

REGISTRATION AND LICENSING OF BUSINESSES, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS, TRUSTS, PRIVATE SECURITY

INFORMATION SHEET

1. PURPOSE

To provide for the registration and licensing of businesses, partnerships, corporations, associations, trusts and private security.

2. SCOPE

This applies to and relates to the registration and licensing of businesses, partnerships, corporations, associations, trusts and private security.

3. SECRETARY FOR JUSTICE AS THE SUPERVISING AUTHORITY

The Secretary for Justice and Border Control is the supervising authority for the following:

- (a) Registrar of Business Names Registration under the Business Names Registration Act 2018;
- (b) Registrar of Business Licences under the Business Licences Act 2017;
- (c) Registrar of Corporations under the Corporations Act 1972;
- (d) Registrar of Partnerships under the Partnerships Act 2018;
- (e) Registrar of Trusts under the Trusts Act 2018;
- (f) Registrar of Associations under the Registrations of Associations Act 2020;
- (g) Licensing Authority under the Private Security Act 2012;
- (h) Authority (Beneficial Owners) under the Beneficial Ownership Act 2017;
- (i) Registrar of Trademarks under the Trademarks Act 2019;
- (j) Registrar of Patents under the Patents Registration Act 1973; and
- (k) Registrar of Copyright under the Copyright Act 2019.

4. ACCESSING LAWS OF NAURU

- (a) All the laws of the Republic of Nauru are available online through this link: <http://ronlaw.gov.nr/> .
- (b) All forms under various Acts of Parliament relevant to business registration and licensing are all capable of being downloaded and completed for registration or licensing purposes.

- (c) Should you require a printed copy of any law of the Republic, you may request the same from the Department of Justice.

5. DUE DILIGENCE TO ENSURE PREPAREDNESS

- (a) Before formally starting the business registration and licensing process, you must first gather all the necessary information required by Nauruan authorities throughout the process.
- (b) A lot of things need to be taken into account to register a business, corporation, partnership, trust or association, including the type of business, the required documentation, among others.
- (c) It is critical to ensure everything is clear, so the remainder of the process will run seamlessly and smoothly.

6. PROCESS



7. REQUIREMENTS

- (1) This is applicable to any person or entity intending to register a business, partnership, corporation, association, trust (registered under the Business Names Registration Act 2018 to carry on a business), association.

- (2) For clarity, this process also applies to all Government instrumentalities, corporations and public enterprises.
- (3) The required documents for **new applications** are as follows:
 - (a) Application for a certificate of registration of a business name:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (v) proof of payment of the prescribed fee.
 - (b) Application for a business licence:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (vi) proof of payment of the prescribed fee.
 - (c) Application for a certificate of partnership:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (vii) proof of payment of the prescribed fee.
 - (d) Application for a certificate of incorporation:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (vi) proof of payment of the prescribed fee.
 - (e) Application for a certificate of registration of association:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and

- (vi) proof of payment of the prescribed fee.
- (f) Application for a certificate of registration of trust:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (vi) proof of payment of the prescribed fee.
- (g) Application for a private security licence:
 - (i) application form;
 - (ii) relevant information;
 - (iii) copies of relevant documents;
 - (iv) declaration; and
 - (vi) proof of payment of the prescribed fee.

8. HOW DOES BUSINESS REGISTRATION AND BUSINESS LICENCE WORKS?

Every business needs a business name and business licence

(a) Business name registration

- ❖ A business name is not a legal entity or body that can be treated as a legal person in Nauru. The business name must be established by a person or entity. A business name is meaningless unless it is associated with a person or entity.
- ❖ Individuals, corporations, partnerships, and trusts all use business names. To demonstrate, 'Buada Contractors' is registered as a business name. If a natural person wishes to register a business name under his name but does not want to use his name as the business name, he can use the business name 'Buada Contractors'; he will be the registered owner of the business, but it will trade under the name 'Buada Contractors'.

(b) Business licence

- ❖ Every business, partnerships, corporations and trusts (which is registered to carry on a business) is required to have a valid business licence,
- ❖ Business licences expire one year from the date the licence is issued.

- ❖ Without a valid business licence, a person, partnership, corporation or trust must not operate its business. *Failure - a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months. [Section 25 of the Business Licences Act 2017]*

9. THE REGISTRATION & LICENSING PROCESS

(1) **STEP 1** – Applicant approaches the Office of the Secretary for Justice and Border Control (*either in person, email or phone call*).

(a) Applicant must contact any officer of the Justice Secretariat, Business Section ('Justice officer') for guidance in terms of registration and licensing requirements and processes.

(b) The Justice officer must provide the potential applicant with guidance, support and a registration package consisting of:

- Application forms relevant to the registration of the different types of businesses:

- **For registration of a sole trader / individual business:**

[sole proprietorship / individual business is an uncomplicated business structure in which a single individual owns and operates the entire business. A sole proprietor/individual business is entitled to retain all profits after taxes are deducted, but is responsible for all losses.]

- ✓ Form 1 of the Business Names Registration Regulations 2018 – for a business name
- ✓ Form 1 of the Business Licences Regulations 2018 – for a business licence
- ✓ Invoice for payment of fees (\$200 for the business name and \$300 for the business licence – which can be paid online to the Treasury Operating Account as provided in the invoice or paid at the Nauru Revenue Office [Civic Centre – above Bendigo Bank agency])
- ✓ Bank details
- ✓ Other documents / information as required by the Registrar

- **For registration of a partnership:**

['partnership' means an unincorporated body of 2 or more individuals or of one or more individuals and one or more corporations, or 2 or

more corporations, who or which have entered into partnership with one another with a view to carry on business registered under this Act and trading as a firm under the Business Names Registration Act 2018]

- ✓ Form 2 of the Business Names Registration Regulations 2018 – for a business name
- ✓ Form 2 of the Business Licences Regulations 2018 – for a business licence
- ✓ Form 2 of the Partnership (Forms and Fees) Regulations 2021 – for registration of a partnership
- ✓ Form 1 of the Beneficial Ownership (Forms and Fees) Regulations 2018 - for appointment of a nominated officer
- ✓ Form 3 of the Beneficial Ownership (Forms and Fees) Regulations 2018 – for registration of beneficial owner details
- ✓ Invoice of payment of fees (\$200 for the business name and \$300 for the business licence, partnership certificate (nil), nominated officer for beneficial owner (\$25), registration of beneficial owner details (\$50) – which can be paid online to the Treasury Operating Account as provided in the invoice or paid at the Nauru Revenue Office [Civic Centre – above Bendigo Bank agency])
- ✓ Bank details
- ✓ Other documents / information as required by the Registrar

- **For registration of a corporation**

A corporation is a legal entity that is separate and distinct from its proprietors and has many of the same rights and responsibilities as individuals.

- ✓ Form 3 of the Business Names Registration Regulations 2018 – for a business name (if trading in its incorporation name)
- ✓ Form 3 of the Business Licences Regulations 2018 – for a business licence
- ✓ Form 1 of the Corporations (Forms and Fees) Regulations 2018 – for a certificate of incorporation
- ✓ Form 3 of the Corporations (Forms and Fees) Regulations 2018 - Consent of Directors
- ✓ Form 5 of the Corporation (Forms) Regulations 1972 – Notice of situation of registered officer and of change of registered office
- ✓ Form 1 of the Beneficial Ownership (Forms and Fees) Regulations 2018 - for appointment of a nominated officer

- ✓ Form 3 of the Beneficial Ownership (Forms and Fees) Regulations 2018 – for registration of beneficial owner details
- ✓ Invoice of payment of fees (\$200 for the business name and \$300 for the business licence, partnership certificate (nil), nominated officer for beneficial owner (\$25), registration of beneficial owner details (\$50), certificate of incorporation (\$1,200) – which can be paid online to the Treasury Operating Account as provided in the invoice or paid at the Nauru Revenue Office [Civic Centre – above Bendigo Bank agency])
- ✓ Articles of Association
- ✓ Memorandum of incorporation
- ✓ copies of photo identification cards, police clearance and passport size photos
- ✓ Bank details

In addition, for foreign corporation:

