



Anti-money laundering and counter-terrorist financing measures

Nauru

Mutual Evaluation Report

November 2024





The Asia/Pacific Group on Money Laundering (APG) is an inter-governmental organisation consisting of 42 members in the Asia-Pacific region, as well as organisations, and observers from outside the region.

Under Article 1 of the APG Terms of Reference 2019 (amended 2023), the APG is a non-political, technical body, whose members are committed to the effective implementation and enforcement of the internationally accepted standards against money laundering, financing of terrorism and proliferation financing set by the Financial Action Task Force.

This document, any expression herein, and/or any map included herein, are without prejudice to the status of, or sovereignty over, any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Under the APG Terms of Reference, membership in the APG is open to jurisdictions which have a presence in the Asia-Pacific region.

For more information about the APG, please visit the website: www.apgml.org

This report was adopted by the APG membership at its annual meeting in September 2024.

Citing reference:

APG 2023, *Anti-money laundering and counter-terrorist financing measures – Nauru*, Third Round Mutual Evaluation Report, APG, Sydney
<https://apgml.org/includes/handlers/get-document.ashx?d=822d38ac-b206-497c-bbbe-398dfa407f37>

© November 2024 APG

No reproduction or translation of this publication may be made without prior written permission. Applications for permission to reproduce all or part of this publication should be made to:

APG Secretariat
Locked Bag A3000
Sydney South
New South Wales 1232
AUSTRALIA
Tel: +61 2 5126 9110

E mail: mail@apgml.org
Web: www.apgml.org

Cover image courtesy of: Nauru Financial Intelligence Unit

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
Key Findings	4
Risks and General Situation.....	6
Overall Level of Effectiveness and Technical Compliance	7
Priority Actions	13
Effectiveness & Technical Compliance Ratings	14
MUTUAL EVALUATION REPORT OF NAURU	15
Preface.....	15
CHAPTER 1. ML/TF RISKS AND CONTEXT.....	16
ML/TF Risks and Scoping of Higher-Risk Issues	17
Materiality.....	21
Structural Elements.....	22
Background and other Contextual Factors.....	24
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION	30
Key Findings and Recommended Actions	30
Immediate Outcome 1 (Risk, Policy and Coordination).....	31
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES	39
Key Findings and Recommended Actions	39
Immediate Outcome 6 (Financial intelligence ML/TF).....	43
Immediate Outcome 7 (ML investigation and prosecution).....	50
Immediate Outcome 8 (Confiscation).....	57
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION.....	63
Key Findings and Recommended Actions	63
Immediate Outcome 9 (TF investigation and prosecution).....	66
Immediate Outcome 10 (TF preventive measures and financial sanctions).....	68
Immediate Outcome 11 (PF financial sanctions)	71
CHAPTER 5. PREVENTIVE MEASURES	74
Key Findings and Recommended Actions	74
Immediate Outcome 4 (Preventive Measures).....	74
CHAPTER 6. SUPERVISION	79
Key Findings and Recommended Actions	79
Immediate Outcome 3 (Supervision)	79
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS.....	84
Key Findings and Recommended Actions	84
Immediate Outcome 5 (Legal Persons and Arrangements)	85
CHAPTER 8. INTERNATIONAL COOPERATION	93
Key Findings and Recommended Actions	93
Immediate Outcome 2 (International Cooperation)	94

TECHNICAL COMPLIANCE ANNEX	98
Recommendation 1 - Assessing Risks and applying a Risk-Based Approach	98
Recommendation 2 - National Cooperation and Coordination	101
Recommendation 3 - Money laundering offence	102
Recommendation 4 - Confiscation and provisional measures	105
Recommendation 5 - Terrorist financing offence.....	108
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing.....	111
Recommendation 7 - Targeted Financial sanctions related to proliferation.....	116
Recommendation 8 - Non-profit organisations	118
Recommendation 9 - Financial institution secrecy laws.....	121
Recommendation 10 - Customer due diligence	121
Recommendation 11 - Record-keeping	125
Recommendation 12 - Politically exposed persons.....	126
Recommendation 13 - Correspondent banking.....	127
Recommendation 14 - Money or value transfer services.....	127
Recommendation 15 - New technologies	128
Recommendation 16 - Wire transfers	132
Recommendation 17 - Reliance on third parties	134
Recommendation 18 - Internal controls and foreign branches and subsidiaries.....	135
Recommendation 19 - Higher-risk countries.....	136
Recommendation 20 - Reporting of suspicious transaction.....	137
Recommendation 21 - Tipping-off and confidentiality	138
Recommendation 22 - DNFBPs: Customer due diligence	138
Recommendation 23 - DNFBPs: Other measures	139
Recommendation 24 - Transparency and beneficial ownership of legal persons	140
Recommendation 25 - Transparency and beneficial ownership of legal arrangements.....	154
Recommendation 26 - Regulation and supervision of financial institutions	162
Recommendation 27 - Powers of supervisors	163
Recommendation 28 - Regulation and supervision of DNFBPs.....	164
Recommendation 29 - Financial intelligence units	166
Recommendation 30 - Responsibilities of law enforcement and investigative authorities.....	169
Recommendation 31 - Powers of law enforcement and investigative authorities.....	171
Recommendation 32 - Cash Couriers.....	175
Recommendation 33 - Statistics.....	179
Recommendation 34 - Guidance and feedback.....	180
Recommendation 35 - Sanctions.....	180
Recommendation 36 - International instruments	184
Recommendation 37 - Mutual legal assistance.....	185
Recommendation 38 - Mutual legal assistance: freezing and confiscation	188
Recommendation 39 - Extradition.....	189
Recommendation 40 - Other forms of international cooperation.....	190
Summary of Technical Compliance - Key Deficiencies	196
GLOSSARY	202
ANNEX A - PREDICATE OFFENCES FOR ML.....	204

EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in the Republic of Nauru (Nauru) as at the date of the on-site visit 9-16 October 2023. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Nauru's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- 1) Nauru is a low-risk jurisdiction for money laundering and terrorist financing (ML/TF), with two National Risk Assessments (NRAs), published in 2018 and 2023.
- 2) Nauru has a robust legislative framework for AML/CFT preventive measures, counter-terrorism financing and targeted financial sanctions (TFS), through the Counter Terrorism and Transnational Organised Crime (Amendment) Act 2020, the AML-TFS Act 2023 and the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations. The AML-TFS Act 2023 covers all reporting entities that fall in the FATF definitions of FIs and DNFBPs.
- 3) There are a limited number of reporting entities in operation in Nauru: one MVTS provider, four law firms and one gaming operator. Understanding of ML/TF risks and AML/CFT obligations varies among them, and no suspicious reports have been filed with the Nauru Financial Intelligence Unit (NFIU).
- 4) Information on the creation and types of legal persons and arrangements, including trusts, companies, and beneficial ownership details, is readily available from the Registry that sits within the Department of Justice and Border Control. The overall ML/TF risk posed by abuse of legal persons is likely to be low due to the primarily domestic nature of businesses.
- 5) The assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru.
- 6) There is insufficient oversight to ensure targeted financial sanctions are implemented in relation to the vessels registered under Nauru's shipping registry.
- 7) Despite being a low-risk jurisdiction for ML/TF, Nauru has not applied the results of its risk assessments to justify exemptions and support the application of simplified measures.

- 8) It is not clear that NFIU has the capacity to obtain and deploy the resources needed to carry out its functions free from any political, government or industry influence or interference.
- 9) NFIU provides financial intelligence and other relevant information to law enforcement agencies (LEAs). The intelligence has been used by LEAs for the purposes of investigating predicate offences. However, there has been minimal use by LEAs of financial intelligence to investigate ML offences.
- 10) Nauru has a legal framework and high-level policy for seizing and confiscating criminal proceeds, instrumentalities, and property of equivalent value. However, there have been very few instances of seizures and no confiscations in Nauru. Currently, there are no specific actions or measures in place to prioritise tracing proceeds of crime, assets, instrumentalities and property of equivalent value, or encourage their seizure and confiscation.
- 11) The undeclared movement of currency/BNIs by outgoing passengers is the legal responsibility of Customs. However, there appear to be internal misunderstandings about conducting inspections on departing passengers, potentially leading to gaps in implementation.
- 12) Competent authorities in Nauru actively engage in forums for international cooperation particularly in the Pacific region, which is adequate considering Nauru's context. However, Nauru did not demonstrate that these forums have been utilised for AML/CFT purposes at the operational level by competent authorities other than NFIU. Further, there are concerns that financial information sharing from foreign counterparts is not on a real-time basis.
- 13) Nauru Police Force (NPF) is the main law enforcement agency in Nauru that can investigate ML and predicate crimes, and works closely with NFIU. The National Strategy for AML/CFT 2022-2025 sets out an intention to increase the coordination and cooperation between agencies, but at the time of the onsite LEAs had a limited understanding of financial crimes or ML.
- 14) No ML investigations leading to ML charges have been undertaken thus far. While there are limited investigations and prosecutions of predicate offences, these did not have any further financial investigations.
- 15) Nauru is low risk for TF. Consistent with this risk setting, there have been no reports of TF to the FIU or other competent authorities. As such, there have also been no TF investigations or prosecutions.
- 16) There is a minimal understanding of TFS requirements amongst the relevant competent authorities in Nauru, which impacts implementation without delay, and there are no operational procedures or mechanisms on how they should handle enquiries relating to freezing measures, false positives, and potential evasions.
- 17) NFIU is empowered to supervise all FIs and DNFBPs in AML/CFT and conducts outreach, off-site or on-site inspections. However, these activities have not yet demonstrated effectiveness in improving an understanding of AML/CFT obligations and ML/TF risks among the reporting entities.

- 18) There are gaps in NFIU's understanding of the scope of reporting entities that should be supervised for AML/CFT, and the ML/TF implications of some of the sectors in Nauru, specifically law firms providing TCSP services.
- 19) Nauru's legal framework for MLA and extradition is sufficient considering its risks and context, although formal international cooperation has not been so far actively used. There is also scope for better use of INTERPOL and 'FIU to FIU' information by LEAs .

Risks and General Situation

2. Nauru is a remote island country in the central Pacific in Micronesia, 42 km south of the equator and 298 km east of Banaba Island (Ocean Island) of Kiribati which is its nearest neighbour. Nauru has a population of approximately 12,500 people of mostly Micronesian origin. Nauru was designated as a trust territory under Australian administration by the United Nations in 1947. In 1968 Nauru gained independence and was established as a republic under its 1968 Constitution. Nauru operates under common law. It is a member of the Commonwealth of Nations.

3. Nauru's GDP in 2023 was AUD 154 million (USD 96.86 million) and GDP per capita was AUD 12,040 (USD 7,572). Until 2006, widespread mining of high-grade phosphate was a source of wealth for Nauru, but readily accessible phosphate was almost exhausted by 2000. The economy of Nauru is now highly dependent on foreign aid and imports. Australia's offshore immigration detention facility, the Nauru Regional Processing Centre is the largest source of income for the Nauruan government. Fishing licence fees and phosphate processing are other important sources of income.

4. Nauru is a low-risk jurisdiction for ML/TF. Nauru has two NRAs which cover the assessment period (2018 and 2023). Nauru's 2023 NRA challenges several facts relied on by the 2018 NRA, including noting that they may be out of date, and differs in its findings in relation to risks. The primary threat identified in the 2018 NRA was illegal export of cash. The 2023 NRA notes that "[t]his conclusion was reached based on 'cash uplifts,' 'tax evasion' 'corruption and 'robbery or theft' [in 2018]. The vulnerability of the risk actually happening was due to the absence of effective border control measures." The 2018 NRA identified Australia as Nauru's greatest vulnerability, as internet banking and money transfer facilities were readily available in Nauru and used to remit funds to foreign bank accounts, primarily accounts in Australia.

5. The 2023 NRA considers ML risks associated with threats arising from cash smuggling, drug trafficking, organised crime, corruption, fraud and tax evasion. Except for tax evasion (low to medium risk), Nauru finds a low level of ML risk arising from these threats. Similarly, a section dedicated to terrorist financing (TF) and proliferation financing (PF) concludes a low level of risk. The NRA also surveys real estate agents, the gaming entity, high value dealers, accounting firms and accountants, trust and company service providers, and law firms and legal practitioners. The 2023 NRA either finds a low level of risk (with respect to the gaming entity and law firms) or no relevant activity.

6. The 2018 NRA finds cash smuggling to be Nauru's highest ML risk, with tax evasion the largest source of illicit funds (87%), followed by corruption. The 2018 NRA also finds capacity and capability challenges in Nauru's competent authorities. Nauru's 2023 NRA assesses the jurisdiction's ML risks as low or non-existent, except the possibility of tax evasion, which is considered to pose low/moderate risk.

Overall Level of Effectiveness and Technical Compliance

7. Nauru's overall level of effectiveness is moderate to low, notwithstanding a relatively high technical compliance rating. In several instances, effectiveness could not be assessed due to recent issuance of relevant legislative amendments or publication of guidance; however, steps are required to deepen Nauru's risk assessment, improve supervisory oversight and enhance the use of financial intelligence by LEAs in pursuit of ML investigations, predicate crimes with parallel financial aspects, prosecutions and confiscations.

8. Nauru has issued a number of legislative and administrative measures since its 2012 mutual evaluation, including the 2023 AML-TFS Act and the Anti-Money Laundering and Targeted Financial Sanctions (Financing Terrorism and Proliferation Financing) Regulations 2023. Nauru has also undertaken two NRAs (2018 and 2023) and a number of sectoral assessments and introduced its National Strategy for AML/CFT 2022-2025.

Assessment of Risk, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33 & 34)

9. Nauru has no shortcomings in relation to guidance and feedback and minor shortcomings with the Recommendations on AML/CFT national cooperation and coordination and keeping and maintaining statistics. There are moderate shortcomings on assessing risk and applying a risk-based approach, and major improvements are needed in the understanding of ML/TF risks, policy and coordination.

10. The following summary of the assessment team's understanding of Nauru's ML/TF risk is based on the material provided by Nauru including its 2023 NRA, its former NRA 2018, its National Strategy for AML/CFT 2022-2025; in addition to information from open-source materials and information gathered from discussions with competent authorities and the private sector.

11. As mentioned above Nauru is a low-risk jurisdiction for ML/TF and has two NRAs which cover the assessment period, (2018 and 2023). The 2018 NRA finds cash smuggling to be Nauru's highest ML risk, with tax evasion the largest source of illicit funds (87%), followed by corruption. The 2018 NRA also finds capacity and capability challenges in Nauru's competent authorities. Nauru's 2023 National Risk Assessment assesses the jurisdiction's ML risks as low or non-existent, except tax evasion which is considered low/moderate. The assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru.

12. Nauru has introduced its National Strategy for AML/CFT 2022-2025, which is based on the findings of the 2018 NRA. Nauru's National Sustainable Development Strategy 2019-2030 includes a Financing Strategy which includes as an objective "the continued strengthening of the AML/CFT framework".

13. Nauru has increased its efforts to improve AML national coordination by recently establishing the AML Officials Committee (AMLOC) to provide oversight and collaboration amongst stakeholders. AMLOC includes Treasury, Nauru Revenue Office (NRO), NPF, Customs, Immigration, Fisheries and Director of Public Prosecutions (DPP), and is chaired by the Head of NFIU. The intention is that the AMLOC meet regularly to discuss and share strategies as well as identifying risks.

14. In regards to statistics, Nauru has no relevant AML/CFT activity to record. Nauru has recorded statistics for property frozen, seized and confiscated where such activities have occurred in the context of predicate offences. However, in areas that have proven relevant to Nauru's context, such as international cooperation, statistics are not comprehensive across agencies.

Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – 10.6, 7, 8; R.1, R.3, R.4, R.29-32)

15. Nauru has minor shortcomings with the Recommendations relating to the ML offence and confiscation measures. There are minor shortcomings in relation to the powers and responsibilities of competent authorities and other institutional measures (operational and law enforcement), with moderate shortcomings in relation to the FIU. Major improvements are needed in the effective use of financial intelligence for ML/TF investigations and fundamental improvements in relation to ML investigation, prosecution, sanctions and the confiscation of proceeds and instrumentalities of crime.

16. The 2023 AML-TFS Act provides that the FIU exercises its functions and powers without direction or obstruction. The FIU also has separate budget line within the DJBC budget agreed ahead of the financial year. However, these are new developments and will likely take time to be established practice for NFIU in a small jurisdiction. The assessment team could not conclude that the FIU has control over its decision-making (expenditure, travel, recruitment) or functional independence in terms of FIU priorities. In addition, under section 91 of the Act, NFIU requires cabinet approval for the purpose of any agreement or arrangement with foreign counterpart regarding the exchange of information, which may also place limits on NFIU's independence and autonomy.

17. NFIU provides financial intelligence and other relevant information to LEAs in a timely manner. The intelligence has been used for the purposes of investigating predicate offences by LEAs. However, there has been limited use of financial intelligence to investigate ML offences by LEAs.

18. No ML investigations, prosecutions, or convictions have been undertaken. However, there are ongoing cases that involve ML elements. The absence of any ML investigation is in line with Nauru's very small size and relatively low risks. The assessment team has not yet received the statistics on predicate offence investigations. Most of the predicate offences being prosecuted are related to assault, with a smaller percentage related to property or financial offences.

19. An MVTs provider is the only FI in Nauru. The MVTs provider currently provides NFIU with quarterly financial transaction reports, covering the period 2021 to 2022, but has not reported any STRs to NFIU.

20. With respect to the foreign bank "agency" on island (see below), much of the formal financial activity is outside of Nauru's AML/CFT system and is not visible to NFIU in real time. There is little coming to NFIU to be analysed, which in turn creates an ongoing concern regarding LEA's access to information. Although the foreign banking agency is not required to submit STRs to NFIU, in 2020 the supervisor of the foreign bank provided to NFIU a batch report of 141 suspicious transaction reports related to the foreign banking agency, covering the period 2017 to 2020.

21. LEAs have investigative capacity but do not have the capability or experience to identify and investigate ML or the financial element of most proceeds generating cases. However, it should be noted that this is in the context of a low crime jurisdiction. In addition, NPF is able to seek assistance from the Australian Federal Police (AFP), which currently has two officers in Nauru. NPF has a bilateral

instrument with the AFP in which the AFP supports and mentors NPF counterparts, including assistance with logistics and providing equipment where necessary in Nauru. Nauru and the in-country AFP presence conducted one formal joint cybercrime investigation in May 2022. AFP carried out the primary investigation as NPF lacked technical capability.

22. LEAs in Nauru have the authority and ability to gather financial information during investigations, but none of them have a parallel financial investigation mandate or policy.¹ One of the actions identified under Objective 2 of the National Strategy for AML/CFT 2022-2025 is to “encourage parallel financial investigations”. However, apart from this, no specific or practical instructions or measures are provided to encourage LEAs to engage in additional financial investigations.

23. Nauru has implemented a conviction-based forfeiture regime and has the legal framework and mechanism to seize or confiscate criminal proceeds and instrumentalities. Nauru’s National Strategy includes objectives to facilitate asset forfeiture and strengthen border currency declaration mechanisms. Limited seizure cases for predicate offences exist, and there have been no cases of confiscation or forfeiture in Nauru. There are no specific actions or measures in place to prioritise tracing proceeds of crime, assets, instrumentalities and property of equivalent value and confiscating them.

24. Under the Proceeds of Crime Act 2004, Customs is responsible for undeclared movement of currency/BNIs for outgoing passengers and the requirements for passengers taking cash out of Nauru can be found in the Nauru Cash Border Regulation Framework Guide. However, it is unclear whether this is happening in practice as, during the on-site, the assessment team was advised that Customs officials were not responsible for undeclared movement of currency/BNIs for passengers departing Nauru. The assessment team can only conclude that Customs has an internal misunderstanding on the issue, which impacts the implementation of their duties. Customs has not reported any breach of declaration requirements under the new laws, nor have penalties been imposed or reports made since 2018.

Terrorist and Proliferation Financing (Chapter 4 – 10.9, 10, 11; R.1, R.4, R.5-8, R.30, R31 & R.39)

25. Nauru has no shortcomings with the FATF Recommendations in relation to the TF offence and TFS related to proliferation. Minor shortcomings were found with Recommendations on confiscation and provisional measures, TFS relating to terrorism and TF (implementation without delay), the NPO sector, responsibilities and powers of law enforcement and investigative authorities, and extradition. Major shortcomings were assessed in relation to assessing risk and applying a risk-based approach. The assessment team found major improvements are needed in effective investigation and prosecution of TF, the prevention of TF and abuse of the NPO sector and fundamental improvements in combatting PF.

26. Nauru has a robust legislative framework for counter-terrorism financing (CTF) primarily through the Counter Terrorism and Transnational Organised Crime (CTTOC) (Amendment) Act 2020. Nauru is low risk for TF; and consistent with this risk setting, there have been no reports of TF to the

¹ Nauru issued an AML-TFS (Parallel Financial Investigation) Regulation 2024 after the onsite. Nauru advises that the regulations set out powers for LEAs to conduct parallel financial investigations. The assessment team has not verified this.

FIU or other competent authorities. As such, there have also been no investigations or prosecutions. Competent authorities, outside the FIU and DPP, have a low level of understanding of TF and how to identify and mitigate TF. Nauru also lacks formalised mechanisms based on the National Strategy, whether domestically or through international partners, to evidence preparedness in the event TF is observed or suspected. As such major improvements are necessary. However, Nauru is commended for initiating CTF efforts through the National Strategy and for establishing a sound legal framework.

27. The AML-TFS Act 2023, in combination with the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023, sets out a robust framework for TFS in relation to UNSCR1267 (and its successor resolutions), and UNSCR1373.

28. The Minister for Justice is responsible for the designations under the AML-TFS (Financing of Terrorism and Proliferation Financing) Regulations 2023. Whether or not implementation of UN designations from point of change occurs without delay is largely reliant on NFIU's publication of consolidated lists (real time access to UN website). The process of alerting changes in designations to competent authorities and reporting entities in Nauru would likely take over 24 hours. However, this is mitigated to some extent given FIU has real time access to the UN website and Nauru's context of low risk and only one FI.

29. Nauru assessed risks of the NPO sector under the 2023 NRA, which found that nine of the total 11 NPOs fell within the FATF definition. The assessment team noted low TF risks and limited number of NPOs in Nauru. None of the total 11 NPOs was identified as being vulnerable to TF. Supervision of NPOs is limited and not conducted in a risk-based manner. In particular, the requirement for all registered NPOs to have a Financial Crime Compliance Officer is onerous and likely to hinder legitimate NPO activities, without an identifiable risk of TF abuse.

30. The introduction of the AML-TFS Act 2023 and Anti-Money Laundering and Targeted Financial Sanctions (Financing Terrorism and Proliferation Financing) Regulations 2023 establishes the relevant legislative framework related to TFS on proliferation financing (PF) as required by UNSCRs 1718, 1737 and 2231.

31. There is a minimal understanding of counter proliferation financing (CPF) requirements amongst the relevant competent authorities in Nauru and there are no operational procedures or a response mechanism on how they should handle enquiries relating to freezing measures, false positives and potential evasions. No supervision has been conducted to assess reporting entities' implementation of CPF obligations. Competent authorities do not have a grasp of CPF requirements and rely on the headquarters of the MVTs provider to ensure TFS screening via a third-party database.

32. Significantly, it is not evident that any competent authority ensures TFS are implemented in the registration of vessels under Nauru's shipping registry, with fishing or non-fishing activities.

Preventive Measures (Chapter 5 – 10.4; R.9-23)

33. Overall, Nauru has few shortcomings with the Recommendations on preventive measures, with minor shortcomings in relation to new technologies, and Recommendations 9-14 and 16-23 rated Compliant. Major improvements are needed in effective application of AML/CFT preventive measures by FIs and DNFBPs commensurate with their risks.

34. The AML-TFS Act enacted in August 2023 covers all reporting entities which fall in the FATF definition of FIs and DNFBPs (and VASPs). There are a limited number of such entities in operation: one MVTs provider, four law firms (some of them providing trust company services) and one gaming operator. The gaming operator is categorised as a type of casino in legislation and by the supervisor in Nauru, and has, in the past, had payouts above USD/EUD3000. There are no VASPs registered for operation in Nauru.

35. The MVTs provider has a fair understanding of the ML/TF risks and AML/CFT measures, largely due to its group-wide compliance programme in another jurisdiction. DNFBPs in Nauru demonstrate a minimal understanding of the ML/TF risks and their obligations under the AML-TFS Act 2023 and have not undergone substantive inspections by NFIU.

36. Nauru's robust legal framework complies with several aspects of the FATF Standards; however, application of CDD and record keeping obligations varies and, generally, have not yet been implemented in the DNFBP sector.

37. Application of enhanced or simplified measures is prescribed legislatively; however, none of the DNFBPs are aware of the enhanced or specific measures prescribed by the AML-TFS Act 2023, and relevant information such as UN sanctions list subject to the TFS.

38. NFIU receives STRs from Australia's FIU, which supervises the foreign banking "agency", but these are in batches, not real time. DNFBPs have not submitted any STRs to NFIU.

Supervision (Chapter 6 – IO.3; R.14, R.26-28, R.34, R.35)

39. Nauru has no shortcomings with the Recommendations on MVTs, powers of supervisors, sanctions and guidance and feedback, and minor shortcomings regarding regulation and supervision of FIs and DNFBPs. Fundamental improvements are needed in effective AML/CFT supervision of FIs and DNFBPs commensurate with their risks.

40. There are gaps in the understanding of NFIU, as supervisor, about entities that should be covered under AML/CFT laws, the business operations in some of the sectors in Nauru (law firms) and possible ML/TF risks they pose. NFIU has three staff responsible that have duties including AML/CFT supervision. While this capacity reflects the size of the regulated sector it creates limitations on the ability to undertake supervision adequately and promote a clear understanding of AML/CFT obligations and ML/TF risks. It also poses a business continuity risk.

41. Nauru has multi-layered frameworks for registration and license, including registration for legal persons and their beneficial ownership, and the licencing specifically for the banking sector and gaming sector. In addition, any entities operating any type of business in Nauru must apply for the generic business license, which covers all types of FIs and DNFBPs.

42. The assessment team has been provided with a Supervisory Plan for the 2022-2023 year that indicates completed and intended reviews with the Nauru AML/CFT system. It is not evident that the frequency and intensity of on-site and off-site AML/CFT supervision considers the characteristics of its limited reporting entities, and the specific risks posed by their activities in Nauru.

43. In August 2023, Nauru enacted a subsidiary regulation of the AML-TFS Act to further set out the criteria for a "fit and proper" test, which includes a process for reporting entities to check criminal

records of their “responsible persons”; however, given the recency of the regulation, implementation has not yet been demonstrated.

44. The legislative framework prescribes appropriate and dissuasive sanctions; however, full implementation has not yet been demonstrated. At this early stage, warnings have been issued following identification of breaches during on-site inspections.

Transparency and Beneficial Ownership (Chapter 7 – 10.5; R.24-25)

45. Nauru has minor shortcomings in relation to transparency and beneficial ownership of legal persons and arrangements. Major improvements to the understanding of ML/TF risks associated with legal persons and arrangements and related to use of the registries by competent authorities, outside of NRO, are needed for an effective system to prevent the misuse of legal persons and arrangements for ML or TF.

46. Nauru has a strong Registry Division that works to uphold the various registry acts and sanctions effectively, efficiently, and appropriately, as well as making the information publicly available. While the Divisions are strong, the Beneficial Ownership (Identity and Declaration) Regulations were newly enacted at the time of the on-site, affecting effectiveness over the period reviewed by this mutual evaluation (approx. 2018-2023). In addition, while ML and TF is low risk for legal entities and arrangements, competent authorities outside of the FIU, DPP, and DJBC did not have a good understanding of risks associated with ML and TF.

47. Despite the strength of the mechanisms for basic and beneficial information held by the Registry Divisions, the assessment team believes major improvements are needed in relation to competent authorities’ ability to identify, assess and understand the vulnerabilities, and the extent to which legal persons created in the country can be, or are being misused for ML/TF.

International Cooperation (Chapter 8 – 10.2; R. 36-40)

48. Overall, Nauru has minor shortcomings with FATF Recommendations relating to international cooperation, with moderate shortcomings in relation to MLA related to freezing and confiscation. Major improvements are needed in Nauru’s international cooperation actions against criminals and their assets.

49. Nauru has a robust legal framework for formal international cooperation; however, these have not been used operationally for AML/CFT purposes, nor is there a case management system and priority/simplified measures in place for extradition.

50. NFIU is an important conduit for accessing international information, but utilisation by LEAs has not been effectively demonstrated. Nauru has applied to join the Egmont group of FIUs and has access to INTERPOL, Pacific Island Chiefs of Police (PICP), and the Australian Federal Police for informal information exchange.

51. Recently, NFIU has begun to play an important role in seeking financial information from foreign counterparts in order to support LEAs in their investigations of predicate offences. However, there seems to be an obstacle in LEAs’ access to information obtained through FIU-FIU information exchanges. Overall, while Nauru is party to several forums that can assist in AML/CFT activities, these have not been utilised for operational purposes in supervisory or law enforcement activities.

Priority Actions

52. This report sets out a series of priority actions that the country should take:

- a) Urgently review the NRA in light of the findings of this mutual evaluation, including issues surrounding oversight over public procurement and handling of public monies.
- b) Support financial inclusion by identifying areas of low ML/TF risk to justify exemptions or the application of simplified measures.
- c) Urgently review the ML/TF/PF implications of Nauru's shipping registry, and establish effective mechanisms for reporting, cooperation, and coordination among the stakeholders, including National Project Limited, to ensure implementation of TFS screening for Nauruan-flagged vessels.
- d) Clarify Customs' powers for undeclared movement of currency/BNIs for outgoing passengers; and strengthen capacity within LEAs, especially Customs, on proceeds of crime, cash and BNIs moving across Nauru's borders, including issuing clear guidance and undertaking regular training.
- e) Review arrangements for the independence of the FIU to ensure the protections in the new AML-TFS Act are being effectively implemented.²
- f) Undertake actions addressing TF capabilities as laid out in the National Strategy and establish standard operating procedures for instances where TF is detected or suspected, including determining which agency is responsible for investigating TF (NPF or TCU).
- g) NFIU, as supervisor, should maintain vigilance on activities in Nauru to ensure all relevant entities are registered and supervised under its AML/CFT legal framework, and a risk-based approach is applied in planning supervisory activities.
- h) Ensure competent authorities have adequate and regular training to identify and investigate ML/TF and predicate offences, including those committed through legal persons.

² After the onsite, Nauru enacted the Anti-Money Laundering and Targeted Financial Sanctions (Amendment) Act 2024 which removes of the requirement for Cabinet approval of bilateral arrangements.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Moderate	Moderate	Low	Moderate	Moderate	Moderate
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Low	Low	Moderate	Moderate	Low	

Technical Compliance Ratings (*C – compliant, LC – largely compliant, PC – partially compliant, NC – non-compliant*)

R.1 - Assessing risk & applying risk-based approach	R.2 - National cooperation and coordination	R.3 - Money laundering offence	R.4 - Confiscation & provisional measures	R.5 - Terrorist financing offence	R.6 - Targeted financial sanctions – terrorism & terrorist financing
PC	LC	LC	LC	C	LC
R.7 - Targeted financial sanctions – proliferation	R.8 - Non-profit organisations	R.9 - Financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
C	LC	C	C	C	C
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
C	C	LC	C	C	C
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFFBPs: Customer due diligence	R.23 - DNFFBPs: Other measures	R.24 - Transparency & BO of legal persons
C	C	C	C	C	LC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
LC	LC	C	LC	PC	LC
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
LC	LC	LC	C	C	LC
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation		
LC	PC	LC	LC		

MUTUAL EVALUATION REPORT OF NAURU

Preface

This report summarises the AML/CFT measures in place in Nauru as at the date of the on-site visit, 9 October to 16 October 2023. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the FATF's 2013 Assessment Methodology. The evaluation was based on information provided by Nauru, and information obtained by the assessment team during its on-site visit and through independent research.

The evaluation was conducted by an assessment team consisting of:

- 1) Ms Adair FINCHER, Financial Intelligence Unit, Palau (legal expert)
- 2) Mr Kota ITO, Ministry of Finance, Japan (financial expert)
- 3) Ms Kirsty PLEACE, Financial Markets Authority, New Zealand (financial expert)
- 4) Mr Walter HENRY, Financial Intelligence Unit, Cook Islands (FIU expert)
- 5) Ms Tai-Chin YUAN, Ministry of Justice, Chinese Taipei (law enforcement expert)

The assessment process was supported by Ms Mitali Tyagi and Ms Marnie Campbell of the APG Secretariat. This report was reviewed by Ms Xueyan Zhao of the People's Bank of China, Ms Sajini Chandrasekara of the Sri Lanka Financial Intelligence Unit, Mr Carlos Acosta of the IMF and by the FATF Secretariat.

Nauru underwent a second round APG mutual evaluation in 2012 under the 2004 FATF methodology. The report of that evaluation is available at www.apgml.org.

Exchange rate in this report

Throughout this report Nauru's nominated currency, the Australian Dollar (AUD), is adjusted at a USD conversion rate in effect at the time of the on-site visit, namely: USD 1.00 = AUD 1.59.

1. Nauru is a remote island country in Micronesia, 42 km south of the equator and 2,000 km east-northeast of Papua New Guinea. Nauru's nearest neighbour is Banaba Island (Ocean Island) of Kiribati which is 298 km to the east. Nauru consists of a single raised, fossilised coral atoll with a total land area of 21 km². This land size makes Nauru the world's smallest independent republic and third smallest country in the world. The population of Nauru is approximately 12,500 people. Most of Nauru's population are of Micronesian origin. The remainder of the population are primarily other Pacific Islanders, or Chinese, Australian, and Filipino expatriates.

2. Nauru was a German protectorate from 1888 until Australian troops seized it during World War I. In 1919, the League of Nations granted a joint mandate to Australia, Britain, and New Zealand to govern the island. During World War II Nauru was occupied by Japan. In 1947, the United Nations designated Nauru as a trust territory under Australian administration. Nauru gained independence in 1968 and is an independent Republic under Article 1 of the Constitution of Nauru 1968.

3. According to IMF statistics,³ in 2023 Nauru had a per capita GDP of AUD 12,040 (USD 7,572) and a nominal GDP of AUD 154 million (USD 96.86 million). IMF further states that these economic indicators are misleading "because they do not meaningfully reflect the high cost of living or the fixed costs of providing infrastructure and government services to a small population".⁴ In addition, this will decrease due to the winding down of the Nauru Regional Processing Centre (further details below). Nauru is heavily reliant on foreign aid and imports.

4. Nauru had rich deposits of high-grade phosphate and widespread phosphate mining began in 1906, continuing until 2006. Due to phosphate mining revenues and a small population size, Nauru at one stage had the second largest per capita GDP in the world. However, by 2000 readily accessible phosphate was almost exhausted, and mining of residual phosphate began some years later. As a result of mining of phosphate, a substantial portion of Nauru's interior land is uninhabitable unless it is rehabilitated. Nauru's population largely resides in the coastal areas around the island. In 2019, the Government established 'Higher Ground Initiative' (HGI). The HGI is a policy to develop the mined land on the top side, which is the interior of the island. The initiative was announced as "a managed retreat to higher ground" over the next 50 years.

5. In the early 1990s, Nauru made provisions for registration of offshore banks and other corporations. This was done through the Nauru Agency Corporation. FATF placed Nauru on the "Non-Cooperative Countries and Territories" list between June 2000 and October 2005 for maintaining an inadequate anti-money laundering regime.⁵ The Government of Nauru revoked licenses for hundreds of banks registered in the country and closed the Bank of Nauru in 2006.⁶ In 2018, the Government of Nauru dissolved the Nauru Agency Corporation, a state-owned incorporation agent, and its operations. All corporations must now register directly to the Registrar of Corporations. Every corporation must have a local representative present in Nauru with a local address. Nauru's 2021 review on the State of

³ <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1NUREA2023001.ashx>

⁴ Statement by Robert Bruce Nicholl, Executive Director for Republic of Nauru and Chris Becker, Advisor to the Executive Director <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1NUREA2023001.ashx>

⁵ Financial Action Task Force International Co-operation Review Group, 'Eighth and Final NCCT Review'

⁶ <https://www.adb.org/sites/default/files/publication/530246/pacific-finance-sector-nauru.pdf>

the Implementation of UNCAC indicates that ‘Nauru has made conscious efforts to clear out and deregister overseas companies’.⁷

6. Due to growing concern of irregular migration to Australia, Australia and Nauru entered into a Memorandum of Understanding in 2013 to establish an offshore immigration detention facility hosted by Nauru (Nauru Regional Processing Centre or ‘RPC’). Between August 2012 and June 2023, Nauru received substantial payments from Australia as hosting fees and reimbursements towards the cost of its public services.⁸ The RPC has, over the last few years, also provided employment for locals and increased economic activity.

7. While Nauru is still largely reliant on foreign payments, Australia’s use of the RPC is winding down. However, the RPC will continue to constitute a revenue stream for Nauru as ‘an enduring facility’ that provides facilities on Nauru for offshore processing as a contingency. Overall, the RPC forms the “largest single revenue stream to the Government.”⁹ Fishing licence fees and residual phosphate processing revenue also contribute to Nauru’s income.

*ML/TF Risks and Scoping of Higher-Risk Issues*¹⁰

Overview of ML/TF Risks

8. Nauru is exposed to limited threats related to ML and TF due to its remote location, small size and its economic and cultural context. Nauru is a low crime jurisdiction. There are some concerns related to weak or absent public procurement processes and lack of effective oversight over use of public monies. The very narrow economic base, lack of financial institutions, and the very strict land tenure and associated restrictions on foreign investment, sees very few opportunities to generate proceeds of crime from the formal Nauru economy. This also means that Nauru is not attractive as a transit route for illicit goods or funds. The 2018 NRA notes that data available to Nauruan authorities does not suggest that Nauru is a source, transit or destination country for terrorist financing, this is reiterated by the 2023 NRA.

Country’s risk assessments and Scoping of Higher Risk Issues

9. Nauru’s first NRA was completed in 2018, and its most recent NRA was completed in 2023. Together these NRAs cover the period under review in this report.

⁷ https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650.pdf

⁸ Republic of Nauru 2015-16 Budget Paper 1 “RPC related revenues are now the dominant revenue stream to Government but were subject to political and other externalities outside the control of the government. The Government has moved to remove this uncertainty through the signing of a 5 year plan that provides surety of around \$31.5 mil in non per capita based grants and reimbursable expenses from the Australian Government associated with hosting the RPC asylum seekers and refugees in the community. On this basis these funds represent the largest single revenue stream to Government.”

<https://naurufinance.info/wpcontent/uploads/2020/08/BUDGET-PAPER-1-2015-16.pdf>

⁹ <https://naurufinance.info/wpcontent/uploads/2020/08/BUDGET-PAPER-1-2015-16.pdf>

¹⁰ In drafting Chapter 1, the assessment team noted that there are limited sources of relevant information on Nauru. As such the assessment team has included as broad a range of sources as possible.

10. *Cash smuggling*: The primary threat identified by the 2018 NRA was illegal export of cash. The 2018 NRA states “The data and information gathered analysed by Nauruan authorities indicates that the highest risk faced by Nauru is the illegal export of cash (smuggling) which is evident through the compensating cash uplifts¹¹ as a result of the depleting withholding cash reserve. The highest source of illicit funds is generated by tax evasion followed by corruption and robbery or theft.”

11. Nauru was vulnerable to this risk due to the absence of effective border control measures. Australia was identified as Nauru’s greatest vulnerability as internet banking and money transfer facilities were readily available and used to remit funds to foreign bank accounts, primarily accounts in Australia. The 2023 NRA concludes that Nauru’s risk related to cash smuggling is now low, due to the financial inclusion brought by an Australian bank providing access to bank accounts for Nauruans. The assessment team noted the benefit of financial access and inclusion resulting from this development, in comparison to the 2012 mutual evaluation report.

12. *Organised crime, corruption, fraud and tax evasion*: The 2023 NRA considers ML risks associated with threats arising from drug trafficking, organised crime, corruption, fraud and tax evasion. Except for tax evasion (low to medium risk), Nauru finds a low level of ML risk arising from these threats. The 2023 NRA also concludes there is a low level of risk from TF and PF. The NRA surveys real estate agents, the gaming entity, high value dealers, accounting firms and accountants, trust and company service providers, and law firms and legal practitioners. The 2023 NRA either finds no relevant activity, or with respect to the gaming entity and law firms, a low level of risk. Notably, due to the traditional methods of owning and distributing land in Nauru, there are no real estate agents.

13. The 2018 NRA did not consider organised crime but concluded that the highest source of illicit funds in Nauru was tax evasion (87%). Corruption was identified as the second highest source of proceeds of crime in Nauru, with a total of AUD 331,000 (USD 208,176) in bribes being accepted between 2010 and 2018. Further, the 2018 NRA highlighted interference by senior government officials and politicians at the borders. Instances include when goods have been falsely declared by importers and falsely declared goods were forcibly removed from the airport baggage area without undergoing clearance by customs.

14. During the on-site, stakeholders noted public integrity and corruption issues as a concern in Nauru, particularly in relation to elections and public procurement.¹² This accords with external sources, where Nauru has been characterised as constituting a “high-risk integrity environment”¹³ with “vulnerabilities to corruption”.¹⁴ The Global Organised Crime Index noted in 2023 that there have, historically, been allegations of corruption in Nauru within the phosphate mining sector, with almost

¹¹ Cash uplifts are larger scale movements of cash across borders. In this case it likely refers to a bank uplift.

¹² Nauru contests this statement, citing the lack of election fraud cases based on police reports since 2016; evidence of only two minor corruption cases pending in court; and bias in news articles about Nauru.

¹³ Pg 13, para 3.6, *Review of Integrity Concerns and Governance Arrangements for the Management of Regional Processing Administration by the Department of Home Affairs* 2024, <https://www.homeaffairs.gov.au/reports-and-pubs/files/richardson-review/richardson-review-report.pdf>, last accessed June 2024.

¹⁴ IMF “Republic of Nauru: 2021 Article IV Consultation” Country Report No. 2022/028. & February 2022, available at [https://www.imf.org/en/Publications/CR/Issues/2022/02/07/Republic-of-Nauru-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-512874#:~:text=IMF%20Staff%20Country%20Reports&text=Nauru%27s%20remoteness%20and%20size%20constrain.%2Dcommunicable%20diseases%20\(NCDs\)](https://www.imf.org/en/Publications/CR/Issues/2022/02/07/Republic-of-Nauru-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-512874#:~:text=IMF%20Staff%20Country%20Reports&text=Nauru%27s%20remoteness%20and%20size%20constrain.%2Dcommunicable%20diseases%20(NCDs)) (last accessed June 2024)

no effective mechanisms in place in Nauru to fight corruption.¹⁵ Similarly, a 2021 Freedom House Report on Nauru stated that corruption was a serious problem, including in relation to the money Nauru received from Australia for hosting of the asylum processing centre.¹⁶ The Transparency International 2022 report also recorded allegations of bribery involving Nauru's politicians exercising influence in relation to the phosphate export business.¹⁷ Since then there have been reports about alleged corrupt conduct by Nauruan persons involved in the operations of the Nauru Regional Processing Centre.¹⁸

15. The assessment team did not receive evidence of public procurement processes being implemented, or of independent offices providing effective oversight over use of public monies. Incidentally, Nauru's 2021 UNCAC review noted, as a challenge in implementation, that Nauru needed to:

- *Strengthen the systems of public procurement...including through the public distribution of information relating to procurement procedures, tendering rules and criteria, invitations to tender and information on the award of contracts, for example, through e-procurement processes, and matters regarding procurement personnel.*
- *Establish, within public procurement systems, an effective system of domestic review and appeal, and provide legal recourse and remedies to address disputes over adherence to applicable rules and procedures.*¹⁹

16. These findings are also echoed in the 'IMF Staff Report for the 2021 Article IV Consultation' published in 2022, which concluded that "Nauru's main governance risks stem from weaknesses in fiscal governance due the lack of timely, transparent, and audited financial statements of SOEs, inadequate financial controls from the high usage of cash transactions, lack of transparency in procurement processes, and gaps in the anti-money laundering/combating the financing of terrorism (AML/CFT) framework. These weaknesses result in inefficient management of resources, vulnerabilities to corruption, and a negative impact on growth."²⁰ Similarly, the 2023 IMF Country

¹⁵ Page 3, Global Initiative Against Transnational Organized Crime (2023a), Organised Crime Index, Country Profile Nauru, <https://ocindex.net/country/nauru>, last accessed June 2024

¹⁶ Freedom House (2023), Freedom in the World Index – Nauru Country Report, <https://freedomhouse.org/country/nauru/freedom-world/2021>, last accessed June 2024

¹⁷ Transparency International Report "Perceptions of corruption in seven small Pacific Island countries" 2022, pg. 31

¹⁸ <https://www.smh.com.au/politics/federal/millions-of-dollars-in-detention-money-went-to-pacificpoliticians-20230718-p5dp51.html>; <https://www.smh.com.au/politics/federal/afp-retracts-statement-dutton-was-briefed-on-nauru-bribery-investigation-20230804-p5dtzi.html>

¹⁹ Nauru, *State of implementation of the United Nations Convention against Corruption* (2021), CAC/COSP/IRG/2021/CRP.2, see at

https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650.pdf, last accessed June 2024

²⁰ IMF "Republic of Nauru: 2021 Article IV Consultation" IMF Country Report No. 22/28, accessible at <https://www.imf.org/en/Publications/CR/Issues/2022/02/07/Republic-of-Nauru-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-512874> (last accessed July 2024)

Report (November 2023) stated that “[m]easures to address governance and corruption vulnerabilities are critical to achieving Nauru’s medium-term growth and development objectives.”²¹

17. The Office of the Ombudsman position has not been filled, despite a strong recommendation in Nauru’s 2021 UNCAC review to “[a]s a matter of priority, fill the position of Ombudsman.”²² In collaboration with the UNODC, Nauru is currently working on its National Anti-Corruption Strategy.

18. *Drug trafficking*: The 2023 NRA concludes a low level of ML risk from drug trafficking. The assessment team noted that drug crime (and the subsequent financial elements) is an increasing concern for law enforcement agencies (LEAs) with cases involving seizure of proceeds of drug crime. The 2018 NRA considered drugs, along with fraud, robbery and theft, as one of the predicate offences reported to the police from 2010 to 2018 and it is estimated to be less than 1% of funds laundered. As noted above, the 2018 NRA indicated tax evasion and corruption were primary threats for ML.

19. *Capacity and capability*: The assessment of vulnerabilities in the 2023 NRA did not consider the capacity challenges of Nauru’s competent authorities. However, the 2018 NRA highlighted deficiencies in the capacity and capability of LEAs. The Organised Crime Index notes that there are no LEA units in Nauru that specifically focus on organised crime, and it is likely that most police and other LEAs have little training or experience with organised crime.²³ This is likely also linked to the limited incidence of organised crime in Nauru.

20. *Financial Sector*: The 2023 NRA notes that the bank agency in Nauru fulfils its AML/CFT obligations and the likelihood of it being used for ML/TF/PF remains low. The 2018 NRA identified the risk to Nauru posed by Australian commercial banks. It noted that authorities have “uncovered a process of laundering in and through Australia which indicates that the highest risk entities are the commercial bank.”

21. *Cash Economy*: The ‘IMF Staff Report for the 2021 Article IV Consultation’ published in 2022 indicated ‘Nauru’s main governance risks stem from weaknesses in fiscal governance due the lack of timely, transparent, and audited financial statements of SOEs, inadequate financial controls from the high usage of cash transactions, lack of transparency in procurement processes, and gaps in the anti-money laundering/combating the financing of terrorism (AML/CFT) framework. These weaknesses result in inefficient management of resources, vulnerabilities to corruption, and a negative impact on growth.’ The assessment team considered these, and other threats associated with a cash economy.

22. During the mutual evaluation on-site visit the assessment team perceived TF to be a lower area of focus due to the Nauru’s low risk as a source, transit or destination jurisdiction for funds

²¹ IMF “Republic of Nauru: 2023 Article IV Consultation” IMF Country Report No. 23/376, accessible at <https://www.imf.org/en/Publications/CR/Issues/2023/11/28/Republic-of-Nauru-2023-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-541784> (last accessed July 2024)

²² Nauru, *State of implementation of the United Nations Convention against Corruption* (2021), CAC/COSP/IRG/2021/CRP.2, see at https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650.pdf, last accessed June 2024

²³ <https://ocindex.net/country/nauru>

connected to terrorism. In relation to TFS, Nauru's Shipping Registry creates an issue in the context of increasing misuse of shipping internationally.

Materiality

Nature of the economy

23. Nauru does not have a central bank. It uses the Australian dollar as its nominated currency. Nauru's gross domestic product (GDP) in 2023 is estimated at approximately AUD 154 million (USD 96.86 million). The GDP per capita is estimated at AUD 12,040 (USD 7,572). In 2022, Nauru had a gross national income (GNI) per person of AUD 19,760 (USD 12,428) which was a 0.78% decline from 2021.

24. The key sources of Nauru's governmental revenue are the RPC, followed by fishing licensing fees and other external grants. The RPC and the Government of Nauru are the country's major employers.

25. Nauru is heavily reliant on imports for virtually all material needs. Australia is Nauru's principal import source. Export destinations include Thailand, Nigeria and Saudi Arabia. Nauru's main exports are frozen fish and phosphates.²⁴

26. In 2018 the Nauru government partnered with a deep-sea mining company in order to harvest poly-metallic nodules from the ocean floor in Nauru's Exclusive Economic Zone. The minerals and metals found in these nodules are highly valuable "green" energy transition metals. Globally, no mining permits have yet been authorised and deep seabed mining remains controversial, but Nauru may begin mining by the fourth quarter of 2025.

Financial inclusion and the use of internet banking

27. Nauru has one agency of a bank, one remitter and four law firms. In comparison to the 2012 mutual evaluation report, there are tangible benefits of financial access and inclusion resulting from the banking agency providing Nauruans easy access to banking services.

28. Financial inclusion is brought to Nauru by an Australian bank providing access to bank accounts for Nauruans. This occurs under an 'agency' arrangement between the bank and the Government of Nauru. The assessment team did not have access to this agreement; however, assessors understand that the agreement provides for banking services to allow Nauru access to formal financial channels, with Australia exercising jurisdiction over the bank. This banking agency is not characterised as a financial institution in Nauru, and any transactions executed by the bank through the agency are supervised and regulated by the competent authority of the bank's home jurisdiction, with no jurisdictional powers being exercised by Nauru. For example, information and forms in relation to CDD and onboarding are processed by the headquarters in Australia; and all necessary documentation on accounts for Nauruans are held in Australia, not in Nauru.

29. Nauru's 2023 NRA states that there has been a steep increase in the use of internet banking. This was corroborated by the fact that the volume of MVTs transactions had fallen in favour of

²⁴ <https://oec.world/en/profile/country/nru>

internet banking. The assessment team notes the positive implications of increased access to formal channels in relation to the threat of cash smuggling. However, there were still concerns raised in relation to cash transaction in discussions with stakeholders in Nauru (see also the 2018 NRA and 'IMF Staff Report for the 2021 Article IV Consultation').

30. Through the banking agency, the Australian bank currently holds approximately 9,000 accounts for Nauruans. Data and information collected during the NRA process has identified money laundering from the Australian bank accounts to other bank accounts held in Australia. After September 2017, the agency, not a reporting entity in Nauru, has been prohibited from disclosing STRs to the NFIU, citing Australia's tipping off provision in the relevant Australian legislation (section 123 of the AML/CTF Act 2006).

31. The remitter / MVTs provider is the only financial institution operating in Nauru and is under internal compliance management by its headquarters in another jurisdiction.

Exposure to trade and finance with the DPRK or Iran

32. It is not apparent that Nauru is directly exposed to trade and finance with the DPRK and Iran.

33. Administration of Nauru's shipping registry is outsourced to a private entity based in a foreign jurisdiction. There are legal persons registered in Nauru that own fisheries vessels; however, registering as a legal person is not a statutory requirement for entities that seek certification under Nauru's shipping registry. The assessment team was not able to conclude that Nauru provides oversight to ensure TFS are implemented in relation to the vessels registered under Nauru's shipping registry. The lack of demonstrable oversight of the Nauru Shipping Registry providing registration under the Nauruan flag is a concern with the increasing misuse of shipping internationally.

Structural Elements

34. Nauru has no banking sector and one MVTs provider. At the time of the on-site, an Australian bank provides banking services in the country through an agency agreement.

35. Nauru entered into an agreement with Australia to operate a facility to process unauthorised maritime arrivals to Australia. The operational cost of the RPC is funded by Australia. Nauru receives direct income in the form of hosting and visa fees for the transferees and the foreign workers, and for limited commercial services. The bulk of funds provided to Nauru are returned back to Australia due to costs associated with required imports and foreign workers. However, the funds do artificially inflate Nauru's per capita income. Consequently, Nauru is classified as a high-income country.

36. Nauru does not have a diversified economic or financial base and is heavily reliant on grants, funding from the RPC and fishing licenses.

37. Given the small population of Nauru, there are gaps in local capacity and expertise available. Nauru has been able to fill these gaps by employing foreign workers. A number of positions are filled by expatriates from higher capacity neighbours, e.g. Australia, Fiji, India and New Zealand.

Close ties with the Government of Australia and New Zealand

38. A key structural element to note is Nauru's close cooperation and historical ties with Australia and New Zealand. In 1947, the United Nations designated Nauru as a trust territory with Australia, the UK and New Zealand as trustees with joint administering authority. In practice, Nauru remained under Australian administration. Nauru gained independence in 1968 and is an independent Republic under Article 1 of the Constitution of Nauru 1968. In 1989, Nauru took legal action against Australia in the International Court of Justice over Australia's administration of the island, in particular, Australia's failure to remedy the environmental damage caused by phosphate mining. *Certain Phosphate Lands: Nauru v. Australia* (1992) led to an out-of-court settlement to pay AUD 107 million (USD 67,296 million) and to rehabilitate the mined-out areas of Nauru.

39. During the 1990s, with the depletion of phosphate, Nauru was in serious debt. The government of Nauru requested the Pacific Islands Forum for assistance, which was provided under the Pacific Regional Assistance to Nauru initiative. Australia and New Zealand contributed to this initiative.²⁵

40. A September 2005 memorandum of understanding between Australia and Nauru provided Nauru with financial aid and technical assistance, including a Secretary of Finance to prepare the budget, and advisers on health and education. In return Nauru housed asylum seekers while their applications for entry into Australia were processed (<https://en.wikipedia.org/wiki/Nauru>).

41. Australia is responsible for Nauru's defence under an informal agreement between the two countries. In September 2017, Nauru and Australia signed a Memorandum of Understanding on security cooperation which affirmed Australia's position as Nauru's primary security partner. Australia works in close cooperation with Nauru to address domestic and transnational security challenges. New Zealand contributes air force and navy assets to provide assistance to Nauru in monitoring its Exclusive Economic Zone through Forum Fisheries Agency operations.²⁶

42. Australia, New Zealand, and Chinese Taipei have contributed financially to, and taken a shared management role in, the Intergenerational Trust Fund for the People of Nauru.²⁷ The fund aims to provide a future revenue stream for Nauru to supplement domestic revenue in anticipation of current revenue declining over the next 20 years.

43. The Australian Federal Police provides support to the Nauru Police Force and a number of other stakeholders through the Nauru-Australia Policing Partnership (NAPP) program. The NAPP program includes law enforcement cooperation, transnational crime and border security, operations capability, training and corporate reform.²⁸

²⁵ <https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/nauru/new-zealand-high-commissioner-to-nauru/about-nauru/>

²⁶ <https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/nauru/new-zealand-high-commissioner-to-nauru/about-nauru/>

²⁷ The 2024 with respect to diplomatic ties between Nauru and Chinese Taipei may affect arrangements for continued management. See https://www.mfa.gov.cn/eng/xwfw_665399/s2510_665401/202401/t20240115_11223838.html

²⁸ <https://www.afp.gov.au/about-us/our-global-work/our-work-pacific/our-work-nauru>

Background and other Contextual Factors

De-risking in the Pacific

44. In common with other Pacific Islands, Nauru faces significant pressure and real risks that commercial banks withdraw access to banking services. There are wider compliance, reputational and supervision issues that need to be considered to support continuing presence by banks. This is largely due to the trend of de-risking impacting many small jurisdictions, and sectors such as the remittance sector or consumers with crypto-currency businesses.

45. Larger banks in Australia, the United States and Europe have responded to factors such as commercial viability of the customer base, and the cost of ML/TF compliance, including the threat of enforcement penalties by withdrawing their banking services from consumers that pose a higher level of risk, or where there is insufficient information or familiarity to support.

46. Given the context of Nauru, which has been subject to blacklisting and experienced challenges maintaining correspondent banking relationships, the threat of de-risking is ever-present. Whilst Nauru is no longer under “listing” by FATF, it continues to face issues accessing the US dollar. Nauru uses the Australia dollar as its currency and does not have its own currency.

AML/CFT strategy

47. Nauru has its National Strategy for AML/CFT 2022-2025 in place, but it is still in the process of being implemented. It has been circulated to stakeholders and LEAs and was informed by the findings of the 2018 NRA. The assessment team found that, at the time of the on-site, Nauru has no mechanism for cooperation or coordination on policies and activities to combat TF and PF.

48. The government wide priorities are set out in Nauru’s National Sustainable Development Strategy 2019-2030 (NSDS). Of its seven long-term goals, the NSDS includes “[s]table, trustworthy, fiscally responsible government”. Under this heading, Nauru strives for “an effective, competitive and stable financial system that will enhance economic growth and development.” The NSDS also includes a Financing Strategy which notes that the government is implementing measures that include committing to transparent budgeting and public procurement frameworks; and strengthening international cooperation in tax matters through the continued strengthening of the AML/CFT framework.

49. The National Strategy introduced in 2022 has set out an intention to increase the coordination and cooperation between agencies. The National AML Governance Council has established the AML Officials Committee (AMLOC) to provide oversight and collaboration amongst stakeholders. AMLOC is currently chaired by the Head of NFIU. The Head of NFIU intends to hold regular meetings of the AMLOC. The mechanism of the AMLOC and National Strategy were established very recently with the first AMLOC meeting occurring in July 2023.

Legal & institutional framework

50. A number of key institutional elements for an effective AML/CFT system are present in Nauru, while others are still developing. The political system in Nauru is stable, with parliamentary elections every three years. Nauru demonstrates a high-level commitment to address AML/CFT issues. There is an independent and effective judiciary consisting of the Court of Appeal, the Supreme Court, and the

District Court. However, Nauru faces resource challenges including limited AML/CFT skills and expertise for competent authorities. There is a lack of capacity in LEAs, including a lack of training/experience in investigating ML/TF and tracing criminal proceeds. This is offset to some extent by NPF's ability to seek assistance from on-site Australian Federal Police officers.

System of Government

51. In 1968 Nauru gained independence and adopted its constitution. The Constitution established Nauru as a republic with a parliamentary system of government. The President is both head of government and head of state and is elected by, and responsible to, the 19-member unicameral parliament. Cabinet consists of the President and a minimum of four members of parliament nominated by the President. Nauru is divided into 14 districts, which are grouped to form eight electoral constituencies. The voting age is 20 years. There is no political party system in Nauru and most Members of Parliament stand as independents. However, it is usual for MPs to form groups that are often fluid. MPs are elected every three years.

52. The most recent election in Nauru was held in September 2022. Seventeen of the 19 parliamentary seats were retained by incumbents. MP Russ Kun was elected as president. On 25 October 2023 Parliament passed a vote of no confidence against the President. Parliament was not successful in electing a new President on that day. On 30 October 2023 MP David Adeang was elected as President.

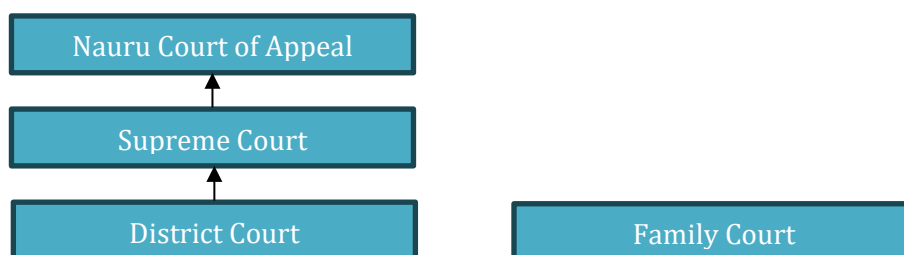
Legal and Court System

53. The legal system in Nauru is common law. The system is based largely on Australian and English common law and incorporates to a limited extent Nauruan customary law. The hierarchy of legal instruments is the Constitution, Acts of Parliament, subsidiary legislation (regulations) derived from powers with Acts and then rules or by-laws.

54. Legislation is passed by Parliament. A proposed law becomes law on the date when the Speaker certifies it has been passed by Parliament and is in force on a date notified by the Minister in the government Gazette.

55. In 2018, a substantive review was undertaken of Nauru's Judicial System. The following chart outlines the current structure of Nauru's courts:

Figure 1.1 Structure of Nauru's Courts



56. Three courts are under their own statutes - the *District Court Act 2018*, *Supreme Court Act 2018* and *Nauru Court of Appeal Act 2018*. The Family court is a separate court and has jurisdiction under the *Maintenance Ordinance 1959-196* and the *Adoption of Children Ordinance 1965-1967*.

57. The Parliament of Nauru has no judicial functions and cannot affirm or overturn court decisions.

Nauru's AML/CFT Agencies and Coordinating Bodies

58. Several agencies and authorities in Nauru have AML/CFT functions as follows:

Table 1.2 Nauru's AML/CFT Agencies

Authority	Responsibility
The Department of Justice and Border Control (DJBC)	The lead agency for the anti-money laundering and terrorism financing regulatory framework. Under DJBC, the Business Section is in charge of registration of business licenses, business names, beneficial ownerships, trusts, corporations, associations and partnerships. The Secretary of Justice and Border Control is the Registrar of corporations, business licenses, business names, trusts, associations and partnerships, and is also the Authority for registration of beneficial ownership. The DJBC is also responsible for immigration issues through the Immigration Division.
Nauru Financial Intelligence Unit (NFIU)	Responsible for the AML/CFT/PF framework, AML/CFT supervision and financial intelligence mechanism for the Republic. NFIU is the lead agency in combatting money laundering, terrorism financing and proliferation financing in the Republic. Additionally, NFIU provides guidance, assistance and training to all stakeholders to ensure capacity building. Sits under the DJBC.
Nauru Police Force (NPF)	The competent authority for the enforcement of the laws including the AML-TFS Act 2023, Crimes Act 2016, POCA 2004, POCA (Amendment) 2023 and CTTOC Act 2004, particularly in relation to investigation, forfeiture and confiscation of criminal assets relating to ML/TF.
Nauru Customs Service Office	Responsible for protecting the border against transnational crimes such as cash smuggling, human trafficking and human smuggling at the border under the Customs Act 2014. It also controls, monitors, and reports on border currency.
Director of Public Prosecutions (DPP)	The competent authority for prosecution of offenders under the ML/TF legislation and it is the office that instigates confiscation and other related proceedings provided under the legislation in force to combat ML/TF.
Nauru Revenue Office (NRO)	The competent authority that deals with tax related offences.
Courts of the Republic of Nauru	Crucial for the purposes of prosecution, determination of interest, confiscation of properties, enforcement of orders and generally determining any issues as part of litigation for criminal prosecution or civil proceedings.
The Office of the Minister for Justice	The Minister has many functions and exercises powers under various legislation including the AML-TFS Act 2023, POCA 2004, POCA (Amendment) 2023, MACMA 2004, CTTOC Act 2004
The Office of the Secretary for Justice	The Secretary for Justice has many functions and exercises powers under various legislation including the AML-TFS Act 2023, POCA 2004, Beneficial Ownership Act 2017. The Secretary for Justice is the Authority for the registration of Beneficial Ownership and the Registrar for all other registries (apart from the Registrar of Banks or the Shipping Registry).
Nauru Fisheries and Marine Resources Authority (NFMRA)	NFMRA is the official body responsible for the management of fisheries and other marine resources of Nauru. It is under an MOU between NFMRA and the Nauru Maritime Administration that Nauru issues certificates for a vessel to sail and trade under the Nauru flag.

Source: Nauru authorities

Table 1.3 Nauru's Principal AML/CFT Coordinating Bodies

Authority	Responsibility
National AML Governance Council	The National AML Governance Council is responsible for Nauru's strategic framework and adopted the 2023 NRA.
AML Officials Committee (AMLOC)	AMLOC is provided for by the National Strategy AML/CFT 2022-2025. The Governance Council established AMLOC to provide oversight and collaboration amongst stakeholders. AMLOC includes Treasury, NRO, NPF, Customs, Immigration, Fisheries and DPP, and is chaired by the Head of NFIU. The intention is that the AMLOC meet regularly to discuss and share strategies as well as identifying risks.

Source: Nauru authorities

Financial sector, DNFBPs and VASPs

59. Nauru's infrastructure for financial flows is precarious. An Australian bank provides access to bank accounts for Nauruans. This occurs under an 'agency' arrangement between the bank and the Government of Nauru. This banking agency is not characterised as a financial institution in Nauru, since it does not conduct any activities listed in the glossary of the FATF Standards. Significantly, the facility allows Nauru to function in the absence of a Central Bank. The mechanism is primarily for the Government (via the Department of Finance) to allow money supply (cash) in Nauru to be circulated. Cash is typically withdrawn from ATMs on island that are owned and serviced locally. But the processing happens in Australia. The cash for the ATMs is provided by the Government, not the agency. The Government is reimbursed in Australia by the agency for the cash dispensed in Nauru. The facility does not provide Nauruans with loans or credit cards. Nauruans typically transact with Bendigo Bank in Australia by card and e-banking, with cash deposits constituting a very small portion of transactions (approximately 2%). Information and forms in relation to CDD and onboarding are processed by the headquarters in Australia; and all necessary documentation on accounts for Nauruans are held in Australia, not in Nauru.

60. Nauru also has one MVTs provider. Nauru's 2018 NRA notes that the MVTs places a daily limit of AUD 20,000 (USD 12,579) on outbound remittances for the entire population. It further notes that through the bank agency, Nauru customers can conduct a telegraphic transfer in 16 currencies (as at 2017), but this does not include USD, EUR or GBP. The 2023 NRA notes that restriction on the use of USD poses concerns for Nauru, as it hampers Nauru's ability to receive grants and aid or enter into commercial contracts.

61. The legislative framework for DNFBPs is provided for in the AML-TFS Act 2023. There are a limited number of DNFBPs in operation: four law firms (some providing trust company services) and one gaming operator. The gaming operator is defined as a casino under the AML/CFT regime in Nauru. VA/VASPs are included in the regulatory regime established by the AML-TFS Act 2023, including identifying VASPs as financial institutions. However, Nauru does not have any VASPs in operation. Due to the traditional methods of owning and distributing land in Nauru, there are no real estate agents in Nauru. There are no insurance providers in Nauru.

