

SUCCESSION, PROBATE AND ADMINISTRATION

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Succession, Probate and Administration Act 1976

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The Succession, Probate and Administration Act 1976 No 21 was certified and commenced on 29 October 1976 (GN No 370/1976; Gaz 58/1976).

Amending Legislation	Certified	Date of Commencement
Statute Law Revision Act 2011	15 April 2011	Sch 1 clause 139: 15 April 2011
Interpretation (Consequential Amendments) Act 2011	3 November 2011	Sch clauses 28–31: 3 November 2011
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to make provision for the succession to and the probate and administration of estates of certain deceased persons.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Succession, Probate and Administration Act 1976* and came into effect on 29 October 1976.

2 Interpretation

(1) In this Act:

‘administration’ includes letters of administration of the estates and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes; and also exemplification of letters of administration with or without the will annexed and such other evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as in the opinion of the Court is sufficient;

‘administrator’ means a person to whom administration or special administration is granted, and includes the Curator of Intestate Estates where administration is granted to him or her;

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

‘personal chattels’ means livestock, vehicles and accessories, furniture, furnishings, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, jewellery and other articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

‘personal estate’ means the personal property to which a deceased person was entitled at the time of his or her death and extends to all other property whatsoever to which he was entitled at the time of his or her death which is not real estate and to any share or interest therein;

‘personal representative’ means the executor, original or by representation, of the will, or the administrator of the estate for the time being, of a deceased person;

‘probate’ includes exemplification of probate, and such other formal evidence of probate purporting to be under the seal of a court of competent jurisdiction, as in the opinion of the Court is sufficient;

‘property’ includes real and personal property and any estate or interest in any property real or personal, and any debt, and any thing in action and any other right or interest;

‘real estate’ means chattels real and land in possession, remainder or reversion, and every interest in or over land, to which a deceased person was entitled at the time of his or her death;

‘the Court’ means the Supreme Court or a Judge thereof or, to the extent of the Registrar’s duties and powers under this Act, the Registrar;

‘the Curator of Intestate Estates’ and ‘the Curator’ means the Curator of Intestate Estates appointed, or deemed to have been appointed, under Section 6;

‘the Deputy Curator of Intestate Estates’ and ‘the Deputy Curator’ means the Deputy Curator of Intestate Estates appointed, or deemed to have been appointed, under Section 6;

‘the Registrar’ means the Registrar of Courts under the *Supreme Court Act 2018* and includes a Deputy Registrar of the Courts; and

‘trustee corporation’

[def omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

‘will’ extends to a testament and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament, and to any other testamentary disposition.

- (2) A testator shall be deemed to have been entitled at his or her death to any interest passing under any gift contained in his or her will which operates as an appointment under a general power to appoint by will, or operates under any testamentary power conferred by statute.
- (3) The interest in chattels real or land of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his or her death.
- (4) On the death of a corporation sole, his or her interest in the corporation’s real and personal estate shall be deemed to be an interest ceasing on his or her death and shall devolve to his or her successor as the corporation sole.

3 Application of this Act

- (1) Except as otherwise expressly provided, this Act applies only to the wills and estates of persons dying after the commencement of this Act.
- (2) Except as expressly otherwise provided, this Act does not apply to the will or estate of a person who at the time of his or her death is a Nauruan, unless he has, by a will which conforms with the requirements of the *Wills Act 1837*, the *Will Act Amendment Act 1852* and the *Wills Act 1963*, all being Acts of the Parliament of England, in their application to the Republic, directed that this Act is to apply to his or her will and estate, in which event it shall apply only to his or her real estate outside the Republic and to his or her personal estate wherever situated.
- (3) This Act applies to **“foreign wills”** and **“foreign estates”** subject to the provisions of the *Foreign Trusts, Estates and Wills Act 1972*.
- (4) In subsection (3), **“foreign wills”** and **“foreign estates”** have the meanings assigned to them respectively in Section 9 of the *Foreign Trusts, Estates and Wills Act 1972*.

PART 2 — JURISDICTION OF THE COURT

4 **Jurisdiction of the Court**

- (1) Subject to the provisions of this Act and to any rules made thereunder, the Court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying leaving property in the Republic.
- (2) The jurisdiction vested in the Court by the provisions of subsection (1) shall, subject to any modifications effected by any rules made under the provisions of Section 78, be in conformity with the law and practice in force in England on 31 July 1969, or on such later date as the Chief Justice may from time to time appoint by notice in the Gazette, so far as such law and practice are not repugnant to or inconsistent with the provisions of this Act or any other written law and so far as they are capable of application to local circumstances.

5 **Duties and powers of the Registrar**

The Registrar shall, subject to rules of court, perform such duties and exercise such powers in reference to matters and proceedings in the probate jurisdiction of the Court, and such other duties and powers, as are performed and exercised in England by the principal probate registrar of the Probate Division of the High Court of Justice and as may be prescribed by the rules of court.

PART 3 — THE CURATOR OF INTESTATE ESTATES

6 Appointment of the Curator and the Deputy Curator

- (1) There shall be a Curator of Intestate Estates and a Deputy Curator of Intestate Estates who shall, subject to subsection (5), be appointed by the Minister and whose duties, functions and powers shall be respectively such as are provided for by this Act and, from time to time, by any other written law.
- (2) No person shall be appointed to be the Curator or the Deputy Curator unless he or she is a public officer.
- (3) The Minister may, if he or she thinks fit, instead of appointing a person by name to be the Curator or the Deputy Curator, appoint as such the person for the time being holding or acting in any public office specified in the appointment; and in that event a person shall become the Curator or the Deputy Curator, as the case may be, upon being appointed to hold or act in that public office and shall continue to be the Curator or Deputy Curator until he or she ceases to hold or act in that public office:
Provided that where a person is appointed to act in that public office the person holding that public office shall not be the Curator or, as the case may be, the Deputy Curator, while such first-mentioned person is acting in that public office.
- (4) A person appointed by name to be the Curator or the Deputy Curator may resign from that office after giving written notice under his or her hand to the Minister of his or her intention to do so.
- (5) Where the office of the Curator is vacant, whether because of the death or resignation of the Curator or the revocation of his or her appointment or because, if the Minister has appointed the person holding or acting in a public office to be the Curator, no person is holding or acting in that public office, the Deputy Curator shall perform the duties and functions and exercise the powers of the Curator; and, if for any reason there is at such time no Deputy Curator, they shall be performed and exercised by the person for the time being holding or acting in the office of Secretary for Justice.
- (6) [subs (6) omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

7 Duties, functions and powers of the Curator and the Deputy Curator

- (1) In addition to the other duties, functions and powers imposed and conferred on the Curator by this Act and by other written laws the Curator shall, subject to the provisions of Section 9 of the *Foreign Trusts, Estates and Wills Act 1972*, have power:
 - (a) to obtain administration of the estate of a person who has died intestate leaving real or personal property in the Republic where:
 - (i) there is no husband, wife or next of kin of that person resident in the Republic;

- (ii) no application for administration has been made within 3 months after that person's death; or
- (iii) the husband or wife or, where there is no husband or wife, the next of kin of that person requests him or her in writing to do so;
- (b) to obtain probate of the will of a person who has died, if he is appointed executor by the will;
- (c) to obtain administration with the will annexed of the estate of a person who has died testate leaving real or personal property in the Republic where:
 - (i) there is no executor of, or beneficiary under, the will in the Republic who is *sui juris*, other than an executor who has renounced probate of the will or a beneficiary who has filed with the Registrar a statement in writing under his or her hand declining to apply for administration; or
 - (ii) no application for probate or administration has been made within 3 months of the testator's death; and
- (d) to obtain administration, with or without a will annexed thereto, of the estate of a person who has died leaving real or personal property in the Republic where:
 - (i) the estate or any substantial part of it is of a perishable nature or in danger of being lost or destroyed;
 - (ii) the Curator satisfies the Court that the grant should be made to him or her in order to protect the interests of any of the persons apparently entitled to the estate, whether as beneficiaries or as creditors; or
 - (iii) the Curator satisfies the Court that there is doubt as to the persons entitled to the grant.
- (2) Nothing in subsection (1) shall be taken as imposing upon the Curator an obligation to apply for the grant of probate of any will or administration of any estate, neither he nor the Republic shall be liable for any loss suffered by any estate, or by a person entitled to any part of any estate, whether as a beneficiary or as a creditor, by reason of the Curator's failure to apply for such grant.
- (3) Where probate or administration has been granted to the Curator, he or she shall have the same duties, functions, liabilities and powers as any other person to whom such a grant is made:

