



REPUBLIC OF NAURU

Designated Non-Financial Business and Professions Customer Due Diligence Guideline

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Introduction

The purpose of this Guide is to provide an explanation as to Designated Non-Financial Businesses and Professions or DNFBPs for the purposes of *Section 7* and *Part 4* of the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023 (AML-TFS Act 2023)*. *Section 7* and *Part 4* of the *AML-TFS Act 2023* domesticate Financial Action Task Force (FATF) Standards or Recommendations.

This Guide explains how DNFBPs are captured under the *AML-TFS Act 2023*. It also explains how to determine whether a person or entity falls within the scope of the definition of DNFBPs.

When a person or entity falls within the scope of the definition, it must then observe obligations to be met under *Part 4* of the *AML-TFS Act 2023*. The obligations were domesticated from the FATF Recommendations. The important Recommendations to note for this Guide are *Recommendations 22* and *23*. However *Recommendations 22* and *23* also requires compliance with *Recommendations 10, 11, 12, 15, 17, 18, 19, 20* and *21*. Therefore, for an entity or a person which falls under this category, it must comply with *Recommendation 10, 11, 12, 15, 17, 18, 19, 20, 21, 22* and *23* collectively.

The overall objective of this Guide is to provide information to all entities or persons who are defined as DNFBPs. The primary objective of the Guide is for all DNFBPs to ensure that during the course of their business, they must know their clients, customers, advisors and all other persons whom they deal with. In doing so, the primary focus is to ensure that such persons or entities are not carrying out any money laundering, terrorist financing or proliferation financing activities.

From the outset, this Guide does not over burden the operations of entities which are already adhering to these requirements as part of transparent operations. This Guide actually fosters and supports all businesses in which DNFBPs are involved to keep them safe from persons or entities involved with money laundering, terrorist financing or proliferation financing activities. In other words, DNFBPs should continue and carry on with their business activities and providing services to the community.

If any DNFBPs, its staff or directors need further assistance on the application of this Guide, please contact the persons listed below.

FATF Recommendation 22 and 23

Recommendation 22 of the FATF Standards require:

‘The customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations:

- (a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.*
- (b) Real estate agents – when they are involved in transactions for their client concerning the buying and selling of real estate.*
- (c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.*

- (d) *Lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client concerning the following activities:*
- *buying and selling of real estate;*
 - *managing of client money, securities or other assets;*
 - *management of bank, savings or securities accounts;*
 - *organisation of contributions for the creation, operation or management of companies;*
 - *creation, operation or management of legal persons or arrangements, and buying and selling of business entities.*
- (e) *Trust and company service providers – when they prepare for or carry out transactions for a client concerning the following activities:*
- *acting as a formation agent of legal persons;*
 - *acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;*
 - *providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;*
 - *acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;*
 - *acting as (or arranging for another person to act as) a nominee shareholder for another person.'*

Recommendation 23 of the FATF Standards requires:

'The requirements set out in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

- (a) *Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of Recommendation 22. Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.*
- (b) *Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.*
- (c) *Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in paragraph (e) of Recommendation 22.'*

What is a DNFBP under Nauruan law?

The AML-TFS Act 2023 regulates DNFBP as a reporting entity. Section 7(c), (d), (e), (f) and (g) provides as follows:

'7 Meaning of "reporting entity"

A 'reporting entity' means:

- (a) ...

- (b) ...
- (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:*
 - (i) *forming bodies, partnerships or other legal arrangements;*
 - (ii) *acting as or arranging for another person to act as, a director or secretary of a corporation or a partner of a partnership or a similar position in relation to other bodies or legal arrangements;*
 - (iii) *providing a registered office, business address or accommodation, correspondence or administrative address for a corporation, partnership or other body or legal arrangements;*
 - (iv) *acting as, or arranging for another person to act as, a trustee of an express trust; or*
 - (v) *acting as, or arranging for another person to act as, a nominee shareholder for another person outside of the Republic;*
- (g) *a legal practitioner or an accountant when they prepare for or carry out transactions for their clients relating to:*
 - (i) *buying or selling real estate;*
 - (ii) *managing client money, securities or other assets;*
 - (iii) *managing bank, savings or securities accounts;*
 - (iv) *organising contributions for the creation, operation or management of companies; or*
 - (v) *creating, operating or managing bodies or legal arrangements and buying and selling of business entities;'*

What are the requirements of DNFBPs in view of Recommendations 22 and 23 of the FATF Standards?

There are 5 categories of DNFBPs identified in *Recommendation 22* to be a DNFBP. These are:

- (a) casinos – if customers engage in financial transactions equal to or above USD/EUR 3,000:

There are no registered casinos in Nauru. However, there is a vendor that operates gaming machines which may fall within the purview of the FATF and *AML-TFS Act 2023* definition of reporting entity. What this means is, if the vendor's customers spend an amount equal to or above USD/EUR 3,000 on the gaming machines, the vendor will be required to meet the requirements of *Part 4* of the *AML-TFS Act 2023*. This Part enforces the requirements of the relevant FATF Recommendations namely:

- DNFBPs obligation regarding Customer Due Diligence (*Recommendation 10*)
- Record Keeping (*Recommendation 11*)
- CDD measures regarding PEPs (*Recommendation 12*)
- New Technologies (*Recommendation 15*)
- Reliance on Third Parties (*Recommendation 17*)

- Internal Controls and Foreign Branches and Subsidiaries (*Recommendation 18*)
- Higher Risk Countries (*Recommendation 19*)
- Reporting of suspicious transactions (*Recommendation 20*)
- Tipping off and confidentiality (*Recommendation 21*)

(b) Real estate agents – when involved in transactions for a client concerning the buying and selling of real estate;

The *Land Act 1976* prohibits restrictions on buying and selling of land. It is an offence under the *Lands Act 1976*. There are no real estate agents registered in Nauru. The non-existence of real estate agents is only logical because there is no land to buy or sell.

