Republic of Nauru

Nauru's Anti-Money Laundering and Proliferation Financing National Risk Assessment 2023

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FOREWORD

I am very pleased and honoured to contribute to *Nauru's Anti-Money Laundering and Terrorist and Proliferation Financing National Risk Assessment 2023* (NRA 2023).

This is the second Report for Nauru. The first one was undertaken in 2018. The Report in 2018 highlighted and provided guidance to the Government to take action on certain matters in regards to compliance with the AML/CFT requirements. The NRA 2018 is one of the factors which was taken into account in reviewing the entire *Anti-Money Laundering Act 2008*. The Government has committed substantial resources to ensure that the laws relating to money laundering and terrorist or proliferation financing were updated and remain progressive.

The statutory recognition of giving independence to the Financial Intelligence Unit to carry out its operational functions and responsibilities paved the way for the Financial Intelligence Unit to undertake the NRA 2023. This is also the first time when a Nauruan entity took an independent exercise to assess Nauru's capability for money laundering and terrorist financing or proliferation financing.

I am informed that a substantial amount of research and information gathering were undertaken to reflect as accurate as possible the position of Nauru.

Money laundering is an act which has serious consequences. It has the potential of destroying financial markets. Equally, it causes reputational harm to businesses. One of the grave effects of this is that lawful operators of businesses are put under unnecessary financial stress.

The NRA 2023 is the beginning of the review process for AML/CFT compliance locally. It will be an ongoing process for the FIU to continue to monitor any suspicious activities. The FIU is given this mandate under the *AML-TFS Act 2023*.

During this assessment, I have also had the opportunity to read through a number of Guides and other information papers prepared for officials and other stakeholders to better understand the legal and administrative framework of AML/CFT. A number of these instruments were existing. However, the value of the same was not realised until the same has now been made publicly accessible in the electronic form on the Government website. It is now open to the people to read and understand what Nauru does for its AML/CFT. Equally, it allows Nauruans to conduct their business activities without the fear of being prosecuted for contravention of AML/CFT laws, as long as the Best Practice Guide provided is adhered to.

The efforts of all those concerned in preparing this Report no doubt will be beneficial to Nauru and its people. This report is also a requirement under *Recommendation 1* of the FATF Standards. For that purpose, it may also be used for Mutual Evaluation of Nauru in October 2023.

I acknowledge the tremendous amount of work of the Supervisor and the staff of the Financial Intelligence Unit. The Financial Intelligence Unit was ably assisted by a legal counsels, the work of the legal

counsel has also been invaluable and is greatly appreciated by the AMLGC.

I am confident that it is with collaborative effort like this that has resulted in the preparation of this comprehensive Report. A fair and balanced approach to assessment, clearly recognising the risk-based approach of the FATF, the assessment shows that Nauru remains a low risk jurisdiction for AML/CFT matters. In addition, it must be noted that Nauru has complied with its international obligations in domesticating the AML/CFT framework, be it the FATF Standards and with various United Nations Security Council and the Committee's recommendations or decisions. A concerted effort is needed of all the law enforcement agencies, to ensure that Nauru remains a hostile nation for illegitimate financial activity and terrorist infiltration.

In reciprocation it will protect our society and also will ensure that Nauru's financial system remains transparent and clean.

Janmai Jay Udit
Chairperson
Anti-Money Laundering Governance Council

8th October 2023

EXECUTIVE SUMMARY

The Financial Intelligence Unit in the exercise of its statutory functions pursuant to *Section 69* of the AML-TFS Act 2023, undertook the National Risk Assessment for Nauru against money laundering, terrorist financing and proliferation financing. The methodology adapted for the Report is discussed in Chapter 6.

In the course of carrying out the research and a collation of data and information, as the Head of the Financial Intelligence Unit, I had the opportunity to discuss a number of issues with various stakeholders.

This Report does not deal with all the matters of AML/CFT. However, the important issues which were raised in the NRA 2018 have been addressed. In addition, other matters have been considered and incorporated in the Report to at least set the foundation for further work.

As can be seen from the Report and the analysis undertaken, Nauru remains a low risk jurisdiction for any money laundering, terrorist and proliferation financing. This assessment remains consistent with the NRA 2018. The only difference is that this Report considers core elements of the FATF Standards. Not only that, the FIU had the benefit of the new legislation and also amendment to existing legislation.

I also acknowledge the work of the various committees established as part of the National Framework. The AMLGC has also supported the compilation of this Report.

The Minister for Justice and Border Control also played an instrumental role at the highest political level to ensure that Nauru remains free from money laundering and other related offences. He was able to get the Cabinet involved for various legislation to be approved by way of Regulations and also the enactment of the new AML-TFS Act 2023.

This Report was compiled and was submitted to the Chairperson of AMLGC on 5th October 2023.

Rajas Swamy
Supervisor
Financial Intelligence Unit

Glossary

ADB	Asian Development Bank
ADF	Australian Defence Force
ALGC	Anti-Money Laundering Governance Council
AML / CFT	Anti-money Laundering and Counter-Terrorism Financing
AML – TFS Act 2023	*Anti-Money Laundering and Targeted Financial Sanctions Act 2023*
AML – TFS Bill 2023	Anti-Money Laundering and Targeted Financial Sanctions Bill 2023
APGML	Asia / Pacific Group on Money Laundering
ASYCUDA	Automated System for Customs Data system
ATMs	Automated Teller Machines
AUSTRAC	Australian Transaction Reports and Analysis Centre
CTTOC	*Counter Terrorism and Transnational Organised Crime 2004*
DFA	Development Fund Act 2011
DNFBPs	Designated Non-Financial Businesses and Professions
EFTPOS	Electronic funds transfer at point of sale
FATF	Financial Action Task Force
FATF Standards	Financial Action Task Force Standards
FIU	Financial Intelligence Unit
FMIS	Financial Management Information System
GDP	Gross Domestic Product
MACMA	Mutual Assistance in Criminal Matters
ML / TF risks	Money-Laundering and Terrorist Financing risks
MTC	Management & Training Corporation Pty. Ltd.
MVTS	Money or Value Transfer Services
NAC	Nauru Agency Corporation
NCS	Nauru Customs Service
NPOs	Non-Profit Organisations
NPF	Nauru Police Force
NRA	National Risk Assessment
NRA 2018	National Risk Assessment 2018
NRA 2023	National Risk Assessment 2023
NRO	Nauru Revenue Office
NSL	Nauru Shipping Line
NUC	Nauru Utilities Corporation
OECD	Organisation for Economic Cooperation and Development
PACLII	Pacific Islands Legal Information Institute
POCA	*Proceeds of Crime Act 2004*
RONLAW	Is Nauru's online legal database
RONPHOS	Is a corporation established under Section 6 of the RONPHOS Act 2005
RPC	Regional Processing Centre
TIN	Tax Identification Number
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UN resolutions	United Nations resolutions
UNSC Resolutions	United Nations Security Council Resolutions
UPR	Universal Periodic Review
UXO	Unexploded ordnances
YTD	Year to date
2012 ME	2012 Mutual Evaluation

CHAPTER 1

INTRODUCTION

Brief Background

A National Risk Assessment was undertaken for Nauru in 2018. It was undertaken in contemplation of the Mutual Evaluation of Nauru's AML/CFT requirements in 2020. The Mutual Evaluation in 2020 did not eventuate due to the closure of national borders and other travel restrictions imposed by international or regional bodies. The scheduled Mutual Evaluation was in the very early days of the COVID-19 restrictions, as such it was not prudent or there was no capability to undertake the Mutual Evaluation. The rules for isolation during the COVID-19 pandemic would have resulted in respective staff and stakeholders being separated, working from home or in other isolated places. The end result would have been that the Mutual Evaluation would not have been carried out comprehensively, as opposed to when it is carried out on-site.

It must also be noted that the NRA 2018 became a source document for a number of information. In 2018, the FIU Office was managed and administered by a foreign national who completed employment in Nauru in 2019. This required the recruitment of a new FIU Supervisor. Since the arrival of the Supervisor in Nauru, a more intensive and aggressive review of the laws, processes and overall endeavour to implement the AML/CFT requirements in Nauru.

Since 2020 Nauru's AML/CFT capacity, operations, public awareness and placing necessary administrative and other infrastructure in place began, which continues to date.

What does this review contain?

The objective of the Review is to ascertain as comprehensively as possible, the overall position of Nauru's legal, administrative and other systems relating to AML/CFT compliance. Consultations and discussions with various stakeholders have been ongoing. One of the results of this review process was the finalization and enactment of a new AML-TFS Act 2023 and amendment to the POCA. In 2020, the CTTOC, was amended extensively to provide for terrorism related laws domestically following from the various United Nations Security Council Resolutions.

Also, with the assistance of APGML, a consultant[1] was engaged in 2018 to undertake a gap analysis study of Nauru's AML/CFT laws. Following that gap analysis, a consultant[2] was appointed to draft a new AML-TFS Act 2023, as it was impossible to amend the existing *Anti Money Laundering Act* of 2008 due to the extent of amendments required. Various consultations were held with the consultants which resulted in the draft AML-TFS Bill. Since 2021 the Drafting Team from the Department of Justice have been fully engaged to ensure that the laws are updated to meet the 40 FATF Recommendations. Whilst incorporating all the Recommendations, it was not an easy task

[1] Anagha Joshi

[2] Lexbridge Lawyers

since they spread over other areas of work, which is normally the responsibility of other persons.

In June 2023 the Bill was finally debated and enacted in Parliament. There was still substantial work to be done for subsidiary legislation. Some have been attended to by the Department of Justice in consultation with the FIU. It is hoped that all subsidiary legislation, whether related to FATF or not, is to be completed in due course.

This legislative review provided a platform for studying any prevailing money laundering activities or terrorism or proliferation financing.

Concurrently with the legislation, the FIU has been meeting with the Bank Manager for the Bendigo Agency. This includes meeting with various reporting entities[3]. There has been ongoing work on this since 2020 and beyond that.

Although the Mutual Evaluation in 2020 was deferred, Nauru continued with its work as required under *Recommendation 1* of the FATF Standards. One of the important steps taken was the appointment of the current Supervisor of the FIU during the COVID-19 travel restrictions. He was brought into the country under strict health movement restrictions, including spending time in quarantine. Since his commencement of duties he has taken time out to meet various stakeholders to draft the *National Strategy for Anti-Money Laundering and Combatting the Financing of Terrorism* (National Strategy). This resulted in the final draft of the National Strategy, which is for the period from 2022-2025. The Policy has come into effect formally from 1st July 2022. However, it must be noted that work was still being undertaken, during the drafting of the National Strategy was still being undertaken.

The additional work undertaken was the formation of various working groups. The most important committee established in Nauru was the establishment of the *Anti-Money Laundering Governance Council*. This organisation also paved the way for the establishment of *Anti-Money Laundering Officials Committee*. The implementation of AML/CFT laws is meaningless if the private commercial entities or organisations do not partake in the education, implementation and enforcement of AML/CFT laws. This resulted in the establishment of *Anti-Money Laundering Private Partnership Committee*. These 3 principal committees are anecdotal evidence of the fact that Nauru has continued to ensure that it complies with the requirements for AML/CFT procedurally and substantively.

Other areas of written laws of Nauru have also been amended which no doubt forms part of the National Strategy for ensuring the objectives of the 40 FATF Recommendations are implemented.

At the background of all these developments, it required meeting with various stakeholders including the reporting entities and commercial operators in Nauru to be able to draft the Risk Assessment for Nauru in 2023. The date in 2023 was chosen to ensure it will be able to capture the impact of laws and AML/CFT framework which were in the process of being implemented.

It must not be overlooked that Nauru was already scheduled for face to face Mutual Review in October 2023 from last year. A number of issues were raised in the NRA 2018 by many individuals who have assessed Nauru for one or another purpose.

[3] *Section 7 of the AML-TFS Act 2023*

Those facts and details are absolutely outdated as such it required a new Risk Assessment addressing the concerns of 2018 and also the progress made as a result of new or additional legislation and administrative action.

How the NRA 2023 is to be interpreted, considered, evaluated and treated in 2023

The NRA 2023 is a current and up to date status of AML/CFT requirements. It clearly spells out the issues which Nauru faces, challenges and how those have been mitigated. There is nothing more important than the current reflections of a sovereign nation. The facts and figures given in this Report are obtained from the relevant authorities. It must be noted that money laundering and terrorist and proliferation financing are acts which are undertaken in absolute secrecy. It requires people with necessary skills and knowledge to obtain such information. The facts and information contained in this report together with any analysis is an expert judgment of those involved in respective areas of the activities. This includes the law enforcement agencies, supervisory authorities and also of the FIU, which has the broader responsibility of ensuring that the AML/CFT laws are implemented. They reflect the actual correct and true status of those matters.

Whilst Nauru acknowledges that the Mutual Evaluation is to also take place in October 2023, the Risk Assessment is an independent work undertaken by the FIU. These ongoing assessments resulted in reviewing a number of laws which are discussed later.

CHAPTER 2

SCOPE AND PURPOSE OF REVIEW

The discussion in Chapter 1 sets out the background for the National Risk Assessment 2023 (NRA 2023). The objectives of undertaking this assessment were/are as follows:

(a) since there have been a number of changes after the 2012 ME, Nauru has faced a tremendous social, political and economic reform and changes. One of the important changes is that there has been a substantial in and out flow of money to and from Nauru after the establishment of the RPC bilaterally between Australia and Nauru. The increase of money in the economy required a closer assessment of how the money linked to Nauru moves within or outside of Nauru;

(b) Nauru began construction of a sea port which would allow ships to berth at the port under construction. This began in 2019. Whilst it still remains to be completed, some vessels are now able to berth for the purposes of loading and offloading cargo;

(c) in order to overcome shipping issues for Nauru's food supplies and other products, especially during the COVID-19 pandemic, Nauru initially chartered but later purchased its own vessel. The vessel is capable of carrying approximately 320 containers per shipment. There is now regular shipping for Nauru;

(d) from 2018, the Government reviewed the judicial system of Nauru. The then existing system was a District Court and Supreme Court (*which was for most part the final court in constitutional, land and other matters*). The Australian High Court was the final appellate court for Nauru, which had limited jurisdiction in criminal matters, specific civil matters and failed asylum seeker applications. The review of the court is fundamental to the rule of law and access to justice. Nauru established its own Nauru Court of Appeal in 2018;

(e) to implement and comply with the requirements of *Recommendation 1* of FATF. *Recommendation 1* requires each country to assess risks and apply a risk based approach to ensure FATF Recommendations are domesticated in the national laws or other policy and administrative mechanisms. This domestic implementation process is key to ensuring that Nauru is able to meet its obligations for AML/CFT compliance;

(f) in 2016, Nauru's 116-year old *Criminal Code 1899* was repealed and replaced by the *Crimes Act 2016*. This has brought in clarity on offences and all such offences which have been created after 1899 in its consolidated form. Part of the *Crimes Act 2016* directly applies to AML/CFT matters, such as, predicate offences;

(g) the NRA 2018 is now spent or out of date due to the effluxion of time in many areas. It is also due to developments after the Report was published. It is important that a new current review be undertaken which is to reflect the prevailing status of the legal framework and the effective implementation of the FATF Recommendations;

(h) Nauru began implementing the UN resolutions on counter terrorism and terrorist financing which are related to money laundering in 2020. The CTTOC was amended in 2020 to incorporate into domestic laws the obligations of a member country. In 2023 the AML-TFS Act was passed by the Parliament. The corresponding amendments were also made to the POCA. Although these laws were enacted by the Parliament in June 2023, the requirements under it have been implemented administratively where it has been possible. The effect of the implementations pre and post enactment is also important to be analysed;

(i) to review the status of AML/CFT laws and its implementation and the business conduct of people as a result of AML/CFT laws;

(j) to update the information and details already published in NRA 2018. This includes the risks and vulnerabilities identified in the NRA 2018 and counter measures taken to address those matters identified where necessary;

(k) to undertake the incorporation and implementation of the comments and suggestions contained in the APGML Scoping Note issued to Nauru in August 2023;

(l) to formulate the *National Strategy for Anti-Money Laundering and Combatting the Financing of Terrorism*;

(m) to promote via education and training, programmes relating to AML/CFT framework;

(n) to establish ALGC and AML committees. The work of the ALGC is important to review the risks of money laundering and terrorist financing;

(o) to update on various laws made by Nauru, which are directly related to AML/CFT requirements; and

(p) to update on the administrative implementation and the results of such to the community and public at large.

In publishing this Report, Nauru has considered and incorporated the guide[4] issued by FATF required for the risk assessment. In addition, the assessment of the risk has been undertaken objectively. The objective assessment is the key to identifying issues which Nauru is to consider as part of its National Plans to implement the AML/CFT framework. For avoidance of doubt, it is reiterated, that the contents of this Report is not for the purposes of defending Nauru's position under the AML/CFT requirements.

[4] FATF Guidance, National Money Laundering and Terrorist Financing Risk Assessment (February 2013)

CHAPTER 3

CONTEXT OF NAURU

Population, GDP and sources of income

The 2021 Population and Housing Census Report was published in September 2023. This latest Report has up to date records and statistics. The Report records that Nauru's current population has increased from 11,580 in 2018 to 11,680[5] in 2021. This population has further increased closer to 12,000 by 2023.

The current GDP for Nauru is US 10,648[6]. Nauru still uses the Australian dollar as its nominated currency. The main source of income for Nauru still remains the Regional Processing Centre, followed by Fisheries which is under the *Parties to Nauru Agreement*. Income from the Regional Processing Centre has also resulted in a substantial collection of personal emoluments and business tax, which is the third highest income.

It must be noted that a number of assessments on Nauru's GDP based on income from the RPC is not an accurate reflection of the real income. This is because once the RPC closes, *(currently there are no population on the island and RPC is operating in its Enduring Capability Contingency State)*, the income and the cashflow in the economy is likely to be substantially reduced.

Government Expenditure

The Government Revenue in the Treasury Fund is governed by *Article 58* of the *Constitution. Article 59(1)* governs the withdrawal of money from the Treasury Fund, in accordance with any written law. Nauru complies with these requirements as any monies withdrawn from the Treasury Fund is under the *Appropriation Act.* This also includes the recognition of all revenues received by Nauru and paid into the Treasury Fund.

Nauru has established a *DFA 2011,* which governs all the monies given in grant, donations and other funds. As part of the budget presentation, the Minister for Finance is required to table a 6-monthly report to the Parliament under *Section 8* of the DFA 2011. The Minister is also required to table in Parliament an annual report of the expenditure and income of the monies under the DFA 2011.

Nauru Airline and Flights

Nauru Airlines has a fleet of 6 aircrafts[7]. Three of them are passenger aircrafts. Nauru Airlines is one of the few airline operators, which has 3 dedicated aircrafts for freight only. This is due to the increase in demand for airfreight following the COVID-19 pandemic.

Nauru Airline continues to fly to the following destinations:

- Nauru;
- Nadi (Fiji International Airport);
- Brisbane (Australia);
- Tarawa (Kiribati);
- Kiritimati (Christmas) Island (Kiribati);

[5] Nauru 2021 Population and Housing Census Report available | Nauru Bureau of Statistics (spc.int)

[6] https://data.worldbank.org/country/NR (published in 2022)

[7] Nauru Airlines: Our Fleet

- Pohnpei (FSM); and
- Majuro (Marshall Islands).

In addition to its normal flights, Nauru Airlines also undertakes charters on request from various countries. Also the freighter services of Nauru Airlines is operating domestically in Australia on a charter basis by other airlines.

Shipping – Nauru's Port and Nauru's Ship

In the NRA 2018, it was noted that Nauru does not have a port for the offloading and loading of cargo. This is undertaken by barge and cranes. In addition, Nauru was not capable of handling large vessels carrying containers. In 2023 this position has completely reversed. Nauru is now building a port which is capable of loading and offloading cargoes like any other port. Some ships are currently able to berth properly although the port is under construction. The port is funded by Asian Development Bank grant. The NSL '***Micronesian Pride***' and other smaller vessels do load and offload goods or cargo from the port.

NSL has been able to berth since June 2022. In September 2023, a vessel carrying petroleum products was able to berth for the first time at the port to deliver fuel through the pipes to the bunkers in Buada District. This is a landmark change. The handling charges are to be reduced due to quick return time for the vessel. The benefits must be passed onto the people of Nauru.

The whole port, including the terminal buildings for the port are to be completed by next year. This is an important development for the purposes of AML/CFT, in that more ships (*cruise ships, refueling vessels, cargo vessels etc.*) are expected to berth at the port. This will result in the potential occurrence of activities which come within the parameters of AML/CFT work and the application of the FATF Recommendations.
This requires legislative and other administrative frameworks to be established.

Banking and Financial Sector

The Bendigo Bank Nauru Agency referred to in the NRA 2018 continues to operate in Nauru. The Agency is part of the Bendigo Bank franchise. Bendigo Bank itself is an Australian Bank which is part of Bendigo and Adelaide Bank Group. Historically, Bendigo Bank has origins with 2 Australian communities, namely Bendigo in Victoria and Adelaide in South Australia. The Bendigo Bank was initially started in 1858. Then it was largely operating as a Building Society to improve the conditions in the goldfields in Victoria and Adelaide.

In 2007 the Bendigo Bank Limited merged with Adelaide Bank Limited. Thereafter it was renamed as '*Bendigo and Adelaide Bank Limited'*.

The Bendigo Bank duly complies with the requirements of the Australian laws for its operation. As can be noted from above, the Bank has been in business for more than 170 years. In other words, it is a financial institution, which knows its obligations for the purposes of AML/CFT. It is also aware of various legislative requirements for financial institutions in Australia.

