

REPUBLIC OF NAURU
CORPORATIONS (AMENDMENT) BILL 2018

EXPLANATORY MEMORANDUM

The *Corporations (Amendment) Bill 2018* is a Bill for the *Corporation (Amendment) Act 2018*.

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

GENERAL EXPLANATION OF PURPOSE OF THE BILL

The Corporations Act was enacted in 1972, and some of its provisions were designed at the time to allow foreign companies to be incorporated in Nauru without any physical presence or without conducting any business activity in Nauru. One of the main and apparent reasons foreign corporations would apply for incorporation under the Act in Nauru, was to effectively avoid being taxed abroad as Nauru was a tax free country, until quite recently. To effect the incorporation of foreign corporations, the Act provided or allowed for institutions and bodies within Nauru to act on behalf of foreign corporation. These institutions and bodies include –

1. nominee corporations;
2. registered corporation agents;
3. registered corporation auditors;
4. registered corporation brokers;
5. registered secretaries and resident secretaries;
6. registered trustee corporations; and
7. the Nauru Government Commercial Authority.

As a matter of the current government policy, which has been implemented by the Registrar of Corporations, all foreign corporations are now required to have a physical presence in Nauru. Therefore all the institutions and bodies listed above have either become defunct or inactive, and in any case no longer serve a purpose under the Act.

A recent in-country assessment of Nauru by the Organisation for Economic Cooperation and Development (OECD), identified that these legacy institutions and bodies should be removed from the Act for certainty and to align the Act with government policy and

practice. Essentially, these institutions and bodies are the historical remnants of a system that is no longer appropriate and applicable in modern day Nauru. Over 90 per cent of the clauses in the Bill are to remove references these institutions and bodies from the Act. The remainders of the amendments are to –

1. provide a link between the Act and the Business Licences Act 2017, Beneficial Ownership Act and the Business Names Registration Act 2018, which are currently Bills being tabled together with this amendment Bill and other consequential Bills;
2. provide for better record keeping and retention of corporation records; and
3. removing references to “bearer shares”.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Corporations (Amendment) Bill 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 Corporation Act 1972.

Clause 4 amends section 2 by deleting certain terms and their definitions such as nominee corporation, registered corporation agent, registered corporation auditor, registered corporation broker, registered secretary, resident secretary, registered trustee corporation, the Authority and included some terms that are relevant due to OECD requirements such as:

‘*beneficial owners*’ means a natural person;

- (a) who has ultimate control, directly or indirectly, of the corporation;
- (b) who ultimately owns, directly or indirectly, the corporation; or
- (c) on whose behalf a corporation is incorporated.

‘secretary’ means a secretary appointed under section 10 of the Act; and

‘trustee corporation’ means a corporation which as a whole or a part of its business undertakes or offers to undertake all or any of the duties of a trustee.

Clause 5 amends section 5 of the Act by removing the term nominee corporation which was a recommendation by OECD purposes.

Clause 6 repeals sections 7, 8, 9 and 11. This is basically removing Nauru Government Commercial Authority, registered corporation agents, registered corporation auditors, corporation brokers from the provisions of the Act.

Clause 7 amends section 12 by repealing subsection (6) and replacing it with a new subsection (6). The new section no longer requires the for submissions through a registered corporation agent .

Clause 8 amends section 14 which provides that in terms of a formation of corporation the Authority no longer needs to subscribe its name or names on the memorandum of authority. This is due to the removal of reference to Authority from the Act. Since the Authority is no longer required to be a subscriber to the memorandum then there is no need to be subscribed under the seal of the Authority.

Clause 9 amends section 15(1) that removes references to subsections (10) to (12) and (15) to (33).

The clause amends section 15(3) that in the filing of the memorandum the Registrar is to certify for incorporation of trading or holding corporation. It will no longer need to deliver the certificate to the registered corporation agent who lodged the documents or as the agent.

The clause amends section 15(4) which is similar to the amendment done previously that certificate of incorporation will no longer be required to be delivered to the registered corporation agent.

