GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

NAURU

2019 (Second Round)

OECD

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PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
APG	Asia/Pacific Group on Money Laundering
AML/CFT	Anti-Money Laundering/Combatting the Financing of Terrorism
BO	Beneficial ownership
BTA	Business Tax Act
ESTA	Employment and Services Tax Act
EOI	Exchange Of Information
EOIR	Exchange Of Information on Request
EOIR Standard	Standard of transparency and exchange of information on request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NAC	Nauru Agency Corporation
NFIU	Nauru Financial Intelligence Unit
NRO	Nauru Revenue Office

PRG	Peer Review Group of the Global Forum
RAA	Revenue Administration Act
Nauru	Republic of Nauru
RPC	Regional Processing Centre
STR	Suspicious Transaction Report
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request (EOIR standard) in Nauru on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 3 May 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the period from 1 January 2015 to 31 December 2017. This report concludes that Nauru is rated overall **Largely Compliant** with the international standard.

2. Nauru underwent a review of its legal and regulatory framework in 2013. The review concluded that only one of the essential elements was in place and thus Nauru was blocked from moving to Phase 2 (review of practical implementation) of the first round of reviews. Nauru subsequently underwent a supplementary review in 2016 on its legal framework and in the light of the actions taken by Nauru to address the recommendations made in the Phase 1 peer review report (2013 report), the Phase 1 Supplementary report (2016 report) concluded that Nauru was in a position to move to the next round of peer reviews. The effectiveness of Nauru's practical implementation of the legal and regulatory framework is, therefore, reviewed in this round of reviews.

Comparison of determinations for the First Round Supplementary Report and the Second Round Report and allocation of ratings

Element		First Round Phase 1 Supplementary Report (2016)	Second Round Report (2019)	
			Determination	Rating
A.1	Availability of ownership and identity information	In place	In place	LC
A.2	Availability of accounting information	Needs improvement	In place	LC
A.3	Availability of banking information	In place	In place	C
B.1	Access to information	In place	In place	C
B.2	Rights and Safeguards	In place	In place	C
C.1	EOIR Mechanisms	In place	In place	C
C.2	Network of EOIR Mechanisms	In place	In place	C

Element		First Round Phase 1 Supplementary Report (2016)	Second Round Report (2019)	
			Determination	Rating
C.3	Confidentiality	In place	In place	C
C.4	Rights and Safeguards	In place	In place	C
C.5	Quality and timeliness of responses	Not applicable	Not applicable	LC
	OVERALL RATING	Not applicable	Not applicable	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. Nauru continues to improve its legal and regulatory framework in all aspects of transparency and exchange of information including the availability of legal and beneficial ownership information and of accounting information in respect of relevant entities and arrangements. The 2016 report made a recommendation to ensure availability of identity and ownership information in respect of (i) domestic trusts and (ii) foreign trusts with a Nauruan trustee (in respect of element A.1). Another recommendation was to ensure availability of accounting information for domestic and foreign trusts with a Nauruan trustee that does not conduct a business in Nauru (in respect of element A.2). A specific recommendation was also provided in relation to the absence of legal obligations on companies and partnerships that do not conduct a business in Nauru to retain underlying documentation in accordance with the international standard.

4. Nauru enacted the Trusts Act 2018 to address the recommendations relating to trusts. In addition, the Beneficial Ownership Act was enacted in 2017 and amended in 2018 to ensure availability of beneficial ownership information in respect of all relevant entities in Nauru, including trusts. In order to address the recommendation on corporations and partnerships relating to underlying documentation requirement, amendments have been made to the Corporations Act, the Partnership Act and the Business Licences Act.

5. The legal changes also aim at strengthening the availability of ownership and accounting information in Nauru by integrating the various regulatory requirements and improving co-ordination between administrative and regulatory authorities in Nauru. Further, a new Business Names Registration Act 2018 was also enacted, replacing the Business Names Act 1976. Further, Nauru increased the quantum of fines to ensure sanctions for non-compliance are stringent enough to raise voluntary compliance and have a strong deterrent effect on businesses. Nauru also established a compliance framework and administrative mechanism to monitor, supervise and enforce legal compliance by all entities in practice. This includes compliance with

an amendment to the Corporations Act in 2016 to abolish bearer shares. Nevertheless, Nauru has sufficiently demonstrated that there are no bearer shares in existence in Nauru.

Key recommendation(s)

6. The main issues raised by this report relate to the monitoring and supervision of newly enacted legislation on beneficial ownership and on trusts. Since the changes have been recent, Nauru should design and implement adequate supervisory programmes to ensure availability of reliable, accurate and up-to-date information, including the beneficial ownership information for all entities and arrangements including trusts.

7. The review also concluded that the supervision and enforcement mechanisms to ensure availability of accounting information in practice were inadequate during the review period. Nauru should implement a robust oversight mechanism to ensure that all relevant entities and arrangements in Nauru maintain accounting information at all times in accordance with the standard.

Overall rating

8. Despite being a Party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters, Nauru has not yet received any EOIR requests. This is largely due to the very limited economy of Nauru, including the absence of bank accounts in Nauru.

9. Nauru has received a Compliant rating for elements A.3, B.1, B.2, C.1, C.2, C.3 and C.4, and a Largely Compliant rating for elements A.1, A.2 and C.5. Nauru is therefore rated overall Largely Compliant with the EOIR standard.

10. The report was approved by the PRG at its meeting in June 2019 and was adopted by the Global Forum on 29 July 2019. A follow-up report on the steps undertaken by Nauru to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Largely Compliant	Nauru enacted the Beneficial Ownership Act in December 2017 to ensure the availability of beneficial ownership information of entities in Nauru. Because it is so recent, it has not been possible to properly evaluate its implementation in practice and therefore its effectiveness has not been fully tested. Further, no guidance has been issued on how to determine "control by other means" in legal entities.	Nauru should provide guidance on how to determine "control by other means" in legal entities and monitor the practical implementation of the Beneficial Ownership Act to ensure that beneficial ownership information is available for all entities in Nauru.
	Nauru enacted the Trusts Act, which came into force in October 2018, to ensure the availability of identity and ownership information of trusts in Nauru. Because it is so recent, it has not been possible to properly evaluate its implementation in practice and therefore its effectiveness has not been fully tested.	Nauru should monitor the practical implementation of the Trusts Act 2018 to ensure that identity and ownership information relating to trusts are available in all cases.
	The compliance framework and enforcement measures for all entities and arrangements in Nauru only became fully operational at the end of the current review period or later.	Nauru should continue to strengthen its supervision and enforcement activities to ensure that all entities and arrangements in Nauru maintain identity and ownership information as required by the EOIR Standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
EOIR Rating Largely Compliant	Although the Nauru Revenue Office carried out supervision measures during the last year of the review period, these may not have ensured the availability of reliable, accurate and up-to-date accounting information in all cases in practice.	Nauru should ensure that adequate supervision and enforcement measures are implemented in practice to ensure availability of reliable, accurate and up-to-date accounting information at all times.
	Nauru enacted the Trusts Act, which came into force in October 2018 to ensure availability of accounting information of trusts in Nauru. As the law is very recent, its effectiveness in practice has not been tested.	Nauru should monitor the implementation and operation of the trust law to ensure reliable accounting information is available for all trusts in Nauru.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determinations and ratings	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determinations and ratings	Factors underlying recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating Largely Compliant	Nauru had not received a single request from its treaty partners during the review period to test the effectiveness of its EOI framework in practice.	It is recommended that Nauru monitors the implementation of its EOI framework in practice to ensure that when EOI requests are received, responses are provided in a timely manner.

Overview of the Republic of Nauru

11. This overview provides some basic information about the Republic of Nauru (Nauru) that serves as context for understanding the analysis in the main body of the report. It is not intended to be a comprehensive overview of Nauru's legal, tax or regulatory systems.

12. Nauru is a small island nation with 21 square kilometres land area located in the western Pacific Ocean. The nearest island is Banaba Island in Kiribati, located around 250 km to the east. First settled by Micronesian peoples, Nauru was a United Nations trust territory under Australian administration after the Second World War and became the world's smallest independent Republic in 1968.

13. The country is divided into 14 districts with no official capital but the seat of the Government is located in the Yaren district. It currently has a population of just over 10 000, plus 800 long term business visa (mainly Chinese) residents and 700 international refugees with Nauruan refugee status, and this makes a total of 11 500 permanent residents on the island. The native language is Nauruan. The official language is English.

14. Nauru was once the second wealthiest nation in the world in terms of per capita GDP (USD 50 000). With the depletion of its primary phosphate resources, during 1990s, Nauru pursued various measures to position itself as an offshore financial centre up until 2004 and had encouraged offshore banking activities. The abolition of the offshore banking regime in 2005 resulted in all the banks winding up their operations in Nauru. The only bank that had a physical presence also closed down by 2006.

15. With more than 80% of land area mined out and uninhabitable, Nauru's current economy relies less on secondary reserves of phosphate, and more on income from the Regional Processing Centre (RPC)[1] services and fisheries. Following the introduction of Business Tax and Employment and

1. A centre established under a bilateral relationship and set up under the Asylum Seekers (Regional Processing Centre) Act 2012 pursuant to Nauru's obligations under the Refugees Convention 1951.

Service Tax, tax revenues are progressively increasing. Nauru imports well over 90% of its foodstuffs and other basic goods.

Legal system

16. Nauru, a unitary State, has a mixed legal system of common law derived from the English principles and cases as well as the local customary law. The Constitution of Nauru is the supreme law of the country followed by the Statutes enacted by the Parliament; customary law; adopted or applied Statutes of the Commonwealth of Australia, State of Queensland; adopted English statutes; and Nauruan common law and English common law, and the principles and rules of equity in force in England as at 31 January 1968. The laws in force in Nauru immediately before its independence continue to apply to the extent that they are not expressly revoked or inconsistent with the independent status of Nauru (Article 85, Constitution). Ratified conventions or treaties that Nauru is a party to do not form part of the domestic law directly but relies on domestic legislation being enacted to give the convention or treaty the force of law domestically. The Interpretations Act 2011[2] provides that any conflict between an international agreement and a domestic law is to be resolved in favour of the terms of the international treaty. Further, the Revenue Administration Act 2014 provides that in case of conflict between the terms of an international assistance agreement having legal effect in Nauru and any domestic law, the EOI provisions will have an overriding effect.

17. The Parliament is unicameral and has 19 members elected every three years by Nauruan Citizens over the age of twenty. There are no formal political parties in Nauru. Each member of the Parliament contests the Parliamentary elections as an independent candidate. Once the election results are declared members meet to elect the Speaker and subsequently the President. The President appoints and heads his or her Cabinet. The Executive Authority of the Republic vests in the Cabinet.

18. Judicial power vests in the Nauru Court of Appeal, Supreme Court, District Court and the Family Court. The Nauru Court of Appeal was established in April 2018 replacing the High Court of Australia as the final appellate court. The original jurisdiction for determination of all

2. Section 51 of the Interpretations Act sets out that any relevant treaty or other international agreement to which Nauru is a party may be considered when interpreting a written law or statutory instrument in order to: (a) resolve an ambiguous or obscure provision of the law; or (b) confirm or displace the apparent meaning of the law; or (c) find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable.

constitutional issues vests with the Supreme Court. The Supreme Court also has original jurisdiction to hear all civil, criminal and other matters. All decisions of the Supreme Court are appealable to the Nauru Court of Appeal.

19. There are also some quasi-judicial bodies. The Nauru Lands Committee established under the Nauru Lands Committee Act 1956 has the jurisdiction to deal with all Nauruan land and personal property matters. The Refugee Status Review Tribunal has the special jurisdiction over the review of negative refugee status determination decisions.

Tax system

20. A taxation system has been in place in Nauru since October 2014 with the introduction of the Revenue Administration Act (RAA) and the Employment and Services Tax Act (ESTA). The Business Tax Act (BTA) was introduced in July 2016. Nauru operates a self-assessment system of taxation with Nauru sourced income being subject to taxation.

21. The ESTA imposes tax on employment income and services fees received by independent service providers. Tax is withheld by an employer/payer and remitted to the Nauru Revenue Office (NRO) on a monthly basis. Nauru's private sector is comparatively small and most of the employment is provided by the Government mainly in relation to providing services to the RPC.

22. The BTA imposes an annual business tax, a Small Business Tax on non-residents conducting business in Nauru, and a non-resident tax. The Small Business Tax is payable quarterly as a % of gross turnover up to AUD 250 000. If the turnover is more than AUD 250 000 then business tax applies. The non-resident tax is payable on interest, insurance premiums and royalties paid to a non-resident. Total revenue collection of the NRO during the year 1 July 2017-30 June 2018 is AUD 29.1 million, mostly from non-residents.

