

REPUBLIC OF NAURU
BUSINESS LICENCES (AMENDMENT) BILL 2018

EXPLANATORY MEMORANDUM

The *Business Licences (Amendment) Bill 2018* is a Bill for the *Business Licences (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 *Business Licences (Amendment) Bill 2018*.

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

Clause 3 is the enabling provision for the amendment of the Business Licence Act 2017.

Clause 4 amends section 3 by inserting some new definitions to ensure consistency with other written laws as well as OECD requirements.

In the definition of applicant by deleting 'partnership' and substitute it with 'firm' as firm is the correct reference as the body of partners.

Repealing the definition of person and replace it with a new definition to ensure consistency with the Business Names Act 2018.

Insert new definitions such as '*corporation*', '*firm*', '*foreign business*', '*individuals*' and '*trusts*'.

Clause 5 amends section 4(2) by clarifying the duties of the Registrar which includes the keeping and maintaining of records for applications, other documents required to be lodged or filed by persons applying to or have licence granted under this Act.

This clause inserts a new subclause to further state that the Deputy Registrar has the same power as the Registrar under this Act.

Clause 6 amends section 5 by inserting that a Business Licence Register shall also be for record keeping and maintenance of records and will be evidence of the record of the business licence kept and maintained by the Registrar. In any legal proceedings a licence granted under the hand and seal of the Registrar is prima facie evidence of the fact that the requirement of this Act is specified in the licence. The Registrar may refuse to accept any

document lodged and request that the document be amended, completed and relodged or a new document lodged, if he or she is of the opinion that the document:

- (a) contains matters contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure.

Clause 7 repeals section 6 and replaces it with a new section 6. It continues to state that a person shall not commence or carry on any business without a licence granted under this Act. If a person does contravene the requirement of a business licence to be able to operate a business then such person commits an offence and is liable under section 25.

Clause 8 repeals the current section 7 and replaces it with a new section 7 which requires that an application for a licence will only be accepted if:

- (a) business name under the Business Names Registration Act 2018;
- (b) firm or partnership under the Partnership Act 2018;
- (c) corporation under the Corporation Act 1972;
- (d) trust under the Trust Act 2018;
- (e) a foreign corporation registered to conduct a business under the Corporations Act 1972;
- (f) tax identification number issued under the Revenue Administration Act 2014; or
- (g) in case of foreign corporation under subsection (e), the:
 - (i) relevant instrument registering the business under the laws of the foreign country; and
 - (ii) tax identification number or tax number issued under the laws of the foreign country of the entity and the directors.

Cabinet may prescribe such other pre-requisites for the purposes of this section.

Clause 9 inserts a new section 7A which provides that an individual, firm, corporation or trust applying for a licence under this Act shall deliver to the Registrar a statement in writing in the prescribed form that contains the particulars prescribed by regulations.

The statement of particulars required under this clause shall be provided by:

- (a) in case of individual, the individual under whose name the business name is registered;
- (b) in case of a firm, by all the individuals who are partners and by a Director or secretary of all corporations which are partners;

- (c) in case of a corporation, by 2 Directors or a Director and Secretary;
- (d) in case of a trust, by a trustee; or
- (e) in case of a foreign business, subsection (3)(a) to (d) apply subject to the person applying for a licence.

On receipt of the statement of particulars, the Registrar shall enter the firm, individual corporation or trust business licence in the Register.

Where a business is carried on under 2 or more business names, each of those businesses is to be registered.

The Cabinet may prescribe the requirements of the particulars under this section.

Clause 10 repeals section 8 and replaces it with a new provision for application for registration. The application for a licence is to be in the prescribed form, provide the relevant documents, copies of the relevant documents, be declared and signed by the person who is to sign the application and be accompanied with the prescribed fee.

The statement of particulars shall:

- (a) in case of an individual be declared and signed by him or her;
- (b) in case of a firm, be declared and signed by all the individuals who are partners and by a Director or secretary of all corporations which are partners;
- (c) in case of a corporation, be declared and signed by 2 Directors or a Director and Secretary;
- (d) in case of a trust, be declared and signed by a trustee; or
- (e) in case of a foreign business, subsections (3)(a) to (d) apply subject to the person applying for a licence be declared and signed by the person applying for a licence.

If a person operates under a registered name or business name and operates such business in multiple places within the Republic he or she shall apply for licences under this Act for each of the places of business separately. A person is required to pay for each of licences. Failure by a person is an offence and upon conviction is liable to a fine not more than \$20,000 or to a term of imprisonment of not more than 3 years or to both.

Clause 11 amends section 10 by inserting a new subsection after subsection (2).

That every licence that is granted shall show the full names or name of the individuals, firm, corporation or trust and any other matters prescribed by regulations.

Clause 12 amends section 17 to ensure that businesses do not operate with an expired licence and that licences are renewed when they are supposed to be renewed.