However, should real estate agents set up business in Nauru, they will be required to comply with the registration of a business under the *Business Names Registration Act 2018*, *Partnership Act 2018*, *Corporations Act 1972* or *Trusts Act 2018* (whichever is the preferred option) and *Business Licences Act 2017*.

Once the entity is established and commences business, it will be required to also comply with *Part 4* of the *AML-TFS Act 2023*. In so complying, it will also be required to comply with *Recommendations 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 23*.

(c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above USD/EUR 3,000;

There are also no registered precious metals and dealers in precious stones in Nauru. However, should dealers of precious metals, stones and jewellery set up business in Nauru, they will be required to comply with the registration of a business under the *Business Names Registration Act 2018*, *Partnership Act 2018*, *Corporations Act 1972* or *Trusts Act 2018* (whichever is the preferred option) and *Business Licences Act 2017*.

Once the entity is established and commences business, it will be required to also comply with *Part 4* of the *AML-TFS Act 2023*. In so complying it will also be required to comply with *Recommendations 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 23*.

(d) Lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client concerning the activities listed in *Recommendation 22* provided above:

Accountants

There are no independent or chartered accountants registered in Nauru. However, should accountants set up practice in Nauru, they will be required to comply with the registration of a business under the *Business Names Registration Act 2018*, *Partnership Act 2018*, *Corporations Act 1972* or *Trusts Act 2018* (whichever is the preferred option) and *Business Licences Act 2017*.

There is no specific legislation which regulates the operation of business and services by accountants, accounting firms or chartered accounting firms.

Once the entity is established and commences business, it will be required to also comply with *Part 4* of the *AML-TFS Act 2023*. In so complying it will also be required to comply with *Recommendations 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 23*.

Legal Professionals

The legal professionals in Nauru are regulated by the *Legal Practitioners Act 2019*.

In addition, a legal practitioner operating a law firm is required to comply with the *Business Licences Act 2017* and the *Business Names Registration Act 2018*. If a legal practitioner enters into a partnership, the requirements of the *Partnership Act 2018* must be met.

For the purposes of the *AML-TFS Act 2023*, legal professionals must take heed of the requirements of *Part 4*, if on behalf of their clients they:

- buy and sell real estate;
- manage client money, securities or other assets;
- manage bank, savings or securities accounts;
- organise contributions for the creation, operation or management of companies; or
- create, operate or manage legal persons or arrangements, and buy and sell business entities.

- (e) [Trust and company service providers – when they prepare for or carry out transactions for a client concerning activities listed in Recommendation 22 provided above:](#)

There are no trust and company service providers registered in Nauru. However, should trust and company service providers set up business in Nauru, they will be required to comply with the registration of a business under the *Business Names Registration Act 2018*, *Partnership Act 2018*, *Corporations Act 1972* or *Trusts Act 2018* (whichever is the preferred option) and *Business Licences Act 2017*.

Once the entity is established and commences business, it will be required to also comply with *Part 4* of the *AML-TFS Act 2023*. In so complying it will also be required to comply with *Recommendations 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 23*.

Other reference materials

A DNFBP that falls within the definition of a reporting entity under the *AML-TFS Act 2023*, is urged to note other important material. These include the:

- *Anti-Money Laundering and Targeted Financial Sanctions (Simplified Due Diligence) Guideline 2023* [**Simplified Due Diligence Guideline**];
- *Anti-Money Laundering and Targeted Financial Sanctions (High Risk Countries) Guideline 2023* [**High Risk Countries Guideline**];
- *Anti-Money Laundering and Targeted Financial Sanctions (Fit and Proper Person) Criteria 2023* [**Fit and Proper Person**];
- *Beneficial Ownership Guide*;
- *Non-Government or Non-Profit Organisation Best Practice Guide*;
- *Virtual Asset Service Provider Policy*; and
- *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023*.

Who to contact for assistance regarding this Guide?

Where a person or entity has questions regarding this Guide, please note that you may contact the FIU directly. The requirements of *Part 4* may be daunting to understand and implement. For this purpose, the FIU is legally mandated to offer guidance to reporting entities for the implementation of the obligations under *Part 4* of the *AML-TFS Act 2023*.

For this reason, the FIU will ensure to provide, assistance through training and awareness. The FIU is required to do so under the *AML-TFS Act 2023*.

You may also contact the Deputy Registrar for Corporations who conducts joint supervision with the FIU on matters relevant to anti money laundering and terrorist financing matters.

This Guide is issued jointly by the Supervisor of the FIU and the Registrar of Business Names. The contact persons are:

- (a) **Wylie Detenamo** – Deputy Registrar for Corporations: wdetenamo@gmail.com
- (b) **Rajas Swamy** – FIU Supervisor: rajasswamy@gmail.com