23. A telecommunications service tax is also imposed under the Telecommunications Service Tax Act 2009, and is payable monthly at rate of 15% of gross turnover. The Automatic Exchange of Financial Accounts Information Act was also legislated in November 2016. Nauru is a Party to the Multilateral Convention and a signatory to the Multilateral Competent Authority Agreement (MCAA). Nauru has also committed to the automatic exchange of financial account information from the year 2018, though at present, has no reporting financial institutions. In November 2017, Nauru committed to the Base Erosion and Profit Shifting (BEPS) minimum standards, to the extent that the minimum standards will become relevant in Nauru. All tax laws may be accessed at www.naurugov.nr and ronlaw.gov.nr.

Financial services sector and other relevant professions

24. There is no financial sector or regulated financial system in Nauru. The economy is entirely cash based with no credit or debit cards in use in the Island since the collapse of the Central Bank in 2005. The only banking activity in Nauru is carried out through an agency of Bendigo and Adelaide Bank, Australia (Bendigo bank) since 2015. The other financial institution is a local branch of Western Union which operates mainly for small cash transfers (principally by foreign employees and refugees sending or receiving funds)/remittance services since 2008, but does not offer accounts nor take deposits. The official currency in Nauru is the Australian Dollar (AUD). One AUD is equal to USD 0.7095 as at 25 January 2019.[3]

25. The Bendigo Agency which is a formal Joint Venture between Bendigo bank and the Treasury Section of the Department of Finance has been providing transactional services to account holders acting as a front office for the Bendigo bank. Technically, all the accounts (around 10 300) are Australian accounts, subject to the banking, AML and other financial regulations of the Government of Australia and regulated by the relevant Australian regulatory agencies. Deposits maintained through the Bendigo Agency are around AUD 70 million. The agency operates nine ATMs around the Island.

26. The GDP of Nauru has been averaging around the AUD 130 million over the past three years. Phosphate revenue is shared between the Government, land owners and the Nauru Phosphate Royalties Trust (NPRT). The NPRT was set up as a sovereign wealth fund to invest a percentage of earnings from state-owned mining to provide for Nauru when phosphate reserves had been exhausted. The bulk of the "historic" sovereign wealth funds were lost and NPRT is soon to be wound up. A new sovereign wealth fund was established in 2015 – Intergenerational Trust Fund for the People of Nauru, which has a net worth of AUD 100 million and growing with contributions and profits from investments at over AUD 30 million per year.

27. The Chief Justice of Nauru is responsible for administration of the Legal Practitioners Act 1973. There are seventeen pleaders (legally trained advocates with permission to plead cases in the court) in Nauru. There are only two private law practitioners practising in Nauru. The Barristers and Solicitors (Accounts) Rules 1973 regulates accounts and other relevant financial activities undertaken by barristers and solicitors. There is only one local accountant in Nauru, who works for the Government.

28. The only registered corporation agent was the Nauru Agency Corporation (NAC), a Government owned entity, which was providing services for the purposes of incorporation, renewal of incorporation certificates,

3. Reserve Bank of Australia www.floatrates.com/source/rba/.

business licences and other legislative requirements to all corporations. In 2017, its operation was ceased. No insurance business operates or is registered in Nauru. The Insurance Act 1974 was repealed by the Statute Law Revision Act 2011 and has not been replaced.

29. There are no real estate agencies in Nauru as the vast majority of land is held under customary tenure recognised by customary law and under the Administration Order No. 3 of 1938 also known as Regulations Governing Intestate Estates 1958. A small amount of State owned land has title under non-customary tenure governed by the Lands Act 1976. The President of Nauru must approve any lease or transfer of land and it is not transferable to a non-Nauruan citizen. The determination of land ownership and benefits is overseen by the Nauru Lands Committee, a statutory body established under the Nauru Lands Committee Act 1956.

30. Nauru's major trading partners are, for import: Korea, Australia, Fiji, China and the United States (USD 96.2 million in 2009), and for export (phosphate): India, Japan, Australia, and South Korea (USD 42.5 million in 2009).[4]

AML framework

31. Nauru has established an anti-money laundering legal framework (AML/CFT framework) through the enactment of the Anti Money Laundering Act 2008 (AMLA). The law requires a full range of financial institutions to adopt AML/CFT preventative measures under the AMLA. Nauru was admitted as a member of the Asia Pacific Group on Money Laundering (APG) in July 2007.

32. The Financial Intelligence Unit was initially set up in 2001 as the "Financial Supervisory Authority" and subsequently renamed in 2004 as the "Financial Investigation Unit" and in 2008 as the "Nauru Financial Intelligence Unit" (NFIU). While the NFIU is a section of the Department of Justice, it is a statutory establishment and has its functions and powers under AMLA. The NFIU is headed by the Manager/Supervisor and has two staff on a full-time basis. The NFIU is mandated to receive and analyse suspicious transaction reports (STR), which are recorded in the database and reviewed to ascertain whether the NFIU needs to proceed with further investigation or not. If further investigation is required, it is jointly undertaken by the NFIU and the relevant law enforcement agency such as the Nauru Police Force, Nauru Revenue Office or Customs. Where the information is provided to the

4. Asian Development Bank, https://sdbs.adb.org/sdbs/KI_fileDownload.jsp?key=NAU&scope=country&file=CT_NAU.pdf.

relevant law enforcement agency for investigation, NFIU keeps a track of such reporting and outcome.

33. Nauru's first APG Mutual Evaluation Report (MER) assessing its compliance with the international standards for anti-money laundering and combatting terrorist financing was completed in July 2012, the outcome of which requires Nauru to be placed under regular follow-up. The MER rated Nauru as Partially Compliant in respect of recommendation 5 (lack of identification of beneficial ownership, lack of customer due diligence requirements, etc.), Largely Compliant in respect of recommendation 10 (record keeping), Partially Compliant in respect of SR.VII (for lack of clarity on full originator information and lack of monitoring of financial institutions), Partially Compliant in respect of recommendation 12 (lack of legal requirements to ensure identification of beneficial ownership information by Designated Non-Financial Businesses and Professions and lack of record keeping), Partially Compliant in respect of recommendation 25 (lack of supervision on service providers), and Partially Compliant in respect of recommendations 33 and 34 (for lack of beneficial ownership information and for existence of bearer shares and warrants). At the end of 2015, Nauru was moved to transitional follow-up procedures and has been asked to provide detailed progress report in respect of the core and key Recommendations rated PC or NC in the 2012 MER. As at the cut-off date, Nauru was subject to the transitional follow-up procedures of the FATF. Nauru has not yet been reviewed against the 2012 FATF Recommendations. The on-site of the APG (3rd round) assessment is scheduled to take place in the year 2021.

Recent developments

34. Following amendments to the Corporations Act, the Business Licences Act, and the Beneficial Ownership Act, the enactment of the Trusts Act in October 2018 and its subsequent amendment in December 2018, and the introduction of a new Partnership Act and a Business Names Registration Act, in December 2018, consequential Regulations have been approved by the Cabinet and gazetted to come into force on 15 January 2019. These Regulations operationalise registration, submission of documents, annual renewal and annual returns filing, and registration of change of ownership and other statutory information in respect of entities in Nauru. Further, an administrative reorganisation and additional resources have been created to meet the new and enhanced requirements and to monitor and enforce effectively the legal obligations of entities in practice.

35. In the week commencing 10 December 2018, the Registrar for Business Names issued 220 notices to various businesses, partnerships and corporations which have registered for business names, but which have not

either been issued with a business licence or re-applied for a fresh business licence. They were given 30 days to respond. Consequently, 215 business names have been struck off. This exercise was an initial step to a more concerted approach to update and regularise the relevant registers and records maintained and kept by the Department of Justice. The current process is expected to be completed by June 2019. The frequency of the striking off exercise is bi-annual and further, all licensees whose business licences are due for expiry are given a month's notice in advance to apply for renewal or to advise the Registrar whether they intend to continue with the business or not. This process is expected to bring in more effective management and control of business registers in Nauru.

Part A: Availability of information

36. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

37. The 2016 report concluded that the legal and regulatory framework to ensure availability of legal ownership and identity information was generally in place. That report noted in detail the several changes made by Nauru in its legal and regulatory framework to ensure obligations were imposed on domestic and foreign companies, and partnerships to keep legal ownership and identity information. The 2016 report removed a recommendation with respect to the issue of bearer shares owing to the legislative amendments undertaken by Nauru. The effectiveness of those legal changes is examined in this report.

38. However, it concluded that Nauruan legislation was inadequate with respect to ensuring availability of ownership and identity of legal owners of domestic trusts and foreign trusts with a Nauruan trustee and thus the recommendation in the 2013 report was retained. Nauru enacted the Trusts Act 2018, which came into force in October 2018 to address this recommendation.

39. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2016 report, particularly with respect to the availability of Beneficial Ownership (BO) information, the existing AML/CFT law was updated in 2018 and has provisions to ensure some beneficial ownership information is available in Nauru. In addition, the newly introduced standalone Beneficial Ownership Act 2017 (the BO law) requires all types of entities, including trusts, in Nauru to maintain beneficial ownership information and to report this annually to the Authority appointed under the law. Further, the BO law ensures that all natural persons having an ownership

or control interest directly or indirectly in a legal entity are identified as beneficial owners. The beneficial ownership information is required to be retained for at least seven years and there are effective penalties and enforcement provisions in place to ensure compliance. However, the effectiveness of implementation of these laws in practice has not been tested in this review as the laws came into force either at the end of the review period or later.

40. The Secretary of the Department of Justice and Border Control (Department of Justice) performs the role of the Registrar of Business Names, Registrar of Partnerships, Registrar of Business Licences, Registrar of Corporations, Registrar of Trusts and the Authority under the Beneficial Ownership Act. With the notification of the Business Tax Regulations in 2017, the Corporations Regulations 2017 on 21 December 2017, the Partnership Regulations and the Beneficial Ownership Regulations in July 2018, enactment of a new Trusts Act in October 2018 and the Trusts Regulations on 15 January 2019, the compliance framework and enforcement measures for all entities and arrangements in Nauru became fully operational only at the end of the current review period or later. However, considering that there are only a small number of entities in existence, many of them State owned, stringent legal requirements for foreign companies to operate in Nauru, a narrow economic base, low level of business activities, restrictive land ownership and a small population, and the fact that there have been no EOI requests, the inadequate level of formal compliance measures during the review period has not had any material impact in practice.

41. After winding up the NAC at the end 2017, the Department of Justice took actions to remove defunct or delinquent corporations from the corporations' register. This exercise resulted in striking-off of 24 corporations, all of them offshore foreign companies as they were found not to have any physical presence in Nauru. At present, a total of 30 corporations have been registered out of which only one is a foreign company.

42. Nauru has not received an EOI request from its treaty partners since the Multilateral Convention for Nauru came into force in October 2016.

43. The new table of recommendations, determination and rating is therefore as follows:

Legal and Regulatory Framework
In place

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified	Nauru enacted the Beneficial Ownership Act in December 2017 to ensure the availability of beneficial ownership information of entities in Nauru. Because it is so recent, it has not been possible to properly evaluate its implementation in practice and therefore its effectiveness has not been fully tested. Further, no guidance has been issued on how to determine "control by other means" in legal entities.	Nauru should provide guidance on how to determine "control by other means" in legal entities and monitor the practical implementation of Beneficial Ownership Act to ensure that beneficial ownership information is available for all entities in Nauru.
	Nauru enacted the Trusts Act, which came into force in October 2018, to ensure the availability of identity and ownership information of trusts in Nauru. Because it is so recent, it has not been possible to properly evaluate its implementation in practice and therefore its effectiveness has not been fully tested.	Nauru should monitor the practical implementation of the Trusts Act 2018 to ensure that identity and ownership information relating to trusts are available in all cases.
	The compliance framework and enforcement measures for all entities and arrangements in Nauru only became fully operational at the end of the current review period or later.	Nauru should continue to strengthen its supervision and enforcement activities to ensure that all entities and arrangements in Nauru maintain identity and ownership information as required by the EOIR Standard.
Rating: Largely Compliant		

ToR A.1.1. Availability of legal and beneficial ownership information for companies

44. The 2013 report analysed the legal and regulatory framework with regard to companies in Nauru (see Phase 1 review report, paragraphs 48-57). The amendments to that legal framework up to 5 August 2016 were discussed in the 2016 report. Further amendments have been made to the legal framework during the current review period. This report will describe the changes made and their implications.

