



REPUBLIC OF NAURU

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2018

No. of 2018

A Bill for an Act to amend the Beneficial Ownership Act 2017

Certified: []

Table of Contents

1	Short title.....	2
2	Commencement.....	2
3	Amendment of Beneficial Ownership Act 2017	2
4	Amendment of section 3	2
5	General amendment as to reference.....	2
6	Amendment of section 5	2
'5	Meaning of beneficial owner	3
7	Amendment of section 10	3
8	Amendment of section 12	3
9	Amendment of section 16	4
10	Amendment of section 20	4
11	Amendment of section 21	4
12	Repeal of section 22	6
13	Amendment of section 26	6
14	Amendment of section 28	6
15	Amendment of section 32	6
16	Amendment of section 42	6

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Beneficial Ownership (Amendment) Act 2018*.

2 Commencement

This Act commences on 15 January 2019.

3 Amendment of Beneficial Ownership Act 2017

The Beneficial Ownership Act 2017 is amended by the provisions of this Act.

4 Amendment of section 3

Section 3 is amended by:

- (a) deleting '(1)' where it appears;
- (b) repealing '*annual returns*' and its definition and replacing with:

'annual returns' mean:

- (a) in relation to a corporation, the annual returns required by section 133 of the *Corporations Act 1972*;
 - (b) in relation to a partnership, the annual returns required by the Partnership Act 2018;
 - (c) in relation to a trust, the annual returns required by the Trusts Act 2018;
- (c) deleting the words '*beneficial ownership*' where they appear and its definition;
 - (d) deleting the word 'ownership' where it appears in the definition of 'owner' and substituting with 'owners'.
 - (e) deleting the phrase '*registrable beneficial owner*' and its definition; and
 - (f) deleting subsection (2).

5 Amendment of section 4

Section 4 is amended by repealing paragraph (c).

6 General amendment as to reference

Any reference in the Act to '*beneficial ownership*' is deleted and substituted with the words '*beneficial owner*' as appropriate.

7 Amendment of section 5

Section 5 is repealed and replaced as follows:

‘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 two 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.

8 **Amendment of section 10**

Section 10(1) is amended by deleting the word *‘residual’* where it appears.

9 **Amendment of section 12**

Section 12 is repealed and replaced as follows:

‘12 **Required details**

- (1) The **‘required details’** in respect of a beneficial owner are:
 - (a) his or her name;
 - (b) his or her usual residential address;
 - (c) a service address, where if the service address is different from 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 Number.

(2) Where a beneficial owner is a foreigner or resides permanently in a foreign country, he or she shall in addition to the details in subsection (1), provide the following details:

- (a) permanent address in the foreign country;
- (b) an email and telephone number;
- (c) a tax registration number in foreign jurisdiction;
- (d) a bio-data page of his or her passport or other types of identity which has his or her photograph.'

10 Amendment of section 16

Section 16(3)(c) is deleted and substituted as follows:

'(c) that the information to be provided as soon as practicable not exceeding 7 days from the receipt of the notice.'

11 Amendment of section 20

Section 20 is repealed and replaced as follows:

'20 The Database

- (1) The Authority shall establish and maintain a:
 - (a) Register of Beneficial Owners; and
 - (b) database of beneficial owners to be known as the Republic's Database of Beneficial Owners.
- (2) The Database shall contain the information specified in section 21(3).'

12 Amendment of section 21

Section 21 is repealed and replaced as follows:

'21 Compulsory provision of beneficial owner information to the Authority

- (1) The nominated officer shall take all reasonable steps necessary to ascertain whether a legal entity has a beneficial owner.

- (2) The steps referred to in subsection (1) may include, but are not limited to, obtaining the information specified in subsection (3) by a notice given under section 10(2).
- (3) The nominated officer shall submit the following information to the Authority where the legal entity has a beneficial owner:
 - (a) the required details of the beneficial owner as specified in section 12; and
 - (b) details of any relevant changes.
- (4) In relation to a legal entity already in existence when the Act commences, the nominated officer shall submit the information to the Authority:
 - (a) on the first occasion after the commencement of the Act by the date on which the legal entity's next annual return shall be filed, delivered or made following receipt by the nominated officer of the first notice given under section 10(3); or
 - (b) on every subsequent occasion, within one month of the relevant information being notified to the nominated officer under section 10 or section 11 as the case may be.
- (5) In relation to a legal entity coming into existence after the commencement of the Act, the nominated officer shall provide the information to the Authority:
 - (a) at the time of the creation of the legal entity; or
 - (b) otherwise no later than 30 days from the date of the creation of the legal entity.
- (6) A nominated officer commits an offence if the officer:
 - (a) fails to comply with subsection (1), (3), (4) or (5); or
 - (b) knowingly or recklessly makes a statement to the Authority which is false, deceptive or misleading in any material respect.
- (7) A nominated officer who contravenes subsection (6) shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 3 years or to both.
- (8) If a nominated officer is convicted of an offence under subsection (6), the court may in addition to the penalty imposed under subsection (7) make an order requiring the person to rectify the failure.
- (9) If a nominated officer fails to adhere to the time limits stipulated in subsection (4) or (5), the Authority may accept late delivery of

the notice upon payment by the legal entity of a fixed penalty of \$1,000.

(10) The Authority may not enforce the payment of the fixed penalty under subsection (9) where the criminal proceedings have commenced in respect of the alleged contravention and such proceedings has not concluded.

(11) The Authority may by order amend subsections (3) and (4) as to amend the information in respect of a beneficial owner to be submitted to the Authority by the nominated officer and the period within which the information is to be submitted.

(12) An order under subsection (11) shall not come into operation unless approved by Cabinet.

(13) The Authority may by regulations for the provision of further information under this section, including the form and content of such information and the manner which they shall be given.

13 Repeal of section 22

Section 22 is hereby repealed.

14 Amendment of section 26

Section 26 is repealed and replaced as follows:

‘26 Authority not liable for accuracy of information submitted

The Authority shall not be liable for the accuracy of any beneficial owner information provided to the Authority by a legal entity for inclusion in the Register or in the Database.’

15 Amendment of section 28

Section 28(4)(c) is deleted and substituted as follows:

‘(c) that the information shall be provided within 7 days from the receipt of the notice.’

16 Amendment of section 32

Section 32(2)(f) is amended by deleting the word ‘*registrable*’ where it appears.

17 Amendment of section 42

Section 42(1)(a)(ii) is amended by deleting the word ‘*registrable*’ where it appears.