A Bank with such a long history, which continues to ensure that the Nauru Agency operates within the lawful confines and parameters of the banking laws and requirements, is in itself assuring that it operates within the requirements of the AML/CFT framework. Needless to mention, the FATF Standards apply to all countries in the same manner and form as it applies to

Nauru or Australia. Undoubtedly the Bank is fully aware of the risks which a financial institution (reporting entity) must consider in its banking business and operations. It is also aware as to how it has to operate by managing or resolving those risks. Mitigating risks for the Bank in an Australian legal framework gives an added advantage to Nauru to ensure that our sole financial institution is not only legally compliant but is meeting its requirements for AML/CFT, in a developed country and also where the offending elements of AML/CFT are more prevalent.

In Nauru's context, this itself ensures that the Bank itself is not exposed to risk of being abused for money laundering or terrorist and proliferation financing. Even if Nauru is not able to trace any such illegal activities, certainly the Bank in Australia and the Australian Authorities will be able to immediately detect the same. Hence, the prospect of the Bendigo Bank Agency being used for money laundering or terrorist or proliferation financing remains **Low**.

Money or value transfer service

In the NRA 2018 reference was made to a '*formal remitter*'. There is nothing known to Nauruan law as a '*formal remitter*' even under the then *Anti-Money Laundering Act 2008*. However, under the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*, Nauru now specifically includes all such service providers and refer to them as '***Money or Value Transfer Services***' as required under *Recommendation 14* of the FATF Standards. The appropriate title or description of the business is *Money or Value Transfer Services* (MVTS). There has been no change in the availability of the service providers for MVTS. Since the NRA 2018, Western Union still remains the only MVTS. Its legal structure of establishment and its legal obligations as a branch operating out of Auckland, New Zealand still remains prevalent.

There have been no complaints on any inwards or outwards remittance to and from Nauru. The Nauru Police Force or the FIU do not have any records of complaints lodged by Western Union or by the people who use the MVTS. This is based on inquiries with the Nauru Police Force of any complaints of handling money by Western Union. Also, verification has been obtained from the head office in Auckland, New Zealand who have confirmed by an email dated 9th July 2021[8] that the Western Union branch in Nauru is operating within the required laws and the administrative rules of a MVTS. In March 2023, Nauru FIU was again advised by the Western Union head office in Auckland that a supervisory review was being undertaken on Nauru's Western Union agency. No report has been submitted yet on the review. The FIU will in due course seek a copy of the Report if it is permissible for Western Union to provide to the FIU.

There are no other MVTS in Nauru.

It is important to acknowledge that Nauru Post Office under the *Naoero Postal Services Corporation Act 2018* has the function to carry out MVTS. However, it is not undertaking any such financial services at all. Also, it has not registered itself in compliance with other laws to carry out MVTS.

An inquiry was made with the Registrar of Business Registration and Licencing as to whether there were any pending applications for MVTS. The information provided was that no one has shown interest or requested to register a business to provide MVTS.

[8] As part of preparing the Report – FIU made these inquiries.

The FIU monitors the activities of Western Union as it is the single avenue by which individuals will be able to use cash to send to other countries or person. During the visits by the FIU, it is now becoming clear that more people are directly transferring money from their Bendigo Bank account into Western Union account, rather than using cash.

During the site visit by the Supervisor, it was revealed that the use of the Western Union services has dramatically reduced as money is now transferred electronically through Bendigo Bank directly to any other country or person.

In any event, when Western Union transfers money from the sender to the receiver, records are generated. The cash deposits to Western Union form part of Western Union's records as well as the recipient entity in another country.

Since 2018, the changes have resulted in greater transparency and accountability of funds being transferred through the sole MVTS provider.

Designated Non-Financial Business and Professions (DNFBPs)

In the NRA 2018, there was reference to this without raising any matters of concern relating to AML/CFT. This was largely due to the fact that there were no DNFBPs operating in Nauru.

As part of the NRA 2023, a number of issues have been considered. One of the important changes that has occurred since 2018 is the requirement for every business entity to register itself. DNFBPs are business entities which are to register as individuals, corporations, partnerships or trusts. There are various requirements for registration, renewal and reporting under various Acts which includes the *Business Names Registration Act 2018, Corporations Act 1972, Partnership Act 2018* and *Trusts Act 2018*. These registration, renewal and reporting requirements undoubtedly bring in more transparency and accountability on the part of all proprietors of businesses.

Recommendations 22 and 23 of the FATF Standards make specific reference to operators of:

- Casinos;
- Real estate agents;
- High value dealers;
- Lawyers, notaries and other independent legal professions;
- Accountants; and
- Trust and Company Service Providers.

The substantial change which has been made after 2018 is the definition of '*reporting entities*' under the AML-TFS Act 2023. *Section 7* of the Act complies with the FATF Standards on the specific entities which fall within the definition of DNFBPs.

Also, a specific *Guide*[9] is now provided by the FIU to the respective DNFBPs. This is to assist them in their operations lawfully and also complying with the requirements of the AML/CFT laws.

As recognized in the NRA 2018, Nauru still has no accountants, real estate agents or stock market.

There are no trust or company service providers operating in Nauru. The legal entity which was providing incorporation, renewal and filing of statutory documents with the Registrar of Corporations has been dissolved and wound up. This was a Government entity

[9] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

in the name of *Nauru Agency Corporation*. The *Corporations Act 1972* was amended in 2018 to require all corporations registered in Nauru to have a registered office in Nauru. The amendment requires[10] that for all corporations, there had to be a registered office operating in Nauru. An additional requirement is that there has to be a contact person for the corporation residing in Nauru. The residential requirement is a necessity so that the corporation's conduct can be attributed to a natural person living in Nauru.

Furthermore, there are no persons providing payroll services or bullion dealers. In the NRA 2018, this was recognised and remains unchanged.

In the NRA 2018, in paragraph 1.8, it was recognised that Nauru has no casinos. During this review, it was revealed that there is an entity which is operating slot machines. It has been treated in Nauru as casinos. The entity also has a gaming licence[11]. There are 60 machines, of which only 40 are working. In any event, the owner informed the review that the machines are normally used when there is payment of money for phosphate royalties by RONPHOS. It is not a large operation which is used for laundering money. It is more used for amusement than for making money or cleaning dirty money. The highest price ever won was $18,000. In the analysis, this does not pose any immediate threat. The potential of this business operating as a full-time casino does not seem real in future due to the declining economy after the Regional Processing Centre went into *Enduring Capability Contingent State*.

Beneficial Ownership Registration Requirements

The *Beneficial Ownership Act* was enacted in 2017. It was brought into effect from 2018. At the time of the NRA 2018, there was little to no evidence available on the implementation of the Act.

The *Beneficial Ownership Act 2017* is now being implemented. There is an Authority, which is responsible for registering all beneficial owners.

Unlike many other jurisdictions, the *Beneficial Ownership Act 2017* is a stand-alone legislation. It applies to all forms of legal entities. These include corporations, partnerships and trusts. There is a Register of Beneficial Owners of these legal entities, which is kept and maintained by the Authority. No legal entities are registered nor are their renewals or other statutory certification is permitted, unless and until the requirement of the *Beneficial Ownership Act 2017*, is met. Compliance with the Act requires provision of the details contained in the Register.

When individual entities are considered in case of Nauru, it must be noted that the respective statutes may have no specific provision for beneficial ownership. This is due to the fact that the beneficial ownership requirements are consolidated and kept under the *Beneficial Ownership Act 2017*. The Act has Regulations and requirements also published.

Law Revision and Consolidation of Nauruan laws

For assessing the risk associated with the operations of businesses and other activities, it is important that the people concerned have access to up to date and current law. When the NRA 2018 was undertaken, Nauru's laws were not consolidated and updated on a regular basis. RONLAW and PACLII did provide some information. However, the most important element was the consolidation of

[10] *Sections 101 and 225(1)(f) – Corporations Act 1972*

[11] Issued under the *Gaming Act 2011*

various amendments to laws, which includes consequential amendments.

In 2020, the Government made a decision to allow the Department of Justice to review, consolidate, update and print consolidated volumes of laws. Lexis Nexis, a renowned law book publishing, supplier and retailing company serving the global community, was assigned the responsibility.

The Parliament enacted the *Law Revision Act 2019*. The long title of the Act summarises the process as follows:

> *'provide for the revision and consolidation of the written laws of the Republic, for the establishment of the Office of the Law Revision Commission and for the authorised publication and distribution of the revised and consolidated laws in print and electronic formats and for related purposes.'*

A Law Reform Commissioner based in Lexis Nexis was appointed under the Act to carry out the revision and consolidation of Nauru's over 600 pieces of legislation. These legislation date back to 1906. The project was completed in 2021. All laws are now consolidated and printed in bound and loose-leaf volumes. Also, all laws of Nauru are now available on RONLAW in the consolidated form. Where laws cannot be accessed on RONLAW due to constant internet issues, the laws are available at all times on the Lexis Nexis website. The Lexis Nexis website is a paid service, however the Nauruan laws contained therein are up to date and current.

The link between the Law Revision and Consolidation Project and the AML/CFT is that, for any person or business entity to ensure it is complying with the laws, it is important that the laws are accessible. Not only that, the laws accessible must be consolidated, current and updated. Commencing businesses and complying with all legal requirements go hand in hand.

Nauruan laws are readily available to all the public on RONLAW website free of charge. Even after the 2021 Review, the consolidation and updating of all laws as and when made in Nauru by the Parliament or the Cabinet are published in the Gazette. After that, they are also available on the RONLAW website within a matter of 2 weeks.

FATF requires that all persons concerned should be able to access as much information as possible publicly. This is an important step for ensuring that laws are made available publicly. It is a matter for an individual or entity to apply the law itself. They can also engage legal practitioners who will be able to assist them.

Court system of Nauru

In 2018, a substantive review was undertaken on Nauru's Judicial System. Its current structure is in an ascending hierarchy as follows:

(a) District Court;
(b) Supreme Court; and
(c) Nauru Court of Appeal.

The three courts are now established under their own respective statutes, that is, *District Court Act 2018*, *Supreme Court Act 2018* and *Nauru Court of Appeal Act 2018* respectively. This led to the repeal of the *Courts Act 1972* and the *Appeals Act 1972*. The repeal of the 2 Acts and the separation of the court by different statutes was necessary to ensure that there is clear legislative separation within the different hierarchies of the courts.

The remote final appellate court being the Australian High Court was replaced by the Nauru Court of Appeal. This was a move similar to other countries including New Zealand and Australia, who moved their final

appellate court from the Privy Council to their own High Court (Australia) and Supreme Court (New Zealand). The Nauru Court of Appeal now has a much broader jurisdiction on matters which can be appealed and the cost of such appeals is almost negligible.

The Registrar is the administrative head of the Department of Judiciary. There are 4 Deputy Registrar positions established to oversee the different hierarchies of courts, that is, the District Court, the Supreme Court and the Nauru Court of Appeal. The Family Court is also a division of the District Court. The 4 Deputy Registrars keep separate records of the respective courts. These divisions and specific statutory provisions clearly establish the vertical and horizontal independence of the Judiciary, as follows:

(a) horizontal, in that each individual judicial officer exercises his or her judicial functions independent of any other person or body; and

(b) vertical, in that there is an appellate process from the District Court to the Supreme Court and from the Supreme Court to the Nauru Court of Appeal.

The Chief Justice and the Judges of the Supreme Court are currently appointed for life, retiring at the age of 70 years. The Justices of Appeal retire at the age of 75. The Resident Magistrate also retires at the age of 70 years. The Judges remuneration and allowances are now prescribed by the *Judicial Officers Conditions of Service, Salaries and Allowances Regulations 2020*. These Regulations are made under the *Statutory Salaries Act 1974*. It emphasises and reinforces *Article 65* of the *Constitution*.

Resident Magistrates are appointed by the President in consultation with the Chief Justice as prescribed in *Section 4(3) of the District Court Act 2018. District Court itself is a creature of the Constitution; Article 56.* Resident Magistrates can be appointed until retirement or on a fixed term contract. Furthermore, there are also magistrates appointed for a specific case or matter in certain circumstances of conflict. Any allegation against a magistrate is now subject to an inquiry or hearing by a *Judicial Complaints Tribunal* established under the *District Court Act 2018* as amended in 2020. The *Judicial Complaints Tribunal* is appointed by the Chief Justice and not the Executive Branch.

The Nauru Court of Appeal is a creature of the Constitution, which was established in 2018*; Article 57*. In the 2016 review, appeals on limited matters were permissible by leave to the High Court of Australia. In May 2018, a new *Court of Appeal* was established in Nauru. Its powers are contained in *Article 57 of the Constitution and the Nauru Court of Appeal Act 2018.* This new apex court now allows appeals from:

(a) land matters;
(b) constitutional issues, interpretation and application;
(c) matrimonial matters;
(d) criminal matters; and
(e) civil matters.

In 2022 the *Constitution* was again amended to separate the Nauru Court of Appeal completely from the Supreme Court. The common element between the Nauru Court of Appeal and the Supreme Court was the Chief Justice sitting on the Supreme Court as well as being the President of the Court of Appeal. Following the 2022 Amendment, the

President of the Court of Appeal is appointed by the President. The Chief Justice no longer plays any role or judicial function in the Appellate Court. The Chief Justice sits in the Supreme Court and his decisions are appealable to the Court of Appeal. The separation now makes the Court of Appeal absolutely independent in that the Chief Justice will not be able to influence or participate in any decision of the Court of Appeal.

The Leadership Code Act 2016 also applies to the Chief Justice and judicial officers. *Section 8(g) and (k)* of the Act, includes the Chief Justice and judicial officers as Leaders that are subject to its provisions.

In order to bring more transparency and making the Judiciary more accountable, the Judicial Department has now established its own website. The website itself now publishes the daily '*cause list*' of all cases. This is an important development in that all cases which are to be called in court on a particular day can be accessed by any person through the cause list on the Judicial website[12].

The reason the Judiciary is discussed at length in this assessment, is because a number of FATF Recommendations require judicial intervention. The independent operation and functioning of a Judiciary is extremely important for ensuring that matters regarding anti-money laundering or terrorist or proliferation financing are adequately covered and provided for by the court system. The current court structure including the respective statutes and rules of court provide a complete procedure for dealing with any matter. This includes, any forfeiture, seizure, disposal or preservation of any alleged criminal properties under POCA. It is also important for ensuring that extradition processes are carried out in matters relating to AML/CFT.

As part of AML/CFT requirements, as much information as possible, should be made available publicly. All judgments of the courts must be reported and people must have free access to the same. Currently all judgments are delivered in open court. The judgments of the Court are ordinarily published in PACLII, a database of judgments reported from many countries in the Pacific region. Also, judgments are uploaded onto RONLAW.

The next phase of the judicial progress requires regular reporting of judgments for public consumption in the Republic. Assistance is needed for this purpose so that the summaries of judgments or decisions of the court are regularly disseminated to the community. The education process is a necessity and not a want.

AML/CFT and other information is publicly available

In the NRA 2018, this issue was not canvassed in detail. It is understandable there was still a lot of work being undertaken to ensure that information is made publicly available. Whilst making information accessible is essential, it is equally important that confidentiality of certain information is to be retained.

In the years following 2018 and leading up to 2023, a substantial amount of information is now made available on the Nauru Government website. The information

[12] www.naurujudiciary.gov.nr

regarding various departments are also available on the same website. Some information may not be updated for some Departments, but there is more than enough information on AML/CFT legal and administrative framework on the Department of Justice website. The website also is linked to other websites. The information published is publicly available without any costs unless specifically stated.

Compliance with AML/CFT laws and other related matters

Following the OECD Review of Nauru in 2018, Nauru continued to modernize its laws. One of the most important elements of current Nauruan laws is that, a number of Regulations are made with forms attached to them. The completion of the forms is a vital exercise and knowledge sharing on the requirements of the laws. There are various forms which persons and business entities are required to complete.

In the scheme of drafting and ensuring that all stakeholders are able to comply with the laws, the forms require substantive details. By completing the forms correctly very detailed information is recorded, which is compliant with the respective laws. This information is necessary to be kept and maintained as records during the operation and 7 years[13] after the ceasing of a business. This also meets the requirement of AML/CFT.

A complete list of all the laws are available on RONLAW. The relevant laws or respective forms for many legal requirements are contained in the Guides[14]. The Guide in some cases also provides the respective forms. The Guides are available on the Department of Justice website or on the FIU website.

Terrorism and proliferation financing

The NRA 2018 in paragraph 9, under the heading of '*Terrorist Financing Risk Assessment*', the issue of terrorist financing was considered. In 2018, it was acknowledged that the data available to Nauruan authorities does not suggest that Nauru has been a source, transit or destination country for terrorist financing.

However, there was no reference to proliferation financing. This may largely have been due to the finding that Nauru did not have laws for proliferation financing. However, proliferation financing is now adequately covered by the AML-TFS Act 2023 and its Regulations and CTTOC and its Regulations.

Since 2018, Nauru has made substantive changes to its legislative framework. The CTTOC was amended in 2020 which domesticated and implemented the UNSC Resolutions on terrorists, terrorist activity, terrorist property and so forth. In 2023, the new AML-TFS Act has a separate part on Targeted Financial Sanctions; *Part 7*. This has come into effect from June 2023. There are subsequent Regulations[15] made which are comprehensive in ensuring that terrorist acts and financing is capable of being detected and monitored in Nauru.

In the process the FIU has now published the High-Risk Countries[16] as identified by the UNSC and FATF. Also, respective terrorists and terrorist organisation recognised by UNSC or its Committees are publicly available on the FIU website.

[13] *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

[14] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

[15] *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023*

[16] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

This list is important for reporting entities when carrying out either simple or enhanced customer due diligence.

Extradition

Nauru's extradition law is one of the older legislation, inherited from its colonial history. It is the *Extradition Act 1973*. One of the issues which concern extradition was the listing of countries with which Nauru has extradition arrangements. Nauru always had extradition arrangements with a number of countries. On a review, these countries had Nauru as one of those countries referred to in their respective legislation as having bilateral relationships with Nauru.

The bilateral arrangement has been taken seriously in the FATF Recommendation. Actually *Recommendation 39* specially deals with the extradition process. The Cabinet has now listed the countries with which Nauru has bilateral relations for extradition. Recently, laws have also been made to ensure that the process of extradition is not lost in the system. For that reason, the *Extradition (Designated Countries) Order 2023* provides for the Secretary for Justice to maintain a case management system. A form is also designed to prescribe the information that should be kept in the Register.

Mutual Assistance in Criminal Matters

The MACMA was passed in 2004. In the 2012 Mutual Evaluation, the assessors evaluated and assessed Nauru's compatibility as Largely Compliant. This was when there were no subsidiary legislation made under the MACMA.

One of the important issues of mutual assistance is prescribing the procedure clearly so that action can be taken without any delay. This is especially when requests are to be sought from other sovereign nations, where diplomatic formalities and protocols have to be observed.

In 2023, Nauru has developed these procedures and also prescribed[17] appropriate documents to be prepared for the purposes of requesting mutual assistance or receiving a request from a sovereign nation.

In addition, a *Guide*[18] is now provided by the *Department for Justice*. This is also available on the FIU website as it involves the DPP and the NPF as well.

Border currency reporting and other matters

The NRA 2018 specifically referred to this as a risk. The law on Border Currency Reporting has been reviewed by Nauru. The review of the administrative and legal framework for border currency was required to be undertaken to ensure that there was sufficient currency in the economy. It was also to avoid individuals removing cash without declaring the same to the authorities.

The requirements for border currency reporting are now contained in the *Customs Act 2014* and also the POCA. The travelers requiring declaration of cash is also contained in the Departure and Arrival Cards, which are required to be filled by all travelers.

Nauru has allowed movement of cash by individuals. The pre-requisite for removing any cash in the excess of $5,000 is now required to be approved by the Chief Collector of Customs. A Request Form for carrying cash in excess of $5,000 is provided.

[17] Mutual Assistance in Criminal Matters Regulations 2023

[18] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

This form is required to be completed to allow NCS to assess the request.

Registration of Associations Act 2020

Whilst individual businesses, corporations, partnerships and trusts were regulated under various legislation, other organisations were not regulated. The *Registration of Associations Act 2020* has also been a substantial change from the 2012 Mutual Evaluation and the NRA 2018. The *Registration of Associations Act 2020* now allows the unincorporated bodies or organisations to formally register as an association under the Act.

This Act makes provision for many organisations to register their operations or bodies in accordance with the law.

The relevant entity in respect of AML/CFT is the NPOs. Under the *Registration of Associations Act 2020 the* NPOs are referred to as Non – government organisations or organisations without profit. These organisations are now required to be registered. Registration itself brings in a number of other compliance issues which includes records and activities of NPOs.

Recommendation 8 of the FATF requires Nauru to monitor the activities of NPOs. There are now ample laws to bring more transparency into the operations of NPOs. It is another matter whether the current registered NPOs fall within the ambit of *Recommendation 8* or not. This is discussed later in the analysis.

However, it is important to note that this legislation is cardinal to ensuring a NPO operates within the parameters of the law.

Parliamentary Services Act 2020

The 3 main arms of the Government are Executive, Legislature and Judiciary. By its various establishment, Judiciary remains independent of the Legislative and Executive except for other laws made by the Parliament.

There is always an overlap between the Executive and the Legislature. This is so because a Government has majority of Members of Parliament to be able to maintain its Cabinet. Nauru has 19 Members of Parliament. After Elections, one of the Members of Parliament becomes the Speaker of the House. The *Constitution* allows the appointment of 7 Ministers. The *Deputy Ministers Act 2019* allows the appointment for Deputy Ministers. The others remain in the opposition.