45. The primary legislation that governs companies in Nauru is the Corporations Act 1972. Two types of corporations can be incorporated under the Corporations Act: holding corporations and trading corporations.

Other types of corporations in Nauru can be created under statutory laws: Government statutory corporations. At the end of December 2018, there were 42 corporations in Nauru, out of which 25 were trading corporations, 5 were holding corporations, and 12 were Government statutory corporations to serve specific purposes and all are Government owned.

Legal ownership and identity information requirements

46. As described in section A.1 of the 2013 report, legal ownership and identity requirements for companies are mainly found in the Corporations Act (see paragraphs.58-69). No gap has been identified in this regard and no material legislative changes that could impact this conclusion have been made since that report.

47. The Corporations Act requires every corporation to maintain a shareholder register (S. 126), file an annual return with the Registrar of Corporations (S. 133) and renew its incorporation certificate annually (S.15(4)). The annual return form (under rule 5(3) of Corporations Regulations 2017) requires identity and legal ownership details such as registered office address, address of location of shareholder register, details of directors and other professionals of the corporation, and the list of each person holding shares along with their address and number of shares held. Any change to information submitted in the annual return form is to be reported to the Registrar within 14 days of such change.

48. The Secretary of Justice acts as the Registrar of Corporations and he exercises this function through a team of officials in the Department. The Registrar's office is manned by two full time and four additional staff, who collect and verify documents, enter the requisite details in the register, maintain and preserve the register and records, and conduct offsite and onsite inspections to verify compliance by corporations. Recently, the office has been further reinforced by the appointment of legally trained paralegals and pleaders.

49. After the NAC was closed down in 2017, the Corporations Act was amended in December 2018 wherein the requirement for corporations to engage a registered corporation agent, registered trustee corporation, nominee corporation or trustee corporation was removed. The implications are that the Government does not recognise and licence any service provider for incorporation, fee collection, filing documents, or conducting due diligence and thus companies no longer need to engage a professional service provider for company services. Similarly, the requirements to engage only a registered corporation auditor, a registered or a resident secretary have been removed. This change was due to the fact that there were no professionals available in the country to provide these services nor had the Government approved any auditor or a secretary for this purpose, and therefore companies had a reasonable excuse not to comply with several requirements of the Corporations Act.

50. The amended law also requires corporations to retain documents and records for at least seven years. More importantly, a new provision (S.15(4A)) was inserted to require every person intending to incorporate or renew the Certificate of Incorporation to comply with the requirements of the Business Licences Act 2017, the Beneficial Ownership Act 2017 and the Business Names Registration Act 2018. The Corporations (Fees) Regulations 2017 was repealed and replaced by a new Corporations (Forms and Fees) Regulations 2018, which came into effect on 15 January 2019. The changes reflect the amendments to the Corporations Act. The form now requires corporations to file their beneficial owners' information; Taxpayer Identification Number (TIN) details of all the shareholders, beneficial owners, directors and secretaries; other identification documents for each shareholder; business licence information; certificate of business name if any, etc. This information is to be mandatorily submitted while applying for incorporation of a new corporation or for renewal of the incorporation certificate.

51. Under the Business Names Act 1976, the application form requires an applicant to provide information about his identity and other information which includes name, address of the principal place of business, identity details of owner(s) or shareholders, nature of business, annual returns filed, etc. Under this law, all applicable entities are required to register with the Registrar of Business Names. The Secretary for Justice performs the role of the Registrar of Business Names. He maintains the register of business names, issue a certificate and retains all the records collected in the process.

52. The Business Names Registration Act 2018 repealed and replaced the Business Names Act 1976 for registration of business names. The new law not only retains the requirements under the Business Names Act 1976 but also strengthens the regulatory requirement and co-ordination between various laws.

53. Every business should now file an annual return (S.32) in the form prescribed in the Business Names Registration Regulations 2018, which came into effect on 15 January 2019. The law also requires that a firm, company, trust or foreign business applying for a business name or holding a certificate should concurrently comply with the requirements of the Beneficial Ownership Act 2017 by providing the requisite details in the annual return form for renewal of business names.

54. Any form of trade, profession, commerce or any other economic activity carried on for the purpose of generating income requires a business licence. An applicant must apply for a business licence under the Business Licences Act 2017, which repealed and replaced the Business Licences Act 2011. The Business Licences Act was again amended in December 2018 to strengthen the administrative and regulatory control over licensed entities, and to increase sanctions for defaulting entities.

55. The Secretary for Justice, who is the Registrar for Business Licences, grants licence to persons conducting business in Nauru and regulates them. Licences are issued for occasional purposes (a maximum period of 30 days) and for permanent businesses. The licences for permanent businesses are valid for 12 months and renewed annually.

56. An applicant should have completed registration of a business name, incorporation of a corporation or registration of partnership, and TIN registration with the NRO before applying for a business licence. Any change of business activity, ownership or address needs to be notified to the Registrar within seven days and a new licence is issued.

57. The Business Licences (Amendment) Regulations 2017 prescribe a form for filing a new application and for annual renewal of business licences. The application must include detailed identity and ownership information about the entity or the individual along with supporting documentation, which includes certified copy of the passport, driver licence, birth certificate, copy of certificate of business name registration, etc. In respect of foreign nationals, additional documentation includes a valid Nauruan visa, police clearance and permanent address of the foreigner in the country of registration. Further, the TIN issued by the foreign country needs to be filed to receive a business licence or to renew it.

58. The Business Licences (Regional Processing Centres and Settlements) Regulations 2017 were made under the Business Licences Act to regulate RPC activities and to provide a special category licence to entities rendering services to RPCs and Settlements or in relation to protected persons. The Regulations provide for a different fee structure and stringent qualification requirements but otherwise the documentation requirements for business licencing, incorporation, registration, renewal or annual filing for tax purposes remain the same for RPC service providers. There is an MOU between the Australian Government and the Government of Nauru to manage and administer these operations and authorised service providers are only allowed to operate in this area. There are currently three licensed operators that provide services to RPC and they are subject to withholding tax regime of the BTA.

Tax law

59. The tax law obligations relating to ownership and identity information are ensured by the BTA, the RAA and other tax legislation. The Secretary of Finance is responsible for the administration of the various tax laws. All resident persons defined in the RAA (individuals, partnerships, trusts or other body of persons) and any other person having a liability to Nauruan tax must register for a TIN (section 9, RAA). The NRO collects ownership and identity information of taxpayers through the TIN registration process.

60. Pre-requisites to receive a TIN are a valid business licence and the incorporation or registration certificate for entities. The applicant should attach mandatory proof of legal ownership in the application for TIN registration. However, there is no direct requirement to update ownership information once a TIN is obtained. The Annual return form does not require the furnishing of updated ownership information. On the other hand, taxpayers need to justify the beneficial ownership of entities in order to avail of preferential tax benefits applicable for Nauruan citizens though the beneficial ownership identification requirement under the RAA covers only the ownership interest in entities and therefore does not fully meet the BO requirement under the EOIR standard.

AML/CFT law

61. As discussed in the 2013 report (see paragraphs. 62-69) the Anti Money Laundering (AML) Act 2008 covers only financial institutions but all types of service providers (lawyers, notaries, accountants, TCSPs, etc.) are covered under the term "financial institutions". The AML/CFT law was amended in 2018 to include proper identification and verification of customers and also to include a definition of Beneficial Owner. However, the requirements for beneficial ownership information is limited to identifying those who are politically exposed persons. Even for those limited cases, there is no clarity on how to identify beneficial owners as there are no identification procedures prescribed under the law or any regulation. The amended law also extends the powers of the NFIU to examine records and inquire into the business and affairs of any financial institution and to enforce compliance. The existing obligations are not in line with the GF requirements to ensure ownership and identity information of companies or other entities. However, the AML/CFT law has only a limited role in terms of establishing legal or beneficial ownership information in Nauru.

62. The Bendigo Bank agency and the remittance agency are the main financial institutions in Nauru. There are four money-lending services but they are not monitored by the NFIU.

63. In practice, the bank agency requires customers to provide TIN, incorporation or registration certificate, and business licence as applicable to open a bank account with the Bendigo bank as part of its due diligence documentation to comply with the Australian AML/CFT requirements and to avert any potential risk of money laundering. Similarly, these documents and the bank account number are mandatory to get a contract with the State owned enterprises.

Foreign companies

64. Part X of the Corporations Act governs the legal obligations of foreign corporations in Nauru. Any company incorporated outside Nauru but intending to operate in Nauru should register with the Registrar and simultaneously comply with the provisions of the Business Licences Act 2017, the Beneficial Ownership Act 2017 and the Business Names Registration Act 2018. All corporations including foreign companies are required to have their registered office in Nauru.

65. Until the end of 2017, the NAC being the sole registered agent had acted as the company secretary and agent for foreign companies and its office had been treated as the registered address for those foreign companies. However, when the NAC became defunct in 2017 foreign companies were required to have their own registered office and thus a physical presence in Nauru. All foreign companies that did not have a physical presence were struck off from the register through an order of the Cabinet in 2017. As a result, there is only one foreign company in existence in Nauru. All ownership and identity information including the identity of beneficial owners is required to be filed by foreign companies to the Department of Justice and same obligations apply as in the case of domestic companies. It is also mandatory for foreign corporations to provide a current certificate of incorporation or other licences or registrations required for operations in the country of its original registration.

66. Any foreigner immigrating to Nauru is required to obtain necessary licence if operating a business and also to obtain a TIN from the NRO. If an individual enters into Nauru for employment purposes, he/she will have to obtain a TIN from the NRO and ESTA taxes are to be paid by the employer(s) concerned. The Department of Justice cross-checks immigration information to supervise the licensing and registration. This information is also shared with the NRO for tax control.

Nominees

67. Nominee ownership was possible in Nauru through the NAC, the only registered agency corporation, but the NAC was wound up by the Government in 2017 and the Corporations Act has been amended to remove the requirement of engaging corporation agents from the scheme of registration. Further, all provisions relating to nominees were also removed from the law by the Corporations (Amendment) Act 2018. The Beneficial Ownership Act requires legal entities and arrangements to identify nominees in determining the beneficial owners (see paragraphs 78-93).

Legal ownership information – Enforcement measures and oversight

68. Nauru reviewed the adequacy of its penalty regime in 2016 and strengthened its penalties to ensure that they are effective in deterring non-compliance. It increased penalties substantially for a variety of non-compliance issues through the Corporations (Amendment) Act 2016 to improve voluntary compliance. The fines for not complying with any requirement of the Corporations Act were increased from AUD 100 to a minimum of AUD 1 000. A fine up to AUD 5 000 and six months imprisonment can be imposed for offences in respect of some specific obligations including failing to register a company or failing to maintain proper accounts and records. Further, the Courts can impose a fine up to AUD 10 000 and twelve months' imprisonment for more serious offences.

69. Under the Business Names Registration Act 2018, any person failing to comply with the provisions of the law commits an offence and is liable to a fine of AUD 5 000-20 000 or to an imprisonment of six months to two years or to both depending on the nature and severity of the offence.

70. Under the Business Licences Act 2017 as amended in December 2018, any person failing to comply with various requirements of the law commits an offence and is liable to a fine of AUD 5 000-100 000 or to an imprisonment of six months to two years or to both depending on the nature and severity of the offence.

71. In practice, the application forms for registration of a business name, business licence, incorporation of a corporation or registration of a partnership or a trust were put together by the Department of Justice in 2018 to integrate these services and to establish better control over the registration and renewal process. The total number of business names issued in 2015, 2016 and 2017 were 144, 183 and 198 respectively. Total number of business licences issued or renewed as in 2015, 2016 and 2017 were 229, 311 and 303 respectively. Nauruan authorities state that not all traders, small and seasonal businesses need a business name and thus the difference in the number of registration. Further, an individual or entity can register a business name but need not acquire a business licence until it plans to operate. Up until the end of November 2018, a total number of 48 licences were cancelled for reasons such as closing down of business activities, ownership changed without notifying the Registrar, etc. Penalties were imposed in five cases for breach of the Business Licences Act 2017.

72. Until October 2017, NAC, as the sole company service provider for all resident and foreign companies, had facilitated all filings and fulfilling other compliance requirements in accordance with the Corporations Act. Since then, the Department of Justice has taken over the work of the NAC as there were severe shortcomings in the functioning of NAC and the

compliance levels were very low. All records historically were kept in hard copy at the NAC. The Department of Justice took over all the documents but decided to retain only records for the previous seven years unless a requirement arose otherwise to retain for a longer period.