Provided that the liabilities of the Curator as such shall be the liabilities of the Republic and not of the Curator personally, except where:

 - (a) he or she acts otherwise than in good faith;
 - (b) he or she wilfully acts illegally; or
 - (c) he or she acts with gross negligence.
- (4) The Curator shall perform such other duties in relation to the estates and wills of deceased persons, including deceased Nauruans, and in relation to the beneficiaries of such estates and under such wills, as may be imposed by rules of court or by any written law or as may be directed by a Judge.
- (5) Subject to any directions given in writing by the Minister, the Curator may delegate all or any of his or her duties, functions or powers to the Deputy Curator; such delegation shall be revocable by the Curator at any time and shall not be taken as limiting the Curator's own duties, functions and

powers and he or she shall be responsible for the performance or exercise by the Deputy Curator of the duties, functions and powers delegated.

- (6) Where the Deputy Curator performs or exercises any duties, functions or powers of the Curator delegated to him or her under subsection (5) he or she shall do so in the name of the Curator and the acts, liabilities and omissions of the Deputy Curator in the performance or exercise, or the purported performance or exercise, of those duties, functions and powers shall be deemed the acts, liabilities or omissions of the Curator:

Provided that the liabilities of the Deputy Curator as such shall not be his or her personal liabilities except where:

- (a) he or she acts otherwise than in good faith;
- (b) he or she wilfully acts illegally; or
- (c) he or she acts with gross negligence.

8 Fees of the Curator

- (1) The Curator and the Deputy Curator shall charge such fees for their services as executor of a will or administrator of an estate as are prescribed and shall be entitled to retain those fees out of the property of the estate in priority to all other claims upon it.
- (2) Fees chargeable by the Curator and the Deputy Curator shall be received by them and paid into the Treasury Fund.

9 Grants of administration to the Curator

- (1) The Court may, before granting administration to the Curator of intestate estates, require him or her to give such notices, cite such persons or adduce such evidence as it thinks desirable and may, if it thinks fit, limit the grant so that it does not extend to the whole estate.
- (2) Notwithstanding that administration, with or without a will annexed, has been granted to the Curator, the Court may, upon the application of a person entitled to grant of probate of the will or to administration, revoke the administration granted to the Curator and grant probate or administration to that person:
- Provided that:
- (a) where administration has been granted to the Curator under Section 7(1)(a)(iii), it shall not be revoked and no grant shall be made to any other person, except upon the application of the husband, the wife or, where there is no husband or wife, the next of kin of the deceased person; and
 - (b) where administration with a will annexed has been granted to the Curator under Section 7(1)(c)(i), it shall not be revoked, and no grant of probate of the will or of administration of the estate shall be made, except upon the application of an executor of the will who has not renounced probate or a beneficiary under the will who has not filed with the Registrar a statement declining to apply for administration.
- (3) Where administration granted to the Curator is revoked and probate of the will or administration of the estate is granted to another person, such part of the estate as is left unadministered by the Curator shall vest in that other person and the Curator shall account for his or her administration of the estate to the executor or administrator to whom the grant is made and shall

pay or hand over to him or her all moneys and other moveable property received by the Curator and remaining in his or her hands. Notwithstanding that he or she has relinquished the office of administrator, the Curator shall continue liable for all acts and neglect while he or she was the administrator of the estate but not otherwise or further.

10 The Court may give directions regarding estates being administered by the Curator

In all cases where administration is granted to the Curator, the Court may, on the application of the Curator or a person interested in the estate, make such orders in relation to the collection, sale, investment and disposal of the estate as appears reasonable to the Court.

11 Returns by the Curator

- (1) The Curator shall:
 - (a) keep proper books of account in relation to all estates in respect of which probate of a will or administration has been granted to him or her or which are vested in him or her by virtue of Section 37 or in respect of which the performance of any duties are imposed upon him or her by rules or by any written law or by the direction of a Judge; and
 - (b) in the month of January in every year furnish to the Registrar and the Secretary for Finance:
 - (i) a return of all monies received and paid by him or her or the Deputy Curator, or by an agent for him or her, during the calendar year immediately preceding the return in respect of all such estates; and
 - (ii) a separate return of all balances or sums whatsoever then in his or her hands, or in the hands of the Deputy Curator or of an agent for the Curator, to the credit of each of such estates.
- (2) Not less frequently than at intervals of 3 months, the Secretary for Finance shall examine and pass the accounts of the Curator or cause them to be examined and passed on his or her behalf by some other person competent in accounting.
- (3) For the purposes of such examination, the Secretary for Finance or the other person examining the accounts shall have access to all books, vouchers and documents in charge of the Curator or the Deputy Curator, or of an agent of the Curator on his or her behalf.

12 Payment into the Treasury Fund after 6 years

The Curator shall, in the month of January in each year, cause all sums of money which on the first day of that month are lying to the credit of any estate under his or her control and have so lain for the 6 years immediately preceding that day to be paid into the Treasury Fund as revenue. If at any time thereafter a person proves to the satisfaction of the Court that he is entitled to any such sum of money, the Court shall direct that it be paid to him or her and it shall be paid to him or her from, and be a charge upon, the Treasury Fund.

13 Investment of monies held by the Curator

Where at any time it may reasonably be anticipated that any monies standing to the credit of any estate which the Curator is administering will not be required

to be paid out within 2 months, he or she shall deposit those moneys in an interest-bearing account with a commercial and trading bank or a savings bank.

14 Bank charges and interest on money deposited by the Curator

Where monies forming part of any estate being administered by the Curator as executor or administrator or vested in him or her by virtue of Section 37 are deposited by him or her with a bank, the bank charges in respect of that deposit shall be paid by the Republic and be a charge on the Treasury Fund and any interest paid by the bank in respect of such monies shall be paid by the Curator into the Treasury Fund.

PART 4 — DISTRIBUTION ON INTESTACY

15 Distribution of estate of intestate deceased

Notwithstanding anything to the contrary contained in any written laws in force in the Republic at the date of commencement of this Act but subject to Section 3(2), the property of a person dying intestate on or after the date of commencement of this Act shall be distributed in accordance with the provisions of this Act, and no person shall have any right, title, share, estate or interest in such property except as provided in this Act.

16 Succession to estate on intestacy

(1) Subject to the provisions of Part 2, where a person dies after the commencement of this Act intestate as to the whole or any part of his or her estate, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed shall hold the property as to which the deceased person has died intestate on trust to distribute it as follows:

- (a) if the intestate has left a wife or husband surviving, with or without surviving issue, that wife or husband shall take the personal chattels absolutely, and:
 - (i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed \$10,000, the residuary estate absolutely; or
 - (ii) if the net value of the residuary estate exceeds \$10,000, the sum of \$10,000 absolutely;
- (b) if the intestate has left no issue surviving, the surviving wife or husband shall, in addition to the interests taken under paragraph (a), take two-thirds of the residuary estate absolutely;
- (c) if the intestate has left issue surviving, the surviving wife or husband shall, in addition to the interests taken under paragraph (a), take one-third only of the residuary estate absolutely, and the issue shall take, per stirpes and not per capita, the remaining two-thirds of the residuary estate absolutely;
- (d) if the intestate has left issue, but no wife or husband, surviving the issue shall take, per stirpes and not per capita, the whole estate of the intestate absolutely;
- (e) if the intestate has left no issue surviving but both his or her parents surviving, then, subject to the interests of a surviving wife or husband the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;
- (f) if the intestate has left no issue surviving but one parent only surviving then subject to the interests of a surviving wife or husband the surviving father or mother shall take the residuary estate of the intestate absolutely;
- (g) if the intestate has left no issue or parent surviving, the surviving husband or wife shall take the residuary estate of the intestate absolutely;
- (h) if the intestate has left no husband or wife and no issue or parents

surviving, then his or her surviving brothers and sisters of the whole blood, and the surviving issue of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such issue taking per stirpes and not per capita;

