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G.N.No. 1104/2023

BENEFICIAL OWNERSHIP (IDENTITY AND DECLARATION) REGULATIONS 2023

SL No. 30 of 2023

Notified: [6th October, 2023]

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The Cabinet makes the following Regulations under Section 5(6) and 34 of the *Beneficial Ownership Act 2017*:

1 Citation

These Regulations may be cited as the *Beneficial Ownership (Identity and Declaration) Regulations 2023*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Interpretation

In these Regulations:

'adequate, accurate and current beneficial ownership information' means:

- (a) information that is sufficient to identify an individual who is a beneficial owner and the means through which the individual exercises beneficial ownership control;
- (b) information which has been verified to confirm its accuracy against other records; and
- (c) information which is as current as possible with the Authority and is received from a legal entity no later than 7 days of the legal entity becoming aware of the change of beneficial ownership information;

'current' means the up to date or prevalent recordings, events or information;

'reporting entity' has the meaning given to it under the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*; and

'senior management' has the meaning given to it under the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.

4 Amendment of the definition of 'beneficial owner'

The definition of **'beneficial owner'** in Section 5 of the Act is amended by:

- (a) deleting 'or' at the end of paragraph (b);
- (b) substituting the fullstop with a semicolon at the end of paragraph (c);
- (c) inserting 'or' at the end of paragraph (c); and
- (d) inserting a new paragraph (d) as follows:

'(d) on whose behalf a transaction is conducted.'

5 Beneficial ownership in a corporation

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

- (a) has a class of shares or preferential voting right, by which he or she has the management and control of the corporation;

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- (b) has the power for the appointment of the number of Board Members, Chairperson of the Board or any other person who has the power to make strategic decisions that affects the management and control of the corporation;
 - (c) has the power to appoint majority of the senior management or to appoint those members of the senior management or staff, who have power to make decisions relating to the management and control of the corporation;
 - (d) has entered into an administrative or contractual arrangement with the corporation or the other shareholders, by which he or she is able to make decisions which results in or has the effect of managing and controlling the corporation;
 - (e) has entered into an arrangement with the corporation or shareholders for the operations of the corporation by advancing the monies to the corporation or shareholders, by which he or she is able to exercise the dominant position to encourage or coerce other shareholders to discharge the debt of the legal entity by raising share capital to strengthen his or her position as a shareholder; or
 - (f) has any other form of control of a corporation other than by direct control of ownership of any interests.
- (2) Where a beneficial owner of a corporation is not ascertainable under Section 5 or subregulation (1):
- (a) for any transaction carried on behalf of the corporation, the person holding a senior management position or any other authorised person carrying out the transaction on behalf of the corporation shall be the beneficial owner; or
 - (b) for customer due diligence of a reporting entity, the natural person who holds the position of senior management shall be the beneficial owner.

6 Beneficial ownership in a partnership

- (1) For the purposes of Section 5, a beneficial owner in a partnership, is a natural person who has ultimate control indirectly or by other means, where he or she:
- (a) controls absolute decision-making power or has veto rights in the operations and management of the partnership;
 - (b) holds the power, directly or indirectly, to appoint or remove any partner of the partnership;
 - (c) is entitled to assets of the partnership in the event of dissolution of the partnership;
 - (d) has the power or authority to declare or make decisions for profit sharing of the partnership;
 - (e) has the power or authority to declare or make decisions on retention of profits for capital investments in the partnership;
 - (f) has the power or authority to amend the partnership instrument;
 - (g) has any other form of control of a partnership other than by direct control of ownership of any interests.
- (2) Where a beneficial owner of a partnership is not ascertainable under Section 5 or subregulation (1):

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- (a) for any transaction carried on behalf of the partnership, the person holding a senior management position or any other authorised person carrying out the transaction on behalf of the partnership shall be the beneficial owner; or
- (b) for customer due diligence of a reporting entity the natural person who holds the position of senior management shall be the beneficial owner.

7 Beneficial ownership in a trust

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

8 Legal entity to maintain beneficial ownership information

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- (1) Subject to Regulation 10, a legal entity shall keep and maintain adequate, accurate and current beneficial ownership information of beneficial owners with the details of beneficial interest of each beneficial owner consisting of the:
 - (a) means and mechanisms through which ownership, control or effective control is exercised; and
 - (b) where ascertainable, numerical value of any interest held, voting rights, description of voting rights, or other forms of control or management of position or appointment of board members.
- (2) Where there is a dispute as to the beneficial ownership of any interest in a legal entity, no change shall be made to the Register of Beneficial Ownership before the resolution of the dispute by adjudication, arbitration or mediation and a written decision is made and is provided to the nominated officer.
- (3) For the purposes of the records kept under Section 20, it shall be sufficient if the Register of Beneficial Owners contain the particulars of the current beneficial owners of the legal entities on the commencement of these regulations.
- (4) The legal entity shall comply with the requirements of these regulations within 3 months of its commencement.
- (5) The nominated officer shall continue to register the variations with the Authority within 7 days of receiving such information from the legal entity.
- (6) The Authority shall record the beneficial ownership information to ensure that the records are adequate, accurate and current beneficial ownership information.