- ✓ a certified copy of the certificate of your company's incorporation or registration in your company's place of incorporation or origin or a document of similar effect
- ✓ a certified copy of your company's charter, statute or memorandum and articles or other instrument constituting or defining your company's constitution
- ✓ a list of your company's directors and officers containing similar particulars with respect to your company's directions as are by the Corporations Act 1972 required to be contained in the register of the directors and secretaries of a corporation incorporated under the Act
- ✓ where a list includes directors' resident in Nauru who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign corporation stating the powers of local directors. Foreign directors must have Nauru business visa too
- ✓ a memorandum of appointment or power of attorney under the seal of a foreign corporation or executed on its behalf in such manner as to be binding on the corporation and, in either case, verified in the prescribed manner, stating the name and address of a registered corporation agent in Nauru authorised to accept on the company's behalf service of the process and any notices

required to be served on the corporation together with the written consent of such agent to the appointment

- ✓ Other documents / information as required by the Registrar
 - ✓ **All foreign corporations registered in Nauru must have a Nauruan business address and a local representative. Failure to do so will, *inter alia*, result in suspension or cancellation of business operations in Nauru.**
- Application forms relevant to the registration of an association

'association' includes a society, club, institution, civil society or non-Government organisation or similar body, which is not formed for any pecuniary gain or profit

- ✓ Form 1 of the Registration of Associations (Forms and Fees) Regulations 2020 – application for registration of association
 - ✓ Invoice for payment of fees - \$100
 - ✓ Other required documents / information:
 - copy of drivers licence, passport bio data or any other photo ID
 - Rules of the association adopted by its executive body
 - List of members of association (at least 7 members which includes executive)
 - Bank details
 - Objective or purpose
- Application forms relevant to the registration of a trust

A registrable trust is:

- (a) an express trust within the meaning of Section 9;*
- (b) a charitable trust within the meaning of Section 10; or*
- (c) a discretionary trust;*
- (d) located in the Republic under Section 6; and*
- (e) not excluded under Section 7.*

- ✓ Form 1 of the Trusts (Forms and Fees) Regulations 2018 – application for registration of a registrable trust
- ✓ Invoice for payment of fees (\$200 for registration of trust, \$25 for nominate officer for beneficial owner and \$50 for registration of

beneficial owners – which can be paid online to the Treasury Operating Account as provided in the invoice or paid at the Nauru Revenue Office [Civic Centre – above Bendigo Bank agency])

- ✓ Bank details
- ✓ Other documents / information as required by the Registrar

(2) Registration for Tax Identification Number

(a) What is a Tax Identification Number?

- (i) A Tax Identification Number, or TIN, is a unique identification number issued by the Nauru Revenue Office.
- (ii) It must be used on any return, notice or other document files, lodged or used for the purposes of a tax law, or as required under a tax law.
 - The Nauru Revenue Office is responsible for the issuance of a Tax Identification Number under the Revenue Administration Act 2014.

(b) Why Tax Identification Number is needed to create entity?

- (i) A Tax Identification Number is a number that enables all business entities with varying structures to report their taxes accurately and make payments. It also functions as an identifier for business entities. Most of the time, other persons or entities that require your Tax Identification Number do so because there have tax reporting obligations associated with the work you are performing for them. This includes applying for a bank account and a bid for a government contract.
- (ii) An individual who wants to set up his or her business as a ‘sole trader’ **MUST FIRST OBTAIN** a Tax Identification Number from the Nauru Revenue Office before lodging his or her application for registration of business name and application for a business licence at the Justice Office.
- (iii) An entity that wants to incorporate a corporation, register a partnership, register a trust **MUST FIRST OBTAIN** a provisional Tax Identification Number from the Nauru Revenue Office before applying for a:
 - Certificate of Incorporation;
 - Certificate of Registration of Partnership;
 - Certificate of Registration of Association; or
 - Certificate of Registration of Trust.

Once a certificate has been issued by the Registrar, he will notify the Nauru Revenue Office within 10 working days of receiving the relevant application containing the provisional Tax Identification Number enclosed. Upon receiving a certificate from the applicant, the Nauru Revenue Office will confirm the Tax Identification Number.

(3) Opening a bank account in Nauru for your business, corporation, partnership, trust or association

- (a) With an extensive ‘know your customer’ procedure by the bank, this process can take varying timeframes in opening your bank account.
- (b) Your business, corporation, partnership, trust or association must already have a Tax Identification Number and other required documents like business licence, certificate of incorporation and director and shareholder details (if applicable), certificate of registration of partnership, certificate of registration of business licence, certificate of registration of trust, certificate of registration of association in order to obtain a bank account (if not yet obtained).

(4) The relevant laws can be downloaded as provided below:

- **BUSINESS REGISTRATION, BUSINESS LICENCING, SECURITY LICENCING, IMPORT LICENCING AND BENEFICIAL OWNERSHIP DIVISION**

- Business Names Registration Act 2018 & relevant regulations [insert link to the Act and Regulations]



Business Names
Registration Act 201

- Business Licences Act 2017 & relevant regulations [insert link to the Act and Regulations]



Business Licences
Act 2017 - Service 1.1

- Private Security Act 2012 & relevant regulations [insert link to the Act and Regulations]



Private Security Act
2012.pdf

- Customs (Prohibition of Imports) Proclamation No 1 2014



Customs
(Prohibition of Impo

- Beneficial Ownership Act 2017 & relevant regulations [insert link to the Act and Regulations]



Beneficial
Ownership Act 2017

- **CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND TRUSTS REGISTRATION DIVISION**

- Corporations Act 1972 and regulations [insert link to the Act and regulations]



Corporations Act
1972.pdf

- Partnership Act 2018 and regulations [insert link to the Act and regulations]



Partnership Act
2018.pdf

- Registration of Associations Act 2020 and regulations [insert link to the Act and regulations]



Registration of
Associations Act 202

- Trusts Act 2018 and regulations [insert link to the Act and regulations]



Trusts Act 2018.pdf

(5) The relevant forms can be downloaded as provided below:

- **BUSINESS REGISTRATION, BUSINESS LICENCING, SECURITY LICENCING, IMPORT LICENCING AND BENEFICIAL OWNERSHIP DIVISION**

- **Business Names Registration Regulations 2018**

- FORM 1 — APPLICATION FORM FOR REGISTRATION OF BUSINESS NAME BY AN INDIVIDUAL



Form 1 -
Application for regis

- FORM 2 — APPLICATION FORM FOR REGISTRATION OF BUSINESS NAME BY FIRM OR PARTNERS



FORM 2 —
APPLICATION FORM

- FORM 3 — APPLICATION FORM FOR REGISTRATION OF BUSINESS NAME BY CORPORATION AS A PARTNER IN A FIRM/TRADING IN ITS INCORPORATION NAME



FORM 3 -
APPLICATION FORM

- FORM 4 — APPLICATION FORM FOR REGISTRATION OF BUSINESS NAME BY A TRUST



FORM 4 —
APPLICATION FORM

- FORM 5 — NOTIFICATION FOR VARIATION OF PARTICULARS



FORM 5 —
NOTIFICATION FOR

- FORM 8 — APPLICATION FORM FOR TRANSFER OF CERTIFICATE



FORM 8 —
APPLICATION FORM

- FORM 9 — NOTICE OF CESSATION OF BUSINESS



FORM 9 — NOTICE
OF CESSATION OF B

- FORM 10 — APPLICATION FORM FOR RESTORATION OF BUSINESS NAME



FORM 10 —
APPLICATION FORM

- FORM 11 — ANNUAL RETURN



FORM 11 —
ANNUAL RETURN.pc

- **Business Licences Regulations 2018**

- FORM 1 — APPLICATION FORM FOR BUSINESS LICENCE BY AN INDIVIDUAL



FORM 1 —
APPLICATION FORM

- FORM 2 — APPLICATION FORM FOR BUSINESS LICENCE BY INDIVIDUAL PARTNERS FOR A FIRM



FORM 2 —
APPLICATION FORM

- FORM 3 — APPLICATION FORM FOR BUSINESS LICENCE BY CORPORATION AS A PARTNER IN A FIRM/TRADING UNDER A BUSINESS NAME REGISTERED UNDER THE BUSINESS NAMES REGISTRATION ACT 2018