73. A total of 54 corporations were recorded in the preliminary Corporations Register during the review period and the first clean-up exercise was undertaken at the end of 2016 to identify and remove defunct corporations from the register. A total of 24 inactive/delinquent corporations were picked up from the register and notices were issued. None of them complied with the notice and were thus struck off from the corporations register on 13 December 2018. The removal of these corporations from the register was confirmed by a Cabinet Decision under Section 247 of the Corporations Act. As at the end of 2018, 12 State owned corporations and 18 private corporations including one foreign company, all having their presence in Nauru, were registered in the corporations register. No foreign holding corporation has been registered in Nauru during the review period.

74. With the issuance of Corporations Regulations 2017, which was published on 29 December 2017, the annual return filing and renewal of incorporation certificates have been monitored by the Registrar. A late penalty fee of AUD 500 each was imposed in the year 2018 on 12 corporations for late filing of annual return and late renewal of incorporation certificate.

75. There has been a registration drive in 2018 to ensure all businesses register under the various commercial laws. Public notices and media marketing had been undertaken to this end. No on-site inspection was conducted during the review period due to lack of resources. On-site inspections commenced in February 2018 and up until November 2018, 47 business have been inspected by the authorised officer. Of these, one corporation was found to be operating with an expired licence and three corporations were detected with violations of business licence. Two new positions for inspectors of businesses have been established recently to strengthen the oversight and enforcement measures.

76. During the year 2017, the NRO has undertaken extensive media outreach activities (TV, Radio, SMS blasts, Bulletin articles) to ensure TIN registration compliance. This has been supplemented by the field visits of the NRO officials to increase the TIN registration. As a result, a total number of 74 companies, 90 partnerships and three trusts were registered for TIN purposes at the end of the review period. The difference in the number of companies registered with the Registrar and the NRO is mainly because TIN registration is mandatory for those foreign companies which do not directly operate in Nauru but through their employees providing consultancy services. The authorities do not consider these foreign companies as having sufficient nexus to Nauru and therefore to be registered under the Corporations Act and having to maintain ownership information. Similarly, the difference in the

number of partnerships registered is because any trade or commercial activity (seasonal or regular) conducted by families in Nauru have been registered by the NRO as partnerships for tax purposes while they may not be captured as partnerships for the purposes of the Partnerships Act.

77. The Registrar and the NRO have initiated a reconciliation exercise by cross-checking their registration records to remove redundant entity registrations and to capture missing registrations. This process is anticipated to be finalised by June 2019, which is the end of the financial year when entities will be required to lodge tax returns.

78. The first cycle of filing of annual business tax returns ended in September 2017. The tax office has been monitoring the compliance level of tax returns filing. The total number of lodgements of business tax returns in the year 2017-18 is 34. Small business tax quarterly lodgements were 154 and 116 for the years 2016-17 and 2017-18 respectively. Nauruan authorities stated that there is an ongoing case against one company that refused to lodge business tax returns disputing its tax liability in Nauru.

79. As explained above, the compliance framework and enforcement measures for all entities and arrangements in Nauru became fully operational at the end of the current review period or later. It is therefore recommended that Nauru continues to strengthen its supervision and enforcement activities to ensure that all entities and arrangements in Nauru maintain identity and ownership information relating to the current review period or earlier as required by the EOIR Standard.

Availability of beneficial ownership information

80. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies and other relevant entities and arrangements should be available. In Nauru, this aspect of the standard is met through the newly enacted Beneficial Ownership Act 2017. This Act was further amended in December 2018 to strengthen the BO identification requirements in line with the Standard.

Beneficial Ownership law requirements

81. The Beneficial Ownership Act came into force on 21 December 2017. Section 6 of the Act describes the scope of the law, which covers all relevant legal entities and arrangements, including trusts, in Nauru. Under Section 8 of the Act, a nominated officer is to be appointed by each legal entity in Nauru. The only exceptions to the scope of coverage of entities are:

- the Nauru Phosphate Royalties trust, which is a protected trust created by the Constitution and is in the process of winding up

- joint ownership of land approved by the Nauru Lands Committee under the Nauru Lands Committee Act 1956, or Regulations Governing Intestate Estates 1938 under the Administration Order No. 3 of 1938.

82. The Authority to administer the Beneficial Ownership law requirements is the Secretary for Justice. The Secretary is required to establish and maintain a database of beneficial ownership information filed by nominated officers of each entity along with the details of any relevant changes.

83. Section 5 of the BO Act defines a beneficial owner as a natural person:

a. who has ultimate control, directly or indirectly, over the legal entity

b. who ultimately owns, directly or indirectly, the legal entity; or

c. on whose behalf a legal entity is created.

84. The above definition of Beneficial Owner under the BO Act is in line with the requirements of the EOIR standard. The BO identification requirement in Nauru does not prescribe a threshold to determine who a beneficial owner is. This ensures that each beneficial owner of an entity is identified irrespective of the size and the level of ownership or control interest in the entity. Where two or more persons each own or control an interest in a legal entity, each of them is treated as a beneficial owner owning or controlling that interest. The Authority in determining the beneficial owner may trace through any number of legal persons or arrangements to any natural person who is the owner or has effective control of any owner's interest. The Minister is empowered to issue binding guidance to the meaning or interpretation of "beneficial owner", "control" or "legal owner". However, no such guidance has yet been issued on how to determine direct or indirect control by other means. This might lead to insufficient identification of beneficial owners in respect of different types of legal entities and arrangements.

85. A legal owner of a legal entity should identify the beneficial owner and his or her corresponding interest in the legal entity (S.10) and report to the nominated officer of the entity. To enable the legal owner to ascertain the beneficial ownership information, an intermediate owner[5] or any other legal owner in the chain of ownership or indirect control or the beneficial owner, should assist the first-mentioned legal owner including notifying any changes to the beneficial ownership of that interest. Any beneficial or intermediate owner who fails to fulfil this duty commits an offence and is liable to a fine of AUD 50 000 or to a term of imprisonment of three years or both (S.11).

5. Any person who has an interest in a legal entity but is not a beneficial or the legal owner of that interest.

The legal owner should notify the nominated officer of any changes to the beneficial ownership information within one month of his knowledge about this change. The intimation to the nominated officer of the entity should accompany the document verifying the change (S.13), failing which he is liable to fine of AUD 50 000 and/or to an imprisonment of three years.

86. The law requires that nominated officers take all necessary steps to find the beneficial owner(s) of the legal entity. A legal owner of the legal entity is required to establish who its beneficial owner is within one month from the date of receiving notice from the nominated officer. Section 12 of the Beneficial Ownership Act 2017 provides that certain required details must be given to the Secretary for Justice in respect of a beneficial owner. The details include the name of the beneficial owner, residential address, service address if different from the residential address, nationality, date of birth, date on which an interest in a legal entity was acquired, percentage of interest in the legal entity and the TIN. Where a beneficial owner is a foreign resident or national, the additional documentation includes permanent address in the foreign country, an email and telephone number, TIN issued by the foreign jurisdiction and the copy of their passport.

87. The nominated officer should submit to the Secretary for Justice the initial information about beneficial owners and any subsequent changes to the information filed. He or she should maintain the beneficial ownership information and related supporting documentation. The requisite information should be kept for seven years from the end of the period to which the information relates or where an investigation is being carried out under this law or any other law until the completion of the investigation. This requirement must be met by the nominated officer even if the legal entity is wound up, dissolved, struck off or removed from the register, or otherwise ceases to carry on business. When the nominated officer intends to leave Nauru, he should hand over the documents and details to the Authority for preservation.

88. A BO annual return needs to be filed by every entity. This return is to be filed as part of the annual return filed by entities under their primary legislation. For instance, a corporation files the BO return as part of the annual corporation return filed under S.133 of the Corporations Act. The same applies to partnerships under the Partnerships Act 2018 and to trusts under the Trusts Act 2018. Further, all entities filing annual returns under the Business Names Registration Act and/or for renewal of annual business licence under the Business Licences Act 2017, need to file BO information along with those returns. A separate statement needs to be filed by every legal entity confirming that the entity and its nominated officer have complied with their respective obligations under the BO Act; that the required details on BO have been filed; and that all information entered in the database is up to date and correct.

89. The Regulations under the BO Act were published on 20 November 2018. The Regulations prescribe a form for notice of appointment of Nominated Officer (Section 8(1)), registration of BO information (section 21), notice of change of BO information (Section 21) and the annual declaration form (section 43) for legal entities and nominated officers.

90. In addition, the NRO needs to know the ultimate beneficial owners of an entity or arrangement to extend loss carry forward and higher tax exemption threshold, and for applying lower tax rates. However, this determination is limited to identifying beneficial owners by ownership interest only and does not extend to beneficial owners who control by other means. Therefore, the beneficial ownership identification requirement under the RAA does not fully meet the BO requirement under the EOIR standard.

91. If a legal entity was already in existence when the BO Act came into force, the nominated officer should submit the BO information by the date on which the legal entity's next annual return should be filed. On every subsequent occasion where new information is notified by legal or beneficial owners, such information should be filed within one month. In relation to a legal entity coming into existence after the commencement of the Act, the nominated officer should file the BO information at the time of creation of the legal entity or within 30 days from incorporation.

92. Sanctions can be imposed for breach of obligations prescribed in the law. Each offence is subject to a fine not exceeding AUD 50 000 and/or imprisonment up to three years or both. The AML Act 2008 imposes a fine up to AUD 50 000 on individuals and to AUD 500 000 on body corporates for failure to comply with CDD obligations contained in that Act. In addition to sanctions that can be imposed by the Authority, a legal entity may also take action for non-compliance by a legal owner who either has not provided the beneficial ownership information or has provided a statement or information that is false or misleading. The penalties include placing restrictions on rights attached to the legal owner's interest such as right to transfer or assign shares, voting rights, any right to acquisition of further shares, any right to receive payment or investment return from the legal entity, etc.

Beneficial ownership information of foreign companies

93. The procedures and obligations under the BO Act are the same for foreign companies as for domestic companies. Similarly, all the obligations governed by other legislation such as the Corporations Act, the Business Licences Act and the Business Names Registration Act relating to availability of beneficial ownership information equally apply to foreign companies. These legal requirements ensure that the beneficial ownership information of foreign companies is available in Nauru as required by the Standard except that the lack of guidance on how to determine direct or indirect control by

other means might lead to insufficient identification of beneficial owners in respect of different types of legal entities and arrangements.

Beneficial ownership information – Enforcement measures and oversight

94. The legal requirements for availability of beneficial ownership information for all types of entities were brought into force at the end of the current review period. While the Secretary for Justice has been appointed as the Authority, the BO Regulations came into force in November 2018. Consequently, although the deadline for nominated officers of entities to file BO information to the Authority was mostly during the year 2018, no BO information was filed owing to the administrative delay on the part of the Government in prescribing forms until November 2018. Therefore, the level of compliance by legal entities with their BO law obligations has not been evaluated and it is not possible to draw any conclusion on the effectiveness of the implementation of the BO legal requirement in practice.

95. The oversight mechanism envisaged for ensuring the BO information is similar to that available for legal ownership information. The Nauruan authorities stated that the compliance of nominated officers to file the BO information will be reviewed by the Secretary for Justice in the first half of 2019. The Minister has not yet issued any guidance on how to determine direct or indirect control or on practical measures to collect the information and supporting documents. In conclusion, Nauru is recommended to monitor the compliance of the BO Act in practice to ensure that updated beneficial ownership information in accordance with the international standard is available at all times in respect of all entities in Nauru.

ToR A.1.2. Bearer shares

96. The 2016 report noted (paragraphs 22-28) that various regimes or controls existed even prior to 2012 which had the effect of immobilising bearer shares or preventing their use to some extent. Amendments were made to the Corporations Act in 2016 and in 2018 to remove completely any possibility to create or maintain bearer shares with respect to companies in Nauru.

97. Although no EOI request has been received so far in respect of bearer shares, Nauru has taken adequate measures to ensure that all existing bearer shares, if any, are either converted into registered shares prior to the next renewal of the respective company's annual incorporation or cancelled. The cut-off date for conversion of bearer shares into registered shares was set at 14 April 2017. For any bearer shares that were not converted by this cut-off date, companies were required to file a statement of cancellation annulling in entirety all rights and privileges associated with those shares. The Corporations Act does not provide for any remedy or compensation to the

respective shareholder(s). Further, no such claims by shareholders have been noticed in practice.

98. To implement this process, the annual incorporation renewal form was amended to include a declaration by all corporations that no bearer securities have been issued or remain current. As the revised form was introduced sometime after the amendment a declaration letter for submission was sent out in January 2017 to ensure all registered corporations completed this declaration and filed before the due date, i.e. 14 April 2017. Further, all companies are continuously required to declare in their annual return that they have not issued bearer shares, had the shares converted into registered shares or have cancelled them.

