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 to the *Companies Act of 1995, as amended* Regarding Anti-Money Laundering Matters

July 21, 2026

1.0 Introduction

The Ministry of Commerce, Consumer, Trade, Innovation and Labour (MCCTIL) seeks input on proposed changes to the Companies Act intended to improve the accuracy and transparency of company information and to assist Tonga in complying with international anti-money laundering standards.

The Asia/Pacific Group on Money Laundering (APG) is the regional body that assesses Tonga's compliance with international anti-money laundering (AML) standards. Failure to comply with these standards can result in a country being placed under increased international monitoring, commonly known as "grey-listing." Grey-listing can make it more difficult to maintain overseas banking arrangements, settle cross-border transactions, obtain credit and obtain foreign investment.

The AML standards cover many corporate governance situations, but one of the most significant has to do with what are called "beneficial owners." Generally, a "beneficial owner" is the person who ultimately owns or controls a company, even if that person is not named in the official records of the company or in the government-run company registry. This arrangement often arises where a non-citizen enlists local persons to be named as the official shareholders of a local company, but the non-citizen actually controls the entity and receives its profits. The current Tonga Companies Act requires companies to disclose their directors and registered shareholders, but it does not require them to identify the natural persons who may ultimately own or control the company

In order to comply with AML mandates, MCCTIL proposes to amend Tonga's Companies Act in the following ways:

- Address beneficial ownership, including mandating that all beneficial owners and their arrangements with their company be reported to the Registrar;
- Provide that nominee directors and shareholders must be identified in the register. A nominee is a person named in the official public record who actually acts on behalf of another undisclosed person;
- The amendments would specifically prohibit bearer shares and bearer share warrants. Bearer shares are unregistered securities that are owned by whoever holds the physical stock certificate. Bearer shares allow for complete anonymity of the owners of shares in a company, which is why they are prohibited under FATF standards;
- Require companies to notify the Registrar promptly when shares are transferred, rather than waiting until the next annual return;
- Tighten some record-keeping requirements for companies;
- Apply the new beneficial ownership and transparency requirements, with appropriate modifications, to overseas companies registered in Tonga; and
- Provide for appropriate transition periods for companies to comply with the new requirements.

Additionally, MCCTIL seeks feedback on whether Tonga should introduce a director residency requirement as have a few other countries in the region.[1] This would require that each company incorporated in Tonga must have at least one director that is a resident of Tonga. A resident-director requirement may also make it easier for the Registrar, creditors and government authorities to locate at least one person responsible for the company in Tonga. If this provision is included in the amendments, a transition period would be included that would allow local companies with no resident director some time to comply.

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 Beneficial Ownership: Detailed Discussion

2.1 What is a beneficial owner?

[1] Australia, New Zealand, Papua New Guinea and the Cook Islands all have this requirement in law.

The term "beneficial owner" refers to the individual person(s) who "ultimately owns or controls" a company.[2] For instance, if an individual registered shareholder owns the shares for their own benefit and no other person controls the company, the registered shareholder will also be the beneficial owner. It is possible that legal ownership and beneficial ownership may be split: a person may be named as the legal owner in the public register but in fact a non-named person may actually receive the benefit of the shares, such as the right to receive profits. That other person would be a beneficial owner.

Beneficial ownership reporting laws assist countries beyond complying with AML standards. These laws help identify unnamed foreign nationals linked to a domestic company. Consider this example below:

> ***Box 1: Example of Beneficial Ownership***
>
> *Consider a local company with a sole shareholder listed on the registry being a local citizen of Tonga. In reality, that local person is acting on behalf of a foreign national from Country X and all profits from the business flow to the foreign national. In this case, the legal ownership of the shares sits with the local citizen, but the beneficial ownership is held by the foreign national.*

Arrangements of this kind are not unheard of in Tonga, where "front" companies are sometimes used to avoid local immigration, foreign investor certification or tax laws. Beneficial ownership rules can help identify any person who owns or controls a company without appearing in its formal records. This may include a foreign national using a local shareholder, but the rules apply equally where the undisclosed person is a Tongan citizen.