FORM 3 —
APPLICATION FORM

- FORM 4 — APPLICATION FORM FOR BUSINESS LICENCE BY CORPORATION TRADING UNDER ITS INCORPORATED NAME



FORM 4 —
APPLICATION FORM

- FORM 5 — APPLICATION FORM FOR BUSINESS LICENCE FOR A TRUST



FORM 5 —
APPLICATION FORM

- FORM 8 — RENEWAL OF LICENCE



FORM 8 —
RENEWAL OF LICENCE

- FORM 9 — APPLICATION FOR TRANSFER OF LICENCE



FORM 9 —
APPLICATION FOR TRANSFER OF LICENCE

- FORM 10 — APPLICATION FOR VARIATION OF PARTICULARS



FORM 10 —
APPLICATION FOR VARIATION OF PARTICULARS

- FORM 11 — NOTICE OF CESSATION OF BUSINESS



FORM 11 —
NOTICE OF CESSATION OF BUSINESS

- FORM 12 — APPLICATION FORM FOR RESTORATION OF BUSINESS LICENCE



FORM 12 —
APPLICATION FORM FOR RESTORATION OF BUSINESS LICENCE

- **Business Licences (Regional Processing Centres and Settlements) Regulations 2017**

- SCHEDULE 1 - FORM — APPLICATION FOR SPECIAL CATEGORY OF BUSINESS LICENCE



SCHEDULE 1 -
FORM — APPLICATI

- SCHEDULE 2 - FORM — APPLICATION FOR SPECIAL CATEGORY OF BUSINESS LICENCE



SCHEDULE 2 -
FORM — APPLICATI

- **Private Security (Forms and Fees) Regulations 2019**

- FORM 1 — APPLICATION FORM FOR SECURITY LICENCE



FORM 1 —
APPLICATION FORM

- FORM 3 — RENEWAL OF LICENCE



FORM 3 —
RENEWAL OF LICEN

- FORM 4 — APPLICATION FOR VARIATION OF PARTICULARS



FORM 4 —
APPLICATION FOR V

- **Beneficial Ownership (Forms and Fees) Regulations 2018**

- FORM 1 — Notice of Appointment



FORM 1 — Notice
of Appointment.pdf

- FORM 2 — Notice of Change of Nominated Officer



FORM 2 — Notice
of Change of Nomir

- FORM 3 — Registration of Beneficial Ownership Information



FORM 3 —
Registration of Bene

- FORM 4 — Notice of Change of Beneficial Ownership
Information



FORM 4 — Notice
of Change of Benefi

- FORM 5 — Beneficial Ownership Information



FORM 5 - Beneficial
Ownership Informat

- FORM 6 — Annual Return



FORM 6 - Annual
Return.pdf

- **CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND TRUSTS REGISTRATION DIVISION**

- **Corporations (Forms and Fees) Regulations 2018**

SCHEDULE 2

- FORM 1 — APPLICATION FORM FOR INCORPORATION
OF CORPORATION



Schedule 2 - FORM
1 — APPLICATION FC

- FORM 2 — RENEWAL FORM FOR INCORPORATION OF CORPORATION



Schedule 2 - FORM
2 — RENEWAL FORM

- FORM 3 — CONSENT OF DIRECTORS



Schedule 2 - FORM
3 — CONSENT OF D

SCHEDULE 3

- FORM 1 — ANNUAL RETURN OF A CORPORATION



Schedule 3 - FORM
1 — ANNUAL RETUR

- Partnership (Forms and Fees) Regulations 2021

SCHEDULE 2

- FORM 1 — APPLICATION FORM FOR REGISTRATION OF PARTNERSHIP



Schedule 2 - FORM
1 — APPLICATION FC

- FORM 3 — APPLICATION FOR VARIATION OF PARTICULARS OF PARTNERSHIP



Schedule 2 - FORM
3 — APPLICATION FC

- FORM 4 — APPLICATION FOR TRANSFER OF CERTIFICATE OF REGISTRATION OF PARTNERSHIP



Schedule 2 - FORM
4 — APPLICATION FC

- FORM 5 — APPLICATION FORM FOR DUPLICATE COPY OF CERTIFICATE OF PARTNERSHIP



Schedule 2 - FORM
5 — APPLICATION FC

- FORM 6 — ANNUAL RETURN



Schedule 2 - FORM
6 — ANNUAL RETUR

- [Registration of Associations \(Forms and Fees\) Regulations 2021](#)

SCHEDULE 2 — FORMS

- FORM 1 — APPLICATION FORM FOR REGISTRATION OF ASSOCIATION



Schedule 2 - FORM
1 — APPLICATION FC

- FORM 3 — APPLICATION FORM FOR DUPLICATE COPY OF CERTIFICATE OF REGISTRATION



Schedule 2 - FORM
3 — APPLICATION FC

- FORM 4 — APPLICATION FORM FOR RENEWAL OF REGISTRATION OF ASSOCIATION



Schedule 2 - FORM
4 — APPLICATION FC

- FORM 5 — NOTICE TO SURRENDER CERTIFICATE OF REGISTRATION



Schedule 2 - FORM
5 — NOTICE TO SUR

- FORM 9 — NOTICE TO VARY OR AMEND REGISTRATION



Schedule 2 - FORM
9 — NOTICE TO VAR

- FORM 10 — NOTICE OF VOLUNTARY DISSOLUTION OF ASSOCIATION



Schedule 2 - FORM
10 — NOTICE OF VC

- FORM 11 — APPLICATION FORM FOR CERTIFICATE OF COMPLIANCE – FOREIGN ASSOCIATION



Schedule 2 - FORM
11 — APPLICATION F

- **Trusts (Forms and Fees) Regulations 2018**

SCHEDULE 1 — FORMS

- FORM 1 — APPLICATION FOR REGISTRATION OF A REGISTRABLE TRUST



Schedule 1 - FORM
1 — APPLICATION FOR

- FORM 3 — ANNUAL RETURN FOR REGISTERED TRUST



Schedule 1 - FORM
3 — ANNUAL RETURN

- FORM 5 — CHANGE OR VARIATION OF PARTICULARS



Schedule 1 - FORM
5 — CHANGE OR VARIATION

(6) The relevant fees can be downloaded as provided below:

- **BUSINESS REGISTRATION, BUSINESS LICENCING, SECURITY LICENCING, IMPORT LICENCING AND BENEFICIAL OWNERSHIP DIVISION**

- **Business Names Registration Regulations 2018**



Business Names
Fees.pdf

- **Business Licences Regulations 2018**



Business Licences
Regulations 2018 Fees

- **Business Licences (Regional Processing Centres and Settlements) Regulations 2017**

Fees for foreign companies



Business Licences
(Regional Processing)

Fees for local service providers



RPC Fees for local
service providers.pdf

- **Private Security (Forms and Fees) Regulations 2019**



Fees - Private
Security.pdf

- **Beneficial Ownership (Forms and Fees) Regulations 2018**



Beneficial
Ownership Fees.pdf

- CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND TRUSTS REGISTRATION DIVISION

- **Corporations (Forms and Fees) Regulations 2018**



Corporations
Fees.pdf

- **Partnership (Forms and Fees) Regulations 2021**



Partnership
Fees.pdf

- **Registration of Associations (Forms and Fees) Regulations 2021**



Association
Fees.pdf

- **Trusts (Forms and Fees) Regulations 2018**



Trusts Fees.pdf

(7) **STEP 2** – Submission of application at the Office of the Secretary for Justice and Border Control

(8) **STEP 3** – Consideration of application

- (a) applicant must submit the completed form with all required documents and information attached
- (b) first round of checks by Justice officer
- (c) second round of checks by legal officer before submission to the Secretary for consideration and determination

(9) **STEP 4** – Issuance of certificate / licence

10. REGISTERS KEPT BY THE SECRETARY FOR JUSTICE AND BORDER CONTROL

The Secretary keeps and maintains the following registers:

- (a) Register of Business Names pursuant to Section 5 of the Business Names Registration Act 2018, including the:
 - business name
 - business registration number
 - nature(s) of business
 - name of proprietor(s)
 - date of registration
 - principal place of business / registered place of business
 - fee
 - receipt number
 - tax identification number

- variation, if applicable
- status of licence, whether valid, expired or being processed