62. The assessment team ranked the types of reporting entities based on their relative importance in Nauru's context given their materiality and level of ML/TF risks. These rankings inform the

conclusions throughout the report, with positive and negative findings weighted more heavily for important sectors. This approach applies throughout the report but is most evident in IO.3 and IO.4.

The MVTs provider is weighted as being of relatively high importance. According to Nauru's NRA 2018 and 2023, the MVTs provider is, along with the agency of an Australian bank, identified as being high risk and a single entity offering international remittance services to its customers, including asylum seekers and refugees potentially from higher TF risk countries. Meanwhile, it should be noted that the amount and the number of transactions handled by the provider is limited (hardly exceeding AUD 5,000 (USD 3,145) for each transaction and about 10 transactions per day).

- b. Law firms, those providing TCSP services, are also weighted as being of less importance.
- c. A gaming operator is weighted as being of relatively low importance, considering its overall small value of transactions/payouts and types of its customers (mostly local residents). categorised as a type of casino in Nauruan legislation and by NFIU as supervisor. In table 6.1 below ("Inspections to FI and DNFBPs for AML/CFT (2018-2023)") Nauru has included the gaming operator as the subject of an onsite inspection for AML/CFT in 2023 by NFIU and JBC.

The gaming entity in Nauru does not set a specific threshold for the winnings and has had a payout of approximately AUD18,000 in the past (see further in IO.4 below), which exceeds USD/EUR 3000 (relevant for applicability of CDD requirements under c22.1 of the FATF Methodology). Further, Nauru's NRA 2023 clearly says "*It [entity operating slot machines] has been treated in Nauru as casinos. The entity also has a gaming licence*".

Supervisory arrangements and Preventive measures

63. Nauru has a robust legal framework of AML/CFT preventive measures under the AML-TFS Act 2023, which covers all reporting entities within the FATF definition of FIs and DNFBPs. The types of entities operating in Nauru are limited, consistent with its size.

64. NFIU is the supervisor for all FIs and DNFBPs in AML/CFT and is empowered to conduct offsite and on-site inspections to FI and DNFBPs. The legal framework for fit and proper testing has been recently introduced (August 2023) as part of a legislative reform project, including enactment of the AML-TFS Act 2023.

Legal persons and arrangements

65. Since 2018, when the Government of Nauru directed the dissolution of Nauru Agency Corporation and its operations, there have been major changes in the way Nauru treats legal persons and arrangements. All legal persons and arrangements in Nauru are required to register with the Registry Divisions within the DJBC and must have a domestic presence in Nauru, as well as providing basic information as laid out by FATF Recommendations 24 and 25. The Beneficial Ownership Act requires that all Beneficial Owners of legal persons must be disclosed to the Authority for Beneficial Ownership by a local, nominated officer.

66. The legal system of Nauru recognises and creates several types of legal persons. They include corporations including foreign corporations (Corporations Act 1972), and associations (Registration of Associations Act 2020). The relevant legislation also categorises trusts (Trust Act 2018) as legal persons. The assessment team's understanding is there are no foreign trusts in Nauru.

Table 1.4 Legal Persons and Arrangements in Nauru as of October 2023

Legal Persons/Arrangements	Number	Registered Beneficial Owners
Corporations	72	94
Partnerships	44	70
Associations	9	
Trusts	0	
Business Licences	627	
Business Name Registrations	627 (536 sole traders)	

International Cooperation

67. The Minister for Justice and Border Control is the central authority responsible for executing MLA and extradition requests. Nauru has a legal framework in place for MLA and extradition. Nauru has neither received nor made any requests for legal assistance and extradition which appears reasonable considering its risks and context. The competent authorities in Nauru focus on informal information exchanges with regional counterparts.

68. Nauru is a member of the United Nations and the Commonwealth of Nations, the International Monetary Fund (IMF) and the Asian Development Bank (ADB). NPF is a member of INTERPOL, and the FIU has applied for membership of the Egmont Group of FIUs.

69. Regionally, Nauru is one of the leaders of the Pacific Islands Forum (PIF), and is also a member of the Fisheries Forum Agency (FFA), Oceania Customs Organisation (OCO), Pacific Financial Intelligence Community (PFIC), Pacific Island Chiefs of Police (PICP), Pacific Island Law Officers Network (PILON), Pacific Islands Tax Administration Association (PTAA), Pacific Immigration Development Community (PIDC), Pacific Prosecutors Association (PPA), Pacific Transnational Crime Network (PTCN) and Pacific Transnational Crime Coordination Centre (PTCCC).

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

2

Key Findings

- a) Nauru is a low-risk jurisdiction for ML/TF, with two NRAs (2018 and 2023). Nauru's second NRA was adopted in 2023, just before the Mutual Evaluation on-site visit. It dismisses several facts relied on by the 2018 NRA, without demonstrating support for the alternate facts, and reaches differing conclusions.
- b) The assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru.
- c) It is not evident that all competent authorities or reporting entities in Nauru understand ML/TF risks, or threats and vulnerabilities associated with ML/TF.
- d) Nauru has a National Strategy for AML/CFT 2022-2025, which was informed by the findings of the NRA 2018. Further, Nauru's National Sustainable Development Strategy 2019-2030 includes a Financing Strategy which incorporates "the continued strengthening of the AML/CFT framework" as an objective. These are appropriate steps to take to continue the development of the AML/CFT framework in Nauru.
- e) There is a gap in understanding the impact of National Project Limited providing shipping registration for Nauru around reporting, cooperation, and coordination to ensure the implications of ML/TF are understood.
- f) Despite being a low-risk jurisdiction for ML/TF, Nauru has not applied the results of its risk assessment exercises to justify exemptions and support the application of simplified measures.
- g) Nauru has recently established an organisational framework for inter-governmental cooperation and coordination in AML/CFT at policymaking level, the AML Official Committee (AMLOC). However, there is no clear central coordination and cooperation mechanism across the agencies in AML/CFT at the operational level.
- h) At the time of the on-site there was a low level of engagement with the findings of the 2023 NRA and there was variation in the understanding of AML/CFT obligations amongst lawyers, notaries, and other independent legal professionals regarding activities such as TCSP services and formation and management of legal persons.

Recommended Actions

- a) Review the NRA to ensure there is a robust process and methodology, with a focus on both quantitative and qualitative data demonstrating the consultation conducted with other agencies. This could include an open acknowledgement of areas of vulnerability, both past and present, and potential emerging risks²⁹ reflecting understanding of areas where Nauru needs to remain vigilant.
- b) In reviewing the NRA, consider the risks associated with informal lending, informal money remittances, and high value dealing activities.
- c) Utilise the results of a robust risk assessment to identify areas of low ML/TF risk and justify exemptions or support the application of simplified measures.
- d) Review the ML/TF implications of Nauru's shipping registry and establish effective mechanisms for reporting, cooperation, and coordination among the stakeholders, including National Project Limited.
- e) Ensure effective implementation of the National Strategy, including development of goals and timelines beyond the completion of the mutual evaluation.
- f) Improve coordination and cooperation amongst competent authorities in both policy and operational settings, including coordination to implement TFS in relation to the shipping registry.

70. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34 and elements of R.15.

Immediate Outcome 1 (Risk, Policy and Coordination)***Country's understanding of its ML/TF risks***

71. Nauru completed its first National Risk Assessment (NRA) in 2018 and is to be commended for the recent completion of its 2023 NRA. The 2023 NRA was adopted by the Anti-Money Laundering Governance Council on 8 October 2023, just prior to the commencement of the mutual evaluation on-site visit from 9 to 16 October 2023. The 2023 NRA not only examines ML/TF risks, but also sets out Nauru's legal, administrative and other systems relating to AML/CFT. The 2023 NRA was a result of work undertaken by NFIU beginning in 2021.

72. The primary threat identified in the 2018 NRA was illegal export of cash. The 2023 NRA notes that "this conclusion was reached based on 'cash uplifts,' 'tax evasion' 'corruption, robbery or theft'." In 2018, the vulnerability of the risk materialising was due to the absence of effective border control measures. The risk of illegal export of cash has been assessed as low in the 2023 NRA. The 2018 NRA

²⁹ Nauru should assess any potential investment migration programs (i.e., resident or citizenship by investment) for AML/CFT risk and ensure appropriate mitigation measures are implemented.

identified Australia as Nauru's greatest vulnerability as internet banking and money transfer facilities platform were readily available.

2

73. The 2023 NRA considers ML risks associated with threats arising from cash smuggling, drug trafficking, organised crime, corruption, fraud and tax evasion. Except for tax evasion (low to medium risk), Nauru finds a low level of ML risk arising from these threats. The NRA 2023 records three cases of corruption but states that there are no clear patterns to indicate systematic corruption and has categorised Nauru's corruption risk as low. Similarly, a section dedicated to terrorist financing (TF) and proliferation financing (PF) concludes a low level of risk. The NRA also surveys real estate agents, the gaming entity, high value dealers, accounting firms and accountants, trust and company service providers, and law firms and legal practitioners. The 2023 NRA either finds a low level of risk (with respect to the gaming entity and law firms) or no relevant activity. There are no real estate agents in Nauru as land ownership is communal and does not allow for the sale and purchase of property. There are no registered high value dealers in Nauru with jewellery and precious metals purchased from Australia or Fiji.

74. Significantly, the 2023 NRA concludes that Nauru's risk related to cash smuggling has reduced due to the financial inclusion brought by an Australian bank providing access to bank accounts for Nauruans. This occurs under an 'agency' arrangement between the bank and the Government of Nauru. This bank is supervised and regulated by the competent authority of the bank's home jurisdiction, with no jurisdictional AML/CFT powers being exercised by Nauru. The assessment team noted the benefit of financial access and inclusion resulting from this development, in comparison to the 2012 Mutual Evaluation Report (see above Ch. 1 "Financial Inclusion and the use of internet banking").

75. The assessment team did not receive persuasive reasons for the shift in findings from the 2018 NRA findings to the 2023 NRA. The risk settings are not supported by the data and consideration of inherent risk (actual, rather than discovered, crime). The basis for the shift of findings from the 2018 NRA is not clearly demonstrated in all cases, with almost all risk settings being downgraded to negligible or low. Nauru has indicated that some figures/statistics used for the 2018 NRA were unable to be verified, requiring a different approach to statistics. For example, during the on-site the assessment team noted that drug crime (and the subsequent financial elements) is an increasing concern for law enforcement agencies (LEAs) with cases involving seizure of proceeds of drug crime. In contrast, the NRA states that "the number of cases are very few and the quantity of drugs is minimal" which diminishes the risk. NFIU's own Strategic Analysis clearly indicates that "drug-related offences are on the rise and pose a significant risk." The assessment team was not provided with more information on the offences. The Strategic Analysis goes on to indicate that there is evidence of hard drugs such as methamphetamine and concludes that "[t]his reveals drugs are either being imported into Nauru or manufactured". The assessment team does not have information on the amount of proceeds, level of ML threat and the types of offences.

76. There has also been a prosecution of environmental crime in Nauru as indicated in IO.7 but the NRA 2023 has not included this crime type. The assessment team is unable to determine if there is an understanding of the ML/TF risks emanating from environmental crime.

77. Similarly, there are three cases related to corruption noted in the 2023 NRA, and the 2018 NRA noted significant bribes being accepted (2010-2018), however the 2023 NRA concludes that risk from corruption is low primarily due to a lack of "clear patterns that there is systematic corruption". In contrast, during the on-site, stakeholders noted weak or absent public procurement processes, lack of effective oversight over use of public monies, public integrity and corruption issues as a concern in

Nauru. This was raised by several stakeholders, particularly in relation to elections and public procurement (see background material on these issues in Chapter 1 above).³⁰

78. Written processes for public procurement primarily include Cabinet approval over public monies. However, there is little evidence of independent offices providing publicly available finalised audited accounts on use of public monies. Nauru has an independent office of the Auditor General established under *Article 66 of the Constitution* and *Audit Act 1973*. A 2017 audit of the 2013–14 government accounts ended a 15-year gap between government audits. However, since then only financial statements until July 2019 have been audited. The 2018-19 financial statements were submitted for audit in March 2021, but no statements have been published after 2019, i.e. for most of the period under review by this mutual evaluation.

79. The Office of the Ombudsman, provided for in the Leadership Code Act 2016, has not been filled. Issues in relation to the Office of the Ombudsman and the lack of financial controls and audits of financial statements were raised by Nauru’s 2021 UNCAC review, and IMF’s 2022 Article IV Consultation Country Report.³¹ These issues sit in the context of publicly available information including ongoing cases in other jurisdictions, raising concerns over corruption in Nauru from allegations of bribery involving Nauru’s politicians (see further background on these issues in Chapter 1 above).³²

80. Trade-based money laundering and smuggling of goods through postal parcels was described by some agencies but this is not addressed in the 2023 NRA. Further, the 2023 NRA lists three cases of unlawful gaming in the table on page 38 but these criminal cases in relation to unlawful gambling do not appear in the NRA’s analysis of risks associated with the gaming operator. Similarly, incidents of Nauruans being impacted by scams, with a financial element, have been described by several public and private stakeholders, including in the Strategic Analysis 2021-2023, but this is not addressed in the NRA. Nauru has experienced cybercrime and established a unit within the Nauru Police Force (NPF), however cybercrime as a threat is also absent from the NRA.

81. The assessment team noted variation in the understanding of AML/CFT obligations amongst lawyers, notaries, and other independent legal professionals regarding activities such as TCSP services and formation and management of legal persons. In the context of Nauru, it would also be recommended

³⁰ Nauru contests this statement, citing the lack of election fraud cases based on police reports since 2016; evidence of only two minor corruption cases pending in court; and bias in news articles about Nauru.

³¹ Nauru, *State of implementation of the United Nations Convention against Corruption* (2021), CAC/COSP/IRG/2021/CRP.2, see at

https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650.pdf, last accessed June 2024; IMF 2021 Article IV

Consultation Nauru Country Report No. 2022/028 (7 February 2022), available at

[https://www.imf.org/en/Publications/CR/Issues/2022/02/07/Republic-of-Nauru-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-512874#:~:text=IMF%20Staff%20Country%20Reports&text=Nauru%27s%20remoteness%20and%20size%20constrain,%2Dcommunicable%20diseases%20\(NCDs\)](https://www.imf.org/en/Publications/CR/Issues/2022/02/07/Republic-of-Nauru-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-512874#:~:text=IMF%20Staff%20Country%20Reports&text=Nauru%27s%20remoteness%20and%20size%20constrain,%2Dcommunicable%20diseases%20(NCDs)). (last accessed June 2024)

³² Transparency International Report, *Perceptions of corruption in seven small Pacific island countries* 2022, p.31; <https://www.smh.com.au/politics/federal/millions-of-dollars-in-detention-money-went-to-pacific-politicians-20230718-p5dp51.html>; <https://www.smh.com.au/politics/federal/afp-retracts-statement-dutton-was-briefed-on-nauru-bribery-investigation-20230804-p5dtzi.html>

that competent authorities maintain vigilance and consider risks associated with informal lending practices, informal money remittance and informal high value dealing activities (e.g. cars and jewellery).

2

82. The assessment team also noted that the assessment of vulnerabilities in the 2023 NRA did not consider the capacity challenges of Nauru's competent authorities. As a jurisdiction with the unique challenges of a small population, this was a notable omission.

83. During the on-site the competent authorities demonstrated varied levels of understanding in relation to ML/TF and universally indicated an appetite for education on how to recognise red flags and what to look for in their roles. This is a relevant metric for an accurate assessment of risk and should be considered by Nauru as a motivator for further reviews of ML/TF risk and awareness-raising of these across competent authorities.

84. Nauru has produced a Strategic Analysis 2021-2023 that includes some analysis on areas of potential risk including drug crime and online scams. The assessment team commends this approach and hopes this continues as part of Nauru's ongoing work on ML/TF risk assessment. The National Strategy (2022-2025) timelines address preparation for the mutual evaluation, but it does not contain any longer-term milestones for the work including a clear schedule for reviews or updates to the NRA. The National Strategy for AML/CFT 2022-2025 chapter on Implementation itself has a review date in mid-2025, but all of the milestones were in 2023. The 2023 NRA does not provide any schedule for the conduct of another holistic report although reference is made that this will now be an 'ongoing activity' for NFIU. Nauru has provided a National AML/CFT Strategy 2022-2025 Review Schedule which was not available to the assessment team until after the on-site.³³ Inclusion of evolving or emerging risks is not present as these are not considered relevant to the Nauruan context.

85. Notably, the current 2023 NRA and the National Strategy do not include any mechanism to review risk settings following material changes to the financial system in Nauru. Any change to the financial system in Nauru would have a significant impact on the risks faced within the jurisdiction and impact on the financial inclusion currently available as a jurisdiction. Some acknowledgement of this topic, along with potential mitigation steps, would be appropriate in the NRA.

86. The 2023 NRA includes a survey of TF risk associated with non-profit organisations (NPOs). The assessment team commends Nauru for this work on NPOs, which is a first for Nauru. The survey has indicated a low risk of the NPOs being misused for TF.

87. Overall, the assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru. The NRA did not provide a foundation for constructive mitigating strategies to counter ML/TF risks.

88. The 2023 NRA has recently been made available to the public, via the Government website. The understanding of ML/TF risks, threats and vulnerabilities differs across the private and public sectors, with some agencies having a clear understanding, but is generally low. At the time of the on-site it was not evident that the findings of the recently published NRA 2023 had been broadly distributed to the public and private sectors. Notably, the MVTS provider, law firms and the banking

³³ Nauru provided a National AML/CFT Strategy 2022-2025 Review Schedule which was not available to the assessment team until after the on-site. The document is not dated in a manner that confirms it was prepared prior to the on-site.

Agency (not a reporting entity) did demonstrate an understanding of ML/TF. However, many stakeholders outside NFIU did not have a grasp on the concept of ML/TF or its risk.

National policies to address identified ML/TF risks

89. Since the commencement of the Nauru National Strategy 2022-2025 Nauru has completed a review of the AML/CFT legislation, established the AML Officials Committee as well as an AML Private Partners' Committee and published the 2023 NRA as well as the FIU Strategic Analysis 2021-2023.

90. Following the 2018 NRA findings Nauru has taken steps to address the shortcomings highlighted with that report. In particular, the steps taken to address tax risk has been recognised with the OECD Global Forum on transparency and exchange of information for tax purposes 2019 report finding Nauru largely compliant with the international standard.

91. The government wide priorities are set out in Nauru's National Sustainable Development Strategy 2019-2030 (NSDS). Of its seven long-term goals, the NSDS includes "Stable, trustworthy, fiscally responsible government". Under this heading, Nauru strives for "an effective, competitive and stable financial system that will enhance economic growth and development." The NSDS also includes a Financing Strategy, which notes that the government is implementing measures which include committing to transparent budgeting and public procurement frameworks; and strengthening international cooperation in tax matters through the continued strengthening of the AML/CFT framework. The assessment team commends these objectives and notes, in agreement, that the efforts within Nauru must have a government-wide scope.

Exemptions, enhanced and simplified measures

92. The AML-TFS Act 2023 has introduced the ability to apply simplified measures in some circumstances, with the AML-TFS (Simplified Due Diligence) Guide 2023 being publicly available. The AML-TFS Act 2023 has introduced the ability for the Minister, in consultation with the Cabinet, to exempt a reporting entity (RE) or class of REs from all or some of the obligations. However, the provisions do not provide a direct link to the application of simplified due diligence only in circumstances of low risk.

93. At the time of the on-site there was no instance where simplified due diligence provisions have been applied. There are enhanced CDD requirements set out in the AML-TFS Act 2023. Enhanced CDD requirements had not been tested, which is in line with Nauru's assessment of low ML/TF risks.

94. As a low-risk jurisdiction for ML/TF, with the capacity constraints of a small jurisdiction, Nauru would benefit from translating the results of robust risk assessment exercises into exemptions from AML/CFT obligations and supporting the application of simplified measures.

Objectives and activities of competent authorities

95. NFIU, DPP and DJBC demonstrated clarity in their objectives in relation to AML/CFT. However, other government agencies were not clear on their roles in combating ML/TF, and it is recommended they are operationally incorporated into identifying and countering ML/TF. In particular, there are teams within the Nauru Police Force (Transnational Crime and Cyber-security) and Customs that have responsibilities over potential emerging risks that could be drawn on by NFIU in considering ML/TF risk.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

96. The Republic of Nauru National Strategy for AML/CFT 2022-2025 sets out five high level objectives to mitigate risks and focus the attention of competent authorities. These include:

2

- a. Objective 1 – Improve the AML/CFT framework to detect, disrupt and prevent AML/CFT contravening activities.
- b. Objective 2 – Develop and improve the effectiveness of AML/CFT investigation and prosecution and asset forfeiture mechanisms.
- c. Objective 3 – Strengthen domestic and international cooperation for AML/CFT.
- d. Objective 4 – Strengthen awareness raising and capacity building of AML/CFT contravening activities.
- e. Develop, promote and improve data collection on AML/CFT issues by sectors.

97. The assessment team was not able to conclude that this has been substantially implemented at the time of the on-site. Once the National Strategy is fully operational the benefits are expected to be seen across the system.³⁴

National coordination and cooperation

98. The National AML Governance Council is responsible for Nauru's strategic framework. The Governance Council has established the AML Officials Committee (AMLOC) to provide oversight and collaboration amongst stakeholders. AMLOC is currently chaired by the Head of NFIU, and the assessment team was provided the agenda and meeting minutes for the inaugural meeting held in July 2023. The Head of NFIU intends to hold monthly meetings of the AMLOC. The mechanism of the AMLOC and National Strategy were established very recently, therefore the assessment team is unable to conclude that they provide a forum for cooperation, coordination and exchange of information in practice.

99. NFIU took on the role of coordinating the responses in preparation for the mutual evaluation and has worked to ensure that competent agencies within Nauru were prepared for the Mutual Evaluation. The assessment team were provided with records of meetings where competent authorities and private sector were brought together in July and August 2023.

100. Objective 3 of the National Strategy focuses on the promotion of domestic and international cooperation of the competent authorities. Since the National Strategy was published, the AML Officials' Committee was established, and NFIU chaired the first meeting in July 2023. The National Strategy provides a framework for ongoing coordination and cooperation between agencies within Nauru. The establishment of the AML Private Partners' Committee provides a clear mechanism for engagement with reporting entities and the private sector.

101. Several competent authorities attended the AMLOC meeting in July but during the on-site they were unable to demonstrate awareness of its purpose, the role of the NRA and their role in its operation.

³⁴ Since the on-site Nauru has provided the assessment team the National AML/CFT Strategy 2022-2025 Review Schedule covering intended work streams.

Agencies appear to have had limited levels of input in the preparation of the 2023 NRA. However, several agencies noted with enthusiasm their support for continued inter-agency engagement and partnership.

102. The Strategic Analysis 2021 – 2023 has been circulated to LEAs and recommends allocation of resources and inter-agency collaboration to address the ML threat from drug offences. At the time of the on-site the assessment team did not observe this coordination and cooperation to be in place.

103. At the operational level, there is no clear central coordination mechanism to execute the decisions of the AMLOC or for broader operational level coordination on AML/CFT issues between relevant agencies, though bilateral MOUs exist between some agencies. However, Nauru was able to provide examples of coordination through the response to COVID -19 and the disposal of a large World War II unexploded bomb that was discovered on island. The development of an operational level coordination structure is critical to ensure the effectiveness of Nauru's AML/CFT framework. This includes concluding MOUs between agencies, in particular between NFIU and LEAs, to ensure financial information can be shared effectively in relation to the foreign banking agency and the MVTs provider (see further IO.6 and IO.7). This is achieved to some extent due to the size of the jurisdiction and the fact that both the competent authorities and the private sector know each other.

104. The management of sanctions evasions issues arising from the shipping registry is not conducted in a manner that is coordinated across agencies for AML/CFT/CPF. For context, the NMA, based in Singapore, undertakes the registration and licensing of ships under the Nauru flag. At the time of the on-site, the Nauru Fisheries & Marine Resources Authority was not aware of AML/CFT/CPF issues, nor was it included in the coordination mechanisms structures detailed above. The assessment team did not have an opportunity to meet with NMA during the on-site.

105. The Republic of Nauru MER 2012 noted that the key AML/CFT coordination mechanism was the National Coordinating Committee on Anti-Money Laundering and Countering the Financing of Terrorism (NCC). The NCC was an interagency group tasked with dealing with AML/CFT issues at a policy and high-level implementation level.³⁵ Broadly, the assessment team found that Nauru has no mechanism for cooperation or coordination on policies and activities to combat TF and PF. There are coordination mechanisms in place to respond to events that occur, including the response to COVID-19 and the unexploded World War II bomb, however, it is not clear that these mechanisms could be used to combat TF and PF.

Private sector's awareness of risks

106. Nauru has a limited number of FIs and DNFbps. NFIU has conducted outreach and ensured most of the relevant reporting entities (MVTs provider and law firms) were aware of recent work on AML/CFT. However, there was an emphasis on the legislative reform project in NFIU's outreach, rather than the 2023 NRA. The assessment team cannot conclude that the gaming entity operating in Nauru understands ML/TF risks as it was very recently engaged by NFIU.

³⁵ Nauru provided minutes and an agenda of the NCC for March 2010 to demonstrate earlier coordination.

107. The assessment team commends the outreach conducted by NFIU to build an understanding of AML/CFT across the private sector in preparing for the on-site meetings of this mutual evaluation. Continued efforts will be required to translate this to a familiarity with the contents of the 2023 NRA.

2

Overall conclusion on Immediate Outcome 1

108. Nauru is to be commended for its work on the 2018 and 2023 NRAs. However, there are differences in the findings of the two NRAs, without sufficient reasoning and data to ground the more recent conclusions. The assessment team is not able to confirm the basis of the NRA 2023 findings. For example, the assessment of vulnerabilities in the 2023 NRA did not consider the capacity challenges of Nauru's competent authorities, or coordination and awareness challenges related to TFS raised by the shipping registry. Similarly, despite being a low-risk jurisdiction for ML/TF, Nauru has not applied the results of its risk assessment exercises to justify exemptions and support the application of simplified measures. As a jurisdiction with the unique challenges of a small population, this was a notable omission.

109. During the on-site the competent authorities demonstrated varied levels of understanding in relation to ML/TF and universally indicated an appetite for education on how to recognise and address threats related to financial crime. The AMLOC and AML Private Partners' Committee have been recently established as forums for information sharing, engagement and AML/CFT policy. At the operational level, there is no clear central coordination mechanism to execute the decisions of the AMLOC or for broader operational level coordination. Given the recent passage of relevant legislation and foundational documents (NRA 2023, National Strategy) Nauru has had little opportunity to demonstrate that ML/TF risks are understood and, where appropriate, actions coordinated domestically to combat ML/TF/PF.

110. **Nauru is rated as having a moderate level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Financial Intelligence (Immediate Outcome 6)

- a) The NFIU provides financial intelligence and other relevant information to LEAs. The intelligence has been used for the purposes of investigating predicate offences by LEAs. There has been limited and minimal use of financial intelligence to investigate ML offences by LEAs, with no ML investigations leading to ML charges having been undertaken. However, there are several ongoing cases that involve ML elements.
- b) The NFIU utilises financial transaction reports in its database to undertake operational and strategic analysis and disseminate intelligence reports to LEAs. However, NFIU has never received STRs from the reporting entities in Nauru.
- c) In keeping with a number of small island states, NFIU is carrying 'key person risk' in relation to staff members that hold technical expertise on conducting financial analysis. NFIU has two analysts, including the NFIU Supervisor, various aspects of business continuity could be substantially degraded or disrupted at short notice, unless NFIU trains additional personnel.
- d) LEAs provided positive feedback on the guidance provided and information available and received when seeking assistance from NFIU. However, as there is only a foreign bank Agency operating on island, much of the formal financial activity is outside of Nauru's AML/CFT system and is not visible to NFIU in real time. MVTs provides quarterly reports to NFIU. There is little real-time information coming to NFIU to be analysed, which in turn creates an ongoing concern regarding LEA's access to information.
- e) NPF, Customs and NRO all produce limited financial intelligence, which is then sent to NFIU for further information and development. Nauru LEAs have requested further financial analysis training.
- f) NPF, DPP, NRO and Customs understand the benefit and use of financial intelligence and have sought additional training, guidance and information from NFIU.
- g) NFIU has statutory provisions establishing its independence and autonomy. However, it is not clear that NFIU has the capacity to carry out its functions freely, and to obtain and deploy the resources needed to carry out its functions free from any political, government or industry influence or interference.

h) NFIU is the central AML/CFT coordinator in Nauru, which allows for the robust and open exchange of information and intelligence amongst key agencies. However, while NFIU has SOPs in place to protect the confidentiality of information it shares, there is no prescribed process to monitor confidential use and maintenance of information exchanged between agencies.

ML Investigation and Prosecution (Immediate Outcome 7)

a) NPF is the main law enforcement agency in Nauru that investigates ML and predicate crimes, and it works closely with NFIU; however, no ML investigations leading to ML charges have been undertaken thus far. There are limited investigations and prosecutions of predicate offences, but these did not have related financial investigations.

b) The National Strategy for AML/CFT 2022-2025 sets out an intention to increase the coordination and cooperation between agencies, but at this time LEAs have a limited understanding of financial crimes or ML. NFIU is the primary agency that offers training and support to LEAs. In addition, principally under the Facilitation of Australian Assistance Act 2004, NPF is able to seek assistance from the Australian Federal Police (AFP) when investigating large and complex cases.

c) There are no specialised units or professional staff responsible for financial investigations or tracing funds - each responsible NPF officer would carry out financial investigations on their own, if necessary. TCU has trained officers to trace the money flow of transnational organised crimes, but not other cases involving ML/TF or predicate offences. NPF officers are not well trained for financial investigations but can conduct inquiries into financial affairs related to criminal activities.

d) LEAs face difficulties in obtaining information on the accounts or transactions from Nauru's sole foreign banking agency and primarily access foreign bank information through NFIU. The LEAs did not actively engage in coercive investigative acts, such as searches to gather essential financial information.

e) Customs is responsible for investigating predicate offences under Customs Act. However, in practice, Customs only conducts preliminary inquiries into border violations and then refers them to NPF for further criminal investigations.

f) There have been no ML prosecutions or convictions in Nauru. The Office of the DPP has expertise in relation to proceeds of crime and ML matters however has not had the opportunity to prosecute a case as yet.

g) Sanctions appear to be proportionate and dissuasive, but due to a lack of ML convictions, effectiveness, proportionality, and dissuasiveness have not yet been tested

h) ML is punishable by criminal penalties and proceeds of crime are unable to be forfeited until conviction. If a business violates any other law, its license may be suspended or cancelled under the Business Licenses Act 2017. However, this measure has not been implemented in any cases of suspected ML.

Confiscation (Immediate Outcome 8)

- a) Nauru has the legal framework and mechanism to seize or confiscate criminal proceeds and instrumentalities and to restrain property of corresponding value and has established a high-level policy. However, there are no specific actions or measures currently in place to prioritise tracing proceeds of crime, assets, instrumentalities and property of equivalent value.
- b) There have been no cases of confiscation or forfeiture in Nauru. Confiscation or restraining orders have never been applied by DPP. Nauru has not received any requests from foreign jurisdictions to seize and confiscate criminal proceeds.
- c) LEAs have the power and ability to conduct basic seizures and have procedures in place. NPF only has limited seizure cases for predicate offences, mostly for minor offences. Customs has only seized one shipment of cigarettes and no cash at the border since 2018.
- d) POCA 2004 permits the creation of a 'Confiscated Assets Fund', which is supervised by the Secretary for Finance. However, the fund account has been inactive since 2016, with no confiscated assets deposited into it. Additionally, the authorities are not currently aware of the existence of this fund.
- e) Customs has not received any cross-border declarations or reported any breaches of declaration requirements under the new laws since the POCA amendment in June 2023. It is worth noting that, in the past two years, fewer than 100 passengers have visited Nauru due to the pandemic.
- f) Customs is responsible for undeclared movement of currency/BNIs for outgoing passengers. However, there may be internal misunderstandings within Customs regarding the responsibility for conducting passenger exit inspections, leading to potential gaps in duty implementation.
- g) The Border control training received by Customs in recent years has been very limited.
- h) Due to the lack of statistics on criminal investigations, the assessment team cannot conclude that no confiscations and limited seizures align with Nauru's ML risk.

*Recommended Actions**Financial Intelligence (Immediate Outcome 6)*

- a) NFIU should ensure there are mechanisms in place for real time information sharing with key foreign FIU counterparts in relation to financial flows in and out of Nauru.
- b) NFIU as the focal point of AML/CFT knowledge in Nauru should work more intensely with LEAs to build their capability in identifying ML and using 'follow the money' techniques, thereby increasing the use of financial intelligence.
- c) Nauru should develop and implement operational strategies to use financial intelligence more proactively in the development of evidence in predicate and ML investigations and tracing proceeds of crime.

- d) NFIU should continue raising awareness of ML/TF typologies and red flags, including for corruption, within reporting entities to increase the frequency and quality of STR reporting.
- e) Nauru should review arrangements for the independence of NFIU to ensure the protections in the new AML-TFS Act are being effectively implemented.³⁶
- f) Nauru should develop context-appropriate mechanisms within competent authorities to ensure information exchanged between agencies has confidentiality protections.
- g) NFIU should review arrangements to receive reports in a timely manner from reporting entities.

ML Investigation and Prosecution (Immediate Outcome 7)

- a) Ensure LEAs are involved in discussions to further Nauru’s understanding of ML and proceeds of crime and familiarity with the NRA's findings.
- b) Issue parallel financial investigation mandates or policies for LEAs dealing with predicate offences and encourage initiation of ML and financial investigations when appropriate.³⁷
- c) Provide extensive training on criminal and financial investigation and develop manuals to LEAs dealing with ML and predicate offences.
- d) Use existing support from international partners, in particular the Australian Federal Police, to build financial investigation capacity within Nauru’s LEAs.
- e) Strengthen NFIU’s support to Nauru’s LEAs by providing education and training on financial investigative measures and facilitating access to and analysis of financial information.

Confiscation (Immediate Outcome 8)

- a) Establish and implement specific actions and measures, including policies and guidelines, to prioritise tracing of proceeds of crime, instrumentalities, and property of equivalent value.
- b) Encourage LEAs and DPP to undertake or propose investigative measures, restraining orders or seizure to secure the final confiscation.
- c) Provide training to enhance LEAs’ abilities to identify, trace and seize property that can be confiscated. This includes regular border control training for Customs officers on detecting proceeds of crime crossing Nauru’s borders.

³⁶ After the onsite, Nauru enacted the Anti-Money Laundering and Targeted Financial Sanctions (Amendment) Act 2024 to address this recommended action. The amendments were not reviewed by the assessment team as part of the ME process.

³⁷ After the onsite Nauru issued Anti-Money Laundering and Targeted Financial Sanctions (Parallel Financial Investigation) Regulations 2024. Nauru advises that the Regulations provide LEAs with the necessary powers for parallel financial investigations. The assessment team has not verified this.

- d) Ensure that Customs fulfils its responsibility to carry out passenger exit inspections.
- e) Strengthen and enforce the management of cases under investigation and seized properties, particularly by maintaining sufficient and comprehensive statistics.

111. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R.3, R.4 & R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

112. Nauru FIU was first established in 2004 within DJBC under the AML Act 2004 and in 2008 under s.7 of the AML Act 2008. The AML-TFS Act 2023 sets out the functions, duties and powers of the FIU. NFIU has a wide range of powers and access to multiple sources of financial and other information, including both commercially available databases and, direct access from some government entities. Government entity databases to which NFIU has direct access include DJBC (Corporations, Trusts, Partnership Records, Business Licenses, Business Names Registration, Shareholders and Beneficial Owners), Immigration (Travel Records and profiles), and Passports and Quarantine. NFIU has indirect access to databases held by other government agencies, which include Customs (Customs records, BCR, import and export data), Finance Department (finance, tax, Customs and budget data), NRO (revenue data, tax identification number, driving licenses), Nauru Fisheries (fishing licenses, illegal fishing, profiles) and Nauru Ports (shipping registry data). NFIU has three staff - the Head of the FIU, Assistant FIU Supervisor and one FIU analyst. The analyst has been recently recruited and is in the course of being trained in AML/CFT supervision and the conduct of financial analysis. NFIU has acquired a new database - TAIPAN - which will enhance analysis and security of intelligence and information received. NFIU is in the process of making TAIPAN functional.³⁸

113. Financial intelligence is primarily developed by NFIU. Nauru has shared six cases with the assessment team in which financial analysis products have been provided in relation to investigations. Information to undertake these disseminations has been taken from STRs received from AUSTRAC, requests for further information received from LEAs and other intelligence developed by NFIU. There is a well-developed capacity within NFIU to conduct financial intelligence.

114. Under section 74 of the Act the FIU exercises its functions and powers without direction or obstruction. The FIU also has separate budget line within the DJBC budget agreed ahead of the financial year. However, the assessment team has not been able to conclude that the FIU has control over its decision-making (expenditure, travel, recruitment) or functional independence in terms of FIU priorities. In addition, under section 91 of the Act, NFIU requires cabinet approval for the purpose of any agreement or arrangement with foreign counterpart regarding the exchange of information, which may also place limits on NFIU's independence and autonomy. The assessment team notes advice from

³⁸ TAIPAN became operational after the ME on-site.

NFIU that cabinet approval is a constitutional requirement and a procedural matter and that to date, all recommendations from NFIU have been endorsed.

Case Study 3.1: Testing FIU independence

3

In mid-late 2023, NFIU tested the new settings on FIU independence by seeking reversal of a recruitment action that had not been approved by the head of NFIU.

The recruitment had been approved as part of broader public service recruitment. DJBC and NFIU raised the matter to high levels of government and were able to reverse the recruitment and appoint a preferred candidate. This demonstrates the application of new legislative provisions (since 2023) which ensure the independence of the FIU.

However, it should be noted that this independence was exercised at the behest of the Secretary for Justice and Border Control (i.e. correspondence in this matter originated from the Office of the Secretary for Justice and Border Control, rather than NFIU). The challenges encountered by this reversal were explained by Nauru as establishing new processes under newly enacted legislation. The legislative provision grounding the independence of NFIU was also not in place for a majority of the review period for this mutual evaluation (2018-2023).

115. LEAs are making some use of NFIU financial intelligence but have limited experience and practice in undertaking their own financial analysis and developing and using financial information and intelligence to trace criminal proceeds and initiate ML, TF and predicate investigations. NPF, Customs and NRO all develop their own financial intelligence and then request further information and input from NFIU. During on-site discussions with the assessment team, Nauru LEAs consistently and repeatedly requested financial analysis training and acknowledged that the use of financial intelligence and other information in investigations is currently being led solely by the recent efforts of NFIU.

116. The following two case studies illustrate where financial intelligence from NFIU has been used by NPF in the investigation of predicate offences:

Case Study 3.2: Information Exchange and International Cooperation

In June 2022, NFIU received a request from NPF for a financial background check on Person A, a 54-year-old unemployed foreign national whose house was raided, and drugs were seized from the premises. Person A was suspected of being involved in illicit drug activities.

NFIU was able to ascertain that there were no bank accounts by Person A with the foreign banking Agency operating in Nauru. This inquiry was facilitated through foreign counterparts. NFIU also established that Person A had arrived in Nauru from another Pacific jurisdiction in March 2016. NFIU was able to obtain a detailed information report on Person A from the Transnational Crime Unit (TCU) of that Pacific jurisdiction. NFIU shared the report with TCU Nauru and introduced them to the TCU of the other Pacific jurisdiction to liaise further on the background of Person A.

Case Study 3.3: Information Exchange between NFIU and LEA (potential fraud)

In April 2023, a request was channelled to NFIU from the Secretary for Justice in relation to alleged forgery at the Passport office. The request from the Secretary for Justice and Border Control was for NFIU to analyse the case for potential fraud.

Person C was an unemployed Nauru national, who approached the Passport office to renew two passports and allegedly attempted to avoid payment for the renewal of two passports. Person C provided an online bank payment receipt which appeared to be forged. NFIU conducted checks (document examination) and established that, in comparison to an original bank payment receipt, there were anomalies. NFIU also established via enquiries with NPF, that Person C was previously known to the police for such behaviour. NFIU disseminated a report to Police in a span of two weeks and an investigation is currently being undertaken into the matter.

117. In the period from 2021 to 2023, NFIU disseminated 10 operational analysis products to NPF, NRO, DPP and Customs as displayed in table 3.1 below.

Table 3.1 NFIU Disseminations to LEAs.

LEA	Number of Products			Total
	2021	2022	2023	
NPF	1		4	5
NRO		2		2
DPP		1		1
Customs			2	2
Total	1	3	6	10

*Source: NFIU

118. In line with Nauru's low risk profile, there have not been any investigations into TF and therefore no financial intelligence has been developed or sought in relation to TF.

STRs received and requested by competent authorities

119. Competent authorities in Nauru displayed awareness of the information they could receive from NFIU. As the table below demonstrates, competent authorities are requesting information from NFIU. The assessment team heard positive feedback from competent authorities on information available from NFIU.

Table 3.2 Requests for Information to NFIU from LEAs or competent authorities (2020 - 2023)

	Requesting Agency				Total
	NPF	Customs	Tax	Others	
2020	7				7
2021			11		11
2022	8	3			11
2023	8				8

120. NFIU has a total of 320 financial transaction reports (STRs, IFTIs) in its database and has powers to access a wide range of financial, administrative and law enforcement data. The table below shows the type and number of reports received by NFIU and by reporting institution from 2020 to 2023.

Table 3.3 Reports received by NFIU from Reporting Institutions from 2020 – 2023.

Report Type	Reporting Institution	Number of Reports				Total
		2020	2021	2022	2023	
STRs	Foreign FIU counterpart (home jurisdiction of banking Agency)	141				141
IFTIs	MVTS		131	48		179
						320

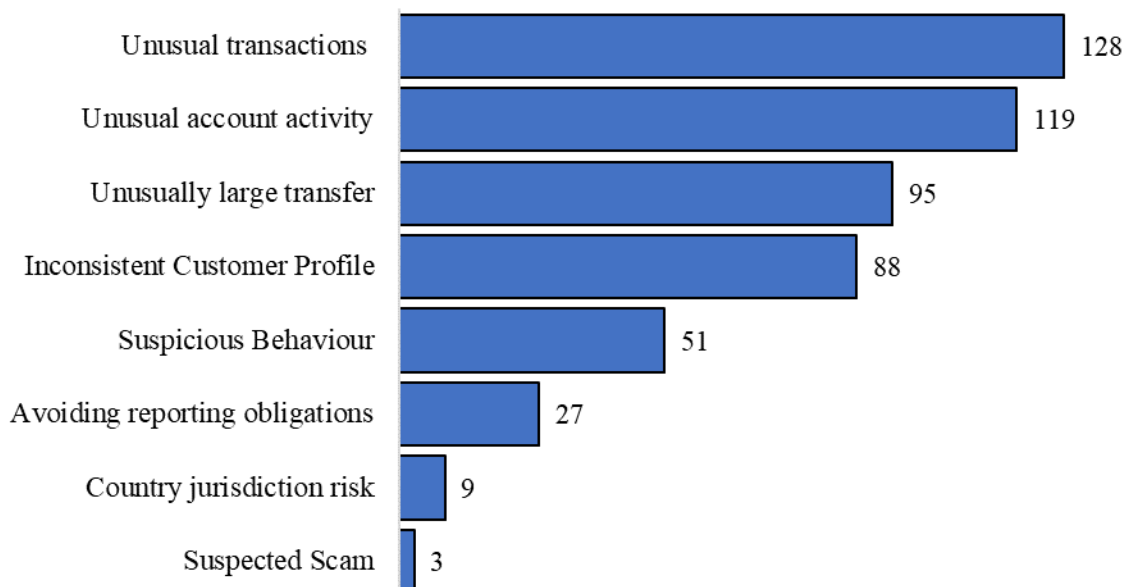
*Source: Nauru Financial Intelligence Unit Strategic Analysis 2021-2023

121. Of ongoing concern is NFIU's limited opportunity to undertake *real-time* operational analysis and dissemination. Most Nauruans hold bank accounts with a foreign banking Agency, which is under the monitoring of the FIU of its home jurisdiction. The current reporting arrangements lack real-time information from the banking agency or from the relevant FIU, AUSTRAC. In addition, as the foreign banking agency is not required to report to NFIU, much of the formal financial activity on the island is functionally outside of the Nauru AML/CFT system and therefore not visible to NFIU. There is little real-time information coming to the NFIU to be analysed.

122. The only FI in Nauru is an MVTS provider. The MVTS provider currently provides NFIU with quarterly financial transaction reports – a practice that has been in place from October 2020 to June 2023. Section 62 of the AML-TFS Act 2023 requires reporting entities to report relevant information to NFIU within 7 days. Quarterly reports are not mandated by law, but appear to be provided in lieu of STRs. However, in practice, the MVTS provider has been able to provide a quarterly financial transaction report within two days of a request from NFIU.

123. The MVTS has not reported any STRs to NFIU. In July 2021, the MVTS was advised by NFIU of its reporting obligations under Nauruan AML/CFT legislation (the superseded AML Act 2008), including the requirement to report STRs to NFIU. This was reinforced in September 2023 after the passage of the new AML-TFS Law 2023. In the period under review, the MVTS provider raised an STR on its Nauruan operations, however this was lodged with the jurisdiction of the MVTS' headquarters rather than the NFIU.

124. The foreign banking agency is not required to submit STRs to NFIU (see context on the banking agency in Chapter 1, "Financial Inclusion and use of internet banking" and "Financial sector, DNFBPs and VASPs"). However, there is some cooperation between NFIU and AUSTRAC, the supervisor of the foreign bank. In 2020, NFIU received a batch report of 141 suspicious matter reports (SMRs) related to the foreign banking agency from AUSTRAC, covering the period 2017 to 2020. These batch reports were in a clustered format, rather than individual reports. AUSTRAC has not provided any SMRs to NFIU since 2020. At the time of the on-site, NFIU had analysed 17 of the 141 SMRs and disseminated three to LEAs for further investigation. NFIU identified 520 individual reports from the batched SMRs from AUSTRAC and categorised the SMRs in graph 3.1:

Graph 3.1 SMRs from the foreign FIU categorised

*Source: Nauru Financial Intelligence Unit Strategic Analysis 2021-2023

125. There are no domestically reported STRs, but NFIU has provided financial dissemination and intelligence information reports in the period 2021 to 2023 to support operational needs of competent authorities. Notably, the DNFBPs that qualify as reporting entities have recently begun developing their understanding of ML/TF and STR requirements. NFIU seeks STRs and other information from AUSTRAC and other FIUs in supporting its analysis as demonstrated in case studies 3.1 (above) and 3.3 (below).

Table 3.4 Number of requests from FIU to REs for additional information from 2021 – 2023

Year	Total Number of Queries to REs for additional information
2021	5
2022	
2023	8

*Source: NFIU

Operational needs supported by FIU analysis and dissemination.

126. In the context of a small jurisdiction, NFIU provides a focal point for competent authorities to access expertise in financial analysis. This expertise is not replicated in other agencies, however, when LEAs identify an operational need for financial enquiries, they approach NFIU for assistance. The assessment team has noted that LEAs do not have capabilities in ‘following the money’ and therefore their operational knowledge is not developed to combat ML/TF. Therefore, use and demand for financial intelligence and information by LEAs requires continuous development, and training with institutions outside of Nauru with fully developed financial intelligence systems would be beneficial (see IO.7 and IO.8).

127. Several case studies provided by Nauru indicate NFIU’s capacity to provide support to LEAs: seeking financial information/background checks of persons of interest relevant to investigations of potential predicate offences. In general, competent authorities had positive feedback on guidance provided and information available and received from NFIU. An ongoing concern amongst LEAs is negligible access by NFIU to *real time* information in relation to transactions conducted by the foreign banking agency. However, NFIU has an arrangement with the foreign FIU counterpart from the banking agency’s home jurisdiction, whereby information can be obtained without delay. However, this information can only be used for intel purposes and not shared with LEAs without permission from the foreign FIU. NFIU is able to analyse the information and send the analysis to the LEA.

128. NFIU undertakes operational analysis and has conducted a strategic analysis, identifying trends in SARs and Electronic Transfer Reports. This strategic analysis is published on the DJBC website.

129. NFIU conducts STR analysis manually. NFIU officers analyse suspicious transactions and other financial transaction information in order to develop intelligence products. The results of the analysis are disseminated to relevant LEAs in the form of “case dissemination reports” to assist the operational needs of LEAs to investigate predicate and ML offences. While NPF and Customs noted that disseminated reports are useful, they have not resulted in successful investigation of ML offences due to limited understanding and capability to investigate ML/TF within NPF and Customs and lack of evidence.

130. Although Nauru is a low-risk jurisdiction, the low rate of FIU disseminations leading to ML investigation, conviction and prosecution is of concern. However, case disseminations have led to some predicate crime investigations.

131. The table below lists instances where NFIU has provided analysis and dissemination to LEAs. The assessment team has received sanitised case studies on each of the six cases. The potential offences linked to the disseminations are somewhat in line with the ML/TF risk assessments, however, despite corruption being noted as high risk in the 2018 NRA, there is an absence of any analysis or disseminations on matters relating to corruption.

Table 3.5 Disseminations by the FIU to relevant authorities

Trigger	LEA	Alleged Offence	Outcome
SMR	NRO	Tax Evasion	Under Investigation
NPF RFI	NPF	Drugs	Pending prosecution
NPF RFI	NPF, NRO, Customs	Illegal Sale of Alcohol	Under Investigation
NPF RFI	NPF, NRO, Customs	Illegal Sale of Alcohol	Under Investigation
JBC	NPF	Forgery	Under Investigation
JBC	NPF	Forgery	Under Investigation

*Source: NFIU

132. NPF, DPP, NRO and Customs understand the benefit and use of financial intelligence and have sought additional training, guidance and information from NFIU.

Case Study 3.4: Financial Intelligence leading to predicate crime investigation.

In 2022, NFIU received a request from the NPF/TCU for financial checks against Person B. The matter was related to a suspicion of illegal sales and distribution of alcohol after hours.

NFIU made a request to a foreign counterpart for financial information and revisited its databases to extract information for Person B. Person B was a subject of NFIU analysis and previously recorded on the NFIU SMR database. This matter and analysis were then undertaken with the previously recorded information.

Analysis of the financials provided by foreign counterpart revealed several accounts held with banks in Australia. Accounts had low balances, and some accounts had been closed. Transactions in the account with the foreign banking agency confirmed payments for alcohol and after hours as well.

The FIU then made a comparative analysis with the findings of a previous case involving person B and found it was likely that the high volume of transactions and fund movements relating to Person B's account was a possible laundering of funds. During information gathering with other LEAs, Customs revealed that Person B was also subject to their investigations relating to possible duty evasion and illegal removal of cargo from the port without proper clearance.

NFIU then made a dissemination report to NPF for a possible predicate offence investigation of illegal sales of alcohol and ML investigations. NFIU also provided further disseminations to both Customs and NRO. NFIU recommended that LEAs conduct joint investigations, where necessary.

The investigation is still ongoing.

Cooperation and exchange of information/financial intelligence

133. NFIU is the central AML/CFT coordinator allowing for the open exchange of information and intelligence among key stakeholders and the private sector. NFIU, in conjunction with DJBC, has established the AMLOC with Treasury, NRO, NPF, Customs, Immigration, Fisheries and DPP to facilitate the cooperation and exchange of information, intelligence and financial investigation training and assistance. In addition, NFIU has signed MoUs with Australia and Chinese Taipei and is negotiating an MOU with New Zealand.

134. Domestically, NFIU has MoUs with Customs, NRO and NPF which include provisions to protect the confidentiality of information shared. In addition, NFIU has protocols (NFIU SOPs) to protect the confidentiality of the information it shares. Financial intelligence products contain caveats that protect and restrict sharing with third parties without first obtaining permission from NFIU. Intelligence data is disseminated through processes that identify its confidential nature.

Case Study 3.5: NFIU information shared with NRO under a confidentiality protocol.

This case was developed from an SMR provided by the FIU counterpart from the foreign jurisdiction that supervises the foreign banking agency.

There were four suspicious matter reports raised against Person A; a businessman based in Nauru. NFIU made a formal request to the foreign FIU counterpart for financial information on Person A. In addition, NFIU made further checks with the registrar of business, relevant authorities in Nauru and open-source information. Analysis revealed Person A was strongly connected to Person B, a local businessman. Further analysis indicated a likelihood of tax evasion and potential money laundering.

Due to several business-related transactions, the matter was referred to NRO to conduct an investigative audit to determine if there is any tax evasion by person A and person B. This information was shared under the confidentiality protocol between NFIU and NRO as provided for by MoU.

The investigation is ongoing.

135. There are no prescribed processes to monitor the confidential use and maintenance of information exchanged between agencies. According to discussions on-site some authorities protect the confidentiality of information they receive and use. However, the assessment team observed hesitation amongst some agencies in relation to the management of disseminated intelligence, leading to concerns with exchanges of information and financial intelligence.

Overall conclusion on Immediate Outcome 6

136. NFIU is developing financial intelligence and has access to multiple sources of information, including both commercially available databases and either direct or indirect access to a number of government entity databases. LEAs have used NFIU intelligence to investigate predicate offences. However, there has been minimal use of financial intelligence to investigate ML/TF and to identify and trace criminal proceeds related to ML/TF. This is primarily due to limited capabilities within LEAs in ‘following the money’ or operational knowledge to combat ML/TF. Further, the quality of operational analysis that NFIU is able to develop is hampered by a lack of access to real time STR reporting from reporting entities, and ad hoc / delayed information-sharing by the FIU counterpart from the foreign jurisdiction that supervises the foreign banking agency.

137. LEAs in Nauru have, on a regular basis, requested information from NFIU and recognise that NFIU provides expertise in financial analysis and quality information and assistance. NFIU has provided a fair number of operational and strategic analysis products and has demonstrated a consistently strong pursuit of international cooperation in developing intelligence. The absence of any ML investigation should be taken in the context of Nauru’s very small size and relatively low risks. In the context of a small jurisdiction, NFIU provides a focal point for LEAs to access expertise in financial analysis.

138. **Nauru is rated as having a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

139. Nauru Police Force (NPF) is the principal authority responsible for investigating money laundering and predicate offences. There are five main units in NPF, including the professional standards unit, operations unit, crimes unit, learning and development unit, and operations support unit, with a total of 318 police officers. The Criminal Investigation section of the crimes unit consists of five officers and is responsible for the investigation of ML and predicate offences.

140. LEAs work closely with NFIU for sharing information and intelligence. However, no ML investigations have been undertaken by the NPF. Nauru has shared two ongoing cases that have been identified as potentially having ML elements (see case studies 3.6 and 3.7 below) which are still under

investigation. Additionally, Nauru has provided information on six ongoing cases related to illegal alcohol sales, abuse of authority, or theft, some of which may involve ML.

Case Study 3.6: Predicate Investigation with Potential ML (multiple jurisdictions)

In 2023, NFIU was requested to assist in the investigation of a predicate offence with potential ML and organised crime. This case has a transnational nature, where four jurisdictions (including Nauru) are involved. A joint investigation involving LEAs and NFIU was commenced. NFIU made requests to its FIU counterparts in three other jurisdictions (A, B, C) for financial information of POI, i.e., bank accounts. NFIU made three disseminations to NPF for its investigations – this case is still ongoing, with the possibility of an MLA request from Nauru to seek further information from Jurisdiction B.

At the domestic level, there has been cross-agency coordination among the LEAs, including but not limited to DPP, JBC, Customs, and Immigration, as well as NFIU and NPF.

Case Study 3.7: Predicate Investigation with Potential ML

This case started as a traffic case in 2023, with a reserve Police Officer identified as the person of interest (POI). The POI stole money from the vehicle of the victim and went absent from work. An internal disciplinary case within the LEA was initiated against the POI.

The disciplinary case revealed that the POI was purchasing expensive items such as vehicles, phones, fishing gear, etc. NPF executed a search warrant and seized the items under suspicion, since the only source of income for the POI was his salary.

NPF made a request to NFIU for the POI's financial information. NFIU provided a dissemination report confirming no other source of income for the POI. Items seized are in Police custody whilst NPF are awaiting a confirmation on the financial information via a search warrant. This matter continues under investigation.

141. The assessment team did not receive sufficient statistics for the investigation of predicate offences. Nauru LEAs noted that the majority of cases that they deal with are physical assaults, such as sexual assaults and serious injuries.

142. According to the 2023 NRA, between 2019 and 2023, 151 predicate offence cases were prosecuted by the DPP, including 14 cases relating to drugs, corruption, unlawful gaming and robbery. Nauru provided prosecution statistics from 2019 to May 2023 (see Table 3.6) in which the majority of predicate offences are assault-related offences, with a very small percentage being property or financial-related offences. NFIU did not initiate these prosecution cases. However, the cases were reported to NPF, and NPF requested necessary information from NFIU during investigations.

Table 3.6 Prosecution statistics, 2019-May 2023

Predicate Offence	Cases of Prosecution (from 2019 to May 2023)
Assault and Serious Harm	47
Sexual Offences	34
Damaging Property	8
Drug related	7
Theft	3

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Robbery	1
Total	100

*Source: Nauru authorities

3

143. Nauru's National Strategy for AML/CFT 2022-2025 sets out an intention to increase the coordination and cooperation between agencies, with the AML Officials Committee (AMLOC) established as a result. Despite some of the LEAs having attended the AMLOC meeting, they did not appear familiar with the findings of the NRA during the ME on-site – this may relate to the recent adoption of the 2023 NRA. The 2023 NRA states that 98% of transactions are electronic with the cash economy only 2%, however, at the on-site the assessment team heard from LEAs that cash transactions are prevalent, and this affects investigation tendencies and patterns of tracing money flows (see conclusions on IO.1 in relation to the 2023 NRA). Generally, there is a gap in understanding the vulnerabilities and risks of ML.

144. LEAs have a limited understanding of ML crimes. LEAs have investigative capacity but do not have the capability or experience to identify and investigate the financial element of most proceeds generating cases. However, it should be noted that this is in the context of a low risk, low crime jurisdiction with a small number of reporting entities. Nauru shared information about some cases where ML would have been a possible avenue for investigation. There are instances of financial information being requested, but there have been difficulties in getting financial information from foreign jurisdictions and in LEAs' use of this information, as outlined below and in IO.2 (chapter 8).

145. NPF is able to seek assistance from the Australian Federal Police (AFP) when investigating large and complex cases and as needed. NPF has a bilateral instrument with the AFP in which the AFP supports and mentors NPF counterparts, including by providing assistance with logistics and providing equipment where necessary in Nauru. AFP currently has two officers in Nauru. Nauru and the in-country AFP have conducted one formal joint cybercrime investigation in May 2022. AFP carried out the primary investigation as NPF lacks technical capability.

146. None of the LEAs in Nauru have a parallel financial investigation mandate or policy. However, one of the actions identified under Objective 2 of the National Strategy for AML/CFT 2022-2025 is to "encourage parallel financial investigations". The assessment team did not receive any supporting evidence of incentives or active demands for parallel financial investigations. In Case Study 3.6, Nauru demonstrated how NPF gathers information from multiple agencies. This includes the personal information of suspects, their spouses, family members, POIs (Persons of Interest), contracts, financial documents, passports, travel records, payment information, and even visits to other agencies for discussions and inquiries.

147. NPF assigns police officers according to the type of case. There is no specialised unit or professional staff solely responsible for financial investigations or tracing funds - each responsible police officer would carry out their own financial investigations, if necessary. TCU has trained officers to trace the money flow of transnational organised crimes, but not other cases involving ML/TF or predicate offences. NPF works closely with NFIU and depends heavily on NFIU for assistance in obtaining financial information.

148. There is one foreign banking agency providing access to bank accounts for Nauruans. As Nauru does not exercise jurisdiction over the banking agency (see IO.1 and 3), LEAs do not approach the agent directly. For transactions involving this agency or other Australian bank accounts (see IO.6), the LEAs request assistance from AUSTRAC, primarily through NFIU. LEAs otherwise would request assistance

from foreign countries through an MLA. However, in the case of transactions involving countries other than Australia, LEAs have not explained how they would obtain financial information or documents to facilitate the investigation, as Nauru has not yet made any MLA request.

149. Overall, the assessment team observed that LEAs are reluctant and feel unable to verify or obtain financial information, as basic as bank account information, from foreign financial institutions. The investigations have usually been interrupted or terminated once the request for information has been delayed or refused (e.g., by the banking agency office in Nauru). Although NPF has legal authority to apply for production orders or monitoring orders, it is unclear whether the police have used these tools in investigating cases. Further, the only financial institution in Nauru is an MVTs provider. LEAs have only sought financial information from the MVTs provider once in 2023, before the on-site visit, due to a lack of familiarity with the coercive powers they hold in this regard.

150. LEAs generally have not received sufficient training for identifying and investigating ML or finance related crimes. Police officers receive six months of training upon recruitment and training in Hawaii in relation to transnational crime. Most in-service training is provided by foreign counterparts or international organisations and is focused on basic investigative techniques or forensics. Table 3.7 represents relevant training provided to LEAs since 2020. The only training focused on financial investigations was in 2021.

Table 3.7: ML/Financial Investigation Related Training provided to LEAs³⁹

Date	Topic	Agency	Organiser
26 Oct -06 Nov 2020	Intelligence Fundamentals – Intelligence Analysis	NFIU, NPF	AUSTRAC
9-12 Mar 2021	Financial Crime, Money Laundering and Criminal Asset Confiscation Workshop	NFIU, NPF, NRO, Customs, JBC	APG NFIU – Co presenter
24-25 Aug 2021	Trade based Money Laundering Webinar series	NFIU, JBC, Customs, NPF, NRO	AUSTRAC
15-23 Nov 2021	Intelligence Fundamentals – Intelligence Analysis	JBC, Immi, NPF	AUSTRAC
March 2023	International Management of Serious Crimes (IMOS)	NPF	Indonesia Police
2-12 May 2023	AML/CFT Supervision of Remittance Providers	NPF	APG
May 2023	Cybercrime Investigation Program	NPF	Pacific Faculty of Policing

151. Customs is responsible for investigating predicate offences under the Customs Act. There are 28 officers in the Nauru Customs Service. In practice, Customs will complete a preliminary investigation of most cases in accordance with its own mandate, then refer the case to NPF if criminal activities are detected, as NPF has the necessary powers to undertake a comprehensive investigation. There are no

³⁹ The Australian Federal Police Financial Investigations Team in partnership with the Law Enforcement Cooperation Program (LECP) delivered economic crime investigations training to Pacific Law Enforcement partners in Fiji from 19-23 February 2024. This is outside the 2018-2023 period covered by this report.

cases where Customs is responsible for criminal investigations with the involvement or assistance of the police. Customs does not conduct financial investigations and will ask NFIU to assist in obtaining financial information if necessary. Customs has demonstrated the ability to detect suspicious activities at the border. Nauru provided a case where Customs had reported a suspicious removal of goods from a container without proper documentation to NFIU, the NPF and the Minister for Finance in May 2023.

152. The Customs database was recently damaged, resulting in data loss, therefore Customs was only able to provide very limited statistics to the assessment team. Nauru advised that since 2016 there have been 22 cases investigated by Customs, of which some have been completed and prosecuted by DPP. According to the statistics provided by Customs (see Table 3.8), there has been only one Customs case since 2018, but the type or details of this case is not provided. Most of the cases shared by Customs with the assessment team are related to drugs. Customs hands over cases to the police for drug testing. NPF can send the drugs overseas for further drug authentication if required.

Table 3.8: Customs Investigations/Prosecutions/ Court Decisions, 2018-August 2023

Year	Investigations	Prosecutions	Court Decisions
2018	-	-	-
2019	-	-	-
2020	-	-	-
2021	-	-	-
2022	-	-	-
2023 (Jan to Aug)	2	1	pending

*Source: Nauru Customs

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

153. The findings of Nauru's 2018 and 2023 NRAs are detailed in IO.1 (chapter 2), which indicates the assessment team's concern about a gap in understanding the sources and risk of ML. The 2018 NRA finds that Nauru's highest ML risk is cash smuggling, with tax evasion, corruption and robbery/theft as the highest source of illicit funds. The 2023 NRA indicates that cash smuggling and corruption are now considered low risk, with tax evasion rated as medium to low. The 2023 NRA also considers drug trafficking, organised crime and fraud, and finds the latter two to be low risk.

154. Regarding predicate offence investigations in Nauru, statistics on actual cases investigated by NPF have not been provided. Concerning prosecution, the assessment team obtained different statistics from various resources, including the 2023 NRA and authorities. The 2023 NRA notes that of the 151 predicate offences prosecuted between 2019 and 2023, 14 were for financially related crimes (drugs, corruption, unlawful gaming and robbery). Table 3.9 represents predicate offences prosecuted between 2018 and August 2023. In addition, from 2019 to May 2023, there were 47 cases of assault and serious harm, as well as 8 cases of property damage (see Table 3.6).

Table 3.9: Number of Prosecutions - by predicate offence (2018-August 2023)

Predicate Offence	2018	2019	2020	2021	2022	2023 (Jan to Aug)	Total
Murder	1						1
Sexual Exploitation	4	7	7	8	2	6	34

Corruption and Bribery						3	3
Environmental Crimes						1	1
Drug Trafficking						7	7
Theft		2		1			3
Robbery					1		1
Total							50

*Source: DPP

155. Regarding theft and robbery offences, the assessment team is aware of four prosecutions since 2019, but the actual number of investigations is not clear. However, according to the authorities, thefts are common, and most are motivated by cash. The authorities have not explained the reasons for the low number of prosecutions.

156. Regarding fraud offences, there are currently no prosecutions or cases investigated by the LEAs in this period. The 2023 NRA notes that cash use in Nauru has declined, internet banking use has increased dramatically, and the NPF has received cases of internet scams. So far, NPF has primarily relied on screenshots and saved messages from social media to investigate internet crimes. Nauru has faced challenges investigating these cases and is enhancing its capabilities by obtaining specialised equipment and tools to extract data from electronic systems and devices.

157. With respect to tax evasion, the 2018 NRA noted a significant ML risk, but the 2023 NRA concluded that there is a medium to low risk of ML. Although tax evasion exists in Nauru, the authorities usually only deal with it in accordance with the tax law and tend not to investigate it as a criminal ML offence. NRO has an MOU with NFIU for information exchange. NFIU has disseminated information involving tax evasion to NRO, and NRO has requested assistance from NFIU. NRO and NPF generally do not cooperate in criminal investigations, although there appears to be no barrier to doing so, but there are joint operations when it comes to price control activities. In practice, there have been cases of goods being sold at lower prices in the market without going through customs clearance and paying taxes. If such cases involve criminal activities, NRO will let Customs deal with them first, and Customs will then refer the matter to the police. Nauru has not provided any case or description of criminal investigations initiated as a result of tax evasion, nor have any of these cases resulted in ML investigations.