In simple terms, beneficial ownership rules require a country to identify the real person behind a company. Thus, beneficial ownership reporting requirements can not only further compliance with international AML standards, but also assist Tonga in enforcing its own local laws.

2.2 Determining if someone is a beneficial owner

A person may be a beneficial owner in either of two ways. First, they may ultimately own or receive the benefit of shares in the company. Second, they may exercise ultimate effective control over the company even if their ownership interest is small or they hold no shares at all.

There are a few questions that need to be answered in light of this two-part test.

2.3 Should Tonga have a threshold ownership test?

[2] These requirements are set out in Guidance issued by the peak international AML body. See the Financial Action Task Force (FATF) Guidance on Beneficial Ownership for Legal Persons (March 2023), p. 15.

First, a person qualifies as a beneficial owner if they have a "significant" ownership interest in the company. The AML standards allow a country to define "significant" by setting a threshold percentage ownership, such as 25% ownership of the company. The standards also recognize that the appropriate approach may be to have no threshold amount: *any* person with any beneficial ownership interest whatsoever should be disclosed.

There are advantages and disadvantages to having a reporting threshold or not having one:

- In support of a threshold. A threshold reduces filing burdens and focuses the regime on persons with a true material ownership interest. This may be especially relevant for companies with numerous shareholders or several layers of ownership.
- In opposition to a threshold. Oddly, the exact same argument for thresholds is also the main argument against them: having a threshold means that smaller beneficial ownerships do not get reported. A threshold can allow beneficial ownership to be divided among several persons below the reporting level. In a small, closely held company, even a relatively small interest may be important, particularly when combined with informal influence or control.

  Consider the following example: suppose the law says that only persons with 25% beneficial ownership interest must report. A company lists 5 official shareholders in the registry, each with 1/5th ownership, or 20%. If none of those persons separately exercises effective control, no beneficial owner would be reported under a 25% ownership threshold even though the entire company may be beneficially owned by undisclosed persons.

MCCTIL's current thinking is that Tonga should have no threshold: all beneficial ownership arrangements should be reported. MCCTIL specifically seeks stakeholder comments on this question so as to find the best solution for Tonga.

2.4 What constitutes "effective control"?

The second test to determine if someone is a beneficial owner is whether they exert ultimate effective control over the company. This is a fact-based inquiry that will be different for each company. A person may be a beneficial owner through control even where they own only a small number of shares or even no shares at all. For example, a person may direct how the directors vote, control access to the company's funds, appoint or remove key decision-makers, or otherwise determine the company's important decisions without owning shares.

2.5 Information to be disclosed

The FATF standards set out the minimum information that must be collected for beneficial owners:

a) name of the beneficial owner;
b) date of birth;
c) nationality;

d) address;
e) some form of government-issued identification with a photo (e.g., passport, national ID);
f) the nature or means by which the beneficial ownership interest is held;
g) date of acquisition of beneficial ownership; and
h) other prescribed information.

MCCTIL believes Tonga should follow these standards, but also allow for additional information to be gathered in the future. Thus, subparagraph (h) would allow additional information to be required by Regulations or the prescribed form if needed for future compliance.

2.6 How it would all work: who is responsible for compliance?

This timeline shows who would be responsible for compliance with these new requirements throughout the life of a company:

- At the time of the initial incorporation the applicant would supply any applicable BO information.
- Existing companies would be given a transition period to gather and report their BO information, with the length of the transition period being open for discussion.
- Company directors are responsible for obtaining and verifying the information.
- A person who is a beneficial owner would be required to notify the company of their status and supply their beneficial ownership information.
- Any changes in beneficial ownership, or any changes in the BO information for an existing beneficial owner, would need to be reported with a proposed reporting period of 20 days (time period open for consultation).
- Once a company receives notice of changes in beneficial owners or BO information, the company would have a proposed reporting period 20 days to report it to the Registrar (time period open for consultation).
- The Registrar would maintain a central BO register that would be accessible by law enforcement and tax authorities. Whether additional parties should have access to this information is a separate consultation issue and is discussed in the next section of this paper.

