

REPUBLIC OF NAURU
BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2018

EXPLANATORY MEMORANDUM

The *Beneficial Ownership (Amendment) Bill 2018* is a Bill for the *Beneficial Ownership (Amendment) Act 2018*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Beneficial Ownership (Amendment) Act 2018*.

Clause 2 sets out when the Bill's provisions will commence which is 15 January 2019.

Clause 3 is the enabling provision for the amendment of the Beneficial Ownership Act 2017.

Clause 4 amends section 3 of the Act.

The definition of 'annual returns' is repealed and replaced to reflect the annual returns requirements for a corporation under the Corporations Act, a partnership under the Partnerships Act and a trust under the Trusts Act.

The phrase 'registrable beneficial owner' and its definition are deleted.

Clause 5 amends section (4) by repealing paragraph (c).

Clause 6 is a general amendment as to reference to the words 'beneficial ownership'. 'Beneficial ownership' is deleted and substituted with 'beneficial owner' where appropriate in the Act.

Clause 7 repeals and replaces the current section 5 which is the meaning of beneficial owner. The new clause clarifies the meaning of beneficial owner to mean 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.

Clause 8 amends section 10(1) by deleting the word 'residual' where it appears in the section.

Clause 9 repeals and replaces section 12 clarifying the details required to be provided for an beneficial owner.

Clause 10 replaces the current section 16(3)(c) to ensure that a beneficial owner provides the information sought by the Authority in a timeframe not exceeding 7 days from when the beneficial owner received the notice from the Authority.

Clause 11 repeals and replaces the current section 20 to ensure the Authority establishes and maintains a manual and physical Register of Beneficial Owners as well as a database of beneficial owners to be known as the Republic's Database of Beneficial Owners.

The Database shall contain the information specified in section 21(3).

Clause 12 repeals and replaces the current section 21 to ensure the nominated officer must take all practical steps to find out whether the legal entity has a beneficial owner.

The nominated officer shall provide where the legal entity has a beneficial owner, the required details of the beneficial owner and any details of relevant changes. Where the legal entity has no beneficial owners, the nominated office shall provide a statement confirming that the legal entity has no beneficial owners.

If a legal entity existed before the commencement of the Act, then the nominated officer:

- (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.

The clause also provides for a sanction for non-compliance with section 21. There is an administrative penalty to ensure a much easier compliance. Otherwise, prosecution is the next course.

Clause 13 repeals section 22.

Clause 14 repeals and replaces the current section 26.

This provision provides for no liability of the Authority for the accuracy of any beneficial owner information provided to the Authority by a legal entity for inclusion in the Register or on the Database.

Clause 15 repeals and replaces the current section 28(4)(c) by providing that the information shall be provided within 7 days from the receipt of the notice.

Clause 16 amends section 32(2)(f) by deleting the word ‘registrable’ where it appears.

Clause 17 amends section 42(1)(a) by deleting the word ‘registrable’ where it appears.