158. Concerning corruption offences, the 2023 NRA views the risk of ML from this threat to be low. There are currently three corruption cases under investigation, and none of them appear to include an ML element. As noted in Chapter 1 and IO.1, publicly available information, including ongoing cases in other jurisdictions, raise questions about Nauru's methodology for assessing risks related to corruption in Nauru.⁴⁰

159. The 2023 NRA notes that drug-related offences are increasing in Nauru but most of them concern possession of drugs and personal use. The Strategic Analysis 2021–2023 has also addressed the ML threat from drug offences and states “the evidence of hard drugs such as methamphetamine is more concerning. This reveals drugs are either being imported into Nauru or manufactured.” Nauru has

⁴⁰ Transparency International Report, *Perceptions of corruption in seven small Pacific island countries 2022*, p.31; <https://www.smh.com.au/politics/federal/millions-of-dollars-in-detention-money-went-to-pacificpoliticians-20230718-p5dp51.html>; <https://www.smh.com.au/politics/federal/afp-retracts-statement-duttonwas-briefed-on-nauru-bribery-investigation-20230804-p5dtzi.html>

discovered two instances of drug smuggling by passengers through imported goods or travellers' baggage. One has been prosecuted and sentenced and the other case is pending. There was a case which resulted in a cash seizure of over AUD 10,000 (USD 6,290) in relation to drug crimes (see Case Study 3.7 under IO.8 below). However, in each of these cases the DPP advised that there was not enough evidence presented to pursue a ML charge and no parallel financial or ML investigation was pursued.

160. The Office of the Director of Public Prosecutions (DPP) has six staff members, including three prosecutors. Three of the DPP's four lawyers are trained in ML and corruption. The DPP's 'Prosecutions Policy' includes a chapter on ML and proceeds of crime, stating that ML and predicate offences will be charged separately in different counts. DPP demonstrates the ability and willingness to prosecute ML cases despite no such prosecutions yet. Most prosecutors come from overseas and have brought experience and expertise in ML and financial crime matters from previous roles outside Nauru.

161. Although Nauru is considered to have a low risk of ML, there is evidence of ongoing criminal activities that could involve ML, particularly drug-related offences, corruption and tax evasion. However, LEAs face challenges in tracing the movement of money, which hinders the initiation of ML inquiries. As a result, the assessment team could not confirm that this aligns with Nauru's risk assessment.

Types of ML cases pursued

162. There have been no ML prosecutions or convictions in Nauru. There are two investigations underway, which may materialise into an ML investigation. Nauru has not established substantive instructions or strategies for prioritising the investigation or prosecution of ML offences.

163. LEAs and prosecutors are highly motivated to investigate and prosecute ML cases and local Nauruan prosecutors and police prosecutors have requested further training. The DPP has capacity in relation to financial investigations and ML within its staff.

Effectiveness, proportionality and dissuasiveness of sanctions

164. Section 9 of the AML-TFS Act 2023 provides a maximum penalty of no more than 20 years' imprisonment and a fine of not more than AUD 500,000 (USD 314,465) for an individual and AUD 2,500,000 (USD 1,572,327) for a body corporate. These sanctions appear to be proportionate and dissuasive. However, given no prosecution and conviction of ML, effectiveness, proportionality, and dissuasiveness have not yet been tested in Nauru.

Use of alternative measures

165. Under Nauru's current legal system, ML is only punishable by criminal penalties, including imprisonment or fines. According to the POCA 2004, proceeds of crime are unable to be forfeited until conviction unless the defendant has absconded or is deceased.

166. Nauru has stated that if any other law is broken, the related business license will be suspended or cancelled according to the Business Licenses Act 2017. However, there has not been any case of ML suspicion. The assessment team is unable to confirm if alternative criminal justice measures are employed when a ML conviction is not possible.

Overall conclusion on Immediate Outcome 7

167. There have been no ML investigations in Nauru, although two ongoing predicate investigations have been identified as potentially having ML elements. LEAs have insufficient training and capability to investigate predicate or proceeds generating cases with a view to pursuing financial investigations. The inability for LEAs to access banking information from foreign counterparts means there is limited motivation to follow the proceeds. Additionally, since Nauru has yet to provide statistics on predicate offence investigations, the assessment team cannot understand the interrelationship between predicate offences and ML and how it relates to Nauru's domestic assessed risks.

168. **Nauru is rated as having a low level of effectiveness for IO.7.**

*Immediate Outcome 8 (Confiscation)**Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

169. The objectives of Nauru's National Strategy for AML-CFT 2022-2025 include facilitating asset forfeiture and strengthening border currency declaration mechanisms. Nauru advises that the National Strategy was published in July 2022, was distributed to relevant stakeholders and has been available on the website for over 18 months, however, most LEAs and prosecutors were not aware of the Strategy. The AMLOC had met three times by the time of on-site, but the assessment team was not advised of any discussion or specific steps concerning confiscation of criminal proceeds.

170. There are no specific actions or measures currently in place to prioritise tracing proceeds of crime, instrumentalities and property of equivalent value. Nauru has recently completed a series of legislative amendments related to ML/TF, which include updating the provisions on forfeiture and seizure. This step, in combination with the objectives of the 2022-2025 National Strategy, highlights the government's increasing focus on improving the seizure and forfeiture of proceeds of crime.

171. Nauru has the legal framework and mechanism to seize or confiscate criminal proceeds and instrumentalities and to restrain property of corresponding value. In Nauru, the legal framework for seizure and confiscation is established under the POCA 2004, Criminal Procedures Act 1972 and Illicit Drugs Control Act 2004. This comprehensive legislation empowers NPF to identify, seize and confiscate the proceeds of crime or assets linked to criminal activities. However, there was not sufficient evidence to show that LEAs had used or exercised their seizure powers to a large extent.

172. Nauru has established a conviction-based forfeiture regime. The Secretary of The Department of Justice and Border Control (DJBC) has the authority to apply for a forfeiture order on conviction. In practice, the Secretary refers the matter to DPP, also under DJBC. The DPP will be responsible for managing the procedures for applying to the Supreme Court. The DPP's 'Prosecutions Policy' includes a brief chapter on ML and proceeds of crime, stating that 'no one can profit from the ill-gotten gains' without further instruction. So far, there have been no cases of forfeiture in Nauru by DPP.

173. Imported or exported goods are forfeited or seized by Customs when there is a breach of the Customs Act 2014, or an offence has been committed, including cross-border declaration violation. There was only one seizure by Customs in 2022 (see Table 3.11). The Chief Collector of Customs has the right to sell, use, destroy, or dispose of the seized goods.

174. In general, Nauru recognises the importance of seizure and confiscation of the proceeds of crime and has established a high-level policy. However, it is not clear whether the high-level policy has been effectively conveyed to LEAs, or whether resources were allocated. LEAs have no policy directive to prioritise seizure or confiscation.

3

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

175. NPF has the power and ability to conduct seizures and have procedures in place to do so. Table 3.10 displays a limited number of NPF seizures, mostly for minor offences. The authorities and the 2023 NRA have noted an increased focus on drug-related offences in Nauru. Seven drug-related cases were prosecuted in 2023 (See Table 3.6), but NPF has only seized drugs in three cases since 2019. It is unclear why there were no seizures in the other cases or how these seized drugs were able to bypass Customs border inspection measures. Without complete statistics on criminal investigations, the assessment team cannot determine whether these minimal seizures are effective and in line with Nauru's risk and context.

Table 3.10: Seizure by NPF

Year	Offence	Property	Value (AUD)
2018	Illegal Gambling	Cash	\$69,561
2018	Illegal Gambling	Cash	\$66,787
2019	Found in Possession	Cash and Drugs	\$2,312
2020	Burglary/Theft	TV and Module	\$4125
2021	Found in Possession	Cash and Drugs	\$10,696
2022		Drugs	\$10,000
2023	Theft	Assorted items: vehicle, mobile phones, fishing gear, kayak, airbed	\$50,000

*Source: Nauru FIU

176. Under POCA 2004, the Commissioner of Police holds all property seized until the court makes a restraining order directing the 'Administrator' to control the seized property. AML-TFS Act 2023 provides for the management of seized assets of the designated person or entity. The Minister may appoint an administrator to deal with seized property. Where an administrator is not appointed, the Secretary for Justice and Border Control shall act as administrator. So far, the Minister has not appointed any 'Administrator'.

177. In practice, property seized, either items or cash, is mainly maintained and managed by the Police as exhibits in the confines of the police station. Nauru advised that the court may also appoint the Registrar of the Courts to be the administrator of seized property. In the cases of drug related prosecutions provided by DPP, the police seized drugs and cash and kept them in the police station for custody. The seized illicit drugs will be destroyed in due course. The following two cases demonstrate the procedures for seizure and the custody of the items by the police.

Case Study 3.8: HK, ZZ & MJ (Criminal Case no. 10/2022)

The Accused are alleged to have been in possession of the illicit drugs unlawfully and unlawfully supplying it as well. The offence was allegedly committed in August 2022.

The police applied for a Search Warrant to search the Accused's place and seized the illicit drugs and about AUD 10,000 (USD 6,290) in cash. The cash and the drugs are in the police Exhibit room.

DPP charged both the supplier and the receiver under the Illicit Drugs Control Act 2004 for supplying and possessing illicit drugs.

*Source: ODPP

Case Study 3.9: XC (Criminal Case no. 11/2019, 42/21)

The Accused is alleged to have been in possession of illicit drugs at his residence. He was charged with unlawful possession of illicit drugs under Illicit Drugs Control Act 2004. The offence was allegedly committed in April 2019.

The Police applied for a Search Warrant to search the Accused's place and found drugs in his residence. The drugs are safely kept at the Nauru Police Force Exhibit room.

The same Accused was again arrested and charged for unlawful possession of illicit drugs after the Nauru Police Force had gone to the Accused's place to execute the bench warrant for his arrest when he failed to turn up to court when his case above was being called.

Upon execution of the bench warrant, the Police officers noted the Accused's demeanour and how he was acting was a bit suspicious. The Police officers then went into the Accused house without a Search Warrant and found more drugs in his residence than before. In the midst of search, the Accused then allegedly bribed one of the police officers who had alerted his superior and the money was seized and documented. The money and the drugs are safely kept at the Nauru Police Force Exhibit room.

The Accused is charged with unlawful possession of illicit drugs under the Illicit Drugs Control Act 2004 and also with bribery of about AUD 420 (USD 264).

*Source: ODPP

178. Although Nauru has a conviction-based forfeiture regime, assets can be restrained. LEAs depend on the Court's decisions regarding the outcome of seized property, to be either returned to the owner or disposed of under the court's instruction. If the matter is not successful in court, then properties not proven to be proceeds of crime will be returned to the person they were seized from. In non-victim cases, LEAs will still seek a court decision on the management or disposal of seized property if it is not forfeited.

179. Customs has seized items, mostly tobacco and cannabis. Table 3.11 indicates that Customs only made one seizure between 2018 and 2023. In the 2022 case, Customs seized cigarettes valued at AUD 80,000, (USD 50,315) but the case involves a suspected breach of importation and is currently under investigation. In the case of Customs, if cash is seized, it will be deposited in a government account.

Table 3.11: Seizure by Customs

	2018	2019	2020	2021	2022	2023 (Jan to Aug)	Total
Number of Cases					1		1
Value (AUD)					\$80K		\$80K
Instrumentalities of Crimes							

*Source: Nauru authorities

180. In addition, where the Defendants have applied for protection of property in court, the property is also secured in accordance with the order of the court.

181. There have been no cases of asset forfeiture in Nauru because there have been no convictions, and the courts have returned seized items or cash to victims. Nauru provided an unlawful gaming case in 2016 where AUD 47,449 (USD 29,842) was seized, but the money was stored in the Registrar's safe as there was no safe at the police station at the time, and the court later released AUD 36,575 (USD 23,003) to the owners. Nauru has not received any requests from foreign jurisdictions to seize and confiscate criminal proceeds. Nauru advised that the forfeited property shall be disposed of under the Public Finance (Control and Management) Act 1997, that is, public auction. Nauru has not explained where forfeited cash can go and for what purposes the money may be used.

182. POCA 2004 permits the creation of a 'Confiscated Assets Fund', which is supervised by the Secretary for Finance. This fund's money can be disbursed or shared with other countries. Nauru states that 'Confiscated Assets Fund' is under Head 16 (the contingency funds) of Government funds. The fund account has been dormant since it was opened on 23 September 2016, and no confiscated assets have been deposited into it. At the time of the on-site authorities did not appear to be aware of this fund.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

183. Nauru has a declaration system for cross-border transportation of currency and BNIs. All passengers entering or leaving Nauru with more than AUD 5,000 (USD 3,145) in cash, BNIs, or precious metals or precious stones are required to declare. Exportation of more than AUD 5,000 (USD 3,145) requires an approval issued by the Nauru Revenue Office. This does not extend to the equivalent in foreign currency. In practice, travellers are required to declare whether or not they are carrying AUD 5,000 (USD 3,145) in cash or the equivalent in foreign currency on the outgoing passenger card. However, the amount of the incoming passenger card received by the assessment team remains at AUD 10,000 (USD 6,290) at the on-site arrival. Nauru explained that the cards were being updated in the transition stage and demonstrated updated cards with a lower threshold.

184. The Nauru Customs has 28 staff, including 10 officers in charge of declaration at the international airport. There is a port in Nauru, which is under construction and does not yet offer passengers entry or exit, but there is a Customs office responsible for cargo inspection and other operations at this port. Nauru advises that when the port is completed it will be declared an international port, will meet international requirements, and is expected to receive cruise vessels, bunker fuels and other fishing vessels.

185. Customs 'Standard Operation Procedure-Processing the Arrival and Departure of Passengers' defines the procedures of inspecting passengers' baggage. At the international airport, there are four scanners that scan all passengers' luggage. If cash is detected by a scanner, the luggage must be opened

for manual inspection. In addition to the four scanners, customs officers from time to time conduct random physical inspection of the luggage.

186. Under Sections 96 and 97 of the Proceeds of Crime Act 2004, Customs is responsible for undeclared movement of currency/BNIs for outgoing passengers and the requirements for passengers taking cash out of Nauru can be found in the Nauru Cash Border Regulation Framework Guide. However, it is unclear whether this is happening in practice, as during the on-site, the assessment team was advised that Customs is not responsible for undeclared movement of currency/BNIs for passengers departing Nauru. Nauru is unable to provide a satisfactory explanation for this statement but confirms that Customs is responsible for conducting passenger exit inspections. However, this implies that Customs may have an internal misunderstanding of the issue, which could result in gaps in the implementation of their duties. This is causing concern for the assessment team.

187. Since the amendment of POCA in June 2023, Customs has not received any cross-border declaration. Most passengers carry less than AUD 5,000 (USD 3,145) cash and there is no need to declare; however, Customs suspects passengers may structure large amounts of cash by dividing it between several people. The assessment team was not aware of any cases being investigated. Customs has not imposed any administrative penalties since 2018 because, to its knowledge, there have been no declaration violations. The authorities stated that in the last two years, less than 100 passengers visited Nauru due to the pandemic, which could have contributed to the decrease in border violations in Nauru.

188. Imported or exported goods are forfeited to Nauru when they breach the Customs Act 2014, or an offence has been committed, including cross-border declaration violation. Customs seize goods that are forfeited or where there is reasonable cause to suspect the goods are forfeited. The Minister has designated Customs, police, quarantine, and immigration officers to search and restrain unreported or suspicious cash or BNIs at the border.

189. There are SOPs for Customs that define processes in relation to import of currency/BNIs by cargo. Customs has the capability to detect suspicious activities at the border and then refers these matters to NPF for investigation. Examples provided include parcels with apparent discrepancies between the actual weight of the parcel and the declared weight, which were found to contain tobacco or other items after inspection, or travellers who had no baggage at all, where marijuana was seized after inspection. Customs has received administration focussed regional training through the Oceanic Customs Organisation, however, the border control training received by Customs in recent years has been very limited. There was one training (Virtual Border Fundamentals training) held in 2021 by Australian Border Force, and one domestic training held by Nauru FIU in October 2023. The fact that Customs has not received regular and adequate criminal training has an impact on investigation of cross-border crimes.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

190. The 2018 NRA finds that the highest ML risk is cash smuggling, with tax evasion, corruption and robbery/theft as the highest source of illicit funds. The 2023 NRA indicates that cash smuggling and corruption are now low risk, with tax evasion rated as medium to low. The 2023 NRA does not identify predicate offences with high ML risks but only finds organised crime and fraud to be low-risk offences.

191. Objective 2 of Nauru's National Strategy for AML-CFT 2022-2025 states, "develop and improve the effectiveness of ... asset forfeiture", and the related measures include "develop border currency

reporting standard operating procedure” and “identify opportunities to increase technical expertise and skills for ... asset recovery for investigators and prosecutors”. Apart from amending the laws, the low emphasis on pursuing ML charges affects the priority of confiscating criminal proceeds. Nauru has not demonstrated effective national policies to prioritise tracing of proceeds of crime, assets, instrumentalities and property of equivalent value.

192. There have been no cases of confiscation or forfeiture in Nauru, even after the publication of the National Strategy. The assessment team acknowledges that there are few instances of seizure or confiscation in Nauru due to its low ML risk and specific context. However, this low number can also be attributed to Nauru's minimal focus on seizure and confiscation, as well as the challenges in investigating ML and predicate offences discussed in IO.7. In addition, the assessment team was unable to obtain a clear overview of the offences being investigated in Nauru due to the lack of statistics. LEAs have not been instructed to undertake follow-up actions as they consider necessary. Therefore, the team cannot conclude that no confiscations and limited seizures align with Nauru's ML risk.

193. Nauru has not had any prosecutions or convictions related to terrorism or terrorist financing activities. No confiscations related to TF have taken place. This is consistent with Nauru's TF risks as discussed in IO.1.

Overall conclusion on Immediate Outcome 8

194. Nauru has the legal framework and mechanism to seize or confiscate criminal proceeds and instrumentalities and Nauru's National Strategy includes objectives to facilitate asset forfeiture and strengthen border currency declaration mechanisms. However, there are no specific actions or measures currently in place to prioritise tracing proceeds of crime, assets, instrumentalities and property of equivalent value and confiscating them. Customs has not reported any breach of declaration requirements under the new laws, nor have penalties been imposed or reports made since 2018. Customs may have an internal misunderstanding of conducting passenger exit inspections in practice, leading to potential gaps in their duties. So far, there have been no confiscations and only a few seizures in Nauru. Due to the lack of statistics on criminal investigations, the assessment team cannot determine if this low outcome aligns with Nauru's ML risk.

195. **Nauru is rated as having a low level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) Nauru has a robust legislative framework for anti-terrorism financing primarily through the Counter Terrorism and Transnational Organised Crime (CTTOC) (Amendment) Act 2020.
- b) Nauru is low risk for TF and has a low level of exposure to international financial services; and consistent with this risk setting, there have been no reports of TF to the FIU or other competent authorities. As such, there have also been no investigations or prosecutions.
- c) The FIU and DPP have a good level of understanding of how to identify and prosecute TF, but other competent authorities, specifically the LEAs, have less of an understanding; however, they have not yet had the opportunity to put any skills into practice and are open to learning.
- d) While competent authorities from other jurisdictions actively provide presence and support in Nauru, the current cooperative settings with these on-island competent authorities (e.g. the Australian Federal Police) have not extended to awareness raising or operational support in relation to TF.
- e) The National Strategy 2022 -2025, developed to combat both money laundering and financing of terrorism, establishes objectives around TF capability objectives, but it is not yet fully implemented. However, Nauru does not have an operational plan or practice set out for steps to be taken in the event that suspicion of TF arose.
- f) Nauru has appropriate and dissuasive sanctions but has not yet had the opportunity to undertake measures or alternative measures to disrupt TF.

Immediate Outcome 10

- a) TF risk is low; however, there is a lack of awareness in relation to TFS.
- b) The process of alerting changes in designations to competent authorities and reporting entities in Nauru is protracted and would likely take over 24 hours.
- c) The AML-TFS Act 2023 in combination with the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023 sets out a robust framework for targeted financial sanctions (TFS) in UNSCR1267 and its successor resolutions, or UNSCR1373.
- d) The Minister for Justice is responsible for the designations under the AML-TFS (Financing of Terrorism and Proliferation Financing) Regulations 2023. In line with the low TF risk profile of Nauru, and in light of the recent introduction of the regulations, there has been no opportunity for the designation settings to be tested.

- e) The AML-TFS Act and Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023 provides for immediate effect of sanctions; however, Nauru has not identified terrorism-related sanction hits and has therefore not had an opportunity to apply in practice the mechanisms for freezing assets related to the UNSCRs.
- f) The only financial institution in Nauru, an MVTS provider, conducts screening using a third-party dataset supplied by its headquarters in a foreign jurisdiction. Other reporting entities are not implementing TFS.
- g) There is no evidence that any Nauruan competent authority understands TF TFS issues that may arise from foreign entities seeking certification to trade and sail under the Nauruan flag, or that the administrator of the shipping registry implements TFS.
- h) Nauru included an assessment of its NPO sector under the 2023 NRA. Nauru's assessment found that nine of its 11 NPOs fell within the FATF definition. None was identified as being vulnerable to TF.
- i) The guideline for NPOs (all low risk) to have a Financial Crime Compliance Officer is likely to be a disruption to legitimate NPO activities.⁴¹

Immediate Outcome 11

- a) The introduction of the AML-TFS Act 2023 and Anti-Money Laundering and Targeted Financial Sanctions (Financing Terrorism and Proliferation Financing) Regulations 2023 establishes the relevant legislative framework related to TFS on proliferation financing (PF) as required by UNSCRs 1718, 1737 and 2231.
- b) The process of alerting changes in designations to competent authorities and reporting entities in Nauru is protracted and would likely take over 24 hours.
- c) NFIU circulated consolidated lists to all public and private AML/CFT stakeholders not long before the on-site. However, stakeholders' implementation and grasp of the TFS regime was minimal. No monitoring or supervision was observed in ensuring compliance with the PF-TFS obligations among the reporting entities in Nauru.
- d) Nauru has not identified any funds or other assets of individuals and entities designated by the UN Security Council in relation to PF.
- e) There is a minimal understanding of CPF requirements amongst the relevant competent authorities in Nauru, including the NFMRA, and there are no operational procedures or a response mechanism on how they should handle enquiries relating to freezing measures, false positives and potential evasions.

⁴¹ After the onsite, Nauru amended the Non-Government Organisations Or Non-Profit Associations Best Practice Guide 2023 in June 2024 to remove the requirement for NPOs to have a financial crime compliance officer. The assessment team has not verified this.

- f) Reporting entities, with the exception of the MVTs provider, are unaware of their obligations and have limited mechanisms to implement PF TFS related obligations on mitigations.
- g) It is not evident to the assessment team that any competent authority provides oversight to ensure PF TFS are implemented in relation to the vessels registered under Nauru's shipping registry.

Recommended Actions

Immediate Outcome 9

- a) Undertake actions addressing TF capabilities as laid out in the National Strategy and establish standard operating procedures for instances where TF is detected or suspected, including determining which agency is responsible for investigating TF (the NPD more broadly, or the TCU), in order to better integrate and support CFT strategies and investigations.
- b) Provide training for, and continue to improve domestic and international cooperation with, competent authorities to allow identification and pursuit of TF inquiries, including building awareness of the agency responsible for investigating TF.
- c) Establish operational partnerships with competent authorities in other jurisdictions to access expedient support on TF investigations when required.

Immediate Outcome 10

- a) Establish effective mechanisms to communicate changes in designations to competent authorities and reporting entities immediately.⁴²
- b) Build awareness across both public and private stakeholders in relation to the TF TFS regime established in the new adopted legislative framework.
- c) Ensure Nauru applies a risk-based approach to regulations protecting NPOs from TF and reconsider the guideline covering the financial crime compliance officer.⁴³
- d) Ensure there is oversight to ensure TF TFS are implemented in relation to the vessels registered under Nauru's shipping registry.

⁴² After the onsite Nauru amended its law through the *Anti-Money Laundering (Financing of Terrorism and Proliferation Financing) (No. 2) (Amendment)* to address this recommended action. The amendments were not reviewed by the assessment team as part of the ME process

⁴³ After the onsite, Nauru amended the Non-Government Organisations Or Non-Profit Associations Best Practice Guide 2023 in June 2024 to remove the requirement for NPOs to have a financial crime compliance officer. The assessment team has not verified this.

Immediate Outcome 11

- 4
- a) Establish effective mechanisms to communicate designations to competent authorities and reporting entities immediately⁴⁴.
 - b) Urgently review the process in place to ensure implementation of CPF requirements and implementation of PF TFS screening in relation to Nauru's shipping registry.
 - c) Build awareness across both public and private stakeholders in relation to the PF TFS regime established in the new adopted legislative framework and improve stakeholder communication and engagement.
 - d) Ensure operational procedures on handling enquiries relating to PF TFS freezing measures, false positives and potential evasions are embedded among all relevant stakeholders. This includes liaising with relevant stakeholders to understand and address practical implementation issues.

196. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

*Immediate Outcome 9 (TF investigation and prosecution)**Prosecution/conviction of types of TF activity consistent with the country's risk-profile*

197. Nauru has a robust legal framework to prosecute TF activities. Due to its low level of exposure to international financial services and its low risk to TF, there have been no prosecutions or convictions for TF in Nauru. Additionally, while some competent authorities have the ability to identify, investigate, or prosecute TF, there is limited ability, generally, due to a lack of risk—and as a result, lack of need to utilise any applicable skills—and lack of capacity among some competent authorities. The 2023 NRA notes Nauru is low risk for terrorism. While the assessment team's concerns with the methodology of the 2023 NRA apply here as well (see IO.1), Nauru's conclusion on TF risk level is supported by observation of the assessment team and publicly available information.⁴⁵ The assessment team's reflections on TF risk settings included consideration of the scarcity of FI/DNFBP presence in Nauru. The lack of access to financial services means Nauru is not a favourable transit point for funds related to terrorism.

TF identification and investigation

198. Consistent with a low risk profile for TF, the FIU has never received a terrorism or TF-related STR, or TF-related information from the international intelligence community or otherwise. As a result, relevant competent authorities have not undertaken any TF investigations, nor been referred to

⁴⁴ After the onsite Nauru amended its law through the *Anti-Money Laundering (Financing of Terrorism and Proliferation Financing) (No. 2) (Amendment)* to address this recommended action. The amendments were not reviewed by the assessment team as part of the ME process.

⁴⁵ Global Terrorism Index 2023; Remittance Corridors: Australia to the Pacific Risk Assessment and New Zealand to the Pacific Money Remittance – sub-sector risk assessment for AML/CFT.

prosecution. Notably, during the on-site the assessment team understood that the DPP has the relevant skills set to prosecute TF cases should the NPF/TCU refer a case, and do provide feedback to NPF/TCU when a case does not meet the threshold. The assessment team understands both the NPF and TCU are empowered to investigate TF.

199. During the on-site the assessment team observed that the FIU has the skill set to identify and address TF and have regular communication with LEAs. However, competent authorities outside the FIU, significantly the NPF and TCU, do not have a good understanding of how to identify, manage and mitigate TF activities should they occur and have not received any training on TF. Competent authorities do have access to international counterparts with expertise for support, with representatives from one jurisdiction stationed in Nauru noting they are able and willing to support Nauru with priority and training needs both on-island and through sponsorship to off-island training, and are interested in learning how to better understand, manage and mitigate TF activities.

TF investigation integrated with -and supportive of- national strategies

200. The National Strategy 2022-2025, developed to combat both money laundering and financing of terrorism, specifically includes TF in its objectives, focusing on implementing CFT capabilities under Objective 2. These include: “establish[ing] a committee for terrorism related activities including CFT...and continu[ing] the development of trained/specialised investigators and prosecutors through training to enable investigation and prosecution of terrorist financing or proliferation financing if such case was to arise.” It also notes an intention to “[formalise] the establishment of ad-hoc working group at operational levels to address needs as they arise” as another goal to promote domestic cooperation amongst competent authorities. The assessment team has not seen evidence of a working group or standard operating procedures that can be used by competent authorities in relation to TF.

201. Noting the recent publication of the National Strategy, and the fact that the main bodies (AMLGC, AMLOC, and the Private Partners Committee) had only started meeting in July 2023, Nauru has not fulfilled the Strategic Plan’s CFT capabilities goals under Objective 2. As a result, the investigation of TF is not yet integrated with and used to support national counter-terrorism strategies and investigations outside the creation of the National Strategy 2022-2025.

202. Additionally, while Nauru has international LEA counterparts who have indicated their willingness to assist with training needs, no TF training has been provided yet. It is also not clear that Nauru and international counterparts have arrangements in place that can be expeditiously used in the event TF is suspected or detected.

Effectiveness, proportionality and dissuasiveness of sanctions

203. As noted in Recommendation 5, Nauru has proportionate and dissuasive sanctions for TF. However, given there has been no prosecution and conviction of TF, consistent with its low-risk setting, effectiveness, proportionality, and dissuasiveness have not yet been tested for effectiveness in Nauru.

Alternative measures used where TF conviction is not possible (e.g. disruption)

204. Due to the low risk of TF in Nauru, Nauru has not yet had the opportunity or need to take measures or alternative measures to disrupt TF. Notably, the assessment team believes the lack of convictions is related to Nauru’s low risk for TF, rather than challenges related to securing a conviction.

Overall conclusion on Immediate Outcome 9

205. Nauru has a low risk for TF, and largely lacks access to traditional financial services that may be abused by funds connected to terrorism. It also has robust legal framework in relation to TF. During the on-site, the assessment team determined that there are some relevant competent authorities—notably the FIU and DPP—who understand how to identify TF and would know how to detect or prosecute TF. However, there are other relevant competent authorities—notably the NPD and TCU—who do not yet have the capacity. Nauru has partnerships with foreign counterparts that can be utilised to access TF investigative capacity, however no mechanisms are in place to do so as yet. Generally, Nauru also lacks established mechanisms based on the National Strategy, whether domestically or through international partners, to evidence preparedness in the event TF is observed or suspected. As such major improvements are necessary, although the low risk to TF and the lack of access to traditional financial services has been considered in the assessment of IO.9.

206. **Nauru is rated as having a moderate level of effectiveness for IO.9.**

*Immediate Outcome 10 (TF preventive measures and financial sanctions)**Implementation of targeted financial sanctions for TF without delay*

207. The introduction of the AML-TFS Act 2023 establishes the relevant legislative framework related to targeted financial sanctions (TFS) in UNSCR1267 and its successor resolutions, or UNSCR1373. At present, most implementation of Nauru's TFS framework occurs through NFIU. Under s120 of the AML-TFS Act, NFIU has the responsibility to monitor and enforce compliance in TFS matters, including specifying the necessary forms or notices, referring matters for criminal investigation and providing publicly available guidance promoting compliance. The Minister for Justice and Border Control is responsible for the designation as set out in AML-TFS (Financing of Terrorism and Proliferation Financing) Regulations 2023.

208. The Minister for Justice and Border Control is the authority responsible for notifying the Secretary for DJBC (which houses the NFIU), the Secretary being responsible for implementing the appropriate immigration controls, with regard to the designated terrorist or group. At the time of the on-site, NFIU had recently circulated consolidated lists of designated persons and entities to all public and private AML/CFT stakeholders. In discussions, stakeholders confirmed receipt of the lists, but it was not evident that there was an understanding of the purpose of these lists. Although some of the AML/CFT stakeholders understood the utility of the lists, there were others that did not connect the information provided with their role in checking the lists against information they hold.

209. The AML-TFS (Financing of Terrorism and Proliferation) Regulations 2023 (R.64), introduced immediately prior to the on-site, provides for the publication of the designated or de-listed person or group and goes on to clarify that the FIU shall *immediately* circulate any designation or de-listing of a terrorist or terrorist group. NFIU has recently circulated the lists in an ad hoc manner. Regulation 64 lists the stakeholders to be included in the circulation, including all reporting entities. The UNSC consolidated list is also publicly available on the NFIU website. The assessment team could not identify a process that has been in operation for the course of the entire ME review period for the distribution of sanctions list updates to reporting entities, as it is not clear who was responsible for notifying reporting entities immediately in the event of a change in the TF TFS lists prior to the introduction of the AML-TFS Regulations 2023.

210. The MVTs provider in Nauru is automatically screening customers against up-to-date UN sanction lists using third-party databases provided by its headquarters in a foreign country. The assessment team is not aware of any implementation of TFS by the gaming entity in Nauru, nor by the law firms operating in Nauru. No STRs have been received by NFIU in relation to TFS, which is likely in line with risk and context of Nauru.

211. The assessment team is not able to conclude that most reporting entities (with the exception of the MVTs provider) understand their obligations in relation to any positive hits or potential frozen assets in practice. At the time of the on-site many entities in Nauru were not able to articulate/demonstrate an understanding of what is required of them in terms of implementing targeted financial sanctions for terrorist financing. This is not surprising given the recent introduction of legislation and the regulations.

212. A Memorandum of Understanding between the Nauru Fisheries and Marine Resources Authority (NFMRA) and the Nauru Maritime Administration (NMA), provides the NMA with the authority to issue certificates for a vessel to sail and trade under the Nauru flag, under the Shipping (Registration of Foreign Vessels) Act 2018. There is increasing global concern around the risk of ships being misused for the purposes of evading targeted financial sanctions. The TF and TFS obligations under the FATF Standards require all natural and legal persons to freeze assets (including maritime vessels, registration rights or licenses) and/or funds of persons or entities designated under TF TFS. Further analysis in IO.5 finds that the Corporate Registry does not provide requisite transparency or information on ownership of Nauru-flagged vessels to mitigate concerns in relation to IO.10.

213. It is not evident that any competent authority ensures TF TFS are implemented in the registration of vessels under Nauru's shipping registry. Sections 6 and 7 of the Shipping (Registration of Foreign Vessels) Act 2018 provide for the establishment of the Nauru Foreign Vessel Administration (NFVA), however its functions do not extend to TFS issues. In practice, administration of the shipping registry is provided by a private entity (NMA) based in a foreign jurisdiction. NMA operates via a 2022 MOU with the NFMRA, and the assessment team has not seen any evidence of legislative delegation of NFVA functions to NMA by the Minister for the Nauru Maritime and Port Authority.

214. NMA, operating out of Singapore, sits under the umbrella of the National Project Limited (NPL). It is not evident that NMA carries responsibility for determining misuse of the registration by foreign vessels. NPL appears to use systems to test against International Maritime Organisation standards, but it is not evident that Nauruan competent authorities ensure TFS testing and compliance. The MOU does not provide any information on how Nauruan competent authorities have oversight of the register or specify any reporting requirements for NPL. Apart from Nauru receiving reports of registered vessels, the MOU does not specify checks conducted for TFS evasion. There is no clear reporting line providing Nauru with oversight of the activities undertaken on their behalf.

Targeted approach, outreach and oversight of at-risk non-profit organisations

215. All NPOs (11 in total) in Nauru are regulated under the Registration of Associations Act 2020. A best practice guide for NGO/NPOs was published in 2023, with sections on indicators for TF risk and CFT mitigation.

216. Nauru included an assessment of the 11 NPOs under the 2023 NRA. Nauru's assessment found that nine of the 11 entities fell within definition of 'NPO' in the FATF Standards,⁴⁶ as two did not raise or disburse funds for the purposes listed in the FATF Standards. Using the traceability of each NPO's source of funds as a proxy for vulnerability to TF abuse, Nauru concluded that its NPO sector posed a low level of risk, with no NPOs identified as vulnerable to TF.

4

217. Nauru has a registration process for all NPOs in Nauru. Compliance with registration is supervised by the Registrar of Associations as the Supervisory Authority. NFIU has recently begun providing education, training and support in relation to AML/CFT to all NPOs. NPOs are also required to submit annual reports, which include information on the source of funds and their use, and to maintain the relevant documents. NFIU and the business registration team have recently conducted outreach sessions for representatives of the 11 NPOs operating in Nauru. In this activity, NFIU and DJBC identified breaches among six out of 11 NPOs against obligations for renewal of registration, and/or annual reporting, which resulted in issuance of warning letters. The assessment team did not see evidence of AML/CFT supervisory or monitoring activities, beyond awareness raising outreach.

218. The assessment team is concerned that the nine organisations that fall within the FATF definition of an NPO are required to have a Financial Crime Compliance Officer. This requirement is included in the NPO Best Practice Guide checklist, which is not a binding document. A key element of core issue 10.2 is that jurisdictions do not disrupt or discourage legitimate NPO activities. Given the low level of TF risk in Nauru, and no organisation being identified as being vulnerable for TF, the assessment team finds that the requirement to have a Financial Crime Compliance Officer is likely to be a disruption to legitimate NPO activities.⁴⁷

Deprivation of TF assets and instrumentalities

219. The AML-TFS Act and Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023 provides for immediate effect of sanctions. The regulations cover prohibition against dealing with property, prohibition against making property available, prohibition against making financial or related services available. Nauru has not identified terrorism-related sanction hits and has therefore not had an opportunity to apply in practice the mechanisms for freezing assets related to the UNSCRs.

Consistency of measures with overall TF risk profile

220. Nauru's 2023 NRA concludes that its TF risk profile is low. This is supported by publicly available information (see IO.9). However, there is a lack of awareness in relation to TFS in Nauru and deficiencies in the relevant legislative framework measures. The low level of TF risk within Nauru has been considered in assessing effectiveness under IO.10.

⁴⁶ NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

⁴⁷ Nauru has amended the Non-Government Organisations Or Non-Profit Associations Best Practice Guide 2023 in June 2024 to remove the requirement for NPOs to have a financial crime compliance officer.

Overall conclusion on Immediate Outcome 10

221. Nauru has undertaken a significant amount of work to ensure that the legislative frameworks are in place, including guidelines. Overall, within the context of Nauru's low level of TF risk and scant access to formal financial channels, the implementation of TFS for TF and frameworks to deprive terrorists of assets and instrumentalities has been achieved to a limited extent. Given the recent introduction of the legislative framework in relation to TFS, including the guidance provided, at the time of the on-site the understanding of the obligations across the AML/CFT network was not demonstrated. The requirement for all registered NPOs to have a Financial Crime Compliance Officer, even though this requirement is not stipulated for entities that have clear obligations under the AML-TFS Act 2023 is likely to hinder the ability for largely voluntary organisations to operate. However, the AT also notes that the NPO Guide is not a legally binding document. Further, it is not evident that there is implementation of TF TFS to ensure that Nauru's shipping registry is not exploited for transactions involving funds or other assets of designated persons and entities.

222. **Nauru is rated as having a moderate level of effectiveness for IO.10.**

*Immediate Outcome 11 (PF financial sanctions)**Implementation of targeted financial sanctions related to proliferation financing without delay*

223. The introduction of the AML-TFS Act 2023 and AML-TFS (TF&PF) Regulations 2023 establishes the relevant legislative framework related to TFS on proliferation financing (PF) as required by UNSCRs 1718, 1737 and 2231.⁴⁸ Regulation 64 (1),(2) of the AML-TFS (TF&PF) Regulations 2023, sets out the process for the distribution of sanctions list updates to reporting entities, and that the Minister of Justice, pursuant to Regulation 5 shall publish in the gazette sanctions list and Regulation 64(2) stipulates the FIU shall be responsible for notifying reporting entities immediately in the event of a change in the PF TFS lists.

224. NFIU is the relevant authority for implementation of the PF-TFS framework including provision of publicly available guidance to promote compliance. At the time of the on-site, NFIU had recently circulated consolidated lists to all public and private AML/CFT stakeholders, in addition, the UNSC consolidated list is publicly available on the NFIU website. This was the first instance of circulation, and the assessment team has no evidence that NFIU notifies reporting entities when there is a change in the UNSC list. In discussions, stakeholders confirmed receipt of the lists, but it was not evident that there was an understanding of the utility of these lists. Importantly, stakeholders responsible for areas relevant to PF sanctions evasion, such as the NMA, have not been consulted on implementation of the PF-TFS regime. The assessment team saw no evidence prior to or at the time of the on-site to indicate that Nauru has considered PF TFS issues arising from foreign entities seeking such certification.

225. Nauru authorities advised that they are not aware of diplomatic or private sector links with DPRK or Iran. This comes in the context of limited awareness of PF or Nauru's exposure to PF. Building such awareness is advisable given Nauru issues certificates necessary for a vessel to sail and trade

⁴⁸ Nauru's onsite concluded two days prior to the lapsing of UNSCR 2231 on 18 October 2023.

under its flag. Nauru reported that it had 93 vessels (only 31 are active) registered in NMA shipping registry.

226. Further, analysis in IO.5 finds that the Corporate Registry does not provide requisite transparency or information on ownership of Nauru-flagged vessels to mitigate concerns in relation to PF TFS. While the NFMRA asserts that any Nauru-flagged fishing vessel registered through the NMA must register as a trading corporation under the Corporate Registry Act of 1972; the assessment team cannot see evidence of this requirement in the law. There is also no requirement that beneficial or legal owners of such vessels register with the Registry Divisions of DJBC.

227. As noted above (IO.10), s.6 and s.7 of the Shipping (Registration of Foreign Vessels) Act 2018 provide for the establishment of the Nauru Foreign Vessel Administration (NFVA) to be responsible to the Minister for the Nauru Maritime and Port Authority. However, the NFVA's functions (s.7) do not extend to PF or TFS issues. In practice, administration of the shipping registry is provided by a private entity (NMA) based in a foreign jurisdiction and there is no legislative delegation of NFVA functions to the NMA.

228. Overall, it is not evident to the assessment team that any competent authority within Nauru ensures PF TFS are implemented in the registration of vessels under Nauru's shipping registry, with fishing or non-fishing activities. Administration of the shipping registry is managed by a private entity based in a foreign jurisdiction. This operator utilises the SeaSearcher database which includes a sanctions-check component. However, vessels are only checked against SeaSearcher once at the time of applying for registration. While NMA reported sending regular updates to the Nauru Maritime and Port Authority on the vessels registered, there was no regular exchange or feedback provided, and this extended to any matters related to TFS or AML/CFT.

Identification of assets and funds held by designated persons/entities and prohibitions

229. During the period under review, Nauru has not identified any funds or other assets of individuals and entities designated by the UN Security Council in relation to PF. There is also no instance where that the reporting entities in Nauru have identified assets and funds held by designated persons/entities and prohibitions.

230. There is a limited understanding of CPF requirements amongst the relevant competent authorities in Nauru and there are no operational procedures or a response mechanism on how they should handle enquiries relating to freezing measures, false positives and potential evasions.

FIs and DNFBPs' understanding of and compliance with obligations

231. Reporting entities, with the exception of the MVTS provider, are unaware of their obligations and have limited mechanisms to implement PF TFS related obligations. No freezing actions have been taken under the PF TFS regime. The MVTS provider is supported by its headquarters in another jurisdiction in screening for TFS.

Competent authorities ensuring and monitoring compliance

232. The AML-TFS Act 2023, AML-TFS (TF&PF) Regulations 2023 and AML-TFS (High Risk Countries) Guideline 2023 enacted in the weeks prior to the on-site. The assessment team has not seen evidence of monitoring and supervision of TFS requirements for PF. NFIU has not issued any guidance

on PF-related sanctions or guidance on the requirement to identify assets and funds held by designated persons and entities.

233. Nauru (NFIF) published a comprehensive Nauru Targeted Financial Sanctions Terrorism and Proliferation Financing Guide in October 2023. It provides for TF, PF, TFS, freezing and unfreezing of assets, listing and de-listing of persons and entities, purpose of the Guide and the Targeted Audience for the Guide. The Guide has only recently been issued, as such the assessment team cannot conclude that relevant stakeholders understand its effect and purpose.

Overall conclusion on Immediate Outcome 11

234. Nauru has undertaken a significant amount of work to ensure that the legislative frameworks are in place, including guidelines. While there is commitment within Nauru to implement measures to address TFS related to PF, no supervision has been conducted to assess reporting entities' implementation of CPF obligations. Reporting entities and competent authorities generally do not have a grasp of CPF requirements. NFIU relies on the headquarters of the MVTTS provider, Nauru's sole FI, to ensure TFS screening via a third-party database. Significantly, it is not evident there is implementation of PF TFS to ensure Nauru's shipping' registry is not being exploited for transactions involving funds or other assets of designated persons and entities.

235. **Nauru is rated as having a low level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) The AML-TFS Act 2023 covers all reporting entities which fall within the FATF definition of FIs and DNFBPs. There are a limited number of such entities in operation in Nauru: one MVTS provider, law firms and one gaming operator. Most importance was placed on the MVTs provider. Nauruan authorities have concluded that there are no VASPs in Nauru.
- b) Understanding of ML/TF risks and the AML/CFT obligations varies across the FI and DNFBP sectors. The MVTS provider has a fair understanding of the ML/TF risks and preventive measures. However, DNFBPs demonstrate a minimal understanding of the ML/TF risks and the obligations under the AML-TFS Act 2023.
- c) The MVTS provider follows its group compliance programme, with use of screening tools for sanctions evasion, and is under active compliance monitoring by its headquarters. The gaming operator sets a threshold for its gaming machines. However, law firms do not demonstrate their application of risk mitigating measures.
- d) While Nauru has a robust legal framework with the enhanced and specific measures in accordance with the FATF Standards, the level of implementation varies significantly among the reporting entities.
- e) The reporting entities in Nauru have never filed suspicious reports to NFIU.
- f) The MVTS provider applies its internal controls and procedure by following the group compliance programme. On the other hand, DNFBPs do not apply any internal control and procedures to ensure their compliance, but this is understandable considering their size and scope of their business.

Recommended Actions

- a) Nauru should continue to conduct outreach to raise awareness of the ML/TF risks and the obligations under the AML/TFS Act 2023 amongst reporting entities.
- b) Nauru should provide a guidance for FIs and DNFBPs updated in line with the latest AML/CFT legal framework, to support them in effectively taking preventive measures in a risk-based manner, including conducting risk assessments, developing internal controls, and promote their filing of STRs to NFIU.

236. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

Immediate Outcome 4 (Preventive Measures)

237. As mentioned in Chapter 1, when assessing the effectiveness of preventive measures (IO.4) and AML/CFT supervision (IO.3), the assessment team gave the most importance to MVTS provider,

and less importance to the law firms (some of them providing trust and company formation services) and to the gaming operator.

Understanding of ML/TF risks and AML/CFT obligations

238. The AML-TFS Act enacted in August 2023 covers all reporting entities which fall in the FATF definition of FIs (including VASPs) and DNFBPs. There are a limited number of such entities in operation: one MVTs provider, four law firms (some of them providing trust company services) and one gaming operator. The gaming operator is categorised as a type of casino in legislation and by the supervisor in Nauru, and has, in the past, had payouts above USD/EUR 3000 (relevant for applicability of CDD requirements under FATF Standards c22.1). There are no VASPs in operation in Nauru.

239. Understanding of ML/TF risks and AML/CFT obligations varies across the FI and DNFBP sectors. Overall, the FI (MVTs provider) has a fair understanding of the ML/TF risks and preventive measures, while the DNFBPs show a minimal understanding in the AML/CFT filed overall.

240. The MVTs provider has a fair understanding of the ML/TF risks in general and AML/CFT measures. Such level of understanding is formed, in part, through its engagement in the consultation process of NRA 2018 and 2023, participation of AML Private Partner's Committee established under the National Strategy and NFIU's supervisory activities (see Chapter 6). However, the MVTs provider has not conducted its business risk assessment, and its AML/CFT safeguards are largely attributable to its group-wide compliance programme in another jurisdiction, including transaction monitoring, regular training and physical oversight of the operation, performed by its headquarters.

241. DNFBPs in Nauru demonstrate a minimal understanding of the ML/TF risks and their obligations under the AML-TFS Act 2023. The assessment team has observed that DNFBPs are not aware of the results of the latest NRA completed in October 2023 and the adoption of the AML-TFS Act in June 2023. There are gaps identified in NFIU's awareness of the business operation of some reporting entities in Nauru (e.g., law firms acting as TCSPs), and DNFBPs have not undergone the substantive inspections of NFIU in AML/CFT obligations, including business risk assessment (see Chapter 6). Therefore, DNFBPs have not yet reached a satisfactory level of awareness of the AML/CFT regime in Nauru.

Application of risk mitigating measures

242. The MVTs provider follows its group-wide compliance programme and is under active compliance oversight by the compliance office of its headquarters in another jurisdiction, including regular training and communication exchanges. It also uses screening tools provided by the parent organisation in its daily operation, which allows the provider to automatically detect transactions with high ML/TF risk countries and persons/entities designated by the UNSC for example and contributes to mitigating the risks. The framework applied within the MVTs provider does not take into account the specific risks and context of Nauru.

243. DNFBPs apply risk mitigating measures to a minimum extent. The gaming operator installs gaming machines (slot machines) in the venue, which have a threshold for cash acceptance (up to AUD 1,000 (USD 629)), however this is not for AML/CFT purposes. The gaming operator does not set a specific threshold for the winnings (reported as AUD 18,000 (USD 11,321) at the highest so far). Other types of DNFBPs, i.e. law firms, do not demonstrate their application of risk mitigating measures.

Application of enhanced or specific CDD and record keeping requirements

244. Nauru has a robust legal framework of the AML/CFT preventive measures under the AML-TFS 2023 Act, which covers number of requirements of the FATF Standards in its scope (see TC Annex). However, the level of application of such measures, including CDD and record keeping obligations, varies among the reporting entities.

245. For FIs, the MVTs provider generally applies CDD and record keeping measures in accordance with the global AML/CFT obligations. Its headquarters, as a part of the global compliance programme, oversees the performance of the provider operating in Nauru in AML/CFT obligations, including through the on-site supervision (per six month). However, NFIU has identified deficiencies in the compliance of the provider with the obligations for record keeping (a failure to maintain customers' ID record for 7 years), business risk assessment and STRs (a lack of the assessment and filing of the report to the NFIU) during the on-site inspections. Since the MVTs provider has not conducted its business risk assessment, it is not demonstrated that the entity conducts CDD fully in accordance with its customers' profile (besides specific EDD measures addressed in the following section). Moreover, due to the recent development in the legal framework on beneficial ownership, it is not demonstrated that the MVTs provider complies with the obligation to identify beneficial owners upon conducting CDD for legal persons.

246. For DNFBPs, the preventive measures under the AML-TFS Act 2023 were passed shortly before the on-site and are not yet applied. Representatives from the DNFBP sectors seem not to be aware of the obligations of the Act: the gaming operator checks IDs only to meet the requirement under another regulation (age restriction for entering the gambling venue), not for the purpose of AML/CFT, and does not keep records of customers and pay out of the winnings. Some of the law firms reported that they generally conduct CDD as a part of their legal practice: however, it is not demonstrated whether such practice is sufficient to meet the requirements under the AML-TFS Act 2023.

Application of EDD measures

247. The AML-TFS 2023 Act requires the reporting entities in Nauru to apply enhanced measures or specific measures, namely to: (a) PEPs; (b) correspondent banking; (c) new technologies; (d) wire transfer; (e) TFS; and (f) high-risk countries. Since no banks and VASPs are in operation in Nauru and types of business operations conducted by the existing reporting entities and services are limited (e.g. only face to face channels provided by the MVTs provider), analysis in this section does not include (b) and (c).

248. The MVTs provider largely understands its obligations of abovementioned enhanced measures and specific measures as required by the AML-TFS Act 2023. As a part of the global compliance programme, it applies escalation procedures in handling higher risk transactions such as with PEPs, including obtaining approval from the senior manager. Its screening system provided by the HQ monitors transactions via the operator and simply rejects those to high-risk countries identified by the FATF (namely, DPRK, Iran and Myanmar), which causes doubts among the assessment team about proportionality of the measures to respond to the risks. Sanctions screening is also incorporated with the system and transactions related to the UN designated persons/entities are to be rejected. To support the entity in compliance with the requirements, NFIU informs the provider of the high-risk countries and the list of the UN designated persons/entities, during its on-site inspection.

249. Meanwhile, none of the DNFBPs are aware of the enhanced or specific measures prescribed by the AML-TFS Act 2023, and relevant information such as UN sanctions list subject to the TFS. Therefore, they do not apply these measures.

Reporting obligations and tipping off

250. The AML-TFS Act 2023 requires the reporting entities to file STRs to NFIU, and includes adequate provisions related to tipping off. However, none of the reporting entities in Nauru, neither FI nor DNFBPs, have ever filed STRs to NFIU, and therefore, no practical measures to prevent tipping-off in effect are observed.

251. The MVTS provider has never filed STRs to NFIU, while it submits quarterly reports on transactions to NFIU. However, the entity had filed STRs, in relation to Nauruan operations, to the FIU of the jurisdiction of its HQ. Although NFIU formally requested the entity to submit STRs to NFIU in 2019, no reports from the entity have been received by NFIU so far. NFIU reminded the entity of its STR obligation under the AML-TFS Act of Nauru during the on-site inspection in 2023.

252. The assessment team notes that NFIU receives suspicious matter reports from the FIU of the foreign jurisdiction (AUSTRAC) in relation to the foreign banking agency operating in Nauru. These were provided in batch format and not in real time. As discussed in Chapter 1, the banking agency does not fall into any categories of FIs as defined in the FATF glossary (see Chapter 3 and 8).

253. NFIU has not yet received any STRs directly nor indirectly from the DNFBPs. This may result from their level of awareness of the ML/TF risks and AML/CFT obligations in general.

Internal controls and legal/regulatory requirements impeding implementation

254. As described above, the MVTS provider applies its internal controls and procedure by following the group compliance programme. That internal control performed by the headquarters includes spontaneous communication with the provider in Nauru, transaction monitoring, screening tools which incorporate the list of high-risk countries, UN designation, and the results of the business risk assessment (although this is based on those identified in relation to the home jurisdiction, and the provider itself has not conducted its business risk assessment - therefore may be not fully consistent with the risks and context of Nauru), regular training and on-site oversight.

255. DNFBPs do not have internal AML/CFT controls and procedures, which is understandable to some extent, considering their size and scope of the business in Nauru.

Overall conclusion on Immediate Outcome 4

256. Nauru has a robust legal framework of the AML/CFT preventive measures under the AML-TFS 2023 Act. However, the level of understanding of ML/TF risks and the AML/CFT obligations, and application of the AML/CFT measures varies across the FI and DNFBP sectors. The MVTS provider demonstrates a fair understanding and implementation of AML/CFT obligations generally, including the enhanced measures, following the global compliance programme enhanced by the HQ oversight activities. This awareness was driven by the MVTS provider's global compliance program without reference to the risk and context of Nauru. A minimal understanding is observed among the DNFBPs in Nauru on the preventive measures in Nauru's legislation or implementation of AML/CFT broadly;

CHAPTER 5. PREVENTIVE MEASURES

however, this is weighted lightly due to the size and activity of the DNFBP sector. No reporting entities in Nauru have filed STRs with NFIU. Major improvements are needed.

257. **Nauru is rated as having a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- a) Nauru has multi-layered frameworks for licence and registration for businesses, which cover all types of FIs and DNFBPs (see also Chapter 7), and a recently introduced “fit and proper” testing mechanism under the AML-TFS Act 2023.
- b) NFIU is the AML/CFT supervisor for all FIs and DNFBPs. It has recently begun outreach, particularly in relation to the newly adopted AML-TFS Act, and conduct of offsite and on-site inspections across its limited reporting entities. However, these activities have not yet demonstrated effectiveness in improving an understanding of AML/CFT obligations and ML/TF risks among the reporting entities.
- c) There are gaps in NFIU’s understanding of the scope of reporting entities that should be supervised for AML/CFT, and the ML/TF risks of business operations in some of the sectors in Nauru, specifically law firms providing TCSP services.
- d) NFIU is empowered to impose sanctions against non-compliance of FIs and DNFBPs with the AML/CFT requirements. However, NFIU has not yet identified serious breaches against AML/CFT requirements among the reporting entities warranting a range of enforcement tools.

Recommended Actions

- a) Nauru should ensure the supervisor maintains vigilance on activities in Nauru to appropriately cover all entities that should be registered and supervised under its AML/CFT legal framework.
- b) NFIU should develop a manual on risk-based supervision and apply the approach in planning the on-site inspections to the FI and DNFBPs, considering the risks identified through off-site inspection.
- c) Nauru should ensure that NFIU applies effective, proportionate, and dissuasive sanctions against breaches identified during supervisory activities.
- d) NFIU should provide adequate feedback to the reporting entities, in order to enhance their level of compliance with the AML/CFT obligations, as a result of its supervisory actions (including both off-site/on-site inspections).

258. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28 & R.34 & 35 and elements of R.1 and 40.

Immediate Outcome 3 (Supervision)

259. As mentioned in Chapter 1, when assessing the effectiveness of preventive measures (IO.4) and AML/CFT supervision (IO.3), the assessment team gave the most importance to the MVTs provider, and less importance to law firms (which provide trust and company formation services), and to the gaming operator.

Licensing, registration and controls preventing criminals and associates from entering the market

260. There are only limited types and numbers of reporting entities in Nauru that fall into the scope of its AML/CFT regime, while the AML-TFS Act 2023 covers a wider range of FIs (including VASPs) and DNFBPs in line with the FATF definition. At the time of the on-site Nauru had: one MVTS provider, four law firms (some of them providing trust and company formation services), and one gaming operator. At the time of the on-site, there was no bank or financial institution licensed in accordance with Banking Act in Nauru.

6

261. Nauru has multi-layered frameworks for registration and license, including registration for legal persons (Cooperation Act 1972, and its subsidiary regulations) and their beneficial ownership (Beneficial Ownership Act 2017 and its subsidiary regulations), and the licencing specifically for the banking sector (Banking Act 1975) and gaming sector (Gaming Act 2011). In addition, any entities operating any type of business in Nauru must apply for the generic business license, which covers all types of FIs and DNFBPs (Business Licences Act 2017, and its subsidiary regulations).

262. The Registrar (Secretary for Justice and Border Control) is responsible for operating and enforcing the abovementioned registrations of legal person and beneficial ownership, and the business licencing in Nauru. The Registrar, at times in cooperation with NFIU, actively conducts on-site inspection to review compliance with the generic business licencing, and request renewal of the licencing if necessary. For further analysis on the transparency of legal persons and their beneficial ownership, see Chapter 7.

263. In August 2023, Nauru enacted a subsidiary regulation of the AML-TFS Act to further set out the criteria for “fit and proper” test, which includes a process for reporting entities to check criminal records of their “responsible persons” (e.g., director, senior executives, compliance officers and any person deemed by a Supervisory Authority to have a significant role in the management or control of the reporting entity) and report information on the appointee to the supervisor for further review, to prevent criminals from holding significant role in the management or control of FIs and DNFBPs. However, given the recent issuance of the regulation, the regime is still premature, and the assessment team is unable to conclude that Nauru demonstrates its effective implementation of that control.

Supervisors’ understanding and identification of ML/TF risks

264. The AML-TFS Act 2023 empowers NFIU to supervise FIs and DNFBPs compliance with the AML/CFT obligations in Nauru. Currently, NFIU has two staff responsible for this function, which aligns with the limited number of reporting entities in Nauru. NFIU is also functioning as the central authority for the conduct of the National Risk Assessment (see Chapter 1) and has a fair understanding of the ML/TF risks in the FI/DNFBP sectors of Nauru, which has been illustrated in the results of the NRA 2018 and the latest one 2023.

265. However, the assessment team observed gaps in the understanding of NFIU, as supervisor, about entities that should be covered under AML/CFT laws, the business operation in some of the sectors in Nauru and possible ML/TF risks they pose. In the interviews with the competent authorities and private sector representatives during the on-site, the assessment team heard about some law firms providing trust and company services. The assessment team notes that those entities, if any indeed in Nauru, may be captured under the AML/CFT regime, however notes that some of information obtained through the interviews is only anecdotal evidence and not fully validated.

266. Notably, in conjunction with the recent passage of the new AML-TFS Act 2023, Nauru is taking steps towards widening its understanding of the nature of the business in Nauru, including by NFIU's recent survey sent to law firms to understand their scope of work.

Risk-based supervision of compliance with AML/CFT requirements

267. Nauru has one FI (MVTs provider), and a very limited number of DNFBPs: one gaming operator, four law firms (some of them involved in forming legal entities or providing trust and company services). NFIU is the supervisor for all FIs and DNFBPs pursuant to the AML-TFS Act 2023. At the time of the on-site, there was a banking agency of a foreign bank in Nauru, however, the assessment team notes the bank accounts handled by that banking agency in Nauru are entirely managed by the bank in Australia, and the compliance regarding these accounts is under AUSTRAC supervision in accordance with the laws/regulations in Australia (see Chapter 1 for further detail). Therefore, analysis on the accounts/transactions in this report is only that within the scope of Chapter 8 (for international cooperation).

268. NFIU supervises the FI and DNFBPs in Nauru, by conducting off-site and on-site inspections in a risk-sensitive manner to some extent, although this is a recent development with only a limited number of such activities having been undertaken. The assessment team was not able to confirm that processes or steps documented for planning and conducting risk-based supervision towards the reporting entities in Nauru. The assessment team's reflection on Nauru's understanding of risks is covered in Chapter 2 (Immediate Outcome 1).

Table 6.1: Inspections to FI and DNFBPs for AML/CFT (2018-2023)

Year	FI / DNFBP	Authority	On-site / Offsite	Scope
2018	MVTs provider	NFIU	On-site	1. AML/CFT obligations (CDD, STR, Record keeping), AML/CFT Programme 2. Awareness raising on the obligations
2021	MVTs provider	NFIU	Off-site	1. Quarterly report on transactions
2023	Gaming operator	NFIU/JBC (joint)	On-site	1. Compliance with Gaming and Business Licences Acts
2023	MVTs provider	NFIU	On-site	1. Awareness of AML-TFS Act 2023 (CDD, EDD, PEPs, BO, Record keeping, STR, TFS) Strategy and ME process 2. Compliance with the CDD/record keeping/STR obligations

269. For FIs, NFIU receives quarterly reports of transactions from the MVTs provider since 2021 (when issued a letter to the MVTs provider to request such reports), which are to be used by NFIU in reviewing and analysing characteristics of the transactions. However, there is no evidence of other desk-based or offsite supervisory activities taken by NFIU in relation to the FI, and no feedback on the reports has been provided by NFIU to the provider. The NRA 2018 identified vulnerabilities in money transfer facilities, and NFIU conducted two on-site inspections to the MVTs provider (2018 and 2023) to assess its compliance with the AML/CFT obligations in Nauru, including CDD, recordkeeping and STR

requirements. During the on-site inspections, NFIU also provided evidence of material used to raise awareness of the reporting entity on the preventive measures in Nauru's legal framework. Meanwhile, no records were provided regarding the offsite and on-site inspections before 2018, and also how the NFIU effectively uses findings identified in the past off-site/on-site inspections when planning next ones.

270. For DNFBPs, however, NFIU's supervision is minimal and focusing more on outreach to raise awareness of the risks and obligation among the entities. There has been only one on-site inspection of the gaming entity, in August 2023, which focused on the licencing obligations. None of the other reporting entities, i.e., law firms, have undergone on-site inspections by NFIU. Furthermore, the assessment team was not informed of NFIU's off-site supervision in relation to the DNFBPs. However, this limited nature of the supervisory actions in the DNFBPs is understandable to some extent considering the risks associated with the DNFBPs and the very recent nature of the amended AML/CFT legal framework.

Remedial actions and effective, proportionate, and dissuasive sanctions

271. NFIU and the Registrar are empowered to impose sanctions against non-compliance of FIs and DNFBPs with the AML/CFT requirements, pursuant to the AML-TFS Act 2023 and the Business Licenses Act 2017 respectively. Such sanctions include written warning, revocation of licencing, fine and imprisonment.

272. NFIU and the Registrar have not yet applied a range of enforcement tools available to breaches against AML/CFT or registration requirements among the reporting entities. The assessment team observed the situation where NFIU identified deficiencies in relation to risk assessment and record keeping obligations during an on-site inspection, with no sanctions applied (only warnings). Nauru demonstrated NFIU's outreach to follow-up with the MVTS provider on remedial actions responding to its recommendations/requests, although the NFIU found the identified issues remaining unaddressed (no escalation in its actions). This issue is likely related to the nascent stage of Nauru's AML/CFT regime under the AML-TFS Act 2023, the limited staffing (only three officials) and supervisory activities of NFIU held thus far in Nauru (see Table 6.1 above).

Table 6.2: Sanction against Non-compliance with AML/CFT Obligations of FI and DNFBPs (2018-2023)

Year	FI/DNFBP	Breaches	Remedial Actions/Sanction
2018	MVTS provider	No STRs filed, raising awareness not yet to be conducted, not fully compliant with CDD obligations	<ul style="list-style-type: none"> • NFIU provided recommendations (appointment of compliance officer, customer risk profiling, STR training) • No sanctions applied
2023	Gaming operator	Business license expired, no regular datum/records on business volume kept	<ul style="list-style-type: none"> • JBC followed-up in renewing business license • No sanctions applied
2023	MVTS provider	SAR yet to be reported, Risk assessment yet to be prepared	<ul style="list-style-type: none"> • NFIU requested the entity to provide risk assessment, and SAR to NFIU • No sanctions applied

Impact of supervisory actions on compliance

273. Nauru does not demonstrate that NFIU's supervisory actions have an effect on improving the level of compliance by the FI (MVTs provider) and DNFBPs. As described above, most reporting entities in Nauru have not undergone substantive supervision of NFIU, and feedback and engagement from NFIU as supervisor is limited.

274. As for the MVTs provider, the compliance programme of its headquarters in another jurisdiction seems to largely contribute to the level of understanding of and compliance with the AML/CFT obligations of the MVTs provider (considered in Chapter 5). The compliance arm of the MVTs headquarters develops its global compliance programme in consideration of the risk and context of the region and jurisdictions where its agencies operate.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

275. NFIU has conducted outreach to the MVTs provider and some DNFBPs to promote their ML/TF risks and the preventive measures, in preparation for the 2023 NRA and this mutual evaluation. The assessment team is not aware of similar activities prior to 2023.

276. Nauru has issued several guidance documents in 2023 to support the reporting entities in improving their understanding of ML/TF risks and the obligations. This includes a recently issued guidance on the registration obligations, that for types of reporting entities (FIs, DNFBPs and VASPs) and TF/PF TFS obligation, which explain the overview of the registration/licensing obligations and AML/CFT obligations under the AML-TFS Act 2023.

277. However, most of these developments have occurred immediately prior to the on-site (since the adoption of the AML-TFS Act 2023) and the assessment team has observed a limited understanding of the ML/TF risks and the obligations among the gaming operator and law firms during the on-site. Therefore, the assessment team is unable to conclude that they resulted in a clear understanding of AML/CFT obligations in the DNFBPs in particular.

Overall conclusion on Immediate Outcome 3

278. The Registrar in Nauru has relatively strong registration and business licensing controls in the FI and DNFBP sectors in place. The legal framework for fit and proper testing has been recently introduced (August 2023) as part of a legislative reform project, including enactment of the AML-TFS Act 2023. While NFIU is empowered to conduct offsite and on-site inspections to FI and DNFBs, Nauru has not demonstrated planning and implementation of such supervisory actions in the DNFBPs sector. Such activities in Nauru are minimal, and still at the early stage as focussing more on raising awareness of the AML/CFT obligations among the reporting entities. In the context of Nauru, and with limited supervisory activities in the past, there are negligible instances of breaches having been identified with remedial actions following. While Nauru, may pose low level risks in relation to ML/TF, and have limited activities by covered persons (as per the FATF Standards), fundamental improvements are needed to ensure the supervisor has an adequate understanding of risks, and appropriate supervisory activities are taken in accordance with the risks.