- (i) if the intestate has left no husband or wife and no issue or parents or brothers or sisters of the whole blood or issue of deceased brothers or sisters of the whole blood surviving, then his or her surviving brothers and sisters of the half blood and the surviving issue of deceased brothers and sisters of the half blood shall take the whole estate of the intestate absolutely in equal shares, such issue taking per stirpes and not per capita;
 - (j) if the intestate has left no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood, or issue of deceased brothers or sisters of the whole blood or of the half blood surviving, then the surviving grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely in equal shares, but if there is no grandparent surviving, then the surviving uncles and aunts of the whole blood, and the surviving issue of deceased uncles and aunts of the whole blood of the intestate, that is to say respectively brothers and sisters of the whole blood and issue of deceased brothers and sisters of the whole blood of a parent of the intestate shall take the whole estate of the intestate absolutely in equal shares, such issue taking per stirpes and not per capita;
 - (k) if the intestate has left no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood or issue of deceased brothers or sisters of the whole blood or of the half blood and no grandparents or uncles or aunts of the whole blood or issue of deceased uncles or aunts of the whole blood surviving, then the surviving uncles and aunts of the half blood and the surviving issue of deceased uncles and aunts of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such issue taking per stirpes and not per capita; or
 - (l) in default of a person taking an absolute interest under any of the foregoing provisions of this subsection, the residuary estate of the intestate shall belong to the Republic as bona vacantia, and in lieu of any right to escheat, but the Curator may, with the prior written approval of the Cabinet, out of the whole or any part of the property devolving on the Republic, provide for dependants, whether kindred or not, of the intestate and for other persons for whom the intestate might reasonably have been expected to make provision.
- (2) For the purposes of subsection (1):
- (a) the net value of the property of a deceased person is the net value of that property at the date of the death of that person as determined by the Court or the Registrar in accordance with rules of court; and
 - (b) subject to Section 14, any income derived from the property of a deceased person shall be distributed among the persons entitled to share in the distribution of that property in the same respective proportions to which they are entitled to share in such distribution.

- (3) In this Section, “*issue*” includes a child or any other issue, whether legitimate or illegitimate, in any generation.
- (4) For the purposes of this Section:
 - (a) an illegitimate relationship between a father and his child shall not be recognised unless there is proof that the paternity of the father had been admitted by or established against the father while the father was living; and
 - (b) a child born to a woman during her marriage, or within 10 months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband or former husband as the case may be.
- (5) For the purposes of the administration or distribution of any estate an executor or administrator shall not be under any obligation to inquire as to the existence of a person who could claim an interest in the estate by reason only of an illegitimate relationship between a father and his child; and no action by any such person shall lie against an executor or administrator to enforce any claim arising by reason of the executor or administrator having made any distribution of the estate or otherwise acted in the administration of the estate in disregard of the claims of that person where at the time of making the distribution or otherwise so acting the executor or administrator had no notice of the relationship on which the claim is based.
- (6) Where a person and that person’s husband or wife die in circumstances rendering it uncertain which of them survived the other, that person’s husband or wife shall, for the purposes of ascertaining who shall take, or share in taking, the whole or any part of the estate of that person on that person’s intestacy in respect thereof, be deemed to have died before that person.

PART 5 — EXECUTORS

17 Cesser of right of executor to prove

Where a person appointed executor by a will:

- (i) survives the testator but dies without having taken out probate of the will;
- (ii) fails, when duly cited, to appear and apply for probate of the will; or
- (iii) renounces probate of the will,

his or her rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his or her real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor:

Provided that the Court may, if it is satisfied that there is good reason for doing so, upon application made *ex parte* by originating summons, permit an executor who has renounced probate to withdraw his or her renunciation.

18 Grant of probate to executor after previous grant to another person

- (1) Where, after probate of a will has been granted to one or more, but not all, of the executors named therein or administration of the testator's estate with the will annexed has been granted, then, if an executor who has not previously proved the will applies for probate to be granted to him or her, the probate, if granted, 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 personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.
- (2) This Section applies whether the testator died before or after the commencement of this Act.

19 Child as sole executor

- (1) Where a child is sole executor, administration with the will annexed may be granted to the guardian of the child, or to such other person as the Court thinks fit, until the child has attained the age of 18 years, with full or limited powers to act as administrator until probate has been granted to the said executor.

[subs (1) am Act 18 of 2011 s 3 and Sch[28.2]–[28.4], opn 3 Nov 2011]

- (2) The person to whom such administration is granted shall, unless otherwise ordered, have the same powers vested in him or her as a person to whom administration with the will annexed of any estate is granted under the provisions of Section 33.

[s 19 am Act 18 of 2011 s 3 and Sch[28.1], opn 3 Nov 2011]

20 Executor of executor represents original testator

- (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

- (2) This provision shall not apply to an executor who does not prove the will of his or her testator and, in the case of an executor who on his or her death leaves surviving him or her some other executor of his or her testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted; nor does it apply unless the executor of the executor proves the executor's will.
- (3) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- (4) The chain of such representation is broken by:
 - (a) an intestacy;
 - (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.
- (5) Every person in the chain of representation to a testator:
 - (a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and
 - (b) is, to the extent to which the estate, whether real or personal, of that testator has come to his or her hands, answerable as if he or she were an original executor.

21 Right of proving executors to exercise powers

- (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, all the powers which are by law conferred on the personal representative 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 proved the will and had concurred therein.
- (2) This Section applies whether the testator died before or after the commencement of this Act.

22 Executor not to act until he has proved will

Save as provided by Section 20, no person other than an executor who has proved the will of a deceased person shall have power to bring any suit or otherwise act as executor of that person.

23 Probate may be granted to one or more executors and leave be reserved to others to prove later

The Court may, if it thinks fit, grant probate to one or more of the executors named in a will and reserve leave to any other executor or executors named therein who have not renounced to apply for probate at some future date.

24 Executor not entitled beneficially unless authorised by the will

No executor shall be entitled, as such, to take beneficially any residue not expressly disposed of by the will of the testator, unless it appears by such will that he or she is intended so to take.

PART 6 — EXECUTORS AND ADMINISTRATORS: GENERAL

25 Rights, liabilities and duties of executors and administrators

- (1) Save as expressly otherwise provided by this Act, the rights, liabilities and duties of executors to whom probate has been granted in the Republic, or whose grant of probate in another country has been resealed in the Republic, shall be the same as the rights, liabilities and duties conferred or imposed by the law in force in England on 31 July 1969, on executors to whom probate has been granted in England.
- (2) Save as expressly otherwise provided by this Act, the rights, liabilities and duties of administrators to whom administration has been granted in the Republic, or whose grant of administration in another country has been resealed in the Republic, shall be the same as the rights, liabilities and duties conferred or imposed by the law in force in England on 31 July 1969, on administrators to whom administration has been granted in England.

26 Liability of estate of personal representative

Where a person as personal representative of a deceased person, including an executor in his or her own wrong, wastes or converts to his or her own use any part of the real or personal estate of the deceased, and dies, his or her personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

27 Provisions as to the number of personal representatives

- (1) Probate or administration shall not be granted to more than 4 persons in respect of the same property, and letters of administration shall, if there is a minority or if a life interest arises under the will or intestacy, be granted either to the Curator, a trustee corporation, with or without an individual, or to not less than 2 individuals:
Provided that the Court in granting letters of administration may act on such *prima facie* evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules and orders.
- (2) Where there is only one personal representative, not being the Curator or a trustee corporation, then, during the minority of a beneficiary or the incapacity of a beneficiary who is mentally impaired or the subsistence of a life interest and until the estate is fully administered the Court may, on the application of a person interested or of the parent or guardian of any such person or the committee of his or her estate, appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules and orders.
- (3) This Section shall apply to grants made after the date of the commencement of this Act, whether the testator or intestate died before or after that date.