9 Beneficial owner's obligation

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

10 Records of beneficial ownership kept by nominated officer

- (1) The records of beneficial ownership of the legal entity shall be kept and maintained by the nominated officer of the legal entity.
- (2) Where the nominated officer is terminated or resigns from the legal entity, he or she shall ensure that the records kept by him or her are provided to a person who holds a position of senior management or any other person replacing him or her as the nominated officer.
- (3) Where a legal entity is wound up, dissolved or ceases operation and the nominated officer intends to leave Nauru, he or she shall provide the records to the Authority.

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11 Period for record keeping when legal entity not existing

Where a legal entity is wound up, dissolved or ceases operation, the records of beneficial ownership shall be kept and maintained by the:

- (a) nominated officer for a period of 7 years commencing from the date of such winding up, dissolution or cessation; and
- (b) Authority for a period of 7 years commencing from the date of such winding up, dissolution or cessation.

12 Quality of assistance

- (1) The Authority shall monitor on the quality of assistance the Republic receives from any competent authority in a foreign jurisdiction, in response to requests for basic and beneficial ownership information or requests for assistance in locating the beneficial owners residing abroad.
- (2) For avoidance of doubt, the Authority shall provide all such information:
 - (a) kept and maintained by the Authority, where necessary; and
 - (b) information which is required to be kept and maintained under the Act by the Republic in fulfilling its international obligations.
- (3) The Authority as the custodian of the beneficial ownership records of legal entities shall:
 - (a) allow foreign competent authorities to have access to basic information of legal entities registered in Nauru; or
 - (b) allow foreign competent authorities to have access to information on shareholders which includes the name, permanent address, email and phone contact, if available;
- (4) Where information is not available in respect of beneficial ownership for which a foreign competent authority requires information, the Authority shall obtain such information in Nauru to provide it to the requesting foreign competent authority.

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Schedule

[Regulation 9(1)]

Declaration of Beneficial Ownership Information Form

To:
 [Corporation/Partnership/Trust]
 [Address of Legal Entity]
 Date:

I, the undersigned, confirm that I have become a beneficial owner as defined under the *Beneficial Ownership Act 2017*, in respect of the above [Corporation/Partnership/Trust].

Therefore, I provide you with the particulars set out below which I confirm to be true and correct:

PART 1: PERSONAL DETAILS

Full name:	
Residential address (including country of residence):	
Service address:	
Date of birth:	
Nationality:	
Date of acquiring interest in the [Corporation/Partnership/Trust]:	
National identification number or equivalent (if any):	
Tax identification number:	

PART 2: PARTICULARS OF BENEFICIAL OWNER'S BENEFICIAL INTEREST

I am the beneficial owner of the [Corporation/Partnership/Trust] in view that I:

[For the Corporation]

- have a class of shares or preferential voting right;
- have the power to appoint the number of Board Members, Chairperson of the Board or any other person who has the power to make strategic decisions that affects the management and control of the corporation;
- have the power to appoint majority of the senior management or to appoint those members of the senior management or staff, who have power to make decisions relating to the management and control of the corporation;
- have entered into an administrative or contractual arrangement with the corporation or the other shareholders, by which I am able to make decisions which results in or has the effect of managing and controlling the corporation;

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- have entered into an arrangement with the corporation or shareholders for the operations of the corporation by advancing monies to the corporation or shareholders;

[For the Partnership]

- control or have absolute decision-making power with veto rights in the operations and management of the partnership;
- have the power, directly or indirectly, to appoint or remove any partner of the partnership;
- am entitled to assets of the partnership in the event of dissolution of the partnership;
- have the power or authority to declare or make decisions for profit sharing of the partnership;
- have the power or authority to declare or make decisions on retention of profits for capital investments in the partnership;
- have the power or authority to amend the partnership instrument;

[For the Trust]

- am a trustee;
- am a person in an equivalent or similar position to a trustee including *trustee de son tort*;
- am a settlor;
- am a protector;
- am a beneficiary or belong to a class of beneficiaries;
- am a guardian, hold a power of attorney or act on behalf of the trustee, settlor, protector, beneficiary or class of beneficiaries;
- have the power to amend the trust deed;
- have the power to direct investment decision of the trust;
- have the power to revoke the trust;
- have the power to appoint or remove a trustee of the trust;
- have the power to direct the distribution of assets or funds of the trust;
- Others: *(Specify means and mechanism through which ownership or control is exercised, numerical value of interest held, description of voting rights or other forms of control, management position or other position held)*

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