➤ **Who may access the Register of Business Names?**

- any person but subject to payment of prescribed fee [Section 5(3) of the Business Names Registration Act 2018]
 - ❖ fee for certified copy of an entry - \$25
 - ❖ fee for certified copy of entries in Register - \$25
- The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(b) Register of Business Licences pursuant to Section 5 of the Business Licences Act 2017, including the:

- business licence number
- business name
- nature(s) of business
- proprietor(s)
- principal place of business / registered place of business
- dated of issue of licence
- date of expiry of licence
- district of business
- fee
- payment receipt number
- status of application – new or renew
- business type – individual / partner / corporation / trust
- nationality of proprietor(s)
- gender of proprietor(s) if natural person
- phone contact
- email address
- Tax Identification Number
- remarks

➤ **Who may access the Register of Business Licences?**

- any person but subject to payment of prescribed fee [Section 5(2) of the Business Licences Act 2017]
 - ❖ fee for inspection of Register - \$25
 - ❖ fee for certified copy of entry in Register - \$25

- The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(c) Register of Partnerships pursuant to Section 7 of the Partnership Act 2018, including the:

- date of registration
- registration number
- name of partnership
- nature(s) of business
- proprietor(s)
- registered place of business
- Tax Identification Number
- phone number
- email address
- nominated officer for beneficial owner
- beneficial owner details

➤ **Who may access the Register of Partnerships?**

- any person but subject to payment of prescribed fee [Section 7(3) of the Partnership Act 2018]
 - ❖ fee for inspection of Register - \$25
 - ❖ fee for certified copy of entry in Register - \$25

- The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(d) Register of Trusts pursuant to Section 19 of the Trusts Act 2018

- details of trust: name, contact address, email address, telephone number, dated created, Tax Identification Number
- details of settlor: full name, nationality. Residential or business address, email address, telephone number, tax identification number
- details of trustees who are individuals: full name, nationality, residential or business address, email address, telephone number, date appointed, tax identification number

- details of corporate trustee: jurisdiction of incorporation, date of incorporation, business name, email address, telephone number, date appointed, Tax Identification Number
- details of a corporate protector: full legal name, jurisdiction of incorporation, date of incorporation, business address, email address, telephone number, date appointed, Tax Identification Number
- details of beneficiaries, full name, nationality, residential or business address, email address, telephone number, Tax Identification Number
- if beneficiary is a minor: full name, nationality, residential address, age and date of birth, date when minor attains age of majority, full names of minor's parents / legal guardian, telephone number of minor's parents / legal guardian, email address of minor's parents / legal guardian
- details of purpose and recipients of distributions (purpose of charitable trust only): full name, nationality, residential or business address, email address, telephone number, Tax Identification Number
- details of beneficial owner: full name, nationality, residential or business address, email address, telephone number, nature and extent of interest, Tax Identification Number

➤ **Who may access the Register of Trusts?**

- A trustee and not any member of the public [Section 19 of the Trusts Act 2018]
 - The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(e) Register of Corporations

- registration number
- name of corporation
- tax identification number
- principal place of business / registered place of business
- secretary (corporation)
- directors (corporation)
- shareholder(s) [corporation]
- nominated officer (beneficial owner)
- beneficial owner(s)
- authorised person (beneficial owner)
- phone number

- email address

➤ **Who may access the Register of Corporations?**

- any person but subject to payment of prescribed fee [Schedule 1 of the Corporations (Forms and Fees) Regulations 2018]
 - ❖ inspection of the Register - \$50
 - ❖ certified copy of entry in Register - \$100
- The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(f) Register of Associations pursuant to Section 11 of the Registration of Associations Act 2020

- registration number
- name of association
- date of registration
- date of expiry of the registration certificate
- date of renewal of registration certificate
- principal place of business / registered place of business
- executive members
- authorised person
- phone number
- email address

➤ **Who may access the Register of Associations?**

- any person but subject to payment of prescribed fee [Section 11(3) of the Registration of Associations Act 2020]
 - ❖ fee for inspection of Register - \$25
- The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(g) Register of security licences pursuant to Section 31 of the Private Security Act 2012

- security licence number

- name of security firm
- proprietor(s)
- dated of issuance of security licence
- date of expiry of licence
- principal place of business / registered place of business
- fee paid
- status of security licence, whether new / renewal
- phone contact
- email address
- Tax Identification Number
- number of employees

➤ **Who may access the Register of Private Security?**

- any person but subject to payment of prescribed fee [Schedule of the Private Security Act 2012]
 - ❖ fee for inspection of Register - \$25
 - The Licensing Authority retains discretion over who may access the Register in order to maintain the confidentiality of information.

(h) Register of Beneficial Owners pursuant to Section 20 of the Beneficial Ownership Act 2017

- name of legal entity
- beneficial owner(s)
- nominated officer
- authorised person

➤ **Who may access the Register of Beneficial Owners?**

- ❖ any person
 - The Registrar retains discretion over who may access the Register in order to maintain the confidentiality of information.

(i) Register of transfers / variations / cessations

- date of notification
- business name
- nature(s) of business

- proprietor(s)
- transfer / variation details
- fee for variation of business name certificate
- fee for variation of business licence
- receipt no of fees paid
- total fees paid

11. RECORD KEEPING BY BUSINESS OWNER / PROPRIETOR

(a) How to keep your business records?

- (i) You must keep your business records electronically or in paper form.
- (ii) Whichever you choose, you must make sure you store your records in a secure place. Back up your records and, if possible, have a secure off-site storage location, which may include cloud storage.
- (iii) If you are storing your records on a computer or device, make sure you have access to (including passwords), is backed up in case of computer failure and allows you to control the information that is processed, entered or sent.

(b) How long to keep business records for?

- (i) You must keep your business records for a minimum of 7 years, starting from when you prepared or obtained the records, or completed the transactions (or acts they relate to).
 - for business names records, 7 years pursuant to Section 30 of the Business Names Registration Act 2018
 - for business licences records, 7 years pursuant to Section 29 of the Business Licences Act 2017
 - for partnership records, 7 years pursuant to Section 45 of the Partnership Act 2018
 - for trusts records, 7 years pursuant to Section 25 of the Trusts Act 2018
 - for corporation records, 7 years pursuant to Section 134 of the Corporations Act 1972
 - for associations, 7 years pursuant to Section 32 of the Registration of Associations Act 2020
 - for required details and verifying information of beneficial owners, 7 years pursuant to Section 14 of the Beneficial Ownership Act 2017

12. DUTY TO KEEP THE SECRETARY FOR JUSTICE AND BORDER CONTROL INFORMED OF VARIATION / CHANGES / AMENDMENTS

- Pursuant to Section 17(1) of the Business Names Registration Act 2018, registrant must notify the Registrar within 7 days of any variation of the registered particulars
 - *Failure – liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both [Section 17(4)]*
 - Form 5, Schedule 3 of the Business Names Registration Regulations 2018 must be used when notifying the Registrar
- Pursuant to Section 21(1) of the Business Licences Act 2017, licensee must notify the Registrar within 7 days of any variation in registered particulars of the licence
 - *Failure – liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both [Section 17(4)]*
 - Form 10, Schedule 1 of the Business Licences Regulations 2018
- Pursuant to Section 14(1) of the Partnership Act 2018, partners must notify the Registrar within 7 days of any variation in registered particulars of the registered partnership
 - *Failure – liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both [Section 17(4)]*
 - Form 3 of Schedule 2 of the Partnership (Forms and Fees) Regulations 2021
- Pursuant to Section 127 of the Corporations Act 1972, a corporation must notify the Registrar within 14 days after any change
 - *Failure – liable to a fine not exceeding \$1,000 [Section 241(1)]*
- Pursuant to Section 226 of the Corporations Act 1972, a foreign corporation must, within one month after the change or an alteration, inform the Registrar of the particulars of the change or alteration
 - *Failure - liable to a fine not exceeding \$1,000 [Section 241(1)]*
- Pursuant to Section 26 of the Registration of Associations Act 2020, the executive of an association must notify the Registrar within 14 days of the variation or amendment
 - *Failure:*
 - (a) *the executive commits an offence and upon conviction each of them jointly or severally is liable to a fine not exceeding \$10,000 or term of imprisonment not exceeding 3 years or to both; and*

(b) the Registrar may cancel the certificate of registration of such association.