The section inserts a new subsection (4A) which provides that a person who intends to incorporate a corporation or renew the certificate of incorporation has to comply with the Business Licence Act 2017, Beneficial Ownership Act 2017 and Business Names Registration Act 2018 where the corporation intends to trade under a business name.

Due to the removal of reference to Authority under the Act the term has been deleted from reference throughout the section and clarified.

Subsections (10) to (23) are repealed from section 15.

Clause 10 amends section 15A which adds a new requirement for registration of corporation that is the corporation is now required to comply with the provisions of the Business Names Registration Act 2018, Business Licences Act 2017 and Beneficial Ownership Act 2017. Furthermore, this is to ensure that the provision has the same meaning as subsection (1).

Clause 11 amends section 22 by removing any references to Authority which is no longer relevant.

Clause 12 amends section 27 by removing any references to resident secretary and alternatively simply refers to the secretary.

Clause 13 amends section 30 which removes any references to resident secretary and simply refers to the secretary.

Clause 14 amends section 33 by repealing subsection (2) which is a requirement for the registered corporation broker to perform.

Clause 15 amends section 41 by repealing subsections (1) - (4) which is a requirement for the registered corporation broker to perform.

Clause 16 amends section 43 by repealing subsection (4) which is a requirement for the Authority to perform.

Clause 17 amends section 46 by replacing the word 'may' with 'shall', to prohibit corporations from issuing bearer shares or share warrants.

Clause 18 amends section 59 by repealing subsection (2)(d) which is a requirement for the registered corporation agent to perform.

Clause 19 amends section 71 by repealing all references to registered trustee corporation.

Clause 20 amends section 72 by repealing all references to registered trustee corporation and simply replacing it with trustee.

Clause 21 amends the Act by repealing section 73 which provides for registered trustee corporation.

Clause 22 amends section 74(1)(b) by deleting the reference to registered corporation auditor.

Clause 23 amends section 101 by repealing subsection (2) which requires that the address of corporations is the address of the registered corporation agent.

Clause 24 amends section 110 by deleting subsections (1) - (2) which requires a registered secretary and resident secretary; amends subsection (9) to remove the reference to resident secretary; and by inserting new subsections (10)-(12) which provides for the duties of the secretary to keep and retain certain corporation records.

Clause 25 amends section 132(6)(b) to remove the reference to resident secretary.

Clause 26 amends section 133(6) to remove the reference to registered corporation trustee.

Clause 27 amends section 134.

Subsection (1) is deleted and replaced to include a more inclusive comprehensive list of underlying documentation to be kept and retained by the corporation for 7 years.

Subsection (3) is amended to remove the reference to registered corporation trustee.

Clause 28 amends section 137(1) to remove the reference to registered corporation trustee.

Clause 29 amends section 138 to remove the reference to registered corporation trustee.

Clause 30 amends section 139 to remove the reference to registered corporation trustee and simplify the provision by only imposing the requirement to appoint an auditor when the services of the previous auditor ceases.

Clause 31 amends section 141 to remove the reference to registered corporation trustee.

Clause 32 amends section 147(6)(a) to remove the reference to registered corporation agent.

Clause 33 amends section 157 to remove the reference to registered corporation trustee.

Clause 34 amends section 171 by repealing subsection (5) which is a role of the Authority.

Clause 35 amends section 183(1) to remove the reference to registered corporation agent.

Clause 36 amends section 190(1) by removing the reference to bearer shares.

Clause 37 amends section 198 by removing the reference to registered corporation agent.

Clause 38 amends section 210(1) by removing the reference to registered corporation agent.

Clause 39 amends section 225 by removing the reference and reference to the role of the registered corporation agent.

Clause 40 amends the Act by inserting a new section 242A to provide for automatic information sharing with the relevant authorities in Nauru and with foreign jurisdictions.

Clause 41 amends the Act by repealing section 250 which are references to old and repealed English statutes.

Clause 42 amends Paragraph 96 of the Second Schedule – Table A to remove the reference to resident secretary.

Clause 43 amends Paragraph 105 of the Second Schedule – Table B to remove the reference to resident secretary.