the testator, the Court may, upon the application of any other executor or executors or of any person interested in the estate or of any creditor of the testator, grant an order nisi calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the Court

dispensing with service of the order, if the executor who is so called upon does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as appears just.

20 [Repealed by 2004/170]

21 Discharge or removal of administrator

(1) Where an administrator is absent from Niue for 12 months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the Court may discharge or remove that administrator, and may appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit.

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

(3) Upon any administrator being discharged or removed as aforesaid (whether or not any such administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1) who shall have the same powers, authorities, discretions, and duties, and may in all respects act, as if he or they had been originally appointed as the administrator or administrators.

(4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section shall restrict section 8.

Administering of Estates

22 Interim vesting of estate where no executor appointed

(1) Subject to this Act and any other Act, where a person dies without leaving a will that effectively appoints an executor, his estate shall, until administration is granted in respect of it, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.

(2) While any estate remains vested in the Crown under this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

23 Executor not to act while another administrator is in office

Subject to this Act and any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or

otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

24 Estate to vest in administrator

(1) (a) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him beneficially or held by him in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person.

(b) Nothing in paragraph (a) shall affect the earlier vesting in an executor by operation of law.

(2) The title of every administrator to any part of the estate of a deceased person shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.

(3) If there are concurrently more administrators than one of any part of the estate that part shall vest in them as joint tenants.

25 How estate to be held by administrator

Subject to this Act, the administrator shall hold –

(a) The estate of any person who dies or who has died leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate;

(b) The estate of any person who dies intestate as to that estate under Part 3.

26 Estate to be assets for payment of debts

The whole of the estate of every deceased person shall be assets in the hands of his administrator for the payment of all duties and fees payable under any Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his debts and of debts properly incurred by his administrator; and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part of it.

27 Power of sale on intestacy

(1) On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administrator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section shall have effect notwithstanding that the administrator has ceased to hold the

real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the will.

28 Method of sale or lease

(1) Sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 26 and 27 of this Act as if the sale or lease were under sections 14 to 18 of the Trustee Act 1956.

(2) Nothing in this section shall restrict the term of any lease which may be granted under section 26.

(3) Land of any value may be sold or leased under section 26, or may be sold under section 27 without the consent of the Court.

29 Administrator to represent real estate

In all actions concerning the real estate of a deceased person, his administrator shall represent his real estate and the persons interested in it in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested in it.

30 Rights and duties of administrator as to real estate

The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons.

31 Payment of claims where estate insufficient

Where the estate of any deceased person is insufficient to pay his debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate under the priorities that would be applicable if it were being administered under Part 17 of the Insolvency Act 1967 (NZ), without the administrator being under any obligation to have recourse to that Part or to administer that estate under it and any surplus shall be held for the person or persons lawfully entitled.

32 Administration suits

(1) [Repealed by 2004/270]

(2) In any action or other proceeding for the administration by the Court of the estate of any deceased person, no court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

33 Debts under deeds and simple contracts to stand in equal degree

(1) Subject to this Act and any other Act, in the administration of the estate of every person who has died no debt or liability of the person shall be entitled to any priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable.

(2) Nothing in subsection (1) shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his debt or liability.

34 Charges on property

(1) (a) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, or where an interest in property passes by survivorship on the death of a person, and at the time of his death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole.

(b) Where a person dies possessed of or entitled to an interest in any personal chattels that passes under the will or on the intestacy of the person to the person's husband or wife, nothing in this subsection shall apply to that interest in those personal chattels.

(2) Such a contrary or other intention shall not be deemed to be signified –

(a) By a general direction for payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his residuary personal estate; or

(b) By a charge of debts upon any such estate – unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.

(3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction out of the other assets of the estate or otherwise.

35-36 [Repealed by 2004/270]

37 Liability of specific devise or bequest where estate is insufficient

If any testator's estate primarily liable for the payment of his debts is insufficient for that purpose, each of his specifically devised or bequeathed estates (if more than one) shall be liable to make good the deficiency, in the proportion that the value of each of those estates

bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

38 Proving executors may exercise powers

Where probate is granted to one or some of 2 or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred in it.

39 Interest on legacies and annuities

(1) In any case where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels under the rules of law that would apply if the legacy were charged upon the land only.

(2) While interest is payable on any legacy or on any arrears of an annuity, under the will or instrument under which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the Court otherwise orders, the interest on the legacy or arrears of the annuity shall be payable at the rate for the time being prescribed by Cabinet, and while no such regulation is in force at the rate of 5 percent per annum.