279. **Nauru is rated as having a low level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Information on the creation and types of legal persons and arrangements is readily available at the Registry Divisions and online.
- b) While there is no specific rating or conclusion in the 2023 NRA on the risk of abuse of legal persons and the assessment team noted weaknesses in competent authorities' understanding of the features of legal persons incorporated in Nauru, the overall ML/TF risk posed by abuse of legal persons is still considered low due to primarily domestic nature of businesses.
- c) The Registry Divisions, where corporations, partnerships, trusts, associations, business names, business licenses, and beneficial ownership are registered, adhere closely to the rule of law, appropriately register entities, and have processes in place in line with Nauru's context.
- d) While Nauru has undertaken a number of reforms since the last mutual evaluation, some aspects of Nauru's legislative regime - particularly the recently promulgated regulations - relevant to legal persons and arrangements are new and are not well-known across all stakeholders.
- e) The Beneficial Ownership (Identity and Declaration) Regulations of 2023 establish a mechanism whereby basic and beneficial ownership information is provided by legal persons and can be accessed from the Registry Divisions in a timely fashion. However, due to the recent issuance of these regulations, the process of ensuring beneficial ownership is accurate, current, and up to date is still being fully implemented.
- f) There are no legal arrangements registered in Nauru; however, there are provisions in place that allow for the access of basic and beneficial information should a trust be formed.
- g) The Registry Divisions have a range of sanctions available to them and these are applied in a manner that is effective, proportionate, and dissuasive. However, there are gaps in sanctions for violations of the newly enacted Beneficial Ownership (Identity and Declaration) Regulations 2023 and the Trusts (Trustee Duties) Regulation 2023.

Recommended Actions

- a) Identify risks based on vulnerabilities and misuse of legal persons as reflected by the sector.
- b) Build awareness and familiarity within key stakeholders, and the public in general, of the newly created Registry Divisions documents and regulations to ensure understanding of requirements.
- c) Ensure competent authorities understand the ML/TF risks associated with legal entities, including those with responsibilities for administering the shipping registry.

- d) Ensure competent authorities have adequate training to identify and investigate ML/TF through legal entities, in particular, use of basic and BO information to help inform intelligence and investigatory activities.
- e) In addition to sanctions, consider streamlining legal person documentation under the relevant Acts to ensure ease of compliance with registration.

280. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25, and elements of R.1, 10, 37 and 40.⁴⁹

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

281. Information on the creation and types of legal persons and arrangements is readily available at DJBC, which houses the Registrars and the Beneficial Ownership Authority. The Corporations, Partnerships, Associations and Trusts Registrations Division⁵⁰ and the Registration, Business Licensing, Security Licensing, Import Licensing and Beneficial Ownership Division⁵¹ employ the same people and reside within the DJBC. The Registry Divisions make information on the creation and types of legal persons and arrangements available on the Republic of Nauru website, where the different entities are identified, the names and contact information of the Registry Divisions' team is provided, and various guidance and forms are also available.

282. Included on the Registry Divisions' website are the following regulations, guides, policies, and forms available for download. Relevant downloadable material includes:

- a. Business Registration and Licensing Forms (includes all forms for every entity and arrangement)
- b. Business Registration & Licensing – Information Sheet (provides information on what an individual need to do to register any legal entity or arrangement with the Registry Divisions)
- c. Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023
- d. Beneficial Ownership Guidelines

⁴⁹ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

⁵⁰<http://www.nauru.gov.nr/government/departments/department-of-justice-and-border-control/corporations-partnership-associations-and-trust-registration-division.aspx>

⁵¹<http://www.nauru.gov.nr/government/departments/department-of-justice-and-border-control/business-registration-business-licensing-security-licensing-import-licensing-and-beneficial-ownership-division.aspx>

- e. Trusts (Trustees) Regulations 2023
- f. NGO-NPO Best Practice Guide

283. Given the number of documents that need to be filled out between applicable registries, many of which require the same information between registries, the assessment team learned that some business owners avoid incorporating if they can operate as a sole proprietor because of the amount of paperwork that is provided. In this context, the Business Registration & Licensing Information Sheet is particularly useful because it provides information on what an individual needs to do to register any legal entity or arrangement with the Registry Divisions. It additionally points out that all law and regulations, past and present, can be found on Ronlaw.gov.nr,⁵² providing an extra avenue for obtaining information.

7

284. Additionally, information can be obtained in the office. While the office may be considered difficult to find for someone unfamiliar with Nauru, given Nauru's small size and small population, for anyone in Nauru interested in registering a legal entity or arrangement, accessing the office is straight forward through directions from the office itself, or through people the applicant may be affiliated with.

285. During the on-site, the Registry Divisions staff noted that on-island, most people prefer to come into the office. Once in the office, the Registry Divisions employees will provide applicants with copies of relevant laws and Acts, as well as the necessary forms either in person or via e-mail.

286. It must be noted that many documents, including laws, guides, forms, etc. were uploaded on the Registry Divisions website and were provided to the assessment team at the time of the on-site assessment. While the laws and relevant subsidiary legislation enacted or promulgated prior to October 2023 had been available on RonLaw and instructions and forms had previously been available at the office, due to the recent nature of the publishing activity around the other documents, relevant stakeholders and the public were largely unfamiliar with the new documents at the time of the on-site.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

287. The 2018 NRA did not discuss legal persons. The 2023 NRA does provide a discussion on legal persons (Chapter titled "Businesses Entities) regarding threats, mitigation, and vulnerability. However, this analysis does not provide a clear rating conclusion of the level of ML/TF risk faced by Nauru from abuse of legal persons and does not provide specific analysis of the activities of the business sector in Nauru. A separate chapter titled "Beneficial Ownership" sets out the regime in Nauru in relation to transparency of beneficial ownership. This chapter assesses the risk of beneficial ownership, which the assessment team presumes intends to capture risk of obfuscation of beneficial ownership, as low, with the acknowledgement it can escalate to medium fairly quickly. Through conversation with the FIU and the Registry Divisions, a review of the contents of the 2023 NRA, and consideration of what the primarily domestic nature of the legal persons sector⁵³ looks like in Nauru, it appears the size of the jurisdiction enables the Registry Divisions to closely monitor the sector. The assessment team proceeds on the basis that this is not an area of high risk due to the primarily domestic composition of the businesspersons after the revision of the Corporations Act in 2017.

⁵² http://ronlaw.gov.nr/nauru_lpms/

⁵³ After the revision of the Corporations Act in 2017.

288. Broadly, some of the concerns raised in IO.1 in relation to the 2023 NRA apply here as well. The chapter on Business Entities in the 2023 NRA is largely focused on advocating for the sufficiency of mitigations in place in Nauru rather than exploring threats of abuse of legal persons. While the NRA surveys various business entities and lists threats and vulnerabilities in a general sense, it is not clear that the exercise was used to identify actual risk, rather than applying theoretical risks based on traditional uses of ML/TF via legal persons.

289. One particular area of focus for the assessment is the link between the Corporate Registry, NFMRA, and NMA, and the registration of beneficial ownership for these fishing vessels. At the time of the on-site, Nauru had 93 vessels registered in NMA shipping registry, some of which are Nauru-flagged fishing vessels that are also chartered with NFMRA. Relatedly, there are 21 corporations that own fisheries vessels registered in the Corporate Registry, which triggers the disclosure of beneficial owners under the Beneficial Ownership Act. NFMRA notes that any Nauru-flagged fishing vessel must register as a trading corporation under the Corporate Registry Act of 1972; however, after review of the documents it is not clear to the assessment team where this is required by law, although s.3 of the Business License Act does appear to require a business license to operate.

290. Additionally, any non-fisheries related vessels are not required to register with the Corporate Registry and there are no statutory provisions requiring the vessels registered with NMA to register with the Beneficial Ownership registry. A review of the Shipping (Registration of Foreign Vessels) Act 2018 reveals that legal persons are able to hold all or part of the certification that attaches the flag, which varies from the Beneficial Ownership Act, and this is reinforced by the registration procedures provided by NFMRA. There is no specific statutory requirement that the vessels have to be incorporated under the Corporations Act, thus triggering the requirement that the Beneficial Owners be registered under the Beneficial Ownership Act. However, in practice, the NMA notes that when they collect beneficial ownership information, they only register ships where they can verify the natural owner of any legal person purported to be the beneficial owner. Unfortunately, there is no requirement within the DJBC or other competent authority to update the NMA should beneficial ownership change after the initial registration. The assessment team's consideration of risks related to the shipping registry is detailed in IO.10 and IO.11. The analysis in IO.5 is set out to assess whether the Corporate Registry provides the requisite transparency or information on ownership of Nauru-flagged vessels. As set out above, it is not evident that the Corporate Registry holds information sufficient to mitigate concerns raised in IO.10 and IO.11.

291. At the time of the on-site, most competent authorities outside the DJBC, FIU, and NRO had not seen the final 2023 NRA and had a minimal level of awareness in relation to vulnerabilities and misuse of legal persons for ML/TF. The assessment team could not conclude that most competent authorities outside the FIU and DJBC can identify, assess, and understand the vulnerabilities and misuse of legal persons for ML/TF.

Mitigating measures to prevent the misuse of legal persons and arrangements

292. At the time of the October 2023 on-site, there were 72 Corporations, 44 Partnerships, 164 beneficial owners, 9 Associations, 627 Business Licences, 627 Business Name Registrations (536 of which are sole traders), and zero trusts. Under Beneficial Ownership Act 2017 s.6, corporations, partnerships, and businesses registered in the name of 2 or more persons, and trusts are required to register their beneficial owners. For the 72 corporations, there are 94 beneficial owners, and for the 44 partnerships, there are 70 beneficial owners. The vast majority of beneficial owners are Nauruan.

293. Nauru has implemented a series of mitigating measures to prevent the misuse of legal persons and arrangements. These are:

- a. Specific legal persons and arrangements are required to register with the Registry Divisions, must have a domestic presence in Nauru, and are required to provide certain basic information as laid out in R.24 and 25.
 - i. During the on-site, the assessment team was provided the Trusts (Trustee Duties) Regulations 2023 and the Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023. The former expanded trustee duties, what information to obtain from regulated agents and access to basic information of the trustee. The latter amended the requirement that the Register keep and maintain business records for 7 years after the cessation of operation of a business name, partnership, corporation, and trust. Given the lack of trusts currently registered and the effect of the Business Licence regulation on just the Authority, both can be implemented immediately and have no impact on effectiveness of the regulations.
- b. All beneficial owners must be disclosed to the Beneficial Ownership Authority under the Beneficial Ownership Act through a local, nominated officer as stipulated in R.24 and R.25, going beyond the requirements of the FATF Recommendation.
 - i. During the on-site, the assessment team was provided the Beneficial Ownership (Identity and Declaration) Regulation 2023, passed on October 6, 2023. This Regulation amended the Beneficial Ownership Act beneficial ownership definition to not only fully comport with the FATF Definition to include “on whose behalf a transaction is conducted,” and to also provide additional lists of persons considered beneficial owners of a corporation, partnership, and trust. The Regulations also updated the maintenance of information by the legal entity, beneficial owner obligations, and records kept by the nominated officer.
 - ii. On 10 October 2023, the DJBC sent out letters notifying every legal entity that there had been a change to the beneficial ownership requirements. However, given its recent passage, the registry had not had time to be updated to reflect the change in definition, although through assessment team communication with the private sector they were aware there had been a change.
- c. Under 2023 AML-CFT Act, FIs and DNFBPs are required to take reasonable measures to understand and document the ownership and control structure of legal persons. The FIU has only begun to implement this requirement recently, as such it is not fully in place.

294. In addition, the Registry Division operates on a very active basis. Outside of what is provided in the Acts and in the *Registration and Licensing of Businesses, Partnerships, Corporations, Associations, Trusts, Private Security Information Sheet*, while not in written format, the Registry Divisions, have a clear multi-step practice for assessing business name, business license, company and beneficial ownership information, before the company and beneficial ownership information is accepted and the licences issued. It additionally keeps the registrations physically in “red books” and once the entity application is reviewed by three different people (culminating in the Registrar) to ensure accuracy and completeness, the information goes into the electric database, and the entity is notified of the approval.

All underlying documentation is maintained in filing cabinets in the Registry. The practice within the Registry Divisions is to undertake weekly or monthly review of all entities and compile list of entities that do not comply with registry requirements. When variations are submitted to the Registrars, the information is verified and updated within a maximum of 5 working days.

295. Given the larger proportion of beneficial owners are Nauruan or local residents, the Registry Divisions are fortunate in that due to the size and context of the jurisdiction, it is relatively easy to verify the identity of the beneficial owner because someone in the Registry Divisions will be familiar with the beneficial owner. However, where the beneficial owner is unknown, the Registry Divisions use a variety of means to verify their identity. This includes production of original documents from governmental authorities, and the collection of the basic information from the beneficial owner. In addition, they occasionally undertake communication through the numbers and e-mail addresses that are provided. Finally, on at least one occasion, the Registry Divisions have utilised the FIU to verify the beneficial ownership information. Beneficial ownership is not accepted until it has been verified. The Registry Divisions find that the nominated officer updates the beneficial ownership information when there is a variation due to the penalties associated with non-compliance.

Case Study 7.1: Company A

Company A was not registered with the Corporate and Beneficial Ownership Registry Divisions as required. After inspection by the Registry that the business was operating without the proper registration, the Registry Divisions issued a notice to cease operation until the company was properly registered.

The Nauru Revenue Office and the Registry Divisions worked together to ensure compliance with business and tax laws. The Company sought compliance but was reluctant to disclose the natural beneficial owner as required by the Act. Instead, they sought to register legal persons in other jurisdictions as beneficial owners, whose beneficial owners were also legal persons. The BO Division refused to register the company until the natural person was disclosed.

Once disclosed, the BO Division requested that the FIU verify the beneficial owners through foreign counterparts. The FIU provided the verification and Company A was registered and allowed to resume operations.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

296. As detailed in c.24.5 and c.24.10, there is generally access to adequate, accurate and current basic information; however, there is no specific provision that requires that access be provided on a timely basis. In practice, the assessment team understands the basic information is and would be given readily if requested by competent authorities. In the past, the Nauru Revenue Office has requested information on legal persons for routine compliance purposes, including beneficial ownership information, and the Authority has provided it, evidencing willingness to provide the information. The assessment team is not aware of other competent authorities requesting basic information of a legal persons:

297. The Beneficial Ownership Act 2017 has been recently updated with the Beneficial Ownership (Identity and Declaration) Regulations 2023 to require adequate, accurate and current basic and

beneficial ownership information of legal persons. Given the promulgation of the regulations the week prior to the on-site, the Beneficial Ownership (Identity and Declaration) Regulations 2023 were at early stages of implementation at the time of the on-site.

298. The assessment team is not aware of competent authorities outside the Nauru Revenue Office requesting information about beneficial ownership of a legal person. The lack of other competent authorities seeking basic and beneficial ownership information on legal persons can be attributed to the general lack of familiarity in relation to legal persons and arrangements among LEAs outside the Department of Justice and Nauru Revenue Office, low levels of awareness of ML and TF typologies, minimal AML/CFT activities at a supervisory or law enforcement level (see IO.3 and IO.7), and generally low levels of perceived ML/TF risk in the jurisdiction (see IO.1).

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

299. Currently, there are no registered trusts in Nauru. The assessment team is reasonably confident there are no unregistered trusts based on conversations with the legal sector during the on-site visit. Under the Trust Act 2018 s.33, “any information” may be provided to law enforcement or regulatory agencies. Additionally, consistent with Criteria 25.2, 24.4, and 25.5, the information can be provided in a timely manner. Finally, trusts are required to comply with the Beneficial Ownership Act and Beneficial Ownerships (Identity and Declaration) Regulations 2023, triggering the assessment provided above.

Effectiveness, proportionality and dissuasiveness of sanctions

300. Sanctions available to competent authorities for breach of obligations relevant to IO.5 are generally effective, proportionate, and dissuasive; however as discussed in c.24.13, and c.25.7, and 25.8 it is not clear what the penalties are for non-compliance with the Beneficial Ownership (Identity and Declaration) Regulations 2023 and the Trusts (Trustee Duties) Regulation 2023, where the penalties do not map on to already established offences in the Trust Act 2018.

301. The Authority is notably strict in ensuring that the beneficial owner is a natural person as is required by the law. The Company A example provides a good overview of Nauru’s Registry Divisions enforcement effectiveness, its collaboration with the Nauru Revenue Office pursuant to its MOU to streamline processes between the two, and the Registry Divisions’ use of the FIU to vet beneficial owners.

302. The Registry Divisions maintain a weekly review of entities, noting any that are delinquent in fees, late in updating annual reports, etc. contacting the entities as needed. The Registrar of Business Licences issues public notices that of business licences that will expire, have expired and have not yet been renewed, and when business names will be cancelled due to lack of commencing business. These Public Notices are published in both the Gazette and on the Republic of Nauru Facebook page, screenshots of which the assessment team received. The Registrar started publishing these notices on Facebook because, in Nauru’s specific context where the island is small and everyone has a smart phone, this was the best way to get the information out.

303. The Registry Divisions provided the assessment team with samples of sanctions they have pursued against legal entities. These include information regarding strike-offs, including the 2018 strike-off of 44 corporations that did not have a physical presence in Nauru, the 2018 and 2023

cancelled business names for businesses that did not commence business within two years resulting from non-compliance with annual reregistration or failure to start businesses within 2 years of registration, the 2023 striking off business names for failure to respond to the Registrar's notice, among others. The assessment team also received sample for the years 2022 to 2023 of types of other sanctions applied, mostly due to missing the annual reregistration. In 2022 there were 30 warning letters issued and in 2023 there were 19 late fees imposed.

304. The practice within the registries is to undertake weekly or monthly review of all entities and compile lists of entities that do not comply with registry requirements. Public notices are listed in the gazette and on the Government of the Republic of Nauru Facebook page in relation to any breaches. Should an entity miss a registry deadline requirement in the registries, such as re-registration, the owner is required to explain the delay. If there is some sort of hardship, the Authority can exercise discretion. The Registry Divisions have a unique approach to sanctions, providing an unspoken three strikes policy, where the Registrar provides the entity the opportunity to explain why they were late through a letter of apology. The Registrar/Authority decides at that point whether to fully penalise or whether they will waive the penalty and allow the re-registration and keeps track of the violations to provide progressively more sanctions to reregistration violations. The entity cannot reregister until approved by the Registrar/Authority, and must pay the fee, if any, before they can continue their business.

305. In gathering and verifying information, the Registry relies on Nauru's unique situation of being a small jurisdiction with a small population of people that are known to each other. While it has a Business Inspector that randomly inspects businesses, the employees at the Registry Divisions also informally maintain surveillance in their day-to-day lives for businesses that may be operating without proper documentation. One example provided to the assessment team is one of the employees notes a new business had popped as they commuted to and from work on their motorbike and, upon inspection of the records, realised they were unlicensed.

306. Additionally, through conversations with business entities, the assessment team noted the effectiveness of registration requirements in encouraging compliance. However, as noted in the 2023 NRA, some Registry applicants noted the paperwork to apply for multiple registries as is required by law is cumbersome and can dissuade someone from applying for a registry such as the Corporations Act registry simply because the work is duplicative.

Overall conclusion on Immediate Outcome 5

307. Nauru has strong Registry Divisions that work to uphold the various registry legislation and make the information publicly available. Additionally, under the various Acts, sanctions are effective, efficient, and appropriate, except for gaps where the Beneficial Ownership (Identity and Declaration) Regulations 2023 and the Trusts (Trustee Duties) Regulation 2023 do not map on to established sanctions in the Beneficial Ownership Act. Additionally, while there are deficiencies related to the Registry Divisions' register of the Nauru-flagged shipping vessels due to apparent lack of specific legal authority to do so, this was not heavily weighted in IO. 5. The information is used to inform the discussions in IO 10 and IO 11. However, while the Registry Divisions are strong, the Beneficial Ownership Regulations were newly enacted at the time of the on-site, affecting effectiveness over the period reviewed by this mutual evaluation (approximately 2018-2023). In addition, while ML/TF risks are low for legal entities and arrangements, competent authorities outside of the FIU and DJBC did not have a good understanding of risks associated with abuse of legal persons and arrangements. Despite the strength of the mechanisms for basic and beneficial ownership information held by the Registry

Divisions, the assessment team believes major improvements are needed, in particular in relation to many competent authorities' ability to identify, assess and understand the vulnerabilities, and the extent to which legal persons created in the jurisdiction can be, or are being misused for ML/TF.

308. **Nauru is rated as having a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- a) Nauru has a relatively robust legal framework for international cooperation for MLA and extradition. However, Nauru does not have adequate priority/simplified procedures for extradition.
- b) Nauru has not received or made any requests for MLA or extradition; however, there is one possible outgoing MLA request under consideration. Whilst this appears reasonable considering the risks and context of Nauru, the assessment team was informed, anecdotally, during the on-site of several situations where suspects or witnesses leaving Nauru had impacted investigations.
- c) While competent authorities actively engage in forums for international cooperation in the Pacific region, these have not been utilised for AML/CFT purposes at the operational level. There are concerns that information sharing is not on a real-time basis (see also chapter 3 on IO.6).
- d) NFIU plays an important role in accessing international information for competent authorities in Nauru. However, there are issues with FIU-FIU information being effectively shared and utilised by Nauru LEAs (see also chapter 3 on IO.7).
- e) The NFIU operates as the AML/CFT supervisor; however, it has not appeared to have proactively sought international cooperation from counterparts in its supervisory capacity outside of limited incidences in 2021 and 2022.
- f) The Registrar of Beneficial Ownership is empowered to provide international cooperation in exchanging basic and beneficial ownership information in response to foreign requests. However, Nauru has never received such requests.

Recommended Actions

- a) Nauru should improve access to, and competence with, MLA channels for investigation and prosecution. Particularly in relation to suspects and witnesses that have travelled out of Nauru.
- b) Nauru should introduce priority/simplified procedures for MLA (extradition)⁵⁴.
- c) Nauru should continue to enhance international cooperation by the NFIU in its supervisory capacity, including by proactively seeking and sharing information with its counterparts, including on Nauru's risk and context.
- d) Nauru should improve use of international cooperation by the LEAs, including through the INTERPOL platform and access to FIU-to-FIU information exchange.

⁵⁴ After the onsite, Nauru enacted the *Extradition (Amendment) Act 2024* to address this recommended action. The amendments were not reviewed by the assessment team as part of the ME process.

309. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

310. Nauru has a reasonable legal framework for international cooperation for MLA (MACMA 2004 as the primary instrument, while supplemented by POC and CTTOC) and extradition (Extradition Act 1973). The Minister for Justice and Border Control is the central authority responsible for executing MLA and extradition requests, while the Minister of Foreign Affairs and Trade communicates as a primary contact point with foreign counterparts.

8

311. Nauru has not received any request for legal assistance and extradition. The assessment team is of the view that this appears reasonable, considering the risks and context of the jurisdiction.

312. Nauru seems to have a priority procedure for urgent MLA requests in place (relying on Ministerial discretion), as shown by a flowchart in the MLA guidance issued by DJBC. However, such prioritisation is not on the basis of specific themes or criteria set out in a document. Furthermore, the priority procedure has not been demonstrated in practice, as there have been no MLA requests to Nauru so far. There is no procedure for prioritising extradition requests.

Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

313. Nauru has not made any request for legal assistance or extradition. During the on-site, the assessment team also heard from the competent authorities of Nauru about their active informal regional cooperation (see the next section).

314. In discussions with the assessment team, Nauru's law enforcement agencies referred to several cases where investigations of potential predicate offences were impacted by suspects or witnesses travelling outside Nauru due to the absence of court orders to prevent them from leaving the jurisdiction. The assessment team was informed of the use of an audiovisual link in the court of Nauru in practice, although not directly relevant to the cases heard from the agencies. Therefore, improving use of MLA could facilitate LEAs to proceed their investigation in such a situation.

315. While the lack of requests from Nauru to other jurisdictions largely appears reasonable considering its risks and context, there is scope for better use of legal assistance from foreign counterparts in relation to ML/TF and associated predicates. Its limited use of MLA could come from a lack of capacity among the LEAs or standardised mechanism to facilitate such requests. Nauru informed the assessment team of a potential MLA request regarding an ongoing case, where multiple jurisdictions are involved (see Case 8.1 below).

Seeking and providing other forms of international cooperation for AML/CFT purposes

316. The competent authorities in Nauru actively participate in information exchanges with regional counterparts informally, outside of the formal mechanism (MLA or extradition). Nauru engages both bilaterally and through a variety of platforms for regional cooperation. Several case

studies show Nauru's capability and willingness in seeking international cooperation in AML/CFT purposes (although they are all still ongoing). On the other hand, international cooperation provided from Nauru seems to be limited overall.

317. The limited level of international cooperation for ML/TF purposes appears consistent and reasonable considering the risks and context of the jurisdiction. The assessment team notes that information provided indicates that the practice of international cooperation is recent and initiated solely by the FIU.

FIU

318. NFIU is empowered to share information with foreign FIU counterpart. It actively engages in informal information forums both bilaterally and in regional cooperation, e.g., Pacific Islands Forum, or those among the FIUs, including Pacific Financial Intelligence Community (PFIC). NFIU is in the process of Egmont membership application, although it has not been approved yet at the time of the on-site.

319. NFIU has negotiated three MOUs and concluded two with Australia and Chinese Taipei, and work is ongoing on an MOU with New Zealand (see Table 8.1 and Table 8.2). The identification of these three partners for MOU is appropriate and in line with the risk and context of Nauru.

320. The assessment team observed cooperation between NFIU and AUSTRAC regarding the operations of the foreign banking agency with Nauru, an entity which is out of scope of NFIU monitoring. Besides regular communication for enhancing cooperation between them, AUSTRAC shares suspicious mater reports with NFIU in a batch format (with the last batch provided in 2020, spanning a period of 2017-2020). Despite this, as noted in IO.6 there are concerns that this information sharing is not on a real-time basis.

Table 8.1: NFIU MOUs with foreign FIUs (signed/in process)

Foreign FIU	Date
AUSTRAC (Australia)	7 September 2020
AMLG (Chinese Taipei)	9 August 2020
NZ FIU (New Zealand)	25 July 2023 (yet to be signed by NZ)

Source: Nauru authorities

Table 8.2: Request with the foreign FIUs (2018-2023)

	2018	2019	2020	2021	2022	2023
Outgoing Request from Nauru				3		
Incoming Request to Nauru						

Source: Nauru authorities

321. Several case studies provided by Nauru (while they are still on-going) indicate NFIU's capacity to provide support to domestic LEAs in cooperation with foreign FIU counterparts (see Case Study 8.1). Nauru sought financial information/background checks of persons of interest relevant to LEA investigations of potential predicate offences. These international cooperation activities by NFIU

utilises bilateral FIU-FIU relationships, the regional forum PFIC. However, information provided to the assessment team indicates that there are some occasions where NFIU experiences obstacles in providing LEAs with the information on bank accounts received from FIU counterparts (where it is necessary to make a formal MLA request). See also Chapter 3 (Immediate Outcome 7).

Case Study 8.1: Information Exchange between NFIU and LEA (potential tax evasion)

In 2023, NFIU, in cooperation with TCU, was engaged in analysis on suspicious activities of two POIs. In its information gathering process, NFIU obtained information on POIs from foreign counterparts, including travel history of one of the POIs from the foreign LEA (border control authority) as well as financial information from the foreign FIU counterpart. The report was subsequently disseminated to the tax authorities (NRO) for possible tax evasion investigations, and the case is still on going.

8

322. See also Case Study 3.6: Predicate Investigation with Potential ML (multiple jurisdictions) in Chapter 3 above.

Supervisor

323. NFIU has a function in supervising the reporting entities in Nauru in their compliance with AML/CFT obligations (see Chapter 6). Overall, NFIU does not seem proactive in seeking/providing international cooperation with its counterparts as supervisory authority (see Table 8.3). Further, the assessment team has noted that the cooperation between NFIU and foreign jurisdictions does not occur on a real-time basis.

Table 8.3: Request with the foreign supervisors (2018-2023)

	2018	2019	2020	2021	2022	2023
Outgoing Request from Nauru				1	1	
Incoming Request to Nauru						

Source: Nauru authorities

324. The assessment team observed cooperation between NFIU and AUSTRAC regarding supervision of the foreign banking agency, an entity which is out of scope of NFIU supervision. AUSTRAC shares suspicious mater reports and outcomes of its supervision/monitoring of that agency with NFIU, noting no negative findings.

325. With respect to the MVTs provider, the assessment team has not seen evidence of cooperation with the supervisor in the jurisdiction of the headquarters; however, there is a relationship on an FIU-to-FIU basis.

LEA (Police, Customs, Immigration, Tax Authority, Fishery) and Judicial Authority (Prosecutor)

326. The competent authorities in Nauru focus more on informal cooperation in information exchanges with their regional counterparts. The assessment team was informed that their informal information exchanges occur through regular communications, casually via emails, phone calls or meetings. None of the six cases provided by Nauru (including those referred to above) demonstrate

international cooperation between LEAs of Nauru and their counterparts, either in information exchange or investigations of ML/TF/predicate offences.

327. Nauru also makes a use of regional cooperation platforms among the authorities, e.g., PFIC, PTCCC, FFA, PILON and the OECD reporting framework for the tax authority. Nauru shared operations where they had successfully engaged in international cooperation; however, they were not for AML/CFT purposes (e.g., disarming unexploded ordnance, or joint patrol over illegal fishing with FFA members).

328. The assessment team did not receive statistics related to informal international cooperation by LEAs for AML/CFT purposes.

International exchange of basic and beneficial ownership information of legal persons and arrangements

329. The Beneficial Ownership Authority (Secretary for Justice and Border Control) is responsible for maintaining basic and beneficial ownership information of the registered legal persons and arrangements, as set out in the Beneficial Ownership Act 2017.

330. The Beneficial Ownership Authority is empowered by the Act to provide international cooperation in exchanging basic and beneficial ownership information, in response to foreign requests. The Beneficial Ownership Authority has not received any foreign requests for basic or beneficial ownership information of legal persons or arrangements so far. This appears reasonable considering that Nauru is a small jurisdiction with low level of ML/TF risks and is not a financial or company formation centre in the Pacific region.

Overall conclusion on Immediate Outcome 2

331. Nauru has a legal framework for international cooperation for MLA and extradition. However, this framework has not been actively used so far, with no incoming/outgoing requests for MLA or extradition. In contrast, Nauru focuses more on informal cooperation with the regional counterparts (bilaterally and multilaterally). Nauru did not provide any cases/figures which demonstrate such international cooperation is being used or provided by its LEAs. Recently, NFIU has begun to play an important role to seek financial information from the foreign counterparts to support LEAs in their investigations of predicate offences. However, there seems to be an obstacle in LEAs' access to bank accounts information obtained through FIU-FIU information exchanges. Overall, while Nauru is party to several forums that can assist in AML/CFT activities, these have not been utilised for operational purposes in supervisory or law enforcement activities.

332. **Nauru is rated as having a moderate level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis concerning the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the member's situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2012. This report is available from www.apgml.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This is a new Recommendation, which was not assessed in the 2012 MER.

4. *Criterion 1.1* - Nauru completed its first National Risk Assessment (NRA) in 2018 and is to be commended for the recent completion of its second NRA, adopted immediately before the on-site. The NRA examines ML/TF risks and also sets out Nauru's legal, administrative and other systems relating to AML/CFT. Nauru's 2023 NRA challenges several facts relied on by the 2018 NRA, including noting that these facts may be out of date, and differs in its findings in relation to risks.

5. The 2023 NRA considers ML risks associated with threats arising from cash smuggling, drug trafficking, organised crime, corruption, fraud and tax evasion. Except for tax evasion (low to medium risk), Nauru finds a low level of ML risk arising from these threats. Similarly, a short section on TF and PF concludes a low level of risk. The NRA also surveys real estate agents, the gaming entity, high value dealers, accounting firms and accountants, trust and company service providers, and law firms and legal practitioners.

6. The 2023 NRA either finds no relevant activity, or a low level of risk (with respect to the gaming entity and law firms). Nauru's vulnerabilities in terms of capacity challenges and difficulties in relation to financial inclusion are not considered in any depth in the NRA. Broadly, inherent risks posed by various activities are not present, with the focus appearing to be on the lack of complaints and external oversight (for instance, the description of the MVTs). Further, the findings of the 2023 NRA materially differ from those in the 2018 NRA, but there is insufficient explanation of the rationale for the shifts in risks. The assessment team also queries whether the lack of sufficient data and consideration of inherent risk (actual, rather than discovered, crime), resulted in the assessment team finding that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru.

7. *Criterion 1.2* - Nauru FIU has the designation as the lead agency for assessing risk and is supported by the Secretary for Justice. Section 69(g) of the AML-TFS Act 2023 makes it a function of the FIU to "identify, analyse and assess on an ongoing basis financial crime trends, patterns and risks of relevance to the Republic." The National Strategy AML/CFT 2022-2025 also provides for the AML Officials Committee, made up of key public sector stakeholders who are key to monitoring risks and exposure to ML and TF. The intention is that the AMLOC meet regularly to discuss and share strategies as well as identifying risks.

8. *Criterion 1.3* - Nauru completed an NRA in 2018 and has an updated risk assessment published in October 2023. In the National Strategy for AML/CFT 2022-2025, paragraph 31 of the chapter on Implementation sets out milestones including one for the AML/CFT Risk Identification for September 2023. While there is no identified cycle for general updates to the risk assessment

or for responding to material changes, NFIU has produced strategic analysis products which contribute to updating a general assessment of risks in Nauru.⁵⁵

9. *Criterion 1.4* - Section 69(1)(k) of the AML-TFS Act 2023 specifically charges the FIU with the function to ensure that reporting entities, supervisory authorities, other competent authorities and the public at large are adequately informed about the trends, patterns and risks of financial crime and the appropriate responses. An updated NRA 2023 has been published but at the time of the on-site this had not been circulated to relevant entities although it was published on the website. Several stakeholders were aware of the 2018 NRA; but were not aware of the shifts from this NRA to the new 2023 NRA. In the future, the AML Private Partners' Committee is intended to be utilised by NFIU as a mechanism for circulation of risk assessments, however at the time of the on-site this was not apparent as a practice.

10. *Criterion 1.5* - Nauru has adopted a National AML/CFT Strategy 2022-2025. The Strategy notes that Nauruan competent authorities operate in the context of limited resources, however there is no clear link between the allocation of those resources and the findings of the NRA. Notably the 2018 NRA included a section on 'Mitigation Strategies' (Section 8) which responds directly to the risks identified. The Nauru Anti-Money Laundering and Proliferation Financing National Risk Assessment 2023 is not as clear on the links between the risks and the allocation of resources. The Nauru FIU Strategic Analysis 2021 to 2023 has analysed the predicate offences in Nauru to determine potential links to financial crimes. The Analysis noted that drug offences are on the rise but also went on to note that resources should be directed to violence and sexual offences.

11. *Criterion 1.6* - Section 14 (1)(a) of the AML-TFS Act 2023 provides the Minister with the ability to exempt a reporting entity or class of reporting entities; or an activity or class of activities from any or all provisions relating to obligations of Reporting Entities. Nauru has not utilised this provision.

12. Section 14(2)(a) states that this ability is contingent on the Minister and Cabinet being satisfied that there is a low risk of financial crime. However, section 14(2)(b) of the AML-TFS Act also provides the ability to exempt reporting entities or activities if they are determined to be adequately regulated under AML/CFT laws and supervised by authorities of another jurisdiction. While an assessment of low risk is not a necessary condition of the provision to exempt FIs or DNFBPs from AML/CFT obligations, the provision does require adequate regulation under AML/CFT laws and applies in the low-risk context of Nauru.

13. *Criterion 1.7* - Part 4, Division 3, subdivision 3, sections 43 and 44 of the AML-TFS Act 2023 clarify the requirements to conduct enhanced CDD and what to do if CDD is deemed not completed, respectively. Section 43(4) also outlines a requirement for reporting entities to establish and use systems and processes to determine whether any of the circumstances requiring enhanced CDD, as set out in section 43(2) and 43(3), are present in relation to a business relationship or a transaction. This obligation imposed on reporting entities goes toward the obligation for financial institutions and DNFBPs to incorporate determination of when enhanced CDD is required in the risk assessments.

14. *Criterion 1.8* - Part 4 s.45(1) of the AML-TFS Act 2023 provides an ability to apply simplified due diligence where it is prescribed. The mechanism for such prescription is not

⁵⁵ Nauru has developed a National AML/CFT Strategy 2022-2025 Review Schedule – provided to the assessment team after the on-site. This Review Schedule outlines Nauru's schedule for reviewing the NRA.

described in the Act and it is not specified whether this is limited to situations where the ML/TF risk is low. Separately, s.45(2) of the AML-TFS Act 2023 specifies that simplified due diligence cannot be undertaken where there is a suspicion of ML or TF or where there are higher risk scenarios.

15. *Criterion 1.9* - The AML-TFS Act 2023 specifies the functions of the FIU in s.69(1)(a) – (l), including supervision of the compliance of reporting entities with the Act. Section 77(a) –(c) provides the FIU with the ability to collect and request information as well as the ability to enter into any agreement or arrangement with domestic agencies to exchange and share information. Section 19(2)(a) specifies the need for the reporting entity to record the procedures, policies and a requirement for a risk assessment that addresses the controls in place and to manage and mitigate the risk identified in the risk assessment. While NFIU is empowered to conduct offsite and on-site inspections of FI and DNFBs, such activities in Nauru are minimal, and still at the early stage, focussing more on raising awareness of the AML/CFT obligations, rather than ensuring reporting entities implementing their obligations under Recommendation 1.

16. *Criterion 1.10* - Section 24 of the AML-TFS Act 2023 requires the RE to prepare a written business risk assessment to include elements set out as follows:

- s24(1) specifies that a reporting entity must prepare a written business risk assessment and s24(6) goes on to specify the entity keeps a record of its risk assessment, its review of the risk assessment and the methodology used in the preparation and review of the risk assessment.
- s24(4) provides for the entity to take appropriate measures to manage and mitigate risks identified.
- Frequency of review for the risk assessment is set at one year as specified in s24(4).
- s79 of the AML-TFS Act 2023 provides the power for the entity to produce certain information to the FIU. This includes copies of the risk assessments the entity has produced.

17. *Criterion 1.11* - Section 19 of the AML-TFS Act 2023 provides for an AML/CFT compliance programme that includes policies, procedures and a business risk assessment that is approved by senior management and disclosed to directors, officers, employees and agents of the RE. Section 20 requires a RE to appoint a financial crime compliance officer who is responsible for administering and maintaining the RE’s compliance programme, among other roles, including reporting to or being a member of senior management.

18. The AML-TFS Act 2023 s.43 provides detail about the requirement for enhanced customer due diligence, but it is not clear if the entity is required to monitor the customer population for the purposes of identifying potential shifts in risk. The AML-TFS (Simplified Due Diligence) Guide 2023 sets out circumstances when simplified due diligence can be applied and in s.5(6) specifically addresses that it must not be undertaken where there is suspicion of money laundering or terrorist financing or where higher risk prevails.

19. *Criterion 1.12* - The AML-TFS Act 2023 s.45 provides for simplified CDD obligations and s.45(2) does prohibit simplified measures if there is a suspicion of ML/TF. The introduction of the AML-TFS (Simplified Due Diligence) Guide 2023 sets out where simplified due diligence can apply. The application includes circumstances of low risk but goes on to allow simplified due diligence where information on the identity of the customer and/or the beneficial owner is available or where there are adequate checks and internal controls in place (section 5(1)(b) & (c)).

Weighting and Conclusion

20. The National Risk Assessment published in 2018 has been updated and replaced by the Anti-money Laundering and Proliferation Financing National Risk Assessment 2023 and has introduced a Republic of Nauru National Strategy for AML-CFT 2022-2025 which intends to establish a framework to support the AML/CFT work within Nauru. The findings of the 2023 NRA materially differ from those in the 2018 NRA, but there is insufficient explanation of the rationale for the shifts in risks. The assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru. The mechanism for ongoing coordination on risks represented by the introduction of the National Strategy for AML-CFT is not yet tested, impacting the awareness raising with the private sector, and appropriate supervision to ensure reporting entities understand ML/TF risks. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Cooperation and Coordination

21. *Criterion 2.1* - Nauru has adopted a National AML/CFT Strategy 2022-2025 which outlines a work programme (spanning June – Sept 2023) and the national level committees and councils. Nauru has reviewed the 2018 NRA and produced the NRA 2023. The National AML/CFT Strategy 2022-2025 has set milestone goals for pieces of work that are all in the 2023 calendar year, and do not respond to the 2023 NRA.

22. *Criterion 2.2* - Section 69(h) of the AML-TFS Act 2023 specifically includes coordination with supervisory and other authorities in Nauru as one of the roles of the FIU. Paragraph 11 of the Nauru National Strategy for AML/CFT, outlines the strategic framework of the FIU as the central agency of the other working groups, providing secretariat support to the National AML Governance Group, being a key representative on the AML Officials Committee and contact point for the Private Partnership Committee.

23. *Criterion 2.3* - Section 3(h) of the AML-TFS Act 2023 specifies one of the objectives of the Act is to facilitate cooperation amongst REs domestically and internationally, with government agencies and international partners which are vested with similar duties, functions and responsibilities. This is clarified in the functions of the FIU in s.69(g) and (i) where it is responsible for coordination with supervisory authorities and other authorities with roles in combatting financial crime or criminal conduct and to ensure that REs, authorities and the public at large are adequately informed about risk trends and appropriate responses. The Nauru National Strategy for AML/CFT, Objective 3 provides mechanisms for cooperation across key agencies within Nauru. The introduction of the Nauru National Strategy for AML/CFT has provided a template for enabling coordination across operational settings by formalising the establishment of working groups and the intention to share databases. Objective 1 of the Nauru National Strategy for AML/CFT also specifically addresses the need to update legislation and develop terms of reference for the AML Officials Committee which includes public and private members. The mechanism of the AML Officials Committee and National Strategy were established very recently; therefore, the assessment team is unable to conclude that they provide a forum for cooperation, coordination and exchange of information in practice.

24. *Criterion 2.4* - The introduction of the Republic of Nauru National Strategy for AML-CFT 2022-2025 has introduced the AML Official Committee as well the AML Private Partners' Committee. These committees were established in 2023 with one meeting taking place in July 2023. There is no information around coordination on matters relating to proliferation financing. While the AML Officials Committee includes most competent authorities and the private sector, and the sanctions lists are publicly available, there was negligible coordination or awareness of potential proliferation financing risks/issues raised by the Shipping Registry.

25. *Criterion 2.5* - While Nauru has confidentiality obligations in relation to sharing of information across agencies for AML/CFT purposes, there do not appear to be specific data protection obligations on competent authorities or privacy obligations that impede the AML/CFT requirements. The Official Information Act 1976 clarifies the protections in place around communication of official information. It is not evident that competent authorities cooperate to ensure compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions (e.g. data security/localisation).

Weighting and Conclusion

26. Nauru has taken steps to clarify the processes used for national cooperation and coordination. It is clear that these mechanisms are very new in Nauru. A gap remains in the system relating to proliferation financing as the information provided to the assessment team is focused on targeting financing of terrorism. **Recommendation 2 is rated largely compliant.**

Recommendation 3 - Money laundering offence

27. Nauru was rated partially compliant with former Recommendation 1 and largely compliant with former Recommendation 2 in its 2012 MER. It received these ratings due to the number of predicate gaps, lack of coverage for property derived from proceeds of crime, and that property held by 3rd parties is not subject to confiscation. Nauru passed the AML/TFS Act in 2023, which revised its AML laws.

28. *Criterion 3.1* - Money Laundering is criminalised under s.9 of the AML/TFS Act 2023, which states that “a person shall not engage in money laundering” and then provides a penalty for conviction. Important definitions are included under s.4 of the AML/TFS Act 2023.

29. The money laundering offence definition and accompanying definitions generally meet the requirements of the Vienna and Palermo Conventions. For both, there is a mens rea, or knowledge, requirement in order to be convicted specifically of money laundering. Turning to the Vienna Convention Article 3(b)(i), this definition includes “the conversion or transfer of property,” including the requirement of “knowledge that such property is derived from any offence or offences established in sub-paragraph (a) [which covers Illicit Drugs and Psychotropics].” It additionally covers illicit drugs and psychotropics in subparagraph (a) through its threshold approach to the predicate offences as discussed in Criterion 3.3.

30. The Crimes Act 2016 Part 2 Division 3.4 lists a number of ancillary offences and is applicable to the money laundering offence as discussed in Criterion 3.11. Nauru’s money laundering offence therefore meets the requirement to include “from an act of participation in such offence or offences.” Through the definition of “deal or dealing with property with the knowledge that it is criminal property” the Vienna Convention requirement that it be “for the purpose of concealing or disguising the property” is met, including that the property be illicit in origin.

31. The requirement “or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions” for both the Vienna Convention and the Palermo Convention Article 6(1)(a)(i) is met under Crimes Act 2016 Part 2 Division 3.4 s.35. Section 35 notes that “a person commits an offence if: a) the person assists another person (the “other offender”); b) the other offender commits an offence; c) the person knows that the other offender committed the offence; and d) the person assists the other offender in order to enable the other offender to escape punishment or to dispose of the proceeds of the offence”.

32. The money laundering offence meets Vienna Convention Article 3(1)(b)(ii). It meets the “concealment or disguise” element through the definition of “deal or dealing with property” under s.4(1) and further meets the specificity of “true nature, source, location, disposition, movement, rights with respect to, or ownership of the property” under s.4(1).

33. Vienna Convention Article 3(b)(C) follows a similar assessment. Finally, Palermo Article 6(1)(b)(i) refers to the ancillary offences discussed in Criterion 3.11. Nauru meets the major components of this criterion.

34. *Criterion 3.2* - Nauru takes a combined list and threshold approach to predicate offences and is established through the definition of criminal conduct in AML/TFS Act 2023 s.4 as conduct that “a) occurs in and constitutes an offence in the Republic for which the maximum penalty is a term of imprisonment of 2 years or more or the imposition of a fine of more than AUD 5,000” (USD 3,145).

35. The same definition lists additional criminal conduct, which includes: 1) acts that occur outside the jurisdiction, but had they occurred in the Republic it would constitute an offence if it meets the criteria of subsection a of the definition of criminal conduct, 2) offences under sections 234, 239, 242, 250, 251, 252, 253, 254 or 255 of the Customs Act 2014; 3) offences of s.58 of the Copyright Act 2019, which establishes any violations of the Copyright Act 2019 as an offence; 4) “non-payment or evasion of any form of tax, duty or other statutory levy”; 5) insider trading, with general definition; and 6) market manipulation, with general definition (AML/TFS Act 2023 s.4, Definition of Criminal Conduct (b)-(g)).

36. Please see Annex A – Predicate offences for ML, for a detailed listing of designated categories of offences. The designated predicate offences are generally covered, and Nauru’s predicate definition ensures broader definition than just the designated predicate offences. However, there are no explicit provisions for illicit trafficking in stolen and other goods, although there is some coverage in the Crimes Act when receiving stolen property. There is also some coverage in the Customs Act when purchase, selling, exchanging, etc. uncustomed goods (defined under Customs Act s.2 as “goods on which duty has become due and payable, but is unpaid”) or prohibited imports. Additionally, while direct tax crimes are covered, except for the defrauding of customs for non-payment of duty, no other indirect tax crimes are covered.

37. Insider trading, and market manipulation are all listed in the AML-TFS Act, but do not have any penalty associated with them outside of their establishment as predicate offences for money laundering. While the Prices Regulation Act 2008 does provide for penalties associated with market manipulation (Secs. 15 [Selling at above regulated prices], 16 [Refusing to sell at or below regulated price], 17 [Profiteering from Hoarding]) the penalty under s.20 is a fine not exceeding AUD 3,000 (USD 1,887) and/or imprisonment of a period between 1 month and 6 months. This does not meet Nauru’s predicate offence threshold. However, given the size of the jurisdiction, and lack of a stock market, opportunities for insider trading and market manipulation are non-existent in Nauru. As such, the fact that the penalties do not meet the threshold predicate offence requirement carries very little weight.

38. *Criterion 3.3* - Nauru takes a combined list and threshold approach to predicate offences. For the threshold portion, AML-TFS Act 2023 s.4 defines criminal conduct as conduct that “a) occurs in and constitutes an offence in the Republic for which the maximum penalty is a term of imprisonment of 2 years or more or the imposition of a fine of more than AUD 5,000” (USD 3,145). Most of the predicate offence categories meet the 2 years or more maximum term of imprisonment or the imposition of a fine of more than the AUD 5,000 (USD 3,145) requirement. Where they do not (sections of the Customs Act 2014 and specific offences of the Copyright Act 2019), they are included as criminal conduct under the AML-TFS Act 2023 in a

list form and do meet the other imposition of a fine of more than AUD 5,000 (USD 3,145). Nauru's threshold approach meets the requirement of c.3.3(b) that the offences are punishable by a maximum penalty of more than one year's imprisonment.

39. *Criterion 3.4* - The ML offence in the AML-TFS Act 2023 extends to any type of property, regardless of value, that directly or indirectly represents the proceeds of a crime. Under the AML-TFS Act 2023, money laundering is defined as "deal or dealing with property that is criminal property." s.4 defines property as "assets of any kind. . . ." and criminal property as "property, whether situated within or outside of the Republic, that is, in whole or in part and whether directly or indirectly, derived or realised from, obtained, used or intended to be used, in connection with criminal conduct . . ." While the ML offence under the AML-TFS Act 2023 does not specifically use the words "proceeds of crime" Nauru's definitions are broader than this criterion requires, and these requirements are met by the option that criminal property be "directly or indirectly derived . . . from . . . criminal conduct...."

40. *Criterion 3.5* - Section 12 of the AML-TFS Act 2023 stipulates that a "conviction relating to the criminal conduct" is not necessary to prove property is criminal property under the ML offence.

41. *Criterion 3.6* - The AML-TFS Act 2023 includes in the definition of criminal conduct "conduct that . . . occurred outside of the Republic, but had it occurred in the Republic, would constitute an offence in the Republic . . ." but does not require the predicate offence to constitute an offence in the other jurisdiction. However, while such a broad definition might be a problem in a larger jurisdiction, this absence of this second requirement is not given any weight in the context of Nauru, given the size and resources of the jurisdiction.

42. *Criterion 3.7* - The criminal property component of the money laundering offence defines criminal property as "property . . . in connection with criminal conduct . . . regardless of who carried out the criminal conduct or who benefited from it." This does not exclude the application of the money laundering offence to persons who commit the predicate offence.

43. *Criterion 3.8* - The AML-TFS Act 2023 s.4 defines knowledge as "mean[ing] for the purposes of a money laundering offence or any offence under the Act of having actual or *constructive knowledge* or knowledge capable of being acquired with reasonable inquiry." While the definition does not specifically establish that the knowledge can be "inferred from objective factual circumstances," the fact that knowledge can also mean "constructive knowledge" is sufficient.

44. It is important to note that under the Crimes Act 2016 s.18 "knowledge" is defined as "1) [a] person has "knowledge" of something if the person is aware that the thing does or does not exist or will or will not exist in the ordinary course of events. 2) [w]here knowledge is specified as the fault element required to prove an offence, proof of an intention or knowledge will satisfy that fault element for the offence." Under s.11 of the Crimes Act 2016, it is noted that "This Part [of which the definition of knowledge applies] applies to: a) all offences created by this Act; and b) offences committed under other written laws on or after the commencement of this Act." As such, there appears to be a conflict between the Crimes Act 2016 and AML-TFS Act 2023; however, in light of the fact that "knowledge" is defined in the AML-TFS Act 2023, this is the applicable definition.

45. *Criterion 3.9* - Sanctions are proportionate and dissuasive. The AML-TFS Act 2023 s.9(2)(a) provides that punishment for money laundering for an individual does not exceed "[AUD] \$500,000 [USD 314,465] or imprisonment for a term not exceeding 20 years, or to both."

46. *Criterion 3.10* - Given the size of Nauru's economy and corporate sector, sanctions appear to be proportionate and dissuasive. The AML-TFS Act 2023 s.9(2)(b) states that punishment "for a body corporate, is a fine not exceeding [AUD] 2,500,000" (USD 1,572,327) S.13 states that "conduct of parallel investigations or proceedings of a criminal, civil or administrative nature arising from the same facts in relation to the same or different persons" is not precluded.

47. *Criterion 3.11* - Crimes Act 2016 s.11 stipulates that Part 3 "Principles of Criminal Responsibility," which includes sections dedicated to ancillary offences, applies to all offences in the Crimes Act 2016 and "offences committed under other written laws on or after the commencement of this Act." Since the AML/TFS 2023 was enacted after the Crimes Act 2016, the stipulated ancillary stipulated offences apply to the offence of money laundering in AML/TFS 2023.

48. While the Crimes Act 2016 Part 3 Division 3.4 provides for the following ancillary offences to the ML offence: participation in (via Joint Commission s.32), conspiracy (s.31), attempt (s.24), aiding and abetting (s.29) and counselling (s.29), and, while specifically not referred to as "facilitating," the requirements of facilitating are included within s. 29.

Weighting and Conclusion

49. With the passage of the AML-TFS Act 2023, Nauru has increased its compliance with Recommendation 3, with one mostly met criterion and ten met criteria. While there is only one mostly met criterion (3.2 as to a couple of predicate offences), the deficiencies are not large in scope given size and risk of the jurisdiction, and the mostly met criterion are not weighted heavily in light of the met criteria. **Recommendation 3 is rated largely compliant.**

Recommendation 4 - Confiscation and provisional measures

50. In its 2012 MER, Nauru was rated partially compliant with former R.3 on the basis that there were gaps in the coverage of predicate offences and no coverages of property derived indirectly from proceeds of crime and property held by a third party and instrumentalities to be used in serious offences. In addition, the overlap between the Anti-Money Laundering Act 2008, the Proceeds of Crime Act, and the Counter Terrorism and Transnational Organised Crime Act negatively impacted implementation.

51. *Criterion 4.1* - Under s.17 of POCA 2004, the Secretary for Justice may apply for a forfeiture order against 'tainted property' relating to a person's conviction of a serious offence.

52. *Criterion 4.1(a)(b)* - According to s.3 of POCA 2004, 'tainted property' means property that (1) is used in, or in connection with, the commission of a serious offence; (2) is intended to be used in, or in connection with the commission of a serious offence; (3) proceeds of that offence; (4) criminal property under AML-TFS Act; (5) terrorist property under CTTOC Act. 'Serious offence' includes (1) offences punishable by imprisonment for not less than 2 years;(2) financial crime and criminal conduct under AML-TFS Act (ML offences); (3) offences under CTTOC Act (TF offences).

53. 'Criminal property' under s.4 of AML-TFS Act 2023 means property that is, whether directly or indirectly, derived or realised from, obtained, used or intended to be used, in connection with criminal conduct and includes:

- any interest in such property;

- any dividend, other income or value accruing from or generated by such property; and
- property that was later converted, transformed or intermingled from such property;

regardless of who carried out the criminal conduct or who benefited from it.

54. The definition of property is wide enough to include property or proceeds held by or under the control of third parties, and instrumentalities used or intended for use in serious offences.

55. *Criterion 4.1(c)* - 'Terrorist property' can be forfeited under POCA 2004. 'Terrorist property' is defined by s.2 of CTTOC Act as any property that is: (1) the proceeds of terrorism financing or a terrorist act; (2) used in, intended or allocated for use in terrorism financing or a terrorist act; or (3) used by, intended or allocated for use by a terrorist group. 'Terrorist property' can be forfeited under POCA 2004. Section 23 of CTTOC also provides that the Minister may apply for a forfeiture order against a terrorist property controlled by a third party.

56. *Criterion 4.1(d)* - According s.23 of POCA 2004, the court may, instead of ordering the property to be forfeited, order the person to pay to the Government an amount equal to the value of the property where the property cannot be made subject to the forfeiture order, and (1) cannot be found; (2) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property; (3) is located outside Nauru; (4) has been mingled with other property that cannot be divided without difficulty; (5) has been substantially diminished in value or rendered worthless. Section 26 also provides for a pecuniary penalty order that the court may order the person who has benefited from a serious offence to pay to the government an amount equal to the value of the benefit.

57. *Criterion 4.2(a)* - The competent authorities in Nauru are empowered to identify, trace, and evaluate property subject to confiscation. A police officer may apply for a production order to obtain a property-tracking document (s.79 of POCA 2004). The Secretary for Justice may apply for a monitoring order requiring a reporting entity to provide information about transactions (s.87 of POCA 2004) and may direct a person to give or disclose the document or information relevant to a serious offence or the making of forfeiture order or restraining orders (s.93 of POCA 2004). Under AML-TFS Act 2023, Nauru FIU has the power to collect or request information from commercial and Government databases and domestic authorities (s.77) and access and request information and records from reporting entities (s.78 and s.79).

58. *Criterion 4.2(b)* - NPF has powers to seize under various legislation, such as sections 36 and 84A of POCA 2004, s.75 of the Criminal Procedures Act 1972, sections 19, 29, and 30 of Illicit Drugs Control Act 2004. In addition, a customs officer is authorised to seize and detain evidence relating to certain offences (s.210 of Customs Act 2014).

59. Under POCA 2004, the Secretary for Justice may apply for a restraining order under certain conditions to prevent any dealing, transferring, or disposal of property (s.48) and a forfeiture order if a person is convicted of a serious offence (s.11). An application for a restraining order may be made *ex-parte* without notice to any person (s.48(2)). However, the restraining order can only be applied against tainted property held by a person charged or convicted of a serious offence (s.48(2)). The court may make a restraining order against property if the person is about to be charged with serious offence (s.50(1)(a)). The timeframe for applying for a restraining order when someone is about to be charged is unclear.

60. Concerning terrorist property, the Minister may apply to the court for a direction to take custody and control of that property (s.16 of CTTOC) and a forfeiture order (s.23).
61. *Criterion 4.2(c)* - Section 18 of POCA 2004 provides the Court may set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the notice of application on persons affected by the order unless the transfer was for valuable consideration to a person acting in good faith and without notice.
62. *Criterion 4.2(d)* - Nauru LEAs have a wide range of investigative powers, as outlined above and in R.31 below. NPF and Customs may conduct undercover operations under Illicit Drugs Act 2004. A police officer, under a production order, may access computer systems for documents (s.80(3) of POCA 2004) and is empowered to perform communications interception and use tracking devices (sections 15 and 16 of Illicit Drugs Act 2004). See also general LEA powers in R.31
63. *Criterion 4.3* - Section 20 of the POCA 2004 provides for the protection of third parties. A person who claims an interest in the forfeited property may apply to the Court. Third parties are obliged to satisfy the court that they were not involved in the commission of the offence, and the person acquired the interest without knowing that was tainted property, the Court shall make an order declaring the nature, extent and value of their interest. The court may order an administrator to return the property or the part of it to the third parties or to pay an amount of money equal to the value of the third parties' declared interest. The court may, instead of ordering the property to be forfeited, order the bona fide third parties to pay an amount equal to the value of the property (s.23(b)).
64. Regarding a forfeiture order against terrorist property, CTTOC Act 2004 also provides that third parties who claim an interest in the forfeited property may apply to the court (s.26). The court may order the Minister to return the property or pay an amount equal to the value of the interest of the third parties' declared interest (s.27).
65. *Criterion 4.4* - Under Criminal Procedures Act 1972, anything seized may be detained with reasonable care taken for its preservation (s.78). The court in any criminal proceedings may make orders for the preservation or disposal of property (s.124). All property seized is held by the Commissioner of Police till the court makes a restraining order directing the 'Administrator' to take custody and control of the seized property (s.46 and 47 of POCA 2004). Section 118 of AML-TFS Act 2023 provides for the management of seized assets of the designated person or entity. The Minister may appoint an administrator to deal with seized property. Where an administrator is not appointed, the Secretary for Justice and Border Control shall act as administrator.
66. Under POCA 2004, the Minister may appoint an 'Administrator' to administer property that is forfeited or restrained (s.102). The 'Administrator' is the Secretary for Justice or the person appointed by the Minister (s.3). The 'Administrator' is empowered to direct that the forfeited property be disposed of and the proceeds be applied or dealt with after the conviction or order has become final or perfected (s.19(2)(b)). The Secretary for Justice can request the court to direct the Administrator to (1) take custody and control of the restrained property; (2) to manage or deal with the property under the directions of the court and the 'Administrator' may do anything reasonably necessary to preserve the property (s.40 and 50(6)). In order to satisfy a pecuniary penalty order by payment to Nauru, the court may direct the 'Administrator' to sell or otherwise dispose of a part of the property that the Court specifies (s.54). In addition, s.100 also provides for the establishment of 'Confiscated Assets Fund'.

67. Nauru advised that there has been no case of Administrator appointment, therefore it is unclear how the administrator would manage or dispose of those properties. Nauru has advised the Administrator is an ad hoc position, appointed as necessary and the court would set out the terms of reference for dealing with the property at the time of appointment. The court is also able to directly decide on the disposal of the property as happened in a 2020 case where the property was returned to the victim.

Weighting and Conclusion

68. Nauru has provisions and mechanisms for the seizure and confiscation of proceeds of crime. There are minor gaps in the application of predicate offences referred to in R.3. The restraining order can only be applied against a person who is about to be charged or convicted of a serious offence. There are no clear provisions regarding the procedures and measures of the 'Administrator' dealing with forfeited or seized properties, although the court can decide on the management and disposal of properties. **Recommendation 4 is rated largely compliant.**

Recommendation 5 - Terrorist financing offence

69. Nauru was rated as partially compliant with former Special Recommendation II in its 2012 MER. It was rated as partially compliant because "no provision for criminalising funding terrorist organisations or individual terrorists, except for those prescribed by the Minister; the absence of prescription of any terrorist group or individual at the time of the on-site visit resulted in a gap for groups and individuals; and there was some uncertainty regarding the scope of criminal liability for legal persons." However, since that time the Counter Terrorism and Transnational Organised Crime (CTTOC) (Amendment) Act 2020 has passed, which addresses a number of these concerns.

70. *Criterion 5.1* - Article 2(1) of the Terrorist Financing Convention (TFC) is met under the CTTOC Act. Section 10(1) of the CTTOC Act criminalises terrorism financing, providing that "no person shall provide, offer or collect a property by any means, directly, or indirectly, with the knowledge that such property be used or is to be used, in full or in part a) to carry out a terrorist act, b) by a terrorist group; or c) by a terrorist." Intent is implied in "knowledge that such property be used or is to be used". The words "unlawfully and wilfully" are not included in the CTTOC, but this does not detract from the definition as it is broader than Article 2 of the TFC.

71. Sections 3(1)(a)(b) and 3(1)(a)(2) defines terrorist act in line with the requirements of TFC Article 2(1)(b).

72. Sections 3(1)(a)(b) and 3(1)(a)(2) defines terrorist act in line with the requirements of TFC Article 2(1)(b).

73. Section 10(1) of the CTTOC Act covers the scope of the treaties referred to in TFC Article 10(a) through the definition of "terrorist act" in s.3(1)(a). A terrorist act is defined as "an act which constitutes an offence within the scope of and as defined by a counter terrorism convention." Given the broad nature of "counter terrorism convention," Section 3(1)(a) is read as referencing the TFC, which in turn is inclusive of the acts that constitute an offence in the treaties listed in the annex of the TFC. By extension the annexed treaties would be included under the definition of "counter terrorism convention." As a result, s.10(a) covers the scope of the treaties listed.

74. Finally, while Article 2 of the TFC specifically references "funds" and s.3 of the CTTOC Act references "property," the definition of "property" under s.2 includes "assets of every kind,

including financial assets” in addition to other types of property. The CTTOC effectively broadens the definition of Article 2(1).

75. *Criterion 5.2* - The analysis of Nauru’s TF offence is set out under c.5.1. While s.10 of the CTTOC does not specifically state that the offence need be “wilful” or use the word “intent,” s.10(1) establishes both wilfulness and intent. Additionally, s.10 tracks with the requirement that the funds cannot be sent to be used to carry out a terrorist act, by a terrorist group, or by an individual terrorist. Section 10(2)(a) specifically states that a person commits this offence “even in the absence of a link to a specific terrorist act.”

76. *Criterion 5.2^{bis}* - Section 15C of the CTTOC states that “no person shall . . . facilitate the travel of a terrorist to a foreign country. . . .” A terrorist is defined in s.2 as a “natural person who a) commits or attempts to commit a terrorist act; (b) participates as an accomplice in a terrorist act; (c) organises or directs others to commit a terrorist act; or (d) contributes to the commission” Although including “terrorist” instead of “individual” narrows the definition, “terrorist” has the same effect as individual when read within the statute as a whole. Section 15C(1)(a)-(e) reflects that the travel be for the purposes of perpetrating, planning, preparing, participating in a terrorist act or providing or receiving terrorist training.

77. Section 10(2)(d) and 10(2)(e) stipulates that an individual can commit the offence of terrorist financing “regardless of whether the person is in the same country or a different country from the one in which a terrorist or terrorist group is located”; and “regardless of whether the person is in the same country or a different country from the one in which the terrorist act occurred or will occur.”

78. *Criterion 5.3* - The definition of “property” under s.2 includes “assets of every kind, including financial assets” in addition to other types of property. Both s.10(2)(b) and s.15C(2)(b) state that a person commits the act of terrorism financing or financing a foreign terrorist, respectively, “regardless of whether the property is from a legitimate or illegitimate source.”

79. *Criterion 5.4* - Both CTTOC s.10(2)(c) and s.15C(2)(c) state that a person commits the act of terrorist financing or financing a foreign terrorist, respectively, “even if the property provided or collected was not actually used, in full or in part, to carry out or attempt a terrorist act.” This would mean that a terrorism offence does not have to be linked to a specific terrorist act or acts.

80. *Criterion 5.5* - CTTOC s.10(1) meets the intent and knowledge requirement for this criterion where it states, “*knowledge* that such property be used or is to be used” (emphasis added). Crimes Act 2016 Part 3 applies to “offences committed under other written laws on or after the commencement of this Act.” Crimes Act 2016 Part 3 s.16, details intent requirements (or “fault elements”) including “knowledge.” As such, any offences committed under CTTOC s.10(1) after 2016 will apply the definition of “knowledge” under the Crimes Act 2016.

81. Crimes Act 2016 s.18(1) states that “[a] person has ‘knowledge’ of something if the person is aware that the thing does or does not exist or will or will not exist in the ordinary course of events.” Under Crimes Act 2016 s.18(2), while there is no specific language carving out “inferred from objective factual circumstances” there is no language specifically restricting the determination and “ordinary course of events” provides a similar meaning.

82. *Criterion 5.6* - Under s.10(3)(a) and s.15C(3)(a) of the CTTOC the penalty for a natural person who commits the offence of, and is convicted of terrorism financing or financing a foreign terrorist, is life in prison. This is proportionate and dissuasive.

83. *Criterion 5.7* - Under s.10(3)(b) and s.15C(3)(b) the penalty for a legal person that commits the offence of and is convicted of terrorism financing or financing a foreign terrorist can be fined up to AUD 10,000,000 (USD 6,289,308).

84. Additionally, s.76 lays out the liability and penalty of a corporation. It establishes that “[t]he Act applies to a corporation in the same way it applies to an individual . . .” and that the “the conduct or state of mind of an employee agent or officer of the corporation is taken to be attributed to the corporation if “the person is acting in specific ways. Section 76(4) states that where a corporation under the Act is found guilty, and the only penalty is imprisonment, then the court “may impose a fine that it considers appropriate reflecting the grave nature of the offences for which this Act provides.”