28 Executor or administrator may be allowed remuneration

- (1) The Court may, upon application made *ex parte* by summons, allow to any administrator and, subject to any express provisions of the will as to remuneration of the executor, to an executor of any will to whom probate has been granted such reasonable remuneration for the performance of his or her duties as the Court thinks just.
- (2) No such remuneration shall be retained by any executor or administrator who neglects, omits or delays without good reason to pass his or her accounts pursuant to any requirement of the Registrar under Section 61.

PART 7 — GRANTS OF REPRESENTATION

29 Persons entitled to grant of administration on intestacy

The Court may grant administration of the estate of a person dying intestate to the following persons, separately or conjointly, being persons not less than 21 years of age:

- (a) the husband or wife of the deceased;
- (b) if there is no husband or wife, one or more of the next of kin in order of priority of entitlement under Section 16 in the distribution of the estate of the deceased;
- (c) any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this Section resident within the Republic and fit to be so entrusted, or if every person entitled as aforesaid and resident within the Republic fails, when duly cited, to appear and apply for administration; or
- (d) the Curator of Intestate Estates in accordance with Section 7.

30 Power to grant representation to a trustee corporation

- (1) The Court may:
 - (a) where a trustee corporation is named in a will as executor, whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require; and
 - (b) grant administration to a trustee corporation, either solely or jointly with another person, and the corporation may act accordingly as executor or administrator, as the case may be.
- (2) Probate or administration shall not be granted to a syndic or nominee on behalf of a trustee corporation.
- (3) Any officer authorised for the purpose by a trustee corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the Court may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation.
- (4) This Section shall have effect whether the testator or the intestate died before or after the commencement of this Act.

31 Where person entitled to grant is outside the Republic

Where an executor or a person entitled to probate or administration is outside the Republic but has some person in the Republic appointed under power of attorney to act for him or her, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit:

Provided that nothing in this Act shall prevent the Court from granting probate to an executor who is outside the Republic.

32 Administration pendente lite

Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the Court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the Court and act under its direction.

33 Administration cum testamento annexo

Where a person dies leaving a will but without having appointed an executor, or leaving a will and having appointed an executor who is not willing or competent to take probate, the Court may on the application of a person interested in the estate of the deceased grant administration thereof, or of any part thereof, to the applicant and such administration may be limited as the Court thinks fit. In such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

34 Failure by executor to obtain probate, etc

- (1) Where an executor neglects to apply for or to renounce probate within 3 months from the death of the testator or from the time of such executor attaining the age of 21 years, whichever is the later, or where an executor is unknown or cannot be found, the Court may, upon the application of a person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the application, and such administration may be limited as the Court thinks fit.
- (2) In such case, the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

35 Special administration if executor or administrator is not in the Republic

- (1) Where, at the expiration of 3 months from the date of grant of probate of the will, or administration of the estate, of any deceased person, the executor to whom probate has been granted, or the administrator, is residing outside the Republic, the Court may, upon the application of any creditor or person interested in the estate, grant to the applicant special administration of the estate of such deceased person, with limited or unlimited powers.
- (2) A grant of special administration under this Section shall not be made unless the applicant satisfies the Court that the executor or administrator is resident outside the Republic, and that the applicant is thereby delayed in recovering or obtaining payment of monies or the possession of goods and chattels or real estate to which he or she is by law entitled, or that the estate is liable to loss or waste.

36 Discretion of the Court as to persons to whom administration is to be granted

Subject to Section 29, in granting administration the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the

proceeds of sale thereof, and, in particular, administration with the will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit:

Provided that:

- (a) where the deceased has died wholly intestate as to his or her estate, administration shall be granted to some one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose; and
- (b) if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the Court may in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the Court thinks fit.

PART 8 — ADMINISTRATION OF ESTATES BY EXECUTORS AND ADMINISTRATORS

37 Pending grant estate to vest in the Curator

- (1) Pending the grant of probate of a will or of administration of the estate of a deceased person, the real and personal estate of that person shall, without any charge being leviable therefore, vest in the Curator for the purpose of:
- (a) accepting service of notices and proceedings and acting as nominal defendant or, in proceedings commenced by the deceased person before his or her death, as nominal plaintiff;
 - (b) executing leases of all or any of the real estate of the deceased person to RONPHOS for the mining of phosphate therefrom; and
 - (c) receiving and keeping in safe custody pending such grant any monies or other property of which the deceased person died possessed or which are paid or delivered to him or her as part of such person's estate,
- but the Curator shall not otherwise be under any obligation or have the power or authority to get in the estate of any deceased person pending such grant or to pay his or her debts or discharge his or her obligations.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[139], opn 15 Apr 2011]

- (2) In the performance of his or her duties under subsection (1), the Curator may incur any expenses necessary for that purpose and such expenses shall be recovered by him or her from the estate. The Curator shall be liable for any loss suffered by the estate as a result of his or her wilful default or of his or her failing to exercise in the performance of his or her duties the degree of care which a reasonably prudent person would in like circumstances exercise in respect of his or her own affairs. Upon grant of probate or administration being made in respect of the will or estate of the deceased person to a person other than the Curator, the Curator shall account to the executor or administrator and shall pay or hand over to him or her all the monies and other property received by the Curator in the performance of his or her duties under subsection (1) and remaining in his or her hands:

Provided that the liabilities of the Curator under this Section shall be the liabilities of the Republic and not of the Curator personally, except where:

- (a) he or she acts otherwise than in good faith;
 - (b) he or she wilfully acts illegally; or
 - (c) he or she acts with gross negligence.
- (3) Notwithstanding the provisions of Section 3, the provisions of this Section shall apply to the estates of Nauruans:
- Provided that, for the purposes of applying the provisions of this Section to the estates of Nauruans, the expression "*pending the grant of probate of a will or of administration of the estate of a deceased person*" shall be taken as meaning the period from such person's death until the time when the persons entitled to receive the estate as beneficiaries have been finally ascertained, whether by a family agreement, a decision of the Nauru Lands Committee or, where any appeal is taken against such decision of the Nauru Lands Committee, the decision of the Court on that appeal.
- (4) Where before the commencement of this Act the person holding the office

of the Curator of Intestate Estates under the *Probate and Administration Ordinance 1913-1915* of the Territory of Papua in its application to the Republic received or was in possession of any monies or other property forming the whole or any part of the estate of any deceased person, including a Nauruan, who had died he or she shall be deemed to have received and been in possession of them under the provisions of this Section as though he or she were the Curator appointed, or deemed to have been appointed, under this Act and those provisions and the provisions of Part 3 of this Act shall, insofar as they may be applicable, be deemed to have been in force at all relevant times; and all such monies and other property as are in the possession of such Curator of Intestate Estates immediately before the commencement of this Act shall, upon this Act coming into force, be transferred by him or her to, and be held by, the Curator appointed, or deemed to have been appointed, under this Act, who shall deal with them as though he or she had received them under the provisions of this Section.

38 Upon grant property comprising estate to vest in grantee

Upon the grant of probate or administration, all property in the Republic of which a deceased person died possessed or to which he or she was entitled at the time of his or her death shall forthwith pass to and become vested in the executor to whom probate has been granted or in the administrator, as the case may be, for all the estate and interest of the deceased therein, in the manner following, that is to say:

- (a) on testacy or on partial intestacy, in the executor or the administrator with the will annexed; and
- (b) on intestacy, in the administrator,

and, subject to the provisions of Sections 22 and 37, shall be deemed to have become vested in such executor or administrator immediately upon the death of the deceased person.

39 Property to vest subject to trusts

All property held by a person in trust or subject to equities shall vest as provided by Section 38 subject to the trusts and equities affecting it.