- Form 9, Schedule 2 of the Registration of Associations (Forms and Fees) Regulations 2020
- Pursuant to Regulation 6 of the Beneficial Ownership (Forms and Fees) Regulations 2018, a legal entity must inform the Authority within 30 days after the date of the decision of such change.
 - *Failure – liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 3 years or to both [Section 37 and Paragraph 7(1)(f) of the Schedule]*
 - Form 4 of Schedule 1 of the Beneficial Ownership (Forms and Fees) Regulations 2018

13. BENEFICIAL OWNERSHIP REQUIREMENTS

The Beneficial Ownership Guide is available as the Schedule to this document.

14. AML / CFT REQUIREMENTS [ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING]

Ongoing customer due diligence / simplified customer due diligence / enhanced customer due diligence requirements

Businesses should undertake customer due diligence measures / simplified customer due diligence measures / enhanced customer due diligence measures as required under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023.

For further assistance, you may contact the following persons:

- (a) Supervisor of Financial Intelligence Unit, Mr Rajas Swamy on email at: rajasswamy@gmail.com / phone contact at: 557338; and
- (b) Assistant Supervisor of Financial Intelligence Unit, Mr Bernard Grundler on email at: bernard.grundler@gmail.com

- ❖ Location of the FIU Office is at the Department of Justice, Government Offices, Yaren District

15. AML – CFT LAWS / LEGAL INSTRUMENTS

Below are laws relating to AML-CFT, which you can locate on this link: http://ronlaw.gov.nr/nauru_lpms/ or request a printed copy from the FIU Office of the Justice Office, including the:

- (a) Anti-Money Laundering and Targeted Financial Sanctions Act 2023 and Regulations
- (b) Proceeds of Crime Act 2004 and Regulations
- (c) United Nations Security Council Resolutions

<https://www.un.org/securitycouncil/content/resolutions-0>

- (d) Financial Action Task Force (FATF) 40 Recommendations

<https://www.fatfgafi.org/content/dam/fatfgafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>

16. OUR TEAM

At the Justice Office, our Team can guide you and your business through our laws and processes.

While these procedures may appear complicated, there are numerous resources available to assist you. Being meticulous and organised while completing these steps will help to streamline the procedure. Numerous businesses rely on the assistance of private local legal practitioners and the Office of the Public Legal Defender to ensure their success.

Our team at the Justice Office can assist you and your business in navigating our laws and procedures.

- Jay Udit – Secretary for Justice and Border Control
Email: jjjudit4@gmail.com
Phone: (674) 557 3505
- Mele Lemaki Tagivakatini – Legal Officer (assisting the Secretary)
Email: meletulemaki@gmail.com
Phone: (674) 557 3077
- Wylie Detenamo – Deputy Registrar of Corporations (assisting the Secretary)
Email: wdetenamo@gmail.com
Phone: (674) 5573756
- Camellia Renzo – Paralegal (assisting the Secretary)
Email: clararenzo7@gmail.com
Phone: (674) 557 9245
- Kosak Kosam – Business Inspector (assisting the Secretary)
Email: kosak.kosam@gmail.com

- Kayla Akua – Paralegal (assisting the Secretary)
Email: kaylaakua49@gmail.com

17. OUR LOCATION

Office of the Secretary for Justice and Border Control
Department of Justice and Border Control
Ground Floor
Government Buildings
Yaren District
Republic of Nauru

SCHEDULE



BENEFICIAL OWNERSHIP GUIDE

OFFICE OF THE AUTHORITY

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Introduction

Nauru has different forms of registration of businesses. These are by registration of business names, partnerships, trusts and corporations. Partnerships, trusts and corporations are legal persons. The International Community established the Financial Actions Task Force (FATF). One of the important things which the FATF has given to the International Community is the 40 FATF Recommendations. Nauru as a sovereign nation has obligations towards its international commitments. One of the commitments is to ensure that Nauru is able to comply with *Recommendations 24* and *25* of the FATF Recommendations. These Recommendations are discussed later.

The subject matter of these Recommendations is beneficial ownership. This Guide is to provide assistance to all relevant entities and bodies to understand the requirements of beneficial ownership.

The relevant laws

The laws which a legal entity and its Senior management staff and beneficial owners must familiarise with are:

(a) *Beneficial Ownership Act*

- *Beneficial Ownership (Forms and Fees) Regulations 2018*
- *Beneficial Ownership (Identification and Declaration) Regulations 2023*

In addition to this, the legal entities should also be familiar with the requirement for registration of legal entities:

(a) *Corporations Act 1972*

- *Corporations (Registration of Existing Companies) Regulations 1972*
- *Corporation (Winding-up) Rules 1972*
- *Corporation (Appeals) Rules 1972*
- *Corporation (Forms) Regulations 1972*
- *Corporation (Prescribed Fees) Regulations 1972*
- *Corporation (Appeal Fees) Regulations 1973*
- *Corporation (Shares Expressed in Other currencies) Regulations 1976*
- *Corporations (Forms and Fees) Regulations 2018*

(b) *Partnership Act 2017;*

- *Partnership (Forms and Fees) Regulations 2021*

- (c) *Trusts Act 2018*;
- *Trusts (Forms and Fees) Regulations 2018*
 - *Trusts (Trustee Duties) Regulations 2023*

For the purposes of AML/CFT beneficial ownership is also important. In that regard all legal entities, senior management and the beneficial owners must familiarize with the following laws:

- (a) *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*
- *Anti-Money Laundering and Targeted Financial Sanctions (Suspicious Activity Report) Regulations 2023*
 - *Anti-Money Laundering and Targeted Financial Sanctions (Record Keeping) Regulations 2023*
 - *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023*
- (b) *Proceeds of Crime Act 2004*
- *Proceeds of Crime (Border Declaration Form) Regulations 2023*
 - *Proceeds of Crime (Miscellaneous) Regulations 2023*
- (c) *Counter Terrorism and Transnational Organised Crime Act 2004*

The relevant office for which registration purposes are required are:

- (a) Authority – currently Secretary for Justice and Border Control;
- (b) Registrar of Corporations – currently Secretary for Justice and Border Control;
- (c) Registrar of Partnerships – currently Secretary for Justice and Border Control; and
- (d) Registrar of Trusts – currently Secretary for Justice and Border Control.

For the purposes of Anti-Money Laundering and Terrorist Financing requirements including the 40 FATF Recommendations, the supervision authority is the:

- (a) Financial Intelligence Unit – based in the Department of Justice and Border Control; and
- (b) Supervisor of FIU – Nauru Financial Intelligence Unit Office.

Nauru's legal position

Nauru has a *Beneficial Ownership Act 2017*. Section 5 provides for the definition of 'beneficial owner'. It states as follows:

'Meaning of beneficial owner

- (1) In this Act, 'beneficial owner' means a natural person:
- (a) who has ultimate control, directly or indirectly, over the legal entity;
 - (b) who ultimately owns, directly or indirectly, the legal entity;
 - (c) on whose behalf a legal entity is created; or
 - (d) on whose behalf a transaction is conducted.
- (2) Where 2 or more natural persons each own or control an interest in a legal entity to which this Act applies, each of them is treated for the purpose of this Act as owning or controlling that interest.
- (3) The Authority in determining the beneficial owner may trace through any number of persons or arrangements to any person who is the owner or has effective control of any owner's interest.
- (4) The Minister in consultation with the Cabinet may issue guidance to the meaning or interpretation of 'beneficial owner', 'owner', 'control', or 'legal owner' which shall be binding on entities or persons to which it applies.
- (5) The guidance issued under subsection (4) shall be published in the Gazette or notified by the Authority in a manner the Authority considers necessary for general public awareness.
- (6) The Cabinet may make regulations to amend, vary or add to the definition of a beneficial owner.'

In 2018, Nauru was assessed by the Global Forum, Organization for Economic Cooperation and Development (OECD). One of the issues that was considered by the OECD was the definition of beneficial ownership, which was then accepted to be in conformity with the requirements internationally. There was a requirement to have a threshold of the ownership. This was not done and is not anticipated to be done because of the small number of corporations. Also, the corporation structures and operations are not complex.