85. *Criterion 5.8* - The CTTOC meets the requirements of this criterion. It:

- Includes attempt to commit the TF offence through s.75 of the CTTOC Act, which provides liability for people who attempt to commit offences, though it is qualified by the fact that the conduct must be more than preparatory.

- Includes “participating as an accomplice in an attempted or in a TF offence” through s.71 (Aiding, Abetting, etc. Commission of an Offence) and lays out in s.72(1) that, “A person who aids, abets, counsels or procures the commission of an offence under this Act by another person is taken to have committed the offence and is punishable as if the offence had been committed by that person.”

- Includes participating as an accomplice in a TF offence or attempted offence through s.73 (Incitement to Commit an Offence), stating in s.73(1) that, “a person who urges the commission of an offence under this Act commits an offence.”

- Includes contributing to the commission of one or more TF offence(s) or attempted offences(s) by a group of persons acting with a common purpose. The offence of participation in organised group through s.55 (Participation in Organised Criminal Group). Section 55(1)(a) states that “[a] person shall not participate, whether as a member, associate member or prospective member, in an organised criminal group, knowing that it is an organised group: a) knowing that his or her participation contributes to the occurrence of a criminal activity. . . .”

86. *Criterion 5.9* - The AML-TFS 2023 Act uses a combined threshold and list approach to predicate offences. Under AML-TFS 2023 Act Article 4 “criminal conduct” is defined as “conduct that a) occurs in and constitutes an offence in the Republic for which the maximum penalty is a term of imprisonment of 2 years or more or the imposition of a fine of more than AUD 5,000” (USD 3,145). CTTOC Article 10A, which establishes the offence of a Terrorism Act, provides for life in prison, meeting the threshold 2 years or more of imprisonment under the AML-TFS 2023 Act. CTTOC 10(3) establishes the offence of terrorism financing and provides for a penalty of life in prison for a natural person and a fine not exceeding AUD 10,000,000 (USD 6,289,308) for a legal person, which also meets the threshold requirement.

87. *Criterion 5.10* - CTTOC also covers the offence of assisting foreign terrorists. Sections 10(2)(d) and 10(2)(e) stipulates that an individual can commit the offence of terrorist financing “regardless of whether the person is in the same country or a different country from the one in which a terrorist or terrorist group is located,” and “regardless of whether the person is in the same country or a different country from the one in which the terrorist act occurred or will occur.” Additionally, s.71 stipulates the jurisdiction if proceedings are brought under the CTTOC, which includes the provision that “. . . proceedings may be brought . . . whether or not the act or omission constituting the offence is committed in or outside the Republic, if the act or

omission . . . is committed by a person who is, after the commission of the offence, present in the Republic.”

Weighting and Conclusion

88. Nauru’s CTTOC Act meets all the requirements of Recommendation 5. **Recommendation 5 is rated compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

89. *Criterion 6.1(a)* - Section 112 of the AML-TFS Act 2023 empowers the Minister responsible for Justice and Border Control to propose persons or entities to the 1267/1989 Committee and the 1988 Committee for designation. Regulation 11 of the AML-TFS (FT&PF) Regulations 2023 specifies these proposals shall be made in accordance with the procedures and standard forms for designating terrorist groups adopted by the UNSC or its committees. Further, Regulation 11 specifies the use of the UNSC approved standard form for listing a group and has attached it as Form 1 of Schedule 2.

90. *Criterion 6.1(b)* - Section 109 of the AML-TFS Act 2023 gives immediate effect to persons or entities designated by the UNSC or its committees (listed in Schedule 1 of the AML-TFS Act 2023). However, neither the AML-TFS Act 2023, the AML-TFS (FT&PF) Regulations 2023 nor the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023 have a process for identifying targets for designation based on the relevant UNSCR designation criteria.

91. *Criterion 6.1(c)* - Subsection 110(1) of the AML-TFS Act 2023 specifies the Minister shall have reasonable grounds to believe that the criteria for designation prescribed by regulations have been met. The AML-TFS (FT&PF) Regulations 2023 set out information on how this would meet the evidentiary standard of proof of reasonable grounds. A proposal for designation is not conditional upon the existence of a criminal proceeding. Subparagraphs 4(1)(i) and 4(2) (terrorist group) and 14(1)(i) and 14(2) (terrorist) of the AML-TFS (FT&PF) Regulations 2023 specify that a designation can be made for having committed an offence or attempting to commit an offence. It is therefore not conditional upon the existence of a criminal proceeding.

92. *Criterion 6.1(d)* - Nauru follows the procedures and standard forms to listing, as adopted by the 1267/1989 Committee and the 1988 Committee. While these are not articulated in the AML-TFS Act 2023, Regulation 11 of the AML-TFS (FT & PF) Regulations 2023 specifies the use of the UNSC approved standard form for listing both terrorist groups and natural persons as terrorists, and they are attached to Schedule 2.

93. *Criterion 6.1(e)* - Subparagraph 11(2)(b) of the AML-TFS (FT&PF) Regulations 2023 addresses the requirements of c.6.1(e). Subparagraph 11(2)(b) requires that any request to designate a terrorist group shall provide as much relevant information as possible on the group proposed to be designated. This includes including information that sufficiently identifies the group, and any name and trade name, acronym, and other former or current names identifying them, address of headquarters and branches or local offices, subsidiaries, organisational links, ownership structure, controlling management, parent company, nature of business or commercial activity, any country of the main activity or operation, registration or incorporation number or other identification numbers, website addresses, and status of the legal entity in terms of being under liquidation or dissolution.

94. *Criterion 6.2(a)* - In relation to UNSCR 1373, section 114 of the AML-TFS Act 2023 empowers the Minister responsible for Justice and Border Control to propose persons or entities to the UNSC or its committees for designation. Subregulations 5(1) (in his/her opinion) and (2) (upon receiving a request from a foreign country) of the AML-TFS (FT&PF) Regulations 2023 specify the Minister may designate a terrorism group. Subregulations 15(1) (in his/her opinion) and (2) (upon receiving a request from a foreign country) of the AML-TFS (FT&PF) Regulations 2023 specify the Minister may designate a natural person as a terrorist.

95. *Criterion 6.2(b)* - Section 109 of the AML-TFS Act 2023 gives immediate effect to persons or entities designated by the UNSC or its committees (listed in Schedule 1 of the AML-TFS Act 2023 and includes resolution 1373). The AML-TFS (FT&PF) Regulations 2023 specify the ability for the Minister responsible for Justice and Border Control to identify targets for designation. Regulations 11 (terrorist group) and 21 (terrorist) specifies the required elements for requesting to designate a terrorist group/terrorist and provides the form for designation in Schedule 2.

96. *Criterion 6.2(c)*: Subsection 110(1) of the AML-TFS Act 2023 specifies the Minister responsible for Justice and Border Control shall have reasonable grounds to believe that the criteria for designation prescribed by regulations have been met. Subparagraphs 7(1)(c) and 17(1)(c) of the AML-TFS (FT&PF) Regulations 2023 provides for expediency when notified by a foreign jurisdiction, foreign person or foreign entity. Further, subsections 7(2) (terrorist group) and 17(2) (terrorist) specify that following the receipt of the request the Minister shall direct the Commissioner of Police, FIU or any other enforcement department or agency, to immediately examine the request and advise the Minister in writing within 3 days whether there are reasonable grounds to designate a terrorist group/terrorist.

97. *Criterion 6.2(d)*: Subsection 114(1) of the AML-TFS Act 2023 specifies the Minister responsible for Justice and Border Control shall have reasonable grounds to believe that the criteria for designation have been met, to submit a proposal to the UNSC or its committees to designate a person or entity for targeted financial sanctions. Further, Subregulations 5(1), 5(2) and 5(3) (terrorist group) and 15(1), 15(2) and 15(3) (terrorist) of the AML-TFS (FT&PF) Regulations 2023 specify the Minister may designate a terrorist group/terrorist after he/she is satisfied on reasonable grounds to do so. Subparagraphs 4(1)(i) and 4(2) (terrorist group) and 14(1)(i) and 14(2) (terrorist) of the AML-TFS (FT&PF) Regulations 2023 specify that a designation can be made for having committed an offence or attempting to commit an offence and therefore, not conditional upon the existence of a criminal proceeding.

98. *Criterion 6.2(e)*: Subregulation 52(1) of the AML-TFS (FT&PF) Regulations 2023 specifies the Minister responsible for Justice and Border Control, through the appropriate diplomatic channels, shall request the relevant authority in another country to freeze assets located in that jurisdiction. Subregulation 52(2) specifies the Minister's request shall be accompanied with as much relevant information as possible to identify the person or group as well as including details on the basis for the designation that meets the relevant designation criteria.

99. *Criterion 6.3(a)*: The introduction of the AML-TFS (PF&TF) Regulations 2023, in particular Regulation 7(2), (3) and (4) and Regulation 17(2), (3) and (4), establish the legal authorities and procedures to designate a terrorist by specifying the process to follow including timeframes to meet.

100. Regulations 7 and 17 provide for the Minister for Justice and Border Control to direct the Commissioner of Police, the FIU or any other enforcement department or agency to examine requests for designation and to advise the Minister within 3 days whether there are reasonable

grounds to designate a terrorist group or person. The Commissioner of Police, FIU or other enforcement department or agency may then collect or request additional information from the person/entity/country who submitted the request for designation, any other supervisory authority, reporting entity (includes DNFBPs and FIs), DPP, Customs, Quarantine, Immigration, any other department or instrumentality in Nauru or any other person or entity who may have access to information necessary to make the designation. The person or entity who receives such a request is to provide the information required within 48 hours of receipt of the request.

101. *Criterion 6.3(b)*: The AML-TFS (FT&PF) Regulation 17(6) 2023 specifically provides the Minister with the ability to authorise *ex parte* orders in relation to designations of persons for targeted financial sanctions.

102. *Criterion 6.4* - Section 109(1) of the AML-TFS Act 2023 provides for immediate effect following designation of a person or entity by the UNSC under Schedule 1, which lists relevant UNSC Resolutions. Section 110(2) of the AML-TFS Act 2023 states that the designation of a person or entity by the Minister has immediate effect. The Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023, clause 4, reiterates the immediate effect of designation and delisting. NFIU has a link to the UNSC consolidated lists on its website for continual access. The process of alerting changes in designations to competent authorities and reporting entities in Nauru is protracted and would likely take over 24 hours, with regulations stipulating designation within 48 hours. However, when the risk and context of Nauru as a small jurisdiction is also considered, it is likely the impact would be minimal.

103. Under Regulations 42 and 44, where the UN designates a person or a group, the Permanent Mission of Nauru to the United Nations shall within 48 hours submit to the Minister for Foreign Affairs and notify the Minister for Justice and Border Control and the FIU of the particulars of the designation. The Minister for Foreign Affairs shall immediately forward the designation to the Minister for Justice and Border Control. The Minister for Justice and Border Control shall within 48 hours designate the person or the group in accordance with the Regulations. Regulations 46 and 48 state that the Minister shall notify the FIU within 48 hours of a designation. Regulations 47 and 49 provide that upon designation, the Minister shall cause immediate temporary freezing or seizing and shall within 8 hours of the designation circulate the information in an expeditious manner to all reporting entities and any relevant public or private entity to facilitate timely freezing or seizing. The reporting entity, or relevant public or private entity is to check within 8 hours of receipt of the information whether the details provided match with particulars of any customer and without delay to freeze or seize and immediately stop all related transactions. In the context of Nauru, the publication by NFIU of the consolidated lists (real time linked to UNSC website) is a positive attribute in relation to implementation of TFS.

104. *Criterion 6.5(a)* - Sections 108 and 128 of the AML-TFS Act 2023 allow the Cabinet to make regulations prescribing prohibited conduct in relation to UNSCRs relevant to TFS. The Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023 provide for immediate effect of sanctions. The Regulations state that the Minister shall circulate the freezing/seizing directive to all reporting entities and any relevant public or private entity. Regulation 47(8) provides that a natural person, reporting entity, relevant public or private entity in the Republic shall freeze or seize without delay and without prior notice to the terrorist group. The regulations cover prohibition against dealing with property, prohibition against making property available, prohibition against making financial or related services available. It also includes an obligation to report freezable property (i.e., any property that attracts the prohibition against dealing in clause 5 of the Regulations) and the requirement for

financial institutions to screen customers. The Proceeds of Crime (Amendment) Act (POCAA) 2023 is the legislation that provides the ability to seize assets identified for sanction.

105. *Criterion 6.5(b)* - Section 107 of the AML-TFS Act 2023 defines ‘asset’, ‘frozen asset’ or ‘freezable asset’ in terms that are sufficiently broad to cover the requirements of criterion 6.5(b). Specifically, the term ‘frozen asset’ or ‘freezable asset’ is defined as an asset that cannot be dealt with as a result of targeted financial sanctions and includes but is not limited to the following: (a) assets that are wholly or jointly, directly or indirectly, owned or controlled by: (i) a designated person or entity; or (ii) a person or entity acting on behalf of or at the direction of, a designated person or entity; (b) assets derived or generated from assets listed in paragraph (a); (c) vessels designated as freezable assets by the United Nations Security Council or its committees under resolution 2270 or resolution 2321 or successor resolutions to those resolutions, on the basis that the vessels are owned or controlled by a designated person or entity; or (d) assets prescribed by regulations as frozen assets or freezable assets.

106. *Criterion 6.5(c)* - Regulation 47(8)(c) of the AML-TFS (FT&PF) Regulations 2023 is drafted in compliance with the requirement of criterion 6.5(c). It states that a natural person, reporting entity, relevant public or private entity in the Republic shall not have any dealing with a designated terrorist group, including making any funds, property or assets, economic resources, or financial or other related services available, directly or indirectly, wholly or jointly, for their benefit or the benefit of entities owned or controlled, directly or indirectly, by a designated terrorist group, or any other person or entity acting on their behalf, or at their direction unless authorised or otherwise notified with these Regulations.

107. *Criterion 6.5(d)* - The Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023 clause 9(3) requires the FIU to provide a list of designated persons or entities to all financial institutions in the Republic. This addresses the requirement of criterion 6.5(d) to advise financial institutions and the introduction of the AML-TFS (FT&PF) Regulations 2023 has addressed the requirement to provide designation lists to DNFBPs as well as financial institutions. Nauru has identified designated countries and terrorist groups in the AML/TFS High-Risk Countries Guideline and the FIU Notice United Nations Security Council Consolidated List, both available on the NFIU website.

108. NFIU has issued the Nauru Targeted Financial Sanctions Terrorism and Proliferation Guide to supplement the Regulations, and the Guide is also available on the NFIU website. The Guide includes a section on asset freezing and advises of reporting entities’ obligation to immediately freeze assets owned or controlled by a client or customer who is a listed person. It also includes legitimate circumstances when funds can be released. The Guide also includes FATF Recommendations 6 and 7 and the Interpretive Notes.

109. *Criterion 6.5(e)* - The Counter Terrorism Transnational Crime (Targeted Financial Sanctions) Regulations 2023, regulation 8, outlines the obligation to report possession of a freezable property to the FIU in compliance with criterion 6.5(e). This provision extends to all persons or entities.

110. Section 127 of the AML-TFS Act 2023 provides for a broad protection from liability if the parties are acting in good faith in compliance with the TFS requirements and requires an element of reasonable care. The AML-TFS (FT&PF) Regulations 2023 provide specific measures to protect the rights of *bona fide* third parties acting in good faith when implementing the freezing of funds.

111. *Criterion 6.6(a)-(d)* - The AML-TFS (FT&PF) Regulations 2023 provide as follows:

112. Regulation 43(1) to (10) provides for de-listing of a group designated by UNSC. Regulation 43(1-4) appears to indicate the group applies directly to the UNSC or its committees, Regulation 43(5) then indicates that the group may submit a request for delisting to the Minister.

113. Regulation 43(6-7) outlines the steps taken by the Minister for submitting the request and Regulation 43(8-10) outlines the steps for removal and circulation of the outcome to appropriate entities. Regulation 45(1-10) follow the format of Regulation 42, but applies to delisting individuals.

114. Regulation 53 provides for the review of decisions around freezing or seizing funds, property or assets and Regulation 53(4) specifically allows the Minister to cause the RE or relevant public or private entity to unfreeze the funds, property or assets.

115. Appeals against designations are specified under Regulation 54 to the Minister and Regulation 55 to the Supreme Court to appeal a decision made by the Minister.

116. *Criterion 6.6(e)* - Section 116(3) of the AML-TFS Act 2023 provides for information necessary to inform the designated person or entity of their rights and includes reference to avenues and procedures for appealing the designation. The AML-TFS (FT&PF) Regulations 2023, Part 10, provide for appeals of the designation made by the Minister.

117. *Criterion 6.6(f)* refers to a process that is triggered when there is a false positive capture of an entity or individual based on having the same/similar name as a designated group or person. The assessment team has not found provisions in the AML-TFS Act or the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations or the AML-TFS (FT&PF) Regulations 2023, relevant to procedures within Nauru for de-listing, unfreezing or review in relation to TFS designation when there is a false positive.

118. *Criterion 6.6(g)* - Section 113(2) indicates that de-listing of a person or entity by the Minister has immediate effect. The introduction of the AML-TFS (FT&PF) Regulations 2023 has clarified that designation or delisting will be published in the Gazette and the FIU will circulate the information to FIs and DNFBPs, as well as other Government departments.

119. *Criterion 6.7* - Section 116(3)(d) of the AML-TFS Act 2023 provides the designated person with the right to receive notice with respect to the “avenues for seeking access to an asset or financial or related service”. The procedures are not set out in the Act, regulations or other enforceable measures. The Nauru Targeted Financial Sanctions Terrorism and Proliferation Financing Guide 2023 has listed certain circumstances where the Minister may authorise the release of frozen funds if a request is made.⁵⁶

Weighting and Conclusion

120. The AML-TFS Act 2023 in combination with the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations and the AML-TFS (FT&PF) Regulations 2023 establish a robust legislative framework for TF TFS in Nauru. However, minor gaps remain in relation to a process for identifying targets for designation based on the relevant

⁵⁶ Section 4 of the AML-TFS (Financing of Terrorism and PF)(Amendment) Regulations 2024 (amended after the period under review) amends Regulation 53(1) and sets out the circumstances where the Court may vary a freezing or seizure order where expenditure is required to meet basic needs or where the funds, property or assets are exempt from freezing or seizing.

UNSCR designation criteria; and procedures for the release of funds categorised as basic and extraordinary expenses. In addition, implementation without delay of UN designations from point of change is largely reliant on NFIU's publication of consolidated lists, with real time access to UN website. This may mean implementation is not without delay if stakeholders on island are not aware of the website access. The assessment team has taken into account the low TF risks of Nauru, and very limited numbers of FIs and DNFBPs operating in Nauru.

Recommendation 6 is rated largely compliant.

Recommendation 7 – Targeted Financial sanctions related to proliferation

The financing of proliferation is a new Recommendation added in 2012.

121. *Criterion 7.1* - Division 2 of Part 7 of the AML-TFS Act 2023, provides a legal framework to give effect to designations for targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of WMD and its financing.

122. Clause 109 of the AML-TFS Act 2023, specifies that designation of a person or entity for targeted financial sanctions by the UNSC or its committees under a resolution or successor resolution listed in Schedule 1 has immediate effect and the de-listing of a person or entity by the UNSC or its committees under a resolution or successor resolution listed in Schedule 1 has immediate effect.

123. Schedule 1 - United Nations Security Council Resolutions, under section 109 of the AML-TFS Act 2023 identifies Security Council resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction, being: UNSCR 1718 (2006) and its successor resolutions, UNSCR 1737 (2006) and its successor resolutions; and UNSCR 2231(2015) and its successor resolutions.

124. Clause 110 of the AML-TFS Act 2023, specifies the Minister shall designate a person or entity for targeted financial sanctions where the Minister has reasonable grounds to believe that the criteria for designation by regulations have been met and the designation by the Minister has immediate effect.

125. *Criterion 7.2* - Clause 120 of the AML-TFS Act 2023 provides the legal authority for the Nauru FIU to supervise compliance with AML-TFS (FT & PF) Regulations 2023, to monitor and enforce compliance, including referring for criminal investigations where appropriate, to specify such forms or notices as are necessary and to provide publicly available guidance to promote compliance.

126. *Criterion 7.2(a)* - Regulation 49 of the AML-TFS Act 2023 (FT & PF) Regulations 2023 sets out the provisions requiring all natural and legal persons within the jurisdiction to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities.

127. Section 117 of the AML-TFS Act 2023 makes legal provision for a police officer to be granted an order from the Supreme Court to search for and seize (freeze) an asset where there is a reasonable risk that the asset will dissipate. Section 107 of the AML-TFS Act 2023 provides a definition for 'frozen asset' or 'freezable asset' as an asset that cannot be dealt with as a result of targeted financial sanctions.

128. *Criterion 7.2(b)* - Counter Terrorism and Transnational Crime (Targeted Financial Sanctions) 2023, regulation 5, extends obligations to assets that are wholly or jointly, directly or indirectly owned or controlled by, a designated person or entity acting on behalf of or at the direction of a designated person or entity. In addition, AML -TFS (FT&PF) Regulations 2023

extends obligations to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

129. *Criterion 7.2(c)* - Regulation 6, CT and TOC (TFS) Regulations 2023, prohibit making property available to a designated person or entity, a person controlled by a designated person, an entity owned or controlled by a designated person or entity; or a person acting on behalf of, or at the direction of, a designated person or entity. The terms for property include part or whole of the property and include whether the property is owned by a person or entity or with any other person or entity, directly or indirectly, for personal use of, or for any terrorist act. There is no exception made for a licence, authorisation or notification in accordance with the relevant United Nations Security Council Resolution.

130. *Criterion 7.2(d)* - Regulation 64(2) of the AML-TFS (FT&PF) Regulations, sets out the mechanisms used by competent authorities for communicating designations to reporting entities. In addition, Regulation 9, sub regulation 3, CT and TOC (TFS) Regulations 2023, states that the FIU shall provide a list of designated persons or entities to every financial institution for the purpose of enabling financial institutions' compliance with this Regulation.

131. *Criterion 7.2(e)* - Regulation 8, CT and TOC (TFS) Regulations 2023, requires any person or entity to report the details of 'freezable property' (as defined in regulation 5) and any transaction or attempted transactions to the FIU within 72 hours.

132. *Criterion 7.2(f)* - Section 127 (1) of the AML - TFS Act 2023 provides measures preventing civil or criminal proceedings against a person if the person has, in good faith and with reasonable care, engaged in conduct in compliance or in purported compliance, with Part 7 of the Regulations. Regulations 53, 58 and 67 of the AML-TFS (FT&PF) Regulations 2023, set out specific measures to protect the rights of bona fide third parties acting in good faith when implementing the freezing of funds.

133. *Criterion 7.3* - Section 120 of the AML-TFS Act 2023, provides for the Nauru FIU to supervise compliance with regulations made under Section 128 necessary to give effect to monitor and enforce compliance, including referring for criminal investigations where appropriate, to specify such forms or notices as are necessary and to provide publicly available guidance to promote compliance. CT and TOC (TFS) Regulations 2023 provide for the immediate effect of sanctions.

134. The regulations cover a prohibition against dealing with property, a prohibition against making property available, and a prohibition against making financial or related services available. They also include an obligation to report freezable property (i.e., any property that attracts the prohibition against dealing in clause 5 of the Regulations) and the requirement for financial institutions to screen customers. Regulations 53, 58 and 67 of the AML-TFS(FT&PF) Regulations 2023 set out the measures for the FIU to monitor compliance with the obligations of recommendation 7.

135. *Criterion 7.4* - Regulation 45 of the AML-TFS (FT&PF) Regulations 2023, sets out the procedures to submit de-listing requests to the Security Council of those persons or entities who do not or no longer meet the criteria of designation.

136. *Criterion 7.4(a)* - Section 111 of the AML-TFS Act 2023 provides a provision to appeal designation made by the Minister. The application shall be in writing and provide any information relevant to the Minister's consideration. Section 112 of the AML-TFS Act 2023 compels the Minister to review the grounds for a designation every 3 years after the date the designation was made. Regulations 43 and 45 of the AML-TFS (FT&PF) Regulations 2023, set

out the provisions for de-listing of a group or individual directly to a focal point for de-listing established pursuant to UNSCR 1730.

137. *Criterion 7.4(b)* - Regulations 51 and 53 of the AML-TFS(FT&PF) Regulations 2023, set out the provisions to unfreeze the funds or other assets of persons or entities with the same or similar name as a designated entity in the case of false positives.

138. *Criterion 7.4(c)* - Section 108 of the AML-TFS Act 2023 provides the legal framework for Cabinet to make regulations under Section 128 authorising access to assets, goods or services and providing administrative procedures. Nauru Targeted Financial Sanctions Guide 2023, pages 13 and 14 sets out the applicable guidelines or procedures.

139. *Criterion 7.4(d)* - Section 108 of the AML - TFS Act 2023 provides the legal framework for Cabinet to make regulations under Section 128 prescribing prohibited conduct that contravenes, or impose obligations for complying with, resolutions listed in Schedule 1. Regulations 43 and 45 of the AML-TFS (FT&PF) Regulations 2023, provide the mechanism for communicating de-listings or reversal of freezing obligations to reporting entities or any guidance to reporting entities or other person that may be holding targeted funds or assets on their obligations to respect a de-listing or reversals of freezing.

140. *Criterion 7.5* - Section 108 of the AML-TFS Act 2023 provides the legal provision for Cabinet to make regulations under Section 128 which includes matters related to authorising access to assets, goods or services (section 128(2)(f)). The AML-TFS (FT&PF) Regulations 2023 and the Targeted Financial Sanctions and Proliferation Financing Guide 2023 have been made under section 128.

Weighting and Conclusion

141. **Recommendation 7 is rated Compliant.**

Recommendation 8 – Non-profit organisations

142. In its 2012 MER Nauru was rated non-compliant in the previous SR.VIII as there was no legal framework for formation or operation of non-profit organisations.

143. *Criterion 8.1(a)* - In 2020, Nauru enacted the Registration of Association Act to make it mandatory for associations formed or established not for gain or profit (NPOs) to be registered. Nauru's registration process requires NPOs to provide details, such as their location, executive members, types or scope of their activities, source of funds (including name of banks). In the NRA 2023, Nauru reviewed these details of all registered NPOs (particular focus on the sources of funds among the details) and identified the NPOs which fall into the FATF definition. The NRA 2023 identified that TF risks are low in Nauru.

144. *Criterion 8.1(b)* - The NPO guidance indicates that the authorities have identified a set of the characteristics/nature of NPOs which may be at risk of being abused for TF as well as how the terrorist actors abuse NPOs: e.g., source of funds, BO of the associations, types of donors/staff/programmes.

145. *Criterion 8.1(c)* - In preparation of its National Risk Assessment 2023, Nauru has reviewed the adequacy of its AML/CFT measures, including Registration of Associations Act 2020. To take further actions to mitigate risk associated with the NPO sector, Nauru has developed its NPO Best Practice Guide.

146. *Criterion 8.1(d)* - NFIU assesses the NPOs sector on vulnerabilities to terrorist activities by quarterly reviewing NPOs' operation and risks based on the checklist attached with the NPO Guidance.

147. *Criterion 8.2(a)* - The Associations Act 2020 provides the legal framework to support the formation or operation of NPOs in Nauru and promote them to maintain high standards of governance, transparency, and accountability. The policy of establishing an administrative framework and promoting accountability and integrity is expressly set out in the Act (Section 3). NFIU issues the guidance further to promote legitimate establishment and operation of NPOs.

148. *Criterion 8.2(b)* - Section 9(h) of the Associations Act 2020 empowers the Registrar to take action for the implementation, enforcement and administration of the Act. The Registrar, in cooperation with the NFIU, conducts awareness-raising programs for NPOs on the requirements of the Act and Nauru's AML/CFT/CPF regime.

149. *Criterion 8.2(c)* - The NFIU issued best practice guidelines for NPOs to address TF risk and vulnerabilities in July 2023. This work has been done in conjunction with outreach with NPOs.

150. *Criterion 8.2(d)* - The Registrar encourages NPOs to conduct business through banks by requiring NPOs to provide banking details in the process of registration under the Associations Act (Application Form 1, Registration of Associations (Forms and Fees) Regulations 2020) and through the outreach efforts. The Best Practice Guide also provides a checklist for conducting self-assessment on compliance with the Associations Act among NPOs, including transactions through regulated financial channels.

Criterion 8.3 is **mostly met**. All NPOs are required to be registered and provide necessary information, including identity of the executive(s) and the source of funds, in the initial application and yearly renewal of registration (sections 12-14, 20 and 26 of the Association Act). The Act also requires NPOs to submit annual reports, within 3 months after the end of fiscal year, to the Registrar (section 33 of the Associations Act 2020). NPOs are obligated to keep and maintain required documents related to operations for more than 7 years, including accounts, transaction records, invoices, annual reports, assets or liabilities, etc. The Registrar or officers authorised by the Registrar are empowered to monitor NPOs by requesting information (sections 34 to 37 of the Associations Act 2020). While Nauru has conducted a formal assessment of the TF risks in the NPO sector in its NRA 2023, these measures and monitoring are generic and not taking into account the TF risks of individual NPOs, therefore they are not fully in a TF risk-based manner. However, this deficiency is relatively minor, considering the low TF risks of the jurisdiction overall.

151. *Criterion 8.4 (a)* - The Registrar of Association is responsible for supervising NPOs and undertakes monitoring measures under the Associations Act 2020. The Registrar or officers authorised by the Registrar are empowered to supervise NPOs' compliance with the measures (referred to in C.8.3 above) by requesting information or documents from NPOs for inspection or obtaining information from other government agencies and conducting on-site inspections at any time (sections 34 to 37 of the Associations Act 2020). However, its monitoring or supervision of the NPOs is limited in practice⁵⁷ (with more focus on outreaches to raise

⁵⁷ Nauru conducted a desk-based review to the registered NPOs on the compliance with the relevant requirements, by using the checklist annexed to the guidance, after the on-site.

awareness among whole of the NPOs), and Nauru does not apply a risk-based approach to its supervision.

152. *Criterion 8.4 (b)* - The supervisory authority can impose a wide range of sanctions for breach of statutory requirements (e.g., operation without registration or provision of false information on registration) by NPOs or persons on behalf of the NPOs. Available sanctions include cancellation of the registration certificate, suspension of operations, monetary penalties and imprisonment (sections 41-47 of the Act).

153. The penalty for an individual is a fine of up to AUD 20,000 (USD 12,579) or a term of imprisonment of up to 12 months or 3 years (whichever is applicable) or both; for the NPOs the penalty is a fine ranging from AUD 100,000 (USD 62,893) to AUD 200,000 (USD 125,786). These sanctions are considered effective, proportionate, and dissuasive based on the structure and overall context of Nauru.

154. *Criterion 8.5(a)* - The Registrar of Associations is responsible for the management and supervision of NPOs, including the maintenance of information and records on registration. The Registrar is allowed to share or disclose information about NPOs under certain conditions, including by court order, to the FIU (in the exercise of FIU's statutory authority), to other law enforcement agencies (for purposes of investigation and prosecution), to other domestic government agencies, or to foreign government agencies (subject to Section 40 of the Associations Act 2020). For information other than that held by the Registrar, the FIU can obtain information by requesting it from other authorities (Section 77 of the AML-TFS Act 2023). In addition, based on the national AML/CFT strategy, Nauru has established AMLOC, where the relevant public sector stake holders cooperate, including by sharing information on ML/TF issues in general, potentially that on NPOs - although this is not proven (see the analysis on R.2 further).

155. *Criterion 8.5(b)* - The Nauru Police Force (the NPF) is responsible for investigating any suspected exploitation of terrorist activity in general. The NPF has general investigative powers and may receive support from the Australian Federal Police and the Pacific regional police departments.

156. *Criterion 8.5(c)* - The administration and management information of NPOs is generally available to the relevant authorities of Nauru. The Registrar can request NPOs and their executives for documents/records relevant to their compliance with the requirements under the act (see c.8.3 above). The Registrar is entitled to provide information to courts, other government agencies, FIU, LEAs, and foreign government agencies (see c.8.5(a) above). The law enforcement authorities may obtain the information held by NPOs through its general investigative powers (the Criminal Procedure Act 1972 and the Proceeds of Crime Act 2004).

157. *Criterion 8.5(d)* - While there is no specific provision that ensures prompt information sharing in the situations set out in this sub-criterion, the FIU has a general power to undertake information exchange with domestic authorities (Section 77 of the AML-TFS Act 2023), and the Registrar is also empowered to do so (see c.8.5(a)). There is a collaborative, inter-agency mechanism for competent authorities, including LEAs, to share information on ML/TF matters in general (as noted in sub-criterion 8.5(a)), although the assessment team has no information to indicate that any information on abuse of NPOs for TF is circulated to the relevant authorities through this mechanism in practice, due to the absence of identified cases.

158. *Criterion 8.6* - The Registrar of Associations is responsible for exchange of information on particular NPOs with foreign government agencies in their CFT performance (sections 39-40 of the Registration of Associations Act 2020).

Weighting and Conclusion

159. In Nauru, the law on the registration of NPOs came into force in 2020, and the NPOs are to be monitored or supervised by the Registrar. Nauru conducted a TF risk analysis of NPOs. In relation to inter-agency collaboration, the Registrar can share and obtain relevant information on NPOs with the other authorities. In addition, Nauru has established AMLOC for information gathering/sharing regarding ML/TF matters in general. However, supervisory activities aiming at preventing misuse of NPOs for TF are limited in practice and not fully in a risk-based manner. Moreover, it is not clear whether AMLOC works as a system to facilitate coordination between the relevant authorities for information gathering/sharing regarding abuse of NPOs for TF in practice (no identified cases). Meanwhile, the assessment team determined that these deficiencies are relatively minor, considering the low TF risks of the jurisdiction overall and a limited number of NPOs in Nauru. **Recommendation 8 is rated largely compliant.**

Recommendation 9 – Financial institution secrecy laws

160. In the 2012 MER, Nauru was rated compliant with former R.4.

161. *Criterion 9.1 - Access to information by competent authorities:* The NFIU (as both FIU and supervisor) has powers to compel information from reporting entities according to Section 78 and 79 of the AML-TFS Act.

162. Section 15 of the AML-TFS Act 2023 requires financial institutions to comply with the requirements of the Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other written law. Sections 90(1) and 93 of the AML-TFS Act enable the FIU to disclose information it receives to a foreign intelligence body, a foreign law enforcement body or a foreign counterpart.

163. *Sharing of information between FIs:* Section 26 of the AML-TFS Act allows the reporting entities to share information with the other entities in the same group (see also R.18). Reporting entities may also share information on suspicions to a person for any purpose connected with the performance of that person's duties relating to the AML-TFS Act (Section 66(4)).

Weighting and Conclusion

164. **Recommendation 9 is rated compliant.**

*Recommendation 10 – Customer due diligence**Detailed CDD requirements*

165. *Criterion 10.1 -* Section 35(4) of the AML-TFS Act 2023 prohibits reporting entities from opening, operating or maintaining any anonymous or numbered accounts or accounts under fictitious, false or incorrect names.

When CDD is required

166. *Criterion 10.2 -* Part 4 of the AML-TFS Act 2023 sets out the obligations of RE, with Division 3 specifically addressing requirements to conduct customer due diligence. Subdivision 2 Section 37(1)(a) sets out the requirements to undertake standard CDD when entering into a business relationship with a person. Section 37(1)(b) sets out a threshold for occasional transactions of AUD 10,000 (USD 6,289) or more as well as addressing a series of isolated

transactions that appear linked with a combined value of AUD 10,000 (USD 6,289) or more. Setting the threshold for occasional transactions at AUD 10,000 (USD 6,289) is in line with an appropriate trigger for standard CDD.

167. Division 4 of the AML-TFS Act 2023 provides an overview of the CDD requirements for electronic currency transfers setting out the information required in relation to identifying the originator (sender) and the receiver of the transfer; the requirements for the intermediary to transfer the identity information and the requirements for the beneficiary end of the transfer. Division 4, clause 52 also sets the electronic currency transfer amount at equal to or greater than AUD 1,000 (USD 628) while clause 53 sets out the identity requirements for electronic currency transfer of less than AUD 1,000 (USD 628) including what to do if there is reasonable suspicion of financial crime. This is below the threshold required by FATF.

168. Division 3, Section 34 of the AML-TFS Act 2023 addresses CDD for existing customers in consideration around the adequacy of the information already on record. Subdivision 2 Section 37(1)(c)(i) of the AML-TFS Act specifies the requirement to identify and verify customers, agents and beneficial owners where there is a reasonable suspicion of financial crime, meeting sub-criterion (d). Subdivision 2, section 37(1)(c)(ii) addresses where there is a reasonable doubt about the veracity or adequacy of the identification and verification documentation or information the RE had previously obtained.

Required CDD measures for all customers

169. *Criterion 10.3* - Part 4 Subdivision 2 of the AML-TFS Act 2023 addresses the obligation to identify and verify the identity of customers, agents and beneficial owners. The AML-TFS Act 2023 defines verifying the identity as using verifying evidence which, in turn, is defined as “reliable official source documents, data, information or other evidence”.

170. *Criterion 10.4* - Section 37(2) requires that an agent of a customer is identified, and that identity is verified and section 37(3) clarifies that in the case of an agent of the customer, the RE shall also verify the authorisation of the agent to act on behalf of such customer.

171. *Criterion 10.5* - Section 37(2)(c) specifically requires the identification and verification of the identity of the beneficial owner of a customer. Beneficial ownership is defined in the Beneficial Ownership Act 2017, under section 5.⁵⁸ Verifying evidence is defined in section 4 of the AML-TFS Act 2023 as referencing reliable official source documents, data, information or other evidence that is reasonably capable of verifying the identity of the person.

⁵⁸ Beneficial Ownership Act 2017, section 5: 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; or (c) on whose behalf a legal entity is created. (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.

172. *Criterion 10.6* - Sections 38, 39 and 43 all include provisions requiring additional information on the intended nature of the business relationship. The AML-TFS Act requires the reporting entity to understand and record the nature of the business.

173. *Criterion 10.7* - Section 42(2) requires a RE to scrutinise transactions carried out on behalf of its customers and ensure that documents, data and information collected under the CDD process are kept up to date and relevant, by undertaking reviews of existing records. The scrutiny of the transactions includes ensuring they are consistent with the RE's knowledge of the customer, the source of property and the business and its risk profile.

Specific CDD measures required for legal persons and legal arrangements

174. *Criterion 10.8* - Section 38(2) of the AML-TFS Act 2023 requires the RE to develop and keep a record of its understanding of the nature of the body corporate's business, ownership and control structure. Section 39(3)(b) also requires a similar understanding of the control structure of a trust the RE has entered a business relationship with when the customer is acting as a trustee. Nauru has defined trusts in the Trusts Act 2018 where registrable trusts include express trusts, charitable trust and discretionary trusts.

175. *Criterion 10.9* - In the case of a body corporate, other body or any other legal person identification information is defined in section 4 as including its name, legal form, registration number, registered address and principal place of business where it is different from the registered address. Using registration details will allow for proof of existence.

176. Section 38(3) (a) and (b) require REs to identify and verify the laws that regulate and bind the body corporate and name of an individual with a senior management position in the body corporate.

177. *Criterion 10.10* - Section 38(4)(a) of the AML-TFS Act 2023 addresses the need to identify the individual who has a controlling ownership interest in the legal entity. Subsections 38(4)(b)(i) & (ii) require the reporting entity to take reasonable measures to verify the identity of the beneficial owners of the body. Where no natural person is otherwise identified the AML-TFS Act s 38(4)(c) requires verification to be conducted on the identity of the individual who holds a position of senior managing official. The Beneficial Ownership (Identity and Declaration) Regulations 2023 provide clarification around steps to take when the BO is not readily ascertainable.

178. *Criterion 10.11* - Section 39 of the AML-TFS Act 2023 provides for the requirement to identify and take reasonable measures to verify the identity of beneficial owners. For trusts this is addressed in section 39(3)(a)(i-v) which requires the RE to develop an understanding of the nature of the trust and goes on to specify the settlor; trustee; protector; beneficiary or class of beneficiaries and person/s exercising ultimate control. Section 39(3)(b) brings in the control structure of the trust. Section 39(4) requires the RE to document its understanding and retain copies of the trust deed and other documents that provide evidence of the understanding. Section 39(5) includes a definition of 'related person' to include a director, officer, employee or agent of the trustee. In relation to other legal arrangements, Nauru defines 'legal entity' broadly in the AML-TFS Act 2023, and section 38(4) clarifies that in instances of CDD for a "legal entity established by law or any other instruments", that is not a trust (see section 39), the reporting entity shall identify and take reasonable measures to verify the identity of the beneficial owners of the body through information set out in section 38(4).

CDD for Beneficiaries of Life Insurance Policies

179. *Criterion 10.12* - Section 41 of the AML-TFS Act 2023 covers the CDD requirements for beneficiaries of insurance policies. The requirements include:

- a. recording the name of the individual or legal entity
- b. requiring the RE to obtain and record sufficient information concerning the beneficiary to satisfy that the RE will be able to establish the identity of the beneficiary at the time of the payout of the insurance policy
- c. requiring the RE to verify the identity of the beneficiary and any beneficial owner of the beneficiary at the time of the payout.

180. *Criterion 10.13* - The AML-TFS Act 2023 section 43 outlines the enhanced customer due diligence obligations. Section 43(2) addresses the obligations when they apply to a business relationship, including the beneficiary in the case of a life insurance policy where the RE identifies that the beneficiary under the insurance policy or any BO of the beneficiary a) is a resident of a jurisdiction i) where there is a high risk of financial crime; ii) in which there are no adequate systems in place to prevent or deter financial crime; iii) that is the subject of information provided by the FIU to a reporting entity; b) is involved in a business activity that involves a high risk of financial crime; c) in the case of a body, has an unusual or excessively complex ownership structure which is not proportionate to the nature of the business; d) is a politically exposed person; e) could, in the circumstances, be suspected on reasonable grounds to be involved in financial crime, either within or outside of the Republic; or f) satisfies any other criteria published or provided by the FIU that is determined to be high-risk by the FIU. This appears to meet the requirements for enhanced customer due diligence of a beneficiary under an insurance policy.

Timing of verification

181. *Criterion 10.14* - Section 37(4) requires REs to comply with the identity requirements before establishing a business relationship.

182. *Criterion 10.15* - No transaction is allowed without completion of the CDD requirements which implies verification before the transaction (Section 31(1)).

Existing customers

183. *Criterion 10.16* - Section 34 of the AML-TFS Act 2023 addresses customer due diligence for existing customers by specifying that REs shall assess existing customer information where it is necessary to do so to mitigate risks. When making the assessment the RE shall consider any previous due diligence undertaken; when that due diligence was last undertaken and the adequacy of the information, documents or data obtained.

184. Section 42 outlines the obligations for ongoing customer due diligence including a positive requirement for the RE to conduct ongoing due diligence in respect of all its business relationships. The ongoing due diligence includes the need to scrutinise transactions carried out to determine if they are consistent with the RE's knowledge of its customers, the source of the customer's property and the business and risk profile of the customer. There is also a requirement to ensure all documents, data and information is kept up to date and relevant.

Risk-based approach

185. *Criterion 10.17* - Section 43(1- 8) covers enhanced CDD obligations in detail including where the risk is high. The elements set out in section 43 relate to circumstances where higher risks exist, and thus reporting entities are required to conduct enhanced CDD. Section 61

applies an obligation to analyse suspicious activity and the requirement to conduct enhanced CDD and report to the FIU. Section 63 provides the FIU with the ability to direct the RE in relation to a suspicious activity report including that the RE not continue further with CDD or to conduct enhanced CDD.

186. *Criterion 10.18* - Section 45 provides for simplified CDD obligations where this has been prescribed. The AML & TFS (Simplified Due Diligence) Guide 2023 provides REs with a mechanism for applying simplified due diligence when appropriate and outlines minimum requirements of information to collect. There is also the necessary clarification that simplified CDD is not to be undertaken where there is a suspicion of ML or TF or where higher risk scenarios apply. The higher risk scenarios where simplified due diligence is not to be applied are outlined in s 6 of the Guide.

Failure to satisfactorily complete CDD

187. *Criterion 10.19* - Section 31 of the AML-TFS Act 2023 addresses when CDD is not able to be completed and clarifies that REs shall not conduct a transaction, open an account or enter into a business relationship with such person, agent or beneficial owner. If a business relationship exists and the RE is not able to comply with the CDD requirement the RE shall terminate the existing business relationship. It also requires the RE to consider making a suspicious activity report.

188. *Criterion 10.20* - The AML-TFS Act 2023 addresses tipping off risks in section 32. This allows the RE to submit a suspicious activity report without performing CDD.

Weighting and Conclusion

189. **Recommendation 10 is rated compliant.**

Recommendation 11 – Record-keeping

190. In the 2012 MER, Nauru was rated largely compliant with former R.10. The 2012 MER identified that there was no requirement in the AMLA for financial institutions to maintain records for business correspondence.

191. *Criterion 11.1* - Section 28(1) of the AML-TFS Act 2023 requires financial institutions to maintain records of any matter required under the Act. Section 3 of the AML-TFS Regulation (record keeping) 2023 further specifies types of information to be recorded.

192. Subsections 29(1) and (2) require that a record is required to be kept and maintained under s 28 for a minimum period of 7 years.

193. *Criterion 11.2* - Section 28(1) of AML-TFS Act 2023 requires financial institutions to maintain records of any matter required under the Act for minimum period of 7 years (see c11.1 above), and the Act requires FIs to conduct CDD measures (Division 3 of the Act), and their business risk assessment (Section 24 of the Act). Section 3 of the AML-TFS Regulations requires FIs to maintain records regarding account files, business correspondence and analysis undertaken.

194. *Criterion 11.3* - Financial institutions are obliged to maintain records sufficient to permit reconstruction of individual transactions, so as to provide evidence for prosecution of any criminal conduct (Section 3(2) of the AML-TFS Regulations).

195. *Criterion 11.4* - Subsection 28(2) requires that any record required to be kept under the Act shall be maintained by financial institutions in a manner and form that will enable them

to comply immediately with requests for information from the FIU (who is the supervisor for all FIs and DNFBPs in Nauru) or other law enforcement authorities.

Weighting and Conclusion

196. **Recommendation 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

197. In the 2012 MER, Nauru was rated largely compliant with former R.6. However, the MER noted that Nauru had no provisions in relation to identifying the beneficial owners of PEPs.

198. *Criterion 12.1(a)* - Section 6 of the AML-TFS ACT 2023 includes a definition of PEP (both domestic and foreign PEPs are in scope of the Act) that is in line with the FATF standard. Subsections 43(1) and (2)(d) stipulate that FIs shall conduct enhanced customer due diligence before or during the course of establishing or continuing a business relationship where the customer, agent, beneficial owner of the customer or the beneficiary in the case of a life insurance policy is a PEP. Furthermore, section 43(4) requires FIs to establish and use systems and processes to determine whether any of the above circumstances exists.

199. *Criterion 12.1(b)* - Section 43(5)(a) requires FIs to obtain senior management approval before establishing, or continuing for existing customers, the business relationship in which FI should conduct the EDD measures.

200. *Criterion 12.1(c)* - s 43(5)(b) requires FIs in their EDD measures to take reasonable measures to establish that financial crime is not involved in the procurement or proposed use of the wealth of the customer or beneficial owner of the customer for the relationship or funds for the transaction, including information on the source of funds or wealth of the customers.

201. *Criterion 12.1(d)* - s 43(5)(e) requires FIs to conduct enhanced ongoing monitoring of the business relationship where the FI has to apply EDD measures.

202. *Criterion 12.2(a)* and *Criterion 12.2(b)* - As described for c.12.1, the AML-TFS Act 2023 applies to both domestic PEPs and foreign PEPs. The definition in s.6 includes “a person who is or has been entrusted with a prominent function by an international organisation” (s.6(2)), and a person who is or has been entrusted by the Republic of Nauru with prominent public functions (s.6(3)).

203. *Criterion 12.3* - Regarding foreign/domestic PEP, a family member or close associate of a person is in the scope of the definition of PEP pursuant to s.6. (4) of the AML-TFS Act 2023.

204. *Criterion 12.4* - Section 41(6) requires financial institutions to take reasonable measures to determine whether a beneficiary under the insurance policy, or any beneficial owner of the beneficiary of any insurance policy issued by it, is a PEP. Furthermore, subsection 41(7) requires that where a financial institution determines that a beneficiary under the insurance policy or any beneficial owner of the beneficiary is a PEP, regardless of the risk, they shall, before making a payment, obtain approval of senior management to make payment, conduct EDD on the business relationship with the beneficiary or beneficial owner and consider making a STR. Subsection 43(2) also requires financial institutions to conduct EDD on the whole business relationship with the customer (i.e. policyholder) in case of an insurance policy, where a customer is a PEP.

Weighting and Conclusion

205. **Recommendation 12 is rated compliant.**

Recommendation 13 – Correspondent banking

206. In the 2012 MER, Nauru was rated ‘not applicable’ with former R.7. The 2012 MER noted that there were no banks in Nauru at the time of on-site visit, although Nauru had comprehensive AML/CFT controls to meet the requirements of the recommendation.

207. *Criterion 13.1(a)* - Section 46 (1)(a) of the AML-TFS Act requires FIs to assess the suitability of the respondent entity by taking the steps outlined in s.46 (2) before entering into a business relationship or isolated transaction that involve correspondent services. In subsections 46(2)(a) and (b), FIs are required to obtain sufficient information about the respondent entity to understand fully the nature of its business and determine from publicly available information the reputation of the respondent entity, the quality of the supervision to which it is subject and whether it has been subject to investigation or regulatory action in respect of financial crime.

208. *Criterion 13.1(b)* - Section 46(2)(c) requires FIs to assess the respondent entity’s financial crime controls and ascertain whether they are adequate and effective.

209. *Criterion 13.1(c)* - Section 46(1)(b) requires FIs to ensure that a member of senior management approves establishing the correspondent services relationship before entering into a business relationship or isolated transaction that involves correspondent services.

210. *Criterion 13.1(d)* - Section 46(1)(c) requires FIs to clearly understand and document the respective AML/CFT responsibilities of each respondent entity.

211. *Criterion 13.2(a)* - Section 46(3)(a) requires FIs to be satisfied that the respondent entity has taken customer due diligence measures to the standard required by the Act with respect to every customer having direct access to the account.

212. *Criterion 13.2(b)* - Section 46(3)(b) requires FIs to be satisfied that the respondent entity will provide the reporting entity with the relevant evidence of identity upon request.

213. *Criterion 13.3* - Section 47 requires FIs not to establish, continue or conduct a business relationship or occasional transaction with a shell bank and to take appropriate measures to satisfy themselves that their respondent entities do not permit their accounts to be used by shell banks.

Weighting and Conclusion

214. **Recommendation 13 is rated compliant.**

Recommendation 14 – Money or value transfer services

215. Nauru was rated PC with former SR.VI in its previous MER 2012, due to the fact that there was no legal, regulatory and supervisory framework for MVTs and there was an absence of a range of proportionate sanctions for non-compliance. Nauru has enacted relevant legislation since the 2012 MER.

216. *Criterion 14.1* - DBJC is the designated authority to licence Money or Value transfer services (Money Remitter) and to ensure compliance with the requirements of the Business Licence Act 2017 and the Business Names Registration Act 2018.

217. All persons intending to operate any business in Nauru are required by section 5 of the *Business Names Registration Act 2018* to register such business name and secure business licence before commencing any activity as required by section 6 of the *Business Licence Act 2017*. Section 11(a) notes that the licence granted is for the specified business activity in the licence. In the case of an MVTS provider, this would presumably be noted in the licence.

218. *Criterion 14.2* - While there is no information to suggest Nauru FIU has undertaken a formal review of different sectors to identify where MVTS is undertaken without a license or registration, in the context of Nauru, this information is readily available due to the small population. Nauru states there is one MVTS operating in Nauru which is Western Union Agency.

219. No sanctions have been applied for carrying out MVTS without a license, nor has the FIU found this to occur. Notably, any person who contravenes Section 6 of the Business Licence Act 2017, commits an offence under section 25 and, upon conviction, is liable to a fine not exceeding AUD 10,000 (USD 6,289) or to a term of imprisonment not exceeding twelve months. In addition, where a person pays the penalty under section 17 (operating a business on an expired licence) he or she shall not be liable for prosecution for operating a business without a licence.

220. *Criterion 14.3* – AML-TFS Act 2023 provides a definition of a “financial institution” which includes (d) provision of a money or value transfer service, and that a financial institution is a “reporting entity” as defined under Section 7 of the AML-TFS Act 2023, and under Section 69 FIU supervises the compliance of reporting entities with the Act.

221. *Criterion 14.4* - Section 5 of the Business Names Registration Act 2018 specifies that there shall be a Register of Business Names, and the Registrar shall be responsible for keeping and maintaining a Register of Business Names as set out in Business Names Registration Regulations 2018. There is currently one licensed remittance agent in Nauru, which is also registered pursuant to Section 15 Corporations Act 1972.

222. *Criterion 14.5* - Section 7(h) of the AML-TFS Act 2023 provides the definition of a "reporting entity" that includes a "person collecting, holding, cashing in, remitting or delivering cash as part of a business providing payroll services". Nauru states there are no agents of any MVTS.

Weighting and Conclusion

223. **Recommendation 14 is rated compliant.**

Recommendation 15 – New technologies

224. Nauru was rated non-compliant with former R.8 in its 2012 MER. This was because there were no provisions in law and no guidelines issued on new technology or non-face-to-face business.

225. *Criterion 15.1* - Section 24 (e), (f) and (g) of the AML-TFS Act 2023 requires reporting entities to identify and assess financial crime risks when implementing new products, services, business practices, delivery methods or systems, or when developing technologies for both new and pre-existing products and services.

226. *Criterion 15.2* - Section 24 (e), (f) and (g) of the AML-TFS Act 2023, requires reporting entities to identify and assess financial crime risks posed by new products, business practices, delivery methods or systems that are *proposed* to be implemented, or when *developing* technologies for both new and pre-existing products and services *proposed* to be used, and the

impact of new technologies. It also requires reporting entities to take appropriate measures to manage and mitigate risks identified in its business risk assessment and other relevant risk assessments (section 24(4)).

Virtual assets and Virtual asset service providers

227. *Criterion 15.3(a)* - VA/VASPs are included in the regulatory regime established by the AML-TFS Act 2023, including identifying VASPs are financial institutions defined under Section 4(1)(n) which captures the provision of services in relation to virtual assets for the purposes of the AML/CFT regulatory regime. The definition of VASPs in section 4 of the AML-TFS Act largely accords with the FATF definition, although there is no clarification on the term 'transfer'. NFIU produced a Virtual Asset Service Provider Policy, which includes generic reg flag indicators in relation to VA/VASPs and states Nauru does not have any financial institutions that provide VA/VASPs. However, there is no information to indicate that Nauru has identified and assessed risks emerging from VA activities or operations of VASPs, in line with footnote 123 of the FATF Methodology, in the Nauruan context. Nauru maintains there is no VASP activity purely on the basis of a lack of business licenses issued for that purpose.

228. *Criterion 15.3(b)* - While Nauru has not assessed its ML/TF risks emerging from VA/VASPs, it has applied measures to regulate VA/VASPs in order to mitigate any threat they pose. AML-TFS Act 2023 includes VASPs as financial institutions defined under Section 4(1)(n), which brings them into the regulatory requirements of reporting entities. However, this approach is not risk-based and does not include measures to maintain vigilance for emerging activities in Nauru in relation to VA/VASPs.

229. *Criterion 15.3(c)* - NFIU produced a Virtual Asset Service Provider Policy that states Nauru does not have any financial institutions that provide VA/VASPs. However, VASPs are financial institutions as defined under Section 4(1) so have obligations in line with c1.10 and c1.11.

230. *Criterion 15.4(a)* - NFIU produced a Virtual Asset Service Provider Policy that states Nauru does not have any financial institutions that provide VA/VASPs but sets out measures or requirements imposed by Nauru specifically in relation to licensing or registering VASPs. All persons intending to operate a business in Nauru are required by section 5 of the *Business Names Registration Act 2018* to register such business name and secure business licence before commencing any activity as required by section 6 of the *Business Licence Act 2017*.

231. *Criterion 15.4(b)* - The provisions in relation to financial institutions apply to VASPs, and thus the analysis in c26.3 applies here. Section 88 of the AML-TFS Act 2023 requires the supervisory authority to ensure that relevant positions are held by persons that are 'fit and proper'. AML-TFS (Fit and Proper Person) Criteria 2023 has provided a mechanism for reporting entities to meet the requirements set out in section 88 of the AML-TFS Act 2023. The AML-TFS (Fit and Proper Person) Criteria 2023 provides a mechanism for VASPs (as FIs) to check criminal records of their "responsible persons" (e.g., directors, senior executives, compliance officers or any other person that a Supervisory Authority deems to have a significant role in the management or control of the Reporting Entity) and report information to the supervisor for further review, to prevent criminals from holding significant role in the management or control of FIs and DNFBPs. However, the Criteria do not explicitly cover beneficial owners and checks do not occur regularly to ensure continued compliance with the fit and proper threshold.

232. *Criterion 15.5* - Nauru has stated that there is no VASP activity within its jurisdiction, and all persons intending to operate a business in Nauru are required by section 5 of the

Business Names Registration Act 2018 to register such business name and secure business licence before commencing any activity as required by section 6 of the Business Licence Act 2017. As Nauru is a small jurisdiction, competent authorities believe they would be aware of a breach. However, it is not clear that Nauru has specifically sought to ensure there are no natural or legal persons carrying out VASP activities without the requisite license or registration.

233. *Criterion 15.6(a)* - VASPs are included in the regulatory regime established by the AML-TFS Act 2023, including VASPs are financial institutions defined under Section 4(1)(n) which captures the provisions of services in relation to virtual assets for the purposes of the AML/CFT regulatory regime. Designation for regulating and supervising (monitoring) FIs under the AML-TFS Act 2023 (sections 68-70) is within the functions of the FIU, including the reporting lines through to the Secretary for Justice and Border Control.

234. *Criterion 15.6 (b)* - Sections 78, 79 and 80 of the AML-TFS Act 2023 provides the legal framework for NFIU to monitor compliance for the purpose of conducting inspections, require a reporting entity (including VASPs) to produce certain information and require certain persons to produce information relating to business relationships, accounts and transactions. Failure to comply is an offence and liable upon conviction, for an individual, to a fine not exceeding AUD 20,000 (USD 12,578) or imprisonment for a term not exceeding 2 years or both; or for a senior management of a body corporate, to a fine not exceeding AUD 100,000 (USD 62,893) or imprisonment of not more than 5 years, or to both. In addition, all persons intending to operate any business in Nauru are required by section 5 of the Business Names Registration Act 2018 to register such business name and secure business licence before commencing any activity as required by section 6 of the Business Licence Act 2017. Section 18 of the Business Licence Act 2017 specifies provisions for the suspension or cancellation of a licence.

235. *Criterion 15.7* - Section 85 of the AML-TFS Act 2023 sets out the legal provision for NFIU to assist reporting entities, issue guidelines in relation to their obligations, including providing feedback to reporting entities and other relevant agencies relating to their compliance. NFIU produced a Virtual Asset Service Provider Policy that states Nauru does not have any financial institutions that provide VA/VASPs.

236. *Criterion 15.8(a)* - The primary sanction for failure to adhere to AML/CFT requirements is, under Sections 48, 58, 67 of the AML-TFS Act 2023, offences related to the contravention of CDD or reporting obligations apply for natural persons to a fine not exceeding AUD 200,000 (USD 125,786) or up to a maximum of twenty years imprisonment and for non-natural persons, a fine of AUD 1,000,000 (USD 62,893). These sanctions are proportionate and dissuasive.

237. *Criterion 15.8(b)* - Section 17 of the AML-TFS Act 2023 sets out the provisions for sanctions for directors and senior management of reporting entities that are not natural persons.

238. *Criterion 15.9* - The Business Licences Act 2017 requires a business must operate with a license. Additionally, the definition of a 'reporting entity' in the AML-TFS Act 2023 includes a 'financial institution'. Part 4 of the AML-TFS Act 2023 sets out the obligations of RE that covers ongoing compliance obligations, obligation to conduct CDD, obligations of FI in relation to electronic currency transfers, and reporting obligations in relation to suspicious activity. VASPs are under the same obligation as FIs therefore analysis in R.10 and 16 applies.

239. *Criterion 15.9(a) Recommendation 10* - Section 37 (1)(b) of the AML-TFS Act 2023 stipulates an obligation to identify and verify the identity of customers, agents and beneficial owners when the reporting entity, including VASPs, conducts an occasional transaction for a

person the value of which is AUD 10,000 (USD 6,289) or more, or a series of isolated transactions that appear to be linked and have a combined value of AUD 10,000 (USD 6,289) or more. Section 52 of the AML-TFS Act 2023 stipulates an obligation on a reporting entity which is the originating entity of an electronic currency transfer of an amount equal to or greater than AUD 1,000 (USD 629) to identify and verify the identity of the sender, and to identify the receiver. However, for all other types of transfers, there is no provision for VASPs to undertake CDD measures for occasional transfers above the designated threshold of USD/EUR 1,000.

240. *Criterion 15.9(b) Recommendation 16* - While the provisions of the AML-TFS Act apply to VASPs as they would to an FI there is no specific provision related to the VA context, i.e., all virtual asset transfers are not specifically required to be treated as cross-border transfers.

241. *Criterion 15.9(b) (i)* - Section 51 and 52 (2) of the AML-TFS Act 2023 sets out the legal provisions that applies to a reporting entity, where the entity is an originating entity to identify the sender information (originator) and section 52(4) identify the receiver (beneficiary) information and section 28(2) to maintain information in a manner and form that will enable the reporting entity to comply immediately with requests for information from the FIU or other law enforcement authorities.

242. *Criterion 15.9(b)(ii)* - Sections 51 and 55 (2) of the AML-TFS Act 2023 set out the legal provisions that apply to a reporting entity where the entity is a beneficiary entity, to identify the sender's information (originator) and satisfy itself that information obtained by an originating entity under section 52(4) is correct and identify the receiver (beneficiary) information. In addition, section 28(2) specifies the reporting entity is to maintain information in a manner and form that will enable the reporting entity to comply immediately with requests for information from the FIU or other law enforcement authorities.

243. *Criterion 15.9(b)(iii) & (iv)* - Section 4 of the AML-TFS Act 2023 defines 'financial institution' and sets out the provisions of services in relation to the transfer of VA and the participation in and provision of financial services relating to VA. Regulations 5, 6 and 7 of the Counter Terrorism and Transnational Crime (Targeted Financial Sanctions) Regulations 2023 provide prohibition against dealing with property wholly or jointly, directly or indirectly, owned or controlled by or on acting on behalf of a designated person or entity. Furthermore, in this regulation, a terrorism-related resolution means (a) resolution 1267; (b) resolution 1989; (c) resolution 2253; (d) resolution 1988 and (e) resolution 1373.

244. *Criterion 15.10* - Part 7 of the AML-TFS Act 2023 and AML-TFS (FT&PF) Regulations 2023 provide that requirements with respect to Targeted Financial Sanctions for the communication mechanisms, obligations and monitoring identified in criteria 6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3 and 7.4(d) apply in relation to c15.10 and for VASPs. The Virtual Asset Service Provider Policy also outlines a number of the requirements.

245. *Criterion 15.11* - Sections 69 and 89 of the AML-TFS Act 2023, stipulates FIU may cooperate with foreign governments and international organisations to provide information and shall not refuse a request. Section 90 states the FIU may disclose to a foreign intelligence body or a foreign law enforcement body a report prepared and any analysis the FIU conducts or causes to be conducted. Furthermore, international cooperation is available under the Mutual Assistance Criminal Matters Act 2004, Proceeds of Crime Act (Amendment) Act 2023 and the Extradition Act 1973.

Weighting and Conclusion

246. There are moderate shortcomings in Nauru's compliance with R.15. While Nauru requires VASPs to be licensed, the deficiencies in c26.3 flow through to R.15, and it is not clear that Nauru has specifically sought to ensure there are no natural or legal persons carrying out VASP activities without the requisite license or registration. There is no specific provision that states that the occasional transactions designated threshold where VASPs are required to conduct CDD is USD/EUR 1000 and whether the equal application of AML/CFT provisions to VASPs covers the travel rule. **Recommendation 15 is rated largely compliant.**

Recommendation 16 – Wire transfers

247. In its 2012 MER, Nauru was rated partially compliant with former SR.VII. The MER identified that there was no definition of full originator information and therefore no clear definition of what information should be covered, no detailed instruction issued on the requirements of SR.VII and there was no effective monitoring.

248. *Criteria 16.1* - The electronic currency transfer (ECT) threshold is defined in AML-TFS Act 2023 as currency equal to or greater than AUD 1,000 (USD 629) (section 52). Legal tender in Nauru is Australian currency, regulated under the Currency Act 1976 and the Customs (Prohibited Exports) Order 2023, which expressly states the use of Australian Currency which is valued lower than the USD/EUR. Furthermore, "Currency" means the following used in or outside the Republic: (a) legal tender in physical or non-physical form; or (b) tender that is customarily used and accepted as a medium of exchange.

249. *Criterion 16.1(a)* - Section 52(2) AML-TFS Act 2023 requires reporting entities to ensure that the cross-border transfer is accompanied by the following information about the sender (originator): name, account number or unique transaction reference number if no account exists, unique transaction reference number where the sender does not have an account, address, customer identification number, date of birth, passport number or any other prescribed form or identity.

250. Section 50(1) AML-TFS Act 2023, a reporting entity is not required to verify the identity of a person under Sections 52 to 55, where the reporting entity has previously identified the identity of a person: (a) for the purposes of carrying out customer due diligence under Division 3 of Part 4; or (b) under any other provision of this Act. However, Section 50(2) provides, subsection (1) does not apply where there are reasonable grounds for the reporting entity to doubt the adequacy or accuracy of the documents, data or information previously obtained. Section 52(5) also requires an originating entity shall verify the sender's identity so that it is satisfied that the information obtained under 52(2) is correct and verify the sender's identity before ordering the electronic currency transfer.

251. *Criterion 16.1(b)* - Section 52(4) also requires reporting entities to ensure that the following information about the receiver (beneficiary) accompanies the wire transfer: name and account number or unique transaction reference number if no account exists, or other identifying information as may be prescribed that allows that transaction to be traced back.

252. *Criterion 16.2* - Section 52(6) AML-TFS Act 2023 require REs to ensure that batched transfers contain the complete sender (originator) information and receiver (beneficiary) information (as set out in 16.1), which is fully traceable within the receiver jurisdiction (beneficiary jurisdiction)

253. *Criterion 16.3* - Section 53 (2) of AML-TFS Act 2023 sets out the provision that transfers below AUD 1,000 (USD 629) are required to be accompanied by the name and account number or unique transaction reference number for both the sender and receiver (originator and beneficiary).