The Parliament in Nauru has become completely independent of the Executive. In 2020, the *Parliamentary Services Act 2020* transferred all the powers which the Executive had over Parliament. That is, the budget was still controlled by the Department of Finance. Also, the administrative matters were left to the Cabinet. Appointment of the staff was through the Chief Secretary.

Following the 2020 Act, Parliament now has its own budget. It is accountable for its own budget except being audited by the Auditor General. Also, all administrative functions including appointment of the staff are now specifically vested through the Speaker or the Clerk of Parliament.

This is an important development which separates all the different Arms of the Government. In the case of AML/CFT requirements, this is also relevant as the Members of Parliament are all Politically Exposed Persons. PEPs is covered by *Recommendation 12*.

Collection of Tax

In the NRA 2018 the implementation of a taxation regime was recognised. Nauru commenced legislating taxation since 2014. In that pursuit an *Administration of Tax Act 2014*, *Employment and Services Tax Act 2014* and *Business Tax Act 2016* were enacted. As recognized in the NRA 2018 Report, the first collection of tax began on 1st January 2017.

The additional tax collected was under the *Telecommunications Services Tax Act 2009*. This is a centralized form of tax which is collected by the telecommunications service provider and paid to the Government. The current rate of the telecommunications service tax is 10% of the total gross sales revenue; *Section 4(2)* of the *Telecommunications Services Tax Act 2009.*

This regime enables the Nauru Revenue Office to collect the Employment/Non-resident withholding tax and business profit tax.

In addition to the direct taxes, the NRO through the Nauru Customs Service also collects duties on all exported or imported items.

CHAPTER 4

LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

Over the years, Nauru has substantially legislated for the purposes of AML/CFT compliance. In addition, it has a permanent FIU. The FIU continues to carry out its functions independently. As part of the FIU's functions, it also issues Guides, Orders and Directions for public information.

The AML/CFT Framework is set out in the Schedule.

CHAPTER 5

NAURU FINANCIAL INTELLIGENCE UNIT

The FIU of Nauru is not a new entity. It was first established under *Section 7* of the *Anti-Money Laundering Act 2004*. Its existence continued under the *Anti-Money Laundering Act 2008*.

When the *Anti-Money Laundering Act 2008* was repealed by the AML-TFS Act 2023, the Nauru FIU continued its existence under *Section 68* of the AML-TFS Act 2023. A number of changes have been made since the last Mutual Evaluation in 2012.

The FIU is still headed by the Supervisor. The Supervisor is still appointed by the Minister in consultation with the Cabinet. The terms and conditions of the Supervisor is determined by the Cabinet. The reason for Cabinet's determination is because the Supervisor holds an independent office as such, the salaries and benefits cannot be reduced by the Public Service or any other Public Service officer. It requires the highest level of approval. The term of appointment is fixed for 3 years. Also, the Supervisor can only be removed by the Cabinet under *Section 72* of the Act. The Cabinet also does not have exclusive authority to terminate the Supervisor. Any allegations against the Supervisor are to be put to the Supervisor. An inquiry needs to be conducted by the Resident Magistrate. The Report of the Resident Magistrate is then submitted directly to the Secretary to the Cabinet and the Secretary for Justice; *Section 72(2) and (3).*

On the other hand, if the Supervisor is to be removed for any mental or physical incapacity, there is a requirement for a report to be prepared by a health practitioner.

In the pursuit of further ensuring that the FIU maintains as much independence as possible for the purposes of operations and carrying out its functions, *Section 74* specifically provides as follows:

> ***'74 Independence of the Financial Intelligence Unit***
>
> *(1) The FIU shall perform all such functions and exercise all such powers under this Act or any other written law independently.*
>
> *(2) The Secretary shall from time to time issue administrative directions to the FIU.*
>
> *(3) The Supervisor and other officers of the FIU report to the Secretary for administrative purposes.*
>
> *(4) For avoidance of doubt, no person shall give directions or obstruct the FIU from acting independently in carrying out its functions and powers under this Act.*
>
> *(5) The FIU shall have its own budget as part of the budget of the Department for Justice and Border Control and the budget shall be utilised as required under the Public Finance (Control and Management) Act 1997 and the respective appropriation law.'*

In summary, *Section 74* gives independence to the FIU as follows:

- Performance of all functions and powers under the Act or any written law independently;
- No person to give directions or obstruct the FIU from carrying out its functions and powers under the Act independently;
- It has its own budget;
- The FIU Supervisor and its officers only report to the Secretary for Justice for administrative purposes and not operational or functional purposes.

The requirements of *Section 74* have been implemented fully as such, FIU is operating independently carrying out its functions and performing its duties. It has a separate budget

which is part of the national budget under the *Appropriation Act 2023-2024*.

The appointment of staff of the FIU is also under the control of the Supervisor. Although there are processes to be followed administratively as provided under *Section 71(1)* to comply with *Article 68* of the *Constitution*, the ultimate control of the appointment of any staff is with the Supervisor; *Section 71(3)*. This Section allows the Supervisor of FIU the final endorsement of any appointments. All officers of FIU report directly to the Supervisor.

Section 69 provides for the functions of the FIU. There are 12 distinct functions. Apart from other functions, the FIU also has the power to '*engage in arrangement, understanding or any mutual cooperation with similar foreign entities in other countries or international bodies on matters relating to financial crime or criminal conduct'*.

On the administrative note, the FIU has a separate lockable office in the Department of Justice. It is isolated from other staff. It is also assisted by AUSTRAC which has provided technical assistance. In addition, it has also provided conferencing kit which includes such as television, camera and laptop. AUSTRAC also has bi-monthly regular meetings with the FIU Supervisor. In addition to these scheduled meetings, AUSTRAC is also able to meet or discuss matters of concern with the FIU.

The AUSTRAC has also assisted Nauru with the TAIPAN System for the Pacific Region. Currently it is undergoing its establishment and testing phase. The advantage of this system would be for Nauru to upload its own information to generate reports on a regular basis. It is intended that this advancement in technology should help FIU with providing more information to the public. The information would also assist other law enforcement agencies. One of the features of TAIPAN System is that the information can be shared amongst the Pacific Member countries.

FIU has also been able to establish working relationships with various Departments, statutory bodies and also private sector entities and personnel. This enables the FIU to disseminate information to the public in a much more effective and efficient manner.

The FIU also has a special provision on the Government of Nauru website under the Department of Justice and Border Control. All its information is published regularly on the website. It also has links to other important information to which the general public can have access to.

Over the period of the last 3 years, the Government Departments and other entities have also been able to understand the role of FIU. This progress is important in that they are able to share information with the FIU on a confidential basis or where it is for public consumption. This cooperation enables FIU and other agencies to detect any criminal conduct and deal with the same in an appropriate manner.

The FIU has been given statutory functions to enter into arrangements with foreign entities as well. The exercise of the function is not in any way affected where FIU is dealing with foreign agencies or similar bodies. In so far as any arrangement is concerned between the FIU and a foreign Government entity, there are diplomatic protocols which needs to be followed. The Department of Foreign Affairs is also involved to ensure the diplomatic channels and opportunities are all cleared for any such arrangements. Apart from that, in Nauru all foreign relations are an act of the '*Executive*'. The Executive branch is headed by His Excellency the President, who is the Head of State and the Chairperson of the Cabinet. *Article 17* of the Constitution vest all

executive authority to the Cabinet. This is a constitutional requirement which every Government entities or bodies are required to follow. FIU complies with this constitutional requirement for all its arrangements with any foreign entity. In saying that, the Cabinet is fully cognizant of the independent functions of the FIU, as such ordinarily, Cabinet does not decline any such request if such relationship is with countries within which Nauru already has diplomatic or friendly relationships.

To conclude, since the 2012 Mutual Evaluation, the FIU has evolved substantially. Its functions, powers, budget, appointment of staff and other operational matters have gained statutory recognition. On a day to day operation, the FIU works independently of the Public Service. The FIU reports its work on a weekly basis to the Secretary for Justice as the administrative head and also as the Chairperson of the AMLGC.

The importance of giving additional powers and independence to the FIU is necessary to ensure that the AML/CFT obligations of Nauru is implemented to the fullest extent possible. This enables the FIU to be able to address issues of concern or any criminal conduct which includes money laundering or terrorist or proliferation financing through secret intelligence and cooperation with foreign and domestic bodies. FIU performs the role of identifying the risk and the possible solutions and mitigations for such risks. The advice of FIU is provided to the various government departments involved to rectify operations. For example, the FIU was instrumental in formalizing the *Border Cash Reporting Framework*.

Although the FIU was already established under the repealed 2004 and 2008 *Anti Money Laundering Act*, Nauru has progressed in a substantive way to ensure that the FIU is independent in its operations. Not only that, FIU now has its own budget with a budget code of 4301.

By making the FIU independent financially, administratively and operationally, it demonstrates Nauru's commitment to comply with the requirements of AML/CFT. Nauru is committed to this. The NRA 2023 discusses a number of issues addressed by the Government of Nauru which demonstrates Nauru's seriousness to join the international community to combat money laundering and terrorism and proliferation financing.

CHAPTER 6

METHODOLOGY FOR NRA 2023

Understanding Money Laundering

The people of Nauru have been exposed to understanding the issue of money laundering before 2004. Since 2004 this has been part of Nauru's laws. The Minister for Justice presented the AML-TFS Bill 2023. In the Second Reading Speech, the Minister outlined the money laundering issues as follows:

> *'Mr. Speaker and Honourable Members, money laundering is a crime that has been around for some time now. Its origins can be traced back to as early as the 13th century. However, money laundering was highlighted in the 1930s when a well-known criminal popularly known as Al Capone used money received from his illegitimate businesses such as prostitution and bootlegging to fund his legitimate businesses such as laundromats and others. By doing this, Al Capone was able to make it appear as if his profits were legitimate because he concealed the criminal origins of this money. This is where the term money laundering was coined. Money laundering simplified, is where dirty money is assimilated into the financial system through additional transactions, until the **"dirty money"** appears clean. This is done in a 3-tier process. The first tier is placement – where money is assimilated into the financial system. The second tier is layering – where complex financial transactions are made to conceal the illegal source of the money. The third tier is integration – where wealth is acquired from the illicit funds transaction.*
>
> *Mr. Speaker Sir, that is a basic understanding of what money laundering entails. '*

The Speech in Parliament is one of the highest level of statement of the Government's position and understanding of money laundering. This is recorded in the Hansard. The second reading speech is also an aid to interpretation of the AML-TFS Act 2023.

Mandate for NRA 2023

The mandate for the preparation and publication of NRA 2023 is part of Nauru's legislative framework and as well as AML/CFT obligation.

Section 69 of the AML-TFS Act 2023 provides;

> ***'69 Functions of the Financial Intelligence Unit***
> *(1) The FIU shall have the following functions:*
> *…*
> *(g) to **identify, analyse** and assess on an **ongoing basis financial crime trends**, patterns and **risks of relevance to the Republic**, including in relation to new technologies, business practices and products;*
> *…*
> *(k) to ensure that **reporting entities**, supervisory authorities, other competent authorities and the public at large are **adequately informed about the trends, patterns and risks of financial crime and the appropriate responses**;'*
>
> [emphasis added]

Furthermore, Nauru is obliged under *Recommendation 1* of the FATF Standards to prepare a National Risk Assessment. The obligation and decisions for the country requires:

(a) '*Countries should identify and assess ML/TF risks for the country;*

(b) *countries should designate an authority or mechanism to coordinate actions to assess risks;*

(c) *countries should keep the risk assessments up to date; and*

(d) *countries should have mechanisms to provide information on the results of the risk assessments to all the relevant competent authorities and self regulatory bodies, financial institutions and DNFBPs.*'

Nauru has by law assigned this responsibility to the FIU; *Section 69(g) and (k).*

Recommendation 1 also requires Nauru to mitigate risks. Based on the understanding of the AML/CFT risks, Nauru applies a risk based approach in locating resources and implementing measures to prevent or mitigate those risks. For the purposes of mitigation, Nauru has adapted the FATF approach of '*detection and disruption of money laundering and terrorist financing and prevention of proceeds entering the system, and criminals sanctioned and deprived of illicit proceeds.*'

Recommendation 1 is also reflected in the long title to the AML-TFS Act which provides as follows:

> *'An Act to strengthen Nauru's capacity to deter, detect and respond to money laundering, the financing of terrorism and proliferation financing and for related purposes.*'

The objectives[19] of the Act further enhance and provide the mandate for continuous assessment of AML/CFT requirements; *Section 3*.

Nauru's Approach

In assessing the risks, Nauru has used the same process which was used in the NRA 2018. This involves:

(a) the National Risk Assessment to be undertaken;

(b) implementation of an ongoing national risk process; and

(c) prevention and mitigation strategies.

In the NRA 2018, six major components of Nauru's risk assessment were identified. For the purposes of this Report, the 6-component approach still appeared feasible and most suitable. These components are as follows:

(a) system mapping;

(b) similar jurisdiction analysis;

(c) desk-based stress testing;

[19] ***'3 Objectives The objectives of this Act are to:***
(a) provide for the effective legal, regulatory and operational measures for combating money laundering, terrorist financing and proliferation financing and other related threats in the Republic;
(b) provide for measures enabling the detection and prevention of money laundering, terrorist financing and proliferation financing;
(c) protect the financial system of the Republic from being used for money laundering and the financing of terrorism and proliferation financing;
(d) provide for and empower the Financial Intelligence Unit and certain other departments or government agencies to carry out their powers, functions and responsibilities under the Act or any other written law;
(e) enable the Republic to enforce targeted financial sanctions to prevent and arrest terrorism, terrorist financing and proliferation financing;
(f) make provision for reporting entities to establish procedures and commit resources to comply with the requirements of combatting money laundering, terrorist financing and proliferation financing;
(g) continue to further enhance the international reputation of the Republic where appropriate by the adoption of financial action task force and other mutually agreed relevant international commitments;
(h) facilitate cooperation amongst reporting entities domestically and internationally, with government agencies international partners which are vested with similar duties, functions and responsibilities;
(i) provide for the Financial Intelligence Unit to be the national coordination body for AML/CFT; and
(j) establish public confidence in the financial system of the Republic.'

(d) interviews of experts, community members and stakeholders;

(e) threat vulnerability and consequence data capture; and

(f) system testing.

As part of the Approach, it was important to make reference to the following instruments as they also form the basis of this Report:

(a) NRA 2018

The NRA 2018 forms the first stage of assessment to focus on issues identified in the Report. The Report provided substantive facts and issues which required addressing by Nauru. It was also important to analyse the data provided in the 2018 Report and to make contact with relevant stakeholders on actions that have been taken.

(b) Gap Analysis

A report compiled by Anagha Joshi, a Consultant engaged by APGML Secretariat, who prepared the gap analysis document on the *Anti-Money Laundering Act 2008*. This Report also considered the issues raised in the 2012 Mutual Evaluation Report and the NRA 2018;

(c) The APGML Scoping Note provided to Nauru on 21 August 2023;

(d) analyse the database for Suspicious Activity Reports which are generated by reports received from the reporting entities and AUSTRAC;

(e) Collected information from law enforcement agencies that the FIU coordinates anti-money laundering efforts with. These include NRO, NCS, DPP, NPF and other supervisory authorities[20].

In addition to the above, reference was also made to other Reports prepared, considered by relevant authorities and published as public documents for Nauru. This includes:

(a) The UNCAC Report on Nauru published on 25 June 2021[21];

(b) The UPR published on 12 April 2021[22];

(c) The OECD Report on Nauru published on 30 July 2019[23]; and

(d) Analyse information received from law enforcement agencies and supervisory authorities. The analysis was conducted to identify relevant threats and vulnerabilities relating to AML/CFT.

The approach undertaken aims to identify and provide understanding of:

(a) the scale if any, of AML/CFT activities in Nauru; and

(b) measures taken to address such activities.

[20] Supervisory Authority is with reference to the definition given to it under the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*

[21] V2104775_E.pdf (unodc.org)

[22] a_hrc_47_17_e.pdf (upr-info.org)

[23] OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Nauru 2019 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/43120c29-en.

Process for reporting

In compiling the Report for each separate activity, a common guide has been used. That is, all activities are assessed and reported in the following order:

(a) Threat;

Threat involves the intent of capability of people which may result or an attempt be made to cause harm, money laundering and committing predicate offences. This also involves the people who may be involved such as terrorist organisations, groups and individuals conducting terrorist or proliferation activities.

(b) Vulnerabilities

Nauru being a low risk jurisdiction as noted in the NRA 2018, the incidences of criminal conduct or financial crimes relating to the AML/CFT laws is minimal. In that context, in analysing the risk, a large component of it will just consider the vulnerabilities. The vulnerabilities are inherent things that can be exploited by terrorists or criminals.

(c) Consequence

The consequence of any money laundering or terrorist activity may cause harm to people or reputational harm or damage to financial systems and institutions.

(d) Mitigation

This requires action that may be taken to mitigate the risk. Where the risk cannot be eliminated at least mechanisms should be put in place to ensure that the chances of risk occurring is reduced.

Sources of information

The information contained in the NRA 2023 comprises of detailed and structured analysis of predicate offences, multiple STRs and open media sources.

CHAPTER 7

MONEY LAUNDERING

The offence of money laundering is provided in *Section 9* of the AML-TFS Act 2023 as follows:

> ***'9 Offence of money laundering***
>
> *(1) A person shall not engage in money laundering.*
>
> *(2) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction:*
>
> *(a) for an individual, to a fine not exceeding $500,000 or imprisonment for a term not exceeding 20 years, or to both; or*
>
> *(b) for a body corporate, to a fine not exceeding $2,500,000.'*

Money laundering is further defined in the Act as '*…deal or dealing with property with the knowledge that it is criminal property*[24]*'*. Deal or dealing with the property[25] is also defined and for the purposes of this Report, it constitutes:

> *'(a) concealing property;*
>
> *(b) disguising property;*
>
> *(c) converting property;*
>
> *(d) transferring property;*
>
> *(e) removing property from the Republic;*
>
> *(f) bringing property into the Republic;*
>
> *(g) receiving property;*
>
> *(h) acquiring property;*
>
> *(i) using property;*
>
> *(j) possessing property;*
>
> *(k) engaging in a banking transaction relating to property;*
>
> *(l) entering into an agreement, arrangement or understanding in relation to property; or*
>
> *(m) consenting to, authorising or enabling any of the actions referred to in any of paragraphs (a) to (l);'*

Existing information

The NRA 2018, perhaps is the document which deals with the issue of money laundering in Nauru. In the Report, it was expressly acknowledged that '*this is the first such assessment and it has identified a range of risks as well as missing or unavailable data and information that prevent accurate assessment of all AML/CFT risks that Nauru faces'*.

The threat that was identified in the Report was illegal export of cash. This conclusion was reached based on '*cash uplifts*,' '*tax evasion*' '*corruption, robbery or theft*'. The vulnerability of the risk actually happening was due to the absence of effective border control measures. Australia was identified as Nauru's greatest vulnerability in the sense

[24] **'criminal property'** means property, whether situated within or outside of the Republic, that is, in whole or in part and whether directly or indirectly, derived or realised from, obtained, used or intended to be used, in connection with criminal conduct and includes:

(a) any interest in such property;

(b) any dividend, other income or value accruing from or generated by such property; and

(c) property that was later converted, transformed or intermingled from such property; regardless of who carried out the criminal conduct or who benefited from it;

[25] 4(2) For the purposes of the definition of 'deal or dealing with property', concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in relation to it.

that internet banking and money transfer facilities platform was readily available. This Report will analyse the findings of the NRA 2018.

Following from the NRA 2018 Report, Nauru undertook several steps to arrest the findings.

(a) Strict procedure for exporting cash established

To begin with the threshold for reporting at the border was reduced from $10,000 to $5,000. This was undertaken to ensure that the loophole through which travellers were able to take $9,999 cash without reporting. Any sum in excess of $5,000 will require approval of the Chief Collector of Customs. A process for taking funds out of Nauru is now formalised. A request is to be made to the NCS. An '*Application for Cash Export Form*' needs to be submitted to NCS which will then refer it to the Nauru Revenue Office. The Nauru Revenue Office will permit the exportation of cash. Once the Form is endorsed, that needs to be given to the NCS prior to departure. The NCS Officers will be required to verify the amount. One of the important things that exportation of cash will be required to provide is '***source of fund***'. This requirement is important to ensure that money is legitimate and also to avoid tax evasion.

(b) Declarations

All travellers are required to complete an outgoing passenger card. The card requires a declaration to be made. The card also specifies that the declaration is made under the *Customs Act 2014* and the POCA. The declaration in the card reads as follows:

> *'**WARNING**: Penalties apply under the Immigration Act 2014, the Customs Act 2014, the Proceeds of Crime Act 2004, the Agricultural Quarantine Act 1999, the Quarantine Act 1908 and the subsidiary legislation made thereunder.'*

(c) Scanners at the Passenger Outgoing Point – security checks

The Airport has security checks for all luggage. They are scanned through the machine. At the departure point, customs officers are present. After the security check is completed, the customs officers do randomly check the passengers' hand carrying luggage physically.

(d) Scanners for checked in luggage

Nauru Airport has scanners which scans all the checked in luggage before they are loaded in the aircraft. This scanning is for all luggage which is done after check in as it goes through the conveyor belt.

(e) Forfeiture of illegal exportation of cash

Apart from the fines and penalties, any illegal exportation of cash if detected will be seized and forfeited.

Threats

The threat of exporting illegal cash cannot be eliminated completely. Whilst it has not been detected, travellers can potentially exploit the system by removing cash in smaller amounts. Also, there is a possibility that cash may be concealed from being scanned.

Vulnerability

The vulnerability of cash movement remains largely due to the fact that the vast majority of commercial entrepreneurs are foreigners. They do not invest in the country. They operate businesses to make profit. They will certainly try to avoid paying tax by removing cash.