(3) Where an administrator (under any power conferred on him in that behalf) appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

40 No right of retainer by administrator

No person, being a creditor in his own right or as a trustee of any estate of which he is administrator, shall, by virtue of his office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him; but every such creditor or administrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he might have been able to enforce if he had not been the administrator.

41 Rights and liabilities of administrator

Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

42 Liability of agent of administrator

No person appointed an administrator upon an application made by him as the attorney or agent for an administrator absent from Niue, shall be liable to account or pay money, or transfer property, to any one in respect of his administratorship excepting only to the administrator whose attorney or agent he was, or to any person who, after his appointment as administrator upon an application so made, is appointed administrator of the same estate.

43 Administrator's right to distrain

(1) An administrator may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged with it, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) An administrator may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Any such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made –

(a) Within 6 months after the termination of the lease or tenancy; and

(b) During the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) The enactments relating to distress for rent shall apply to any distress made under subsection (2).

44 Administrator may be required to exhibit inventory

Every administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court shall have power to require administrators to bring in inventories.

45 Protection of persons acting on administration

(1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him in so doing, as he would if the administration were valid and not revoked.

(2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation shall be valid discharges to the person making the same; and the administrator who acted under the revoked administration may retain and reimburse himself out of the estate that comes into his hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made.

(3) Nothing in subsection (1) shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment

or disposition was made as he would have had against the administrator if the payment or disposition had not been made.

(4) Nothing in this section shall restrict section 51.

46-48 [Repealed by 2004/270]

49 Following of assets

(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may –

(a) Make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer of payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets;

(b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;

(c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than in good faith and for full valuable consideration, shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, or to any person who under any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;

(d) In making any such order fix such terms and conditions as the Court thinks fit and for the purpose of giving effect to any such order, make such further order as it thinks fit.

(2) The remedies given to any person by subsection (1) are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

(3) Subject to subsection (4), no application for an order under subsection (1) shall be heard by the Court –

(a) [Repealed by 2004/270]

(b) In the case of an application to which section 50 (b) (i) applies, unless that application is made within 1 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him;

(c) In any other case, unless the application for an order under subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed:

Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.

(4) Notwithstanding subsection (3), in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) has, within the time specified in subsection (3), made an application to the Court for an order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, that person or any other person on whose behalf that application is deemed to be made, may apply to the Court under subsection (1), and the application may be heard by the Court after the expiration of the period prescribed by subsection (3) if it is made within 6 months after the date on which that person first became aware of the distribution.

50 Freedom to exercise remedies

Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust –

(a) Any person may exercise the remedies (if any) given to him by section 49 (1) and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him against the administrator or the trustee in consequence of the making of the distribution;

(b) If any person exercises any right or remedy available against the administrator or the trustee in consequence of the distribution of any such assets, the administrator or trustee may –

(i) apply to the Court for any order which may be made under section 49 (1);

(ii) in any proceedings against him in respect of the exercise of any such right or remedy, by leave of the Court and in accordance with the rules of court relating to such notices, issue a third party notice against any person against whom he may apply for an order under subparagraph (i).

51 Restriction on following assets

In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under section 49 (1) or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if –

(a) The person from whom relief is sought received the assets or interest in good faith and has altered his position in the reasonably held belief that the distribution was properly made and would not be set aside; and

(b) In the opinion of the Court it is inequitable to grant relief or to grant relief in full, as the case may be.

52 Liability of person fraudulently obtaining or retaining estate of deceased

If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming into his hands, or the debt or liability released, after deducting –

(a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death which might properly be retained by an administrator; and

(b) Any payment made by him which might properly be made by an administrator.

Powers and Procedure of Court

53 Direction to executor to prove or renounce

The Court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Act and any other enactment and the Rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

54 Production of instruments purporting to be testamentary

The Court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be

testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct that person to attend for the purpose of being examined in open court, or upon interrogatories, respecting the same; and that person shall be bound to answer any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or interrogatories, or not bringing in any such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the Court.

55 Continuance of legal proceedings

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

56 Question of fact may be tried by a jury

(1) If any question of fact arises in any proceeding under this Act, the Court may cause the same to be tried by a jury before the Court itself, or before any Judge of the Court, and may settle an issue for that purpose.

(2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

57 Practice of Court in its administration jurisdiction

The practice of the Court in regard to administration shall, except where otherwise provided, be regulated, so far as the circumstances of the case will admit, by the practice of the Court.