254. *Criterion 16.4* - Under Section 53(4) of the AML-TSF Act 2023, if the reporting entity has reasonable suspicion of financial crime, it shall verify the information obtained in relation to the sender under section 53(2) and file a suspicious activity report.

255. *Criterion 16.5* - Section 52 (3) of the AML-TFS Act 2023 stipulates, in the case of a domestic electronic currency transfer, RE shall identify the sender and include address, customer identification or account number, date of birth, passport number and any other prescribed form of identity, if that information will permit the transaction to be traced back to the originator and beneficiary, and the RE must provide the information within three working days on request made by the beneficiary entity or if the FIU makes a request to the originating entity.

256. *Criterion 16.6* - Section 52(3) of the AML-TFS Act 2023, stipulates that for domestic electronic funds transfer, the ordering institution may include only the originator's account number or unique transaction reference if that information will permit the transaction to be traced back to the originator and beneficiary. The RE must provide the originator information within three working days of a request being made by the beneficiary institution to execute the electronic currency transfer or if the FIU makes a request to the originating entity for that information.

257. *Criterion 16.7* - Under Section 51, a reporting institution shall maintain records of the information required to be obtained for electronic currency transfers with section 28 (obligation to maintain records) and section 29 (period for keeping records) as set out in R.11.

258. *Criterion 16.8* - Section 52(8) stipulates an originating entity shall not execute a currency transfer where the information required under subsection (2) (that the originating entity shall identify the sender of the transaction by obtaining identification information) and subsection (5) (an originating entity shall, (a) verify the sender's identity so that it is satisfied that the information obtained under subsection 2 is correct and (b) verify the sender's identity before ordering the electronic currency transfer) are not met.

Intermediary financial institutions

259. *Criterion 16.9* - Section 54(5) of the AML-TFS Act 2023 requires intermediary institutions to retain all the required sender (originator) and receiver (beneficiary) information which accompanies the electronic funds transfer in accordance with section 28 (obligation to maintain records) and section 29 (period for keeping records).

260. *Criterion 16.10* - Section 28 of the AML-TFS Act 2023 stipulates an obligation to keep and maintain records of any matter required under the Act and to keep and maintain those records for a minimum period of seven years in accordance with section 29.

261. *Criterion 16.11* - Section 54(3) of the AML-TFS Act 2023 requires intermediary institution to take reasonable measures, which are consistent with straight-through processing, to identify cross-border electronic funds transfers that lack the required originator or beneficiary information.

262. *Criterion 16.12* - Section 54(4) of the AML-TFS Act 2023 requires intermediary institutions to implement appropriate internal risk-based policies, procedures and controls for

determining when to execute, reject, or suspend an electronic funds transfer lacking the required originator or beneficiary information, and the appropriate follow-up action.

263. *Criterion 16.13* - Section 55(3) of the AML-TFS Act 2023 requires beneficiary financial institutions to take reasonable measures, including post-event monitoring or real time monitoring where feasible, to identify electronic funds transfers that lack originator or beneficiary information in relation to all cross-border electronic funds transfers.

264. *Criterion 16.14* - Section 55(2) of the AML-TFS Act 2023 states that in the case of an electronic currency transfer equal to or over the ECT threshold amount, the beneficiary financial institution should identify the beneficiary and verify that identity in accordance with section 52(4) requirements for originating entity-electronic currency transfer.

265. *Criterion 16.15* - Section 55(4) of the AML-TFS Act 2023 requires beneficiary institutions to implement appropriate internal risk-based policies, procedures and controls for determining when to execute, reject or suspend an electronic funds transfer lacking required originator or beneficiary information, and the appropriate follow-up action.

266. *Criterion 16.16* - Section 57(1) of the AML-TFS Act 2023 notes that the requirements relating to electronic funds transfers apply to REs that provides a money or value transfer services.

267. *Criterion 16.17* - Section 57(2) of the AML-TFS Act 2023, requires where a RE (MVTs provider) controls both the ordering and beneficiary side of the electronic currency transfer to take into account all the information required to be obtained under sections 52 to 54 relating to the sender and receiver to determine whether to file a SAR, and in accordance with section 57(3) where the RE determines that a SAR should be filed, must file the report in any jurisdiction affected by the ECT and make all relevant ECT information available to the relevant authorities in the jurisdiction affected.

268. *Criterion 16.18* - As per criterion 6.5, The Terrorism Transnational Crime (Targeted Sanctions) Regulation 2023, Regulation 5 (Prohibition against dealing with property), Regulation 6 (Prohibition against making property available), Regulation 7 (Prohibition against making financial or related services available) and Regulation 8 (Obligation to report freezable property), prescribe requirements whereby, financial institutions report freezing actions and comply with prohibitions from conducting transactions with designated persons and entities set out in resolution 1267 and 1373.

Weighting and Conclusion

269. **Recommendation 16 is rated compliant.**

Recommendation 17 – Reliance on third parties

270. In the 2012 MER, Nauru was rated largely compliant with former R.9. The 2012 MER identified that clarification of ultimate responsibility resting with the financial institution was not set out.

271. *Criterion 17.1* - Section 33 of the AML-TFS Act 2023 permits FIs to rely on an intermediary entity or a third party to undertake the FIs’ obligations regarding CDD or to introduce business. Section 33 (4) stipulates that FIs remain liable for any failure to undertake their obligations regarding CDD measures notwithstanding the use of an intermediary entity or a third party.

272. *Criterion 17.1(a)* - Section 33(2)(a) requires FIs to immediately obtain CDD related information from the intermediary or third party.

273. *Criterion 17.1(b)* - Section 33(2)(b) requires FIs to ensure that verifiable copies of evidence relating to the CDD measures, where relevant are made available are made available to it by the intermediary entity or third party upon the request of such FIs and without delay.

274. *Criterion 17.1(c)* - Section 33(2)(d) requires FIs to satisfy themselves that the intermediary entity or third party is supervised and has measures in place, to comply with the requirements regarding CDD measures and where the third party is located outside Nauru, it is regulated and supervised and has measures in place, to comply with requirements equivalent to those set out in the law.

275. *Criterion 17.2* - Section 33(2)(c) requires FIs to assess whether the location of the intermediary entity or third party is a high-risk location and the countries or geographical areas in the intermediary entity or third party operates are high risk countries or geographical areas.

276. *Criterion 17.3* - Section 33(3) stipulates that FIs are deemed to have satisfied the requirements of their obligation where the Minister certifies in writing that the FIs rely on a third party that is part of the same financial group, the financial group applies CDD, record-keeping and compliance measures and the implementation of such policies is supervised at a group level by a competent authority, whether in or outside of Nauru. FIs are required to develop an AML/CFT compliance programme to identify, assess and mitigate the risks posed by countries or geographical area (sections 19(2)(a) and 24(2)). A group-wide compliance programme should include those requirements set out by section 19 (section 26(2)(c)).

Weighting and Conclusion

277. **Recommendation 17 is rated compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

278. In the 2012 MER, Nauru was rated largely compliant with former R.15 and former R.22 was not applicable. The 2012 MER identified that; (1) audit requirements do not stipulate the need for independent audit and there is no independent audit function; (2) compliance officers are not required to be at management level; (3) no clear obligation for employee training to be ongoing.

279. *Criterion 18.1* - Section 19 of the AML-TFS Act 2023 requires FIs to develop and implement an AML/CFT compliance programme including a business risk assessment conducted under section 24 (ML/TF risk and the size of the business are considered).

280. *Criterion 18(1)(a)* - Section 19(2)(a)(1) stipulates that the AML-TFS compliance programme shall be recorded in writing, setting out the internal procedures, policies and controls that FIs establish, operate and maintain, to ensure that FIs comply with their obligations under the Act. Sections 20(1) and (3)(a) require FIs to appoint a compliance officer at senior management level.

281. *Criterion 18(1)(b)* - Section 22 requires FIs to establish, maintain and operate screening procedures to enable the FI to satisfy itself of the competence and integrity of a new appointment or newly appointed director, officer, employee or agent to oversee or undertake duties related to obligations of FIs.

282. *Criterion 18(1)(c)* - Section 23 requires FIs to take appropriate steps to ensure that its directors, officers, employees and agents receive regular and adequate training.

283. *Criterion 18(1)(d)* - Section 21 requires FIs to maintain appropriate procedures and adequate resources to independently and periodically, test and assess the system.

284. *Criterion 18.2* - Section 26(1) requires FIs to establish, operate and maintain a group-wide AML/CFT compliance programme. Section 26(2) stipulates that the programme shall be applicable and appropriate to all branches and majority-owned subsidiaries of the financial group and include the requirements referred to c.18.1.

285. *Criterion 18(2)(a)* - Section 26(2)(c) stipulates that the programme shall include policies and procedures for sharing information between members of the financial group required for the purpose of customer due diligence and AML/CFT risk management.

286. *Criterion 18(2)(b)* - Section 26(2)(d) stipulates that the programme shall include policies and procedures for branches and majority-owned subsidiaries to provide customer account and transaction information (including suspicious activity reports, pursuant to section 26 (3)) to the financial group when necessary.

287. *Criterion 18(2)(c)* - Section 26(2)(e) stipulates that the programme shall have adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent disclosure of information contrary to the provisions of a law with confidentiality provisions.

288. *Criterion 18.3* - At the time of the on-site, there were no domestic financial institutions in Nauru with foreign branches or subsidiaries operating outside of Nauru. However, section 27 has provisions relevant to this criterion whereby it stipulates that FIs shall ensure that their foreign branches and majority-owned foreign subsidiaries located outside Nauru apply, to the extent permitted by the law of that foreign jurisdiction, measures equivalent to those provided under the Act.

Weighting and Conclusion

289. The AML-TFS Act makes provision for the internal control of financial institutions. **Recommendation 18 is rated compliant.**

Recommendation 19 – Higher-risk countries

290. In 2012 MER Nauru was rated partially compliant with former R.21. The report noted there was no guidance to financial institutions on how to identify which countries have weak AML/CTF regimes and there is no legal authority to apply a range of appropriate countermeasures where a jurisdiction continues not to apply or insufficiently applies the FATF Recommendations.

291. *Criterion 19.1* - Under section 43(1) of the AML-TFS Act 2023, a reporting entity must conduct enhanced customer due diligence (ECDD) before or during the course of establishing or continuing a business relationship where circumstances set out in subsection (2) exist.

292. In accordance with section 43(2) ECDD obligations apply to a business relationship or transaction where the customer, agent, beneficial owner of the customer is; a resident of a jurisdiction where there is a high risk of financial crime, inadequate systems in place to prevent or deter financial crime; is involved in a business activity that involves a high risk financial

crime and satisfies any other criteria published or provided by the FIU that is determined to be high-risk by the FIU.

293. NFIU has issued the AML-TFS High Risk Countries Guideline 2023 which lists the FATF listed countries for reporting entities to take note of and to apply enhanced due diligence, and the terms used in section 43(2) “risk of financial crime, inadequate systems in place to prevent or deter financial crime.”

294. *Criterion 19.2* - NFIU has issued an AML-TFS High Risk Countries Guideline 2023, has identified FATF listed countries and UNSC listed countries and has disseminated to reporting entities detailing the jurisdictions which the FATF, FATF-style regional body, or the Republic of Nauru has made a call to apply countermeasures.

295. *Criterion 19.3* - Section 85(j) of the AML-TFS Act 2023, compels the FIU to assist reporting entities, issue guidelines in relation to their obligations under the Act, which include to inform reporting entities about weaknesses in the systems relating to AML/CFT of other countries. NFIU has issued the AML-TFS High Risk Countries Guideline 2023 to indicate what measures are in place to advise REs about concerns in the weaknesses in the AML/CFT systems of other countries.

Weighting and Conclusion

296. **Recommendation 19 is rated compliant.**

Recommendation 20 – Reporting of suspicious transaction

297. Nauru was rated partially compliant with former R.13 and SR.IV in its 2012 MER. Deficiencies included gaps in the coverage of domestic predicate offences; no STR reporting obligation relating to funding of an undesignated individual terrorist or a terrorist organisation; and no STRs had been filed. In 2023, Nauru passed the AML-TFS Act, which includes provisions in relation to reporting suspicious transactions.

298. *Criterion 20.1* - AML-TFS Act 2023 section 59(1) sets out a number of circumstances where the reporting entity must submit a suspicious transaction report. These circumstances are described broadly and would cover most, if not all, instances where financial institutions come across funds that are proceeds of criminal activity (specifically when related to the commission of a financial crime or criminal conduct). Under AML/TFS Act 2023 section 5, reporting entities include financial institutions.

299. Criminal conduct is defined through a combined threshold and list approach to predicate offences discussed in c.3.2 and c.3.3 and includes CTTOC Article 10 (Terrorism Financing) and 10A (Terrorist Act). As the deficits in predicate offences in c.3.2 and c.3.3 are minor, they do not impact this rating. As such, funds related to criminal activity and terrorism financing are covered by s.59 of the AML-TFS Act.

300. The report must be submitted to the FIU within 2 working days under AML-TFS Act 2023 section 59(3). This timeframe is prompt.

301. *Criterion 20.2* - AML-TFS Act, subsections 59(1)(a)(i), (ii) and (iii) include references to attempted conduct across ‘transactions’ (subsection 59(1)(a)(i), (iv)), account or business relationships (subsection 59(1)(a)(ii)), or ‘any activity’ (subsection 59(1)(a)(iii)).

Weighting and Conclusion

302. **Recommendation 20 is rated compliant.**

Recommendation 21 – Tipping-off and confidentiality

303. Nauru was rated as compliant with Recommendation 14 in its 2012 MER. Since its 2012 MER, Nauru passed the AML-TFS Act in 2023.

304. *Criterion 21.1* - Section 18 of the AML-TFS Act 2023 lays out protection from civil, criminal, or disciplinary proceedings for actions or omissions under the Act in good faith, or in compliance with a lawful direction given by the NFIU. Under s 18(1) the protection applies to directors of reporting entities, and officers, employees or agents of reporting entities acting in the course of their employment, and any person who previously held these positions. Finally, AML-TFS Act 2023 s (4) stipulates that the protection applies even if the person did not know what criminal offence had been committed and whether the conduct had occurred.

305. *Criterion 21.2* - Section 66 of the AML-TFS Act 2023 creates the obligation not to disclose suspicious activity reports and related information. Under subsections 66(1)(c) – (e) the Act targets “... (c) a director of a [financial institution]; (d) an officer, employee or agent of the [financial institution] acting in the course of his or her employment or agency; and (e) a person who was previously a person referred to in paragraphs (a) to (d). Under s 66(2) the persons in s.66(1) “shall not... apart from complying with the reporting obligations under the Act, disclose to any other person” the following: “(a) the knowledge or suspicion; (b) any details of the request; (c) that the report under this Act has been or may be made to the FIU; (d) that other information required under this Act has been or may be given to the FIU; (e) the contents or likely contents of any report under this Act relating to the suspicious activity; and (f) information that might identify any person who has (i) handled that suspicious activity; (ii) prepared any report regarding that suspicious activity; or (iii) provided any information to the FIU regarding that suspicious activity.”

Weighting and Conclusion

306. **Recommendation 21 is rated compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

307. In the 2012 MER, Nauru was rated partially compliant with former R.12. The 2012 MER identified that; (1) checking of beneficial ownership is not included in the AMLA for DNFBP; (2) EDD for high risk customers was not present; (3) obligation to identify PEPs doesn't extend to beneficial owners; (4) there is no requirements in the legal framework to pay special attentions to non-face to face transactions or emerging technologies; (5) the requirement to keep records of business correspondence is not fully covered; and (6) there are no provisions to take counter-measures where countries insufficiently apply FATF recommendations.

308. Pursuant to section 7 of the AML-TFS Act 2023, a reporting entity includes a person operating a casino or lottery, a real estate agent, DPMS (a high value dealer), a legal practitioner or an accountant, and a TCSP. This definition captures all types of DNFBPs referred to in the FATF Standard.

309. *Criterion 22.1* - Section 7 of the AML-TFS Act defines the meaning of the reporting entity and this definition captures all DNFBPs as required under this criterion.

310. *Criterion 22.2* - As described in criterion 22.1, DNFBPs have the same requirements in relation to record keeping as FIs and the analysis and conclusions R.11 are also applicable to this criterion.

311. *Criterion 22.3* - As described in criterion 22.1, DNFBPs have the same requirements in relation to PEPs as FIs and the analysis and conclusions in the R.12 are applicable to c.22.3.

312. *Criterion 22.4* - As described in criterion 22.1, DNFBPs have the same requirements in relation to PEPs as FIs and the analysis and conclusions in the R.15 (c.15.1 and 2) are applicable to c.22.4.

313. *Criterion 22.5* - As described in criterion 22.1, DNFBPs have the same requirements in relation to third parties' reliance as FIs and the analysis and conclusions in R.17 are applicable to c.22.5.

Weighting and Conclusion

314. The definition of the reporting entity in the AML-CTF Act 2023 captures all DNFBPs as required by the FATF Standard. **Recommendation 22 is rated compliant.**

Recommendation 23 – DNFBPs: Other measures

315. In the 2012 MER, Nauru was rated partially compliant with former R.16. The 2012 MER identified that; (1) the full range of predicate offences are not covered for STRs; (2) restrictive provisions regarding tax offences may undermine the operation of the STR reporting regime; (3) FIU yet to conduct education and awareness sessions for the DNFBP sectors; (4) the AMLA does not mention the requirement of independent audit provisions and compliance officers are not required to be at management level; (5) no clear obligation for employee training to be ongoing; and (6) there are no legal requirements to apply counter measures for countries with weak AML/CFT regimes and do not apply FATF Standards.

316. *Criterion 23.1* - As described in criterion 22.1, DNFBPs have the same requirements in relation to STR as FIs and the analysis and conclusions in R.20 are also applicable for this criterion.

317. *Criterion 23.2* - As described in criterion 22.1, DNFBPs have the same requirements in relation to internal control and foreign branch and subsidiaries as FIs and the deficiencies identified R.18 are also applicable for this criterion.

318. *Criterion 23.3* - As described in criterion 22.1, DNFBPs have the same requirements in relation to higher risk countries as FIs and the analysis and conclusions in R.19 are also applicable for this criterion.

319. *Criterion 23.4* - As described in criterion 22.1, DNFBPs have the same requirements in relation to tipping-off and confidentiality as FIs and the analysis and conclusions in R.21 are applicable to c23.4.

Weighting and Conclusion

320. The definition of the reporting entity in the AML-TFS Act 2023 captures all DNFBPs as required by the FATF Standard. **Recommendation 23 is rated compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

321. Nauru was found non-compliant with Recommendation 33 in its 2012 MER because the information kept by the Company Registry did not extend to beneficial ownership information, and bearer share warrants were able to be issued for Nauru corporations without beneficial ownership being recorded.

322. During the 2012 MER, there were a number of foreign corporations registered in Nauru. At that time, Nauru registered corporations under the Corporations Act 1972, through the Nauru Corporation Agency. Since that time, Nauru has abolished the Nauru Corporation Agency, which registered the corporations, and amended the Corporate Registry Act 1972 in 2016 and 2018 to require the physical presence of an individual in Nauru. With these enactments, Nauru provided the public notice of the changes and a requirement to comply with the updated Act in 2016, and ultimately ended up striking off a majority of its corporations in 2018. At the time of the October 2023 on-site, there is only one foreign corporation.

323. Since the 2012 MER, Nauru has enacted the Partnership Act (2018), the Registration of Associations Act (2020), the Business Names Registration Act (2018), and the Beneficial Ownership Act in 2017. The Business License Act of 2017 repealed the Business Licenses Act of 2011

324. In addition, Nauru's Trust Act (s.11) deems that registrable trusts, once registered, are legal entities that can (a) sue and be sued; (b) enter into contracts and other legal obligations; and (c) acquire, hold, manage and dispose of real or personal properties. These are characteristics of legal persons, not legal arrangements, in the commonly understood lexicon of the FATF methodology. However, given Recommendation 25's robust review of trusts, Nauru's Trust Act will not be reviewed under Recommendation 24.

325. At the time of the October 2023 onsite, there were 72 Corporations, 44 Partnerships, 164 beneficial owners, 9 Associations, 627 Business Licenses, 627 Business Name Registrations (536 of which are sole traders), and zero trusts.

326. The Department of Justice hosts two registry divisions: *The Corporations, Partnerships, Associations, and Trusts Registration Division* and the *Business Registration, Business Licencing, Security Licencing, Import Licencing and Beneficial Ownership Division*. The Secretary of Justice operates as the Authority for the Beneficial Ownership registry, and the Registrar for all other registries. The Divisions employ the same six people and comprises the Secretary for Justice and Border Control who oversees the Divisions, and a Legal Officer, one Paralegal/Authorised Officer; two Paralegals; and one Authorised Business Inspector, all of whom assist the Secretary for Justice.

327. *Criterion 24.1(a)* - Nauru has legal instruments in place that fulfil the c.24.1(a) requirements needed to describe the different types (corporations and associations), forms, and basic features of legal persons. These legal instruments are set out below.

Corporations Act

328. Section 15(a)(1) of the Corporations Act provides for the registration of domestic holding and trading companies, and of the registration of continuation in Nauru of a company incorporated outside of Nauru. Sections 14(1) and (2) provides for the formation of holding and trading corporations, respectively. Under s.15(a) a corporation registered in another register can be registered as a foreign corporation in Nauru. Finally, under s.225, foreign corporations

who are “carrying out business” in Nauru as defined under s.224⁵⁹ are required to lodge certain documents with the Registrar within one month after it establishes a place of business within Nauru.

Registration of Associations Act

329. Section 11 of the Registration of Associations Act provides for the registration of Associations with the Registrar of Associations (created under s.8). Section 4 defines an association as “a society, club, institution, civil society or non-Government organisation or similar body, which is not formed for any pecuniary gain or profit.”

330. In relation to c.24.1(b), each piece of legislation also has the process for creation of the legal persons. These are:

Corporations Act

331. Section 15(a)(1) of the Corporations Act provides for the registration of domestic holding and trading companies, and of the registration of continuation in Nauru of a company incorporated outside of Nauru. It requires a person who wishes to incorporate to file with the Registrar the unsigned true copy of the memorandum and articles of the corporation and other documents required of the Act. Upon payment of the fees, the Registrar accepts the filing of the Memorandum (the Powers of the Corporation) and Articles of Incorporation.

332. For a foreign corporation, s.225 stipulates that the corporation must file with the Registrar the following documents within one month of commencing business within the Republic: “a certified copy of the its incorporation or registration in its place of incorporation or origin or a document of similar effect; b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution; c) a list of its directors and officers containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors and secretaries of a corporation incorporated under the Act; d) where the list includes directors resident in the Republic who are members of the local board of directors, a memorandum duly executed or on behalf of the foreign corporation stating the powers of the local directors; e) 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 . . . ; f) notice of the situation of its registered office in the Republic; g) a declaration in the prescribed form setting out particulars of its authorised capital; and h) s.134 shall apply to foreign corporations . . .” Section 134 stipulates accounts to be kept.

333. Corporations (Forms and Fees) Regulations 2018 establishes the necessary forms to fulfil these sections.

⁵⁹ Section 224 defines “carrying out business” as “a) establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situate [sic] in the Republic as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and b) in the case of a foreign corporation in respect of which the Minister has by notice in the gazette so specified, suffering or permitting the corporation’s own shares to be dealt with, issued, transferred or made the subject of options or agreements within the Republic or permitting or suffering dealings, transfers or agreements to sell or purchase or options in respect of securities, notes or rights issued by it to the public, or by reason of which the public might acquire an interest in the corporation, to be made within the Republic . . .”

Registration of Associations Act

334. Section 13 stipulates that an application for the registration of the association shall be “a) in the prescribed form; b) accompanied by the instrument of creation and association conforming the requirements of this Act; c) accompanied by copies of relevant documents; and d) accompanied by evidence of payment of the prescribed fee.” In addition, the application must be accompanied by a certificate in the prescribed form by executive member of the association, providing “. . . b) providing the full name, residential and e-mail addresses, telephone contacts and occupations of the executives of the association; c) listing all members of the association . . . h) verifying the copy of the instrument of creation of the association accompanying the application is a true copy and that instrument of creation make provisions for the matters in conformity with this Act. . . .” Part 6 dictates the requirements of certain foreign associations to register in the Republic of Nauru.

335. Registration of Associations (Forms and Fees) Regulations 2020 establishes the necessary forms to fulfil these sections.

336. As far as public availability of this information, the information can be obtained on the Government of the Republic of Nauru website, under the Department of Justice and Border Control.⁶⁰ Each Division⁶¹ has its own web page where relevant information is listed. Importantly, both Division web pages include the *Registration and Licensing of Businesses, Partnerships, Corporations, Associations, Trusts, and Private Security Information Sheet*, which lays out the process for applying to register the various entities and provides information on these entities. This document can also be obtained in paper copy at the Division office, or via email.

337. Furthermore, the various authorising acts and accompanying regulations can be found publicly on Ronlaw.gov.nr, should an applicant be interested in the law itself. The *Registration and Licensing of Businesses, Partnerships, Corporations, Associations, Trusts, and Private Security Information Sheet* specifically notes Ronlaw.gov.nr as a source of additional information for interested applicants.

338. *Criterion 24.1(b)* - The basic information which is obtained is discussed in more detail in c.24.3; however, it is primarily included in the required forms found in the regulations of the various acts as stipulated above.

339. The required forms can be obtained from the Divisions in person, or via phone or email. In addition, the *Business Registration, Business Licencing, Security Licencing, Import Licencing and Beneficial Ownership Division* provides for download on its website the Business Registration and Licensing Forms. These include the schedule of fees, forms for new applications, renewals, and renewals for each entity. The forms can also be obtained in paper copy at the Division office, or via e-mail; and as discussed in c.24.3, are included in the regulations for each act, and can be reviewed on Ronlaw.gov.nr.

⁶⁰ <http://www.nauru.gov.nr/government/departments/department-of-justice-and-border-control.aspx>

⁶¹ <http://www.nauru.gov.nr/government/departments/department-of-justice-and-border-control/corporations-partnership-associations-and-trust-registration-division.aspx> and <http://www.nauru.gov.nr/government/departments/department-of-justice-and-border-control/business-registration-business-licencing-security-licencing-import-licencing-and-beneficial-ownership-division.aspx>

340. Under c.24.1(b), countries must also have mechanisms for the process of obtaining and recording beneficial ownership information. As discussed in c.24.6, Nauru has a Beneficial Ownership Act that creates a registry that collects beneficial ownership information from required entities. Section 6 stipulates that the Act applies to corporations and businesses registered under 2 or more persons under the Business Names Registration 2018 and express and implied trusts. Section 21 requires nominated officers of each entity shall submit beneficial ownership information to the Beneficial Ownership Authority. Beneficial Ownership (Forms and Fees) Regulations 2018 establishes the forms that this information must be provided on.

341. In addition to the above-mentioned *Registration and Licensing of Businesses, Partnerships, Corporations, Associations, Trusts, and Private Security Information Sheet* the Divisions and the Business Registration and Licensing Forms available for download on the division webpages, the *Business Registration, Business Licencing, Security Licencing, Import Licencing and Beneficial Ownership Division* also provides a Beneficial Ownership Guide for download. This guide provides an overview of what Beneficial Ownership is and how to register beneficial owners in Nauru. The Divisions also provide this information in person or via email, if needed. The Beneficial Ownership Act and accompanying regulations can be found on Ronlaw.nr.gov.

342. *Criterion 24.2* - Nauru's 2018 NRA did not assess the ML/TF risks associated with legal persons. Nauru's 2023 NRA, provided to the assessment team during the on-site examination, discusses legal persons and beneficial ownership. While informative as to the role and activities of the Authority and Registrars, including the internal review by the Authority and Registrars of a sampling of the entities for compliance against the relevant Acts, it only provides a cursory analysis of the features of different legal persons that are vulnerable for misuse for AML/CFT. Outside the standard way legal persons are misused, this only includes the ability for shareholders to amend or alter the incorporation instruments. It additionally does not provide an analysis of the activities of the business sector on which to base a conclusion of risk. While it does not give a specific risk rating for ML related to legal persons, it notes that the most common risk is the non-renewal of business licenses and timely registration of any variation, suggesting a low-risk rating. Given the primarily local nature of the businesses, this is consistent.

343. Additionally, consistent with the law, the risk assessment does note that beneficial owners can only be a natural person, which brings the risk down a degree, but does not go into detail as to where the beneficial owners are from. The NRA 2023 concludes that beneficial ownership is low risk in Nauru.

344. *Criterion 24.3* - The legal instruments outlining the registration information requirements are set out below.

Corporations Act

345. Under Sections 15 the Corporations Act, domestic corporations are required to lodge with the Registrar the memorandum and articles of the proposed corporation, with any other required documents. Nauru enacted the Corporation (Forms) Regulations of 1972, amended in June 2021, which established the required forms. The forms provide information on 1) the name of the company (Forms 2 and 3), proof of incorporation (when issued by Registrar, Forms 13 and 14); the address of the registered office (Form 5); and a list of the directors (Form 6). Section 17 establishes the powers of corporations, stating the powers are established in Schedule 1 of the Corporations Act, any additional powers are set out in articles or granted by regulation. Legal form and status are also included.

346. Under s.15A of the Corporation Act, foreign corporations are required to register with the Registrar. Under 225(1) of the Corporation (Forms) Regulations of 1972 the forms require a foreign corporation to provide information on the name of the company, the requirement to submit proof of incorporation, and a list of directors (Form 22). Under s.225(7) the company must also file a certificate of incorporation of a foreign corporation (Form 26) and renewal certificates of incorporation every year (Form 27). Under s.226(1) they are also required to submit the address of the Nauru registered office (Form 5). Schedule 1 establishes the powers of the corporation in Nauru. Further, under s.111, every corporation shall keep at its registered office a register of its directors, registered directors, and secretaries.

347. In addition, applicable to both domestic and foreign corporations, Nauru enacted in January 2019 the Corporations (Forms and Fees) Regulations 2018, amended in June 2021, which not only provide a schedule of fees but additional forms that, ostensibly, are required for application (Schedule 2, Form 1), renewal (Schedule 2, Form 2), and the annual return (Schedule 3, Form 1) that also requests the similar information.

348. While the Corporations Act requires this information be lodged with the registry, under s.12(1) the Registrar “may . . . keep such other registers as he or she considers necessary and, in such form, as he sees fit.” There is no statutorily mandated form for the registry; however, Nauru keeps the register in physical and electronic form (Microsoft Excel). The electronic form itself maintains the following information: registration number, name of the Corporation, date of incorporation, date of issue, date of expiry, fee, receipt, tax identification number, annual return, contact person, phone, email. The electronic form additionally maintains all of the required information, with the basic regulating powers provided for statutorily.

349. Section 12(2) indicates a person may “inspect a document filed or lodged with the Registry” or may “require any certificate issued under this Act or copy of or extract from any document be kept by the Registrar be given or certified by the Registrar” for a fee.

Registration of Associations Act

350. Registration of Associations Act s.8 establishes an office of the Registrar of Associations and the Secretary of Justice as the Registrar. Section 13 establishes the application process for associations.

351. Associations are defined under s.5, and generally track with non-profits, charitable, and civil service organisations. Under s.10, the Registrar has all the powers necessary to form his or her functions under the Act. Under s.11(2), the register shall be kept and maintained as prescribed by regulation.

352. Under the Registration of Associations (Forms and Fees) Regulations 2020, Schedule 1 establishes the form of the Registrar of Associations, which includes 1) the name of the association, 2) person nominated or authorised to register association, 3) phone number, 4) email, 5) date 6) application received, 7) date certificate issued, and 6) renewal dates. Form 1 requires that the association provide the name of the association, details about the executive members of the association, purpose of the association, the requirement to attach certain documents (a) authority to nominated or authorised person to register association; b) list of at least 7 members; c) rules of association, d) name of bank; and e) any other documents submitted, and the certificate of the executive member of the association.

353. Under Registration of Association (Forms and Fees) Regulations 2020 s.3, the Register of Associations may be kept a) in writing; and b) in digital or electronic form. The Register is kept both written and electronic form. Both s.3 and the online database include the following

information: registration number, date of expiry, date of renewal, place of operation, fee, purposes of association, executive members, person authorised to register association (authorised person), phone and email contact, meeting all the basic information requirements.

354. The Register is publicly available for a fee under s.11 of the Registration of Associations Act.

355. For each registry, Nauru maintains a “red book” (physical registry) and searchable electronic registry, with the maintenance of all underlying physical documents and forms located in filing cabinets.

356. *Criterion 24.4* - Corporations registered under their respective acts are required to also register and have issued to them a business licence under the Business License Act of 2017. Corporations are required to display the license at the place of business. Business License Regulation 2018 Form 7 lays out the template for the Business License, which includes name and address of the corporation, and the registered and principal place of business. This meets the requirements to maintain the information of name of the company and address of the registered office. Legal form can be surmised from the name of the company; under Corporation Act s.19, a corporation must include a standard reference to a corporation in the name.

357. It additionally notes that the license is only valid for one year from the date of issue, which indicates the status of the entity.

Corporations Act

358. Under s.15 of the Corporations Act, upon lodging of the memorandum and articles, the Registrar issues a certificate of incorporation to the corporation, which expires 12 months after issuance. Section 225(7) requires the same of foreign corporations. While there is no clear provision that the certificate be maintained, s.15(8) does note that the certificate is conclusive proof of incorporation, while 20, 21, and 29 note sections where the corporation must surrender its certificate of incorporation, indicating the requirement to maintain the certificate.

359. Under s.101, the name of the corporation must be displayed outside the place of business, and, under s.102, must be included in its seal and all “all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit”

360. Corporations Act s.134 requires that every corporation must “cause proper accounts and records to be kept and retained for 7 years, which shall include but is not limited to underlying documentation.” The records include not only financial-related documentation but also annual returns, which include the basic information of the corporations, and details of the current and former shareholders, director, secretary and corporation officer. Additionally, under s.111 a corporation is required to maintain a register of the directors and secretaries at the office.

361. Section 17 of the Corporations Act notes the default powers of a corporation are listed in Schedule 1 of the Corporations Act; however, these can vary should the corporation wish through inclusion in the articles. There is no requirement to maintain this information at the company.

362. The Corporations Act is the only act that addresses shareholder information, which is appropriate given the nature of the legal entity. Under s.126 of the Corporations Act 1972 a corporation is required to keep a register and index of members, including the names and addresses of the members, statement of shares held by each member, the date the person was entered on the registry, the date of the cessation of that member if within the last 7 years, and

date of every allotment of shares. Under s.43 a corporation is required to provide the class of share to which each share belongs. Additionally, s.126 does indicate that each share must be distinguished by a number, or nature of the associated voting rights be included. Should a trading corporation have more than 50 members, then the corporation must maintain an index. However, under s.43, the corporations must file with the Registrar a return as to allotment of shares, which includes not only class of shares, but, in the case of a trading company, also the full name and address of the allottees.

363. Corporations Act 1972 s.127 stipulates that this information in s.126 must be maintained at the registered office of the Corporation, which is required to be in Nauru under s.101(1), unless the Registrar otherwise directs.

Registration of Associations Act

364. Registration of Associations Act s.16 stipulates the issuance of a certificate of registration once the application for association is approved. Registration of Associations Act (Forms and Fees) Regulation 2021 Form 2 establishes the form for the Certificate of Registration of Association. This form includes the name of the association and the date issued. Section 18 requires the certificate to be displayed, maintaining the registration of the association, including its name.

365. Under s.32 of the Registration of Associations Act, an association is required to “keep and [maintain] underlying documents,” which includes not only finance related documentation (accounts, bank statements, invoices, etc.), but also annual reports (which include the basic information of the association), details of staff, key persons and beneficiaries, details of the associate non-profit associations of the association, and other matters prescribed by regulation.”

366. The Corporations Act and the Association Act generally meet the requirements of c.24.4; however, there does not appear to be a requirement to maintain the regulating powers of Corporations at the place of business, whether the statutorily conveyed powers or any variation the Corporation wishes to include through the articles. However, the regulating powers are provided for statutorily, as such there would only be a gap where a corporation changes their regulating powers. This is provision is not weighted heavily given that the rest of the elements are met.

367. *Criterion 24.5* - The legal instruments outlining requirements for accurate and updated information are set out below.

Business Licence Act

368. With respect to a variation of the particulars that underlie a business license, should there be change, s.21 of the Business Licence Act requires the variation be registered within 7 days. Should the variation be with respect to the license, ownership, address or nature of business, the Registrar must issue an amended license. If the business fails to update the Registrar, they can be penalised. This ensures the basic information collected via the Business License Act is up to date.

Corporations Act

369. Under s.15(4), domestic corporations are required to renew their certificate of incorporation every 12 months after they pay the required fee and submit their annual return, maintaining their legal form and status. Additionally, s.225(7) requires the same of foreign corporations through reference to s.15(4). Both the Application for Incorporation and Renewal for Incorporation, located in the Corporations (Forms and Fees) Regulations 2018, require the

information be verified as true under the *Oaths, Affirmations and Statutory Declarations Act*, and signed in front of a notary.

370. Under 101(4) domestic corporations must report any change to the registered office within a month of the changes (Form 5). Under s.111, domestic corporations must report any change to the directors and secretaries within one month. Under s.111(6), where default is made, every officer will be guilty of an offence. Under s.122, all resolutions and agreements are to be registered with the Registrar within 15 days. Change of basic regulating powers would therefore fall under this requirement.

371. Under s.226, foreign corporations are required to update the Registrar within one month should the criteria listed in Criterion 24.3 change. Under Article 230, should a foreign corporation be required to change its name, it shall do so within one month.

372. Section 126 requires corporations to keep a register of its members, including the names and addresses of the members, and statement of the shares held by each member. It is also required to keep the date at which the name of each person was entered in the register as a member, the date at which a person ceased to be a member within the last seven years, and the date of every allotment of shares to members and the number of shares comprised. Article 15(4) and Article 133 requires an annual return to be lodged with the Registrar every year, which would be based on the corporation's register of its members to some extent. However, the annual return does not include all the details required to be maintained in the register of members. As a result, while some of the information from the register of membership would be included in the annual return, requiring that information to be updated every year, there is no explicit timeframe for which the register must be updated after a change takes place. This information is not required to be maintained on a timely basis. Under s.126(6), if there is default, every officer is guilty of an offence. Under s.43, the Registrar is required to be updated of a change in share allotment within one month. Under 43(5), if there is a default in complying with the section, every officer will be guilty of an offence. Finally, under s.134, records must be maintained for seven years, including details of current and former shareholders, directors, secretary and corporation officer.

Registration of Associations Act

373. Under s.26 of the Registration of Associations Act any variation to the criteria listed under c.24.4 must be registered with the Registrar within 14 days on the prescribed form. The requirement that the information referred to in c.24.3 is met.

374. Overall, the Business License Act, Corporations Act, and the Registration of Associations Act meet the requirements ensuring that the basic information is accurate and up to date. However, there does not appear to be an explicit requirement that the register of members under Corporations Registry Act s.126, be updated within a certain time frame, although some of the details will be updated annually on the annual report. This does not mean the information is accurate or updated on a timely basis.

375. *Criterion 24.6* The provisions regarding obtaining and availability of beneficial ownership information are set out below.

Beneficial Ownership Act

376. Under s.20 the Beneficial Ownership Act, the Authority is required to maintain a database of beneficial owners. The definition of beneficial ownership under s.5 of the Beneficial Ownership Act comports with the FATF definition. Beneficial ownership is defined under s.5(1) as "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.”

377. Section 6 of the Beneficial Ownership Act lists the entities that are required to comply with this Act: corporations under the Corporations Act 1972, partnerships under the Partnership Act 2018, businesses in the name of two or more persons under the Business Names Registration Act 2018, and express or implied trusts under the Trusts Act 2018. Section 15(4A) of the Corporations Act obligates a person intending to incorporate a corporation or renew the certificate of incorporation to comply with the Beneficial Ownership Act 2017.

378. Under Beneficial Ownership (Identity and Declaration) Regulations 2023 s.9, Beneficial Owners are required to submit a declaration to the legal entity at the time they become the beneficial owner or when the information providing the required information under the Beneficial Ownership Act. This information must be submitted within 7 days of becoming the beneficial owner or after the change.

379. Under Beneficial Ownership Act s.7, s.8, and s.9, each legal entity is required to nominate, provide notice to the Authority, and maintain an internal register of the nominated officers, respectfully. Under s.21, each nominated officer from each legal entity is required to take all reasonable steps necessary to ascertain whether a legal entity has a beneficial owner. Steps include, but are not limited to, providing the required beneficial owner details as stipulated in s.12 through the legal owner providing notice to the nominated officer under s.10(2). Section 10 obligates legal owners to trace the legal owner and corresponding interest in the legal entity. Under s.10(3) the legal owners are obligated to respond to the notice with the required information. If the legal owner fails to comply with s.10 or knowingly or recklessly makes a false statement to the nominated officer, they can face a penalty of AUD 50,000 (USD 31,447) or a term of up to three years imprisonment upon conviction. Under s.11 the beneficial owners and intermediate owners are obligated to assist the legal owner in obtaining this information or also face AUD 50,000 (USD 31,447) or three years imprisonment upon conviction.

380. Under s.21(3), the nominating officer must provide the required beneficial owner information under s.12 of the Beneficial Ownership Act to the Authority. Under s.21(5), the nominated officer is required to provide this information to the Registrar within 30 days of creation of the entity. Under s.12 this includes name, residential address, service address, nationality, date of birth, date that they acquired an interest in the legal entity, and tax ID; and where the beneficial owner is a foreigner or resides outside of Nauru, permanent address in foreign jurisdiction, email and telephone number, tax registration in foreign jurisdiction, and bio-data page from passport. Under s.13, once they know of a change, a legal owner has one month to provide updated beneficial ownership information to the nominated officer. The nominated officer then has one month to provide that information to the registry under s.21(4)(b). Under s.14, the nominating officer is required to maintain this information, and information verifying this information for seven years or until the end of an investigation, if an investigation is being carried out beyond the seven years. There are strict penalties for non-compliance of these provisions throughout the Beneficial Ownership Act.

381. Additionally, under Beneficial Ownership (Identity and Declaration) Regulation 2023 s.8, a legal entity is required to “keep and maintain adequate accurate and current beneficial ownership information” including “a) means and mechanisms through which ownership, control or effective control is exercised; and b) where ascertainable, numerical value of any interest held, voting rights description of voting rights, or other forms of control or management of position or appointment of board members.”

382. Through the mechanisms of the Beneficial Ownership Act outlined above, Nauru meets the requirements of c.24.6(a) and c.24.6(b).

Criterion 24.7 - Beneficial Ownership (Identity and Declaration) Regulations 2023 s.8 requires the legal entity to keep and maintain “adequate, accurate and current” (defined in s.3) beneficial ownership information as part of that requirement. Section 3(c) provides that information must be as current as possible and received from a legal entity no later than 7 days of the legal entity becoming aware of the change of beneficial ownership information. Further, the Authority on Beneficial Ownership—a guide provided on the Divisions’ website—notes that the information must be provided to the Authority within 30 days.

383. *Criterion 24.8 - The Beneficial Ownership Act* meets the requirements of c.24.8(a). Under s.7(b) of the Beneficial Ownership Act, the required nominated officer must be a natural person who is a resident or a citizen in Nauru. In accordance with the details listed in c.24.6 and c.24.7, this nominated officer is accountable to the competent authority for providing basic information and available beneficial ownership information. Under s.16 the nominated officer is also required to provide further assistance to certain authorities (the Financial Intelligence Unit, Solicitor General, Nauru Revenue Office, Secretary of Justice, Nauru Police Force, Chief Collector of Customs, or Director of Public Prosecutions), should they request specific information for a permitted purpose as defined in s.3(1).

384. *Criterion 24.9 - The provisions for C.24.9* can be found under the Beneficial Ownership Act.

Beneficial Ownership Act

385. C.24.3 requires that company registries record the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. Under s.14(2) of the Beneficial Ownership Act the nominated officer must maintain and preserve in the Republic the required details and information that verifies the required details for “a) 7 years from the end of the period to which the information relates; or b) where an investigation is being carried out under this Act or any other written law until the completion of the investigation.” Under s.12 the “required details” of the beneficial owner include the following: “a) his or her name; b) his or her usual residential address; c) a service address, where the service address is different than the residential address; d) his or her nationality; e) his or her date of birth; f) the date on which he or she acquired an interest in the legal entity; and g) his or her tax identification.” When the beneficial owner is a foreigner or resides in a foreign jurisdiction in addition, the following must be provided: “a) permanent address in the foreign jurisdiction; b) an e-mail and telephone number; c) a tax registration number in a foreign jurisdiction; and d) a bio-data page of his or her passport or other types of identity which has his or her photograph.” While this is a minor issue, there is no statutory requirement that the nominated officer is an officer of the company, which would make the nominated officer the legal entity. However, this not weighted heavily as in practice the majority of nominated officers are also an officer of the company.

386. Section 14(3) states that “a legal entity’s nominated officer shall comply with the requirement of this section immediately before any of the following event occurs, if the legal entity is a) wound up, dissolved, etc. . . . b) otherwise ceases to carry on business.” The requirement is that this shall apply “immediately before” one of these events. Further, in the Beneficial Ownership (Identity and Declaration) Regulations 2023 s.11, states that “where a legal entity is wound up, dissolved or ceases operation, the records of beneficial ownership shall be kept and maintained by” both the nominated officer and the Authority for 7 years from the date of winding up, dissolution or cessation.

387. Under Beneficial Ownership Act s.14(4), if the nominated officer no longer intends to reside in the Republic, that person should provide the required details to the Authority. Beneficial Ownership (Identity and Declaration) Regulations 2023 s.10 stipulates that the records of beneficial ownership of the legal entity shall be kept and maintained by the nominated officer, that should the officer be terminated or resign, that the officer is required to provide the records to the next nominated officer or the person who holds a position as senior management; and, finally, where the “legal entity is wound, dissolved or ceases operation” and the nominated leaves Nauru, they must provide the records to the Authority.

388. Given that both the nominated officer and the Authority are required to maintain the records for 7 years after cessation of the company, and the nominated officer my provide the company records to senior management should the nominated officer leave the jurisdiction, this criterion is met.

389. *Criterion 24.10* - The legal instruments outlining the powers of competent authorities to obtain timely access to basic and beneficial ownership information are set out below.

Corporations Act and Business License Act

390. Under 242A(1) of the Corporations Act 1972 and s.32 of the Business Licensed Act, the Registrar of the respective acts “may provide any information including any copy of a document, account, or record the Registrar has obtained under this Act to: a) a law enforcement or regulatory agency [domestically and in a foreign jurisdiction] . . . for the purpose of carrying out the agency’s duty, power or function.” However, there are no provisions ensuring timely access.

Registration of Associations Act

391. Under s.39, the Registrar may disclose information kept and maintained when “. . . c) made to the FIU . . . made to law enforcement . . . made to a domestic regulatory authority . . . and made to a foreign government agency” in line with the stipulated purposes of the section. However, there is no provision ensuring timely access.

Beneficial Ownership Act

392. Under s.16 of the Beneficial Ownership Act, the nominated officer is also required to provide further assistance to certain authorities (the Financial Intelligence Unit, Solicitor General, Nauru Revenue Office, Secretary of Justice, Nauru Police Force, Chief Collector of Customs, or Director of Public Prosecutions), should they request specific information for a permitted purpose as defined in s.3(1), and must do so within seven days. Permitted purposes includes prevention, detection, investigation or prosecution of criminal offences, prevention; bring proceedings, furtherance or discharge of any function under this Act; and, in the case of the FIU, to “(i) determine whether to investigate, prosecute, or bring proceedings; (ii) initiate or end such an investigation, prosecution or proceedings; or (iii) trace, freeze, seize, confiscate or recover assets.”

393. Overall, the relevant Acts meet the requirements of this criterion; however, while access to the information can be provided there are no provisions outside of the Beneficial Ownership Act s.16 ensuring timely access by authorities.

394. *Criterion 24.11* - Section 46 of the Corporations Act 1972 states that “a corporation shall not issue bearer shares or share warrants.” Under s.87(2A) bearer shares that were in existence prior to the Corporation Amendment Act No 2 2016 were required to be converted to ordinary securities, otherwise the securities would be forfeited under s.87(2B), and the corporation would have cancelled those bearer shares at their next annual renewal date. No other legal entity issues shares.

395. *Criterion 24.12* - Nauru repealed provisions permitting nominee shareholders in 2019 through the Corporations (Amendment) Act 2019 and requires share disclosure in Corporations (Forms and Fees) Regulations 2018 Form 1 (Application Form for Incorporation of Corporation), Form 2 (Renewal Form), and Form 4 (Annual Return).

396. Corporations Act 1972 s.134 (1)(m) requires corporations to maintain records and accounts on current and former directors. While nominee directors can be appointed by a director who is a corporation in writing under Corporate Registry Act s.103(2), it is the director's information that must be recorded with the Register and not the nominee directors. This discloses the director to both the company and the Registrar.

397. *Criterion 24.13* - The legal instruments outlining liability and sanctions for failure to comply with the requirements are set out below.

Corporations Act

398. Under s.241, the Corporations Act provides progressively more stringent penalties depending on section. Generally, it finds that if a person fails to comply with the requirements of the Act, that person can be fined AUD 1,000 (USD 629). However, noncompliance with Sections 6 (includes certain requirements by a person relative to the Registrar of Corporations), 42 (Application monies to be held in trust until allotment), 63 (Special resolution for reduction of share capital), 94 (Registrar of Charges to be kept by Registrar), 119 (Circulation of members' resolutions), 134 (Accounts to be kept), 147 (Power to Compromise with Creditors and Members), 148 (Information to Compromise with Creditors and Members), and 214 (Offences by Officers of Corporations in Liquidation) can be fined up to AUD 5,000 (USD 3,145) and a term of imprisonment for 6 months for each offence. Finally, a person who commits offences against Sections 33 (Invitations to public to lend money to or deposit money with a trading corporation), 40 (Civil liability for misstatement in prospectus), 107 (Power to restrain certain persons from managing corporations), 215 (Frauds by Officers) and 216 (Liability where Proper Accounts Not Kept or Debts incurred without reasonable expectation of payment) and is convicted can be fined up to AUD 10,000 (USD 6,289) and/or be imprisoned for 12 months.

399. While the Corporations Act provides the same sanctions to any person (both legal and natural), the Interpretation Act 2011 s.80 stipulates that where a "provision of written law . . . prescribes a fine for an offence; and does not expressly prescribe a fine for a body corporate different from the fine for an individual," if the body corporate is found guilty of the offence, the court may impose a fine of equal to 5 times the fine of the individual. Sanctions are proportionate and dissuasive for both natural and legal persons.

Registration of Associations Act

400. Part 9, under the Registration of Association Act, has in place seven sections that address penalties for offences. There is the same penalty for the specific offences of conducting activities without registration (s.41), Conducting Activities of a Foreign Association without a Valid Certificate of Compliance (s.42), Providing False or Misleading Information (s.43); Obstruction of Register or Authorised Officer (s.44), and Registered name not to be assisted or transferred (s.45). This penalty is that, upon conviction, the executive or key person is liable for a fine of up to AUD 20,000 (USD 12,579) and/or imprisonment for up to 3 years, while the association could be liable for a fine of up to AUD 200,000 (USD 125,786). S.45 provides the penalty of a general offence of the act, which is, upon conviction, the executive or key person is liable for a fine of up to AUD 20,000 (USD 12,579) and/or imprisonment for up to 3 years, while the association could be liable for a fine of up to AUD 100,000 (USD 62,893).

401. Additionally, s.45(3) stipulates that where an asset is determined to be a proceed of a crime under the Proceeds of Crime Act 2004, the Registrar must provide a report to the Director of Public Prosecutions for forfeiture orders.

402. The Associations Act provides for liability and these penalties are sufficiently proportionate and dissuasive against both a natural or legal person.

Business License Act

403. Under s.6 of the Business Licences Act, no person shall commence or carry on any business without a license granted under the Act. Section 7 provides the list of those who can apply for a business license, which are: "... c) a corporation under the Corporations Act 1972; ... e) a foreign corporation registered to conduct a business under the Corporations Act 1972." Under s.22(1) a person is required to display and maintain the business license—which, in accordance with c.24.4 includes the registered address—at the registered place of business in a conspicuous location. Under s.22(2), administrative sanctions include being liable for a penalty of AUD 1,000 (USD 629) to be paid within 7 days or, under s.22(3), if criminally prosecuted and convicted for non-compliance with s.22(2), a fine not exceeding AUD 5,000 (USD 3,145) or a term of imprisonment, or both.

404. Like the Corporations Act, the Business License Act is subject to s.80 of the Interpretation Act, which state that where, "provision of written law . . . prescribes a fine for an offence; and does not expressly prescribe a fine for a body corporate different from the fine for an individual," if the body corporate is found guilty of the offence, the court may impose a fine of equal to 5 time the fine of the individual. Sanctions are proportionate and dissuasive for both natural and legal persons.

Beneficial Ownership Act

405. Under various provisions of the Beneficial Ownership Act, the Act imposes fines against the legal entity, the legal owner, and the nominated officer at various stages. Non-conviction-based fines include a late fee of AUD 500 (USD 314) against the legal entity for not notifying the Authority of the nominated officers. Steeper penalties of up to AUD 50,000 (USD 31,447) and/or three years in prison apply if convicted of violating s.7 (Requirement to have a nominated officer), s.8 (Notice of Appointment of Nominated Officer), s.9 (Register of Nominated Officer), s.10 (Duty of Legal Owners), s.11 (Duty of Beneficial Owners and Intermediate Owners to Assist), s.13 (Change in Required Details), s.14 (Preservation of Required Details and Verifying Information), s.15 (Further Consequences for Failure to Disclose Beneficial Owner), s.16 (Disclosure of Beneficial Owner Information by Nominated Officer), and s.18 (Disclosure of Information Obtained from a Nominated Officer by the Financial Intelligence Unit when Responding to External Requests).

406. The Act provides for liability and sanctions that are proportionate and dissuasive. However, while the Beneficial Ownership (Identity and Declaration) Regulations 2023 do appear to provide for liability they do not appear to provide adequate sanctions. Under this Recommendation, Beneficial Ownership (Identity and Declaration) Regulations 2023 s. 8 (Legal Entity to Maintain Beneficial Ownership Information), s.10 (Records of Beneficial Ownership Kept by Nominated Officer), and s.11 (Period for Record Keeping When Legal Entity Not Existing) do not have specific sanctions associated with them if violated. However, applicable to s.11 (Beneficial Owner’s Obligation) are Beneficial Ownership Act s.10 and s.11, which, if convicted, provides for up to AUD 50,000 (USD 31,447) sanctions and/or up to three years in prison, which is proportionate and dissuasive. None-the-less, sanctions for the Beneficial Ownership (Identity and Declaration) Regulations are not entirely proportionate or dissuasive.

407. Generally, the relevant Acts provide sufficient liability and proportionate and dissuasive sanctions against natural and legal persons. However, the Beneficial Ownership (Identity and Declaration) Regulations 2023 do not have proportionate or dissuasive sanctions associated with them.

408. *Criterion 24.14* - The legal instruments outlining rapid international cooperation in relation to basic and beneficial ownership information are set out below.

Corporations Act

409. Under 242A(1) of the Corporations Act 1972, the Registrar of the Act “may provide any information including any copy of a document, account, or record the Registrar has obtained under this Act to: a) a law enforcement or regulatory agency [domestically and in a foreign jurisdiction] . . . for the purpose of carrying out the agency’s duty, power or function; b) the competent authority of a foreign government with which the Republic has entered into an agreement providing the exchange of information . . . and c) any treaties or agreements entering into by the Republic for the purpose of this exchange.” However, as discussed in c.24.5, it is not clear the shareholder information in the registry is required to be updated on a timely basis, as such that information could be dated.

Registration of Associations Act

410. Under s.39, the Registrar may disclose information kept and maintained when “. . . made to a foreign government agency. “The disclosure to the foreign government agency must be line with s.40 of the Act, which details the requirements of disclosing to a foreign agency. This includes the requirement that the agency be “performing a function or exercising a power under the foreign government agency’s own regulatory legislation, including investing a breach of that legislation; performing a function or exercising a power under the foreign jurisdiction’s anti-money laundering and counter-terrorism financing regulation and supervision laws; its performing a function or excursing a power under the foreign jurisdictions financial sanctions laws; its investigating or prosecuting a foreign serious offence or a foreign tax evasion offence, or investigating or taking action under the foreign jurisdiction’s proceeds of crimes laws.” The Registrar must also be satisfied that the information will be used for proper regulatory, supervisory or law enforcement purposes, and the agency subject to restrictions to further disclosure.

Beneficial Ownership Act

411. Under s.16 of the Beneficial Ownership Act, the nominated officer is required to provide further assistance to the Financial Intelligence Unit and must do so within seven days. Permitted purposes includes “(i) determining whether to investigate, prosecute, or bring proceedings; (ii) initiate or end such an investigation, prosecutions or proceedings; or (iii) trace, freeze, seize, confiscate or recover assets.” Under s.18, the NFIU “may disclose the information to an external intelligence or law enforcement agency: a) if the disclosure is made in response to a request made by the external intelligence or law enforcement agency; or b) the request is made in furtherance of the Authority’s functions; and c) the request is made using such manner and form as the FIU may require.”

412. Under the Beneficial Ownership (Identity and Declaration) Regulation 2023 Section12(3), the Authority must “a) allow foreign competent authorities to have basic information of legal entities registered in Nauru; or b) allow foreign competent authorities to have access to information on shareholders which include the name, permanent address, email and phone contact, if available.” Given that this Regulation is specific to the Beneficial

Ownership Act 2017, this provision would only be applicable to the information contained within the Beneficial Ownership Act registry and not the Corporations Act.

413. Under s.27(1) of the Beneficial Ownership Act, “any of the persons under s.16(2) may access the Database for a permitted purpose.” Section 16(2) includes the “a) Financial Intelligence Unit; b) Solicitor General; c) Nauru Revenue Office; d) [Secretary of Justice]; Nauru Police Force; Chief Collector of Customs or any nominated officer of the Customs Office; or g) Director of Public Prosecutions.” Permitted purposes includes “(i) determining whether to investigate, prosecute, or bring proceedings; (ii) initiate or end such an investigation, prosecution or proceedings; or (iii) trace, freeze, seize, confiscate or recover assets.” Under s.18, the FIU “may disclose the information to an external intelligence or law enforcement agency: a) if the disclosure is made in response to a request made by the external intelligence or law enforcement agency; or b) the request is made in furtherance of the Authority’s functions; and c) the request is made using such manner and form as the FIU may require.”

414. Each relevant act provides a level of access to foreign competent authorities to basic and beneficial information held by registries, information on shareholders where the legal entity has shareholders (although the information may not be fully up to date), and access to the beneficial ownership registry through the FIU. Local law enforcement and regulatory agencies may also access the information and could do so on behalf of foreign counterparts AML/TFS Act 2023 s.94.

415. *Criterion 24.15* - Under AML-TFS Act 2023, while NFIU is the main authority to cooperate with foreign governments and international organisations regarding requests for information; receiving request for information, and receiving or providing information, the Beneficial Ownership Act Authority is the entity to monitor the quality of assistance. Beneficial Ownership (Identity and Declaration) Regulation 2023 s.12(1) stipulates that “the Authority shall monitor on the quality of assistance the Republic receives from any competent authority in a foreign jurisdiction, in response to request for basic and beneficial ownership information or requests for assistance in locating the beneficial owners residing abroad.” Since no such request for assistance has been made, it is not possible to assess monitoring in practice.

Weighting and Conclusion

416. Nauru has come a long way since its 2012 MER, creating a whole new legal landscape for legal entities and beneficial ownership. Nauru meets or mostly meets the majority of the criterion, with deficiencies related to non-maintenance of regulating powers and place of business, timely update or access to information and not having a clear legal foundation for enforcement under the Beneficial Ownership (Identity and Declaration) Regulations 2023. Additionally, the risk assessment was not sufficiently robust as to give a detailed risk analysis of the legal sector. **Recommendation 24 is rated as largely compliant.**

Recommendation 25 - Transparency and beneficial ownership of legal arrangements

417. Nauru was found non-compliant with Recommendation 34 in its 2012 MER because there was no mechanism to collect beneficial ownership information of trusts, and while the beneficiaries of offshore unit trusts were recorded, the information did not extend to beneficial ownership or the identity of settlors.

418. Nauru has in place two statutorily created trusts that will not be discussed in this criterion: the Nauru Phosphate Royalties Trust created by the Nauru Phosphate Royalties Trust

Act 1968, last fully amended in 2009, and the Intergenerational Trust Fund, under the International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015. The Nauru Phosphate Royalties Trust was established to manage royalties from phosphate mining, with revisions taking place in 2009 in order to better manage the trust.

419. The Nauru Phosphate Royalties Trust Fund was created in 2015 to create a way to generate future investment earnings that would allow for a source of revenue for Nauru after 2035. The fund cannot be touched until the next decade. It receives contributions from the Government of Nauru, Australia, Chinese Taipei, New Zealand, and, at the beginning, the Asian Development Bank. It is managed by an investment firm in another jurisdiction.

420. The Trusts Act was passed in 2018 and amended in 2021. Trustees were previously authorised to register as a corporation under the Corporate Registry Act through the Nauru Agency Corporation; however, with the revisions of the Corporation Act in 2017, both the Nauru Agency Corporation and the ability for trustees to register as a corporation were done away with. Corporations were required to register in compliance with the new Corporations Act and those that did not were struck off in December 2018.

421. All trustees must now register under the Trust Act 2018 and must abide by subsidiary legislation Trusts (Forms and Fees) Regulation 2018 and Trusts (Trustee Duties) Regulation 2023. Under Trust Act 2018, s.34, the Cabinet is authorised to pass regulation for a whole host of reasons, including “. . . in respect of any other matters necessary or expedient for the proper administration of this Act.” At this time, there are no trusts registered.

422. The Trust Act 2018 provides mechanisms to register express and charitable trusts. Unusually, s.11 of the Act deems that registrable trusts, once registered, are legal entities that can a) sue and be sued; (b) enter into contracts and other legal obligations; and (c) acquire, hold, manage and dispose of real or personal properties. Registrable trusts in Nauru exhibit functional characteristics of legal persons. However, trusts were not analysed under c.24. The analysis below sets out Nauru’s technical compliance with R.25 to the extent the form (as opposed to function) of registrable trusts is a legal arrangement, in the commonly understood lexicon of the FATF methodology. See for example the definition of express trust in s.9 of the Trust Act.

423. Notably the Trust Act does not extend to foreign trusts, unless the trustee is ordinarily a resident of Nauru and at that point the trust becomes a registrable trust. Foreign trusts are covered by the Foreign Trusts, Estates, and Wills Act of 1972. Under Article 6, a foreign trust is only valid if at least one of the trustees of the trust is a trustee corporation that has acknowledged in writing acceptance of the appointment. Trustee corporations are defined under Article 2 as a corporation registered under the Corporations Act of 1972. The assessment team’s understanding is that while there are no foreign trusts in Nauru, this Act is left in place so as not to affect any foreign trusts that may be currently operating outside of Nauru. However, given that trustee corporations can no longer be registered under the Corporations Act of 1972, any foreign trust would seemingly no longer be valid.

424. Section 16 of the Trusts Act 2018 creates a Registrar of Trusts, who can register trusts under s.14 and under s.21(1)(a) records the registration information. Under s.18, the Registrar has the power to inspect information of trusts, including inspecting and taking copies of information from the trustee. However, statutorily under s.21(1)(b), the Registrar records a change or variation 1) by the trustees at any time or 2) in the annual return or under s.21(1)(d) if the Registrar is satisfied after proper inquiry that the information contained in the entry is incorrect. Section 24 provides for an offence for filing misleading information.

425. *Criterion 25.1(a)* - Compliance with 25.1(a) is analysed through both the Trust Act 2018 and its subsidiary legislation and the Beneficial Ownership Act 2017 and its subsidiary legislation.

Trust Act 2018

426. Section 4 of the Trust Act 2018 defines a trustee as “a person who holds or deals with the trust property on behalf of the beneficiary or for the purposes of the trust.”

427. The definition of trustee in s.4 of the Trust Act is broad and professional trustee can be included in this wide scope.

428. Section 12(3) & (4) of the Trust Act requires that an application to register a ‘registrable trust⁶²’ shall be filed within 30 days of the creation of a trust. Section 13 requires this application to be in the prescribed form, which is set out in s.3 of the Trusts (Forms and Fees) Regulations 2019: the trustee needs to provide information on the settlor, trustee, beneficiaries *to the extent that they are ascertainable*, protector of the trust, and beneficial owners of the trust. Section 4 of the Trusts Act defines beneficial owners of registrable trusts as 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 or c) on whose behalf a trust is created.”

429. Under s.15, annual returns are required to be filed every twelve months, and the same information is provided when filed, but there is no requirement to obtain updated information prior to that annual return. As amended by s.5(5) of the Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023, s.7(2) Trust (Forms and Fees) Regulation 2018 requires a trustee to inform the Registrar of any variation with 7 days of the occurrence of the variation. Under s.21 of the Trusts Act 2018, the Registrar is then required to record this variation.

430. Section 25 of the Trusts Act provides some requirements imposed on a trustee such as record keeping requirements, as does Trusts (Trustee Duties) Regulation 2023 s.3(1)(p), which requires a “trustee to keep the books, records and accounts of the trust i) during the operations of the trust; ii) any dormant period of the trust; and iii) 7 years from winding up, dissolution, cessation or lapsing of the trust.”

431. As such, the requirement to obtain and hold the information is met, as is the requirement that the information be adequate, accurate, and current.

Beneficial Ownership Act

432. Under s.6(1) of the Beneficial Ownership Act trusts are considered legal entities that must comply with the Act. Under s.8, each legal owner is required to nominate a nominated officer. The nominated officer must also maintain and preserve the required details in relation

⁶² Under Section 5 of the Trust Act, “registrable trusts” are defined as “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; located in the Republic under Section 6; and not excluded under Section 7.” Section 6 states that a trust is located in the Republic where “a) the settlor of the trust is a citizen of or ordinarily resident in the Republic; b) at least one of the trustees of the trust is ordinarily resident in the Republic; c) the trust is subject to the jurisdiction and the laws of the Republic; or d) the trust is administered in the Republic.” Section 7 states excluded trusts are constructive or resulting trusts; an implied trust; a family trust unless the trustees or the beneficiaries intend to register the trust under this Act; a trust arising out of specific co-ownership of land or a specific express or implied trust related to certain intestate estates.”

to the beneficial owner under s.14. While the nominated officer could also be the trustee, it is not a requirement that the nominated officer be the trustee.

433. As discussed in c.24.6, Beneficial Ownership Act s.5 defines beneficial ownership in compliance with the FATF Definition. In addition, Beneficial Ownership (Identity and Declaration) Regulations 2023 s.7 further defines beneficial owners as “a trustee or any person in any equivalent or similar position to a trust included trustee de son tort; . . . a settlor . . . a protector . . . a beneficiary or class of beneficiaries . . . a guardian . . . and any other natural person exercising ultimate effective control over the trusts,’ covering all the natural persons required of c.25.1(a).