The restrictions on exportation of cash also increases the vulnerability of movement of

money through mule accounts or the cash couriers. Mule accounts transactions will be undertaken through legitimate sources and processes. However, how the money exchanges hands in the recipient country is of concern. There have been no statistics on this form of transactions but certainly it remains a threat.

Consequences

The consequence of any movement of cash will still remain the same as was found in the NRA 2018. However, the statistics show that the cash outflow from Nauru has been very little. Most of them are accountable through the reporting processes.

Mitigation

The Government of Nauru together with the Bendigo Bank Agency have encouraged payments through electronic means. Most of the commercial activities in the private sector is generated through Government contracts and services. According to the Department of Finance, no payments are now made in cash. All payments are made through electronic payments which include domestic and international payments. The FMIS has been operational in Nauru for over 9 years. In addition, no payments are made to any contractors unless they are able to produce:

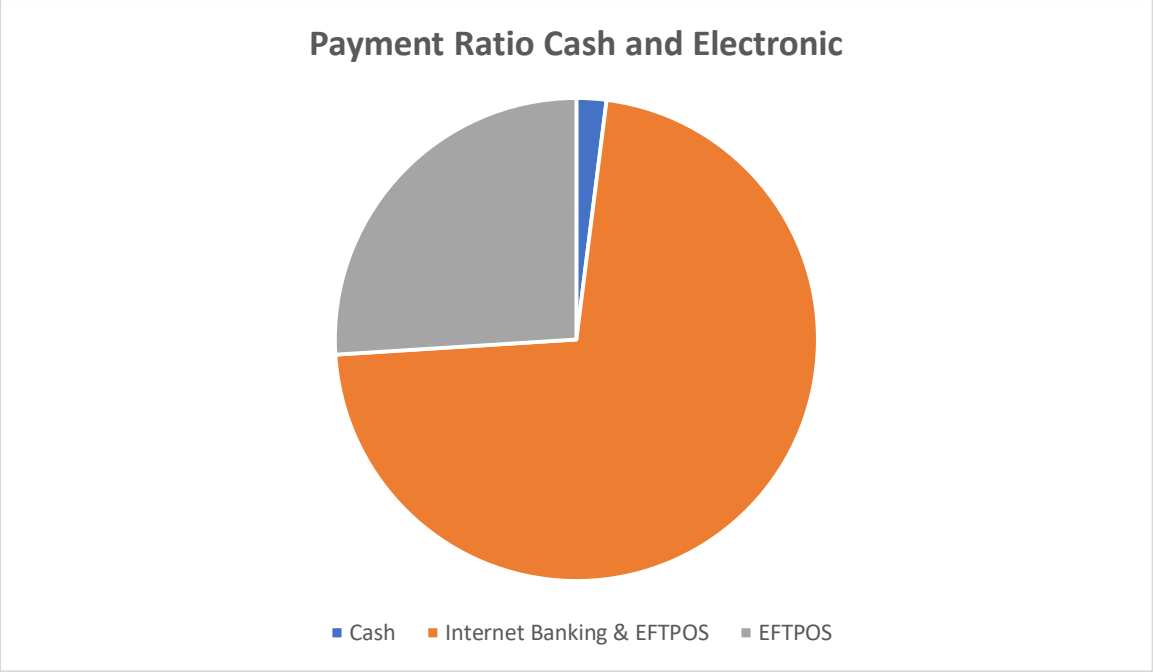
(a) a business licence; and
(b) a tax identification number (the TIN number is needed for business licence).

Further electronic means of payment has been introduced by use of EFTPOS. The major supermarket and a number of retailers are now using EFTPOS for payment.

The third means of payment is through direct electronic payment from customers' accounts into the vendors' accounts. Since there is only one Bank, the transfer is instant. This has now become a common form of payment for most of the domestic retailers in Nauru.

The fourth means of payment, is through online payment using the Bendigo portal. That is, for foreign payments as well. The Bank has a limitation on the transfer per transaction. Any sum in excess of the limit needs prior Bank approval. In any event, any transaction in excess of $10,000 is automatically reported under the Bendigo Bank's requirements in Australia.

The Bendigo Bank has advised that the use of electronic means of payment has substantially increased. The Chart below shows the use of electronic means of payment and cash.



Description of Table above:	
Cash	2%
Internet Banking & EFTPOS	72%
Bendigo Bank Debit Card and Master Card	26%

Currently, there are 65 EFTPOS machines in Nauru. These are given to the merchants. There are also 12 ATMs. People are able to withdraw money from ATM machines. The withdrawal itself requires receiving or depositing money in the account and the withdrawal. All of this generates electronic records of money movement.

Since the use of cash has reduced to 2%, it clearly shows that the position from 2018 to 2023 has been reversed. With 2% only dealt with in cash, the potential of unlawful exportation of cash has substantially reduced.

However, there is still a need to monitor the use of cash as this can change where travellers or people get an opportunity to start exporting cash to other countries.

The characterisation of low category is based on the information provided by NRO. For the last 3 years the number of applications for export of cash is shown in the table below:

Year ended	Number of Cash Export Licence Issued
30 June 2020	0
30 June 2021	1
30 June 2022	2
30 June 2023	2

There have been no cases detected at the airport or port where anyone was attempting to remove cash. The last reported case was in 2018.

Generally speaking, with this change the potential of export of cash is now found to be in the **Low Category**.

Domestic Threat of Money Laundering

Threat

In considering the domestic threat of money laundering in Nauru, it is important to consider the nature of economic activity. For most part the commercial operators are foreigners. As such they normally take the profits out of the country.

The domestic threat of money laundering is measured against the nature of commercial activity. During the collation of the Report it has come to the knowledge that foreign commercial entrepreneurs are using locals for the purpose of paying for importing goods. This is a threat which needs to be considered in the future.

The second means of assessing domestic money laundering is based on the type of criminal activity that is committed. Money laundering will result in more finance related crime such as fraud, theft and burglary. Also, it might detect the property being stolen and sold.

Vulnerability

The vulnerability for local money laundering arises from the use of local people by foreign entities. Also, criminal activities which are not detected would be a cause for concern. However, nothing has happened so far that raises any alarm for Nauru to take some drastic action.

Consequences

The consequences of domestic money laundering would result in movement of more money into the system. This should largely be in cash.

Mitigation

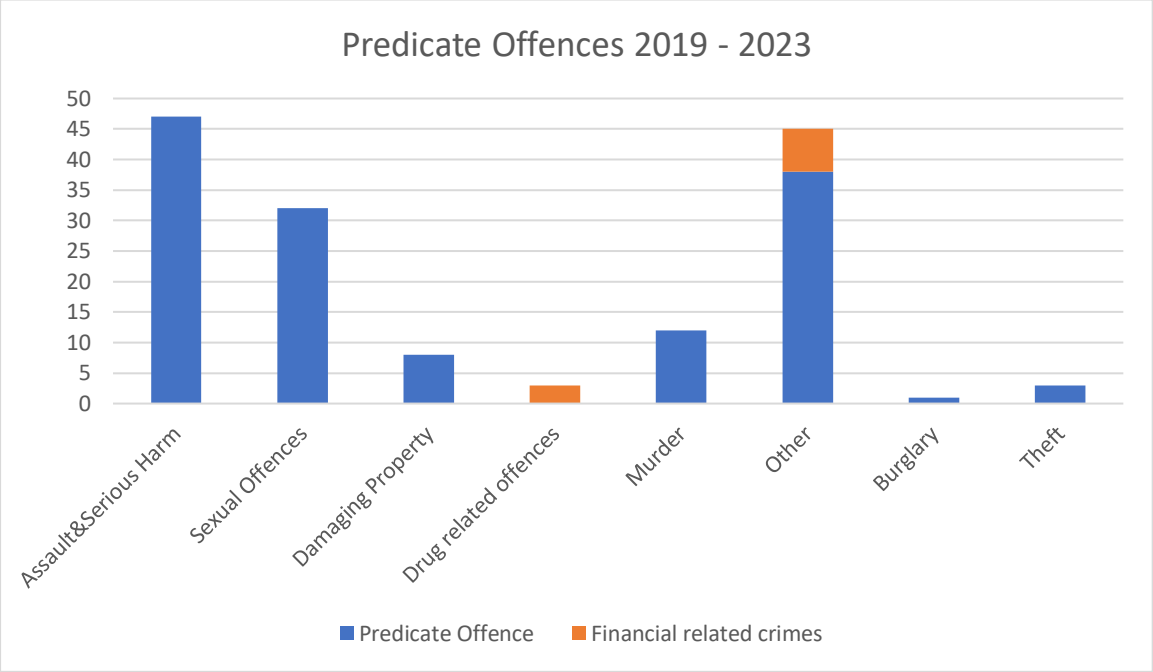
The use of locals in the business of foreigners has been mitigated to a large extent. Prior to 2018, the foreign business owners were not owning the businesses. They were operating under a licence issued to a local person. This used to be the scenario especially with landlords. The landlords have the business licence in their name which was assigned or under private arrangement allowed to be operated by foreigners. This resulted in foreigners also evading tax. The *Business Licences Act 2017* banned this kind of arrangements completely; *Section 20A*[26]. Any assignment of business if it was to be through a proper application to the Registrar of Business Licences.

Secondly, in 2018, the *Partnership Act* was also brought into force. Where the foreign owners and locals intended to work together they were advised to register partnership businesses. In that circumstance, the business was legitimate and was also subjected to tax.

The *Crimes Act 2016* provides for many predicate offences. The number and nature of cases would demonstrate illegitimate

[26] **20A Licence not to be assigned** (1) A licence shall not be assigned or permitted to be used by another person. (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 2 years or to both.

dealing with money. The statistics obtained for the last 4 years from the DPP does not reflect any trends or patterns relating to AML/CFT matters. The table below lists the nature of cases:



In total there were 151 predicate offences prosecuted within the period identified. Within 151 predicate offences, 14 were financially-related crimes.

The data relating to the financially related crimes are set out in the table below:

Predicate Offence		**Cases**
Drugs related		7
Other	**Corruption related**	3
	Unlawful gaming related	3
	Robbery	1
Total		14

From the cases reported, the only growing criminal activity is in drugs. However, the drug offences are mostly limited to marijuana. There is only one case of heroin. The mere fact that heroin has been detected does need a stringent searching of all imported goods including containers. This also includes travelling passengers' baggage and hand luggage.

The geographical limit and small-scale economic activity also provide its natural protection against local money laundering. Nauru does not produce any goods which is capable of being purchased and then taken away to be sold or its value realized. This includes that there are no precious stones and metal or real estate businesses in Nauru which

would at least allow money to be converted into property and later on realized.

Currently the relevant law enforcement authorities are more focused on drug related offences which appear to be one of those illegitimate activities to accumulate illegitimate money. Although, the number of cases are very few and the quantity of drugs is minimal, one should not lose sight of this development in considering the AML/CFT framework.

Organised Crime

Organised crimes or organized syndicate groups also use mechanism to launder money. However, Nauru has no organized criminal group nor are there syndicates operating. Due to the small population any such organized criminal activity would be detected sooner than later. The risk of money laundering through organized crime remains extremely low.

Fraud and Tax evasion

The NRA 2018 identified tax evasion as one of the major causes of concern for money laundering.

As discussed above, Nauru's taxation system began in 2014. The tax collection began in January 2017. The NRA 2018 Report showed that there was a substantial sum of tax evasion. It constituted 87% of money laundering. The amount of tax evasion was $6,113,656-56.

The figures provided in the NRA 2018 Report could not be verified by the Nauru Revenue Office or Department of Finance. There was substantial effort made to identify this form of tax evasion. The reason for this was to ensure that the tax collection system becomes more streamlined and efficient. However, the figures could not be verified and traced back to some credible source. The NRA 2018 Report also does not refer to any particular source.

Threat

The threat of tax evasion, like any other country in the world is also applicable to Nauru. Nauru implemented the tax collection system from January 2017. The statistics have been maintained for this period. The statistics do not show any threat of tax evasion by those who become subject to taxation.

Vulnerability

There exist circumstances where tax can be evaded. As discussed above, there are foreign businesses and partnerships with local persons and businesses. Where a local person is involved, the business may be regarded as local rather than a foreign business. The threshold for local business is much higher than a foreign business.

Consequences

If arrangements are entered into by foreign businesses and local persons it has the potential of evading tax. This is because the tax threshold[27] applying to local persons is much higher than that applied to foreign persons.

It must also be noted that during the collation of information, it was revealed that foreign businesses which are largely owned by Chinese entrepreneurs, do not engage local persons in employment.

[27] Schedule to the *Employment and Services Tax Act 2014* and the Schedule to the *Business Tax Act 2016*

Mitigation

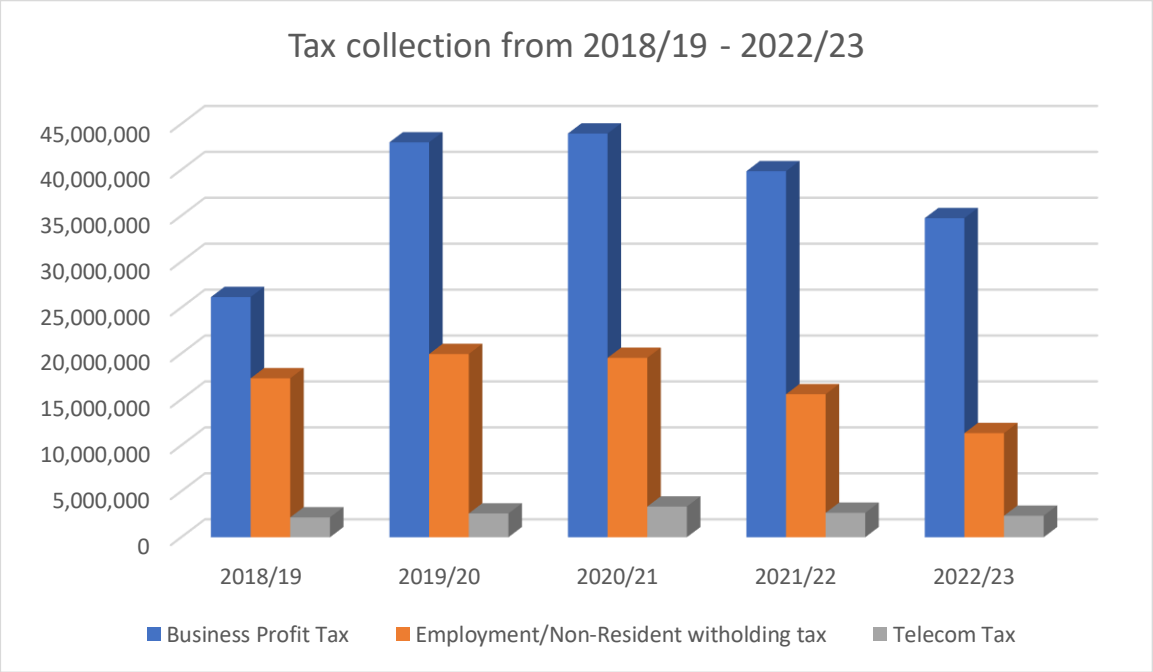
Since 2017, Nauru has seen the benefit of a vibrant taxation system. Collection of tax as part of Government revenue has become a source of income. Therefore, the Department of Finance invests in ensuring that the tax collection is maintained. The NRO is responsible for collection of tax.

Since a number of contracts and employees are either in the Government or Government instrumentalities, the tax for all such persons or contractors are deducted at source. The source is the employer. The tax deducted is paid directly to the NRO.

No person is allowed to operate a business without a proper business registration or a business licence. Whether the person starts the business by a legal entity or under his or her own name, he or she is required to obtain a tax identification number (TIN) from the NRO. Without the TIN no businesses are registered. That is the mechanism put in place to ensure that any person which has a TIN pays the tax or has justification for not paying any tax. The Registrar of Businesses, Corporation, Trust and Partnership has entered into a *Memorandum of Arrangement* with the NRO in respect of registering businesses. This deals with obtaining a TIN prior to the registration of the business. NRO now issues a provisional TIN. The TIN is used to register the business. The tax payer is supposed to provide all the documents back to the NRO. It is anticipated that in certain circumstances that should not happen. For that purpose, the arrangement is also that the Registrar provides the NRO with the details of the registration. The provisional TIN number becomes confirmed once this process is completed.

There also exists a *Memorandum of Understanding* between the NRO and the FIU in respect of exchange of information. This information includes exchange of information on suspicious transactions activity reports. The FIU provides this to NRO for its further action. Also, the NRO requests the FIU to seek financial details of individuals and entities.

The data obtained from NRO since 2018 shows the actual tax being collected by the NRO.



The NRO also provided the data for the collection of tax for the financial year 2023/2024 (see table below). The financial year for Nauru begins from 1st July to 30th June of each year.

Type of Tax	Amount Collected 2023/2024 YTD
Telecommunication Tax	$418,522
Employment and Services Tax	$1,955,633
Business Tax	$4,511,464
Total	$6,885,619

The possibility of tax evasion is also measured in terms of enforcement by the NRO. The records of NRO for non payment of tax for the period 2020/2021 is contained in the Table below:

COMPLIANCE RESULTS – 2020-21 (Including Record Keeping Project commenced in 2021) Risk/audit activity across the Key Taxpayer Compliance Risks								
	W-I-P 01/07/20	Started	Finished	W-I-P 30/06/21	Adjustments	Primary Tax	Penalty	TOTAL
Tax Register Integrity – Third party data matching								
	Customs Data				ongoing			
	GON Contractor payments				ongoing			
	Justice Depart- Foreign Coy register				ongoing			
Price Control Monitoring- petrol retailers								
	0	9	9	0	ongoing			
Superannuation Compliance – late payers								
	0	7	4	3				
EST Late Lodgement & Payment Penalties								
	0	82	82	0	0	0	16,055	16,055
BPT Late Lodgement & Payment Penalties								
	0	7	7	0	0	0	11,600	11,600
SBT Record Keeping Penalties								
Project	0	45	45	0		0	0	0
other	4	0	4	0		0	1,086	1,086

Risk/Audit Activity – Topside								
	0	6	5	1	1,870,790	488,597	92,485	581,082
Risk/Audit Activity Large Business Local								
	0	3	0	3	0	0	0	0
TOTALS					1,870,790	488,597	111,226	599,723

The reduction in tax collection is not due to tax evasion. This is directly a result of the departure of all the refugees and asylum seekers from Nauru. This has resulted in reduction in commercial activity. Currently the Regional Processing Centre is in its *Enduring Capability Contingent State*.

During the analysis it was also noted that there was no tax collected in 2016. That is why the record shows there as no tax collected in 2017. The 2016 collection would be reflected in the 2016/2017 financial year. In that regard, the NRA 2018 findings of tax evasion of over 6 million does not correlate with the law or the actual collection.

During the review it was also considered that the number of tax payers is fairly small, which are capable of being easily traced and accessed if the appropriate taxes are not being paid. Tax evasion is an activity which is prevalent all over the world as such, the analysis does not discard that it would be present in Nauru. The potential of tax evasion would be ranked in the **Medium** to **Low Category**.

Indirect Taxes – Duties

Indirect taxes in Nauru's context applies to customs tariff and duties. It also includes statutory fees and penalties. This type of tax is largely associated with import and export businesses. Duties are applicable in Nauru for both exportation and importation of goods. Nauru imports most of its goods. The exports are minimal.

The process for importation of goods is prescribed. Any person who imports any goods including any vehicle must obtain an import permit prior to the importation. The import licence is given by the Secretary for Justice on the approval of the Minister for Finance. The goods are not cleared by NCS without the production of the import licence.

Nauru has recently reviewed its *Customs Tariff Act 2014*. A new Tariff classification of goods has been enacted by the Parliament and came into effect from 7 June 2023. However, most part of the Tariff classification as enacted in 2023 was used as a '***Working Tariff Document***' permitted under *Section 13* of the *Customs Tariff Act 2014* for the last 5 years before it was enacted. This Working Tariff Document and the ultimate Tariff classification in 2023 has clearly identified the goods that are imported and their respective duties.

The NRA 2018 did not refer to the tariff which was then existing. To the contrary it raised questions on the collection of duties for importation and exportation of goods.

Threat

Importation of goods is a complex process. The goods are classified into various

categories or tariff and have different applicable duties. Duties can easily be evaded by simply giving a different tariff or different classification to the goods. Also, an importer may not disclose all the details of the goods imported. The element which is completely out of control of the competent authorities is the arrangement between an importer and the supplier of the goods overseas. This can happen where they enter into fictitious pricing arrangements to evade duty.

Vulnerability

The collection of customs duties and fees rest on the staff. Lack of capacity in identifying goods exposes the ability of importers to avoid duty. Equally, classifying goods under the wrong tariff without being properly checked poses a threat of duty being evaded.

Consequences

The consequences of duty not collected results in the importer gaining advantage of the reduced value of duty being paid. That money becomes illegitimate earning. As a consequence, this will result in loss of Government revenue. In addition, this will reflect in the tax collection. It opens the opportunity for the importer to transmit the illegitimate earnings into some form of legitimate earnings or may attempt to export it as cash.

Mitigation

The pre-requisite for importation is an import permit. In the past, import permits were given for the whole year for specified products. This resulted in the abuse of goods being imported for which there were no permits available. This required a change in the granting of import permits. Permits are now issued for each single consignment. Import permit is now given per shipment. In this way the goods imported are properly checked with the requisite permits. Without the permit, NCS does not release the goods.