58 [Repealed by 2004/270]

59 Power to make rules

Cabinet may make rules of Court, including rules –

- (a) Prescribing the forms of administration;
- (b) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar;
- (c) Regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;
- (d) Regulating the procedure and practice of the Court with respect to contentious probate business;

(e) Regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration under Part 2, and in particular for the purpose of imposing upon persons applying under it for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the Court for original grants of probate or letters of administration;

(f) Prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs;

(g) Generally for carrying the provisions of this Act into effect.

Caveats

60 Caveat may be lodged

(1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within Niue at which notices may be served on him.

(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of one year from the date of the lodging of the caveat.

(3) (a) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar.

(b) A copy of every such notice shall be served on any person who has applied for administration or to whom an order nisi, under section 61 has been granted.

(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

61 Where a caveat lodged, Court may grant order nisi

In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply –

(a) The Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order nisi for the grant of administration to the person applying, and every such order shall name a time and place for showing cause against the same, and the Court may enlarge any such order;

(b) Every such order nisi, and every order enlarging the same, shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat;

(c) If before the day named in the order nisi or the day to which the order is enlarged the caveat is withdrawn, the order nisi may be made absolute at any time thereafter;

(d) In any case to which paragraph (c) does not apply, if on the day named in the order nisi, or on the day to which the order is enlarged, the caveator does not appear, the order nisi may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order –

(i) that the order nisi be made absolute or discharged; or

(ii) that the application for administration be made in solemn form, and any order made under subparagraph (i) or (ii) may be with or without costs as may be just, and, if the Court so directs, those costs may be paid out of the estate;

(e) Upon the hearing of the order nisi the parties may, subject to the Rules, verify their cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

Miscellaneous Provisions

62 [Repealed by 2004/270]

63 Administration granted to trustee companies

(1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act to apply for and obtain the grant.

(2) A grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

(3) Nothing in this section shall –

(a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before 1 January 1963;

(b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before 1 January 1963;

(c) Prevent the resealing in Niue of probate or letters of administration granted to a company in any other country;

(d) Affect any grant of probate or letters of administration subsisting at 1 January 1971.

64-66 [Repealed by 2004/270]

67 Other Acts providing for payment without administration

Nothing in this Act shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property under any enactment authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.

68 Bondsmen and sureties deemed to be trustees

Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property.

PART 2

ADMINISTRATION GRANTED OUT OF NIUE

69 Interpretation

(1) For the purposes of this Part "probate or letters of administration" includes an exemplification of any probate or letters of administration, or a duplicate of it sealed with the seal of the court granting the same, or a copy certified as correct by or under the authority of the court granting the same, and also includes an exemplification or a copy certified by or under the authority of any court, or a duplicate sealed under the seal of any court, of any instrument which is filed in or issued out of that court and which within the jurisdiction of that court operates to make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him by that court.

(2) The filing in or the issuing out of any court of any instrument which operates to make any person an administrator in the manner described in subsection (1) shall be deemed to be equivalent to the granting of probate or letters of administration by that court to that person.

70 Estate of person dying abroad not to vest without administration

(1) Estate in Niue belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in Niue; or, if probate or letters of administration of the estate have been granted in any place out of Niue, unless the probate or letters of administration are resealed in Niue as provided in this Part.

(2) Upon the estate in Niue becoming legally vested under this section, the legal estate shall vest as from the time of the death of the person from whom it is obtained.

71 Resealing of probate

(1) Where any probate or letters of administration granted in a competent court in any country are produced to and a copy deposited with the Registrar of the Court the probate or letters of administration may be sealed with the seal of the Court, and shall have the like force and effect and have the same operation in Niue, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Court.

(2) Nothing in this section shall prevent the Court from making an independent grant of administration in Niue.

72 Seal not to be affixed till fees are paid and administration bond effected

(1) The seal of the Court shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than Niue) or in the Republic of Ireland, or by a competent court in any other country, so as to give operation as if the grant had been made by the Court, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Court; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the Court:

(2) The Court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder.

(3) Where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than Niue) or of the Republic of Ireland or of any other country to which section 71 is declared to apply, it shall not be necessary, upon the resealing in Niue of the letters of administration, for the Public Trustee or other official, as the case may be, to execute any such bond.

73 No probate granted out of Niue to be evidence unless resealed

Probate or letters of administration granted in any place out of Niue shall not be received in evidence of the title of any person to any estate in Niue until the probate or letters of administration are resealed in Niue as provided in this Part.

