POTUNGĀUE KOMEESI, KONISIUMA, FEFAKATAU‘AKI, ‘ILO FO‘OU MO E NGĀUE ‘A E KAKAI

Ministry of Commerce, Consumer, Trade, Innovation and Labour

Consultation Memorandum

Seeking Stakeholder Input to Proposed Amendments

Charitable Trusts Act

July 21, 2026

1.0 Introduction

The Ministry of Commerce, Consumer, Trade, Innovation and Labour (MCCTIL) seeks input on amending the current Charitable Trusts Act. While the current Act has served Tonga well for many years, the law governing trusts and associated registry practices have evolved significantly since its enactment in 1994. Some of the areas that have changed include:

- Modern laws require disclosure of all trustees, and when a trustee changes then the register must be updated in a reasonable time-frame. The current Act requires the signature of each “subscriber” but additional identification information should be provided (printed name, addresses, perhaps a photo ID). This should also apply to changes in the details of an existing trustee (name and address);
- The current Tonga law is almost silent on how trustees should behave. Modern trust laws impose a minimum of duties on trustees, such as a duty to act honestly and in good faith when dealing with trust assets;
- The current Act lacks any provisions to address conflict of interest issues that could arise for a trustee dealing with trust property;
- There are few formal record keeping requirements for trustees;

Given these issues, MCCTIL proposes updating the Charitable Trusts Act to reflect a more up-to-date legislative framework. The goals are to modernize governance and administration without upsetting the continuity of charitable activities, adversely affecting any trust property, or otherwise unnecessarily overriding the intentions under which a trust is established.

MCCTIL is simultaneously reviewing the Tonga Incorporated Societies Act so as to undertake a comprehensive review of the entire nonprofit sector. Stakeholders are encouraged to also review the Consultation Memo prepared for Incorporated Societies and to provide comments on that proposed reform.

This Consultation Memorandum is a joint effort between the MCCTIL and the Pacific Private Sector Development Initiative, an Asian Development Bank program undertaken in partnership with the governments of Australia and New Zealand. This Consultation Memorandum will be widely distributed to the public and Government departments and agencies. All stakeholders are invited to submit questions and voice their comments on the issues raised in this Memorandum. Please submit your comments to: mcctilconsultations@mcctil.gov.to . Comments are due by **August 28, 2026.**

2.0 Detailed Discussion

The current Tonga Charitable Trusts Act provides for the incorporation of trusts. In this context, an underlying trust is usually created when a person (or entity) called a "settlor" contributes property to be held in trust, usually for some charitable purpose. Then, the trustee(s) may choose to incorporate the trust board under the Act. Upon incorporation, the trust board becomes an incorporated entity that may engage in activities like any other incorporated entity. Still, given the existence of the underlying trust, the settlor's instructions carry significant weight as the trustee(s) works to carry out their intentions.

MCCTIL believes that this basic approach to how trusts are incorporated, their status as an incorporated body, and the purposes for which they can act, all should remain in place. Changes to be considered for a new law include whether there should be additional disclosures at the time of incorporation, whether incorporated trusts should be required to have more than 1 trustee, what duties should be imposed on trustees, and some minimal enhanced governance measures. These issues are discussed below, and MCCTIL seeks feedback on each item.

2.1 Online Filing

The current Act does not support online filing. MCCTIL deployed a new online register in December 2025 that allows for all filings for companies, business names, business licenses, and foreign investment certification to be submitted online. The long-term goal for MCCTIL is to have all filings for all entities to be submitted online. To do so for trusts will require the law to contain the same sorts of provisions already present in other legislation that recognizes the validity of electronic filings and records. Therefore, the new Act will largely mirror those provisions.

There will need to be a transition period during which all existing trusts can migrate into the online register. Tonga undertook this same process when its upgraded business entity register went live in December 2024. However, even though they are incorporated entities, trusts are simply different in practice from other incorporated entities. Therefore, the failure to "re-register" in the online register likely should not result in a trust being dissolved. Instead, possible sanctions could include marking a trust as "non-compliant" on the register and not allowing it to produce certificates from the register; disallowing it to make other filings until it re-registers; and imposing late fees once it does re-register. MCCTIL seeks input on the proper approach to encouraging timely re-registration.