99. Out of the 30 corporations registered with the Registrar of Corporations, 28 of them declared that they had not issued any bearer shares. The two remaining corporations have not filed annual returns for the past years and therefore the declaration has not been filed. However, Nauruan authorities stated that these two corporations are wholly owned government enterprises and are defunct. These corporations were created by a Cabinet resolution and therefore, the question of bearer shares do not arise in these entities. In summary, bearer shares do not exist in Nauru.

ToR A.1.3. Partnerships

100. There was no mandatory registration requirement for partnerships under the original Partnership Act 1976. This law was amended twice in 2016 to introduce mandatory registration requirement for all partnerships, to appoint a Registrar of Partnerships, enhance record keeping obligations to cover underlying documents and to increase sanctions for non-compliance in line with the revised Corporations Act amendments and new business tax penalties.

101. Under the Partnership Act 1976, as amended in September 2016, the same identity and ownership information that require to be filed to obtain business names or business licenses in the case of companies, needs to be filed. In addition, particulars such as name, addresses, contact details of all partners, split of partnership if not on an equal basis, copy of partnership deed or agreement, TIN registration, and statement of assets and liabilities need to be filed at the time of registration. The partnership registration is required to be renewed annually.

102. The Partnership Act 2018 repealed and replaced the Partnership Act 1976 to ensure its requirements were in line with the EOIR standard. The Partnership Act requires that any two or more persons, who intend to carry out a business as partners, should register a partnership under this Act and as a firm in the name of the registered partnership or any other business name

under the Business Names Registration Act 2018. The registration is mandatory irrespective of whether a partnership has already been in existence or registered in other jurisdiction or not. The term "business" covers any form of economic activity, trade, profession, commerce, craftsmanship or other activity carried on for the purpose of generating revenue for gain. As such, a foreign partnership carrying on business in Nauru or that has income, deductions or credits for tax purposes will also be required to register and provide the requisite ownership information and identity of partners as prescribed by the Partnership Act 2018, Business Licences Act and Business Names Registration Act as applicable. Under this new law, the partners or the partnership should also notify the Registrar of any change to the information filed for registration within 14 days of such change.

103. The Secretary for Justice acts as the Registrar of Partnerships. While the Partnership Act requires that mandatory registration for all partnerships be completed by April 2017, the authorities only commenced the registration exercise in early July 2018 due to administrative constraints. The total number of partnerships registered under the Partnership Act up to November 2018 was 22.

104. Under the tax registration requirements, partnerships are required to provide a copy of the partnership agreement verifying the bona fides of the partnership together with full details of all the partners. This requirement is in accordance with the RAA as amended by the Revenue Administration (Amendment) No. 3 Act 2016.

105. The Beneficial Ownership Act 2017 covers partnerships that are registered under the Partnership Act. A firm or partnership applying for a certificate under the Partnership Act should concurrently comply with the requirements of the Beneficial Ownership Act 2017 by providing details required for the purposes of that Act. The Partnership Act restricts the Registrar from registering a partnership if the beneficial ownership information is not provided by an applicant.

Oversight and enforcement

106. Any person who fails to comply with the requirements of the Act, or who fails to comply with the directions of the Registrar, commits an offence and is liable to a penalty of AUD 1 000. A penalty of AUD 5 000 is levied for not registering a partnership or for failing to maintain necessary records and documents of the partnership. Failing to notify any change of information filed at the time of registration or later results in a fine of AUD 10 000 and/or to an imprisonment of ten years. All partners are individually or jointly liable for sanctions for the failure of the partnership.

107. During the current review period, Nauru had not organised any specific monitoring supervision programme to verify the compliance of partnerships in maintaining and updating ownership and identity information. At the same time, there are a limited number of partnerships in Nauru and their business activities are entirely localised. Further, Nauruan authorities were of the view that all these entities are generally monitored through business licensing, renewal and tax control. In any case, Nauru is recommended to implement a systematic programme of supervision to ensure the availability of identity of partners and beneficial ownership information in respect of partnerships in Nauru at all times.

ToR A.1.4. Trusts

108. Up until mid-2018, Nauru as a common law jurisdiction adopted England's common law, statutes of general application and the principles of equity as in force at 31 January 1968. The 2016 report noted that identity and ownership information may not be consistently available in respect of domestic trusts and foreign trusts with a Nauruan trustee. To address this recommendation, Nauru enacted a Trusts Act, which came into force on 4 October 2018. The Trusts Act was amended in December 2018 to remove a few inconsistent provisions and to bring the beneficial ownership identification requirements in line with the EOIR standard. The Trusts (forms and fees) Regulations was also notified on 11 January 2019.

109. The trusts law provides for the establishment and registration of express and charitable trusts in Nauru. A trust is located in Nauru where the settlor of the trust is a citizen or ordinarily resident in Nauru; at least one of the trustees of the trust is ordinarily resident in Nauru; the trust is subject to the jurisdiction and the laws of Nauru; or the trust is administered in Nauru. All trusts located in Nauru need to be registered with the Registrar of Trusts. The exceptions are:

- a constructive or resulting trust
- an implied trust
- a family trust[6] unless the trustees or the beneficiaries intend to register the trust
- a trust arising out of co-ownership of land by virtue of a family agreement or a decision of the Nauru Lands Committee under the Nauru Lands Committee Act 1956; or

6. A trust is a family trust where the assets, or substantially all the assets, are located in Nauru and beneficiaries of the trust are descendants of the settlor or otherwise close relatives as contained in the Regulations Governing Intestate Estates 1938. Further, the purpose of the trust cannot be a substantive commercial purpose, profit or gain.

- an express or implied trust arising out of an intestate estate by virtue of the Regulations Governing Intestate Estates 1938.

110. The exclusion of one or other form of implied trusts (constructive or resulting trusts) are in line with the EOIR standard. Trusts relating to land ownership among Nauruan families do not have any material impact over the effective implementation of the Standard as land ownership in Nauru is strictly controlled and restricted to Nauruan nationals only. A trust once registered is deemed as a legal entity. The trustees exercise the duties, powers and functions of a trust vested by the settlor and have the same rights, obligations and liabilities as the directors of a corporation registered under the Corporations Act 1972.

111. If an existing trust becomes a registrable trust on the commencement of the Trusts Act, an application to register should be filed with the Registrar within 30 days. Similarly, any new trust created after the commencement of the Trusts Act should file an application within 30 days.

112. Under Section 15 of the Trusts Act, trustees should file an annual return on the anniversary of the date of registration of the trust. The Secretary of Justice is the Registrar of Trusts, who maintains a separate register for express and charitable trusts. The Registrar may remove a registered trust from the register if the trust has become defunct, i.e. when a trust fails to file annual returns for three consecutive years or the annual return shows the trust has not undertaken any activity.

113. The Beneficial Ownership Act 2017 covers beneficial ownership information relating to trusts that are registered under the Trusts Act 2018. A beneficial owner of a trust is specifically defined under the Trusts Act. It means a natural person who has ultimate control, directly or indirectly, over the trust; who ultimately owns, directly or indirectly, the trust; or on whose behalf a trust is created. A beneficial owner of a trust includes but is not limited to a settlor, trustee, protector (if any), and the beneficiaries and also covers those who exercise ultimate control over the trust by any means. This definition of a beneficial owner of a trust is in line with the requirements of the EOIR standard.

114. The Trusts Regulations 2018 prescribes a form for an application to register a trust. This form requires full name and address (residence and business), nationality and contact details of each of the settlor, the trustees, the beneficiaries to the extent known or ascertainable, the protector, TIN and any details of any person who is a beneficial owner of the trust. The application form should be accompanied by the trust deed or other document evidencing the creation of the trust and any document amending the trust deed or founding document. Any changes have to be notified in the annual return including the information on beneficial owners and any change in nature of beneficial owner's interest.

115. Filing false or misleading information in an application form or annual return is an offence and sanctions are in the form of a fine of AUD 10 000 or three years' imprisonment or both. Similarly, failing to retain records and documents relating to the affairs of the trust for a minimum period of seven years will attract a fine of AUD 5 000. If a trust is not registered, an initial penalty of AUD 5 000 is imposed and AUD 50 is imposed for each following day of default. This also applies for failure to file annual returns.

116. Under the RAA, trusts are required to register for a TIN which in turn requires the production of trust deed and provision of information on the trustees, settlors and beneficiaries in accordance with the RAA Regulations. No trust was registered during the review period. As at the end of 2018, three trusts have been registered for the BTA purposes. Under the RAA, filing false information is an offence and the sanction is three years imprisonment or fine of AUD 10 000 or both. Non filing of annual return attracts a fine of AUD 5 000 and AUD 50 after that for each day of non-compliance.

Enforcement measures and oversight in practice

117. The Trusts law came into force after the current review period. Nauruan authorities stated that since the administrative authority is the Department of Justice, which regulates and supervises other types of entities, it will deploy the same compliance mechanisms and resources to monitor and supervise trusts on their compliance to the Trusts Act and other relevant legislation, and on the availability of up-to-date and reliable ownership and identity information.

118. In conclusion, Nauru is recommended to monitor and enforce the compliance of the Trusts Act in practice to ensure that reliable identity and ownership information in accordance with the international standard are available in respect of all trusts in Nauru.

ToR A.1.5. Foundations

119. Nauru does not have a foundation law and no foundation therefore exist in Nauru.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

120. The 2016 report concluded that the combination of requirements set out in the Corporations Act, the Partnerships Act, the RAA and other tax legislation ensure that reliable accounting records, including underlying

documentation, are held for a minimum period of five years by all entities and arrangements conducting business in Nauru. However, information might not always be available for companies, partnerships and trusts that are not subject to any tax law, including foreign trusts with a Nauruan trustee, since they were not covered by the provisions of the RAA. The legal and regulatory framework for element A.2 was therefore determined as in place but certain aspects of the legal implementation of the element need improvement.

121. The Corporations Act and the Partnerships Act were amended in September 2016 to address one of the recommendations in the 2016 report. These amendments included a specific legal obligation to fulfil underlying documentation requirements and to keep those records for a minimum period of five years. Penalties for ensuring compliance by corporations and partnerships were revised in the amendments to the respective laws and were increased substantially to provide stronger deterrence.

122. To address the remaining recommendations, Nauru introduced the Trusts Act in 2018 which ensures availability of accounting information for all registered trusts in accordance with the EOIR standard. In terms of practice, Nauru has not received any request for accounting information during the review period. However, it is difficult to assure that had there been a request for accounting information during the review period, Nauru would have been in a position to make available all the requested accounting information. This is because Nauru had insufficient monitoring and supervision mechanisms during the review period to ensure compliance by entities and arrangements with requirements to maintain reliable, accurate and up to date accounting information in practice.

123. In view of above, the new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified	Although the Nauru Revenue Office carried out supervision measures during the last year of the review period, these may not have ensured the availability of reliable, accurate and up-to-date accounting information in all cases in practice.	Nauru should ensure that adequate supervision and enforcement measures are implemented in practice to ensure availability of reliable, accurate and up-to-date accounting information at all times.
	Nauru enacted the Trusts Act, which came into force in October 2018 to ensure availability of accounting information of trusts in Nauru. As the law is very recent, its effectiveness in practice has not been tested.	Nauru should monitor the implementation and operation of the trust law to ensure reliable accounting information is available for all trusts in Nauru.
Rating: Largely Compliant		

ToR A.2.1. General requirements

124. The 2016 report (paragraphs 34-46) concluded that the accounting records requirements set out in the Corporations Act and the Partnerships Act ensure reliable accounting records are maintained by companies and partnerships respectively for a minimum period of five years. Similarly, the RAA and other tax legislation ensure accounting records as set out in the Standard are maintained by taxpayers for a minimum period of five years, after the tax period to which they refer and, in any case, until completion of the assessments relating to that tax period. This applies to companies, partnerships and trusts, whether resident or not as long as they are taxable in Nauru.

125. The 2016 report also noted that Nauru law does not ensure reliable accounting records are kept for domestic and foreign trusts with a Nauruan trustee that does not conduct a business in Nauru. To address this gap, Nauru enacted a Trusts legislation which came into force on 4 October 2018. Under section 25 of the Trusts Act 2018, registered[7] trusts are required to maintain all relevant accounting records and documents for not less than seven years from the end of the period to which the information relates. These legal obligations are in line with the accounting records requirements of the Standard.