74 Effect of sections 70 and 73

Nothing in sections 70 and 73 shall restrict any other enactment relating to the payment or devolution of any estate without administration.

PART 3

DISTRIBUTION OF INTESTATE ESTATES

75-76 [Repealed by 2004/270]

77 Succession on intestacy

Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely –

(a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residue of the estate shall stand charged with the payment of a sum of \$12,000 to the surviving husband or wife with interest on it from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 39, and, subject to providing for that sum and the interest on it, the residue of the estate shall be held –

(i) if the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate;

(ii) if the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely;

(iii) if the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely;

(b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate;

(c) If the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust for the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one;

(d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely: Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate;

(e) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as bona vacantia, and in place of any right to escheat; and the Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

78 Statutory trusts in favour of issue and other classes of relatives

(1) Where the estate of any intestate, or any part of it, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely –

(a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of any child of the intestate who predeceases the intestate, the said issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest: Provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her, or their parent would have taken if he or she had not so died;

(b) The statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying to give a valid receipt for his share or interest;

(c) The administrator may permit any minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest –

(a) The estate of the intestate and the income of it and all statutory accumulations, if any, of the income, or so much of it as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under this Act as if the intestate had died without leaving issue living at the death of the intestate;

(b) References in this Act to the intestate "leaving no issue" shall, subject to this section, be construed as "leaving no issue who attain an absolutely vested interest";

(c) References in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall, subject to this section, be construed as "leaving issue who attain an absolutely vested interest".

(3) Where under this Act the estate of an intestate or any part of it is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

79 Application to cases of partial intestacy

(1) Where any person dies leaving a will effectively disposing of part of his estate this Part, shall have effect in respect of the part of his estate not so disposed of, subject to the will and subsection (2).

(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 77 to a sum of \$12,000 payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the value exceeds that sum, section 77 shall have effect as if references to that sum and to interest were omitted.

(3) References in subsections (1) or (2) to a beneficial interest acquired under a will shall be construed –

(a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment;

(b) As not including a reference to a beneficial interest in any personal chattels.

(4) For the purposes of this section the administrator may ascertain and fix the value of the beneficial interest under section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he distributes the estate in accordance with the value that he has honestly and reasonably so fixed.

80 [Repealed by 2004/270]

PART 4

MISCELLANEOUS PROVISIONS

81 Right of successor on intestacy to disclaim

(1) Subject to this section, where a successor has become entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person –

(a) The successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he has attained full age and is of sound mind;

(b) The Court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.

(2) No disclaimer under this section shall be valid unless –

- (a) The disclaimer is made by the successor in his lifetime; and
- (b) The disclaimer relates to the whole of the successor's interest as a beneficiary in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and
- (c) The disclaimer is made within one year after the date of the first grant in Niue of administration in respect of the estate or will of the intestate person or within such extended period as may be allowed by the Court.

(3) No disclaimer under this section shall be valid if –

- (a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or
- (b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part of it or of any property which would include that interest or any part of it if it were not disclaimed, or has covenanted or agreed to do any such thing; or
- (c) There is any valuable consideration for the disclaimer; or
- (d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or
- (e) The successor is bankrupt when the disclaimer is made.

(4) Every disclaimer under this section shall be irrevocable.

(5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 82 to be a transfer of the disclaimed interest –

(a) The property which passes on the intestacy of the person shall be distributed, and estate duty in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person;

(b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part of it.

(6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

(7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with

the requirements of this section and of any order of the Court which relates to the disclaimer and is made under this section.

82 Effect of bankruptcy on disclaimer

(1) Where a successor disclaims the interest as a beneficiary to which he is entitled in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of any rule of law relating to the protection of creditors –

(a) The successor shall be deemed to have accepted the disclaimed interest; and

(b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled to it in consequence of the disclaimer.

(2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution –

(a) The successor is not bankrupt; and

(b) The administrator has no reason to believe that the successor is about to become bankrupt; and

(c) The administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

83 [Spent]

84 [Repealed by 2004/270]

SCHEDULE

Section 18

Certificate of Administration

In the High Court of Niue

In the estate of,		of
Under section 18 of the Administration Act 1969, I hereby certify that, on the		
	day of	20
, probate of the will [or letters of administration in the estate]* of the above-named deceased who died on or		
About,	[date]	was [were] granted to
, of		
Dated at	this	day of
		20
[Seal]		

Registrar.

*In the case of a limited or special grant the exact nature of the grant should be shown.