These provisions would not become effective until such time as the online register is ready to handle trusts, and realistically this may take one or more years to have in place given funding constraints. In the meantime, the other reforms discussed below could still proceed as they are not dependent upon online filing.

2.2 Trustee and "control persons" disclosures

The current Act requires certain information to be provided as part of an application for incorporation. Section 30 does require all trustees to be identified on the annual return. Section 29(1) provides that the Board must keep a register of trustees (or governing members) and "supply details thereof to the Registrar on demand." These provisions provide some visibility of the persons responsible for administering a charitable trust board.

As part of this review, the Ministry is considering whether the Act should more clearly require the identification of all trustees at the time of incorporation. This would include their full legal names, relevant addresses, and perhaps the need to provide a photo ID (similar to other business entities in Tonga). Further, MCCTIL is also considering requiring any changes to trustees be reported to the Registrar within 30 days. MCCTIL seeks feedback on these proposals. These changes would be consistent with how directors of companies are treated and not only increase transparency but are also good-governance measures.

2.2.1 Other control persons

Sometimes there are people who actually control a trust without being named as official trustees. The modern approach to this situation is to have these people identified in the records of the trust and available to the Registrar upon request so that if something controversial arises the real decision-makers can be identified. This would also help Tonga comply with international anti-money laundering standards which require identification of "control persons" for incorporated entities. MCCTIL seeks input on whether this approach is appropriate for Tonga.

2.2.2 Minimum qualifications for trustees

The current Act does not establish any qualifications (or rather, disqualifications) of persons that can serve as trustees. Minimum standards could include that a trustee must be at least eighteen years old, not have been convicted of a serious offence, and should not have been prohibited from acting as a director of a company. Are minimum trustee qualifications appropriate? If so, what qualifications or disqualifications should apply?

2.3 Minimum governance requirements

The Act contains a limited number of governance-related provisions, including requirements relating to trustee registers, annual financial reporting, approval of financial statements, and the execution of certain documents. However, it contains few express rules governing trustee conduct, conflicts of interest, decision-making processes, or the maintenance of organizational records. MCCTIL seeks feedback on whether additional governance provisions should be introduced. Each of these matters is discussed in detail below.

2.3.1 Minimum number of trustees?

The current Act does not have any explicit requirement for a minimum number of trustees. While Section 15 appears to contemplate at least 2 trustees to sign a deed, that requirement can be altered by the trust documents themselves if they allow for only 1 trustee to sign.

MCCTIL is considering whether the Act should require a minimum number of trustees (such as 2 or even 3) or whether the current arrangement whereby an incorporated trust board may potentially operate with a single trustee should stay in place. MCCTIL notes that some jurisdictions require more than one board member for charitable entities. The rationale is that having more than one decision-maker reduces governance risk, avoids concentration of power in one person, and in the case of a conflict of interest provides someone to whom the conflict can be disclosed and leaves an independent, non-conflicted person to make a decision.

On the other hand, some charitable trusts differ from membership-based organizations. In some cases, a trust reflects the wishes of a benefactor who has given an asset(s) for charitable purposes and chosen a particular individual to manage those assets. Requiring additional trustees may limit that flexibility and may create practical difficulties for smaller trusts that do not have a large pool of suitable persons available to serve. Some jurisdictions therefore permit a charitable trust to operate with a single trustee, relying instead on trustee duties, financial reporting, and other governance measures to manage risk.

One further consideration is that trusts can remain private and still do charitable works. Once a trust incorporates into a statutory body corporate, the entity is no longer a purely private trust arrangement. It receives legal personality, perpetual succession, the ability to own property in its own name, and other benefits. One can therefore argue that some minimum governance standards are justified, including requiring more than one trustee.

Please carefully consider this important question and provide your feedback to MCCTIL.

2.3.2 Trustee duties and responsibilities

Current law provides only limited guidance on how a trustee is to conduct themselves in relation to the trust. MCCTIL seeks input on whether the law should impose a minimum standard on trustees. This could include a duty to act in good faith and in what the trustee reasonably believes to be in accordance with the trust documents. There could also be a standard duty of care provision which would say that a trustee must exercise the care and diligence that a reasonable person with the same responsibilities would exercise.