434. As discussed in c.24.7, s.8 of the Beneficial Ownership (Identity and Declaration) Regulations 2023, the legal entity must keep and maintain adequate, accurate and current⁶³ beneficial ownership information on beneficial owners. Beneficial Ownership (Identity and Declaration) Regulations 2023 s.3 defines “adequate, accurate and current beneficial ownership information as “a) information that is sufficient to identify an individual who is a beneficial owner and the means through which the individual exercises beneficial ownership control; b) information which has been verified to confirm its accuracy against other records; and c) information which is as current as possible with the Authority and is received from a legal entity no later than 7 days of the legal entity becoming aware of the change of beneficial ownership information.” “Current” is defined under s.3 as “up to date” or prevalent recordings, events or information.

435. While the information held and obtained would meet the requirement of c.25.1(a), it is not clear that it is the trustee that would be holding this information, as the nominated officer does not have to be the trustee and it is the legal entity itself that holds this information. This criterion is not affected given the lack of trusts in Nauru, given the Trust Act 2018 meets the requirements, and the fact that 1) the nominated officer would likely be the trustee and 2) the trustee’s role in managing the trust.

436. *Criterion 25.1(b) - Trusts (Trustee Duties) Regulation 2023 s.5(1)* requires a trustee to keep and maintain basic information⁶⁴ and record of the regulated agent of the trust. s.5(2) defines a “regulated agent” as an investment advisor, manager, accountant, legal advisor, tax advisor and any other person whose professional and advisory services are ordinarily required for the operations and management of the trust.” Under s.3(p), the trustee is additionally required to keep “books, records and accounts of the trust” during the operations of the trust; any dormant period of the trust; and 7 years from winding up. . . .”

437. *Criterion 25.1(c) - Trust Act 2018 s.4* defines a “trustee corporation” as a corporation incorporated in the Republic and permitted to carry on a business as a trustee corporation under any other written law.” Corporations Act s.5 expressly prohibits trustee corporations.

⁶³ Beneficial Ownership (Identity and Declaration) Regulations 2023 Section 5(3) lists basic information as “a) the name of the legal entity or natural person; b) in case of the legal entity, at least a beneficial owner or the person who carried out or attend to the transactions or professional advisory services for the trust on behalf of the legal entity; tax identification number of the legal entity or the natural person or both; d) address of the place of business; and e) address or e-mail or phone contact of the natural person.”

⁶⁴ Beneficial Ownership (Identity and Declaration) Regulations 2023 Section 5(3) lists basic information as “a) the name of the legal entity or natural person; b) in case of the legal entity, at least a beneficial owner or the person who carried out or attend to the transactions or professional advisory services for the trust on behalf of the legal entity; tax identification number of the legal entity or the natural person or both; d) address of the place of business; and e) address or e-mail or phone contact of the natural person.”

However, the definition of trustee in Trust Act 2018 s.4 is broad and professional trustee can be included in this wide scope, allowing individuals or partnerships to register as trustees. There is no clear provision that requires any trustee to hold on to this information for five years after their involvement with the trust ceases, although under the Trusts (Trustee Duties) Regulation 2023 s.5(3)(p) is a requirement that the information be maintained for 7 years when the trust is wound up, dissolved, ceased, or lapsed. As to the information in c.25.1(a), this information is required to be disclosed to the Authority under the Beneficial Ownership Act and the Registrar under the Trust Act 2018, which in turn has a duty to maintain the information for 7 years. Under the Beneficial Ownership (Identity and Declaration) Regulations 2023 s.10, the nominated officer is required to maintain this information and if they should resign, provide the information to the next nominated officer or the person who holds senior management of the trust. This meets the requirement for c.25.1(c) because the goal is for the information to be contained in some sort of capacity.

438. *Criterion 25.2* - As discussed in c.25.1(a) there is a requirement that the beneficial ownership details be kept accurate and current under the Beneficial Ownership Act and its subsidiary legislation, the Beneficial Ownership (Identity and Declaration) Regulations 2023. This information must be submitted within 7 days of becoming the beneficial owner or after the change.

439. In addition, regarding the maintenance of information related to c.25.1(b) under Trusts (Trustee Duties) Regulation 2023, there is a duty to obtain and keep basic information regarding regulated agents, and that this information be kept accurate, as up to date possible, and that it is updated on a timely basis.

440. *Criterion 25.3* - Section 39 of the AML-TFS Act 2023 sets out obligations in compliance of this criterion on trustees and reporting entities. Under s.39(2) in Division 3 of the Act a trustee must report to a “reporting entity that he or she is acting as a trustee when a) entering into a business relationship with the reporting entity or b) conducting a transaction or series of transactions.” Under s.7, a reporting entity includes financial institutions and DNFBPs.⁶⁵ Enforcement of the Division 3 can be found in s.48, but only extends to enforcement of reporting entities and does not extend to trustees. While there may overlap between reporting entities (lawyers acting as trustees), where the trustee is not a lawyer or other reporting entity, they would not be covered.

441. *Criterion 25.4* - The Trust Act is the only instrument that puts in place provisions related to trustees. There is no provision specifically restricting the trustee’s ability to provide competent authorities or FIs/DNFBPs with information related to the trust.

442. *Criterion 25.5(a)* - Trust (Trustee Duties) Regulation 2023 s.6 requires a trustee or a trust to provide basic information about the trustee to competent authorities. However, under Trust Act 2018, the Registrar is empowered under s.18 to “inspect and take copies of information, any documents, accounts or record relating to any activity of the trust” and the trustee is required to provide this information. Under s.33(1), the Registrar of the trust may

⁶⁵ AML-TFS Act 2023 Section 7 defines reporting entities as “a) any person that undertakes banking under the Banking Act 1975; b) a financial institution; c) a real estate agent; d) a person operating a casino or conducting a lottery, including those carried out over the internet; e) a high value dealer; f) trust or company service provider . . . , g) a legal practitioner or an accountant . . . h) a person collecting, holding, cashing in, remitting or delivery cash as part of a business providing payroll services; and i) excludes a person or class of persons prescribed under the Act.

provide information to law enforcement or regulatory agencies both domestically and abroad, and with competent authorities that Nauru has entered into agreement with to provide the exchange of information. Since language for disclosure is “may” and not “shall,” this information is not necessarily obligatory.

443. However, express trusts are also required to register with the Beneficial Ownership Registrar under the Beneficial Ownership Act. In compliance with c.25.5(a), under Sections 16 and 28, the nominated officer—who may not be the trustee—of the trust must disclose information related to the beneficial owner of the trust to the FIU, Solicitor General, Nauru’s Revenue Office, Secretary of Justice Nauru’s Police Force, Chief Collector of Customs, and the Director of Public Prosecutions when requested and within seven days.

444. Under s.39(2) of the AML/CFT Act, trustees are required to report to the reporting entity that they are acting as a trustee when “a) entering into a business relationship with the reporting entity; or conducting a transaction or series of transactions.” AML/CFT Act s. 7, reporting entities includes both FIs and DNFBPs. Under s.39(3)(a)(v), the reporting entity must develop an understanding of the “person exercising ultimate effective control over the trust.” Under s.39(4) the reporting entity must then “document its understanding . . . retain . . . any other document that provides evidence of such understanding. AML/CFT Act s. 28(2), stipulates that any record required to be kept under the Act must be kept in a form that will allow the reporting entities to comply immediately with requests from the FIU and other law enforcement. Section 4 defines a record as “any material on which data or information is recorded or marked and which is capable of being read or understood by a person, computer system or other device,” and encompasses the information required to maintained under s.39. AML/CFT Act s. 7, reporting entities includes both FIs and DNFBPs. Under s.78, the NFIU has the power to inspect reporting entities and their records.

445. *Criterion 25.5(b)* - Trusts (Trustee Duties) Regulation 2023 s.6 trustees are required to provide their basic information to competent authorities when requested.

446. *Criterion 25.5(c)* - Under s.39(2) of the AML/CFT Act, as noted above trustees are required to report to FIs/DNFBPs that they are acting as a trustee when “a) entering into a business relationship with the reporting entity; b) or conducting a transaction or series of transactions.” As noted above FIs/DNFBPs are required to comply immediately with any request for records, the definition of which is broad enough to include “assets,” by the NFIU or other law enforcement.

Criterion 25.6 - Both the Trust Act and the Beneficial Ownership Act provides a level of access to domestic and foreign competent authorities to basic information held by the registries. Local law enforcement and regulatory agencies may also access the information and could do so on behalf of foreign counterparts under s.94 of the AML-TFS Act 2023.

Trust Act 2018

447. Section 33(1) of the Trust Act authorises the Registrar to provide “any information, including any copy of a document, account or record that the Registrar has obtained under the Act to: (a) law enforcement or regulatory agencies whether in the Republic or (b) in an overseas jurisdiction, for the purposes of carrying out the agency’s duty, power or function.”

Beneficial Ownership Act

448. Under s.27(1) of the Beneficial Ownership Act, “any of the persons under s.16(2) may access the Database for a permitted purpose.” Section 16(2) includes the “a) Financial Intelligence Unit; b) Solicitor General; c) Nauru Revenue Office; d) [Secretary of Justice]; Nauru

Police Force; Chief Collector of Customs or any nominated officer of the Customs Office; or g) Director of Public Prosecutions.” Permitted purposes includes “(i) determining whether to investigate, prosecute, or bring proceedings; (ii) initiate or end such an investigation, prosecution or proceedings; or (iii) trace, freeze, seize, confiscate or recover assets.” Under s.18, the NFIU “may disclose the information to an external intelligence or law enforcement agency: a) if the disclosure is made in response to a request made by the external intelligence or law enforcement agency; or b) the request is made in furtherance of the Authority’s functions; and c) the request is made using such manner and form as the FIU may require.”

449. Criteria 25.6(a) and c.25.7(b) are met by s.33(1) of the Trust Act 2018, while c.25.6(c) is met by the s.33(1) of the Trust Act 2018 and the Beneficial Ownership Act in regards to the beneficial ownership information provided on the Trust Act 2018 forms.

450. *Criterion 25.7* - The obligations for which trustees can be held accountable fall under s.24 (offence for filing false or misleading information), s.25 (obligation to keep and maintain records), and s.26 (offence for failure to register trust or file annual returns) of the Trust Act 2018. For a s.24 offence, a person can be held liable for a term of imprisonment of up to 3 years or a fine of up to AUD 10,000 (USD 6,289), or both. For a s.25 offence, a trustee can be held liable for a fine of up to AUD 5,000 (USD 3,145) if convicted. For a s.26 offence, a trustee can be found liable for a fine of up to AUD 5,000 (USD 3,145) and for a penalty not exceeding AUD 50 (USD 31) a day that failure continues. Trustees can additionally be found liable for a fine of up to AUD 5,000 (USD 3,145) once convicted for failure to produce a document requested by the Registrar under s.18.

451. While there is liability assigned for included offences, many of the underlying duties required of Recommendation 25 (such as requiring the trustee to obtain and hold the information in c.25.1(a) and c.25.1(b)) are included in Trusts (Trustee Duties) Regulation 2023(3)(1). However, outside those that map on to offences in Trust Act 2018 (specifically Trust (Trustee Duties Regulation) 2023 s.(3)(1)(p), which could be included as an offence under Trust Act 2018 s.25), the only recourse for a violation is a civil suit by the aggrieved or a criminal suit under applicable crimes in the Crimes Act 2023. There is generally not an independent penalty listed in the Trust Act or the Trusts (Trustee Duties) Regulations, for violation of regulations derived from the Act. It is not clear what the penalty is for violation of these duties. However, in regards the obligations required in the Trust Act 2018, but not in the regulations, the sanctions would be sufficiently proportionate and dissuasive particularly in light of current trust sector.

452. *Criterion 25.8* is **mostly met**. The Authority and the Registrar of Trusts are considered competent authorities in Nauru. Information provided under c.25.1(a), per Trust Act 2018 s.26, if a trustee does not register the trust or file an annual return as prescribe by s.13 (Registration) and s.15 (Annual Return) of the Trust Act, a trustee can be penalised upon conviction for a fine of up AUD 5,000 (USD 3,145) and a fine of AUD 50 (USD 31) a day for each day that the failure continues. Trusts (Forms and Fees) Regulations 2018 Section 7, as amended by s.5(5) of the Business Licenses (Non-Operational Business Record Keeping) Regulations 2023, requires any change of variation to take place within 7 days. The Trust Act is subject to s.80 of the Interpretation Act, which state that where, “provision of written law . . . prescribes a fine for an offence; and does not expressly prescribe a fine for a body corporate different from the fine for an individual,” if the body corporate is found guilty of the offence, the court may impose a fine of equal to 5 time the fine of the individual. Sanctions are proportionate and dissuasive for non-compliance with timely provision of the information.

453. Additionally, under s.25 of the Trust Act 2018 and Trusts (Trustee Duties) Regulation 2023 s.3(1)(p) trustees are required to maintain certain accounts and records, as detailed in 25.1(a). Since the information in the Regulation further expands on s.25, it would be captured by the penalty associated with non-compliance. As a result, under s.25(3), a trustee who is found guilty of the section will be liable for a fine not exceeding AUD 5,000 (USD 3,145). Section 80 of the Interpretation Act also applies here. Sanctions are proportionate and dissuasive for non-compliance with timely provision of the information.

454. Regarding the application of the Beneficial Ownership Act to c.25.1(a), the legal entity is required to maintain certain Beneficial Ownership Information under s.5 of the Beneficial Ownership Act and Sections 7 and 8 of the Beneficial Ownership (Identity and Declaration) Regulations 2023. Under Beneficial Ownership Act s.16, the nominated officers are required to disclose beneficial ownership information to certain authorities, including the NFIU and the NPF, when requested in writing. The nominated officer can be subjected to a conviction of AUD 50,000 (USD 31,447) or imprisonment not exceeding 3 years, or both should the nominated officer be convicted of failure to comply or by knowingly or recklessly making a statement that is false, deceptive, or misleading in a material nature. Sanctions are proportionate and dissuasive for non-compliance with timely provision of the information.

455. Under s.21 of the Beneficial Owner Information to the Authority, the nominated officer is required to register the beneficial owners with the Authority. Under s.21(7) If a nominated officer violates s.21 as stipulated in s.21(6), a nominated officer is liable of a fine “not exceeding [AUD] \$50,000 [USD 31,447] or to a term of imprisonment not exceeding 3 years or both.” Under s.21(4) or (5), if the information is not provided, generally, within one month, the Authority can penalise the legal entity through the fining of AUD 1,000 (USD 629) for non-compliance with the time limit. Sanctions are proportionate and dissuasive for non-compliance with timely provision of the information.

456. In regards to c.25.1(b), outside a civil suit and a fine of not more than AUD 5,000 (USD 3,145) upon conviction for not producing information requested by the Registrar under Trusts Act s.18, there does not appear to be any other penalties for providing timely access to the information contained in of Trusts (Trustee Duties) Regulation 2023 s.5. A civil suit and possible fine of AUD 5,000 (USD 3,145) upon conviction for the non-production of information is not proportionate or dissuasive.

457. In regards to the information in c.25.1(c), the sanctions are as stipulated above for information required to be disclosed to the Authority and the Registrar of Trusts under c.25.1(a). Sanctions are proportionate and dissuasive for non-compliance with timely provision of the information.

458. The Beneficial Ownership Act and the Trust Act do require the disclosure of information to the Authority and the Registrar of Trusts. However, this is not the case for c.25.1(b). As a result, the sanctions and penalties provided for not providing timely access to competent authorities are proportionate and dissuasive for everything except c.24.1(b).

Weighting and Conclusion

459. Nauru has completely overhauled its trust system establishing a more transparent system in line with the majority of the Recommendation 25. However, while there are still deficiencies relating to sanctions in c.25.3, c.25.7 and c.25.8 there are no trusts registered in Nauru. As a result, these deficiencies are given proportionally lower weighting. **Recommendation 25 is rated largely compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

460. *Criterion 26.1* - Designation for regulating and supervising (monitoring) FIs under the AML-TFS Act 2023 is through Section 68-70 which in turn continues the FIU, sets out the functions of the FIU and confirms the role of an office of the Supervisor of FIU, including the reporting lines through to the Secretary for Justice and Border Control.

461. *Criterion 26.2* - Section 5 of the Banking Act outlines the requirements for licensing Banks and FIs. Nauru also requires registration of all businesses under the Business Licence Act 2017 and the Business Names Registration Act 2018. Section 4 of the Banking Act outlines restrictions on carrying on banking business in Nauru which, although not specified, would preclude shell banks.

462. The AML-TFS Act 2023 defines ‘shell bank’ in clause 4 and then specifically precludes a RE establishing, continuing or conducting a business relationship or occasional transaction with a shell bank. Section 47(2) also requires a RE to take appropriate measures to satisfy itself that its respondent entities do not permit their accounts to be used by shell banks.

463. *Criterion 26.3* - Section 88 of the AML-TFS Act 2023 requires the supervisory authority to ensure that relevant positions are held by persons that are ‘fit and proper’. AML-TFS (Fit and Proper Person) Criteria 2023 have provided a mechanism for reporting entities to meet the requirements set out in section 88 of the AML-TFS Act 2023. The AML-TFS (Fit and Proper Person) Criteria 2023 provide a mechanism for FIs to check criminal records of their “responsible persons” (e.g., directors, senior executives, compliance officers or any other person a Supervisory Authority deems to have a significant role in the management or control of the reporting entity) and report information to the supervisor for further review, to prevent criminals from holding significant role in the management or control of FIs and DNFBPs. However, the criteria do not cover beneficial owners in line with the FATF definition. The criteria also do not cover criminal associates.⁶⁶

464. *Criterion 26.4* - The Policy for Regulating Financial Institutions for the Prevention of Anti-Money Laundering or Terrorist or Proliferation outlines the high-level requirements of Recommendation 26 as well as addressing the way the core principles are met within the Republic. Nauru is not a member of the International Association of Insurance Supervisors or the International Organisations of Securities Commission because these services are not provided within the Republic. The Basel Committee on Banking Supervision Principles are addressed in section 7(1)(a)(iii) of the Banking Act 1975 that stipulates the essential criteria outlined in Principles 12 of Core Principles Methodology.

465. *Criterion 26.5* - Nauru has one FI and low ML/TF risk settings. The assessment team has been provided with a Supervisory Plan for the 2022-2023 year that indicates completed and intended reviews with the Nauru AML/CFT system. The frequency and intensity of on-site and off-site AML/CFT supervision is appropriate in light of the low ML/TF risks in the jurisdiction and the characteristics of Nauru’s one FI. However, it is not clear that the supervision of the FI considers specific risks posed by its activities in Nauru.

466. *Criterion 26.6* - The AML-TFS Act 2023, section 69 sets out the functions of the FIU and section 78 provides FIU with the power to conduct inspections including the ability to review

⁶⁶There were changes made to the AML/TFS (Fit and Proper Person) Criteria 2023 after the ME on-site that addressed beneficial owner and criminal associates.

the REs business risk assessments. There does not seem to be a trigger relating to major events or developments in the management and operations of the FI or group. Further, the FIU's activities have not yet demonstrated periodic review of the FI's business risk assessments.

Weighting and Conclusion

467. The AML-TFS Act 2023 sets out the functions of the FIU and includes requirements around the regulation and supervision of Financial Institutions. Nauru has a supervisory plan in place for the 2023-2024 year from 1 July 2023 which outlines planned engagements with FIs and DNFBPs as well as private partners and other competent authorities and law enforcement. There are however shortcomings in relation to provisions for fit and proper tests for beneficial owners, persons with a significant or controlling interest, or holding a management function, in a financial institution; and in relation to risk-based supervision. In light of the minimal number of financial institutions in Nauru, this deficiency is not weighted heavily. **Recommendation 26 is rated largely compliant.**

Recommendation 27 – Powers of supervisors

468. *Criterion 27.1* - The powers and functions of the FIU as the AML/CFT Supervisor in Nauru are set out in Part 5 of the AML-TFS Act 2023 with s 69 providing the FIU with the ability to supervise the compliance of REs in meeting the obligations under the Act.

469. *Criterion 27.2* - Section 78 of the AML-TFS Act 2023 empowers the FIU to conduct an inspection of a reporting entity to monitor compliance with the AML-TFS Act 2023 and enforce its provisions.

470. *Criterion 27.3* - Section 78 empowers the FIU to enter premises in order to examine records relevant to ensuring compliance with the AML-TFS Act 2023. Section 78(3) sets out broad powers for the FIU to access and request reproduction of information and records.

471. *Criterion 27.4* - Section 48 under Subdivision 5 – Enforcement, outlines the pecuniary penalty levels should the RE be found to contravene the obligation to conduct CDD in Part 4, Division 3. Sections 58 and 67 similarly set out an offence for contravention of the division and subsequent penalties that apply under Part 4, Division 4 – Obligations of FIs in relation to electronic currency transfers and Part 4, Division 5 respectively.

472. Section 81 under Subdivision 2 – Powers to enforce compliance, allows the FIU to apply to the Supreme Court for an order requiring compliance with the AML-TFS Act 2023. Section 82 provides the FIU with the ability to apply for restraining injunctions to stop a person from engaging in conduct in contravention of the Act.

473. Licences are suspended, withdrawn and restricted through the Registrar of Business. There does not appear to be a link between failures under the AML-TFS Act 2023 as a reason/trigger for taking action on a licence. However, this is addressed through the Registrar's ability to suspend or cancel a licence under section 18 of the Business Licences Act 2017 for the breach of any laws of the Republic.

Weighting and Conclusion

474. The AML-TFS Act 2023 sets out the powers that the supervisor has, and these are in line with R.27. **Recommendation 27 is rated compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

475. *Criterion 28.1(a)* - Section 7 of the AML-TFS Act 2023 includes a person operating a casino or conducting a lottery including those carried out over the internet, in the definition of reporting entity. As such they are subject to a regulatory and supervisory regime for compliance with AML/CFT requirements.

476. Nauru requires registration of all businesses under the Business Licence Act 2017 and the Business Names Registration Act 2018. The Gaming Act 2011 s 5 requires a person to apply for a gaming licence if they are conducting (d) a game to be played on a gaming machine; or (e) one or more table games. Both (d) and (e) describe activities commonly undertaken in casinos.

477. *Criterion 28.1(b)* - Section 88 of the AML-TFS Act 2023 requires the supervisory authority to ensure that relevant positions are held by persons that are ‘fit and proper’. That provision empowers the FIU or the supervisory authority to introduce criteria for fit and proper person controls. The introduction of the AML-TFS (Fit and Proper Person) Criteria 2023 has provided a mechanism for reporting entities to meet the requirements set out in s 88 of the AML-TFS Act 2023. The AML-TFS (Fit and Proper Person) Criteria 2023 specifies how to apply the fit and proper criteria and requires the RE to provide information to the Supervisory Authority.

478. The introduction of the AML-TFS (Fit and Proper Person) Criteria 2023 clause 5(4)(b) specifies that any individual who has been convicted of a criminal conduct, serious offence or terrorist offence is prevented from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. There is a gap, as the Criteria do not cover associates of persons convicted of a criminal offence.⁵⁴

479. Suitability of applicants to hold a gaming licence is outlined in s.7 of the Gaming Act 2011 and includes consideration of character, the financial position of the applicant and any other prescribed matter. Suspension of licence (s13) can occur by being charged with, or convicted of, an offence under s22 but this refers only to failures to comply with a licence condition.

480. There is however a gap as the legislative framework does not extend the fit and proper criteria to associates of persons convicted of a criminal offence.⁶⁷

481. *Criterion 28.1(c)* - The analysis in c.26.3 applies here as casinos are categorised as reporting entities. Under the AML-TFS Act 2023 the FIU is the designated supervisor for reporting entities (Section 69(b)). The AML-TFS (Record Keeping) Regulations 2023 requires that non-compliance is reported to the FIU. The AML-TFS Act 2023 provides a catchall empowering the FIU to have powers, functions and responsibilities under any other written law, and this is supported with the introduction of the AML-TFS (Record Keeping) Regulations 2023.

482. *Criterion 28.2* - Under the AML-TFS Act 2023, the FIU is the designated supervisor for reporting entities (Section 69(b)). Section 7 includes all categories of DNFBPs in the definition of reporting entity. The AML-TFS Act 2023 has expanded the definition of REs to include: real estate agents; a high value dealer; trust or company service provider when they are providing captured services; a legal practitioner or accountant where they prepare for or carry out

⁶⁷There were changes made to the AML/TFS (Fit and Proper Person) Criteria 2023 after the ME on-site that addressed beneficial owner and criminal associates.

transactions for their clients and creating, operating or managing bodies or legal arrangements. All AML/CFT obligations on REs extend to DNFBPs.

483. *Criterion 28.3* - The assessment team has been provided with the FIU Annual Supervisory Plan for 2022-2023 that outlines planned engagement with DNFBPs in the Republic. Nauru has begun awareness raising on AML/CFT issues for DNFBPs, however at the time of the on-site not all other DNFBPs had been subjected to monitoring for compliance for AML/CFT.

484. *Criterion 28.4(a)* - The analysis in c.27 applies here as DNFBPs are categorised as reporting entities. Section 78 empowers the FIU to conduct inspections of reporting entities to monitor compliance with the AML-TFS Act and enforce its provisions. The FIU can enter premises in order to examine records relevant to ensuring compliance with the AML-TFS Act. Section 78(3) sets out broad powers for the FIU to access and reproduce information and records.

485. *Criterion 28.4(b)* - The analysis in c.26 applies here as DNFBPs are categorised as reporting entities. Section 88 of the AML-TFS Act requires the supervisory authority to ensure that relevant positions are held by persons that are 'fit and proper'. That provision empowers the FIU or the supervisory authority to introduce criteria for fit and proper person controls. The introduction of the AML-TFS (Fit and Proper Person) Criteria 2023 has specifically addressed where a person must not be appointed as a Fit and Proper Person and includes where they have been convicted of criminal conduct, serious offences or terrorist offences. However, the criteria do not cover beneficial owners in line with the FATF definition or criminal associates.⁶⁸

486. *Criterion 28.4(c)* - Section 17 of the AML-TFS Act 2023 provides for sanctions of directors and senior management of REs which includes DNFBPs. Sections 48, 58 and 67 outline the offences and the penalties that may be applied when the reporting entity or person contravenes the Act.

487. *Criterion 28.5* - Nauru has provided the assessment team with the FIU Annual Supervisory Plan for 2022-2023. The plan includes engagements with the Casino operating in Nauru as well as plans to engage with legal practitioners. While the frequency of on-site and other monitoring activities appears appropriate in light of the risk and context of Nauru, the plan does not include all law firms.

Weighting and Conclusion

488. The AML-TFS Act makes provision for the supervision of DNFBPs and the FIU Annual Supervisory Plan for 2022-2023 includes plans to engage with DNFBPs as well as private partners. At the time of the on-site not all DNFBPs had been subject to monitoring for obligations under the AML-TFS Act 2023. There is also a gap in relation to the fit and proper criteria set out in the legislative framework to the extent that it does not capture *associates* of persons convicted of a criminal offence. **Recommendation 28 is rated largely compliant.**

⁶⁸ There were changes made to the AML/TFS (Fit and Proper Person) Criteria 2023 after the ME on-site that addressed beneficial owner and criminal associates.

Recommendation 29 - Financial intelligence units

489. Nauru was rated partially compliant with former R.26 in its 2012 MER. The report noted; dissemination was limited to ODPP rather than the police; there was a lack of a suitable data management system; guidance to RI on the manner and form of reporting was outdated; and there was a lack of autonomy to determine staffing.

490. *Criterion 29.1* - The FIU was first established within DBJC in 2004 under the AML Act 2004 and was then established under section 7 of the AML Act 2008. Part 5, Division 1, s 68 of the AML-TFS Act 2023 provides that the FIU established by Section 7 of the Anti-Money Laundering Act 2008 shall continue in existence within the Department of Justice and Border Control.

491. The AML-TFS Act 2023, s.69 sets out the functions of the FIU which include to receive and analyse suspicious activity reports and other information available to the FIU in order to identify activity that may constitute or may relate to a financial crime or criminal conduct and to carry out any further investigations the FIU considers necessary and to disseminate to domestic and foreign law enforcement bodies or foreign intelligence bodies information derived from analysis and reports of information received.

492. Section 77 sets out the powers relating to information exchange with domestic authorities, which include to collect information relevant to financial crime or criminal conduct, whether or not publicly available, including information from commercially available databases and databases maintained by the Government, and to request information from any law enforcement agency, supervisory authority and enter into any agreement or arrangement with any domestic law enforcement agency or supervisory authority regarding the exchange and sharing of information.

493. NFIU, NPF, Nauru Customs Service and Nauru Revenue Office are all part of the Department for Justice and Border control (JBC) and are able to exchange information without the need for a formal arrangement. In addition, the Secretary for Justice is the Registrar of Corporations, Registrar of Partnerships and Registrar of Trusts and no arrangement is needed to enable information exchange. The Secretary for Finance is the Registrar of Banks under the Banking Act 1975 and Nauru is also able to share information with the Registrar of Banks.

494. *Criterion 29.2 (a)* - The FIU is mandated under s 69(c) of the AML-TFS Act 2023 to receive suspicious activity reports (SAR). Section 59(1) sets out the obligation where the RE knows or suspects on reasonable grounds to the occurrence of one of the circumstances outlined in subsection 1(s59) related to financial crime or criminal conduct, it shall no later than 2 working days after the occurrence submit a suspicious activity report to the FIU in accordance with section 59(3). Section 29 of the Counter Terrorism and Transnational Organised Crime Act 2004 obligates a financial institution to inform the FIU about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to/ connected to a terrorist act.

495. *Criterion 29.2(b)* - Section 62 sets out the obligation to report within 7 days certain transactions, which include, an international electronic currency transfer, a domestic electronic currency transfer to the value of AUD 10,000 (USD 6,289) or more, cash transactions to the value of AUD 10,000 (USD 6,289) or more and a series of structured transactions which cause suspicion that the transactions were structured in such a way to avoid meeting the AUD 10,000 (USD 6,289) reporting threshold. Section 64 sets out the obligation of a supervisory authority or auditor to report suspicious activity to the FIU

496. *Criterion 29.3(a)* - Section 79(1) of the AML-TFS Act 2023 provides that the FIU may require a reporting entity to provide information relating to the reporting entity's obligations under the Act. In addition, section 77 of the AML-TFS Act 2023 sets out the powers relating to information exchange with domestic authorities, which include at s.77(b) the power to request information from any law enforcement agency, supervisory authority or instrumentality and at s.77(c) to enter into any agreement or arrangement with any domestic law enforcement agency, supervisory authority or instrumentality regarding the exchange and sharing of information. s.69 allows the FIU to receive and analyse suspicious activity reports and other information available to it.

497. *Criterion 29.3(b)* - Section 77(a) of the AML-TFS Act 2023 empowers the FIU to collect information relevant to financial crime or criminal conduct, whether or not publicly available, including information from commercially available databases and databases maintained by the Government.

498. *Criterion 29.4(a)* - The FIU regularly conducts operational analyses pursuant to subsections 69(c) and (d) of the AML-TFS Act 2023, which empower the FIU to conduct analysis on suspicious activity reports and other information available to it. The analysis identifies targets and determines links between targets and possible proceeds of crime, money laundering and terrorist financing. However, NFIU lacks real-time information from the foreign bank agency and the relevant FIU and therefore has limited opportunity to undertake *real-time* operational analysis, which is an ongoing concern for LEAs.

499. *Criterion 29.4(b)* - Subsections 69(f), (g) and (i) allow the FIU to identify, analyse and assess financial crime trends, patterns and risks of relevance to the Republic including in relation to new technologies, business practices and products; to coordinate with supervisory authorities and other authorities in the Republic that have a role in combatting financial crime or criminal conduct and to ensure that REs, supervisory authorities and the public at large are adequately informed about the trends, patterns and risks of financial crime and the appropriate responses. The Nauru FIU Strategic Analysis 2021 – 2023 included a number of case studies, identified the current major risk as the increase in drug offences and recommended mitigating measures in response. In addition, NFIU undertook strategic analysis, identifying trends in SARs and Electronic Transfer Reports. This analysis is published on the DJBC website.

500. *Criterion 29.5* - Section 77 of the AML-TFS Act 2023 empowers the FIU to collect, request and to enter into any agreement or arrangement with domestic authorities regarding the exchange and sharing of information. Section 86 of the AML-TFS Act 2023 states the FIU shall establish rules and policies relating to the protection and dissemination of information which shall be published in the Gazette. In practice the FIU has standard operating procedures which manage the disclosure of any report or information available to it. The preferred method is via a dedicated, protected and secure channel (email) with the report and attachments password protected. If sending a report via email is deemed a potential risk, the report and attachments are to be hand delivered in a sealed envelope.

501. *Criterion 29.6(a)* - Section 86 of the AML-TFS Act stipulates that the FIU shall establish rules and policies relating to the protection and dissemination of information which shall be published in the Gazette. In practice the FIU has enforceable standard operating procedures (SOP) which manage the security and confidentiality of information, including procedures for handling, storage, dissemination and protection of and access to information.

502. Section 66(6) of the AML-TFS Act covers non-disclosure of STRs and related information by the reporting entity and an auditor or supervisory authority of a reporting entity. Sections 90(6) and 91(3) requires that a foreign intelligence body or foreign law enforcement

body treat as confidential the report, information, or analysis provided by NFIU and not disclose it without the express permission of the FIU. Section 66(6) of the AML-TFS Act covers non-disclosure of STRs and related information by the reporting entity and an auditor or supervisory authority of a reporting entity. Sections 90(6) and 91(3) require that a foreign intelligence body or foreign law enforcement body treat as confidential the report, information, or analysis provided by NFIU and not disclose it without the express permission of the FIU.

503. *Criterion 29.6(b)* - Section 71(3) of the AML-TFS Act 2023 stipulates that appointed officers shall be endorsed by the Supervisor as having the necessary security clearance levels and understanding of their role and functions, including their responsibilities in handling and disseminating sensitive and confidential information before appointment. Section 87 of the AML-TFS Act has non-disclosure requirements for a person who is or has been the Supervisor or an officer of the FIU. All staff recruited sign a confidentiality agreement, take oath under public service standards for confidentiality and are subject to Police background checks.

504. *Criterion 29.6(c)* - The FIU Standard Operating Procedures have a section that provides for limited access to facilities and information and to information technology systems. The Supervisor is the administrator with access consent to FIU files on an ICT server and in order to access the ICT server the Supervisor has exclusive password access.

505. *Criterion 29.7* - The FIU has two staff members that perform FIU functions as provided for under the AML-TFS Act 2023. The Financial Intelligence Supervisor is the head of the FIU. The Supervisor reports to the Secretary for Justice and Border Control. NFIU has statutory provisions establishing its independence and autonomy. It is not evident, in the context of Nauru, that NFIU has the capacity to carry out its functions freely, and to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference.

506. *Criterion 29.7 (a)* - Section 74 of the AML-TFS Act 2023, states the FIU shall perform all such functions and exercise all such powers under this Act or any written law independently and for avoidance of doubt, no person shall give directions or obstruct the FIU from acting independently in carrying out its functions and powers under this Act and the FIU shall have its own budget as part of the budget of the Department for Justice and Border Control.

507. *Criterion 29.7(b)* - Section 77(c) of the AML-TFS Act 2023 empowers the FIU to enter into any agreement or arrangement with any domestic, law enforcement, supervisory authority or instrumentality regarding the exchange and sharing of information. For the purpose of any agreement or arrangement with foreign counterpart regarding the exchange of information, section 91 requires the approval of cabinet. This requirement for cabinet approval may place limits on NFIU's independence and autonomy. However, Nauru states it is first and foremost a constitutional requirement and that the approval of cabinet is procedural. To date, Cabinet has endorsed all NFIU recommendations for bilateral arrangements.

508. *Criterion 29.7(c)* - The Supervisor and other officers of NFIU report to the Secretary for Justice and Border Control for administrative purposes. The Secretary may from time-to-time issue administrative directions to the FIU. As noted above, section 74(4), for avoidance of doubt, no person shall give directions or obstruct the FIU from acting independently in carrying out its functions and powers under this Act. Furthermore, s 74 (5), states the FIU shall have its own budget as part of the budget of the Department for Justice and Border Control. As noted in IO.6 (chapter 3) this separation of the FIU is recent, with the legislative provisions having been in place only since 2023. The FIU's independence was therefore not in place for the majority of the period of review (2018-2023) for this ME. The Assessment Team is of the view that NFIU

requires further time before it can demonstrate it is operationally independent and autonomous.

509. *Criterion 29.7(d)* - Sections 71(2) and (3) of the AML-TFS Act 2023 empower the NFIU Supervisor to appoint an authorised person to exercise powers, duties and functions of the NFIU subject to the direction and supervision of the Supervisor. However, this independence has only been exercised at the behest of the Secretary for Justice and Border Control.

510. *Criterion 29.8* - Nauru's unconditional application for Egmont Membership was submitted on 9 May 2022. Nauru asserts it is fully engaged in the application process.

Weighting and Conclusion

511. Nauru has a robust legal framework establishing NFIU. However, NFIU lacks real-time information limiting its ability to conduct real-time operational analysis. While NFIU has statutory provisions establishing its independence and autonomy, it is not evident in the context of Nauru that the FIU has the capacity to carry out its functions freely, and to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference. **Recommendation 29 is rated partially compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

512. In its 2012 MER Nauru was rated partially compliant with former R.27. The significant deficiencies included the lack of knowledge of the application of AML Act 2008 and POCA 2004, very limited ML investigations, and no TF investigation.

513. *Criterion 30.1* - Nauru has established the National Strategy for AML/CFT 2022-2025 which aims to improve AML/CFT investigation, prosecution, and asset forfeiture mechanism. Nauru Police Force (NPF) is the competent authority responsible for investigating all criminal offences, including ML, TF, and predicate offences. According to Nauru Police Force Act 1972, Criminal Procedure Act 1972, CTTOC, Illicit Drugs Control Act 2004, NPF is authorised to take general investigative measures for preventing and detecting offences (as referred in R.31) such as searching, seizing and obtaining records or documents, though no specific provisions relate to ML/TF or predicate offences. In addition, Nauru Customs has the nature of a law enforcement agency but may only investigate offences under the Customs Act.

514. *Criterion 30.2* - NPF is the only law enforcement agency investigating ML/TF offences in Nauru and is empowered under various legislation to undertake general investigations, including applying for a warrant to search, a restraining order, a production order, and seizing.

515. According to POCA 2004, the police officer may apply to a Resident Magistrate for a production order of a property-tracking document or property-tracking documents for serious offences (section 79). With a production order, the police officer is authorised to inspect the document, take extracts from it, print it, make copies of it, or keep the document (section 81). NPF are able to conduct financial investigations of predicate offences, ML and TF. In addition, the Secretary for Justice is also empowered to apply to the court for a monitoring order in which a reporting entity provides information about transactions (section 87). Under section 321 of the Customs Act 2014, Customs may collect, use or disclose information about border-crossing craft and persons for the purpose of investigation. Customs also refers cases to NPF for financial investigation.

516. *Criterion 30.3* - A police officer may apply for a production order to obtain a property-tracking document (section 79 of POCA 2004). A police officer may apply for a warrant to search the person, the land, or the building for a tainted property with reasonable grounds of certain circumstances and may seize the property (sections 35, 36, and 85 of POCA 2004. In the event of an emergency, a police officer can apply for a search warrant via telephone or other means of communication (section 35(5) of POCA 2004. A police officer may search and seize without a warrant if he obtains the consent of the person or the occupier of the land or premises (section 35A and 84A of POCA 2004).

517. Under POCA 2004, the Secretary for Justice may apply *ex parte* to the Supreme Court for a restraining order against tainted property under certain conditions to prevent any dealing, transferring, or disposal of the property (section 48). The Secretary for Justice may also apply for a monitoring order (section 87) and, where a person is convicted of a serious offence, a forfeiture order (section 11). The time frame for granting a monitoring order is not specified in the POCA. Nauru has advised that in most cases seizing or freezing of properties is done as a matter of urgency, as established by precedent. Regulation 50 of the AML-TFS (Financing of Terrorism and Proliferation Financing) Regulations 2023 provides for the DPP to make an *ex parte* application against the funds, property or assets of a designated person or group with the determination to be made by the Court expeditiously.

518. A Customs officer is authorised to seize and detain goods suspected to be certain risk goods or evidence of the commission of certain offences (section 210 of Customs Act 2014). An authorised officer may be directed to apply for a production order or search warrant to obtain a property-tracking document (section 46 of the Mutual Assistance in Criminal Matters Act) (as referred in R.31).

519. In addition, NFIU assists NPF in identifying and tracing proceeds of crime. Under AML-TFS Act 2023, NFIU is obliged to enquire into conduct regarding financial crime and to conduct related inquiries, investigations, analysis, and oversight (section 69).

520. *Criterion 30.4* - NPF is the sole law enforcement agency investigating ML/TF offences and officers from relevant authorities assist in predicate offence investigations.

521. Officers authorised by Nauru Fisheries and Marine Resources Authority have the power to stop, enter and search any vehicle or aircraft, without a warrant, on the reasonable ground of an offence against Fisheries Act 1997; seize or detain vessels, vehicles, and aircraft. Officers authorised by Minister for Justice under Business Licence Act 2015 have the power to enter and inspect a business. Tax officers under Revenue Administration Act 2014 may seize goods in certain circumstances. Immigration Act 2014 also empowers authorised officers, including immigration officers, to enter and search without a warrant, and question persons on certain circumstances.

522. *Criterion 30.5* - NPF is the competent law enforcement agency for the investigation of corruption offences. NPF has general investigative powers and is authorised to seize tainted property. The Secretary for Justice may apply for a restraining order and a forfeiture order on conviction

Weighting and Conclusion

523. The time frame in which the court will grant an application for a monitoring order, or, in the case of conviction, a forfeiture order is not stated in the POCA 2004. **Recommendation 30 is rated largely compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

524. In its 2012 MER Nauru was rated largely compliant with former R.31. The relevant authorities have general investigative powers. The general search warrant powers prescribed in the Criminal Procedures Act 1972 are outdated and effective measures of investigating ML, TF, and predicate offences were not demonstrated.

525. *Criterion 31.1* - As outlined in R.30, NPF is the primary competent authority responsible for investigating ML, TF, and predicate offences in Nauru.

526. *Criterion 31.1(a) the production of records*: Several competent authorities are empowered to obtain records or documents.

527. AML-TFS Act 2023: Nauru FIU has the power (1) to collect any information considered relevant to financial crime or criminal conduct whether or not publicly available, request information from any law enforcement agency, supervisory authority or instrumentality (section 77); (2) to reproduce and request records or information from reporting entity (sections 78).

528. POCA 2004: A police officer may apply to a Resident Magistrate for a production order requiring a person to make a property-tracking document available for inspection (section 79) if the person has been convicted of a serious offence or there are reasonable grounds for suspecting the person has committed a serious offence. The production order only applies to natural persons and corporate bodies (section 84). It is unclear if this extends to DNFBPs and other legal persons. In addition, the Secretary for Justice may apply for a monitoring order requiring a financial institution to provide information about transactions (section 87). Additionally, the Secretary for Justice may direct a person in charge of a Government department or statutory body to give or disclose a document or information relevant to a serious offence or the making of forfeiture order or restraining orders (section 93). This applies to documents in the possession or under the control of a person in charge of a government department or statutory body, or to which the person has access.

529. CTTOC Act 2004: The immigration, customs or police officer may require the production of any documents relating to the craft or any travel or identity documents of a person on the craft (section 70(3)(d)) in relation to a people smuggling offence.

530. *Criterion 31.1(b) the search of persons and premises*: NPF and customs officers have the power to search persons and premises. Provisions relating to searching exist in relevant legislation, as described below.

531. POCA 2004: A police officer may apply for a warrant to search the person, the land or the building for tainted property and documents and seize them (sections 35, 36 and 85). A police officer may search and seize without a warrant if he obtains the consent of the person or the occupier of the land or premises (sections 35A and 84A).

532. Criminal Procedure Act 1972: A police officer is authorised to search arrested persons and examine a person in lawful custody charged with an offence (sections 15 and 15A) and may detain and search a person without a warrant in certain circumstances (section 16). A police officer is authorised under a search warrant to search a building, ship, aircraft, or vehicle and seize evidence of any offence (section 75). This provision appears to be broad enough to seize and search anything necessary to conduct an investigation into any offence under any legislation in Nauru.

533. Illicit Drugs Control Act 2004: A police officer may search a person or place and seize any evidence relating to an offence under the Act (sections 19 and 29). The search and seizure may be carried out without a warrant in emergencies (section 30). In addition, under certain circumstances a Customs officer may stop, detain and search a person (section 25) or enter and search a place with a warrant (section 28).

534. Mutual Assistance in Criminal Matters Act: An authorised officer (designated by the Minister of Justice) may be directed to apply for a search warrant for the tainted property and may seize tainted property (section 44). The authorised officer may also apply for a production order or search warrant to obtain documents (sections 46). Section 45 authorises the Minister for Justice to apply for a restraining order against property for a serious offence.

535. AML-TFS Act (2023): A police officer may search for and seize a frozen asset by Supreme Court order (section 117) where there is reasonable risk the asset will dissipate. For the purpose of executing mutual legal assistance, the Minister may direct the Secretary for Justice to apply for a warrant to enter and search the premises and remove any document, material or other thing (section 94 and 95).

536. Customs Act: A Customs officer may search a person at the place under warrant or search such a person for dangerous items when executing the search warrant and seize a thing referred to in the warrant or any dangerous item found (section 198 and 199). A Customs officer may search a person on/embarking/disembarking a craft arriving or departing from Nauru or still in a Customs place after arrival, if he reasonably suspects hidden items relating to Customs offences or dangerous items and may seize such items if found (section 170 and 171).

537. CTTOC Act 2004: The immigration, customs or police officer may search a craft within Nauru and anyone and anything on it (Section 70(3)(b)) in relation to a people smuggling offence.

538. *Criterion 31.1(c) taking witness statements*: Nauru 2012 MER (c.28.2) indicates the police are entitled to take statements from witnesses and suspects in investigations and prosecutions of ML/TF or predicate offences. Police powers to take statements stem from common law and Judge Rules 1967. Nauru advised that taking statements is part of the police powers under section 23 of the NPF Act 1972. Taking witness statements is not specifically mentioned under section 23 of the Act, but the police are authorised to take lawful measures in the execution of their duties. Nauru further advises that the manner in which police take statements is prescribed under the Police Standing Orders.

539. Section 90 of the Criminal Procedure Act 1972 requires the filing of charges and information to be accompanied by statements, but there is no statutory authority for the police to take witness statements in general. CTTOC Act 2004 allows the immigration, customs or police officer to question a person on board a craft on the reasonable suspect of the craft being used to commit the offence of people smuggling (section 70(3)(c)). The CTTOC Act also empowers an authorised officer to investigate and make enquiries on a premise in relation to offences relating to nuclear material (section 53(1)(a)). Section 70 empowers an immigration, customs or police officer to question a person on board a craft where there is suspicion that the craft is being used in relation to a people smuggling offence.

540. Under section 23 of Illicit Drugs Control Act 2004, a police officer outside the Customs area or a customs officer in Custom area may stop and question a person who:

- a. has arrived in, or is intending to depart from Nauru as a passenger or crew member;

- b. is the master or commander of a craft that has just arrived in, or is about to depart from Nauru; or
- c. is arriving in, or departing from or within any customs-controlled area.

541. *Criterion 31.1(d) seizing and obtaining evidence:* NPF has powers to seize under relevant legislation, as described below:

542. Section 117 of AML-TFS Act (2023) provide that a police officer may search for and seize a frozen asset by the Supreme Court order where there is reasonable risk the asset will dissipate.

543. Sections 36 and 84A of POCA 2004 provide that a police officer may seize tainted property and documents.

544. Section 75 of the Criminal Procedure Act 1972 states that under a search warrant an authorised police officer or other person may seize evidence of any offence. The provision under section 75 appears to be broad enough to seize and search anything necessary to conduct an investigation into any offence under any legislation in Nauru.

545. Illicit Drugs Control Act 2004: A police officer may search a suspected person, enter places and seize any illicit drug, controlled chemical or equipment, evidence relating to the offence or property derived from the offence (sections 19, 29 and 30).

546. Section 70(3)(f) of CTTOC Act 2004 provides that an immigration, customs or police officer may seize and detain anything found on the craft that appears to be evidence of an offence against the Act.

547. In addition, the Secretary for Justice may direct a person in charge of a Government department or a statutory body to give or disclose to the Secretary for Justice a document or information relevant to a serious offence (section 93 of POCA 2004). This applies to documents in the possession or under the control of the person, or to which the person has access.

548. *Criterion 31.2(a) Undercover operations:* It appears that NPF and Customs have the authority to conduct undercover operations under Illicit Drugs Act 2004. Section 37 of Illicit Drugs Act 2004 allows the Commissioner of Police or the Chief Collector Customs to authorise a qualified person who is not a police or customs officer to perform or exercise their legitimate function or power. The authorisation shall be made in writing, and the term of authorisation shall not exceed 3 years. Section 36 further provides for the protection of informants and undercover police officers or customs officers. However, there is no explicit provision or legal authority for undercover activities to be conducted by police or customs officers.

549. *Criterion 31.2(b) Intercepting communications:* Under section 15 of Illicit Drugs Act 2004, a police officer may apply to the Resident Magistrate for authority to enter a place to covertly monitor and record, by any means, the conduct and communications, including telecommunications of a suspected person. In addition, section 16 empowers a police officer to place tracking devices in or on any place or goods. There are no other provisions which explicitly authorise the police to intercept communications to investigate ML, TF and other predicate offences.

550. *Criterion 31.2(c) Accessing computer systems:* According to section 80(3) of POCA 2004, a police officer, under a production order, is allowed to (1) use a computer on which the document is held; (2) obtain the password; (3) use any computer software necessary to access the document. It applies to serious offences which includes offences under the AML-TFS Act (2023) and CTTOC (Section 3 of POCA 2004). Section 78 of the AML-TFS Act 2023 authorises

the Nauru FIU to use or cause to be used any computer system or data processing system on a reporting entity's premises to examine data contained in or available to the system as well as to reproduce any record from the data.

551. *Criterion 31.2(d) Controlled delivery:* Section 30 of the Counter Terrorism and Transnational Organised Crime Act 2004 allows an authorised officer to use controlled delivery of property to gather evidence against an offence in the Act or identify a person. 'Authorised officer' means the Commissioner of Police, or a police officer authorised by the Commissioner of Police, or a person authorised by the Minister for Justice (definition of section 2). Under this section the authorised officer may allow the property to enter, leave or move through Nauru.

552. Section 17 of the Illicit Drugs Control Act 2004 also provides for any officer authorised by the Minister to carry out controlled delivery relating to an offence under this Act. There are no other provisions which explicitly authorise the police to use controlled delivery to investigate ML, TF and other predicate offences.

553. *Criterion 31.3 -* The competent authorities in Nauru can identify if accounts are held or controlled by natural or legal persons. The relevant authorising provisions do not provide for a time limit for obtaining or providing information of accounts, but if this information is provided under a search warrant, provision is immediate.

554. The AML-TFS Act 2023 empowers Nauru FIU to collect and request information as stated in c.31.1. Under POCA 2004, NPF may obtain a document for inspection through a production order (section 79). Secretary for Justice is also entitled to require a financial institution to provide information about transactions upon a monitoring order (section 87).

555. The production order may be applied *ex parte* (section 79 of POCA 2004). There are explicit prohibitions from disclosing information concerning the existence or the operation of monitoring orders (section 91 of POCA 2004). There are no requirements outlined in the above provisions with respect to conducting investigations that require notice to the owner.

556. *Criterion 31.4 is met.* According to section 69(g) of AML-TFS Act 2023, one of NFIU's functions is to coordinate with other authorities in combatting financial crime or criminal conduct. NFIU has the power to enter into agreement or arrangement with domestic LEAs or supervisory authorities to exchange and share information (section 77). However, NFIU only exchanges and shares information with domestic agencies that have entered into agreements or arrangements. NFIU has signed MOUs with the Nauru Police Force (NPF), the Nauru Revenue Office (NRO) and Customs.

Weighting and Conclusion

557. The Nauru Police Force (NPF) has the necessary power to investigate ML/TF and predicate offences. However, there is no explicit provision regarding undercover operations conducted by LEAs. Controlled delivery⁶⁹ is only conducted by NPF in cases of drug offences and offences under the Counter Terrorism and Transnational Organised Crime Act 2004. **Recommendation 31 is rated largely compliant.**

⁶⁹ After the onsite and before the Plenary, Nauru enacted the *Anti-Money Laundering and Targeted Financial Sanctions (Amendment) Act 2024*, to address this deficiency. The amendments were not reviewed by the assessment team as part of the ME process.

Recommendation 32 – Cash Couriers

558. In its 2012 MER, Nauru was rated partially compliant with the former SR.IX. The 2012 report noted that the legal framework for cross-border reporting was overlapping and confusing, and many gaps existed in implementing the declaration system. The declarations under POCA 2004 did not apply to unaccompanied luggage, postal items, or cargo. Information on declarations was only shared with FIU upon request. There was no designed competent authority to request and obtain details of the origin of the currency/BNI and its intended use. There was no sanction relating to the cross-border transportation of currency for ML or TF

559. *Criterion 32.1* - Nauru has a declaration system for cross-border transportation of currency and BNIs. Both the POCA 2004 and the Customs Act provide for declaration requirements, but there seems to be a discrepancy between the items they each require to be declared.

560. Section 96 of POCA 2004 confirms that any person entering or leaving Nauru with more than AUD 5,000 (USD 3,145) in cash, bearer negotiable instruments, or precious metals or precious stones including gold, silver, diamonds or sapphire on their person or in their luggage must make a declaration in the form prescribed by the regulations to 'an authorised officer'. Customs officers, police officers, quarantine officers, and immigration officers have been appointed as authorised officers.

561. Section 96A further provides the declaration requirement applies to physical transportation, and Regulation 4 of the Proceeds of Crime (Miscellaneous) Regulations 2023 provides that physical transportation includes on a person, in the person's cargo or luggage, or by mail. The Proceeds of Crime (Border Declaration Form) Regulations 2023 requires cash, BNIs and precious metals or stones to be declared in fiat currency, namely Australian dollars (legal tender in Nauru), and does not include foreign currency equivalents.

562. The Customs Act requires that a person importing or exporting 'goods' needs to make a declaration to Customs, including all information of the goods (defined in section 2 as all kinds of movable personal property). The declaration may be made in verbal, written or electronic form. A passenger may be required to produce a prescribed document or declaration of the person's identity, travel movements, or entitlement to air or sea travel (section 163 of Customs Act). In addition, Customs (Prohibited Exports) Order 2023 prohibits the exportation, by luggage or cargo, of cash exceeding AUD 5,000 (USD 3,145) without the approval of the Chief Collector of Customs. But there are no explicit provisions relating to foreign currency or bearer negotiable instruments.⁷⁰

563. *Criterion 32.2* - Nauru operates a declaration system for any person entering or leaving Nauru with more than AUD 5,000 (USD 3,145) in cash or negotiable bearer instruments as described section 96 of POCA 2004. It does not explicitly extend to the equivalent in foreign currency although Nauru indicates in practice it is understood to apply to foreign equivalents. According to section 96(2) of POCA 2004 and the Proceeds of Crime (Border Declaration Form) Regulations 2023, all passengers are required to fill out a 'Border Declaration Form'. The

⁷⁰ "Bearer Negotiable Instruments" and foreign currency are regulated in Regulation 3 of Proceeds of Crime (Border Declaration Form) (Amendment) Regulations 2024, which took effect on 28 March 2024, after the time period covered by this report.

Immigration Departure and Arrival forms explicitly cover foreign currency, BNI and precious metals and stones.

564. *Criterion 32.3* - Nauru adopts a written declaration system.

565. *Criterion 32.4* - In order to determine whether the person has any currency, negotiable bearer instruments or precious metals or stones required to declare, sections 96(4)(5) and 96(A)(4) of POCA 2004 provides that an authorised officer (designated by the Minister) may, with the use of force as necessary to examine any person's article or luggage and search the person, mail or cargo with reasonable grounds of suspecting that person fails to make a declaration or makes a false declaration. According to the Proceeds of Crime (Miscellaneous) Regulations 2023 established under POCA 2004, authorised officers are empowered to request and obtain further information (section 5) and ascertain the origin, purpose and intended use of cash and BNIs (section 6).

566. The Customs Act empowers a Customs officer to question (1) a passenger on a craft relating to the craft, its voyage and any goods that are or have been carried by the craft (section 23); (2) a person entering or leaving Nauru regarding possession of dutiable, prohibited, uncustomed, or forfeited goods and the nature, origin, value, or intended destination of the goods described (section 160). Regulation 6 of the Proceeds of Crime (Border Declaration Form) Regulations 2023 covers the intended use of the goods. If the person refuses to answer or the officer is not satisfied with the answer, the customs officer, with a reasonable cause of suspecting an offence of the Customs Act, has the power to detain that person for up to 4 hours (section 165).

567. *Criterion 32.5* - Under section 96(3) of POCA 2004, it is an offence for a person leaving or arriving in Nauru and carrying more than AUD 5,000 (USD 3,145) cash, or BNI, or precious metals or stones on his person or in his luggage, not to make a declaration or to make a declaration that the person knows is false or misleading in a material particular. The person will be liable to a fine not exceeding AUD 20,000 (USD 12,579) or an imprisonment term not exceeding 2 years or to both. In addition to these penalties Section 96A(3) also provides in the case of a body corporate a fine not exceeding AUD 50,000 (USD 31,447); and for both a person and a body corporate the forfeiture of the cash, BNI, precious metals or stones.

568. In addition, section 243 of the Customs Act 2014 makes it an offence to knowingly or recklessly make a false declaration or produce or deliver any documents that are erroneous in any material particular. The penalties range from fines not exceeding AUD 3,000 (USD 1,887) to AUD 30,000 (USD 18,868) or imprisonment for no more than 6 months for an individual and fines not exceeding AUD 5,000 (USD 3,145) to AUD 50,000 (USD 31,447) for a body corporate and for a person or body corporate. In addition to these fines/imprisonment, the person/body corporate is also liable to a fine not exceeding more than three times the value of the goods to which the offence relates. The sanctions under the POCA and the Customs Act appear proportionate and dissuasive.

569. *Criterion 32.6* - Section 96B of POCA 2004 requires that an authorised officer is obliged to report to NFIU where he suspects on reasonable grounds that (1) a declaration has not been made as required; (2) a false or misleading declaration was made. As provided by Section 96A of POCA 2004, the declaration process is applicable to travellers who travel across borders, to mail and cargo. Sections 60 and 74 of the Customs Act 2014 also provide for the declaration process to apply to mail and cargo transportation. However, the authorised officer is not required to make

information obtained through declarations/disclosure process available to NFIU.⁷¹ According to Standard Operating Procedure-Processing the Arrival and Departure of Passengers, false declarations or disclosure should be reported to FIU by using a secure channel and in which electronic means (Email) is preferred. The reporting procedures outlined in this SOP are only applicable to travellers who travel across borders and do not apply to mail or cargo.

570. According to section 77 of AML-TFS Act 2023, NFIU has the power to request declaration information obtained by Customs and to exchange and share information with authorities that have entered into any agreement or arrangement (MOU). NFIU has signed an MOU with Customs.

571. *Criterion 32.7* - According to Nauru National Strategy for AML/CFT 2022-2025, the AML Official Committee (AMLOC) is established and comprises NFIU, NPF, Customs, Revenue Office, Department of Justice and Border Control, Department of Environment, Nauru Fisheries and Marine Resources Authority and the Department of Foreign Affairs. AMLOC meets regularly to discuss and share strategies or ideas and help the stakeholders to implement their obligations. In addition, Nauru Customs has a regular coordination meeting with NPF and NFIU. Nauru Customs will discuss and coordinate with relevant authorities such as Nauru Immigration Office, Passports Section, and Quarantine Section on an ad-hoc basis when there are operational or border issues. There are also monthly Section Heads' meetings for discussion on operational matters.

572. *Criterion 32.8* - Any currency or negotiable bearer instrument can be seized and detained if 'an authorised officer' (as designated by the Minister) has reasonable grounds to suspect (1) it is derived from a serious offence; (2) intended for use in a serious offence; (3) there has been a failure to make a declaration; (4) a false or misleading declaration has been made (section 96 and 97 of POCA 2024).

573. Currency or any negotiable bearer instrument may be detained for up to 28 days (section 98 POCA 2004). The court may order its continued detention, subject to certain conditions being met, for no longer than 3 months, but the total period of detention may not exceed 2 years from the date of the first order made.

574. The Customs Act 2014 generally authorises a Customs officer or police officer to detain and search a person, with the reasonable cause of suspecting items hidden, uncustomed, prohibited goods, or relevant evidence (section 171). The officers also have the power to seize a thing found while searching (section 176). It further provides that a Customs officer is authorised to seize and detain suspected tainted property, without a warrant, during a search, inspection, audit, or examination under (1) the Customs Act; (2) the Anti Money Laundering Act 2008; or (3) Part 6 of the Proceeds of Crime Act 2004, which relates to reporting of imports and exports of cash (section 191). The property seized and detained would not be returned until relevant investigations were complete or 7 days after seizure and detention (section 194).

575. *Criterion 32.9* - Under POCA 2004, a person must make a declaration in the form to 'an authorised officer', and the authorised officer is obliged to report to NFIU where a declaration has not been made as required, or a false or misleading declaration was made. The Proceeds of Crime (Miscellaneous) Regulations 2023 requires authorised officers to report the suspicion of the

⁷¹ The POCA (Border Declaration Form) Regulations have been amended since the ME on-site, to include the requirement for Customs to provide a copy of each Border Declaration form to NFIU.

commission of an offence including ML/TF to NFIU or NPF. The Proceeds of Crime (Border Declaration Form) Regulations 2023 requires the declarations to be maintained and kept for a period of 7 years.

576. Sections 188 to 190 of the Customs Act allow Customs to retain a document or record presented on entry or required to be produced and make copies of the documents reasonably believed to be evidence of an offence under this Act, further, to retain the above documents. It is not clear whether these provisions extend to the situation where there is the suspicion of ML/TF.

577. Nauru advised that declaration information/reports are manually stored.⁷² NFIU may receive the above reports as POCA required and request information relating to the declaration from Customs. Section 84 of AML-TFS Act (2023) requires FIU to maintain all records for at least 7 years. FIU also has the power to provide or disclose any report or information to foreign governments, law enforcement agencies, and international organisations (sections 89 to 91 of AML-TFS Act (2023)).

578. *Criterion 32.10* - Nauru Customs has an electronic entry processing system which only can be accessed by registered users. Customs have legal obligation of keeping records of transmission through the Customs electronic entry processing system (section 151 of Customs Act). The record described shall be kept for 7 years or for any other prescribed period. Under the Customs Act it is an offence for an employee of Nauru Customs to disclose, use or disseminate any information from Customs Service (section 259 of Customs Act).

579. NFIU is required by AML-TFS Act (2023) to establish rules and policies relating to the protection and dissemination of information (section 86). NFIU is also required to keep all information or matter confidential (section 87).

580. It is unclear whether the authorised officer to whom the declaration is made under POCA 2004 has a security mechanism to protect their declaration information (physical or electronic) and to prevent accidental or unauthorised dissemination. However, Nauru advises that the provisions in the Customs Act also apply to the authorised officer under the POCA, as this person will be a Customs Officer, and an MOU between the FIU and Customs included confidentiality provisions. In addition, Regulation 9 of the Proceeds of Crime (Miscellaneous) Regulations 2023 provides that a person receiving information in accordance with the Regulations regard the information as confidential and not disclose it unless required by law.

581. Section 10 of the Proceeds of Crime (Miscellaneous) Regulations 2023 requires the competent authorities' enforcement of the Regulations not to affect trade payment or capital movement.

582. *Criterion 32.11* - Nauru makes it an offence to deal with, including removing from Nauru and bringing into Nauru, criminal property which includes currency or BNIs related to ML/TF or predicate offences (sections 4 and 10 of the AML-TFS 2023). This offence does not apply to foreign currency, as discussed in Criterion 32.1. It further provides that the penalty for a natural person

⁷² Since the on-site, Nauru has implemented the ASYCUDA System for electronic retention of declaration of goods imported in to and exported out from Nauru. This System was on trial during the on-site and the Customs Tariff Act 2014 was amended for the implementation of the ASYCUDA System prior to the on-site.

committing the offence of dealing with criminal property is a fine not exceeding AUD 60,000 (USD 37,736) and/or imprisonment for a term not exceeding 5 years. The penalties appear dissuasive and proportionate in the context of Nauru.

583. Currency, BNI or precious metals or stones derived from tainted property or intended for use in the commission of a serious offence may be seized and detained by an authorised Customs officer under POCA 2004.

584. Nauru has provisions regarding forfeiture in various legislations. The Secretary for Justice may apply for a forfeiture order if a person is convicted of a serious offence (section 11 of POCA 2004). With respect to terrorist property, the Minister may apply to the court for a forfeiture order (section 23 of the CTTOC Act 2004).

Weighting and Conclusion

585. Nauru has a declaration system for cross-border transportation of currency and BNIs. The declaration does not explicitly extend to foreign currency⁷³. There is a mechanism for reporting the declaration and its related information to FIU. There is no provision regarding the channels for Customs to report suspicious activities in the cargo transportation to NFIU. It is not clear whether the authorised officers are required to make information obtained through declarations/disclosure process available to FIU. **Recommendation 32 is rated largely compliant.**

Recommendation 33 – Statistics

586. In 2012 MER Nauru was rated partially compliant with former R.32. The report noted, Nauru lacks systems for keeping key AML/CFT statistics and statistics of the implementation of the overlapping cross-border reporting regimes have not been kept and made available to the FIU.

587. *Criterion 33.1(a)* - Statistics on STRs (received and disseminated) are maintained by NFIU and published in FIU annual report, and weekly report to the Chairperson for the AML Governance Council and Secretary for Justice on work undertaken by FIU. Section 84(2)(a) of the AML-TFS Act 2023, specifies it is one of the duties of FIU to maintain statistics in relation to suspicious activity reports received and disseminated.

588. *Criterion 33.1(b)* - Section 84(2)(b) of the AML-TFS Act 2023 specifies it is one of the duties of FIU to maintain statistics in relation to ML/TF investigations, prosecutions and convictions. Nauru has recorded nil prosecutions for ML. There are no TF investigations, prosecutions or convictions in Nauru

589. *Criterion 33.1(c)* - For Statistics on property frozen, seized and confiscated section 84(2)(c) of the AML-TFS Act 2023 specifies it is one of NFIU's duties to maintain statistics in relation to property frozen, seized and confiscated. Property has been frozen, seized and confiscated in the context of predicate offences and NFIU has maintained statistics in relation to this.

⁷³ The POCA (Border Declaration Form) Regulations have been amended since the ME on-site, to include the requirement for Customs to provide a copy of each Border Declaration form to NFIU.

590. *Criterion 33.1(d)* - For Statistics on mutual legal assistance or other international requests for cooperation made and received will be maintained by the FIU and Office of Director of Public Prosecutions. NFIU has provided to the assessment team statistics in relation to requests for MLA or international cooperation. It is not clear how LEAs collect and maintain statistics on police to police, customs to customs, international cooperation.