40 Both real and personal estate to be available as assets

- (1) The real as well as the personal estate of a deceased person shall be assets in the hands of the executor of his or her will to whom probate has been granted, or the administrator of his or her estate, for the payment of all duties and fees and of the debts of the deceased in the ordinary course of administration.
- (2) No executor or administrator shall by virtue of his or her office as such have or exercise any right of retainer in priority to the other creditors of the estate in respect of any debt due to him or her.
- (3) An executor to whom probate has been granted, or an administrator, may, for the purposes of administration, sell or lease all or any part of the real estate of the deceased, or mortgage it with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his or her lifetime.

41 Estate to vest according to will

Subject to Section 39, the estate, both real and personal, of every person who has died testate shall be held by the executor to whom probate has been granted or the administrator with the will annexed according to the trusts and dispositions of the will of that deceased person.

42 Administration of assets

- (1) Where the estate of a deceased person is insolvent, his or her real and personal estate shall be administered in accordance with the rules set out in Part 1 of the Schedule.
- (2) Where the estate of a deceased person is solvent, his or her real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his or her will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable therefrom in the order stated in Part 2 of the Schedule.

43 Charges on property of deceased to be paid primarily out of the property charged

- (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment, by his or her will disposes of, an interest in property which at the time of his or her death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise, including a lien for unpaid purchase money, 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 the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.
- (2) Such contrary or other intention shall not be deemed to be signified:
 - (a) by a general direction for the payment of debts or of all the debts of the testator out of his or her personal estate, his or her residuary real and personal estate or his or her residuary real estate; or
 - (b) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.
- (3) Nothing in this Section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

44 Powers of personal representative as to appropriation

- (1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his or her property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased: Provided that:

- (a) an appropriation shall not be made under this Section so as to affect prejudicially any specific devise or bequest;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not, save as hereafter in this proviso provided, be made under this Section except with the following consents:
 - (i) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person; and
 - (ii) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any, not being also the personal representative, or the person who may for the time being be entitled to the income,

if the person whose consent is so required as aforesaid is a child or is a person certified under Section 7 of the *Mental Health Act 1963* to be a mentally impaired person and a committee of his or her estate has been appointed under Section 12 of that Act the consent shall be given on his or her behalf by his or her parents or parent, testamentary or other guardian or the committee, as the case may be, or in the case of a child, if there is no such parent or guardian, by the Court on the application of his or her next friend;

- (c) no consent, save of such trustee as aforesaid, shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- (d) if no committee has been appointed for a person suffering from mental disorder or defect, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the said person; and
- (e) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

[subs (1) am Act 18 of 2011 s 3 and Sch[29], opn 3 Nov 2011]

- (2) Any property duly appropriated under the powers conferred by this Section shall thereafter be treated as an authorised investment and may be retained or dealt with accordingly.
- (3) For the purposes of appropriation of property under this Section, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he or she may think fit, and may for that purpose employ a person experienced in valuation in any case where he or she considers such employment to be necessary; and he or she may make any conveyance which may be requisite for giving effect to the appropriation.
- (4) An appropriation made pursuant to this Section shall bind all persons interested in the property of the deceased whose consent is not by this Section made requisite.
- (5) The personal representative shall, in making any appropriation pursuant to this Section, have regard to the rights of a person who may thereafter come

into existence or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this Section.

- (6) This Section does not prejudice any other power of appropriation conferred by law or by the will, if any, of the deceased, and takes effect with any extended powers conferred by the will, if any of the deceased and, where an appropriation is made under this Section in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing disposition and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made if no such appropriation had been made.
- (7) Where after any real estate has been appropriated in purported exercise of the powers conferred by this Section the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this Section and after all requisite consents, if any had been given.
- (8) In this Section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, and also an annuity and “*purchaser*” means a purchaser for money or money’s worth.
- (9) This Section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

45 The Court may deal with interest of child beneficiary in certain cases

- (1) Where a person has died either before or after the commencement of this Act leaving a beneficiary who is a child and the value of the share of the real and personal property of the deceased person to which the child is entitled in distribution does not exceed \$10,000, the Court may, on the application of the child, or of a person on his or her behalf, authorise the executor or administrator to expend the whole or any part of the share of the child on his or her maintenance, advancement or education.

[subs (1) am Act 18 of 2011 s 3 and Sch[30.2]–[30.5], opn 3 Nov 2011]

- (2) The power or authority which the Court may confer under this Section on an executor or administrator is in addition to any other power or authority, statutory or otherwise, that the executor or administrator may have to pay or apply any of the assets of the estate or the income thereof to or on behalf of a child.

[subs (2) am Act 18 of 2011 s 3 and Sch[30.6], opn 3 Nov 2011]

[s 45 am Act 18 of 2011 s 3 and Sch[30.1], opn 3 Nov 2011]

46 Power to appoint trustees of child’s property

- (1) Subject to the provisions of subsection (5), where a child is absolutely entitled under the will or on the intestacy of a deceased person who has

died before or after the commencement of this Act to a devise or legacy, or to the residue of the estate of the deceased or any share therein, and that devise, legacy, residue or share is not under the will, if any, of the deceased devised or bequeathed to trustees for the child, the personal representative of the deceased may appoint two or more individuals not exceeding four, whether or not including the personal representative or one or more of them, to be the trustee or trustees of that devise, legacy, residue or share for the child, and may execute or do any assurance, act or thing requisite for vesting that devise, legacy, residue or share in the trustee or trustees so appointed.

[subs (1) am Act 18 of 2011 s 3 and Sch[31.2], [31.3], opn 3 Nov 2011]

- (2) On the vesting of the devise, legacy, residue or share mentioned in subsection (1) in the trustee or trustees appointed under the provisions of that subsection, the personal representative as such is discharged from all further liability in respect of that devise, legacy, residue or share.
- (3) Trustees appointed under the provisions of subsection (1) may retain in its existing condition or state of investment any property transferred to them pursuant to the provisions of this Section or may convert it into money and upon conversion they shall invest the money in any of the securities or property authorised by law for the investment of trust funds, or by the will.
- (4) Where a personal representative has, before the commencement of this Act, retained or sold any property to which an infant was entitled by virtue of any devise or legacy or as the residue of the estate of the deceased or any share of such residue and has invested it or the proceeds thereof in any investments in which he or she was authorised to invest money subject to the trust, then, subject to any order of the Court made before that date, he or she shall be deemed not to have incurred any liability on that account or by reason of not having paid or transferred the money or property into Court.

[subs (4) am Act 18 of 2011 s 3 and Sch[31.4], opn 3 Nov 2011]

- (5) The power of appointing trustees conferred upon personal representatives by this Section is subject to any direction or restriction contained in the will of the deceased.

[s 46 am Act 18 of 2011 s 3 and Sch[31.1], opn 3 Nov 2011]

47 Personal representative may relinquish office

- (1) A personal representative may at any time, with the leave of the Court and on such conditions as the Court may impose, relinquish his or her office to such person as the Court may appoint.
- (2) He or she shall account to that person and shall pay or hand over to that person all monies and other moveable property received as part of the estate of the deceased and remaining in his or her hands.
- (3) Notwithstanding that he or she has relinquished his or her office, the personal representative shall continue to be liable for all acts and neglect while he or she was executor or administrator, but not otherwise or further.

48 Personal representative to represent real estate

In all proceedings concerning the real estate of a deceased person his or her personal representative, so long as such estate remains vested in him or her,

shall represent such real estate and the persons interested therein in the same manner and to the same extent as in proceedings concerning personal estate.

49 All creditors to stand in equal degree

- (1) In the administration of the estate of a deceased person, all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets, whether legal or equitable, and no debt or liability of the deceased person shall be entitled to any priority or preference by reason only that it is due to an executor or administrator of the estate.
- (2) Nothing in this Section shall be taken as prejudicing or affecting any mortgage, lien, charge or security which a person may hold or be entitled to for payment of his or her debt.