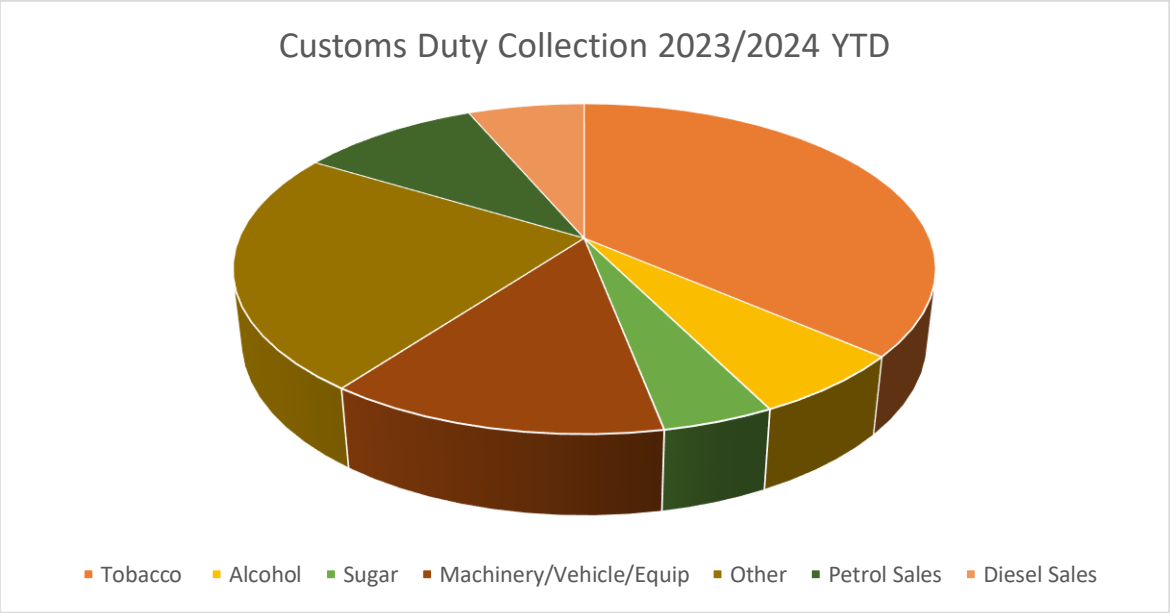
Furthermore, Nauru is also now implementing the UNCTAD-ASYCUDA system. The ASYCUDA system is expected be live by November 2023. This will bring in:

- '*Modernizing customs operations and helping to improve revenue collection;*
- *Facilitating trade efficiency and competitiveness by substantially reducing transaction time and costs;*
- *Improving security by streamlining procedures of cargo control, transit of goods and clearance of goods;*
- *Helping fight corruption by enhancing the transparency of transactions; and*
- *Promoting sustainable development by cutting down on the use of paper, through the use of electronic transactions and documents.*[28]'

The *Customs Act 2014* and the *Customs Tariff Act 2014* enables Nauru to put in place mechanisms to improve keeping of records and crucial data. Mechanisms are also in place to monitor AML/CFT related activities such as importation or trafficking of illicit goods including drugs.

[28] Customs automation - ASYCUDA | UNCTAD

The customs duty collection 2023/2024 YTD is depicted in the diagram below:



The table below records the customs and excise duties collected from 2019 to 2023 (YTD).

	FY19-20	FY20-21	FY21-22	FY22-23	FY23-24 (YTD)
1140 - Customs and Excise Duty - Tobacco	(5,886,456)	(7,073,041)	(7,577,355)	(6,526,761)	(1,501,784)
1145 - Customs and Excise Duty - Alcohol	(1,429,190)	(1,956,048)	(1,924,643)	(1,226,723)	(405,961)
1150 - Customs and Excise Duty - Sugar	(929,415)	(1,267,758)	(1,400,897)	(852,996)	(277,187)
1155 - Customs and Excise - Machinery/Vehicle/Equip.	(1,059,210)	(1,075,455)	(1,728,352)	(1,182,429)	(591,114)
1160 - Customs and Excise Duty - Other	(2,471,249)	(2,826,607)	(3,957,190)	(2,996,011)	(1,159,561)
1165 - Customs and Excise Duty - Petrol Sales	(2,294,837)	(2,654,280)	(2,563,712)	(1,990,239)	(406,692)
1170 - Customs and Excise Duty - Diesel Sales	(3,940,535)	(2,775,403)	(1,855,307)	(1,634,282)	(263,100)
1175 - Customs and Excise Duty - JetA1	0	0	0	0	0
1245 - Drones Licenses	0	(1,500)	(1,000)	(300)	(400)
Total	**(18,010,893)**	**(19,630,090)**	**(21,008,457)**	**(16,409,741)**	**(4,605,798)**

The reduction in the collection of customs and excise duties is not attributed solely to any illegitimate activities. In the year 2019 to 2022, the Government was undertaking a number of activities which includes the Housing Scheme Projects which resulted in a high importation of goods. The importation is also linked to goods and services for the Regional Processing Centre. The amount of duty collected is now reduced due to the Regional Processing Centre going into *Enduring Capability Contingent State.* Also, there is lack of commercial activity

particularly in the building and construction sector.

Corruption

The NRA 2018 identifies corruption as another source of proceeds of crime in Nauru, with a total of AUD 331,000 in bribes being accepted between 2010 and 2018.

The scoping note refers to the Global Organised Crime Index noting that there have, historically, been allegations of corruption in Nauru within the phosphate mining sector, with almost no effective mechanisms in place in Nauru to fight corruption.

Corruption is taken seriously by Nauru. It is a member of the UNCAC. Nauru has filed its Country Report as required by the Convention which is a public document. The issues of corruption identified have been considered at length in the Report. The Report identified certain Recommendations which Nauru was to put in place.

The law regulating corruption in Nauru includes *Division 9.4, Part 9 of the Crimes Act 2016*. The data to date demonstrates that there are 3 ongoing cases relating to corruption pursuant to the *Crimes Act 2016*. The matter is currently undergoing investigation.

In addition to the Executive Summary by the UNCAC[29] other measures have been introduced in Nauru.

The financial and institutional independence of the FIU has been further clarified in the AML-TFS Act 2023.
There was substantive reform in 2018. This is discussed earlier in the Report. All the matters contained in that discussion *ipso facto* apply to the issue of corruption. The reason for this is because an independent Judiciary has a check and balance on both the Legislature and Executive.

In 2020 Parliament enacted the Parliamentary Services Act. The Act ensures separation of the operation of the Office of Parliamentary Services from the Public Service. This includes the establishment of a Special Fund for the operation of the Office of Parliamentary Services. The Fund is appropriated by Parliament. There are also statutory obligations on the Clerk of Parliament to provide quarterly financial reports to the Secretary for Finance on the expenditure of the Office for the purpose of accountability and financial planning[30].

The selection of individuals for public positions is based on the merit principle and with fixed terms. The *Public Service Act 2016* expressly provides for the requirement that when conducting the selection and appointment procedure that the merit principle is observed[31]. There is no data to indicate that there has been a breach of the merit-based principle.

Nauru observes principles of transparency and accountability by ensuring all money paid into the Treasury Fund and the Development Fund are accounted for in Parliament. This is implemented by the tabling of a report as required under the respective legislation[32].

From the records obtained from the DPP, the level of offences for corruption remains very low. Also, there are no clear patterns that there is a systematic corruption in place. To that

[29] CAC/COSP/IRG/2021/CRP.2 unodc.or/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-18June2021/CAC-COSP-IRG-2021-CRP.2_V2103650

[30] Section 39 – *Parliamentary Services Act 2020*

[31] Section 21 – *Public Service Act 2016*

[32] Article 59(1) of the Constitution and Section 8 – *Development Fund Act 2011*

regard, Nauru's corruption risk can be categorized in the **Low Category.**

However, it must be noted that in a small community, if corruption does operate, it can escalate rapidly. For that reason, it is important for all law enforcement agencies to ensure that law in respect of corruption is enforced. Also, continuous education on good governance and integrity of public servants should continue. The Government must commit funds for undertaking this ongoing education.

CHAPTER 8

NON-PROFIT ORGANISATIONS

There was no reference to or analysis made about NPOs in the NRA 2018. The analysis in this Report is the first for Nauru in NPOs. The registration of NPOs (recognised as Non-Government Organisations under the domestic legislation) only commenced under the *Registration of Associations Act 2020* when it was enacted. The Act was passed in the midst of the pandemic. The education on the use of the Act to the members of the public has been slow. However, the Office of the Registrar does advise the entities which intend to register under the Act. This is a new form of registration which was not available in Nauru prior to 2020.

The following definitions in *Section 4* of the *Registration of Associations Act 2020* are relevant for refence in the assessments of NPOs:

> ***'association*** is defined as including a '*society, club, institution, civil society or* ***non-Government organisation*** *or similar body, which is not formed for any pecuniary gain or profit.*'
>
> [emphasis added]

> ***'non-Government organisation'*** *means a private voluntary grouping of associations that are ...****not operated for pecuniary gain*** *that can be of national, district or community level…to serve the community…*'
>
> [emphasis added]

Recommendation 8 of the FATF Standards makes provision for consideration of NPOs in respect of AML/CFT framework. The particular focus in respect of NPOs under the Recommendation is their potential of being used as a vehicle for money laundering or terrorist or proliferation financing. For that reason, all NPOs do not become the subject of AML/CFT framework. The definition of a NPO under the AML/CFT framework is as follows:

> '*is a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as* ***charitable****,* ***religious****,* ***cultural****,* ***educational****,* ***social*** *or* ***fraternal*** *purposes, or for the carrying out of other types of* ***"good works."*** '
>
> [emphasis added]

Registration of Associations

There are 11 associations registered in Nauru under the *Registration of Associations Act 2020*. The data relating to the 11 associations is depicted in the table below:

	Association	Purpose	Source of Funds
1	Nauru Cycling Club	Education, Charitable, religious or benevolent purpose	known
2	Panzer Football Club	Sports, recreation, amusement or local or international federation or affiliation of such sports, recreation, amusement bodies	known
3	Filipino Community in Nauru	Sports, recreation, amusement.	known

4	Promotion of Women's and children's empowerment and right	To promote a holistic approach to providing services that will enhance the wellbeing and good quality of the children and women in Nauru.	known
5	Nauru Chamber of Commerce	(a) Collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry. (b) Promoting programs or activities for sustainable human development and future generations observing the principles of equity, cooperation and solidarity.	known
6	Oceania Weight Lifting Federation	(a) Sports, Recreation, amusement or local or international federation or affiliation of such sports, recreation, amusement bodies. (b) Carrying on or improving a community, social or cultural centre to promote the interests of the local community. (c) Collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry.	Known
7	Women Empowerment Nauru Association	(a) Education, Charitable, religious or benevolent purpose. (b) Promoting or encouraging literature, science or the arts. (c) Promoting or encouraging environmental protection or climate change adaptation activities. (d) Conservation of resources or preserving any part of the environment, historic or cultural heritage of the Republic. (e) Collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry. (f) Promoting and advancing patriotism and national consciousness putting the Republic's interests first. (g) Promoting and advancing the employment, skills, welfare and interests of women or youth.	Known
8	Econauru Foundation	(a) Education, Charitable, religious or benevolent purpose. (b) Promoting or encouraging literature, science or the arts. (c) Promoting or encouraging environmental protection or climate change adaptation activities.	Known

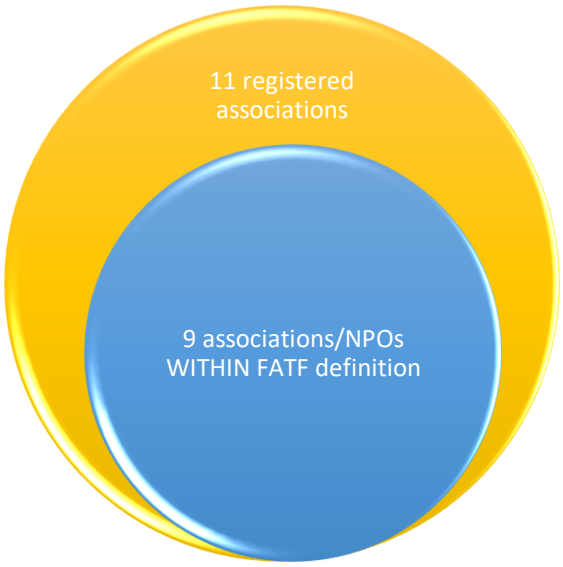
	(d) Conservation of resources or preserving any part of the environment, historic or cultural heritage of the Republic. (e) Establishing carrying on or improving a community, social or cultural centre to promote the interests of the local community. (f) Collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry. (g) Promotion of the welfare of flora and fauna. (h) Promoting and advancing patriotism and national consciousness putting the Republic's interests first. (i) Promoting and advancing the employment, skills, welfare and interests of women or youth. (j) Promoting programmes or activities for sustainable human development and future generations observing the principles of equity, cooperation and solidarity.	
9 Special Olympics Nauru	(a) Purpose of sports, recreation, amusement or local or international federation or affiliation of such sports, recreation, amusement bodies. (b) Establishing, carrying on or improving a community, social or cultural centre to promote the interests of the local community. (c) Providing medical treatment or attention or promoting the interests of person who suffer from particular physical, mental or intellectual impairment or condition. (d) Promoting programmes or activities for sustainable human development and future generations observing the principles of equity, cooperation and solidarity.	Known
10 Fisher of Men Pentecostal	Education, charitable, religious or benevolent purpose	Known
11 Live and Learn Nauru	(a) Education, charitable, religious or benevolent purpose. (b) Promoting or encouraging environmental protection or climate change adaptation activities. (c) Conservation of resources or present any part of the environment, historic or cultural heritage of the Republic.	Known

	(d) Collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry. (e) Promoting and advancing the employment, skills, welfare and interests of women or youths. (f) Promoting programmes or activities for sustainable human development and future generations observing the principles of equity, cooperation and solidarity.	

Of the 11 registered associations, 2 do not fall within the definition of NPOs as they do not raise or disburse funds for any of the purposes listed in the FATF definition and the Act. The 2 NPOs are listed as Numbers 3 and 5 in the table above.

There are 9 NPOs which are covered by the definition of FATF Standards. However, it must be noted that all 9 NPOs are not the subject of *Recommendation 8* of the FATF Standards. The reason for this is explained later on in this Report.

The diagram below shows the NPOs.



Of the 9 NPOs, 4 receive funding from foreign organisations. The funds are used for their activities. The other 5 NPOs source funds through fund raising and membership fees locally. In a recent awareness meeting conducted on 8 September 2023[33], some NPOs reported their accounts do not regularly hold funds as this is generated through fund raising or grants from international donors. All sources of funds for the 9 NPOs are identified and accounted for.

[33] In accordance with Section 9(h) of the *Registration of Associations Act 2020,* the Registrar is required to do all that is necessary for the implementation and enforcement of the Act.

Threat

The risk of money laundering and terrorist and proliferation financing is a global issue. However, the use of NPOs by these organisations remains relatively low in other jurisdictions. In Nauru, having reviewed all the financial assistance which the organisations received, none of them fall within that category. The funding is traceable to lawfully established organisations which are largely international or regional bodies. The threat associated with NPOs being used in Nauru for money laundering or other purposes does exist. It is very early days of the registration of associations and the appraisal of all risks is not capable of being ascertained. However, comparison has been made to other jurisdictions where there exists a number of charitable organisations, the abuse of such organisations by money launderers or terrorists is minimal. Nauru expects the same.

Vulnerabilities

The vulnerabilities of NPOs is discussed at length[34] in the *Non-Government or Non-Profit Organisation Best Practice Guide* issued by the Registrar of Associations.

Consequences

The consequences of a NPO being abused by money launderers or terrorists for illegitimate purposes poses a serious issue for Nauru. NPOs perform a fundamental role in the community. In the Best Practice Guide, Nauru recognises the work of the charitable organisations as follows:

> '*The Government acknowledges and appreciates the work which Non-Profit Organisations (NPOs) provide in the national and international community, performing the much needed charitable, social, cultural, economic and moral support which helps our local, regional and global community to enrich their lives.*'

The importance of the existence of NPOs in Nauru cannot be undermined or abused by perpetrators of money laundering and terrorist or proliferation financing.

Mitigation

The Registrar of Associations together with the FIU has provided an instrument captioned '*Non-Government or Non-Profit Organisation Best Practice Guide*'. The Guide is very comprehensive which provides explanation to all NPOs on how to appreciate risks and how those risks can be mitigated. Pages 7 and 8 of the Guide specifically refers to the mitigation under the subheading '*How do NPOs mitigate risk*'.

The officials of the Registrar of Associations are having meetings with the executive members and officials of the NPOs. These meetings will continue in future to ensure that the NPOs are provided with all the necessary information to protect them from being abused by perpetrators of money laundering and terrorist or proliferation financing.

From the analysis of the funding and the small number of NPOs existing in Nauru, the potential of NPOs being abused is extremely low. However, Nauru is prepared to address the issues if it does arise. The first step has been to provide all information

[34] See pages 5 – 7 of the Non-Government or Non-Profit Organisation Best Practice Guide.

to the NPOs in respect of *Recommendation 8* by way of the Best Practice Guide.

The risk associated with NPOs is categorized as **Low.**

CHAPTER 9

DESIGNATED NON-FINANCIAL BUSINESS PROFESSIONS (DNFBPs)

The NRA 2018 referred briefly to DNFBPs in paragraph 1.8 of the Report. For ease of reference the report stated as follows:

> '*Nauru has 2 private law firms, no real estate agents, no casinos, no stock market, no bullion dealers or precious stone dealers, no car dealers and no other high value goods dealers and no insurance companies. Services of the type normally provided by* DNFBPs are *accessed from Australia and paid to Nauruan held Australian bank accounts*'

This position remains the same for all except the law firms. Nauru still does not have any real estate agents, stock market, no bullion dealers, no precious stones dealers, *no car dealers and no other high value goods dealers.* Also, there are no insurance companies in Nauru.

The legislative framework for the DNFBPs is provided for in the AML-TFS Act 2023.

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*
> *(h) creating, operating or managing bodies or legal arrangements and buying and selling of business entities;'*

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.*'

In this Chapter, the only profession which needs assessment is the lawyers.

Real estate agents

Nauru does not allow the sale and purchase of land. Land is owned communally. As a consequence of no market for real estate, Nauru does not have any real estate businesses registered. Also, there are no persons operating as real estate agents without registering a business.

High value dealers

Similarly, there are no high value precious metal or stone dealers. There is no likelihood of them commencing a business in Nauru due to a very small market. In addition, jewellery and other precious metals are normally purchased from Australia or Fiji.

Accounting Firms and Accountants

There are no accounting firms. Equally there is no law which provides for the operation of the business of accountants or accounting profession. Therefore, a person can start an accounting practice by simply registering a business and obtaining a business licence.

Trust and Company Service Providers

There used to be a *Nauru Agency Corporation*, which was established by the Government for the purposes of providing trust and company services. In 2018, the NAC was wound up by the Government. As a consequence, there are now no companies or body providing such services. The corporations registered in Nauru are required to have a person based in Nauru. He or she must have a Nauru residential address. That being the case, there is nothing to report on this category of DNFBPs.

Law Firms and Legal Practitioners

Since the 2018 review, Nauru's legal system has evolved substantively. A new *Legal Practitioners Act 2019* was enacted. This Act also establishes the Nauru Law Society. The Nauru Law Society is integral to the establishment and operation of law firms. A legal practitioner is required to obtain a practicing certificate[35] before he or she may practise as a legal practitioner. A law practice is defined in *Section 4* as follows:

> ***'law practice'*** *or* ***'practice'*** *means a law firm registered under the Business Names Registration Act 2018, the Business Licences Act 2017, Beneficial Ownership Act 2017 and where applicable, the Partnership Act 2018 but does not include a department of the Government providing legal services or a legal section of an instrumentality of the Republic;'*

The Act provides the code of conduct for all legal practitioners. Schedule 2 to the Act captioned '*Legal Practitioners (Professional Conduct) Rules 2019*'. Rule 30 of the Rules provides that a practitioner must maintain a reputable practice. Furthermore, the practitioner has an obligation to report any issues of money laundering. Rule 31 provides as follows:

> ***'31 Practitioner duty to report on any money laundering***
>
> *A practitioner shall inform the relevant authorities for any suspicious activities of money laundering by clients under the Anti-Money Laundering Act 2008.[now AML-TFS Act 2023]'*

Since 2018, the number of law firms have increased from 2 to 4. There are in total 32

[35] *Section 14 of the Legal Practitioners Act 2019*

legal practitioners, who have current practicing certificates.

Threat

The risk of the law firms being used for money laundering exists in Nauru if the legal practitioners deal with any of the matters contained in *Recommendation 22* namely:

- 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.

Vulnerability

Although currently no legal practitioner falls within the definition of the DNFBPs, the practice itself is open to accepting instructions from customers relating to any of the matters. The legal profession is still evolving in Nauru and it is quite possible that conveyancing may be undertaken by lawyers. This may not be for properties in Nauru but Nauruan buying properties overseas.

Consequences

The consequences of non-compliance with the requirements under the Code of Conduct will result in the Legal Practitioners practice being shut down and closed and further the legal practitioner being debarred. Nauru's law is quite expressive and clear that the legal practitioner must report on any money laundering issues to the police and also now to the FIU.

Mitigation

The *Legal Practitioners Act 2019* and the Code of Practice itself provides the mechanism by which a legal practitioner must mitigate the risks. The statutory requirement of reporting any money laundering activity is in itself a matter which assists in mitigating risks.

A *Designated Non-Financial Business and Professions Guide* has also been issued and is publicly available to assist all the professions who fall within the category. The Guide sets out in detail the matters to which the professions are to take into account to ensure they comply with the AML/CFT framework.

An analysis was undertaken of all the 4 existing law firms. The questionnaire was sent to the Firms in particular to address issues relating to AML/CFT matters. From the information received, none of the law firms are undertaking any of the matters which are referred to above as part of AML/CFT requirements.