FATF requirements

Recommendation 24 of the FATF Standards requires transparency of beneficial ownership of legal persons and arrangements. *Recommendation 24* provides as follows:

'Countries should assess the risks of misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse. Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities, through either a register of beneficial ownership or an alternative mechanism. Countries should not permit legal persons to issue new bearer shares or bearer share warrants, and take measures to prevent the misuse of existing bearer shares and bearer share warrants. Countries should take effective measures to ensure that nominee shareholders and directors are not misused for money laundering or terrorist financing. Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBBs undertaking the requirements set out in Recommendations 10 and 22.'

Recommendation 25 provides:

‘Countries should assess the risks of the misuse of legal arrangements for money laundering or terrorist financing and take measures to prevent their misuse. In particular, countries should ensure that there is adequate, accurate and up-to-date information on express trusts and other similar legal arrangements including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed efficiently and in a timely manner by competent authorities. Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBSs undertaking the requirements set out in Recommendations 10 and 22.’

The initial requirement of beneficial ownership was limited to a natural person who has:

- (a) ultimate control directly or indirectly over the legal entity;
- (b) ultimately owns directly or indirectly the legal entity; and
- (c) on whose behalf the legal entity was created.

The objective was to ensure that legal entities must disclose or provide means to disclose a natural person. By ‘*natural person*’ it is meant, a human being. The reason to get to the natural person was because a legal entity does not act on its own. It always requires a natural person to make and implement decisions. The legal entities normally do not show the face or identity of these person. These persons are shareholders, beneficiaries or had other forms of interest which gave them legal ownership or some power or authority to control legal entities.

Extension of definition of beneficial ownership

Until March 2022, the beneficial ownership was left largely to legal ownership. In other words, the natural person was synonymous with beneficial owner if he or she had the final control of a legal entity. In March 2022, the FATF rule changed and it required a more detailed statement of the beneficial owners. This Manual guides all legal entities on what the additional criterion is.

Beneficial owner by virtue of transaction

One of the fundamental changes to the recommendation is that it also captures a person who conducts any transaction on behalf of a legal entity. This criterion becomes applicable where any person dealing with the legal entity is not able to trace the actual beneficial owners that could be due to non-availability of information or very complex nature of the corporate or legal entities hierarchies. This additional requirement now where any person who is conducting a transaction on behalf of a legal entity, and the actual beneficial owners are not traceable, makes the person conducting the transaction the beneficial owner.

To demonstrate, we take the situation of a legal entity named **Buada Pty Ltd**. It has beneficial owners **X, Y and Z**. They cannot be traced nor the records in the Corporations Office or with the Registrar of Corporations Office are able to trace them. Buada Pty Ltd seeks a loan from the Bank. As part of the Bank's customer due diligence, it will need to know the shareholders who are the ultimate natural persons as legal owners of the corporations. **John** is the Chairperson of the Board of Directors of the Corporation. Since no shareholders can be traced and the Bank is happy to grant the loan, in that case, John will be a beneficial owner as he is the natural person who has taken the benefit for the entity.

This applies to corporations and partnerships.

Indirectly or otherwise

As it can be seen from the definition in the *Beneficial Ownership Act 2017*, it refers to ultimate control indirectly, 'ultimately owns indirectly' or 'on whose behalf a legal entity is created'. These phrases or clauses requires further clarification for all legal entities to ensure that they are able to comply with the requirements of FATF *Recommendation 24* and also the *Beneficial Ownership Act 2020*. This guide provides circumstances by which each of the legal entities are to identify the beneficial owners. This applies to Corporations, Partnerships and Trusts.

To guide the Secretary of the Corporation, nominated officers under the *Beneficial Ownership Act 2017* or any other authorised person by the legal entity that in completing and filing the beneficial ownership, the requirements discussed below applies.

Corporations

Corporations are registered under the *Corporations Act 1972*. The Act is available on RONLAW without any charge or fee. The type of corporation registered in Nauru are limited liability corporations.

The corporations that are registered to a large extent rely on the *Memorandum of Arrangement* and the Articles for Management of a Trading/Holding Corporations. The Memorandum of Arrangement appears as 'The Powers of a Corporation' in *Schedule 1* of the *Corporations Act 1972*. The Articles of Management of a Trading Corporation appears as *Schedule 2* of the *Corporations Act 1972*. The powers of corporation which is ordinarily referred to the as the Memorandum of Association sets out the legal parameters of the operations of a corporation. This is the document which to any person outside the corporation identifies the nature of business and operations of that corporation. On the other hand, the Articles of Association is a document which provides for the internal operations and shareholders arrangements. These 2 documents are fundamental to understanding the beneficial ownership requirements.

In the additional requirement for registering beneficial ownership, a corporation will now be required to undertake the following:

(a) Shares

A corporation is owned by a natural person by virtue of shares. In other words, a person can only be an owner of a corporation if he or she has shares. The shares can form in many classes and for many purposes. The most common is that everyone has shares which has the same powers for all shareholders. The shares can also be in different classes where one class of shares may have more privileges, rights or able to manage and control the operations of the corporation.

The beneficial ownership requirements now require analysis of the actual class of shares and whether any of those affect the management and control of a corporation. If a shareholder has some additional rights or classes of shares through which he or she is able to control the operations and management of the corporation, that becomes an ‘*indirect control*’.

Example 1: A shareholder may have special rights for making decisions on contracts with which the corporation may enter into.

Where there are different classes of shares, shareholder will hold those shares in the respective classes. If John holds Class A shares (which has the preferential voting powers) and Sylvia owns Class B shares (ordinary shares). Although John may only have 20% shares and Sylvia has 60% shares, because John has a preferential share, John will be able to make the decision of the corporation in place of Sylvia. This can happen in an example where dividends of a corporation is to be declared for payment. Sylvia would want the dividends paid but John disagrees. If John has the preferential shares to make the decision on dividend payment, his decision prevails over Sylvia’s.

(b) Power to appoint the Board Members

The Articles of Association of a corporation provides means by which the Board of Directors of a corporation are to be appointed. Normally all the Directors have the same rights to choose the best persons who could look after the interest of the corporation as a whole. However, it can also be possible that due to the strength and the holding of majority capital shares a shareholder may have special rights for appointment of the Board of Directors.

Example 1: An example of 3 Board Members if John, a shareholder has the power to appoint the chairperson and Sylvia as a shareholder has the right to appoint the other 2

Board Members, Sylvia will have control of the Board of the corporation if the 2 Directors take instructions from Sylvia on matters where the Board may have to vote.

Example 2: In the same scenario as above, John may have an opportunity to take management and control of the operation. This can happen where there is an arrangement in the Articles of Association by which the Chairperson of the Board has the right to veto the decision of the majority shareholders. In this example, John has the ultimate control of the corporation indirectly or otherwise.

(c) Power to appoint Senior Management Staff

The operations of a corporation are dependent upon the work of the senior management staff. If one shareholder has certain rights contained in the shareholders Articles of Association by which he or she is able to take control on the appointment of Senior Management staff of the corporation.

Example: Sylvia has special rights attached to her shares by which she has the power to appoint the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO). These 2 officers in many cases will decide the general operation and business of the corporation. Although John is a shareholder, he will have no control on this appointment. This gives Sylvia a preference over John on the operations of the corporation by virtue of the staff she appoints as the CEO and the CFO. In that case Sylvia becomes a beneficial owner having the ultimate control of the corporation, because she may be able to direct the CEO or the CFO or both of them to take a particular decision she would like to see being made on behalf of the corporation.

(d) Administrative or contractual arrangement with legal entity or shareholders

This is another means where a shareholder or person may have indirect control of a corporation. This is by entering into administrative or contractual arrangement with a legal entity or shareholders separately.

Example 1: John as a shareholder may contribute to providing some special service or support to the legal entity without charging any fees. Instead of the fees he enters into an arrangement by which he would be able to make some decisions in the corporation irrespective of the views of the majority of the directors. This will have concurrence of shareholders or majority shareholders.