50 Revocation of special administration

- (1) Where special administration has been granted under Section 35, the executor to whom probate has been granted, or the administrator to whom administration was originally granted, may, on his or her return to the Republic, apply to the Court to rescind such special grant; and the Court may make an order accordingly upon such terms and conditions as to the Court may seem fit, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant had never been made.
- (2) Upon any order being made for the rescission of any special grant, the special administrator shall be bound to account to the executor or the original administrator, and to pay over all monies received by him or her and then remaining in his or her hands. Notwithstanding that he or she has relinquished his or her office upon rescission of the grant, he or she shall continue to be liable for all acts and neglect while he or she was special administrator of the estate but not otherwise or further.
- (3) Where an executor or administrator neglects to apply for an order for the rescission of any special grant within 28 days of his or her return to the Republic, he or she shall, unless he or she has again departed from the Republic and is outside the Republic at the expiration of the said period of 28 days, be liable in respect of all claims and demands against the estate of the deceased to the extent of the assets which have come to his or her hands, or which might have come to his or her hands but for his or her wilful neglect or default, including the neglect to apply for rescission of the special grant.

51 The Court may remove executor

The Court may for any reason which appears to it to be sufficient, either upon the application of a person interested in the estate of any deceased person or of its own motion on the report of the Registrar and either before or after a grant of probate has been made:

- (a) make an order removing any executor of the will of the deceased person from office as such executor and revoking any grant of probate already made to him or her;

- (b) by the same or any subsequent order grant probate or administration with the will annexed of that estate to some other person;
- (c) make such other orders as, it thinks fit for vesting the real and personal property of that estate in the administrator and for enabling the administrator to obtain possession or control thereof; and
- (d) make such further or consequential orders as it may consider necessary in the circumstances.

52 Pending proceedings not abated by revocation or rescission

Where probate or administration is revoked or rescinded while any proceedings commenced by or against any executor or administrator lawfully acting as such are pending, such proceedings shall be continued in the name of the executor or administrator appointed on such revocation or rescission as if they had been originally commenced by or against such last-mentioned executor or administrator.

53 Power to postpone distribution

An executor or administrator shall not, unless the Court otherwise orders, be bound to distribute the estate of the deceased before the expiration of 1 year from the date of grant of probate or administration, as the case may be.

54 Devisee or legatee may apply to the Court if distribution is unreasonably delayed

Where an executor who has obtained probate, or an administrator with the will annexed, unreasonably fails or refuses to:

- (a) execute a transfer of land devised to a devisee; or
- (b) transfer, pay or deliver to the person entitled any bequest, legacy or residuary bequest,

after request in writing by such devisee or person, that devisee or person may apply to the Court for an order directing the executor or administrator to comply with that request, and the Court may make such order therein as it thinks fit.

55 Distribution of assets after notice

Where an executor or administrator has given such or the like notices as in the opinion of the Court in which the executor or administrator is sought to be charged would have been given by the Court in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, the executor or administrator may, at the expiration of the time named in those notices, or the last of them, for sending in such claims, distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which he or she has then received notice and he or she shall not be liable for the assets or any part thereof so distributed to a person of whose claim he or she has not had notice at the time of such distribution.

56 Certain claim barred

Where an executor or administrator has given the notices referred to in Section 55 and he or she receives a claim against the estate, he or she may, if he or she disputes the claim, serve upon the person by whom or on whose behalf the claim

was made a notice calling upon that person to take proceedings to enforce his or her claim within a period of 3 months, and to duly prosecute them. If, after the said period of 3 months has expired, that person has not taken proceedings to enforce his or her claim or, having taken such proceedings, does not satisfy the Court that he or she is duly prosecuting them, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or make such other order as the Court may think fit.

57 Right to follow assets

Nothing in Section 55 or Section 56 shall prejudice the right of any creditor, claimant, lessor or grantor, or those claiming under any lessor or grantor, to follow the property, or any part thereof, into the hands of the persons or any of them among whom it may have been distributed or who may have received it.

58 The Court empowered to settle all questions in respect of wills or administration

- (1) The Court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real or personal estate which an executor or administrator may have in hand, or as to the residue of the estate, as the circumstances of the case may require; such order shall bind all persons whether *sui juris* or not.
- (2) No final order for distribution shall be made except upon notice to all the parties interested, or as the Court may direct.

59 Payments made before revocation are valid

- (1) Where any probate or administration is revoked or rescinded, all payments and transfers made in good faith to the executor or administrator before the revocation or rescission shall be a legal discharge to the person making them.
- (2) An executor or administrator who has acted under any revoked or rescinded probate or administration may retain and reimburse himself or herself, or shall be entitled to be reimbursed, in respect of all payments made by him or her in good faith before revocation or rescission, in the same manner as if such revocation or rescission had not taken place.

60 Indemnification where grant defective

Every person making or permitting to be made in good faith any payment or transfer upon any probate or administration granted under the authority of this Act shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or administration not then known to him or her and such indemnification and protection shall be a proper charge against the estate, unless the Court orders otherwise.

61 Inventory and accounts

- (1) Every person to whom probate or administration is granted may, and shall

if so directed by the Court or required by the Registrar, file an inventory of the estate of the deceased, and pass his or her accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by rules or as the Court may order.

- (2) The order of the Court allowing any account shall be *prima facie* evidence of the correctness of the account and shall, after the expiration of 3 years from the date of such order, operate as a release to the person filing it, except so far as it is shown by some person interested therein that a fraudulent error or a wilfully incorrect omission or entry has been made in that account.

62 Registrar to give notice if accounts not filed

- (1) Where an executor or administrator neglects to file an inventory or to pass accounts within 1 month after being required by the Registrar so to do, the Registrar may apply to the Court for an order directing that executor or administrator to file an inventory or exhibit accounts forthwith.
- (2) No proceedings under this Section shall affect the liability of the executor or administrator to be proceeded against for an account and administration.
- (3) An executor or administrator who, having been directed by the Court or required by the Registrar to file an inventory or to exhibit accounts, fails to comply with that direction or files an inventory, or exhibits an account, which he or she knows, or has reason to believe, is not complete and accurate is guilty of an offence and is liable to a fine of \$1,000 and, if the default continues after conviction, to a further fine of \$100 for every day until a complete and accurate inventory is filed or complete and accurate accounts are exhibited, as the case may be.

**PART 9 — ORDERS FOR MANAGEMENT, ETC OF PROPERTY OF
PERSONS BELIEVED DEAD**

63 Property of person believed to have died

- (1) Whenever it is made to appear to the Court that there is reasonable ground to suppose that a person has died either in or out of the Republic leaving property within the Republic, the Court may grant an order to the Curator to administer the estate of such person both real and personal.
 - (2) Every such order shall be valid until revoked, and shall empower the Curator to:
 - (a) collect, manage, control and deal with the personal estate of the supposed deceased person;
 - (b) execute leases of all or any of the real estate of that person to RONPHOS for the purpose of mining phosphate;
 - (c) enter upon and receive the rents and profits and otherwise manage the real estate; and
 - (d) pay and discharge the debts and liabilities of that person, in like manner as if he or she were certainly dead and administration had been granted to the Curator.
- [subs (2) am Act 8 of 2011 s 12 and Sch[139], opn 15 Apr 2011]
- (3) The Curator shall not proceed to any distribution of assets without an order of the Court specially authorising him or her to make such distribution.
 - (4) Subject to subsections (2) and (3) and any order of the Court, where an order is granted to the Curator under this Section to administer the estate of a person, he or she shall have the same duties, functions, liabilities and powers as if he or she had been granted letters of administration under Section 9.
 - (5) Where the Court has, under the provisions of subsection (1), granted an order to the Curator to administer the estate of a person, the Court shall revoke that order:
 - (a) on application by that person or the Curator, upon being satisfied that that person is alive;
 - (b) upon granting probate or administration in respect of the will of that person or his or her estate; or
 - (c) where that person is a Nauruan, upon being satisfied that he or she is dead and that the persons entitled to his or her estate and the extent of their respective beneficial interests therein have been finally determined by:
 - (i) agreement of his or her family, or
 - (ii) in default of such agreement, the Nauru Lands Committee or, where an appeal is taken against the decision of the Nauru Lands Committee, the Court.
 - (6) Where an order granted to the Curator under subsection (1) to administer the estate of a person is revoked, the Curator shall hand over:
 - (a) where that person is alive, to that person, and

(b) where that person is dead, unless administration has been granted to the Curator, to the deceased person's personal representative or, where the deceased person is a Nauruan, directly to the beneficiaries of his or her estate entitled to receive them,

all assets of the estate which are in his or her possession. Notwithstanding the revocation of the order granted under subsection (1), the Curator shall continue to be liable for all acts and neglect while the order was in force but not otherwise or further.