7. See Section A.1.4.

126. The Corporations (Amendment) Act 2018 increased the retention period for keeping accounting records, which includes underlying documentation, to seven years. In addition to general records and documents that a company needs to maintain, the amended law explicitly specifies that records and documents include bank statements; statutory taxes, licence, duties and fees; court proceedings; invoices; contracts; audited financial statements; annual returns; details of the current and former shareholders, directors and corporation officers; and any other documents prescribed by regulations.

127. The accounting records requirements set out in the new Partnership Act 2018 resembles the obligations under the Partnerships Act as amended in 2016 and are in line with the standard. In addition, to align the obligations relating to retention period of accounting records with that of the Corporations Act and the Trusts Act, the Partnerships Act 2018 requires partnerships registered under this Act to retain accounting records and documents for a period not less than seven years from the end of the period to which the information relates. The law also explicitly specifies that records and accounts include financial accounts; bank statements; business transactions; statutory taxes, licence, duties and fees; court proceedings; invoices; contracts; audited financial statements; annual returns; details of the director, manager, secretary or officer; the assets and liabilities of the individual or firm; and any other documents prescribed by regulations.

128. Under the new Business Names Registration Act 2018, every business should file an annual return (S.32), which covers financial records information[8] (S. 30) and an annual financial statement. Similarly, the Business Licences (Amendment) Act 2018 requires a licensee to file an annual return to the Registrar. For the purpose of this provision, the annual return filed by an individual under the Business Names Registration Act 2018; by a firm under the Partnership Act 2018; by a company under the Corporations Act; and a trust under the Trusts Act 2018 are to be relodged with the Registrar. In the case of foreign businesses, annual returns filed in the place of registration in the foreign country under any equivalent laws applicable in that foreign country need to be filed with the Registrar.

ToR A.2.2. Underlying documentation

129. The 2016 report (see paras 35 to 41) found that the requirements under the Corporations Act do not ensure the availability of underlying documentation in respect of companies not conducting any business in Nauru. To address this gap, Nauru amended the Corporations Act in September

8. Audited financial accounts; bank statements; business transaction; taxes and fees; invoices; contracts; details of the director, manager, secretary or officer; and the assets and liabilities of the entity.

2016. The amended law now requires all companies to keep underlying documentation such as invoices and contracts along with their accounts and records.

130. Similarly, to address the gap in underlying documentation requirements in relation to partnerships that do not conduct business in Nauru, the Partnership Act 1976 was also amended in September 2016. The amended law required partnerships, including partnerships not conducting a business in Nauru, to keep underlying documentation such as invoices and contracts, for a minimum period of five years. This law was repealed by the Partnerships Act 2018 which has a mirror provision for underlying documentation but the retention period is now increased to seven years.

131. Trusts registered under the Trusts Act 2018 are required to maintain underlying documentation including invoices and contracts for a minimum period of seven years. The Business Names Registration Act 2018 and the Business Licences (Amendment) Act 2018 also require that accounting information, including financial accounts and records including the underlying documentation, of all businesses are maintained for a period of not less than seven years.

132. The Business Tax Regulations, which came into effect in November 2016 prescribe in detail the kind of records to be kept. These include all source and underlying documents relating to transactions of taxpayers. Similarly, NRO's Public ruling no. 3 specifies the record keeping requirements for all taxpayers, types of records covered and how these records are to be maintained including in electronic form.

Foreign companies

133. Foreign companies in Nauru are required to maintain accounting information in accordance with the requirements under various laws described above as these rules apply similarly to foreign companies, other relevant foreign entities and arrangements.

Entities that cease to exist

134. Section 206 of the Corporations Act requires a liquidator to retain all records and documents of a corporation from the commencement of the winding up process until its dissolution and to submit them to the Registrar upon wound up of the corporation. This includes books and papers that are handed over to the liquidator by any contributory, trustee, receiver, agent or officer of the corporation as directed by the Court. The Registrar has to retain the records for a minimum period of six years from the commencement of the winding up.

135. The Corporations (Amendment) Act 2018 introduced obligations on the secretary of a corporation to retain accounting records and underlying documents maintained at the time of appointment of a liquidator for the company, for a period of seven years after the company has been wound up. This obligation applies to corporations wound up voluntarily or compulsorily. In the case of partnerships, the responsibility to maintain accounting information lies with their partners. Irrespective of whether a partnership is active or dissolved, the Partnership Act 1976 and the Partnership Act 2018 require that relevant accounting information needs to be maintained by its partners for the statutory retention period of five and seven years respectively. Therefore, the obligation to maintain accounting records continues to apply even after the dissolution of partnerships.

Oversight and enforcement of requirements to maintain accounting records

136. The 2016 report concluded that there were no specific provisions regarding penalties or sanction for partnerships that fail to comply with their record-keeping obligations. In order to address this gap, Nauru amended the Partnerships Act in September 2016 to introduce general penalty provisions (S. 44J) for failure to comply with the requirements of the Act. Accordingly, any person who fails to comply with the requirements of Section 28 (accounting record obligations) commits an offence and is liable to a penalty not exceeding AUD 5 000. If a partnership defaults on the payment of a penalty, it will be forced to close down its operations. The Partnerships Act 2018 has similar penalty provisions and consequences for any partnership contravening the accounting records obligations.

137. Recognising that a low quantum of penalties for failure to keep accounting records creates a weak deterrence effect in the enforceability of legal obligations under the Corporations Act, Nauru amended the Act in September 2016 to increase the quantum of penalties. Under the new section 241 of the Corporations Act, any person who commits an offence against section 134 (Accounting Records) is liable on conviction to a fine not exceeding AUD 5 000 and to imprisonment of six months for each offense related to accounting information.

138. In addition, the RAA imposes penalty on a taxpayer who fails to comply with the record-keeping obligations. The penalty is imposed either on a percentage of tax payable under the tax law or a fine not exceeding AUD 5 000 and/or to imprisonment for a term not exceeding two years.

139. Under the Trusts Act 2018, a trustee who contravenes the obligations to keep accounts and records commits an offence and upon conviction is liable to a fine not exceeding AUD 5 000.

140. A Secretary of a corporation is responsible for the compliance by the corporation in relation to lodging documents with the Registrar for the maintenance of the corporation's records and this includes retaining records for a period of seven years after the corporation has been wound up. Failing to retain such documents and records constitutes an offence under the Corporations Act. Similarly, a director failing to take all reasonable steps to secure compliance by the corporation with respect to all accounting records and underlying documents is guilty of an offence under the Corporations Act.

141. The Corporations Act requires every trading corporation when filing its annual return with the Registrar to also file an auditor's certificate stating that proper accounts have been kept by the corporation concerned and financial statements have been audited. The corporation and every officer of the corporation are guilty of offence for failure to file annual returns or to file an auditor's certificate.

Availability of accounting information in practice

142. No request for accounting information has ever been received by Nauru. However, during the review period, there was no administrative framework or mechanism in the Department of Justice to monitor and enforce accounting information requirements of companies or partnerships. Neither did the regulations require any accounting information to be captured in annual returns. However, the new Business Names Registration Act 2018 and the Regulations require all registered entities and arrangements to file annual returns along with audited financial statements and other financial records.

143. At the outset, the Nauruan authorities stated that given that Nauru is an exclusively cash economy, ensuring full compliance on record-keeping requirements in practice will take time as record keeping itself is a new concept for businesses in Nauru and hitherto non-existent, especially in the case of small businesses. The Nauruan authorities added that the beginning of banking services by the Bendigo bank agency in 2015 after 15 years of absence of a banking system will improve financial inclusion and formalisation of the economy and thereby increasing regulatory compliance. Therefore, at present, the focus of regulatory and tax authorities have been towards educating, sensitising and intelligence gathering especially on small business taxpayers.

144. The Trusts Act came into force in October 2018, which is after the review period and the Registrar has undertaken a registration exercise for trusts since then. With the introduction of the Trusts Regulations on 15 January 2019, the Registrar will commence monitoring activity to verify compliance and will devise a mechanism for supervising or enforcing accounting information in practice.

145. The Registration exercise for partnerships commenced in July 2018 with the coming into force of the Partnerships Regulations 2018. The supervision and enforcement measures on partnerships commenced in 2018. The Nauruan authorities stated that given the small number of registered entities, no fines have been levied so far for deficiencies in record keeping.

146. While there are legal obligations for every corporation to have its financial documents audited and certified by registered auditors, the Government has not approved any auditors in the past and there were no qualified auditors in the country to audit and certify the financial records of a corporation. Accordingly, financial records of corporations have not been audited in the past. In December 2018, Nauru amended the Corporations Act and removed the requirement to have a registered auditor. Accordingly, corporations are now required to get their records audited by any auditor even one outside Nauru.

147. Similarly, until late 2017, the NAC acted as the sole registered secretary for corporations and had responsibilities for the compliance of corporations with their record keeping and reporting obligations in accordance with the Corporations Act in Nauru. After the closure of the NAC, Nauruan corporations have not had a registered secretary to perform company secretarial functions. Through the Corporations (Amendment) Act 2018, Nauru removed the requirement for companies to have a registered secretary. Corporations are now required to engage any secretary to ensure their compliance with legal obligations under the Corporations Act. The Registrar has not verified their compliance during the review period due to lack of resources and restructuring of the regulatory framework in Nauru. However, Nauru created two new positions at the end of 2017 to specifically inspect all aspects of the legal requirements of businesses and all legal entities. Their functions include spot checks, imposing fines and initiating prosecutions.

148. On the other hand, monthly withholding tax returns filed by taxpayers require filing of certain accounting information such as number of employees and contractors, salary wages or service fees paid and tax deducted. Non-resident individuals conducting business in Nauru with annual gross revenue not exceeding AUD 250 000 file small business tax returns on a quarterly basis wherein information on gross revenue is filed. Taxpayers file withholding tax information on payments such as interest, royalties and insurance premium. The Business Tax annual return form requires a taxpayer to furnish financial details such as gross sales from trading, services, rent, interest, royalties and miscellaneous income, and details of direct and indirect expenses, and depreciation, etc. Therefore, legal entities and arrangements in Nauru are required to file certain accounting information through various tax obligations and it is available with the NRO in practice.

149. Nauru reported that if accounting records and documents are not provided during the tax assessment process, an estimated assessment is made by the tax authority and this normally results in a higher tax liability for the taxpayer as no deductions can be allowed. In addition, the tax authority can levy a fine in accordance with the RAA for non-compliance. Compliance visits of the NRO so far included a combination of taxpayer education, record keeping compliance and intelligence gathering.

150. The NRO had undertaken 68 record keeping reviews since July 2017 and it noted that compliance has been generally poor. Since the current compliance strategy is to encourage and educate all taxpayers to register and file tax returns regularly, a penalty was levied in only one case where non-compliance with record keeping requirements was detected.

151. While the enforcement actions by the tax authority as well as the Registrar were limited during the review period, given the number of registered entities and arrangements in Nauru and the number of onsite inspections conducted by the NRO in 2017, there has been no adverse impact. However, Nauru is recommended to ensure adequate supervision and to apply enforcement measures in practice to ensure the availability of accounting information with all relevant entities and arrangements in Nauru at all times.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

152. The 2016 report concluded that the legal and regulatory framework for element A.3 on the availability of banking information was in place. Nauru has had no banking institution since 2005. In 2015, a joint venture was entered between the Government of Nauru under the Department of Finance and the Bendigo Bank of Australia to operate an agency of the Bendigo Bank in Nauru. The agency is wholly owned by the Government of Nauru but utilises the operational and risk management systems of Bendigo Bank-Australia, which strictly maintains the Australian compliance standards for the agency's operations.

153. The agency's operations in Nauru are restricted to transactional banking services with limited products and without any lending facility to customers. Technically, all the accounts (around 10 300) are Australian accounts, subject to the banking, AML and other financial regulations of the Government of Australia and regulated by the relevant Australian regulatory agencies. The agency has one office with nine ATMs in the island for cash operations. It also issues MasterCard debit cards and uses the Bendigo internet banking system for registering new clients and conducting transactions.

Bendigo bank Australia is responsible for Bendigo agency's compliance of Australian banking and AML/CFT regulations and it has conducted monthly operational audits for the first 18 months. Currently, the bank is physically audited six times a year by visiting Bendigo Bank staff and continually on suspicious transactions reporting.

154. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of account holders be available. While the definition of "Beneficial Owner" under the AML law is in line with the EOIR standard, the customer due diligence requirements to identify and verify the identity of beneficial owners of customers that are legal persons and legal arrangements including trusts may not ensure the availability of beneficial owners of bank accounts in all cases. However, since there are currently no bank accounts in Nauru, the gaps in beneficial ownership information requirements for banking information has no consequence for Nauru as long as no bank is established. During the current review period Nauru has not received any request for banking information.

