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G.N.No. 1108/2023

TRUSTS (TRUSTEE DUTIES) REGULATIONS 2023

SL No. 34 of 2023

Notified: [6th October, 2023]

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The Cabinet makes the following Regulations under Section 34 of the *Trusts Act 2018*:

1 Citation

These Regulations may be cited as the *Trusts (Trustee Duties) Regulations 2023*.

2 Commencement

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

3 Principal duties of a trustee

(1) The duties of the trustee are:

- (a) to act honestly and in good faith;
- (b) to be familiar with the terms and conditions of the trust;
- (c) to act in accordance with the terms of the trust;
- (d) not to delegate the trust duties to another person, except where the trust instrument expressly permits;
- (e) to exercise reasonable degree of skill and care in carrying out his or her duties in respect of the trust;
- (f) to devote loyalty to the beneficiaries;
- (g) to administer the trust solely for the interest of the beneficiaries and the objects of the trust;
- (h) to carry out the intentions of the settlor;
- (i) to put his or her own interest secondary to the interest of the beneficiaries or interest of the trust and where there is a potential for conflict, he or she shall immediately disclose the interest to other trustees and trust practicably in writing or any verbal communication be recorded in trust records or meeting minutes;
- (j) to possess, protect and preserve the trust property and in doing so, the trustee shall defend the trust, the beneficiaries and any challenge to the validity of the creation or the objects of the trust;
- (k) to invest prudently and with due diligence for the purposes of benefiting the trust;
- (l) not to mix his or her interest in property with a trust property;
- (m) to ensure that activities of a trust are carried out in accordance with the laws;
- (n) to be accountable to the beneficiaries;
- (o) to be impartial in carrying out his or her duties to the beneficiaries;
- (p) to keep or require to keep the books, records and accounts of the trust:

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- i. during the operations of the trust;
 - ii. any dormant period of the trust; and
 - iii. 7 years from the winding up, dissolution, cessation or lapsing of the trust; and
 - (q) not to profit from the trusteeship of the trust.
- (2) The trustees individually and collectively, in addition to the duties in subregulation (1) shall:
- (a) ensure that the operations and activities of the trust are carried out in accordance with the *Trusts Act 2018*;
 - (b) ensure that the trust complies with the requirements of the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023* and *Counter Terrorism and Transnational Organised Crime Act 2004*; and
 - (c) ensure that the trust, trustees or the beneficiaries shall not use the trust as a vehicle for aiding or abetting any activities relating to money laundering or are abused by any person for the purposes of carrying out any objectives or furthering any such objectives for a terrorist, terrorist group, terrorist financing or proliferation financing.

4 General duty of care and responsibilities

When administering a trust, other than when exercising a discretion to distribute trust property, a trustee shall exercise the care and skill that is reasonable in the circumstances, in particular:

- (a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and
- (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

5 Duty to obtain information about regulated agents

- (1) A trustee shall obtain, keep and maintain basic information and record of a regulated agent of the trust.
- (2) For the purpose of subregulation (1), a '**regulated agent**' includes an investment advisor, manager, accountant, legal advisor, tax advisor or any other person whose professional or advisory services are ordinarily required for the operations and management of the trust.
- (3) For the purposes of subregulation (1), '**basic information**' means:
 - (a) name of the legal entity or natural person;
 - (b) in case of a legal entity, at least a beneficial owner or the person who carried out or attended to the transactions or professional advisory services for the trust on behalf of the legal entity;
 - (c) tax identification number of the legal entity or the natural person or both;
 - (d) address of the place of business; and

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(e) address or email or phone contact of the natural person.

6 Access to basic information

- (1) A trustee upon request shall provide his or her name, residential address, corresponding address, email and any other means of communication with him or her directly to Nauru Police Force, Financial Intelligence Unit, Nauru Revenue Office or any other law enforcement body or agency.
- (2) A trust shall provide the name, residential address, corresponding address and email address of a trustee to a law enforcement body or agency for legitimate purpose or inquiry.
- (3) For the purposes of subregulation (2), the law enforcement body or agency shall provide to the trust or trustees the reasons for seeking information in respect of a trustee, before the information may be provided.