(7) Notwithstanding the provisions of Section 3, the provisions of this Section shall apply to Nauruans:

Provided that the Curator shall not distribute the assets except in accordance with a family agreement or the decision of the Nauru Lands Committee as to the persons entitled thereto or, where any appeal is taken against such decision of the Nauru Lands Committee, with the decision of the Court on that appeal.

64 Notice of order under Section 63 to be given to next of kin

(1) The Curator shall:

(a) cause a notice of any order made under Section 63 to be sent by post or delivered to all the known next of kin of the person to whose property the order relates; or

(b) in the case of a person who is not Nauruan and none of whose known next of kin is resident in the Republic, give notice to the consular representative of the country where his or her next of kin is supposed to reside, if there is any such consular representative resident in the Republic.

(2) For the purposes of this Section, "*next of kin*" includes the husband or wife, if any, of the person to whom the order relates.

**PART 10 — RESEALING OF FOREIGN PROBATES AND LETTERS OF
ADMINISTRATION**

65 Certain foreign probates and letters of administration may be resealed in the Republic

- (1) Where any probate or administration heretofore or hereafter granted by any court of competent jurisdiction in any country or territory of the Commonwealth, or any other country specified by the Minister by notice in the Gazette, is produced to and a copy thereof deposited with the Registrar by a person who is the executor or administrator to whom such grant has been made, whether the original executor or administrator personally or by representation or by a person duly authorised by power of attorney in that behalf under his or her hand and seal, then, subject to the provisions of Section 9 of the *Foreign Trusts, Estates and Wills Act 1972*, such probate or administration may be resealed by the Registrar with the seal of the Court.
- (2) When resealed as provided for in subsection (1), such probate or administration shall have the like force, effect and operation in the Republic, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or administration had been originally granted by the Court.
- (3) The Court may require any administrator or attorney of an administrator applying for resealing of administration under this Section to give security for the due administration of the estate in respect of matters or claims in the Republic.

66 Personal representative to be deemed resident in the Republic

Every executor or administrator to whom probate or administration is granted under this Act or named in any probate or administration granted by any court of competent jurisdiction in any country or territory of the Commonwealth, or any other country specified by the Minister by notice in the Gazette as referred to in Section 65, and making application under this Act for the resealing of such probate or administration, shall be deemed to be resident in the Republic, where he or she is not actually so resident, he or she shall, before the grant or resealing of any probate or administration, file with the Registrar an address in the Republic at which notices and processes may be served upon him or her, and all service at that address shall be deemed personal service.

PART 11 — CAVEATS

67 Caveat against grant may be lodged with the Registrar

- (1) A person may lodge with the Registrar a caveat against any application for probate or administration, or for the resealing of any probate or administration under the provisions of Section 65, at any time before such probate or administration is granted or resealed.
- (2) Every such caveat shall show the name of the person lodging it and an address within the Republic at which notices may be served on him or her.

68 The Court may remove caveat

- (1) Where a caveat has been lodged, the Court may, upon application by a person applying for probate or administration, or for the resealing of any probate or administration under Section 65 of this Act, as the case may be, remove the caveat.
- (2) Every such application shall be served on the caveator by delivering a copy of it at the address mentioned in his or her caveat.
- (3) An application under subsection (2) may be heard and an order made thereon upon affidavit or oral evidence, as the Court may direct.

PART 12 — MISCELLANEOUS

69 Small bank deposits and monies owed by employers may be paid to wife or child of deceased without grant

- (1) Where a person dies:
- (a) leaving a sum of money standing to his or her credit in an account at any bank;
 - (b) having a sum of money standing to his or her credit in the hands of his employer in respect of salary, wages or provident fund contributions; or
 - (c) having been employed immediately before his or her death under a contract of employment containing provisions for passages to another country or for other services to be provided by his or her employer to his or her wife or child or to both,

then, notwithstanding the other provisions of this Act or the provisions of any will of that person, the manager of the branch of the bank at which the account is kept or the employer, as the case may be, shall on request by the wife of that person or, if she has died, by a guardian of the child of that person or a person with whom the child of that person is residing, pay to the wife, or to the guardian or person with whom the child is residing for the benefit of the child, the sum of money standing to the credit of that person's estate in the, bank or due to his or her estate by his or her employer in respect of salary, wages or provident fund contributions or \$1,000, whichever is the less, and provide for the wife or child or both, as the case maybe, the passages or other services in accordance with the terms of the contract of employment:

Provided that, where there are two or more children of any deceased person, the manager of the bank shall not pay to them under the provisions of this subsection more than a total of \$1,000 and the employer shall not pay to them under the provisions of this subsection a total of more than \$1,000.

- (2) The payment of any monies or the provision of a passage or of any other service by the manager of a bank or by an employer under subsection (1) shall be a valid discharge to the bank or the employer against the claims of a person in respect of those monies or the value of that passage or service.
- (3) For the purposes of this Section, the expression "**employer**" includes the Republic in respect of all public officers, and every public officer is deemed to be employed under a contract of employment between himself or herself and the Republic.
- (4) The provisions of this Section do not derogate from any provision of Section 30 of the *Nauru Police Force Act 1972*:

Save that, where a request made under subsection (1) of this Section has been received by the manager of a branch of a bank or by an employer, he or she shall comply with the provisions of this Section and not thereafter pay to the Commissioner of Police under Section 30 of the *Nauru Police Force Act 1972* the monies to which the request relates.

70 Effect of death on certain causes of action

- (1) Subject to the provisions of this Section, on the death of a person after the commencement of this Act all causes of action subsisting against or vested in him or her shall survive against, or, as the case may be, for the benefit of, his or her estate:
Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.
- (2) Where a cause of action survives, as provided for by subsection (1), for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:
 - (a) shall not include any exemplary damages;
 - (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
 - (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his or her estate consequent on his or her death, except that a sum in respect of funeral expenses may be included.
- (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Section has survived against the estate of a deceased person, unless either:
 - (a) proceedings against him or her in respect of that cause of action were pending at the date of his or her death; or
 - (b) proceedings are taken in respect thereof not later than 6 months after probate or administration was first granted.
- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against a person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him or her before his or her death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.
- (5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the *Fatal Accidents Acts, 1846 to 1908*, of England in their application to the Republic and so much, of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).
- (6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this Section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

71 Intermeddling in estate

Where a person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he or she shall be charged as executor in his or her own wrong to the extent of the real and personal estate received or coming to his or her hands, or the debt or liability released, after deducting:

- (a) any debt for valuable consideration and without fraud due to him or her from the deceased person at the time of his or her death; and
- (b) any payment made by him or her which might properly be made by a personal representative.

72 The Court may order production of testamentary papers, etc

- (1) The Court may, on motion or petition or otherwise, in a summary way, whether or not any suit or other proceeding is pending in the Court with respect to any probate or administration, order a person to produce and bring into the registry any paper or writing, being or purporting to be testamentary, or otherwise material to the matter before the Court, which may be shown to be in the possession or under the control of that person.
- (2) Where it appears that there are reasonable grounds for believing that a person, although he or she may not have in his or her possession or under his or her control any such paper or writing as is referred to in subsection (1), has knowledge of such a paper or writing, the Court may direct that person to attend for the purpose of being examined in open court or to answer interrogatories respecting that paper or writing.
- (3) A person to whom a direction is given by the Court under subsection (1) shall be bound to answer the questions or interrogatories and, if so ordered, to produce and bring into court such paper or writing, and shall be liable in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, to the same consequences as he or she would have been subject to in case he or she had been a witness to a suit in the Court and had made such default.
- (4) The costs of any such motion, petition or other proceeding under this Section shall be in the discretion of the Court.