155. In summary, since ultimately, the standard requires that banking information be available for all account-holders, but given that bank accounts cannot be opened in Nauru for now as the banking law is not operational, the legal deficiency against the EOIR standard in this regard has no consequence for Nauru. Therefore, the legal gaps identified in the AML legislation are only potential ones, and Nauru should ensure that its laws regarding the availability of beneficial ownership information on bank accounts are in line with the EOIR standard, should any bank come into existence. (see Annex 1).

156. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

ToR A.3.1. Record-keeping requirements and beneficial ownership information

Transactional information and identification of account holders

157. As described in the 2016 report, Nauru's banking record-keeping requirements are provided under the Nauruan AML/CFT framework and were in line with the EOI standard at that time.

Beneficial ownership information on account holders

158. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. The Anti-Money Laundering Act 2008 is not in line with the FATF 2012 recommendations and is currently being reviewed to strengthen the AML framework in line with the Mutual Evaluation report recommendations.

159. The Anti-Money Laundering (Amendment) Act 2018 introduced beneficial ownership identification requirement for financial institutions. While the amendment has introduced a definition of "beneficial owner", which is in line with the standard, the customer due diligence process for a financial institution to identify beneficial owners is not in line with the standard requirements and thus does not ensure the availability of beneficial ownership information for all account holders in Nauru.

Enforcement and oversight to ensure availability of banking information

160. The NFIU is the regulatory authority for AML purposes and it has a functional office with two full time officials. While the NFIU operates largely autonomously it comes under the Department of Justice and reports to the Secretary for Justice. The NFIU works closely with the NRO, Nauru Customs and the Nauru Police to monitor cash transactions and border currency movements.

161. STRs are reported by the Bendigo bank agency manager to both the NFIU and the Bendigo bank in Australia, which in turn reports to Australian FIU (AUSTRAC). Six STRs have been reported by the bank agency in 2017 and none was received from the remittance agency.

Availability of bank information in exchange of information in practice

162. In the absence of any EOI request or bank accounts, it is impossible to test the practice in this area.

Part B: Access to information

163. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

> Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

164. Nauru's access powers were assessed under the 2010 ToR and found to be adequate. The competent authority has sufficient access powers to request and obtain all types of relevant information including legal ownership information, accounting and banking information from any person in order to comply with obligations under Nauru's EOI arrangements. The legal and regulatory framework was determined to be "in place". There have been no relevant changes in the legal framework since the 2016 review. The available access powers also ensure access to beneficial ownership information.

165. During the review period, Nauru had not received any EOI request and consequently the competent authority powers have not been tested in practice. However, the tax authorities have been exercising their information access powers for domestic tax compliance and enforcement purposes and no limitation on these powers has been identified so far.

166. In view of above, the new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

ToR B.1.1. Ownership, identity and bank information

167. The Minister for Finance is the Competent Authority under the Multilateral Convention. His designated representatives, the Secretary of Finance and the Deputy Secretary for Revenue, have the authority to access and exchange information for EOI purposes by exercising their powers under the RAA.

General access powers

168. As noted by the 2016 report (see paragraphs. 52-57), access to information is established by section 46A of the RAA which empowers the Secretary of Finance to make use of his authority under the RAA or any other law to meet Nauru's obligations under an international agreement to provide administrative assistance for exchange of information. In case of conflict between the terms of an international assistance agreement having legal effect in Nauru and any domestic law, the EOI provisions will have an overriding effect. There has been no change to this legal provision since the last report. The access powers are broad enough to have access to any type of information including beneficial ownership information. The competent authority can either access information (i) from the databases of the tax office or other government administration, (ii) directly from taxpayers or from third parties as required, and (iii) from the bank agency.

169. The NRO is made up of three divisions – Revenue division, Taxpayer Services division and Compliance division. The Taxpayer Services division has six employees and is responsible for processing of all tax related filings and payments, for taxpayer education and providing tax related information to the general public. The Compliance division is responsible for compliance functions including intelligence gathering, conducting risk assessments, collecting outstanding tax debts and conducting audits using various audit powers. The NRO's information gathering powers include requiring any person to furnish any information provided in a notice, requiring any person to attend and give evidence regarding his/her tax affairs or that of any other person, and powers to enter and search premises. The NRO confirmed that

part of these powers have been exercised in practice for domestic purposes. For instance, notices are issued to persons to furnish information in assessing correct tax liability of taxpayers

170. While the RAA and ESTA came into force in 2014 and the BTA came into force in 2016. First lodgement of annual returns for the BTA was in September 2017. Small businesses file quarterly returns for business turnover tax. There is a grace period of seven days after the due date of filing with no consequences. After that, the officials send a soft demand letter to defaulting entities concerned to file tax return and/or to pay taxes, if not paid. Any failing entity will be sent a hard demand letter for penal/prosecution actions. The case file will then be forwarded to the Ministry of Justice, which will in turn refer the case to the Director of Prosecutions.

171. The audit system is mostly self-assessment to date and based on risk by comparing data from the ESTA filings and other limited third-party data. Deduction and depreciation claims are reviewed and tax adjustments made if necessary. Penalty was levied in one case where non-compliance with record keeping requirements was detected. The Nauruan authorities stated that since the tax system in Nauru is nascent, they will progressively increase their enforcement measures including moving to a prosecution regime in a phased manner. A total of 68 onsite visits were conducted by the tax office in 2018 for verifying compliance on record keeping obligations, for intelligence gathering and compliance education.

Information obtained from banks or other financial institutions

172. Requesting information from banks is part of the normal administrative procedure of the NRO by means of a third party investigation described above (paragraph 167). The NRO has a Memorandum of Understanding with the NFIU to receive information that the NFIU has access to by exercising its powers in the AML legislation. In practice, the access powers of the NRO were not tested for EOI purposes but the NRO has received information from the Bendigo bank agency for domestic tax purposes.

ToR B.1.2. Accounting records

173. The powers described in section B.1.1 can be used to obtain accounting information. There are no particular rules that apply to accounting records that would impede the use of these powers.

ToR B.1.3. Use of information gathering measures absent domestic tax interest

174. There are no provisions in Nauruan laws that restrict the information gathering powers of the NRO for lack of domestic tax interest. The legal framework in this regard has not changed since the 2016 report.

ToR B.1.4. Effective enforcement provisions to compel the production of information

175. As stated in the 2016 report, the NRO has powers to compel production of documents, information, evidence etc. A penalty of AUD 10 000 and/or three years imprisonment can be imposed for failure to comply with notices from the tax authority or for violation of the RAA or other tax laws. The same measures and penalties can be applied in relation to an EOI request.

ToR B.1.5. Secrecy provisions

176. There are three types of secrecy or confidentiality provisions that are relevant for the purposes of this section: corporate secrecy, bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

Corporate secrecy

177. The 2016 report concluded that there are no legal barriers that restrict the competent authority from accessing information from corporations or other entities and arrangements or from the Registrar. The Corporations (Amendment) Act 2018 introduced a specific provision (S. 242A) to explicitly enable the Registrar to provide any information including a copy of a document, account or record that the Registrar has obtained under the Corporations Act to a law enforcement or regulatory agency or to the competent authority of a foreign government with which Nauru has entered into an agreement providing for the exchange of information to the extent permitted under that agreement. Similar access provisions have been introduced in the new Partnerships Act 2018, the Trusts Act 2018, the Business Names Registration Act 2018 and the Business Licences (Amendment) Act 2018 to enable the Registrar to provide information for EOI purposes. Nauru confirmed that the Registrar is not a designated competent authority for EOI purposes at present. The Minister for Finance, who is the competent authority for Nauru, has so far designated the Secretary for Finance and Deputy Secretary for Revenue to perform the competent authority functions in relation to EOI. While there is an enabling provision in the aforementioned laws for the Registrar to send information to the competent authority of a foreign government for EOI purposes, this will be operational only when the

Minister designates the Registrar to perform EOI functions on his/her behalf. Therefore, for the time being, the Registrar will share information relating to corporations or other types of entities with the existing designated competent authority of Nauru, who will in turn exchange this information with the competent authority of a foreign government for EOI purposes. Thus, the legal provisions and arrangements in this regard are in line with the EOIR standard.

Bank secrecy

178. The Nauru Banking Act is an inoperative legislation since 2005 after the only operational bank, the Bank of Nauru, ceased operations. The banking law has provisions relating to bank secrecy that restrict disclosure of information in general. However, the RAA has overriding provisions authorising the tax office to obtain information from any person for EOI purposes. Further, the AML/CFT Act too has overriding provisions that enables the NFIU to obtain information from banks and other financial institutions. There is an MOU between the NFIU and the NRO for administrative co-operation and exchange of information and this can also be used to obtain such information from a financial institution. In practice, the NRO has received information from the Bendigo bank agency during the review period in relation to domestic audits.

Professional secrecy

179. The Legal Practitioners Act 1973 regulates legal practitioners in Nauru. The immunity under this Act is limited to possession of information in relation to an ongoing court proceeding and therefore the client-attorney privilege is in line with the requirements of the EOIR standard. There is one registered local accountant, who works for the Government. There is no regulation governing the immunities/professional privileges of an accountant. There are five Notary Public in Nauru but they do not maintain any ownership or any other type of information. The Nauruan authorities stated that if a lawyer or any professional possesses any information on behalf of his/her clients, (s)he cannot refuse to provide such information to the tax authority.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

180. Nauruan law does not require notifying the person who is the subject of a request for information (i.e. person whom the investigation or inquiry concerns in the requesting jurisdiction), neither before the information is exchanged (prior notification) nor after the information is exchanged (time specific post notification). There is no other right such as right to inspect files, appeal against an EOI notice, etc. in relation to EOI requests or the processing of such requests.

181. There are no specific provisions relating to appeal over EOI notices. Section 43 of the Revenue Administration Act 2014 provides that a person dissatisfied with an appealable decision may appeal against the decision on a point of law to the Supreme Court. An appealable decision is one related to a tax assessment and/or an additional tax liability of a taxpayer. However, a notice issued by the Competent Authority to obtain information does not fall under the ambit of an appealable decision. No request has been received by Nauru in this review period or in the previous periods to examine the practice.

182. The table of determination, which remains unchanged, and rating are as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

Part C: Exchanging information

183. Sections C.1 to C.5 evaluate the effectiveness of Nauru's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Nauru's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Nauru's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Nauru can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

184. The 2016 report determined that Nauru's network of EOI mechanisms was "in place". Nauru is a Party to the Multilateral Convention. Nauru has not signed any other EOI instruments. Nauru's tax law does not exclude the possibility of making and responding to group requests. No peer input was received for the current review period to draw an inference on practice. As a result, element C.1 remains determined to be "in place" and is now rated "Compliant". The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

Other forms of exchange of information

185. Besides exchanging information on request, Nauru has committed to implement automatic exchange of information under the Common Reporting Standard with exchanges from 2018 timeline. However, as pointed out above, Nauru does not have a reporting financial institution at this point in time to collect and report such information to its treaty partners.

186. While Nauru has not received or sent information under spontaneous exchange, it is open to engage with its treaty partners when an opportunity arises.

ToR C.1.1. Foreseeably relevant standard

187. While Nauru has not yet received an EOI request to test the practice, its EOI manual describes procedures to determine whether an EOI request is valid or not and this is in line with the foreseeable relevance standard.

Group requests

188. Nauru's procedures to deal with group requests would be the same as those used for dealing with an individual request. During the review period, Nauru did not receive any group request but should it receive such a request in the future, Nauru's competent authority confirms that it will be in a position to process and respond to the request in accordance with the standard.

ToR C.1.2. Provide for exchange of information in respect of all persons; ToR C.1.3. Obligation to exchange all types of information; ToR C.1.4. Absence of domestic tax interest; ToR C.1.5. Absence of dual criminality principles; ToR C.1.6. Exchange information relating to both civil and criminal tax matters; and ToR C.1.7. Provide information in specific form requested

189. Nauru's only EOI instrument is the Multilateral Convention and its practice on EOI exchange has not been tested so far. Therefore, these sub elements are determined to be in place. However, the Nauruan authorities confirm that were they to receive a request, their response in practice will be in accordance with the legal provisions of the Multilateral Convention.

ToR C.1.8. Signed agreements should be in force

190. The 2016 report describes the procedures for signing and ratifying an international treaty and there have been no changes since. As demonstrated in Nauru's signing and ratification of the Multilateral Convention in June 2016, there are no systemic delays in these procedures. Nauru does not have any other international agreements for EOI in place.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

191. The international standard requires that jurisdictions exchange information with all relevant partners. If it appears that a jurisdiction is refusing to enter into agreements or negotiations, in particular with those jurisdictions that have a reasonable expectation of requiring information in order to properly administer and enforce its tax laws, it may indicate a lack of commitment to implement the standards.