MCCTIL is also considering whether the law should address conflicts of interest, which would basically require a trustee to disclose any conflicts to other trustees and not vote on the issue where they have a material personal interest. However, this provision would be problematic if trusts are not required to have more than one trustee as there would be no one to whom to disclose conflicts.

Are statutory trustee duties appropriate for Tonga? If so, which duties should be included?

2.3.3 Record keeping

There are few record-keeping requirements in the current law. Trustees are required to keep a list of trustees (or other governing body) along with their addresses and dates of appointment. Section 29. Section 30 requires certain financial statements, but there is no direct requirement that accounting records be kept. Section 19 requires updates when trusts are varied or additional property is received. There are no requirements that records of trustee meetings or decisions be kept or even that important documents like contracts, employment records or other similar things be kept.

MCCTIL is considering whether a straightforward statement in the law that requires trustees to keep minimum records would be appropriate. For example, trustees could be obligated to retain important documents (contracts, etc.), records related to major decisions, and basic accounting records. The goal would be to keep enough records that a third party can understand what the trust owns, what decisions it made, and how trust property was used.

2.4 Annual filing requirements

Current law requires a trust to file basic financial statements each year. These statements must be audited. The filing must also confirm the identities of the trustees. Section 30. This is reasonably close to a true annual return filing that is intended to make certain that the information in the register is accurate and up-to-date, including the identification of trustees.

MCCTIL seeks guidance on whether this annual filing sets out the proper information and whether the audit requirement makes sense for every single trust. Audits cost money, and the cost of compliance for smaller trusts may be disproportionate to their total assets. It would be possible to put some threshold in the law under which the statements would not need to be audited. Is such a threshold appropriate?

MCCTIL also seeks guidance on whether financial statements should be publicly available to searchers or only available to the Registrar. This will become especially relevant once trusts are implemented in the online register. Note that the exact same question is being asked in the Consultation Memo for incorporated societies, and it may be that a consistent rule would be beneficial for Tonga. On the other hand, charitable trusts may have stronger claims to confidentiality as some privately endowed trusts may have legitimate privacy interests.

2.5 Registrar general powers

The current Act does not provide for much Registrar oversight of trusts. Section 29 requires a trust to "supply details" of the trust register upon request. However, this power does not appear to extend to other documents. Section 22 allows the Registrar to dissolve a trust where "[t]he Registrar is satisfied that a Board is no longer carrying on its operations or has been registered by reason of a mistake of fact or law...". In practical terms, this could mean that if a trust failed to file its annual financial statements, the Registrar could take this as evidence that the trust is no longer carrying on operations. But before the Registrar can strike off a trust, the current Act contemplates the Registrar would first send an inquiry to the trust. Section 22(4).

Other business entity laws in Tonga grant the Registrar enhanced powers of inspection, including the authority to inspect their books and records in the case of suspected improper activities. MCCTIL seeks input on whether similar (but streamlined) Registrar powers should extend to incorporated trusts.

MCCTIL also seeks input on whether there are other means to ensure compliance with the Act and guard against fraud. One option would be to allow the Registrar to refer suspected misdeeds to law enforcement or the Attorney General for further investigation, or where a court could remove trustees and appoint replacements where appropriate.

There are also more routine powers that should be extended to the Registrar, including the ability to correct the register where a mistake (typo) has been found.

2.6 Charitable societies under this Act

The current Act allows for incorporation of not only trust boards but also any society that exists for charitable purposes. Section 4. Given that Tonga has an incorporated societies act, the question arises as to whether it is appropriate to allow societies to incorporate under two different laws.

The Ministry's preliminary view is that existing charitable societies should be permitted to remain under the Charitable Trusts Act, but that consideration should be given to whether new charitable societies should instead be incorporated under the Incorporated Societies Act. Existing charitable societies could be given the option, but not the obligation, to convert to become incorporated societies. However, practitioners may have different views and MCCTIL seeks feedback on this question.