73 Wills proved, etc, to be retained in registry

All original wills brought into the Court or of which probate or administration with the will annexed is granted, and such other documents as the Court may direct, shall be deposited and preserved in the registry of the Court and shall be under the control of the Court and may, subject to rules of court, be inspected there.

74 Official copies of wills

An official copy of the whole or any part of a will retained in the registry of the Court, or an official certificate of the grant of probate or administration, may be obtained from the Registrar on the payment of the prescribed fee.

75 Deposit of will by testator during his or her lifetime

- (1) A person residing in the Republic may deposit with the Registrar his or her

will enclosed in a sealed envelope or cover endorsed with the full name, description and the address of the testator at the time of deposit, or other means of ready identification, and also the names in full, with descriptions and addresses, of all the executors named therein; and such will shall, unless previously required to be given up by the testator, remain in the registry of the Court in the custody of the Registrar until the death of the testator, and upon his or her death the Registrar shall make and retain a copy of it and then deliver the will to any one of the executors named in the said will or, in case of doubt, to such person as the Court may direct.

- (2) The Registrar shall give to the depositor a certificate of the deposit and shall keep an index containing the particulars of the endorsements made on the envelope or cover of each will so deposited.

76 Register of Grants made

- (1) The Registrar shall cause entries to be made in a Register to be kept for that purpose of:
 - (a) all grants of probate and administration and all orders under Section 63;
 - (b) all foreign probates and letters of administration resealed under the provisions of Part 10;
 - (c) the filing, passing and allowance of the accounts of all executors and administrators; and
 - (d) any special order extending the time for passing such accounts.
- (2) The Register shall show in respect of each estate:
 - (a) the date of the grant or resealing;
 - (b) the name of the testator or intestate;
 - (c) the place and date of death;
 - (d) the name, address and description of the executor or administrator;
 - (e) the sworn value of the estate; and
 - (f) the dates of the filing, passing, allowance of, and special orders with reference to, the said accounts.
- (3) Where a grant of probate or administration is made or resealed by the Court, a copy of that grant may, on payment of the prescribed fee, be obtained from the Court, with or without the annexure thereto of a copy of the will, if any, to which it relates, and such copy may be issued under seal for all purposes as an office copy, and when so sealed and issued shall be sufficient evidence of that grant and of the death and date of death of the deceased without further proof.

77 Balance of estate of person not normally resident in the Republic

- (1) Where the Curator is administering the estate of a person who at the time of his or her death was not habitually resident in the Republic and whose estate is being administered in the place where the deceased was habitually resident by the Curator of Intestate Estates, Public Trustee or similar public officer of that place, the balance of the estate, after payment of local creditors, commission, fees and expenses, may, notwithstanding any other provisions of this Act, be paid over to such Curator, Public Trustee or similar public officer.
- (2) Where any part of the estate of a deceased person whose estate is being

administered by the Curator is situated outside the Republic, the Curator may receive any part of such estate so situated and, when received, it shall be dealt with according to the law of the Republic.

78 Rules of court and fees

- (1) The Chief Justice may make all such rules and prescribe all such forms and fees as may be necessary or convenient to carry out the objectives and purposes of this Act and in particular, but without prejudice to the generality of the foregoing, may by rules of court provide that such part of the jurisdiction exercisable by a Judge in Chambers as he or she thinks fit may be exercised by the Registrar.
- (2) Subject to the provisions of this Act and to such rules as are made from time to time pursuant to subsection (1), all the rules in force, and the forms prescribed for use, in the Principal Probate Registry in England on 31 July 1969, or on such later date as the Chief Justice may from time to time appoint by notice in the Gazette, shall, so far as they can be read as applicable to the circumstances of the Republic, apply as if made pursuant to subsection (2).

79 Certain applied statutes to cease to apply to the Republic

- (1) The *Succession Act of 1867* and the *Succession Declaratory Act 1884*, both Acts of the State of Queensland applied to the Republic by Section 12 of the *Laws Repeal and Adopting Act 1922-1967*, shall, from the date of commencement of this Act, cease to have force and effect in the Republic save to regulate the succession to the estates of persons who have died intestate before the commencement of this Act.
- (2) The Probate and Administration Ordinance 1913-1915, an Ordinance of the Territory of Papua applied to the Republic by Section 14 of the *Laws Repeal and Adopting Act 1922-1967*, shall, from the date of commencement of this Act, cease to have force and effect in the Republic save in respect of grants of probate or administration made before that date.
- (3) [subs (3) omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

80 Amendment of the Laws Repeal and Adopting Act 1922-1967

Subject to the saving provisions of Section 79, the *Laws Repeal and Adopting Ordinance 1922-1967* is amended by:

- (a) deleting from Schedule 2 thereto:
 - (i) *Succession Act of 1867*; and
 - (ii) *Succession Act Declaratory Act 1884*; and
- (b) deleting from Schedule 3 thereto:

Probate and Administration Ordinance 1913-1915.

SCHEDULE

[Section 42]

RULES FOR ADMINISTRATION OF ASSETS

PART 1 — RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT

1. The funeral, testamentary and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, as to debts and liabilities provable, as to the valuation of annuities and future and contingent liabilities respectively and as to the priorities of debts and liabilities as may be in force for the time being under the law of insolvency or bankruptcy with respect to the assets of persons adjudged insolvent or bankrupt.

PART 2 — ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT

Unless varied by the will of the deceased, the order of application of assets where the estate is solvent shall be as follows:

1. Property of the deceased undisposed of by will, subject to the retention therefrom of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included, either by a specific or general description, in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies so far as not provided for as aforesaid.
3. Property of the deceased specifically appropriated or devised or bequeathed, either by a specific or general description, for the payment of debts.
4. Property of the deceased charged with, or devised or bequeathed, either by a specific or general description, subject to a charge for, the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Property specifically devised or bequeathed, rateably according to value.
7. Property appointed by will under a general power, rateably according to value.

Succession, Probate and Administration (Fees of the Curator) Regulations 2018

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
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	SCHEDULE — FEES OF THE CURATOR

Succession, Probate and Administration (Fees of the Curator) Regulations 2018

TABLE OF AMENDMENTS

The Succession, Probate and Administration (Fees of the Curator) Regulations 2018 SL 24 were notified and commenced on 5 November 2018 (GN No 861/2018; Gaz 162/2018).

Amending Legislation	Notified	Date of Commencement
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These Regulations are made under Section 8 of the *Succession Probate and Administration Act 1976*:

1 Citation

These Regulations may be cited as the *Succession, Probate and Administration (Fees of the Curator) Regulations 2018*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Definitions

In these Regulations:

‘*Act*’ means the *Succession Probate and Administration Act 1976*; and

‘*Curator*’ has the same meaning under Section 2(1) of the Act.

4 Calculation of fees

(1) In calculating the fees of the Curator, the total value of the estate or sum of money shall be applied.

(2) The fees of the Curator shall be deducted from the total value of the estate or sum of money before the same is distributed to the respective beneficiaries.

5 Power to deduct fees

For the purposes of Regulation 4, the Curator shall have the power to deduct fees from the total value of the estate or sum of money.

6 Fees of the Curator

For the purposes of Section 8 of the Act, the fees for the performing of the functions and services of the Curator are set out in the Schedule.

SCHEDULE

[Section 8 of the Act; Regulation 4]

FEEES OF THE CURATOR

Item No	Value of the estate or sum of money administered by the Curator	Other services	Administration fees
1	\$0 - \$100		Exempt
2	\$101 - \$200		\$20
3	\$201 - \$300		\$40
4	\$301 - \$500		\$50
5	\$501 - \$1,000		\$100
6	over \$1,000		\$100 plus 5% of the total value of the estate or sum of money administered for each distribution.
7		Obtaining the grant of probate or letters of administration from the Supreme Court	\$350
8		Appearing in Court	\$200 per appearance for a maximum of \$1,000