192. Nauru currently has EOI relationships with 128 partners by being a Party to the Multilateral Convention. The 2016 report concluded that element C.2 was "in place".

193. None of the Global Forum members has indicated that Nauru had refused to negotiate or sign an EOI agreement. Even though Nauru is a party to the Multilateral Convention, Nauru should nonetheless continue to conclude EOI agreements with any new relevant partner which would request it (see Annex 1).

194. The table of determinations and rating, which remains unchanged, is as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

195. The 2016 report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information were in accordance with the standard (see paragraphs 91-96). The legal framework remains the same in the current review period too. No issues arose in terms of any administrative practices on confidentiality and no adverse peer input was received.

196. The determination and the new rating are as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

ToR C.3.1. Information received: disclosure, use and safeguards

197. The Multilateral Convention to which Nauru is a Party meets the confidentiality standard. It also allows jurisdictions to use the information for non-tax purposes provided the conditions prescribed in the Convention are met. The Nauruan authorities confirm that their procedures and practice adhere to the confidentiality provisions of the Multilateral Convention.

ToR C.3.2. Confidentiality of other information

198. The confidentiality provisions in the Multilateral Convention uses the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA and do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

199. The Official Information Act 1976 and the RAA have secrecy provisions to protect EOI information and there are corresponding penalties for any breach of adherence to these provisions. There are no notification requirements in Nauru and the information holder would not be informed of the identity of the requesting jurisdiction, nor the name of the taxpayer, unless required in view of the nature of the information to be obtained from the information holder.

Confidentiality in practice

200. In terms of data safeguards in practice, Nauru has adequate data security controls in place. Adequate background checks are conducted on employees and contractors of the NRO. Contractors are required to sign confidentiality agreement prior to any access to tax information. Training is imparted to employees and there is an overall awareness on confidentiality requirements of taxpayer information and the EOI information in particular.

201. The EOI unit is not a physically segmented work environment as the EOI staffing is a shared resource for the NRO. The entire office is secured from unauthorised access with security guards manning the entry points to the office. The entry point is also monitored through Closed Circuit

Television. The access to employees is through an electronic key access system and employees must wear name tags and have formal ID with picture and signature badges for display at all times.

202. The main computer servers are located in the secure Treasury Office of the Ministry of Finance building and logical accesses are regulated and monitored. There are dedicated cabinets under lock and key of the EOI manager and staff to store physical documents related to EOI. Clear screen and clean desk policies are enforced by the NRO management. There are confidentiality and EOI stamps for any incoming or outgoing requests to make aware that the information furnished under the provisions of an EOI agreement are confidential and its use and disclosure is governed by the provisions of such agreement.

203. All EOI documents are to be preserved in the paper format and currently there is no plan to digitalise them. The access is limited to employees who are assigned to the EOI unit and are designated to process EOI requests. The Deputy Secretary for Revenue monitors and controls access of employees, including issue of keys and access levels for documents. For documents assigned with the highest security level which could cover some EOI documents, the vault has facilities to lock these records up inside and only access by senior staff on a sign out basis. Contractors do not have any kind of access to EOI documents as they are strictly prohibited to access physical taxpayers' records. Since it is a small office with a limited number of staff, monitoring is real-time and every employee has been trained to report suspected breaches.

204. During the current review period, Nauru has not detected any breach with regard to confidentiality and there were no adverse peer inputs in this regard. While no EOI request has been received, the EOI manual states that only details that is necessary to obtain information from third party sources or within the tax office are disclosed to other tax officials. Policy regarding monitoring and handling confidentiality breaches are in place though the NRO have not had an incident yet to invoke these measures.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

ToR C.4.1. Exceptions to requirement to provide information

205. Nauru's information exchange mechanism allows jurisdictions to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information

the disclosure of which would be contrary to public policy (*ordre public*). No request has been received to test this aspect in practice.

206. The table of determination, which remains unchanged, and rating are therefore as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

207. In order for exchange of information to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In the case of Nauru, it has not received a request during the review period or before. The organisation and procedures for EOI are complete and coherent. Similarly, Nauru's system for sending requests is established but has not been used so far. Since Nauru's EOI mechanism and processes have not been tested in practice, it is not possible to ascertain the effectiveness of such mechanism in this review. In view of the above, the table of determinations and ratings is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Nauru had not received any requests from its treaty partners during the review period to test the effectiveness of its EOI framework in practice.	It is recommended that Nauru monitors the implementation of its EOI framework in practice to ensure that when EOI requests are received, responses are provided in a timely manner.
Rating: Largely Compliant		

ToR C.5.1. Timeliness of responses to requests for information

208. In the absence of any request, timeliness cannot be measured in practice. Nauru's EOI manual is based on the Global Forum manual and includes rules and systematic procedures to provide information within 90 days. In cases where information could not be provided in 90 days, the process requires that Nauru provide status update to treaty partners though considering the size of the jurisdiction and the number of entities involved, procedural delays could be a rare occurrence.

ToR C.5.2. Organisational processes and resources

209. The designated Competent Authority for Nauru is the Secretary of Finance and the Deputy Secretary for Revenue. The Director of Taxpayer Services division performs the role of "EOI Manager" and is responsible for managing the EOI processes and for monitoring the quality, efficiency and effectiveness of EOI activities. The director may process some of the EOI cases personally depending on the complexity involved.

210. The designated Taxpayer Services Officer assumes the responsibilities of an "EOI Officer" and is responsible for checking and logging incoming and outgoing requests and for obtaining information. The "field" officer is a designated Senior Compliance Enforcement Officer, who may initiate a request for information through the EOI unit. For incoming requests, the field officer may be tasked by the EOI unit to obtain information from information holders in Nauru.

211. Four officials of the Taxpayer Services division have been designated to perform the EOI functions although there is no demand for this function at present. The EOI officials may collect information directly or may request the field officers of the NRO to collect information.

212. The EOI unit is funded as part of the NRO office and no constraints have been noticed. All the NRO tax division staff have attended comprehensive information sessions on EOI and two EOI unit staff have attended the training seminar conducted by the Pacific Islands Tax Administrations' Association, the Global Forum and the Asian Development Bank on EOI practices. All staff have attended in-house formal confidentiality training sessions. The EOI database is maintained in a manual register in accordance with the process prescribed in the EOI manual.

Incoming requests

213. When a request for information is received at the EOI Unit, it will be registered in the manual EOI register, and date and confidentiality stamped. An acknowledgement will be sent to the requesting competent authority

within seven days. The EOI unit manager will examine the request for validity as required by the Standard. A valid request will be then assigned to an EOI case officer, who will process the request for information by accessing the electronic records of the tax office. When necessary, a list of questions will be sent to other tax officials, who will collect the information from the case records before seeking the remaining information from third parties, if needed, by issuing a notice to the third party. Once the requisite information is collected, the EOI unit manager will verify the response and forward it to the requesting competent authority.

Outgoing requests

214. In the current review period, Nauru has not sent any EOI request. The EOI manual sets out procedure that requires the NRO to exhaust all domestic means available in Nauru before sending the request to other partners. Outgoing requests will be sent by registered postal mail (traceable) and/or by encrypted email depending on the preference of the treaty partner concerned.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

215. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI by Nauru. No peer input was received which suggested otherwise.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in-text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.3**: Nauru should ensure that its laws regarding the availability of beneficial ownership information on bank accounts are in line with the EOIR standard, should any bank come into existence.
- **Element C.2**: Nauru should continue to conclude EOI agreements with any new relevant partner which would request it

Annex 2: List of Nauru's EOI mechanisms

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[9] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Nauru on 28 June 2016 and entered into force on 1 October 2016 in Nauru, which can exchange information with all other Parties to the Multilateral Convention

As at 3 May 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica,

9. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Croatia, Curaçao (extension by the Netherlands), Cyprus,[10] Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia, Brunei Darussalam (entry into force in July 2019), Burkina Faso, Dominica (entry into force on 01-08-2019), Dominican Republic, Ecuador, El Salvador (entry into force on 01-06-2019), Gabon, Kenya, Liberia, Mauritania, Morocco (entry into force on 01-09-2019), North Macedonia, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).[11]

10. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

11. Since the United States is a Party to the original Convention only and Nauru is not a member of the OECD or of the Council or Europe, the Multilateral Convention cannot be considered as an EOI instrument between the two jurisdictions, especially as they did not consult to reach a meeting of the minds on its application.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 03 May 2019, Nauru's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2014 to 30 June 2017, Nauru's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Nauru's authorities during the on-site visit that took place from 26-28 November 2018 in Nauru.

List of laws, regulations and other materials received

Civil and commercial laws

Business Names Act 1976

Business Licences Act 2017

Business Licences Regulations 2017

Business Licences (Regional Processing Centres and Settlements) Regulations 2017

Corporations Act 1972 as amended in 2011, 2016 and in 2018

Corporations (Fees) Regulations 2017

Corporations (Forms and Fees) Regulations 2018

Partnership Act 1976

Partnership (Amendment) Act 2016

Partnership Act 2018

Trusts Act 2018

Trusts (Amendment) Act 2018
Beneficial Ownership Act 2017
Beneficial Ownership (Amendment) Act 2018
Business Names Registration Act 2018

Taxation laws

Revenue Administration Act 2014
Revenue Administration (Amendment) Act 2015
Revenue Administration (Amendment) Act 2016
Revenue Administration Regulations 2016
Business Tax Act 2016
Business Tax Regulations 2016
Business Tax (Transfer Pricing) Regulations 2016
Business Tax (Rates of Tax) Regulations 2017
Telecommunications Services Tax Act 2009
Employment and Services Tax Act

Banking and AML/CFT laws

Banking Act 1975
Bank of Nauru Act 1976
Proceeds of Crime Act 2004
Counter Terrorism and Transactional Organised Crime Act 2004
Anti-Money Laundering Act 2008

Authorities interviewed during on-site visit

Department of Justice and Border Control
Department of Finance
Republic of Nauru Financial Intelligence Unit
Nauru Revenue Office
Nauru Bendigo Agency
Auditor General of the Republic of Nauru

Current and previous reviews

This report is the third review of Nauru conducted by the Global Forum. Nauru previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2013 and a supplementary review (Phase 1) in 2016. Nauru's Phase 1 review report was adopted by the Global Forum in October 2013 and recommended that Nauru would not move to Phase 2 of the first round of reviews. Nauru subsequently underwent the supplementary review resulting in a Phase 1 Supplementary report published in November 2016. That report concluded that sufficient progress had been made to allow Nauru to progress to the next round of reviews. Practical implementation would be therefore reviewed in the second round of reviews.

The Phase 1 peer reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under Review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Dr Malcolm Couch, Head of Income Tax Division, Treasury Department, Government of the Isle of Man; Ms Megumi Ezaki, Deputy Director of International Operations Division, Japanese National Tax Agency; and Ms Laura Hershey and Ms Renata Teixeira of the Global Forum Secretariat.	Not applicable	October 2012	March 2013
Round 1 Supplementary to Phase 1	Mr Yasuhiro Ishizaki and Mr Hideo Yanase from the National Tax Agency of Japan; Ms Audrey Christian, Treasury of Isle of Man; and a representative from the Global Forum Secretariat, Ms Ana Rodriguez-Calderon.	Not applicable	August 2016	November 2016
Round 2	Ms Ma. Jeusua Bato and Ms Febe Lim from the Ministry of Finance of Philippines; Ms Talei Esera from Samoa International Financial Authority of Samoa; and Mr Sivasankaran Pattanam from the Global Forum Secretariat	1 January 2015 to 31 December 2017	3 May 2019	July 2019

Annex 4: Nauru's response to the review report[12]

At the outset, the Republic of Nauru expresses its sincere gratitude and thanks to the assessment team for its professionalism, expert advice, guidance and technical assistance during the in country review, the writing of the report, and the peer review process.

Nauru also takes the opportunity to thank the Secretariat and the Peer Review Group for its comments and constructive discussion, and subsequent approval of the report.

Nauru accepts the report in its entirety and is very pleased with the overall rating of Largely Compliant. Nauru notes both the inbox and in-text recommendations in the report and undertakes that it will address the implementation of the recommendations to ensure enhanced compliance with the Global Forum standards.

Nauru as a member of the Global Forum is committed to the implementation of accepted international standards for the effective exchange of information to strengthen and promote greater transparency.

12. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request NAURU 2019 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Nauru.

Consult this publication on line at ***https://doi.org/10.1787/43120c29-en***.

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