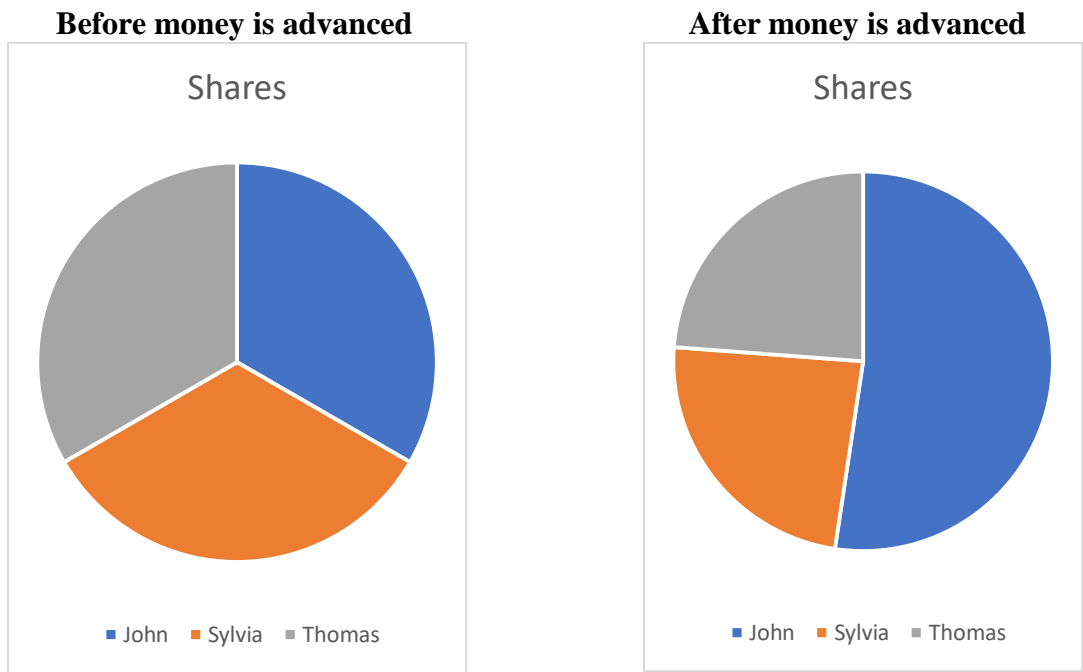
Example 2: John may enter into an arrangement or understanding with other shareholders so that other shareholders can vote with him on any matter in a corporation. If the

shareholders vote with John on a particular matter or issue and he is successful, he will have indirect control of the corporation.

(e) Providing financial support to the corporation when needed

This is another situation where a shareholder who has sufficient wealth will be able to manipulate the shareholding arrangements of a corporation. He would legally lend money to the corporation. When the corporation is not able to pay the money back, he would require the other shareholders to raise capital shares of a corporation so that he is able to acquire those shares as part of the corporation discharging his debt.

Example: John, Sylvia and Thomas each have 30,000 shares in a 90,000-share corporation. The corporation needs finance to conduct some business. John advances the money to the corporation with approval of Sylvia and Thomas. For instance, he advances \$50,000. The corporation is unable to pay the debt as such John can demand the payment of the money and wind up the corporation. It is in the interest of all the shareholders to ensure that the corporation continues to operate, as they all see there is a bright future for the corporation. John can encourage or even force Sylvia and Thomas to make a decision on the \$50,000 in repayment or winding up of the corporation. If each nominal share is worth \$1.50, John can convert all the \$50,000 into shares. He gets 33,000 shares. By this way he now accumulates 66,000 shares. He is in a stronger position than the 2 combined who hold only 60,000 shares. If the shares are ordinary, John has taken the ultimate control of the corporation by advancing money and now becomes a legal owner of 66,000 which is 52% holdings in the corporation.



(f) Any other type of control

There can be other forms of arrangements by which a beneficial owner may take control or management of the corporation.

Partnership

Partnership is another form of legal entity for the purposes of *Recommendation 24* of the FATF. Nauru also recognises partnership as a legal entity under the *Partnership Act 2018*. Partnership is a different form or arrangement than a corporation. Partners are to be registered at the time when the partnership is actually registered with the Registrar of Partnerships.

In registering a partnership, all the partners are to enter into a partnership agreement. The partnership agreement needs to be filed with the Registrar of Partnerships. Normally the partnership agreement should state the respective shares each partner holds. Nauru's law has a default clause by which if the Partnership Agreement does not disclose the respective shares, it is deemed that all shareholders have equal shares.

Under the FATF rules also Nauruan law, a partner who is duly registered or has ownership by virtue of the Partnership Agreement is a beneficial owner by virtue of a legal owner. However, it is important to know how a partnership can be indirectly or otherwise controlled.

A partnership can be controlled indirectly or otherwise as follows:

- (a) controls absolute decision-making power or has veto rights in the operations and management of the partnership. This is when in a Partnership Agreement, the Partner may have a greater percentage of the shares or from the time when the Partnership is established, he has ensured to retain the decision making and management of the Partnership.
- (b) holds the power, directly or indirectly, to appoint or remove any partner of the partnership. A person only joins a Partnership if he or she is invited or may be through years of work in the Partnership. The rationale for taking more partners in a Partnership is not important for beneficial ownership. The requirement for indirect or direct control for the partnership for the purposes of beneficial ownership is when a particular partner or partners have the absolute authority to appoint or remove a partner. This is important because every partner in the partnership contributes to the decision making of the partnership. The removal of a partner would enable the remaining partners to make the decision which they intend to make. Equally, they may appoint an additional partner to outvote the remaining partners who may oppose a particular decision. By appointing a new partner, the partners who have control on the appointment or the removal of a partner would be able to make a decision which he or they intend to make.

- (c) is entitled to assets of the partnership in the event of dissolution of the partnership. This is an essential requirement in considering beneficial ownership in that if a partner has the final interest in the assets of the partnership, when it is dissolved, certainly it can be inferred that the decision making would be affected by this ultimate benefit. In that way he or she will also have indirect control of the management and operations of the partnership or its assets.
- (d) has the power or authority to declare or make decisions for profit sharing of the partnership. The establishment of partnership no doubt is all geared towards making profit. The partners enjoy the benefits of all the profits. If a partner controls on the declaration of the profits, certainly he has an indirect control on the operations of the partnership. Other partners may have to sometimes accede to the requests or demands of the partner who has such power. In that way the partner has indirect control of the partnership.
- (e) has the power or authority to declare or make decisions on retention of profits for capital investments in the partnership. This goes to the requirement that profits must be shared or alternatively invested in the partnership. If a partner has the authority to retain more of the profits as investments in partnership, he has indirect control of the actual declaration of profits for sharing as dividends by the partners. He indirectly controls the partnership.
- (f) has the power or authority to amend the partnership instrument. This is a very crucial power or authority. If a partner is able to change the partnership instrument without any reservations, he or she actually meddles with the entire partnership structure. By changing the partnership instrument, he or she indirectly controls or will be able to control the partnership.
- (g) has any other form of control of a partnership other than by direct control of ownership of any interests.
- (h) in relation to transactions, the discussion above, under the heading ‘*Beneficial ownership by virtue of transactions*’ also applies to partnerships.

Trusts

A trust is also another form of legal entity recognised under the FATF Standards. The trusts in Nauru are governed by the *Trusts Act 2018*. A ‘*beneficial owner*’ under the *Trusts Act 2018* is defined as

‘beneficial owner’ in relation to a registrable trust means a natural person including but not limited to a settlor, trustee, the protector (if any), the beneficiary:

- (a) *who has ultimate control, directly or indirectly, over the trust;*
- (b) *who ultimately own, directly or indirectly, the trust;*

- (c) *on whose behalf a trust is created; or*
- (d) *on whose behalf a transaction is conducted.*'

The FATF requires the additional requirements for beneficial ownership for trusts based on transactions carried on behalf of the trust where the beneficial owners are not traceable. The requirement for transactions and identification for beneficial owners for trusts is different from corporations and partnerships.

The FATF and our laws provides the means by which beneficial owners of trusts can be identified for the purposes of being registered as beneficial owners. These are:

- (a) a trustee, *trustee de son tort* or similar position as trustee:

A trustee is normally provided for in the trust instrument. The trustee is the beneficial owner by virtue of having the management and control of the trust under the *Trusts Act 2018* and common law.

The FATF also refers to any other person who may be performing the role of the trustee.