Furthermore, the legal practitioners are required to operate a trust account. *Section 76* of the Act provides that without a trust account a legal practitioner cannot hold his or her client's money. It reads as follows:

> ***'76 Trust accounts***
>
> *(1) Any practitioner who wishes to operate a trust account for his or her clients shall only operate such account with the approval of the Chief Justice.*
>
> *(2) A practitioner who operates a trust account under subsection (1) shall:*
>
> *(a) keep trust account books or records in such manner as to disclose clearly the position of the funds and to enable the*

same to be properly audited on an annual basis;

(b) account properly for trust account money to his or her clients; and

(c) provide an account on an annual basis to the Registrar for the renewal of his or her practicing certificate.'

The trust account is not to be opened without the approval of the Chief Justice. The Registrar of the Supreme Court is responsible for the renewal of practicing certificates for legal practitioners. Information was sought from the Registrar on legal practitioners holding trust accounts. There are no records of any practitioner seeking approval of the Chief Justice to operate a trust account. Furthermore, there are no trust accounts operated by legal practitioners. This single requirement together with no trust account being opened, makes it difficult for any legal practitioner to undertake any of those activities caught by the AML/CFT framework.

An analysis of the operations of the law firm shows that none of them are dealing with any matters which has the slightest potential or possibility of being abused or used for money laundering or terrorist or proliferation financing.

Unless the legal practitioners open trust accounts, the prospect of a legal practitioner getting involved in any of those matters involved in the AML/CFT framework, there is literally no risk. This falls in the **Low Category.**

CHAPTER 10

BUSINESS ENTITIES

Under Nauruan law a person may operate a business under his or her own name. That is required under the *Business Names Registration Act 2018*. The other forms of registration of business is by incorporating a corporation under the *Corporations Act 1972*, registering a partnership under the *Partnership Act 2018* and registering a trust under the *Trusts Act 2018.*

The Registrar of Business Names, Corporations, Partnerships and Trusts has issued an *Information Paper* and *Guide* for the registration of all the various entities. The information is available from the office and is also available on the Department of Justice and Border Control Business Registration Section, Government of Nauru website[36].

For the purposes of carrying out this analysis, the contents of the Guide have been taken into consideration. It was noted that the Guide provided sufficient information for any person in Nauru to register a business. The information provided by the business Registration officials was that any person intending to operate a business in Nauru must in addition to the registration of the business obtain a licence under the *Business Licence Act 2017.*

Threat

The legal entities are known globally to be misused for money laundering. There are possibilities of creating complex structures to enhance anonymity of natural persons. The complex structure becomes a mechanism and tool to undertake criminal activities without being identified. Nauru abolished shell companies in 2018. Also, there are no bearer shares to overcome the issue of anonymity of natural persons.

The additional threat is now even greater where the person who has the ultimate control is not capable of being identified in respect of specific transactions.

The complex structure also makes it difficult for financial institutions or reporting entities to carry out customer due diligence, standard, simplified or enhanced.

The complex structures also create a threat or risk to investigation by obscuring the beneficial owners.

The use of corporation is also a mechanism by which one or more persons may have indirect or other forms of control over the legal entity. These are identified in *Section 5* of the *Beneficial Ownership Act 2018* and in greater detail in the *Beneficial Ownership (Identity and Declaration) Regulations 2023*. The Regulations specify circumstances in which a person may indirectly or otherwise control a legal entity.

Vulnerabilities

During the analysis, various *Partnership Agreements*, *Articles of Associations*, *Memorandum of Agreements* and other instruments creating a partnership or corporation were reviewed. Although most of the corporations have the standard incorporation instruments which is contained in the *Schedule* to the *Corporations Act 1972*, they are all capable of being amended and altered by the shareholders. Similarly, this

[36] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

applies to partnerships. The potential of changing the arrangements always exposes the entities to be utilised for the purposes of undertaking criminal activities such as money laundering, terrorist or proliferation financing. The structure would be designed to obscure the natural person.

Consequences

Any abuse of the legal entities is likely to result in the increase in financial crimes. It has also had the potential of distorting the financial market. Equally, it will expose Nauru in the international community for AML/CFT related requirements. It is in Nauru's interest to ensure that the legal entities remain within the legal parameters of their creation and in particular ensuring that beneficial ownership is not abused for illegitimate purposes.

Mitigation

The particular issue of concern for AML/CFT framework is the potential of legal entities being used for money laundering and terrorist or proliferation financing.

The extended definition of beneficial ownership which covers '*transactions*' and controlling '*indirectly or otherwise*' covers a number of potential risks. The requirement for declaration and registration of interests and particularly prescribing time limitation mitigates some risk of preventing the abuse by beneficial owners.

Nauru has strict registration requirements of all businesses. Not only that, all businesses registered are to have a business licence to operate. The business licence is renewed annually. The renewal of business licence requires every business to produce their registration of business, incorporation certificate in case of corporations, certificate of partnership in case of partnerships and Certificate of registration of Trust in case of trusts. This requirement in itself imposes other statutory obligations such as maintaining records, filing annual returns, registering any variations and so forth.

The information provided by the Business Registration Section of the Department of Justice was that at the end of every month the business licences are reviewed. The owners of businesses whose business licence has not been renewed are issued a notice. The notice is either to renew the business licence or to advise the Registrar of the status of the business. This is simply to avoid businesses operating without business licences.

Since 2018, the Business Registration Section has undertaken a review of all registered businesses. Those businesses which were dormant for a substantial period were required to show cause as to why they should not be struck off. This process was initially applied to corporations.

In 2018, there were 46 corporations incorporated. In 2018, 43 corporations were struck off in Nauru as they had registered place of business and no physical presence in Nauru.

There were a total of 58 new corporations that were incorporated between 2018 to 2023. All the 58 corporations are currently active and carrying on business. Each of them also have a current business licence. In addition, they are complying with the requirements of annual returns and filing of any variations to any of the registered information. They have also complied with the requirements of *Beneficial Ownership Act 2017* and the *Beneficial Ownership (Identity and Declaration) Regulations 2023*. As to the latter Regulations, letters have been sent for the beneficial owners, entities and nominated officers to comply with the declaration of controlling, indirectly or otherwise, of a legal

entity by a natural person. By law, that natural person is a beneficial owner.

Partnerships

Currently, there are 44 partnerships registered. They are all active businesses. They each have complied with the beneficial ownership requirements under the Act and Regulations. Similar to corporations, letters will also be issued to the partners and the partnership to comply with the requirements of the declaration of controlling, indirectly or otherwise, of a legal entity by a natural person. By law, that natural person is a beneficial owner.

There are no trusts registered so far. However, the Registry is aware of the requirements for registration of trusts. All assistance will be rendered to people to ensure compliance with the registration requirements of Nauru.

For completeness, the Registrar of Business Names informed the review that in total, there are 536 individual businesses registered. These are all natural persons. They are the owners of the business. Under the *Business Names Registration Act 2018*, the name of the business is not the owner of the business, instead, it is the individual person who registers the business.

Keeping the business registration active

After the OECD review in 2018, Nauru has continued to maintain its registers for all the businesses operating in Nauru. The business licences of each entity is reviewed on a monthly basis. For those business licences which are expiring, notices are issued to the owners. Also, the notices are published on the Government website and facebook page. The same process applies for businesses which have not been operating for some time. To them, a '*Notice to show cause*' as to why the business should not be struck off or cancelled is issued. If there is no response, or where the response is to cancel the business, the respective business licence and the business entity is struck off or cancelled.

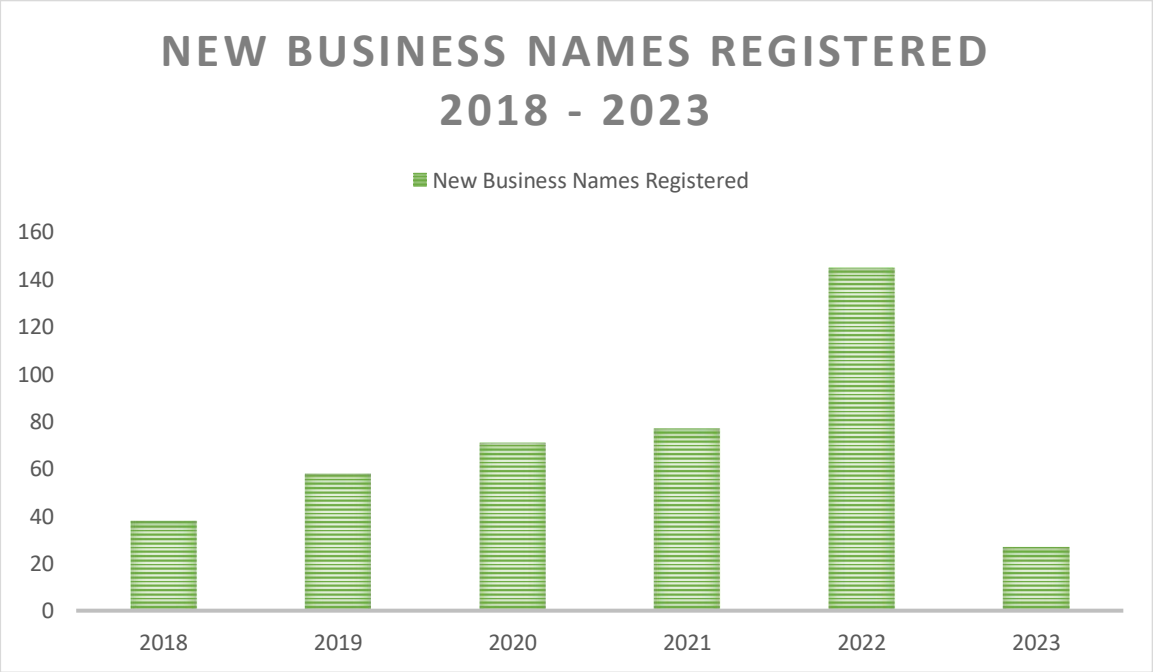
From 2018 to 2023, the following statistics was ascertainable from the Registrar of Business Entities and Business Licences

	Struck Off	Permanent Cancel	Temporary Cessation	Duplicate	No Business Licences	Expired Business Licences	Active
1977-1979	53	0	1	0	0	2	7
1980-1989	109	3	0	0	0	3	9
1990-1999	287	4	0	0	71	14	16
2000	0	0	0	0	77	0	1
2001	1	0	0	1	68	0	5
2002	3	0	0	0	23	3	4
2003	3	0	0	0	7	0	3
2004	1	1	0	0	29	1	3
2005	1	0	0	0	16	1	0
2006	0	1	0	0	29	1	1
2007	0	0	0	0	20	0	2
2008	0	1	0	0	44	1	1

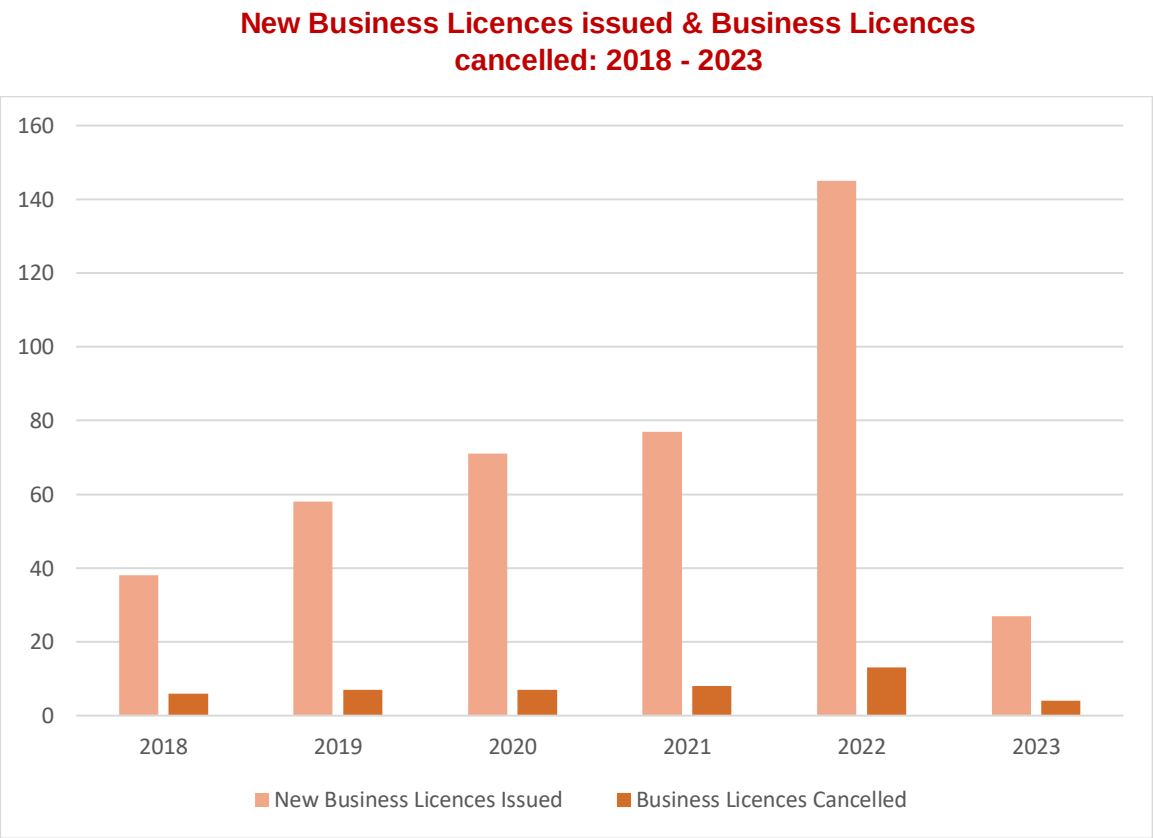
2009	0	3	0	0	19	4	6
2010	0	2	0	0	19	8	29
2011	36	1	0	0	4	15	15
2012	13	6	1	0	7	37	10
2013	21	5	0	0	8	47	18
2014	16	9	3	0	13	87	23
2015	37	9	4	0	39	99	23
2016	69	16	5	0	67	143	27
2017	16	11	6	0	44	100	33
2018	1	11	8	0	58	126	38
2019	0	17	20	15	18	92	58
2020	0	12	15	9	7	60	71
2021	0	4	6	13	0	87	77
2022	0	1	4	11	0	23	145
2023	600	0	0	0	0	0	27 [to date]
							652

With regard to the table above, the total number of registered business names to date is 652. There are a total of 44 active partnerships and 72 active corporations and 536 active sole traders.

Further, the table below demonstrates the number of new business names registered for each year from 2018 to 2023.



With regard to Business Licences There is a total of 44 active partnerships and 72 active corporations and 536 active sole traders. This is demonstrated in the table below:

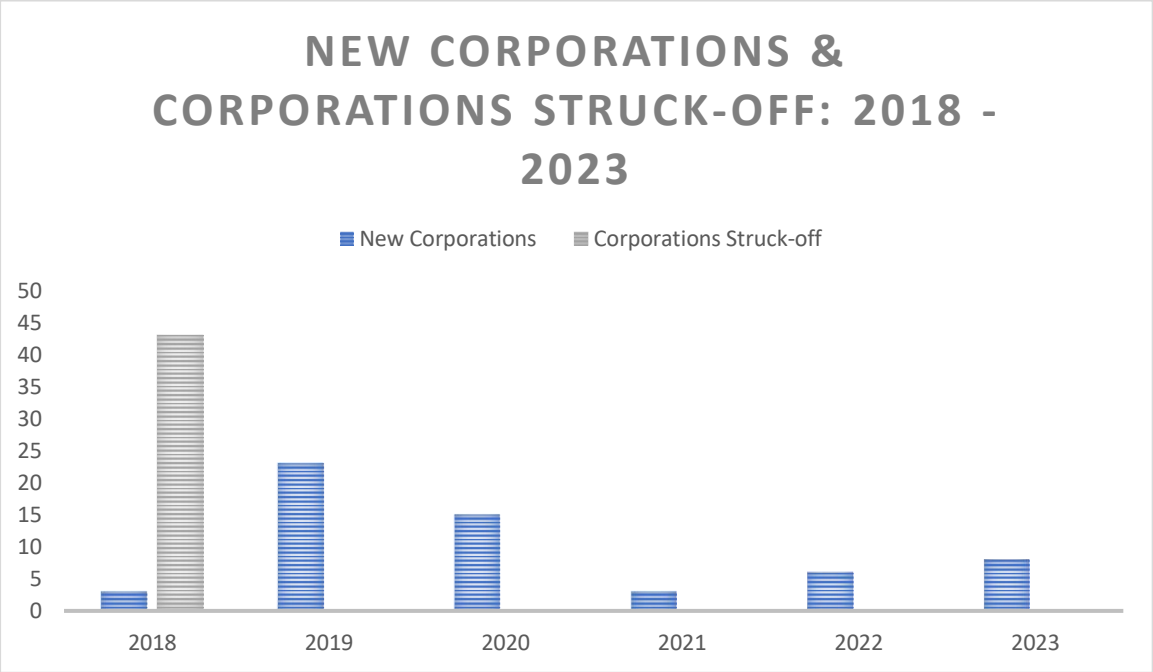


Corporations

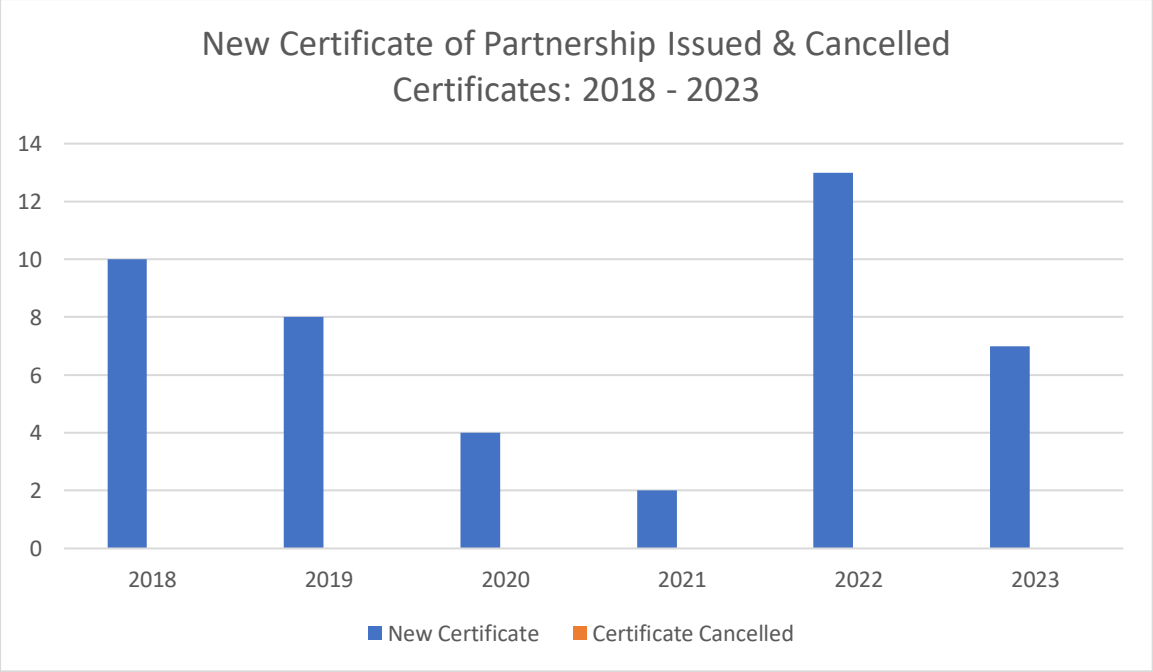
In relation to corporations, the explanation is further provided below:

- Total of 58 new corporations were incorporated between the years 2018 to 2023 (to date).
- There is a total of 72 active corporations, of which 14 corporations were registered before 2018.
- The 43 corporations that were struck off in 2018 were registered in Nauru but had no physical presence in Nauru nor did they have any principal place of business or registered place of business.

The above data is demonstrated in the table below:



In relation to partnerships all businesses that had 2 or more owners were required to register as a partnership when the *Partnership Act 2018* was enacted.



Apart from this, the Business Section of the Department of Justice has also been able to re-list corporations which were struck off on the application of the shareholders. The process for re-listing of corporations is strictly followed. This also includes paying their arrears of registration fees. So far, 2 corporations which were de-registered have been restored to the Register. However, subsequently, both the corporations applied to be re-domesticated in foreign countries. Only 1 company has been successfully being re-domesticated from Nauru to Switzerland. The case study below provides the process of the same.

MAGWICH HOLDING CORPORATION [H-437]

Background

Magwich Holding Corporation ('Corporation') was incorporated in Nauru on 3rd July 1980.

In 2016, it was struck off by Cabinet under Section 247(2) of the Corporations Act 1972. This Corporation and fifteen other corporations were struck off by the Cabinet because they lacked a physical presence in Nauru.

In early 2022, it re-applied, through its lawyers, to be re-registered in Nauru so that it could be re-domiciled in another country.

The Corporation had re-applied for and received renewed business licences and incorporation certificates that were valid until 25th June 2023.

Application for re-domestication

The Corporation applied pursuant to Section 232A (2) of the Corporations Act 1972 to continue its operations in Switzerland. The Corporation submitted the required documentation to the Registrar of Corporations in support of its application.

On 21st September 2022, a Notice of application for continuation in another country or jurisdiction was published in the Gazette [G.N.No. 993/2022] of the Corporation's intention to make an application under Section 232A of the Corporations Act 1972 to the Minister for his approval to the Corporation's outward re-domicile in accordance with Section 232A(2)(b) of the Act.