This is to clarify further the previous rule that any business must have a licence in order to operate under the law if they don't renew and still operates on an expired licence they have to pay a fixed penalty of \$1,000 within 1 months from the date of the expiry of the licence.

Clause 13 repeals section 18 and replaces it with a new provision for suspension or cancellation of licence. The Registrar may suspend or cancel a licence where:

- (a) the licence was obtained by fraud, misrepresentation or deliberate or negligent provision of false information;
- (b) in case of an individual, where the Registrar becomes aware that a licensee has died, and the personal representative fails to transmit the licence to a beneficiary of the estate of the licensee;
- (c) in case of a firm, the partnership is dissolved;
- (d) in case of a corporation, the corporation is wound up;
- (e) in case of a trust if it is dormant or wound up;
- (f) the licensee fails to file annual returns for 2 consecutive years;
- (g) the licensee contravenes this Act;
- (h) any person ceases to carry on its business activity under the licence and the licensee fails to notify the Registrar of such cessation of business; or
 - (i) the licensee fails to commence business under the licence within 2 years of :
 - (ii) from the date of the registration of the business; or
 - (iii) from the date of giving notice to the Registrar for temporary cessation business.
- (i) a licensee applies to have his or her licence cancelled;
- (j) the licensee fails to comply with any directions given by the Registrar; or
- (k) the licensee assigns, permitted or transfers his or her licence in contravention of sections 20 and 20A.

Clause 14 repeals and replaces section 20 by providing that a licence is not transferrable unless it is with the approval of the Registrar. If any business intends to transfer the licence they may do so with by applying in the prescribed form to the Registrar with the payment of the prescribed fee.

If any person transfers a licence without the prior approval of the Registrar, such person commits an offence and upon conviction shall be liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

Clause 15 inserts a new section 20A to provide that a licence shall not be assigned or permitted to be used by another person. If a person fails to comply he or she commits an

offence and upon conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment of not more than 2 years or to both.

Clause 16 repeals section 21 and replaces it with clause providing for variation of particulars. The licensee is to notify the Registrar in the prescribed form for variation of particulars. If a variation relates to in respect of the licence, ownership, address or nature of the business the Registrar shall issue an amended licence.

If a person does not inform the Registrar of any variation or amendment to the particulars of a licence, such person commits an offence and upon conviction is liable to a fine of not more than \$5,000 or a term of imprisonment of not more than 2 years or both.

Clause 17 amends section 22 to provide a requirement for a person with a business licence but who operates more than one business. Each business requires a separate business licence for each such business. The different business licences have to be exhibited and maintained at each of the registered places of business in a conspicuous position.

Clause 18 inserts a new section 22A which provides that a licensee has a duty to notify the Registrar for temporary or permanent cessation of business. Failure to notify the Registrar is an offence and such person is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.'

Clause 19 inserts a new section 22B to ensure that if any business licence is lost or is destroyed, the licensee shall apply to the Registrar to get a duplicate copy of the licence by filling the prescribed form and paying the prescribed fee. The Registrar will then issue a duplicate copy of the licence.

Failure by a person without reasonable excuse to notify the Registrar for such loss or destruction of the licence is an offence and such person is liable to a fixed penalty of \$300.

Clause 20 inserts a new section 22C which provides that the Registrar may restore the registration of a licence upon application by the last registered licensee. Where a licence after being cancelled is granted to another person, the Registrar shall not restore the registration under this section.

Clause 21 inserts a new section 22D which provides that a licensee is to surrender a licence if the business ceases to continue.

Clause 22 inserts a new section 25A which provides for an offence for obstructing an authorised officer.

Clause 23 repeals PART 5 and replaces it with a new PART 5 to include the requirements of the OECD and to ensure that there is consistency with other Acts such as the Business

Names Registration Act and Beneficial Ownership Act and other written laws. The new inclusions are the:

Record to be kept by the licensee. The underlying documentation to be kept by individual, firm, corporation, trust or foreign business as required under their relevant statutes of establishment.

The firm, corporation, trust or foreign business applying for a licence shall comply with the Beneficial Ownership Act 2017 except for the individual.

There is no need for duplication of annual returns under this Act. The requirement under the licensee whether individual, firm, corporation, trust or foreign business is required to file with the Registrar an annual return lodged in their respective laws such as individual under the Business Names Registration Act 2018, firm under the Partnership Act 2018, corporation under the Corporation Act 1972, trust under Trust Act 2018 and for a foreign business whether it be individual under the Business Names Registration Act 2018, firm under the Partnership Act 2018, corporation under the Corporation Act 1972, trust under Trust Act 2018 for the Nauru operations and equivalent requirements under the place of registration under that foreign country laws.

The sharing of information by the Registrar with other counterparts domestically or outside Nauru including the law enforcement and regulatory agency.

This clause also provides for the authorisation of authorised officers for the purpose of the Act, the protection from liability of the Registrar or an authorised officer as well as the regulation making power of the Cabinet.