In trusts, it is not unusual that on certain occasions in disputes, other persons meddle with the operations of the trust. In law this category of persons are regarded as *trustee de son tort*. Their decision can also affect the management and control of the trust. By acting in that manner, a *trustee de son tort* may make decisions for the trust or take over the management and control of the trust. He or she will be regarded as a beneficial owner.

- (b) is a settlor.

A settlor actually establishes or creates a trust. Where settlor appoints trustees or other persons to have the management and control of the trust, in law those persons appointed should have the control and management of the trust. However, there would be circumstances where the settlor by writing or actions would be able to change the trust, terms and conditions or make decisions for the trust and required the trustees to implement such decisions. In the latter case, he or she will not be making a decision directly but the decision which he or she wants will be made through the people he or she appoints. If the settlor does not relinquish all his or her rights, power or authority and control over the trust he or she will at all times may have some right indirectly to manage and control the trust. He or she could also use the beneficiaries of the trust to take management and control of the trust. If the settlor retains any such powers or assumes an ostensible authority to manage and control the trust for the purposes of Nauruan law he or she will be a beneficial owner.

- (c) is a protector:

A protector for a trust is a person who is not the settlor, trustee or the beneficiary but an agent engaged as the third party to manage and control the trust or control the actions of the trustees. This could be power of attorneys, guardians appointed by beneficiaries or professional advisers. The protector is normally a person who is disinterested in the trust or as to who exercises the power over the terms of the trust. He or she actually performs the role of the trustee. The third party may represent a class of beneficiaries which will also have influence on the decision making on the management and control of the trust.

(d) is a beneficiary or class of beneficiaries:

The beneficiaries in a trust also play a substantive role. Where the beneficiaries are able to control or direct the trustees in respect of the matters of trust, the beneficiaries will be treated as beneficial owners. This particularly happens where a class of beneficiaries who may have sufficient numbers for purposes of a trust to make decisions through voting or other democratic processes. In that way, beneficiaries can also coerce trustees to make a particular decision. The decision-making process itself affects the management and control of the trust.

(e) is a guardian, holds power of attorney holders or any other person acting on behalf of the trustee, settlor, protector, beneficiaries or class of beneficiaries where the trustee, settlor, protector, beneficiaries or class of beneficiaries is not ascertainable.

(f) any other natural person exercising ultimate effective control over the trust including any other person who has under the instrument creating the trust or power to:

- (i) amend the trust deed;
- (ii) direct investment decision of the trust;
- (iii) revoke the trust;
- (iv) appoint or remove any of the trustee of the trust; or
- (v) direct the distribution of assets or funds of the trust.

Obligation of the entity

It is a requirement of the legal entity to at all times maintain ‘*adequate, accurate and current beneficial ownership information*’.

The FATF requires **adequate** beneficial ownership details to ensure it is sufficiently capable of identifying who the beneficial owner is. The information should be sufficient through which any person would be able to identify who is the person who has beneficial ownership control.

The FATF also requires that **accurate** information be kept. In other words, the details of the beneficial owners must be in accordance with the requirements of the *Beneficial Ownership Act 2017* and the Regulations. If there is any change or any details are wrongly recorded, it must be corrected by the entity.

The FATF also requires the information to be **current**. The requirement for current information is that any changes or variations should be provided to the nominated officer as soon as possible. Nauru's law requires such information to be provided by the beneficial owner or the entity to the nominated officer within 1 month. The nominated officer is required to provide that information to the Beneficial Ownership Authority within 30 days of the receipt of the information. Failure to comply with this requirement is an offence for which the entity, beneficial owner or the nominated officer are all capable of being prosecuted.

Obligation of the beneficial owner

A beneficial owner as defined above in simplest form is a person who has direct ownership or control of a legal entity. Indirect or other means have also been discussed above. The Guide gives every individual dealing with a legal entity to be able to ascertain if he or she becomes a beneficial owner directly or indirectly or by carrying out a transaction on behalf of a legal entity.

If any person who by virtue of his or her own conduct or request of any other parties undertakes any of the activities discussed in relation to corporations, partnerships or trusts *prima facie* becomes a beneficial owner. Once a person falls in that category, it is the duty of that person to fill the beneficial ownership form clearly stating the grounds on which he or she claims to be a beneficial owner. Once the form is given to the entity or the nominated officer, it will then be up to the nominated officer to decide whether the person is or is not a beneficial owner.

What happens if there is dispute of beneficial ownership

It is important to note that a beneficial ownership is not a title. It is a person who has the ultimate control of a legal entity. In other words, he or she also receives the ultimate benefits from the operations of the entity. Therefore, the benefit itself lays out an incentive by which parties are likely to have disputes over beneficial ownership.

The law provides that such disputes can be resolved through courts. Also, the parties can request an arbitration to resolve the dispute. A more sensible and practical approach is to hold a mediation by which the issue can be resolved.

What happens on beneficial ownership when there is a dispute

Where there is a dispute on beneficial ownership, the records kept by the Beneficial Ownership Authority remains current for the purposes of ensuring that beneficial ownership information remains current.

When to register beneficial ownership

A legal entity should register beneficial ownership at the time of the creation of the legal entity. Otherwise the beneficial ownership is to be registered as soon as practicable after the creation of the legal entity. Nauru's law requires this to be registered in 30 days from the time of registration or creation of the legal entity.

How to register beneficial ownership

Section 21 of the Beneficial Ownership Act 2017 makes provision on how to register beneficial ownership with the Authority. The *Beneficial Ownership (Forms and Fees) Regulations 2018* provide for the respective forms that need to be completed and submitted to the Authority. The forms can be obtained online from RONLAW. Copies can also be obtained from the Office of the Authority which is the Department of Justice and Border Control. If you are overseas you can also contact the relevant officers by email.

Appointment of nominated officers

Nauru does not have nominated officers from outside the legal entity. It is the obligation of the legal entity to appoint a nominated officer for the purposes of maintaining the records of beneficial ownership and also liaising with the Beneficial Ownership Authority. A nominated officer has to be a citizen or resident of Nauru. The records of the legal entity will be kept and maintained all throughout the operations of the entity.

What happens to the beneficial ownership information when the legal entity is wound up, dissolved or ceases operation?

When a legal entity is wound up, dissolved or ceases operate on, the nominated officer is required to keep the records for 7 years from the date the entity is wound up, dissolved or ceases operations.

What happens to the records if the nominated officer intends to leave Nauru?

If the nominated officer is for one reason or another intends to leave Nauru or becomes completely incapacitated from keeping the records, he or she must submit all the records to the Authority. The Authority is also required to keep the records of beneficial ownership for at least 7 years.

Obligations of sharing information

As a legal entity, foreign legal entities or authorities may require information on beneficial ownership directly from the legal entities. It is important that where such information is provided, it is provided adequately, accurately and with current beneficial ownership information. If you are unsure of how the information is to be provided, it is important to contact the Authority.

The Authority also has an obligation to share the information on beneficial ownership to foreign authorities. Therefore, the information you provide is required to be made available to other parties without seeking consent from you. The Authority is required to keep adequate, accurate and current beneficial ownership information.

The FATF rule requires that where a request is sought by foreign entities, quality information is provided. Quality information means it is information that is required to be adequate, accurate and current.

Database of beneficial ownership

The law requires the Authority to maintain a database of all the beneficial ownership information. This information currently is kept with the Authority. It is intended that this information will be made available on the database. Only limited information will be available publicly. If detailed information is required, it will be provided on the payment of a statutory fee.

Who has access to the information?

The law requires that the information must be accessible to any person which also include foreign nationals, entities or authorities.

The Authority also is required to provide information under *Section 16* of the Act to:

- (a) Financial Intelligence Unit;
- (b) Solicitor General;
- (c) Nauru Revenue Office;

- (d) Authority;
- (e) Nauru Police Force;
- (f) Chief Collector of Customs or any nominated officer of the Customs Office; or
- (g) Director of Public Prosecutions.

The FATF Recommendation requires that the data be made available publicly. Every effort is made by the Authority to establish a database of the beneficial ownership which can be accessed electronically with the necessary security mechanisms in place. We intend to have this in place by December 2023 together with the website for the Department for Justice and Border Control.

Contact Details for the Authority:	
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