On 31st October 2022, the Minister for Justice and Border Control was informed of the application by the Corporation. Subsequently, the Minister granted the request by the Corporation to be re-domiciled.

Notice of cessation and removal

On 19th April 2023, a Notice of cessation of Magwich holding corporation [H-437] as a corporation incorporated in Nauru & removal of Magwich holding corporation [H-437] from the Register of Corporations was published in the gazette on 19th April 2023 [G.N.No. 447/2023].

On the registration of beneficial ownership, generally, the shareholders are the registered beneficial owners. However, there was a foreign corporation which sought registration in Nauru. An issue of beneficial ownership using corporate structure was considered. Ultimately, the natural person was identified as the beneficial owner. The case study below provides the process and factual background to the same.

PALLADIUM NAURU PTY LTD

Background

In general, if a business or organisation has been operating in Nauru, it must comply with the country's business registration and licencing laws.
Under an agreement between the Government of the Commonwealth of Australia and the Government of Nauru, Palladium International had been conducting business in Nauru for some time. However, Palladium was operating in Nauru without a valid business licence and incorporation certificate.

On 18th January 2023, the Nauruan counsel representing Palladium requested access to Palladium International-related documents. Prior to receiving a response from the Registrar of Corporations, our business inspectors conducted an inspection to validate whether Palladium is operating in Nauru. Inspectors confirmed to the Registrar that Palladium has a physical office in Nibok District and has been conducting business without a valid certificate of incorporation and business licence.

Action by the Registrar of Corporations

As Palladium has never been registered in Nauru under any of our laws, the Registrar confirmed that we do not possess any documents pertaining to the company. A letter dated 23rd February 2023 was issued in that regard.

The Registrar instructed Palladium in the same letter to cease all operations in Nauru until it has obtained a business licence, a **certificate of incorporation, and the registration of its beneficial owners.** In addition, Palladium was informed that it must contact the Registrar within fourteen days of receiving the correspondence or face prosecution under our laws without further notice. In addition to the registration and application documents, Palladium was also provided with the applicable laws.

The Office of the Registrar of Corporations and the Nauru Revenue Office collaborated to ensure that Palladium complies with both tax and business laws.

Action by Palladium

On 30 March 2023, the Australian-based counsel for Palladium contacted our Office for assistance with the registration of Palladium in Nauru.

The Australian-based attorney was provided with all necessary regulations and forms, and the registration and licensing process was explained.

Both the Nauru Revenue Office and the Office of the Registrar of Corporations conducted consistent follow-ups.

On 19 May 2023, the Australian-based counsel met with representatives from the Nauru Revenue Office and the Office of the Registrar of Corporations, who explained the counsel's obligations and procedures. Due to the complex structure of Palladium, one of the issues that surfaced involved the "beneficial owner". It was emphasised to Palladium's Australian-based legal counsel that Nauruan law requires the registration of **only natural persons** as beneficial owner, and not any other entity. The concern raised were due to confidentiality of information of the ultimate beneficial owner and it was emphasized too that Nauruan public service employees are bound by confidentiality laws and policies which we must comply with at all times.

Lodgement of incorporation, licensing and beneficial owner documents

After the Office of the Registrar of Corporations received the incorporation, licensing, and beneficial owner documents for Palladium on 21st June 2023, the FIU was requested to conduct a background check on Palladium through AUSTRAC.

AUSTRAC responded to the FIU on 26 June 2023 with their report, which was also sent to the Office of the Registrar of Corporations on the same date.

First Certificate of Incorporation and Business Licence

The Nauru Revenue Office issued Palladium Nauru Pty Ltd a tax identification number before the issuing of a certificate of incorporation and business licence by the Registrar of Corporations and Registrar of Business Licences.

On 22 June 2023, Palladium Nauru Pty. Ltd. received its first certificate of incorporation and business licence. When the certificate of incorporation and business licence were emailed to Palladium's Australian-based counsel, the Nauru Revenue Office was also notified.

Threat

The current registration system of businesses in Nauru is monitored very closely by the Registrar of Business and staff. There is a constant follow up of compliance with the laws. Notices are issued. Also, there is a business inspector and an authorised person, who actually does inspection of businesses on-site.

The threat is that some businesses continue to operate without renewal of business licences. Also, there are certain individuals carrying on certain businesses which are not registered. This is monitored closely and any person found undertaking any activity is immediately questioned by the inspector. Effort is made then to regularize registration. The objective is to ensure that businesses continue to operate in Nauru.

The other issue of concern for the future would be the identification of beneficial ownership. Whilst the current law provides every possible means to identify the beneficial owner, this can change in future.

Vulnerability

Since the business registration process and monitoring of the businesses is managed, the Registrar of Business could not identify any vulnerability in the system. The Registrar has been looking after the Business Section for the last 6 years. The risks for the business operations here has already been identified and addressed. The most common risk is the non-renewal of business licences and timely registration of any variation.

Mitigation

The Business Registration Section continues to enforce the laws. The current laws itself is very cumbersome for reporting requirements. However, since the matters required for registration are important, it would not be overlooked. During the review, it was revealed that the people who registered their businesses were not very happy with the requirements imposed on them for the renewal of their business licences.

This information is provided only for the purposes of understanding how the business registration process operates in Nauru. The full guide to operations is contained in '*Information Sheet*', which is available from the Office or also publicly accessible on the Government of Nauru website under the Department of Justice[37].

[37] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

CHAPTER 11

BENEFICIAL OWNERSHIP

Beneficial ownership registration is become a key requirement to ensuring greater transparency, accountability and integrity in the business sector. In other words, those who are responsible for directing the legal entities, staff and any other person of authority, should be known to others. These are persons who ultimately control legal entities. In Nauru, beneficial ownership registration is not spread over different legislation. Nauru has a Beneficial Ownership Act, which makes provisions for all legal entities.

The definition of 'beneficial ownership' under *Section 5* of the Act is 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;*
>
> *(c) on whose behalf a legal entity is created; or*
>
> *(d) on whose behalf a transaction is conducted.'*

This general definition is again further defined for the purposes of each different legal entities, that is, corporation, partnership and trusts. This is in particular addressing the issue of ultimate control by '*indirect or otherwise*'. The extension of the definition to each entity is separately considered because of the nature of creation and legal existence.

(a) Corporation

In case of a corporation, the extension is contained in the *Beneficial Ownership (Identity and Declaration) Regulations 2023*. A natural person is deemed to have ultimate control where he or she under the Regulations has any one of the following:

> *'(1) For the purposes of Section 5, a beneficial owner in a corporation, is a natural person who has ultimate control indirectly or by other means, where he or she:*
>
> *(a) has a class of shares or preferential voting right, by which he or she has the management and control of the corporation;*
>
> *(b) has the power for the appointment of the number of Board Members, Chairperson of the Board or any other person who has the power to make strategic decisions that affects the management and control of the corporation;*
>
> *(c) has the power to appoint majority of the senior management or to appoint those members of the senior management or staff, who have power to make decisions relating to the management and control of the corporation;*
>
> *(d) has entered into an administrative or contractual arrangement with the corporation or the other shareholders, by which he or she is able to make decisions which results in or has the effect of managing and controlling the corporation;*
>
> *(e) has entered into an arrangement with the corporation or shareholders for the operations of the corporation by advancing the monies to the corporation or shareholders, by which he or she is able to exercise the dominant position to encourage or coerce other shareholders to discharge the debt of the legal entity by raising share capital to strengthen his or her position as a shareholder; or*
>
> *(f) has any other form of control of a corporation other than by direct control of ownership of any interests.*
>
> *(2) Where a beneficial owner of a corporation is not ascertainable under Section 5 or subregulation (1):*

(a) for any transaction carried on behalf of the corporation, the person holding a senior management position or any other authorised person carrying out the transaction on behalf of the corporation shall be the beneficial owner; or

(b) for customer due diligence of a reporting entity, the natural person who holds the position of senior management shall be the beneficial owner.'

(b) Partnership

In case of a partnership, the ultimate control '*indirect or otherwise'* is contained in *Regulation 6* of the *Beneficial Ownership (Identity and Declaration) Regulations 2023*. It provides as follows:

'6 Beneficial ownership in a partnership

(1) For the purposes of Section 5, a beneficial owner in a partnership, is a natural person who has ultimate control indirectly or by other means, where he or she:

(a)controls absolute decision-making power or has veto rights in the operations and management of the partnership;

(b) holds the power, directly or indirectly, to appoint or remove any partner of the partnership;

(c) is entitled to assets of the partnership in the event of dissolution of the partnership;

(d) has the power or authority to declare or make decisions for profit sharing of the partnership;

(e) has the power or authority to declare or make decisions on retention of profits for capital investments in the partnership;

(f) has the power or authority to amend the partnership instrument;

(g) has any other form of control of a partnership other than by direct control of ownership of any interests.

(2) Where a beneficial owner of a partnership is not ascertainable under Section 5 or subregulation (1):

(a) for any transaction carried on behalf of the partnership, the person holding a senior management position or any other authorised person carrying out the transaction on behalf of the partnership shall be the beneficial owner; or

(b) for customer due diligence of a reporting entity the natural person who holds the position of senior management shall be the beneficial owner.'

Further, it was considered that partnership issues can arise and determination of partners may become a question of fact. *Section 21 of* the *Partnership Act 2018* provides a rule for the determination of partners. It reads as follows:

'21 Rules for determining existence of partnership

Subject to this Act, in determining whether a partnership exists, regard shall be had to the following rules:

(a) joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross return does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived; and

(c) the receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not itself make the person a partner in the business.'

(c) Trust

In case of a trust, the ultimate control '*indirect or otherwise'* is contained in *Regulation 7* of the *Beneficial Ownership (Identity and Declaration) Regulations 2023.* It provides as follows:

> *'**7 Beneficial ownership in a trust***
>
> *(1) For the purposes of Section 5, a beneficial owner in a trust, is a natural person who has ultimate control indirectly or by other means, where he or she:*
>
> *(a) is a trustee or any person in an equivalent or similar position to a trustee including trustee de son tort;*
>
> *(b) is a settlor;*
>
> *(c) is a protector;*
>
> *(d) is a beneficiary or class of beneficiaries;*
>
> *(e) is a guardian, holds a power of attorney or any other person acting on behalf of the trustee, settlor, protector, beneficiary or class of beneficiaries where the trustee, settlor, protector, beneficiary or class of beneficiaries is not ascertainable; or*
>
> *(f) any other natural person exercising ultimate effective control over the trust including any other person who has under the instrument creating the trust or power to:*
>
> *(i) amend the trust deed;*
>
> *(ii) direct investment decision of the trust;*
>
> *(iii) revoke the trust;*
>
> *(iv) appoint or remove any trustee of the trust; or*
>
> *(v) direct the distribution of assets or funds of the trust.*
>
> *(2) Where a person under subregulation (1)(a) to (f) is a legal entity and not a natural person, the beneficial owner of that legal entity shall be the beneficial owner of the trust.*
>
> *(3) Where a beneficial owner of a trust is not ascertainable under Section 5 or subregulation (1):*
>
> *(a) for any transaction carried on behalf of the trust, the person holding the position of a trustee, settlor or beneficiary or class of beneficiaries or any other authorised person carrying out the transaction on behalf of the trustee shall be the beneficial owner; or*
>
> *(b) for customer due diligence of a reporting entity the natural person who holds the position of trustee, settlor or beneficiary or class of beneficiaries shall be the beneficial owner.'*

Recommendation 24 of the of the FATF Standards requires that there be greater transparency and beneficial ownership of legal persons. The requirement is for each country to identify different types, forms and basic features of legal persons in the country in the process of creating those legal person. There must be procedures laid out for obtaining and recording basic ownership information. The beneficial ownership information should be publicly available.

Nauru operates within the requirements of the Act and the parameters set by *Recommendation 24* of the FATF Standards.

In 2018, Nauru undertook a review of its Corporations Act 1972 for the purposes of the OECD Review. In that review, the Government prohibited any person holding a bearer share. *Section 46* provides as follows:

> ***'46 Bearer shares***
>
> *A corporation shall not issue bearer shares or share warrants.'*

For the purposes of ensuring that a person responsible for a corporation is a natural person, the concept of '*nominee corporation'* was also abolished in 2018[38].

[38] *Corporations (Amendment) Act 2018*

Also, all shell corporations or corporations which did not have any operations in Nauru were struck-off the Register of Corporations. A process was followed for this. All corporations were given notices to show cause as to why they should not be struck-off, as having no business in Nauru or elsewhere. Sufficient time was given for response following which those corporations were struck off. This is a matter which was not considered in the NRA 2018.

As required by *Recommendation 24.1.(1)(d)* of the Standards, Nauru also now requires the beneficial owners to declare their controlling interests to the corporation and the corporation should record their identity. Following that the nominated officer is to register such declaration with the Authority; *Regulation 9*[39]. In addition, the beneficial owners are also required to submit a declaration to the Authority; *Regulation 9* and in the Form in the Schedule.

(d) Authority

The *Beneficial Ownership Act 2018* establishes the office of a Authority. The Authority is the Secretary for Justice; *Section 2*. The Authority is required to maintain a Register of all Beneficial Ownerships of entities.

During the process of obtaining information for the purposes of this Report, the Register was inspected. The Register contains beneficial ownership of corporations and partnerships. There are no trusts registered as such there are no beneficial ownerships for trusts. The table below shows the beneficial ownership statistics:

Number of Legal Entities	Number of Beneficial Owners
72 Corporation	94
44 Partnership	70
0 Trust	0

In order to meet the requirements of the Act and in particular the latest amendment by Regulations, a study was undertaken on the instruments creating the entities. A sample of 10 of each was picked randomly. In case of partnerships, it was the Partnership Agreement which was considered. In case of corporations, the '*Powers of a Corporation' and the 'Articles for management of a Trading Corporation'* was considered. The review particularly looked at the arrangement for shareholding. Also, matters contained in the Regulations on ultimate control '*by indirect or otherwise*' was considered. All the corporations in Nauru have the standard Articles of Management, which in many countries is known as Articles of Association. The standard document is contained in *Schedule 2* of the Act. There are no specific provisions empowering any shareholders,

[39] **9 Beneficial owner's obligation**
(1) A person upon becoming a beneficial owner shall submit to the legal entity a declaration of beneficial ownership detailing the registerable particulars in Form 1 of the Schedule.
(2) Where the beneficial ownership interest of an existing beneficial owner is varied or changed, he or she shall submit to the legal entity a declaration of beneficial ownership detailing such variation or change.
(3) For the purposes of subregulation (1) and (2) a beneficial owner shall submit the information to the legal entity within 7 days of becoming a beneficial owner or any change or variation of beneficial ownership.

directors or any other persons to have any control of a corporation other than by ownership through shareholding.

In case of partnership, the Partnership Agreements are basic and standard. Partners are required to identify their respective interest. Where there is no interest declared, it is deemed in law that the interest is equal amongst all partners. Again, the Partners Agreements are mainly for small businesses. In most cases the family members are partners. In very few cases individuals who are in business have joined in the partnership enterprise.

Threat

The ultimate ownership or control of a legal entity is a subject which has recently been considered by the FATF Standards. It clearly shows that the threat of controlling a legal entity by natural persons, who are obscuring themselves in the complex nature of legal entities is real. Whilst the law and the registration requirements for beneficial ownership is strict, it does not provide absolute certainty for the future. That is, a natural person may be able to create some other forms or means by which he or she will be controlling a legal entity.

Vulnerability

Nauru recognises that it has a complete Register of all beneficial owners. The current arrangements of legal entities is simple and transparent. There are no complex layers of corporate structures to obscure the beneficial owner. However, like any other country where corporations law and the use of corporations is fully established, in Nauru this can also happen. The Authority will have to continue to monitor this.

Consequences

Any non- registration of a beneficial owner itself is a problem for identifying who has the ultimate control of the corporation. However, another problem is the correct registration of the beneficial ownership is always a challenge. If the registration system does not work properly, it may result in corporations undertaking criminal activities which includes money laundering or terrorist or proliferation financing. It is important that apart from the legal entity the natural persons having control will also be prosecuted for the offence.

Mitigation

The recent amendment to the definition of beneficial ownership and also requiring the beneficial owners to provide a declaration of their interest is in itself sufficient. Any breaches will result in prosecution of both the entity and the beneficial owner.

The definition of beneficial ownership also now extends to the person who carries out any transaction. In that regard, the persons who are senior managers or any authorised person are now regarded as beneficial owners. They will be held accountable for carrying out any activities on behalf of beneficial owners who are obscured or purposely not disclosing themselves. This requirement has also extended to reporting entities (financial institutions and DNFBPs). This additional provision at least links any transaction to a natural person. Not only that, a natural person is responsible for the absence of the legal entity for a particular transaction or activity.

In the overall review of the current status of beneficial ownership the risk can be categorized as **Low.** However, Nauru is cognizant of the fact that ownership is a dynamic subject and human beings can invent

many forms of deviations as such, this can escalate to **Medium** level of risk.

CHAPTER 12

COOPERATION AND COORDINATION

During the process of gathering information for analysis, one of the issues which was constantly raised by stakeholders on the issue cooperation and coordination amongst various Government departments and stakeholders.

The FIU itself has coordinated and formed a number of bodies. There is an ALGC. The Governing Council includes the Secretary for Justice as the Chairperson, Secretary for Finance, Commissioner of Police and Director of Public Prosecutions. The FIU provides the secretariat support to the Governing Council[40].

Also, there is a *Anti-Money Laundering Officials Committee.*[41] This Committee consists of key public sector stakeholders who are at the forefront of monitoring risk and exposure of the Republic to money laundering, terrorist and proliferation financing and other financial crimes. His includes representatives from the FIU, NPF, NCS, NRO, Department of Justice and Border Control, Department of Environmental Management and Agriculture, Nauru Fisheries and Marine Resources Authority and Department of Foreign Affairs and Trade.

In addition, there is an *Anti-Money Laundering Private Partners Committee.* This Committee was formed for the purposes of sharing information which is critical to the implementation of AML/CFT framework effectively in Nauru. One of the core members of the Committee is the Nauru Chamber of Commerce, which is a body registered under the *Registration of Associations Act 2020.*

On the issue of cooperation, information was also provided on how the public sector is able to coordinate itself for any issues which requires coordination. This has been done in the past with the COVID-19 pandemic. Also, it was done for the purposes of the recent UXO which was found in Nauru. Because of the size of Nauru, a permanent and fixed committee cannot be established. This is largely to do with the limited staff members in each Department. However, depending on the nature on incident or crisis, the Government Departments expeditiously coordinate amongst themselves.

It must be noted that due to the size of Nauru, in cooperation and coordination purposes the lead is taken by the Cabinet itself. Furthermore, in many instances Ministers also form part of the coordination team. Reporting and feedback is normally to the Ministers or the Cabinet collectively. The heads of Departments whose involvement may be needed also form the Committees.

An example of this cooperation is discussed below in the case of the UXO incident.

[40] Page 8 of the *National Strategy for Anti Money Laundering and Combatting the Financing of Terrorism*

[41] ibid

COORDINATION EFFORTS – UXO BOMB DISCOVERY

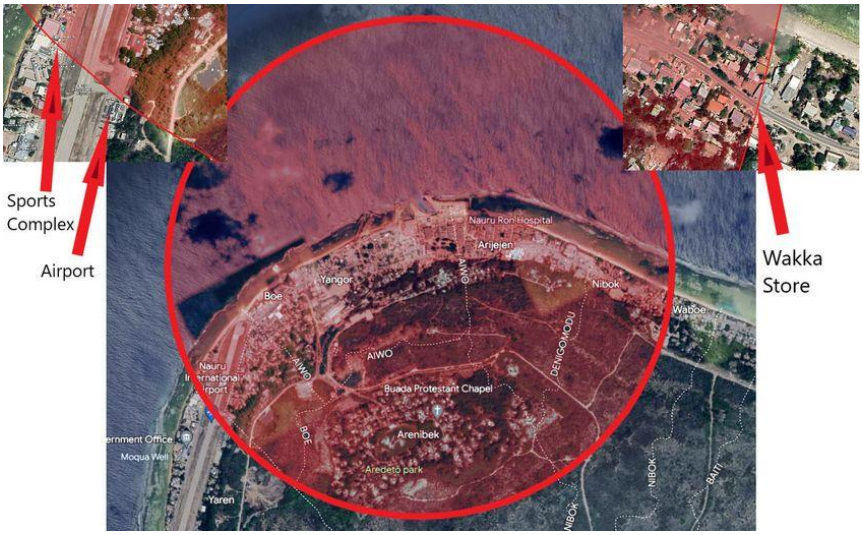


Photo: Nauru Government/Facebook

On 7th July 2023, a large WW2 UXO 500lb bomb was discovered by a construction company during excavation work, in Aiwo District. The matter was immediately reported to the NPF and the Acting President was notified. Within 24 hours, the Government of Nauru had coordinated with its domestic authorities as well as foreign partners to assist with the matter. In the events that ensued, a focal point (Secretary of Public Administrations and Operations) was appointed to lead the national coordination efforts. The primary goal was to ensure the bomb was disarmed safely. The Nauru Government through diplomatic channels, requested the assistance of the Australian Government. The request was channelled through the Nauru DFAT to the Australian High Commission. Within 48 hours, the ADF landed with the necessary equipment to deal with the situation. On the ground, the focal point held a meeting with core relevant stakeholders. They are Nauru Ports Authority, Nauru Utilities Corporation, Government Information Office, NPF, Australian High Commission, MTC and National Emergency Services.

Within 72 hours, a larger meeting of stakeholders was held comprising of the Departments of Justice and Border Control and Health and Medical Services, National Emergency Services, NPF, Transport Department, Civil Aviation Office, NUC, Department of People Living with Disabilities, Nauru Port Authority and the Nauru Fisheries and Resources Authority and Australian Police Force.