Weighting and Conclusion

591. Nauru's legislative framework allocates responsibilities for the maintenance of statistics in relation to AML/CFT. However, in the context of Nauru there is no relevant AML/CFT activity to record. It is notable though that in areas that have proven relevant to Nauru's context, such as international cooperation, statistics are not comprehensive across agencies. **Recommendation 33 is rated largely compliant.**

Recommendation 34 – Guidance and feedback

592. In 2012 MER Nauru was rated partially compliant with former R.25. The report noted limited guidance was issued, which did not reflect current legislative obligations. NFIU also did not have policies, procedures or systems in place to provide feedback, no information, education sessions delivered to explain STR obligations, no constructive feedback provided and there were no strategies, policies or procedures to develop, issue guidance or engage with the financial sector or DNFBPs.

593. *Criterion 34.1* - Under section 85 AML-TFS Act 2023, NFIU shall, for the purpose of assisting reporting entities, issue guidelines to reporting entities.

594. Section 85(e) requires NFIU to provide feedback to reporting entities and other relevant agencies relating to their compliance to AML-TFS Act 2023.

595. Provisions to provide feedback are set out in the NFIU standard operating procedures. Nauru stated, in practice, NFIU provides feedback in-person during meetings, via email or over the telephone with the reporting entities in the jurisdiction. All guidelines are publicly available on the NFIU website.

Weighting and Conclusion

596. **Recommendation 34 is rated compliant.**

Recommendation 35 – Sanctions

597. In 2012 MER Nauru was rated partially compliant with former R.17. The report noted, the AMLA is not clear whether the FIU can issue administrative directions and orders, the FIU cannot take out measures specifically against directors or senior management and there is not a full range of compliance measures, such as proportionate penalty notices or a range of fines and effectiveness has not been established.

598. *Criterion 35.1* - The primary sanction for failure to adhere to AML/CFT requirements is, under Section 48 AML TFS Act 2008 in the case of an individual, a fine not exceeding AUD 50,000 (USD 31,447), or imprisonment not exceeding 15 years or both, and, in the case of a body corporate, a fine not exceeding AUD 500,000 (USD 314,465). Under Sections 32, 58, 67 of the AML-TFS Act 2023, offences related to the contravention of CDD or reporting obligations apply for natural persons to a fine not exceeding AUD 200,000 (USD 125,786) or up to a

maximum of twenty years imprisonment and for non-natural persons, a fine of AUD 1,000,000 (USD 628,930). These sanctions are dissuasive and proportionate.

Recommendation 6. Targeted Financial Sanctions – terrorism and terrorist financing.

599. The primary legislative framework for compliance with R.6 is contained in the Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023. Under Section 125 of the AML-TFS Act 2023, provides the legal regime for criminal sanctions via regulations for natural persons to a fine not exceeding AUD 200,000 (USD 125,786) or up to a maximum of twenty years imprisonment and for non-natural persons, a fine of AUD 1,000,000 (USD 638,930). Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023, empowers FIU to implement this regime. The sanctions are both dissuasive and proportionate

Recommendation 8. Non-Profit Organisations

600. Under Section 10 of the Counter Terrorism and Transnational Organised Crimes Act 2004, legal persons can be fined up to AUD 10,000,000 (USD 6,289,308) if convicted of terrorism financing. Additionally, Section 22 of the Registration of Associations Act 2020 provides grounds for the cancellation of an Associations certificate if “a key person, beneficiary or associate non-profit organisation has contravened a provision of the . . . Counter Terrorism and Transnational Organised Crimes Act 2004”, and Section 46 provides grounds, where an association, its executives or key person contravenes any provision of the Act is liable to, for an individual member of the executive or key person, a fine not exceeding AUD 20,000 (USD 12,578) or a term of imprisonment not exceeding 3 years or both, and, for the association, a fine not exceeding AUD 100,000 (USD 62,893), which is dissuasive and proportionate to the predicate offence of terrorism financing.

Recommendations 9-23. Preventive Measures

601. The AML-TFS Act 2023 (AML-TFS) provides supervisory and regulatory authorities with criminal, civil and administrative sanctions for failure to implement AML/CFT measures.

602. The following criteria are explicitly sanctioned by reference to section 32 of the AML Act 2008.

FATF Recommendation /Criteria	Offence in Anti-Money Laundering Act 2008	Offences in Business Licences Act 2017 & Regulations 2017, 2018 and 2020	Business Names Registration Act 2018 & Regulations 2018
9	Section 25 provides that no other obligation to secrecy or restriction on disclosure of information may inhibit the imposition of sanctions for non-compliance with the with the AML Act		
10.1	Section 26 (1), 26 (5)		
10.2 - 10.3	Section 27 (1) provides requirements enforceable under Section 32		
10.5	Section 27 (3) provides requirements enforceable under Section 32		

TECHNICAL COMPLIANCE

10.6	Section 27 (2) provides requirements enforceable under Section 32		
10.7	Section 27 (5) & 27 (6) provides requirements enforceable under Section 32		
10.12 - 10.13	Section 27 (7) & 27 (8) provides requirements enforceable under Section 32		
11	Section 35 (6)	Section 29 (4)	Section 30 (4)
12	Section 27 (4)- 27(8) provides requirements enforceable under Section 32		
13.1-13.2	Section 28 provides requirements enforceable under Section 32		
14		Section 6 provides requirements enforceable under Section 25	
16.1-16.16	Section 27 (1b) provides requirements enforceable under Section 32		
17.1	Section 29 provides requirements enforceable under Section 32		
20	Sections 17 (4), s.19		
22	Same provisions as R.10.1 - 10.3, 10.5-10.7, 10.12-10.13, 11, 12, 13.1, 13.2, 17.1 for all DNFBPs		
23.1	Same provisions as R.20 for all DNFBPs		

603. The following criteria are explicitly sanctioned by reference to sections 48, 58, 67 of the AML-TFS Act 2023.

FATF Recommendation/ Criteria	AML – TFS Act 2023
9	Section 15 provides that no other obligation to secrecy or restriction on disclosure of information may inhibit the imposition of sanctions for non-compliance with the AML – TFS Act
10.1	Section 35 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.2 – 10.3	Section 37 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.4	Section 37 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.5	Section 37 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or

	(b) for a body corporate, to a fine not exceeding \$1,000,000.
10.6	Section 38 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.7	Section 41 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.8 – 10.10	Section 38 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.11	Section 39 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.12 -10.13	Section 41 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.16	Section 34 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.17	Sections 43 and 44 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.18	Section 45 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.19	Section 31 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
10.20	Section 32 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
11	Section 29 (3)
12	Section 43 (2) provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
13.1-13.2	Section 46 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.

13.3	Section 47 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
15	Section 24 provides requirements enforceable under Section 80
16.1-16.8	Section 52 provides requirements enforceable under Section 58
16.9 - 16.12	Section 54 provides requirements enforceable under Section 58
16.13 - 16.15	Section 55 provides requirements enforceable under Section 58
16.16 - 16.18	Section 57 provides requirements enforceable under Section 58
17	Section 33 provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
18	Section 26 provides requirements enforceable under Section 80
19	Section 43 (2) provides requirements enforceable under Section 48 (a) for an individual, to a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or to both; or (b) for a body corporate, to a fine not exceeding \$1,000,000.
20	Section 59 provides requirements enforceable under Section 67
21.2	Section 66 provides requirements enforceable under Section 67
22	Same provisions as R.10, 11, 12, 15, 17 for all DNFBPs
23.1, 23.3-23.4	Same provisions as R.20 for all DNFBPs

604. In addition, sanctions are provided under section 37 of the Beneficial Ownership Act 2017 where a person shall be liable upon conviction to a fine not exceeding AUD 50,000 (USD 31,447) or to a term of imprisonment not exceeding 3 years or to both.

605. Administrative sanctions are provided under Section 18 of the Business License Act 2017 where a registrar may suspend or cancel a business license for a range of conditions.

606. *Criterion 35.2* - Section 17 of the AML-TFS Act 2023 specifies relevant sanctions for directors and senior management of reporting entities that are not natural persons.

607. Section 76 of the CTTOC extends corporate liability to an ‘employee, agent or officer of a corporation’. ‘Officer’ is defined in the Corporations Act 1972 section 2 and includes ‘any director, secretary or employee of the corporation’. Section 76(2) of CTTOC further expands on the conduct of an employee, agent or officer which can be attributed to a corporation to include provisions for acting within the scope of the person’s employment; actual or apparent authority; or with the consent or agreement of a director, servant or agent of the company, which would then cover directors or senior management of a financial institution or DNFBP. In addition, Section 72 of the CTTOC includes an ‘aiding and abetting’ provision which may be sufficient to hold directors and managers accountable.

Weighting and Conclusion

608. **Recommendation 35 is rated compliant.**

Recommendation 36 – International instruments

609. In its 2012 MER, Nauru was rated non-compliant for R.35 and partially compliant for the former SR.I on the basis that Nauru has not ratified Vienna and Palermo conventions, nor had they fully implemented them.

610. *Criterion 36.1* - Nauru has been a party to the Terrorist Financing Convention since 24 May 2005. Nauru ratified Vienna, Palermo, and Merida Conventions on 12 July 2012.

611. *Criterion 36.2* - In Nauru, the ratified convention does not automatically form part of domestic law. Most provisions of the Vienna Convention, Palermo Convention and Terrorist Financing Convention have been implemented through Illicit Drugs Control Act 2004, Counter Terrorism and Transnational Organised Crime Act 2004 (CTTOCA), AML-TFS Act 2023, Proceeds of Crime Act 2004 (POCA), Mutual Assistance in Criminal Matters Act 2004 (MACMA), and Extradition Act 1973. There are deficiencies in articles 15 and 17 of Vienna Convention, and articles 24, 25 and 26 of Palermo Convention, which affect the implementation of these conventions.

612. The UNCAC report for the review cycle 1 dated 24 February 2015 (<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1501263e.pdf>) and the report for the review cycle 2 dated 15 June 2021 (https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650.pdf) are noted. The UNCAC Implementation Review Mechanism (IRM) assessment identifies deficiencies in the implementation of articles 14, 52, 53, 54, 55, 57 and 58 of Merida Convention. In the context of Nauru, these gaps are considered to be minor in relation to C.36.2.

Weighting and Conclusion

613. Nauru has signed and ratified all international conventions, but there are some minor gaps in the implementation of these conventions. **Recommendation 36 is rated largely compliant.**

Recommendation 37 - Mutual legal assistance

614. In the 2012 MER, Nauru was rated largely compliant for R.36 and partially compliant for the former SR.V. The main deficiencies included no authorised officer executing mutual legal assistance (MLA) affairs had been designated under the Mutual Assistance in Criminal Matters Act 2004 (MACMA), and there were gaps in the range of ML predicate offences and TF offence.

615. *Criterion 37.1* - The Mutual Assistance in Criminal Matters Act 2004 (MACMA) is the primary statute for mutual legal assistance in Nauru. In addition, the Proceeds of Crime Act 2004 (POCA), AML-TFS Act 2023, and Counter Terrorism and Transnational Organised Crime Act 2004 (CTTOC) also contain MLA provisions in criminal matters. MACMA should be applied with priority. These acts provide the legal framework and a broad range of MLA.

616. Section 6 and 7 of MACMA allow Nauru to make and receive requests for MLA in 'a criminal matter', which is defined in section 3 as an offence punishable with imprisonment for a term of not less than 12 months or a fine of no less than AUD 5,000 (USD 3,145) had the conduct occurred in Nauru. ML and TF offences and most predicate offence categories meet this definition of 'a criminal matter' (see R.3).

617. The MACMA provides assistance relating to the taking evidence and production of documents and other articles, search and seizure, arrangements for persons to give evidence or assist investigations, custody of persons in transit, and assistance regarding proceeds of crime. Under sections 18 to 20, 44 and 46, an 'authorised officer' may be designated, in writing, by the Minister of Justice to apply for a search warrant or production order and seizure.

618. Part 3 of POCA 2004 provides assistance relating to the search for and seizure of tainted property of foreign serious offences. 'Serious offence' is defined in section 3 of POCA 2004 as (1) an offence punishable with imprisonment for not less than 2 years or the imposition of a fine of more than AUD 5,000 (USD 3,145); (2) financial crime and criminal conduct under AML-TFS 2023; (3) offences under CTTOC.

619. Part 6 of AML-TFS Act 2023 provides for MLA concerning ML, including search warrants, property tracking and monitoring orders, and restraining and forfeiture of property. The Minister is obliged to execute the MLA request (section 94). MLA is provided in a 'financial crime' or 'criminal conduct', including ML, TF and offences punishable with imprisonment for a term of more than 2 years or a fine of more than AUD 5,000 (USD 3,145) had the conduct occurred in Nauru (section 4).

620. The above-mentioned acts vary in the scope of criminal cases in which MLA applies, but ML and TF offences and most predicate offence categories are covered. The Acts do not expressly require assistance to be provided "rapidly", but there are not unreasonable processing periods or undue restrictions for MLA. In addition, Regulation 21 of the MACMA Regulations 2023 provides for urgent requests to be expedited.

621. *Criterion 37.2* - Under MACMA and AML-TFS Act 2023, the Minister for Justice and Border Control is responsible for MLA and if a foreign jurisdiction makes a request to the court for MLA, the court shall refer the request to the Minister. The Minister may designate an 'authorised officer' or direct the Secretary for Justice to execute the request. The Minister may direct the Secretary for Justice to immediately execute the request (section 94 of AML-TFS Act 2023).

622. The MACMA Regulations 2023 provide for a priority procedure for urgent MLA requests. Where a request is made urgently, the Minister, court or any other person authorised may direct any person or authority to summarily deal with the substance of the applications be attended to without the requirement to follow all the intricate procedures (Section 21). Under the Mutual Assistance in Criminal Matters Guide, Nauru authorities are able to contact foreign local authorities directly.

623. Under the MACMA Regulations 2023, the Secretary is responsible for establishing and maintaining a Register of MLA requests (Section 19). Form 22 'Register of requests from foreign countries received by Nauru for international assistance in criminal matters', which is included in the MACMA Regulations 2023 must be filled out for all MLA requests. Given the limited incoming and outgoing requests, Nauru advised MLA cases can be managed and incorporated into the existing case management system for the Office of the Director of the Public Prosecutions.

624. *Criterion 37.3* - Under MACMA, the MLA may be provided in whole or in part and subject to any conditions to any conditions the Minister determines (section 8). The Minister may refuse or postpone the request because granting the request would likely prejudice the sovereignty, national security, or other essential public interest of Nauru or prejudice the conduct of an investigation or proceeding in Nauru; the requested action is inconsistent with the Constitution; the requested document or material is prohibited from disclosure under Nauru's obligations to another jurisdiction (section 9 of MACMA and section 99 of AML-TFS Act 2023). In this regard, there are no unreasonable or unduly restrictive conditions in the legislative provisions.

625. *Criterion 37.4* - MLA requests can only be refused in certain circumstances referred to in Criterion 37.3. Under section 99 of AML-TFS Act 2023, a request cannot be refused solely on the ground that it relates to an offence that relates to matters of taxation or currency. Subsection 79(2) of CTTOC explicitly states that no requests for MLA in relation to an offence under the CTTOC may be declined solely on the basis of bank secrecy. There are no specific restrictions on MLA based on fiscal matters or the grounds of secrecy requirements of FIs, or DNFBPs specified in MACMA, POCA and the AML-TFS Act 2023.

626. *Criterion 37.5* - Section 61 of MACMA requires the contents, or that fact of MLA shall not be disclosed unless necessary for the performance of duties, or the Minister has given the approval. In addition, intentional disclosure of the contents or fact of MLA is an offence punishable by a fine or imprisonment or both. Section 94 of POCA has similar provisions, requiring a document or information held by government departments should not be further disclosed except for certain circumstances and make it an offence to disclose without legitimate purposes.

627. *Criterion 37.6* - MACMA, POCA, and AML-TFS Act 2023 allow Nauru to provide MLA in a 'criminal matter', 'serious offence' or 'financial crime' or 'criminal conduct'. These definitions of matter or offences (see Criterion 37.1) do not require dual criminality.

628. *Criterion 37.7* - Dual criminality is not a requirement under MACMA, POCA, and AML-TFS Act 2023. MLA is provided when the acts or omissions described in the request constitute an offence in Nauru.

629. *Criterion 37.8* - The MACMA provides general powers to competent authorities for the taking evidence and production of documents and other articles, search and seizure, arrangements for persons to give evidence or assist investigations, custody of persons in transit, and assistance regarding proceeds of crime. The scope and execution of above powers shall be in accordance with the provisions of POCA and AML-TFS Act 2023.

630. Sections 42, 43, 61, and 86 of POCA provide specific powers for production, application of an interim restraining order, search, and seizure. The competent authority may apply for a monitoring order requiring reporting entities (FIs and DNFBPs) to provide information about transactions (section 87 of POCA). AML-TFS Act 2023 provides for MLA concerning ML, including search warrants, property tracking and monitoring orders, and restraining and forfeiture of property.

631. There is no legal provision which prohibits or limits the domestic competent authorities from exercising all powers available to them in response to a request. However, the deficiencies in R.31 also apply to this criterion.

Weighting and Conclusion

632. Nauru has a legal framework for MLA. Little weight is placed on the minor gaps mentioned in R.3 and 31 due to the context of Nauru. **Recommendation 37 is rated largely compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

633. In the 2012 MER, Nauru was rated largely compliant for R.38. It was noted that given the dual criminality, the gap in the ML offence could compromise the effective implementation of MLA.

634. *Criterion 38.1* - Sections 38 to 46 of MACMA provide for the assistance regarding proceeds of crime. Under section 38, the Minister for Justice is empowered to apply for the registration of (1) a foreign forfeiture order, for a serious offence; (2) a foreign pecuniary order, for a serious offence, which is an order made under the law of a foreign jurisdiction for a person to pay to the foreign jurisdiction an amount representing the value (or part of the value) of what the person gained from an offence against the law of that jurisdiction (section 3). The Minister may direct an authorised office to apply to the court for a search warrant or a restraining order against property for a serious offence, or a production order to obtain possession of the property-tracking document upon requests of a foreign jurisdiction (sections 44 to 46).

635. Section 3 of MACMA adopts the definition of ‘tainted property’ of POCA which means property that (1) is used in, or in connection with, the commission of a serious offence; (2) is intended to be used in, or in connection with the commission of a serious offence; (3) proceeds of that offence; (4) criminal property under AML-TFS Act; (5) terrorist property under CTTOC Act. The definition under AML-TFS and CTTOC Act, includes property directly or indirectly, derived or realised from, obtained, used, or intended to be used in connection with criminal conduct. The definition covers laundered property, proceeds, and instrumentalities used in or intended for use in ML offences, predicate offences or TF offences as discussed in C.4.1.

636. With respect to property of corresponding value, section 23 of POCA 2004 allows the court may, instead of ordering the forfeiture of the property, order the person to pay to the Government an amount equal to the value of the property where the property cannot be made subject to the forfeiture order in certain circumstances discussed in C.4.1.

637. Division 2 of POCA provides that where under MACMA, the police officer is authorised to apply for search warrants for tainted property, the police officer may seize the tainted property (section 42,43). AML-TFS Act 2023 provides for MLA concerning ML, including search warrants, property tracking and monitoring orders, and restraining and forfeiture of property.

638. *Criterion 38.2* - Under subsection 38(1) and (2) of MACMA, the conviction of a ‘serious offence’ is a requirement for the Minister for Justice to apply for the registration of a foreign forfeiture or pecuniary order. Subsection 38(3) does not require a conviction to apply to register a foreign restraining order. Section 20(1) of the MACMA Regulations 2023 states that unless a law expressly requires a conviction of a person, any authorised person, or the court may accede to an application, request or order without the conviction of that person.

639. Section 94 of the AML-TFS Act permits the Minister for Justice to respond to an MLA request by a foreign State in relation to a financial crime, criminal conduct or TFS. It does not state that there is the requirement for a conviction. Section 97 provides for restraining or forfeiture of property of any person named in the request and also does not state that there is the requirement for a conviction. In the situations where the person is taken to have absconded in connection with an offence or dead, the court may order the forfeiture of their property (section 21(2) of POCA

2004). There are no provisions dealing with a situation where the perpetrator is unavailable or unknown.⁷⁴

640. It is not clear that the Minister for Justice has the authority to respond to all requests made on the basis of non-conviction forfeiture or confiscation. Nauru advised that it still facilitates assistance for MLA requests relating to non-conviction-based confiscation.

641. *Criterion 38.3* - Under MACMA and AML-TFS Act 2023, the Minister for Justice and Border Control is responsible for MLA. The Minister may designate an 'authorised officer' or direct the Secretary for Justice to execute the request. There is no provision or guideline concerning arrangements for coordinating seizure and confiscation actions with other countries.

642. Nauru's mechanism to manage and dispose of frozen, seized, or confiscated properties is referenced in c.4.4. In addition, under section 71 of POCA, where a foreign restraining order registered in the court under the MACMA, the Secretary for Justice may apply for a court order to direct Administrator (1) to take custody and control of property; (2) to manage or otherwise deal with the property or part in accordance with the directions of the court. Under section 74, if a foreign pecuniary penalty order is registered, the court may direct the Administrator to satisfy the order by a payment to Nauru out of the property.

643. *Criterion 38.4* - Section 40(3) of MACMA authorises the Minister for Justice to enter an arrangement with a foreign jurisdiction to share with that jurisdiction the amount forfeited under a registered foreign forfeiture order or paid under a registered foreign pecuniary order. The assessment team could not conclude from the text of this provision that confiscated properties resulting indirectly from coordinated law enforcement action can be shared.

644. Under section 100 of POCA, the money relating to confiscated assets under MLA will be deposited into "Confiscated Assets Fund". Monies from this fund can be disbursed or shared with other countries.

Weighting and Conclusion

645. Nauru is able to provide MLA with respect to identifying, detaining or seizing assets. The Nauru legal system is for conviction-based forfeitures and does not provide for the treatment of non-conviction forfeitures of MLAs from foreign countries. There are no procedures for coordinating actions with other countries. There are no provisions concerning a situation where the perpetrator is unavailable or unknown. **Recommendation 38 is rated partially compliant.**

Recommendation 39 – Extradition

646. In the 2012 MER, Nauru was rated partially compliant with the former R.39 and SR.V. The MER noted that Nauru did not sign any bilateral agreements for extradition and there were deficiencies with the ML offences.

647. *Criterion 39.1* - Extradition Act 1973 provides for the legal basis for extradition. The competent authority is the Ministry for Justice and Border Control. Nauru is able to execute

⁷⁴ The Proceeds of Crime (Miscellaneous) Regulations have been amended after the ME on-site to include provisions for a forfeiture order to be issued where the person is untraceable or unknown.

extradition requests related to ‘relevant offences’ with ‘designated countries’ (Section 5). ‘Relevant offences’ are defined as offences punishable with a term of imprisonment of 12 months or more, which includes both ML and TF. ‘Designated countries’ are the countries designated by the Cabinet Order and will be published in the Gazette (section 4). Nauru has designated 16 countries under the Extradition (Designated Countries) Order 2023.

648. The Procedure for Extradition is provided in the Extradition Guide, which was issued by the Secretary for Justice and Border Control. However, there is no procedure for prioritising extradition requests. Under the Extradition (Designated Countries) Order 2023, the Secretary for Justice shall maintain a Register of the extradition requests, which record all important activities, matters relating to the requests and keep a list of persons extradited into or out of Nauru.

649. Section 6 of Extradition Act 1973 provides general restrictions on extradition such as the offence is of a political character; or the offence is made on account of race, nationality or political opinions. There are no unduly restrictive conditions on the execution of requests.

650. *Criterion 39.2* - Section 5 of Extradition Act 1973 provides for the extradition of Nauru nationals accused of a relevant offence in the designated jurisdiction.

651. *Criterion 39.3* - Under Section 5 of Extradition Act, dual criminality is required and satisfied regardless of whether both Nauru and the designated countries place the offence within the same category of offence, or denominate the offence by the same terminology.

652. *Criterion 39.4* - Nauru has in place essential extradition procedures. There is a light simplified extradition process in place, in the Extradition Guide, which includes a flow chart that outlines the process for the issuance of a provisional warrant of arrest by the resident magistrate. However, this process still requires Ministerial approval. Nauru does not have mechanisms in place for direct transmission of requests for provisional arrests between appropriate authorities, extraditing persons based on warrants of arrests or judgements or a simplified process for consenting persons who waive formal extradition proceedings. Nauru advised that the existing system functions properly.

Weighting and Conclusion

653. Nauru has a legal framework for extradition. There is no procedure for prioritising extradition requests, and there are only light simplified extradition mechanisms. Considering the context of Nauru, these deficiencies were given less weight. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

654. In the 2012 MER, Nauru was rated partially compliant with R.40. The 2012 MER identified that (1) legislative restriction on the exchange of regulatory information and tax offence related information; (2) narrow range of formal and informal agreements with jurisdictions and relevant organisations; (3) in the absence of concrete examples of non-MLA international cooperation, effectiveness of current mechanisms difficult to assess.

655. *Criterion 40.1* - Part 5 Subdivision 4 (sections 89-93) of the AML TFS Act 2023 provides the legal basis for information exchange by NFIU on AML/CFT matters outside of the mutual legal assistance process. The provisions authorise NFIU, both as FIU and supervisory authority, to

cooperate in exchange of information and the competent authorities can provide international cooperation through NFIU under the Act. Further, Section 33 (1)(b) and (c) of the Business Name Registration Act, section 32 of the Business Licences Act 2017, division 3 of the Beneficial Ownership Act 2017 and part 8 of the Registration of Associations Act 2020 enable the Registrar, which belongs to DJBC, to disclose information to foreign government agency, with whom Nauru has entered into an agreement in information exchange, and to the extent permitted under the respective agreement. For the LEAs, Immigration and Customs are allowed to share information with the foreign counterparts by the respective acts (Section 35 of Passport Act 2011 and Section 319 and 320 of Customs Act 2014). While there is no specific provision to empower NPF to disclose information to its foreign counterparts, Nauru informed the Assessment Team that NPF has bilateral agreements to fulfil this requirement, Department of Finance (tax authority of Nauru) is responsible for information exchange on tax matter pursuant to Section 8(2) and 8(3) of Revenue Administration Act 2014 and the Automatic Exchange of Financial Account Information Act 2016 respectively.

656. Further, Nauru can exchange information using bilateral and regional arrangements. These platforms include Pacific Transnational Crime Network, Pacific Island Law Officers Network, Pacific Transnational Crime Coordination Centre, Pacific Island Chiefs of Police, Pacific Immigration Development Community, Oceania Customs Organisation, Fisheries Forum Agencies, Pacific Prosecutors Association, Pacific Islands Tax Administration Association and Pacific Financial Intelligence Community, South Pacific Regional Environmental Programme, Pacific Plant Protection Organisation, South Pacific Community and Interpol.

657. *Criterion 40.2(a)* - As described in 40.1, the relevant competent authorities in Nauru, including NFIU, the Registrar, LEAs (Immigration, Customs) and the Department of Finance have a lawful basis for providing cooperation (including AML-TFS Act 2023, the Business Names Registration Act 2018, the Business Licences Act, the Beneficial Ownership Act 2017, the Registration of Associations Act 2020, Passport Act 2011, Customs Act 2014, Revenue Administration Act 2014 and the Automatic Exchange of Financial Account Information Act 2016 respectively). While there is no specific provision to empower NFP to provide cooperation to its foreign counterparts, Nauru informed the Assessment Team that NFP has bilateral agreements to fulfil this requirement.

658. *Criterion 40.2(b)* - There is no provision to prevent the competent authorities from using the most efficient means to cooperate.

659. *Criterion 40.2(c)* - Competent authorities in Nauru use secure channels/networks in the transmission and execution of requests between them and their foreign counterparts, including those established by INTERPOL, PTCCC and UNCTAD.

660. *Criterion 40.2(d)* - The assessment team has no information on clear processes for the prioritisation and timely execution of requests for international cooperation (those other than MLA/Extradition – see R.38 and 39).

661. *Criterion 40.2(e)* - The relevant acts referred to in the sub-criterion 40.2(a) have provisions for confidentiality of the information received by the competent authorities: Section 86 and 87 of the AML-TFS Act 2023 for the FIU Section 33 (2) of the Business Name Registration Act/Section 32 (2) of the Business Licencing Act for the Registrar. Section 35 of Passport Act for

Immigration, Section 259 of Customs Act for Customs and Section 8(1) of Revenue Administration Act and Automatic Exchange of Financial Account Information Act for the Department of Finance.

662. *Criterion 40.3* - Section 91 of the AML-TFS Act enables NFIU to enter into arrangement or understanding with a foreign financial intelligence body (see Chapter 8) or a foreign law enforcement body, which has law enforcement functions and powers, but does not explicitly refer to a foreign supervision body and the assessment team was not informed of any events to probe Nauru's argument. The competent authorities in Nauru, including NFIU, have entered into a number of multilateral regional/international arrangements for cooperation (see c40.1).

663. *Criterion 40.4* - The competent authorities can provide feedback in a timely manner through direct response to overseas counterparts (e.g., email, or telephone), or regular bilateral meetings.

664. *Criterion 40.5* - Section 89 of the AML-TFS Act stipulates that the FIU should not refuse a request for assistance from a foreign government or international organisation due to the elements set out in c40.5 (a) to (d). However, the assessment team has no information on any legal basis for such conditions in relation to information exchange by other authorities beyond NFIU.

665. *Criteria 40.6* - Section 90 (6) and 91 (3) of the AML-TFS Act provide conditions for arrangement or understanding, which allow NFIU to share information with foreign FIUs and LEAs: including (a) restrictions on the use of the report, information or analysis for the purposes referred to in Section 90 (3) of the Act, (b) a stipulation that the report, information or analysis is to be treated in a confidential manner and not to be further disclosed without the express consent of NFIU, and (c) provisions concerning the uses to which the report, information or analysis may be put, and the other bodies with which the information may be shared. Such conditions are also required for a one-off disclosure under section 90(5). The Registrar, upon information exchange with foreign counterparts, shall ensure the necessary protections to protect confidentiality of the information are in place (Section 33(2) of the Business Names Registration Act, 32(2) of Business License Act, Section 40 of Registration of Associations Act). Section 319 (2) – (6) of the Customs Act also establishes necessary controls and safeguards, by setting criteria for Customs entering into agreement with its foreign counterparts. The Revenue Office of Nauru is also required to maintain secrecy when exchanging information with foreign counterparts, while the relevant section does not explicitly specify details of the safeguard (Section 8(3) of Revenue Administration Act 2014). However, the assessment team has no information on any legal basis for control or safeguards established for other authorities (NPF in particular) to ensure that the exchanged information is used by foreign counterparts only for the intended purpose, and not transferred to other foreign authorities without prior authorisation.

666. *Criteria 40.7* - As described in 40.6, Section 90(6) and 91(3) of the AML-TFS Act provide that information exchanged through international cooperation must be kept confidential where there is an arrangement or an understanding. Section 89 (3) of the Act provides that NFIU may refuse a request for assistance where in the opinion of NFIU the requesting foreign government or international organisation is not adequately able to protect the confidentiality of any information that has been requested. The Registrar, Customs and the Revenue Office shall ensure the necessary protections/condition for information exchange to protect confidentiality of the information to be exchanged are in place (see the analysis on criterion 40.6 above). However, the assessment team has no information on any legal basis for such confidentiality requirements

established with foreign counterparts by other authorities, including refusal of requests due to weak information protection of a requesting authority.

667. *Criterion 40.8* - Section 93 of the AML-TFS Act enables NFIU to use its power under Part 5 Division 2 Subdivision 1 and 2 for the purpose of gathering information to share with a foreign counterpart, and Subdivision 1 enables NFIU to request information from any law enforcement agency, supervisory authority or instrumentality. The tax authority in Nauru also is empowered to execute its power to gather information in response to inquiry from its foreign counterparts (Section 4 and 7(2) of the Automatic Exchange of Financial Account Information Act 2016, read together with Article 5 of the convention). Nauru informed the Assessment Team that the LEAs in Nauru are so empowered through bilateral arrangements with their foreign counterparts. However, the assessment team has no information on any legal basis for such power of other authorities, e.g., specific clauses of such agreements, to conduct inquiries on behalf of foreign counterparts and exchange information with them.

Exchange of Information Between FIUs

668. *Criterion 40.9* - NFIU has an adequate legal basis for providing cooperation under Section 89 of the AML-TFS Act.

669. *Criterion 40.10* - As described in c.40.4, while there is no specific requirement for NFIU to provide feedback to its foreign counterparts, NFIU can provide feedback through direct response to overseas counterparts or regular bilateral meetings.

670. *Criterion 40.11* - Section 90 (1) enables NFIU to disclose to a foreign financial intelligence body or a foreign law enforcement body any or all of the following (a) a report prepared or causes to be prepared by NFIU or received by NFIU, (b) any information derived from the report (c) any analysis the FIU conducts or causes to be conducted or (d) any other information NFIU receives. Additionally, section 93 provides that NFIU may use its powers to gather information domestically for the purpose of sharing the information with a foreign counterpart.

Exchange of Information Between Financial Supervisors

672. *Criterion 40.12* - NFIU has a function as a financial supervisor and can engage in an arrangement understanding or any mutual cooperation with similar foreign entities in other countries or international bodies on matters relating to financial crime or criminal conduct (Section 69 (i) of the AML-TFS Act). As described in 40.11, NFIU has a wide range of power to exchange information it has on AML/CFT with foreign FIUs or LEAs. Furthermore, NFIU can also cooperate with foreign governments and international organisations on matters related to its functions or powers (Section 89 (1) of the AML-TFS Act). However, it is not clear whether NFIU as an AML/CFT financial supervisor can exchange supervisory information, including regulatory and prudential information, with its foreign counterparts of financial supervisors without such arrangements, in case where its counterparts (foreign financial supervisors) are not FIUs or LEAs.

673. *Criterion 40.13* - Section 93 of the AML-TFS Act enables NFIU to use its power under Part 5 Division 2 Subdivision 1 and 2 for the purpose of gathering information to share with a foreign counterpart (foreign FIUs and LEAs, but not financial supervisors), and Subdivision 1 enables NFIU to require reporting entity to produce certain information (Section 79 of the AML-TFS Act).

674. *Criterion 40.14* - As described in 40.11, the FIU has a wide range of power to exchange information it has on AML/CFT, however, it is not clear whether NFIU as an AML/CFT supervisor

can exchange supervisory information, including regulatory and prudential information, with its foreign counterparts.

675. *Criterion 40.15* - As described in 40.8, Section 93 of the AML-TFS Act enables NFIU to use its power under Part 5 Division 2 Subdivision 1 and 2 for the purpose of gathering information to share with a foreign counterpart (foreign FIUs and LEAs, but not financial supervisors), and Subdivision 1 enables NFIU to request information from any law enforcement agency, supervisory authority or instrumentality. The assessment team has no information on any provisions which authorise/facilitate the ability of foreign counterparts to conduct inquiries themselves in Nauru.

676. *Criterion 40.16* - As described in 40.6, Section 90 (6) and 91 (3) of the Act provide conditions for arrangement or understanding requiring the prior consent of the requested financial supervisor (NFIU) for further disclosure of information.

677. *Exchange of Information Between Law Enforcement Authorities*

678. *Criterion 40.17* - There are no express provisions relating to information exchange between Nauru Police Force (NPF) and foreign counterparts. However, NPF and TCU are active members of regional multilateral platforms, i.e., PICP and PTCCC respectively, and also a member of INTERPOL which allows them to exchange domestically available information for intelligence and investigation in relation to ML, TF and predicate offences, although the INTERPOL channel has not been actively used. However, it is unclear if NPF have the authority to exchange investigative information with foreign counterparts which are not members of these platforms.

679. According to sections 319 and 320 of the Customs Act, Customs has the authority to share a range of information with foreign agencies. This includes financial transactions related to money laundering as well as intelligence analysis reports. Additionally, Customs can directly exchange information with foreign counterparts through the Oceania Customs Organisation.

680. *Criterion 40.18* - There are no provisions that enable law enforcement authorities to use their powers to conduct inquiries and obtain information on behalf of foreign counterparts even without MLA (see R.38.1).

681. *Criterion 40.19* - There are no provisions that prohibit law enforcement authorities from forming joint investigative teams. NPF has a bilateral instrument with the AFP. Nauru informed the assessment team of a case in 2022 where NPF and AFP conducted a joint cybercrime investigation.

Exchange of Information Between Non-Counterparts

682. *Criterion 40.20* - As described in 40.1, competent authorities can exchange information through NFIU under the AML-TFS Act, as NFIU is the point of contact of the international cooperation.

Weighting and Conclusion

683. NFIU is empowered to exchange information with foreign FIUs and financial supervisors. The competent authorities, including NFIU, the Registrar and LEAs, in Nauru can exchange information with their foreign counterparts and through regional arrangements. NPF has a bilateral instrument with the AFP, which allows for information sharing. Beyond these arrangements, the assessment team is not informed of information on a legal basis, or bilateral

cooperation/agreements in the some of the competent authorities, financial Supervisors and LEAs in particular, with their foreign counterparts. **Recommendation 40 is rated largely compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Nauru’s vulnerabilities in terms of capacity challenges, difficulties in relation to financial inclusion are not considered in any depth in the NRA. Broadly, inherent risks posed by various activities are not present, with the focus appearing to be on the lack of complaints and external oversight (c.1.1) The findings of the 2023 NRA materially differ from those in the 2018 NRA, but there is insufficient explanation of the rationale for the shifts in risks. The assessment team found that the 2023 NRA requires major improvements, and significant efforts are necessary to understand threats or vulnerabilities facing Nauru. (c.1.1). There is no identified cycle for general updates to the risk assessment or for responding to material changes (c.1.3) The mechanism for ongoing coordination on risks represented by the introduction of the National Strategy for AML-CFT is not yet tested, impacting the awareness raising with the private sector, and appropriate supervision to ensure reporting entities understand ML/TF risks (c.1.4). Nauru’s National AML/CFT Strategy 2022-2025 and the National Risk Assessment 2023 do not have a clear link between Nauru’s risks and the allocation of resources (c.1.5). Nauru has not used its provision for exempting an RE or class of REs or an activity or class of activities from any or all provisions relating to obligations of REs (c.1.6). Mechanism for applying simplified Due Diligence is not described in the Act and is not specified whether this is limited to situations where ML/TF risk is low (c.1.8). NFIU is empowered to conduct on-site and offsite inspections to FI and DNFBs, but at this stage such activities are minimal and at an early stage - focus is on raising awareness of AML/CFT obligations (c.1.9).
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Nauru’s National AML/CFT Strategy 2022-2025 has set milestone goals for pieces of work that are all in the 2023 calendar year and does not respond to the 2023 NRA (c.2.1). There is no information around coordination on matters relating to PF (c.2.4). There is negligible coordination or awareness of potential proliferation financing risks/issues raised by the Shipping Registry (c.2.4). It is not evident that competent authorities cooperate to ensure compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions (e.g. data security/localisation) (c.2.5).
3. Money laundering offence	LC	<ul style="list-style-type: none"> Designated predicate offences generally covered, with some gaps including illicit trafficking in stolen and other goods, and the coverage of indirect tax crimes (c.3.2). The penalties associated with market manipulation does not meet Nauru’s predicate offence threshold (c.3.2).
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> There are minor gaps in the application of predicate offences referred to in R.3 (C.4.2). A restraining order can only be applied against tainted property held by a person who is about to be charged or convicted of a serious offence. (c.4.2). There are no clear provisions regarding the procedures and measures of the ‘Administrator’ dealing with forfeited or seized

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		properties, although the court can decide on the management and disposal of properties (c.4.4).
5. Terrorist financing offence	C	<ul style="list-style-type: none"> The Recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> No process for identifying targets for designation based on the relevant UNSCR designation criteria. Minor gaps remain in relation to the procedures for the release of funds categorised as basic and extraordinary expenses, which are not set out in the AML-TFS Act 2023, in regulations or in other enforceable measures (c.6.7). NFIU has a link to the UNSC consolidated lists on its website for continual access. However, as set out below, the process of alerting changes in designations to competent authorities and reporting entities in Nauru is protracted and would likely take over 24 hours. This impacts implementation without delay.
7. Targeted financial sanctions related to proliferation	C	<ul style="list-style-type: none"> The Recommendation is fully met.
8. Non-profit organisations	LC	<ul style="list-style-type: none"> Measures and monitoring of NPOs are generic, not taking into account the TF risks of individual NPOs (c.8.3). Supervisory activities aiming at preventing misuse of NPOs for TF are limited in practice and not fully in a risk-based manner (c.8.4). It is not clear whether AMLOC works as a system to facilitate coordination between the relevant authorities for information gathering/sharing regarding abuse of NPOs for TF (c.8.5).
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> The Recommendation is fully met.
10. Customer due diligence	C	<ul style="list-style-type: none"> The Recommendation is fully met.
11. Record keeping	C	<ul style="list-style-type: none"> The Recommendation is fully met.
12. Politically exposed persons	C	<ul style="list-style-type: none"> The Recommendation is fully met.
13. Correspondent banking	C	<ul style="list-style-type: none"> The Recommendation is fully met.
14. Money or value transfer services	C	<ul style="list-style-type: none"> The Recommendation is fully met.
15. New technologies	LC	<ul style="list-style-type: none"> While Nauru requires VASPs to be licensed, the deficiencies in c26.3 flow through to R.15. There is no information to indicate that Nauru has identified and assessed risks emerging from VA activities or operations of VASPs (c.15.3(a)). VASPs are defined as FIs and included under RE regulatory requirements, but this is not a risk-based approach and there are no measures for maintaining vigilance for emerging activities in relation to VA/VASPs (c.15.3(b)). The AM-TFS (Fit and Proper Person) Criteria do not explicitly cover preventing criminals or associates from being a beneficial owner and regular checks to ensure continued compliance do not occur (c.15.4(b)). It is not clear that Nauru has specifically sought to ensure there are no natural or legal persons carrying out VASP activities without the requisite license or registration (c.15.5).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There is no specific provision that states that the occasional transactions designated threshold where VASPs are required to conduct CDD is USD/EUR 1000 and whether the equal application of AML/CFT provisions to VASPs covers the travel rule (c15.9(a)).
16. Wire transfers	C	<ul style="list-style-type: none"> The Recommendation is fully met.
17. Reliance on third parties	C	<ul style="list-style-type: none"> The Recommendation is fully met.
18. Internal controls and foreign branches and subsidiaries	C	<ul style="list-style-type: none"> The Recommendation is fully met.
19. Higher-risk countries	C	<ul style="list-style-type: none"> The Recommendation is fully met.
20. Reporting of suspicious transaction	C	<ul style="list-style-type: none"> The Recommendation is fully met.
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> The Recommendation is fully met.
22. DNFBPs: Customer due diligence	C	<ul style="list-style-type: none"> The Recommendation is fully met.
23. DNFBPs: Other measures	C	<ul style="list-style-type: none"> The Recommendation is fully met.
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> The 2023 NRA gives only a cursory analysis of legal persons' vulnerabilities to misuse for ML/TF. It additionally does not provide an analysis of the activities of the business sector in order to base a conclusion of risk (C.24.2). There does not appear to be a requirement to maintain the regulating powers of Corporations at the place of business. However, the regulating powers are provided for statutorily, as such there would only be a gap where a corporation changes their regulating powers (c.24.4) There is no explicit timeframe for which a corporation's register of members must be updated after a change in members takes place. This information is not required to be maintained on a timely basis (c.24.5) Nauru has deficiencies related to timely update or access to information and no clear legal foundation for enforcement of Beneficial Ownership (Identity and Declaration) Regulations 2023 (c.24.10). The Beneficial Ownership (Identity and Declaration) Regulations 2023 do not have proportionate or dissuasive sanctions (c.24.13).
25. Transparency and beneficial ownership of legal arrangements	LC	<ul style="list-style-type: none"> Enforcement of the requirement for a trustee to disclose their status to FIs and DNFBPs only extends to enforcement of reporting entities and does not extend to trustees. While there may overlap between reporting entities (lawyers acting as trustees), where the trustee is not a lawyer or other reporting entity, they would not be covered (c.25.3). There is liability assigned for included offences, however, many of the underlying duties required of Recommendation 25 (such as requiring the trustee to obtain and hold the information in c.25.1(a) and c.25.1(b)) are included in Trusts (Trustee Duties) Regulation 2023(3)(1), but it is not clear what the penalty is for violation of these duties (c.25.7). In regards to 25.1(b), outside a civil suit, there does not appear to be any penalties for non-compliance of Trusts (Trustee Duties)

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		Regulation 2023 Section 5. Sanctions are not proportionate and dissuasive for non-compliance with timely provision of the information (c.25.8).
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> The fit and proper criteria do not cover beneficial owners in line with the FATF definition and do not cover criminal associates (c.26.3). It is not clear that the supervision of the FI considers specific risks posed by its activities in Nauru (c.26.5). In relation to reviewing ML/TF risk profiles, there does not seem to be a trigger relating to major events or developments in the management and operations of the FI or group. Further, the FIU's activities have not yet demonstrated periodic review of the FI's business risk assessments (c.26.6).
27. Powers of supervisors	C	<ul style="list-style-type: none"> The Recommendation is fully met.
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> There is a gap in relation to the fit and proper criteria set out in the legislative framework to the extent that it does not capture beneficial owners in line with the FATF definition or <i>associates</i> of persons convicted of a criminal offence (c.28.1(b), c.28.4(b)). Not all DNFBPs have been subject to monitoring for compliance for AML/CFT (c.28.3). The FIU supervisory plan does not include all law firms (c.28.5).
29. Financial intelligence units	PC	<ul style="list-style-type: none"> NFIU lacks real-time information from the foreign bank agency and the relevant FIU and therefore has limited opportunity to undertake <i>real-time</i> operational analysis, which is an ongoing concern for LEAs (29.4(a)). While NFIU has statutory provisions establishing its independence and autonomy, it is not evident in the context of Nauru that the FIU has the capacity to carry out its functions freely, and to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference (c.29.7). For the purpose of any agreement or arrangement with foreign counterpart regarding the exchange of information, section 91 of the AML-TFS Act requires the approval of cabinet. This requirement for cabinet approval may place limits on the FIU's independence and autonomy (29.7(b)). Legislative provisions for the FIU's independence have been in place only since 2023. The FIU requires further time before it can demonstrate it is operationally independent and autonomous (29.7(c)).
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> The time frame in which the court will grant an application for a restraining order, monitoring order or forfeiture order is not stated in the POCA (c.30.3).
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> There is no statutory authority for the police to take witness statements (c.31.1(c)). There is no explicit provision for LEAs to conduct undercover operations (c.31.2(a)). Under the Illicit Drugs Act 2004 NPF may covertly monitor and record conduct and communications of a suspected person and use tracking devices, but there are no other provisions which explicitly authorise the police to intercept communications to investigate ML, TF and other predicate offences (c.31.2(b)). Controlled delivery is only conducted by NPF in cases of drug offences and offences under the CTTOCA 2004 (c.31.2(d)).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Relevant authorising provisions do not provide a time limit for identifying if accounts are held or controlled by natural or legal persons (c.31.3).
32. Cash couriers	LC	<ul style="list-style-type: none"> Nauru's declaration system for cross-border transportation of currency and BNIs does not explicitly extend to foreign currency (c.32.1, c.32.2). Unclear whether authorised officers are required to make information obtained through declarations or disclosure available to NFIU (c.32.6). Unclear channels for Customs to report to NFIU suspicious cargo transportation (c.32.6). It is not clear whether the Customs Act requirement for documents or records to be retained extends to situations where there is a suspicion of ML/TF (c.32.9). It is unclear whether the authorised officer to whom the declaration is made under POCA 2004 has a security mechanism to protect their declaration information and to prevent accidental or unauthorised dissemination (c.32.10).
33. Statistics	LC	<ul style="list-style-type: none"> In areas that have proven relevant to Nauru's context, such as international cooperation, statistics are not comprehensive across agencies. (c.33.1d)).
34. Guidance and feedback	C	<ul style="list-style-type: none"> The Recommendation is fully met.
35. Sanctions	C	<ul style="list-style-type: none"> The Recommendation is fully met.
36. International instruments	LC	<ul style="list-style-type: none"> Nauru has signed and ratified all international conventions, but there are some minor gaps in the implementation of these conventions (c.36.2).
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> The minor gaps in predicate offences referred to in R.31 have affected the application of MLA (c.37.8).
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> There are no provisions concerning a situation where the perpetrator is unavailable or unknown (c.38.2). It is not clear whether MLA requests may be made on the basis of non-conviction forfeiture or confiscation (c.38.2). There are no procedures for coordinating actions with other countries (c.38.3). It is not clear whether confiscated properties resulting indirectly from coordinated law enforcement action can be shared (c.38.4).
39. Extradition	LC	<ul style="list-style-type: none"> There is no procedure for prioritising extradition requests (c.39.1), and there are only light simplified extradition mechanisms which require Ministerial approval (c.39.4).
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> There are no clear processes for the prioritisation and timely execution of requests for international cooperation other than MLA/extradition (c.40.2(d)). There is no legal provision for the FIU to enter into an arrangement or understanding with a foreign supervision body (c.40.3). There are no conditions requiring that authorities (beyond the FIU) not refuse a request for assistance from a foreign government or international government due to the elements set out in c.4.05 (a)-(d) (c.40.5). There is no legal basis for control or safeguards established for the authorities beyond NFIU to ensure that the exchanged information is used by foreign counterparts only for the intended purpose, and not transferred to other foreign authorities without prior authorisation (c.40.6).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • No legal basis for confidentiality requirements established with foreign counterparts by other authorities beyond the FIU, including refusal of requests due to weak information protection of a requesting authority (c.40.7). • No legal basis for power of other authorities beyond the FIU, to conduct inquiries on behalf of foreign counterparts and exchange information with them (c.40.8). • It is not clear whether the FIU as an AML/CFT financial supervisor can exchange information with foreign supervisors that are not FIUs or LEAs (c.40.12 - 40.16). • It is unclear if NPF has the authority to exchange investigative information with foreign counterparts which are not members of regional multilateral platforms (c.40.17). • There are no provisions that enable law enforcement authorities to use their powers to conduct inquiries and obtain information on behalf of foreign counterparts even without MLA (c.40.18).

GLOSSARY

AFP	Australian Federal Police
AML	Anti-Money Laundering
AMLOC	Anti-Money Laundering Officials Committee
AML-TFS Act 2023	Anti-Money Laundering and Targeted Financial Sanctions Act 2023
AUD	Australian Dollar
AUSTRAC	Australian Transaction Reports and Analysis Centre
BNI	Bearer Negotiable Instruments
BO	Beneficial Ownership
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CT	Counter Terrorism
CTTOC Act 2004	Counter Terrorism and Transnational Organised Crime Act 2004
DJBC	Department of Justice and Border Control
DNFBP	Designated Non-Financial Business or Profession
DPMS	Dealers in Precious Metals and Stones
ECDD/EDD	Enhanced Customer Due Diligence/Enhanced Due Diligence
ECT	Electronic Currency Transfer
FI	Financial Institution
FIU	Financial Intelligence Unit
IFTI	International Funds Transfer Instruction
LEA	Law Enforcement Agency
MACMA 2004	Mutual Legal Assistance in Criminal Matters Act 2004
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NFIU	Nauru Financial Intelligence Unit
MVTS	Money Value and Transfer Services
NFMRA	Nauru Fisheries and Marine Resources Authority
NFVA	Nauru Foreign Vessel Administration
NPF	Nauru Police Force
NPO	Non-Profit Organisation
NRA	National Risk Assessment
NRO	Nauru Revenue Office
ODPP	Office of the Director of Public Prosecutions
OECD	Organisation for Economic Co-operation and Development
PEP	Politically Exposed Person
PF	Proliferation Financing
POCA 2023	Proceeds of Crime Act 2023
PTCCC	Pacific Transnational Crime Coordination Centre
RE/RI	Reporting Entity/Reporting Institution
RONLAW	Republic of Nauru's Online Legal Database
SAR	Suspicious Activity Report
SMR	Suspicious Matter Report
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Providers
TCU	Transnational Crime Unit
TF	Terrorist Financing
TFC	Terrorist Financing Convention
TFS	Targeted Financial Sanctions

GLOSSARY

TOC	Transnational Organised Crime
UNSCR	United Nations Security Council Resolution
VA	Virtual Assets
VASP	Virtual Asset Service Provider
WMD	Weapons of Mass Destruction

ANNEX A – PREDICATE OFFENCES FOR ML

	Predicate Offence	
1.	Participation in an Organised Criminal Group and Racketeering;	CTTOC s. 55 (Participation in Organised Criminal Group) Penalty: Maximum 20 years in prison
2.	Terrorism, including terrorist financing;	CTTOC Article 10 (Terrorism Financing) Penalty: life in prison (natural person) or fine not exceeding AUD 10,000,000 (legal person) CTTOC Article 10A (Terrorism Act) Penalty: Life Imprisonment
3.	Trafficking in human beings and migrant smuggling;	CTTOC s. 57-58 (Human Trafficking) Penalty: Maximum 15 years imprisonment CTTOC s. 64 (Migrant Smuggling): Penalty: Maximum 15 years imprisonment
4.	Sexual exploitation, including sexual exploitation of children;	Crimes Act s. 107 (Engaging Person to Provide Commercial Sexual Services) Penalty: life imprisonment, with no chance of parole or probation for first 12 years. Crimes Act s. 108 (Holding Interest in Premises Used for Commercial Sexual Services) Penalty: 6 years imprisonment Crimes Act s. 109 (Compelling Prostitutions and Giving of Earnings from Prostitution) Penalty: Life Imprisonment, with 15 years to be served without parole. Crimes Act s. 118 (Causing etc. child under 16 years old to engage in sexual activity) Penalty: Imprisonment term of at least 15 years to be served without parole or probation Crimes Act s. 119 (engaging child to provide commercial sexual services) Penalty: Imprisonment term of at least 15 years to be served without parole or probation Crimes Act s.120 (Obtaining benefits from commercial sexual services of a child)

		Penalty: Imprisonment term of at least 15 years to be served without parole or probation
5	Illicit trafficking in narcotic drugs and psychotropic substances;	<p>Illicit Drugs Control Act 2004, Part 2 s.4 (Unlawful import)</p> <p>Penalty: imprisonment for 10 years and a fine not exceeding AUD 50,000.</p> <p>Illicit Drugs Control Act 2004 Part 2 s.5 (Unlawful Export)</p> <p>Penalty: imprisonment for 10 years and a fine not exceeding AUD 50,000.</p> <p>Illicit Drugs Control Act 2004, Part 2 s.6 (Unlawful possession, manufacture, cultivation and supply)</p> <p>Penalty: imprisonment of 10 years and fine not exceeding AUD50,000.</p> <p>Illicit Drugs Control Act 2004 Schedule 1 lists all the Narcotic Drugs and Psychotropic Substances</p>
6.	Illicit arms trafficking;	<p>CTTOC s.14 (Provision of weapons terrorist groups)</p> <p>Penalty: Maximum life imprisonment.</p> <p>CTTOC s.70A (Offences in relation to nuclear, chemical and biological weapons)</p> <p>Penalty: life imprisonment, if no permission from the Cabinet.</p> <p>Crimes Act s.215B (Manufacturing, selling, importing, or supplying of firearms)</p> <p>Penalty: 10 years imprisonment.</p>
7.	Illicit trafficking in stolen and other goods;	<p>Crimes Act s.165 (Receiving)</p> <p>While not specifically framed as illicit trafficking it does criminalise the receipt of property obtained as a result of an offence</p> <p>Penalty: 7 years imprisonment if value more than AUD1000; 5 years imprisonment if value is between AUD500 and AUD 1000;</p> <p>Customs Act s.253 (Possession or custody of uncustomed goods or prohibited imports)</p> <p>While not specifically framed as illicit trafficking, it does criminalise the possession or custody of uncustomed goods or prohibited imports meeting some of the coverage of illicit trafficking in stolen or other goods, when the uncustomed goods or prohibited imports are stolen.</p>

		<p>Penalty: for an individual, fine not exceeding AUD 300,000 or imprisonment for a term not exceeding two years; for a body corporate, fine not exceeding AUD 500,000. In either case, a fine not exceeding 3 times the value of the goods to which the offence relates. However, it is a listed predicate offence, so the threshold need not apply.</p> <p>Customs Act s.254 (Purchase, sale, exchange, etc. of unaccustomed goods or prohibited imports)</p> <p>While not specifically framed as illicit trafficking, it does criminalise the purchase, sale, exchange, etc. of uncustomed goods and prohibited imports, meeting some of the coverage of illicit trafficking in stolen or other goods, when the uncustomed goods or prohibited imports are stolen.</p> <p>Penalty: for an individual, fine not exceeding AUD 300,000 or imprisonment for a term not exceeding two years; for a body corporate, fine not exceeding AUD 500,000. In either case, a fine not exceeding 3 times the value of the goods to which the offence relates. However, it is a listed predicate offence, so the threshold need not apply.</p>
8.	Corruption and bribery;	<p>CTTOC s.56 (Corruption)</p> <p>Penalty: Maximum 5 years imprisonment</p> <p>Crimes Act 2016 s.173 (Bribery)</p> <p>Penalty: 7 years Imprisonment.</p> <p>Crimes Act 2016 s.174 (Giving or receiving other corrupting benefits)</p> <p>Penalty: 5 years imprisonment</p> <p>Crimes Act 2016 s.175 (Bribery of foreign public official)</p> <p>Penalty: 7 years imprisonment.</p> <p>Crimes Act 2016 s.176 (Bribery outside Nauru of foreign public official)</p> <p>Penalty: 7 years imprisonment</p>
9.	Fraud;	<p>Crimes Act 2016 s.167 (Obtaining property by deception)</p> <p>Penalty: if value more than AUD 1,000, 7 years imprisonment; if value more than AUD 500, but not AUD</p>

		<p>1,000, then 5 years imprisonment; if value less than AUD 500 then 1 year imprisonment.</p> <p>Crimes Act 2016 s.168 (Obtaining financial advantage or disadvantage by deception)</p> <p>Penalty: if value more than AUD 1,000, 7 years imprisonment; if value more than AUD 500, but not AUD 1,000, then 5 years imprisonment; if value less than AUD 500 then 1 year imprisonment.</p> <p>Crimes Act 2016 s.169 (False statement by promotor)</p> <p>Penalty: 7 years imprisonment</p>
10.	Counterfeiting Currency;	<p>Crimes Act 2016 s.191 (Counterfeit Money)</p> <p>Penalty: 5 to 10 years depending on type of counterfeit offence.</p>
11.	Counterfeiting and Piracy of Products	<p>AML/TFS Act 2023 s.4, criminal conduct definition (d) as a listed predicate offence stipulates s.58 of the Copyright Act 2019 establishes that any violation of the Copyright Act is an offence subject to criminal sanctions under s.59. Specifically, the Copyright Act 2019 Secs. 25 (Meaning of Infringement), and 26 (Infringement of Copyright Work).</p> <p>While the Copyright Act 2019 does not discuss counterfeiting and piracy of products, both are generally covered by the Copyright Act 2019</p> <p>Penalty: Fine not exceeding AUD 50,000.</p>
12.	Environmental Crime (for example, criminal harvesting, extraction or trafficking in protected species of wild fauna and flora, precious metals and stones, other natural resources, or waste)	<p>CTTOC s.49 (Offences related to nuclear materials);</p> <p>Penalty: maximum 20 years, and fine of no less than AUD 150,000.</p> <p>Environmental Management and Climate Change Act 2020 (EMCCA) s.35 (Pollution of Waters)</p> <p>Penalty: Imprisonment not exceeding 24 months, fine not exceeding AUD 10,000, or both.</p> <p>EMCCA s.36 (Prohibition of discharge of hazardous waste, chemical, oil, into the environment)</p> <p>Penalty: Imprisonment not exceeding 24 months, fine not exceeding AUD 10,000, or both.</p> <p>International Seabed Minerals Act 2015 s.28 (Duties pertaining to Seabed Mineral Activities)</p> <p>Penalty (s.31): AUD 100,000 or imprisonment for 10 years or to both if person fails to follow directions of Authority.</p>

		<p>Fisheries Act 1997 s.21J (Discharge of Oil or Pollution into Nauru Waters) s.21K (Discharge of Oil or Pollutants into Waters Outside Nauru Waters) s.21L (Discharge of Garbage of Sewage into Nauru Waters)</p> <p>Penalty: Fine not exceeding AUD 100,000</p>
13.	Murder, grievous bodily injury;	<p>Crimes Act 2016 s.55 (Murder)</p> <p>Penalty: Life Imprisonment</p> <p>Crime Act 2016 Sec 71 (Intentionally Causing Serious Harm)</p> <p>Penalty: 15 to 20 years imprisonment, depending on circumstances.</p> <p>Crime Act 2016 s.72 (Recklessly Causing Serious Harm)</p> <p>Penalty: 12 to 15 years, depending on circumstances.</p> <p>While no specific provision for grievous bodily injury, intentionally causing serious harm meets the requirements.</p>
14.	Kidnapping, illegal restraint and hostage-taking;	<p>Crimes Act 2016 s. 87 (Kidnapping)</p> <p>Penalty: If person is a child – 20 years, or in any other case – 15 years.</p> <p>Provision is sufficient as it includes, in addition to kidnapping, the elements of hostage taking and illegal restraint.</p>
15.	Robbery or theft;	<p>Crimes Act 2016 s. 154 (Theft)</p> <p>Penalty: if value more than AUD 1,000, 7 years imprisonment; if value more than AUD 500, but not AUD1,000, then 5 years imprisonment; if value less than AUD 500 then 1 year imprisonment.</p> <p>Crimes Act 2016 s. 154 (Theft in fiduciary relationship)</p> <p>Penalty: 10 years imprisonment</p> <p>Crimes Act 2016 s. 158 (Robbery)</p> <p>Penalty: 12 years imprisonment</p> <p>Crimes Act 2016 s. 159 (Aggravated Robbery)</p> <p>Penalty: 14 years imprisonment</p>

16.	Smuggling (including in relation to customs and excise duties and taxes)	<p>Illicit Drugs Control Act has provisions for the Unlawful Import (s.4) and Unlawful Export (Sec 5) of Illicit Drugs, and Unlawful possession, manufacture, cultivation, and supply (s.6)</p> <p>Penalty for each: 10 years imprisonment and fine not exceeding AUD 50,000.</p> <p>As established in AML/TFS Act 2023 s.4 for definition of criminal conduct as a listed predicate offence: Custom Act s.234 (adapting craft for smuggling), s.239 (offences in relation to manufacture, movements, and storage of goods), s.242, (Offences in relation to entries), s.250, (Offences in relation to importation or exportation of prohibited goods), s.251 (Offences in relation to exportation of goods), 252 (Defrauding the revenue of customs), s.253 (Possession or custody of uncustomed goods or prohibited goods), s.254 (Purchase, sale, exchange, etc. of uncustomed goods or prohibited imports), s.255 (Possession or control of concealed goods)</p>
17.	Tax Crimes (related to direct and indirect taxes);	<p>Revenue Administration Act 2014 Division 3 covers the following direct tax offences: offences relating to registration (s.68); Offences relating to TINs (s.69); Failure to maintain documents (s.70); Failure to Withhold tax (s.71); Failure to file a tax return or other document (s.72); Failure to pay tax by the due date (s.73); False or misleading statements (s.74); Offences relating to recovery of tax (s.75); Offences relating to enforcement powers (s.76); Default in obligation under tax law with intent to evade tax (s.77); Obstruction of Tax Officer (s.78); Aiding or abetting a tax offence (s.79); Offences relating to tax officers (s.80); Offences by employees, agents, and companies (s.81)</p> <p>s.82(1) (Sanctions for Tax Offences) penalty for sections 68, 69(2), 69(3), 70(a), 71, 72, 79, and 81: fine not exceeding AUD 5,000 or imprisonment for term not exceeding 2 years, or both a fine and imprisonment.</p> <p>Penalty for sections 82(2) (Sanctions for Tax Offences) for sections 69(1), 69(4), 70(b) or (c), 74, 75, 76, 77, 78, and 80: fine not exceeding AUD AUD10,000 or term of imprisonment not exceeding 3 years, or both a fine and imprisonment.</p> <p>Telecommunications Services Tax Act 2009 s.11 (Tax Evasion [by Service Provider])</p> <p>Penalty: AUD 100,000</p> <p>s.12 (Falsifying or Concealing Records [by a Service Provider]); s.13 (Failure to Pay Tax [by Service Provider])</p>

		<p>Penalty: AUD 50,000</p> <p>s.14 (Failure [for Service Providers] to Keep Records); s.15 (Failure [for Service Provider] to Submit Monthly Statements)</p> <p>Penalty: AUD 10,000.</p> <p>Customs Act 2014 s.252 (Defrauding the Revenue of Customs)</p> <p>Penalty: for individual: fine not exceeding AUD 300,000 or imprisonment for term not exceeding 5 years or both;</p> <p>For body corporate, fine of an amount not exceeding AUD 500,000;</p> <p>In either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates, in addition to any penalty imposed under paragraph (a) or (b).</p>
18.	Extortion;	<p>Crimes Act 2016 s.181 (Blackmail)</p> <p>Penalty: 10 years imprisonment</p> <p>Crimes Act 2016 s.182 (Aggravated Blackmail)</p> <p>Penalty: 14 years Imprisonment</p> <p>Crimes Act 2016 s.183 (Unwarranted demand on public official) Penalty: 12 years imprisonment</p> <p>Crimes Act 2016 s.180 provides an interpretation of “threat” used in Secs. 181-183 that meets the coercive element generally associated with extortion.</p>
19.	Forgery;	<p>Crimes Act 2016 Sec 186 (Forgery – making false documents)</p> <p>Penalty: 8 years imprisonment</p> <p>Crimes Act 2016 s.187 (Using False Documents)</p> <p>Penalty: 8 years imprisonment</p> <p>Crimes Act 2016 s.188 (Possessing False Documents)</p> <p>Penalty: 5 years imprisonment.</p>

20.	Piracy;	<p>Crimes Act 2016 Secs. 216 (Endangering Transport)</p> <p>Penalty: 14 years imprisonment</p> <p>Crimes Act 2016 s.217 (Piracy)</p> <p>Penalty: Life Imprisonment</p> <p>Crimes Act 2016 s.218 (Operating a pirate-controlled ship or aircraft.)</p> <p>Penalty: 15 years imprisonment</p>
21.	Insider trading and market manipulation.	<p>AML/TFS 2023 Sec 4 Definition of Criminal Conduct (f) (Insider Trading) and (g) (Market Manipulation); however, does not provide any penalty for violation. Nauru does not have a stock exchange.</p> <p>The penalty for violations of Prices Regulation Act 2008 Secs. 15 (Selling at above regulated prices), 16 (Refusing to sell at or below regulated price), 17 (Profiteering from Hoarding) all affect the market is a fine not exceeding AUD3,000 and/or imprisonment for a period of not less than 1 month and not greater than 6 months and does not meet the predicate offence threshold.</p>



© APG 2024

www.apgml.org

November 2024

Anti-money laundering and counter-terrorist financing measures – Nauru

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/countering the financing of-terrorist (CFT) measures in place in Nauru as at October 2023. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Nauru's AML/CFT system, and provides recommendations on how the system could be strengthened.