In addition to the group meetings, the focal point held one on one meetings with different Departments to address issues pertaining to the Departments. Within the first 72 hours of the bomb being identified, residents within a certain km radius were evacuated by police. It initially began with 120m and gradually increased to 400m. Residents between the 400m and 2 km were then evacuated on the day of the diffusion of the bomb.

Between 7th – 20th July 2023, the ADF aircraft exited and entered Nauru on numerous occasions. At least 4 scoping exercises were undertaken before the bomb was safely diffused.

The response agencies in the UXO incident, are the same agencies that was formed to deal with the COVID-19 pandemic. Nauru being a small island jurisdiction is likely to have the same agencies respond to any crisis, whether it is for a pandemic, an unexploded UXO or other possible crisis. There may not be a full-time office for coordination effort, but there are mechanisms in place that enable Nauru government offices and agencies to immediately respond to crisis.

For the purposes of money laundering or terrorist or proliferation financing, where need arises similar committees or members of the Public Service will coordinate and assist each other to address the issues. This was a common theme of all those public servants who had participated in national issues. There is also a general consensus not to have a fixed committee.

However, it needs to be mentioned here that for national emergencies, there is a Council already established under the *National Disaster Risk Management Act 2016*. *Section 16* establishes the Council[42]. The definition of disaster is wide enough to capture risks posed by money laundering or more so on terrorist or proliferation financing contravening activities or actually having the presence of terrorists in the country.

'Disaster' *means a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment whether arising from accidents, nature, human activities or such other unforeseeable causes, events or activities, whether occurring suddenly or developing as a result of long term processes.'*

The issue of coordination has not been considered for threats and other matters as this risk is not a matter which involves an analysis of that type.

[42] **16 Establishment of Council**

(1) A National Disaster Risk Management Council is established.

(2) The Chairperson of the Council is the Minister.

(3) The Council consists of the following persons or their nominee:

(a) Secretary who shall also be the Secretary of the Council;
(b) Commissioner of Police;
(c) Secretary for Health and Medical Services;
(d) Secretary for Finance;
(e) Secretary for Education;
(f) Secretary for Justice and Border Control;
(g) Secretary for Multicultural Affairs;
(h) Secretary for Commerce, Industry and Environment;
(i) Secretary for Foreign Affairs and Trade;
(j) Secretary for Information, Communication and Technology;
(k) Secretary for Transport;
(l) a representative from the Persons with Disabilities group in the Republic;
(m) a representative from civil society organisations in the Republic; and
(n) on the recommendation of the Secretary, any other person to be nominated by the Cabinet.

CHAPTER 13

TARGETED FINANCIAL SANCTIONS REGULATIONS

The NRA 2018 made references to Terrorist Financing Risk Assessment in paragraph 9. In the Report, it was recognised that '*Nauruan authorities believe that legislation to require the reporting of threshold transaction will further enhance terrorist financing detection as will an improvement in Bendigo Banks compliance with the AML Act.* '

Following the NRA 2018, in 2020, the CTTOC Act was amended. This brought in substantive changes to the definition of terrorist, terrorism financing and terrorist activities. Pursuant to the *Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023* all the existing UNSC Resolutions have been domesticated into Nauruan laws. The domestication process means that the UNSC Resolutions can be enforced, without the need for any additional laws.

The Anti-Money Laundering Act 2008 was repealed and replaced by the AML-TFS Act 2023. *Part 7* of the Act itself deals with '*Targeted Financial Sanctions'*. In order to implement the Act, the *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023* makes provisions for the process by which sanctions and other activities are to be undertaken.

As required by *Recommendations 5, 6 and 7 of the FATF Standards deal with terrorist financing and targeted financial sanctions relating to terrorism and proliferation financing.*

The Regulations now make provision for implementing *Recommendations 6 and 7* of the FATF Standards.

In addition, the Supervisor of the FIU has also published the High-Risk Countries Guide as declared by the UNSC and its Committees. This instrument is also sent to reporting entities and other stakeholders. The publication of the instrument is also available publicly on the Government of Nauru website under the Department of Justice in the FIU Section[43].

Also, Nauru has noted that the closely monitored countries by the FATF. This list is a guide to the reporting entities. It is essential for financial institutions to consider this list for the purposes of customer due diligence, if a customer is from any of the listed countries. Nauru appreciates that this list is a capable of changing. The FIU closely monitors this list and makes changes concurrently with the change in the list of the closely monitored countries.

During the analysis, it was noted that the NRA 2018 it was assessed that the activities involving terrorists or terrorist or proliferation financing was not present. Again, in this review, that position has not changed. In fact, from the period 2013 to 2023, Nauru had refugees and asylum seekers from many

[43] http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

different countries which had internal conflicts or prevailing terrorist activities. However, during this period no threat of any terrorist activity was detected. There is no evidence of any of those persons getting involved with money laundering for terrorism purposes.

During the compiling of this Report, no information or evidence was provided that Nauru should take immediate action on terrorist activities. Having said that, with all the legislative instruments in place, Nauru is ready to engage with any other countries to combat any terrorist activities or terrorism and proliferation financing. The respective documentation for information and other processes are in place.

This includes the freezing of assets, finance and other properties. Also, provisions and procedures are now clearly stated for the purposes of de-freezing any of those assets.

The procedure for listing of terrorists or terrorist groups is also now prescribed in the Regulations. In addition, also the procedure provides for de-listing.

The risks or vulnerabilities could not be further analysed due to the fact that Nauru remains a low risk country for terrorist related activities. With only one financial institution, it is also not conducive for terrorists or terrorist groups to use Nauru as a medium for transmitting funds for terrorist activities.

The assessment did not reveal any evidence of terrorist related activities occurring in Nauru. With the legal administrative mechanisms put in place, this makes Nauru a **Low Risk** country for any future or potential terrorist activities.

CHAPTER 14

MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION

Money laundering, terrorist or proliferation financing in this digital era knows now geographical barrier. Money moves without it being digitally carried by any person. The movement of money without the need for any physical movement of persons, exposes every country to criminal activities.

Nauru recognises this phenomenon as a reality. From the information received and on the analysis of the facts, Nauru is not absolutely free from this happening. There is a prospect of individuals physically coming to Nauru despite the strict visa requirements for entry into Nauru.

For that purpose, the *Extradition Act 1973* plays a significant role for extraditing persons from Nauru for any criminal offending. In 2004, the MACMA provided further assistance in investigation, detection, search and seizure.

Nauru has now designated countries with which it has bilateral arrangements for extradition. Not only that, Nauru generally cooperates with all countries for extradition purposes. The only requirement with Nauru strictly follows how the legal reasons for which a person may not be extradited. This is related to politics or persecution.

For assistance under MACMA, Regulations[44] have been prescribed for the procedures. This is contained in the *Mutual Assistance in Criminal Matters Regulations 2023*.

The current review did not find much evidence of assistance under any of these Acts. However, there were sporadic events for which there has been assistance provided through various government offices. Since the procedures are now prescribed clearly, it is anticipated that Nauru may use this for purposes of investigating or extraditing persons. Equally, since the legislation is publicly available on RONLAW other foreign countries have access to seek request.

[44] Mutual Assistance in Criminal Matters Regulations 2023

CHAPTER 15

SUPERVISORY AUTHORITY

This assessment considered the statutory roles and functions of supervisory authorities. It was considered in the context of ensuring compliance of the laws and AML/CFT requirements. Compliance of laws is looked at more in managing of risks than penalising individuals or entities. Nauru's approach to managing the risks is based on deterrence. The concept of deterrence works better for Nauru because of its size. Generally, the community and also the business entities comply with the laws. Also, where there is non-compliance, the offenders are traceable and can be dealt with expeditiously.

In the *Anti-Money Laundering Act 2008* and *Anti-Money Laundering Act 2004*, the issue of supervisory authority did not surface with great prominence. It was more focused on having the legal framework in place. With all the changes in the FATF Standards and compliance requirements (*Effective Implementation*), Nauru understands the role and functions of supervisory authorities have become more important. For that purpose, the issue of supervisory authority was specifically addressed in AML – TFS Act 2023.

Section 4(1) defines ***'supervisory authority'*** as *'any body or agency having regulatory supervisory or licensing authority over a reporting entity'*.

The role of supervisory authority was clarified in *Regulation 5* of the *Anti-Money Laundering-Targeted Financial Sanctions (Record Keeping) Regulations 2023*. For ease of reference, *Regulation 5* is reproduced in full:

> '***5 Reporting of non-compliance to the supervisory authorities***
>
> (1) Where a reporting entity neglects or fails to comply with the requirements of record keeping, the FIU may report the entity to the relevant supervisory authority of the non-compliance of the requirements of the Act or these Regulations.
>
> (2) Where a matter is reported under subregulation (1), the relevant supervisory authority shall conduct an investigation and appropriately take necessary action under the relevant statute which the reporting entity is established.'

The objective of the Regulation is to ensure that the role of the supervisory authorities who are regulators of entities are separate from the role which FIU has under the AML–TFS Act 2023 and the compliance with the FATF Standards.

It was important that the issue of supervision is addressed with the Department of Justice. The Solicitor General provided a table of responsibilities of the supervisory authorities for different entities. The table below reflects the opinion of the Solicitor General:

Nature of entity	Regulatory authority	Supervisory authority	Acts
Corporations	Registrar of Corporations	Registrar of Corporations	*Corporations Act 1972*
Partnership	Registrar of Partnerships	Registrar of Partnerships	*Partnership Act 2018*
Trusts	Registrar of Trusts	Registrar of Trusts	*Trusts Act 2018*
Business Names	Registrar of Business Names	Registrar of Business Names	*Business Names Registration Act 2018*
Business Licences	Registrar of Business Licences	Registrar of Business Licences	*Business Licences Act 2017*
Banks	Registrar of Banks [Secretary for Finance]	Registrar of Banks [Secretary for Finance]	*Banking Act 1975*
Legal practitioners	Registrar of Courts	Registrar of Court / Chief Justice	*Legal Practitioners Act 2019*
Associations	Registrar of Associations	Registrar of Associations	*Registration of Associations Act 2020*
Beneficial owners	Authority	Authority	*Beneficial Ownership Act 2017*
Taxation	Secretary for Finance / NRO / NSC	Secretary for Finance / NRO / NSC	*Business Tax Act 2016* *Employment and Services Tax Act 2014* *Revenue Administration Act 2014* *Telecommunications Service Tax Act 2009*
Duties and Excise	NSC	NSC	*Customs Act 2014* *Customs Tariff Act 2014*
Import licences	Secretary for Justice	Secretary for Justice	*Customs (Prohibition of Imports) Proclamation No 1 2014.*

Threat

Where any person, employee or body is left without any supervisory control, the potential of anything going wrong is real. That threat is realised by Nauru and following the various meetings and discussions relating to financial matters, it is then important to give a clear direction on the supervisory authority.

Vulnerability

The vulnerability is that if an entity, body or person is not adequately covered by law to be controlled or supervised by a supervisory authority, any person carrying out those activities will act without any restrictions in compliance with the laws.

Consequence

A non-supervisory authority will make arbitrary decisions. Decisions can affect individual activity, harm businesses and damage the financial market in the context of money laundering and terrorist financing.

Mitigation

The Government has various legislation dealing with entities or persons who conduct businesses including financial transactions. A clear direction is available in the laws of Nauru for the supervisory authorities.

Apart from the regulatory authorities, the Government has other law enforcement agencies such as the Nauru Police Force and the FIU to undertake investigative or enforcement measures.

After various meetings and clarifications sought on the supervisory authorities as defined under *Section 4(1)* of the AML–TFS Act 2023, it has now become clear that any entity which contravenes the laws will be dealt with by their respective supervisory authorities.

Under *Section 64* of the AML–TFS Act 2023, supervisory authorities are also required to report suspicious transactions to law enforcement agencies.

From the analysis, the chances of an entity or person flagrantly disregarding the laws, will be traced and punished in law. That makes it very hard for such entities to contravene the laws. Under the circumstances, Nauru's supervisory authorities play an important role. That puts Nauru in a very **Low Risk Category** of any entities or persons contravening the AML/CFT laws.

CHAPTER 16

RESTRICTIONS ON NAURU FOR THE USE OF US CURRENCY

During this Assessment, the Government of Nauru has raised concerns with the FIU on the restrictions of the use of the US dollar. This concern was raised with the FIU since 2020. Before the compilation of the Report, this was reiterated and stressed on many occasions.

It is only important for the purposes of fair reporting, that this issue is addressed by this Report.

This issue has constantly been affecting Nauru in receiving grants, aid or for that matter entering into commercial contracts is the use of the US currency. Nauru uses the Australian currency.

Efforts have been made by the Government to address this with various agencies so that Nauru will be able to trade or deal with money in US currency. This issue has been there before the Bendigo Bank Agency commenced operations in Nauru in 2015.

Nauru is not aware of any reports or publications which currently states that Nauru is one of the closely monitored nations or on a grey or a black list for any matter. During the assessment, the FIU was informed that Nauru has successfully reviewed the requirements under the OECD and remains as a '**Largely Compliant'** Nation. Equally Nauru has submitted its '**Universal Periodic Reviews'** and was assessed by the ***United Nations Human Rights Council*** (UNHCR) in 2020. In addition, Nauru is an active member with the ***United Nations Convention Against Corruption***. It also submitted the Report under the Convention**.** It is published for public accessibility. The issues raised in the UPR and UNCAC reviews are being attended to by Nauru.

Nauru has also been an active member of the Pacific Island Forum which is the apex organisation for the Pacific Region as a whole, including Australia and New Zealand. Nauru has chaired the Forum in 2018. It also hosted the Pacific Island Forum meeting in Nauru.

Risk

The FATF Standards deals with issues of money laundering, terrorist and proliferation financing. In the Mutual Evaluation in 2012, the National Risk Assessment in 2018, and the NRA 2023, again finds Nauru as free from any of these activities. Nauru is regarded as a low risk jurisdiction for any of these activities. The Bendigo Bank which has more than 170 years' experience in financial sector business in Australia. Australia is one of the 9 countries which has AAA credit rating, by all 3 Credit Rating Agencies namely, *Moody's*, *Standard and Poor's* and *Fitch*. This in itself again establishes the point that the financial system of Nauru is free from intrusion or infiltration by money launderer or terrorists.

Consequence

The consequence of not accepting US currency dealings for Nauru is a major set back for the country. One of the issues is that a substantial amount of funds are lost in exchange rates as every time a transaction is undertaken, it has to convert from the US to Australian currency.

It also inhibits investment by entrepreneurs. Nauru needs foreign investment to ensure that its economy remains vibrant.

Furthermore, with the US dollar, Nauru would also be able to access the assistance from other nations including the World Bank in the form of grant, aid or soft loans.

Outcome

Nauru requests that this mutual evaluation addresses this concern in the Report and provide means to overcome the obstacle which really has no sound legal, economic or financial basis.

SCHEDULE

Anti-Money Laundering and Combatting the Financing of Terrorism Framework

1 *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1617

Regulations

- *Anti-Money Laundering and Targeted Financial Sanctions (Suspicious Activity Report) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/817

- *Anti-Money Laundering and Targeted Financial Sanctions (Record Keeping) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/815

- *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/824

- *Anti-Money Laundering and Targeted Financial Sanctions (High Risk Countries) Guideline 2023;*

  http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

- *Anti-Money Laundering and Targeted Financial Sanctions (Simplified Due Diligence) Guideline 2023;*

  http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

- *Anti-Money Laundering and Targeted Financial Sanctions (Fit and Proper Person) Criteria 2023;*

http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

- *FIU Notice on the United Nations Security Council Resolutions Consolidation List for Individuals and Entities that are subject to measures imposed by the UNSC and its Committees;*

  http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

2 *Proceeds of Crime Act 2004*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1616

Subsidiary legislation

- *Proceeds of Crime (Border Declaration Form) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/816

- *Proceeds of Crime (Miscellaneous) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/821

3 *Counter Terrorism and Transnational Organised Crime Act 2004*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1598

Subsidiary legislation

- *Counter Terrorism and Transnational Organised Crime (Amendment of the Schedule) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/812

- *Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/813

4 *Mutual Assistance in Criminal Matters Act 2004;*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1498

Subsidiary legislation

- *Mutual Assistance in Criminal Matters Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/823

5 *Extradition Act 1973*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1441

Subsidiary legislation

- *Extradition Forms Regulations 1973;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1441

- *Extradition (Designated Countries) Order 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/820

6 *Beneficial Ownership Act 2017*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1390

Subsidiary legislation

- *Beneficial Ownership (Forms and Fees) Regulations 2018;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1390

- *Beneficial Ownership (Identity and Declaration) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/818

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

7 *Business Licences Act 2017*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1392

Subsidiary legislation

- *Business Licences Regulations 2018*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1392

- *Business Licences (Notices) Regulations 2020*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1392

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

8 *Business Names Registration Act 2018*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1393

Subsidiary legislation

- *Business Names Registration Regulations 2018*
  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1393

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

9 *Corporations Act 1972*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

Subsidiary legislation

- *Corporation (Appeal Fees) Regulations 1973*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Appeals) Rules 1972*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Forms) Regulations 1972*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Prescribed Fees) Regulations 1972*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Proof and Ranking of Claims) Regulations 1973*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Registration of Existing Companies) Regulations 1972*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Shares Expressed in Other Currencies) Regulations 1976*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporation (Winding-up) Rules 1972*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Corporations (Forms and Fees) Regulations 2018*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1414

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

10 *Partnership Act 2018*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1529

Subsidiary legislation

- *Partnership (Forms and Fees) Regulations 2021;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1529

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

11 *Registration of Associations Act 2020*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1502

Subsidiary legislation

- *Registration of Associations (Forms and Fees) Regulations 2020*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1502

12 *Trusts Act 2018*

http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1487

Subsidiary legislation

- *Trusts (Forms and Fees) Regulations 2018;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/act/view/1487

- *Business Licences (Non-Operational Businesses Record Keeping) Regulations 2023;*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/819

- *Trusts (Trustee Duties) Regulations 2023.*

  http://ronlaw.gov.nr/nauru_lpms/index.php/subordinate_legislation/view/822

AML/CFT Strategy, Guides and Policies

- Republic of Nauru 2022 – 2023 National Strategy for Anti-Money Laundering and Combatting the Financing of Terrorism;
- Nauru Virtual Asset Service Provider Policy;
- Business Registration and Licencing Information Sheet;
- Non-Government Organisation and Non-Profit Organisations Best Practice Guide;
- Beneficial Ownership Guide;

- Nauru Cash Border Regulation Framework Guide;
- Designated Non-Financial Businesses and Professions Guide;
- Financial Institutions Policy;
- Mutual Assistance in Criminal Matters Guide;
- Extradition Guide.

The link for the above Guides and Policies is set out below:

http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx

Related Legislation

- *Constitution of Nauru 1968*
- *Appropriation Act 2022-2023*
- *Business Tax 2016*
- *Banking Act 1975*
- *Civil Procedure Act 1972*
- *Copyright Act 2019*
- *Crimes Act 2016*
- *Customs Tariff Act 2014*
- *Customs Act 2014*
- *Development Fund Act 2011*
- *District Court Act 2018*
- *Employment and Services Tax Act 2014*
- *Environmental Management and Climate Change Act 2020*
- *Evidence (Confidential Information) Act 1976*
- *Fisheries Act 1997*
- *Foreign Judgements (Reciprocal Enforcement) Act 1973*
- *Gaming Act 2011*
- *Illicit Drugs Control Act 2004*
- *Immigration Act 2014*
- *International Seabed Minerals Act 2015*
- *Interpretation Act 2011*
- *Lands Act 1976*
- *Law Revision and Consolidation Act 2019*
- *Leadership Code Act 2016*
- *Legal Practitioners Act 2019*
- *Limitation Act 2017*
- *Maritime Security Act 2019*
- *National Disaster Risk Management Act 2016*

- *Nauru Court of Appeal Act 2018*
- *Nauru Fisheries and Marine Resources Authority Act 1997*
- *Nauru Police Force Act 1972*
- *Oaths, Affirmation and Statutory Declarations Act 1976*
- *Official Information Act 1976*
- *Parliamentary Services Act 2020*
- *Partnership Act 2018*
- *Patents Registration Act 1973*
- *Prices Regulation Act 2008*
- *Private Security Act 2012*
- *Public Finance (Control and Management) Act 1997*
- *Public Service Act 2016*
- *Quarantine Act 1908*
- *Republic Proceedings Act 1972*
- *Revenue Administration Act 2014*
- *Supreme Court Act 2018*
- *Telecommunications Service Tax Act 2009*
- *Trademarks 2019*
- *Treasury Fund Protection Act 2004*
- *Wild Birds Protection Act 1937*

The link for the above Acts is set out below:

http://ronlaw.gov.nr/nauru_lpms/index.php

ACKNOWLEDGMENT

SOURCES OF INFORMATION

1. Secretary for Justice & Border Control
2. Solicitor General
3. Director Legislative Drafting
4. Director of Public Prosecutions
5. BC Business & Corporation teams
6. Nauru Customs Service
7. Nauru Revenue Office
8. Department of Finance
9. Department of Treasury
10. Chief Accountant
11. Manager Bendigo Agency
12. Registrar of Courts
13. Nauru Police Force
14. Anti-Money Laundering Officials Committee
15. AML PPC
16. Chairperson - Anti-Money Laundering Governance Council
17. DA Law and Associates
18. BWD Law & Consultancy
19. Clodumar, Soriano and Associates
20. Solde Law Firm
21. Western Union Agency Staff
22. Human Rights Section (JBC)
23. Immigration Section
24. Passport Section
25. Assistant Supervisor FIU
26. Finance and Adminstration Team