2.7 Who should have access to the filed beneficial ownership information?

MCCTIL proposes that, initially, beneficial ownership information would not be available to the general public. Law-enforcement, tax and other competent authorities would have access where needed for official purposes. MCCTIL is also considering whether Regulations should permit access by other specified persons, such as licensed financial institutions carrying out customer due diligence. The additional parties given access to this information could change over time based upon international standards. MCCTIL seeks stakeholder views on whether any additional persons should have access to beneficial ownership information at the outset. If other parties were to have access, appropriate safeguards would be put into be included in the law to only allow access for a legitimate purpose and that the information would be protected.

2.8 Enforcement

The proposed amendments would also require company directors to take reasonable steps to identify beneficial owners and verify the accuracy of the information provided. The Registrar (and, ultimately, law enforcement) must be able to verify beneficial ownership information provided and also to investigate whether full disclosure has been made. The Registrar of Companies already has broad powers of inspection in the Companies Act, primarily under Section 371. The Registrar could use these powers to ensure that companies are complying with the new law. The penalty provisions set out in Sections 377-378 will also apply to the proposed requirements for persons who fail to file required disclosures

3.0 Nominee shareholders

A related concept to a beneficial owner is a *nominee shareholder*. A nominee shareholder is a person whose name appears in the company's share register but who holds the shares and acts as instructed by another person. The person giving those instructions is called the nominator. The nominator may itself be a company or another legal entity.

The Companies Act currently requires the legal holder of shares to be entered in the company's share register and disclosed to the Registrar. It does not, however, require a registered shareholder to state whether they hold those shares on behalf of another person

While there are similarities between beneficial ownership and nominee shareholder arrangements, they are different. Nominee rules require the person whose name appears in the share register to disclose that they act for someone else and to identify that person. Beneficial-ownership rules require the company to continue through any ownership chain until it identifies the individual who ultimately owns or controls the shares or the company

A key issue is whether nominee status should be publicly disclosed on the MCCTIL company register. A follow-on question is that if that status is disclosed, what information should be included in the disclosure? One approach would be to make the nominee status public, while treating information about the nominator and the underlying arrangement in the same way as beneficial ownership information, so that it would only be available to competent authorities but not generally to the public. MCCTIL seeks stakeholder feedback on the appropriate approach.

4.0 Nominee directors

Nominee directors are persons that are named as the official directors of a company but are actually acting on behalf of unnamed third parties. If the arrangement is not disclosed, it conceals the identity of the person(s) managing the company. There can be legitimate reasons for the existence of nominee directors: for example, a lender may wish to have a presence on a board to monitor their borrower's activities.

The proposed legislation should treat nominee directors much like regular directors, including applying all duties and liabilities to them. Further, their identity must be disclosed and updated whenever a change is made. The additional information collected would include: i) the director's status as a nominee; ii) the identity of the nominator; and iii) the nature of the nomination relationship.

Just as with nominee shareholders, a key issue is whether nominee-director status should be publicly disclosed on the MCCTIL company register. Because directors actively manage the company, MCCTIL's preliminary view is that it is fair to require that their status as a nominee be shown on the public register. A further question is whether the identity of the nominator should also be public, or whether that information should be treated as confidential and made available only to competent authorities. MCCTIL seeks stakeholder feedback on the appropriate approach.

5.0 Bearer shares

Bearer shares are essentially unregistered securities where the owner is not named in any corporate records, meaning that ownership is determined by physical possession of the certificate. This allows true owners to remain completely anonymous. International AML standards now practically ban the use of bearer shares due to their lack of ownership transparency.

The current Companies Act does not authorise the use of bearer shares and there is no evidence to suggest their use in Tonga companies. However, to remove any doubt and fully comply with AML standards, MCCTIL proposes an express ban on bearer shares and bearer share warrants. Any bearer shares already in existence would have to be converted into registered shares within a short transition period. If they were not converted, they would cease to have legal effect.

6.0 Residency requirement for company director

Should every local Tongan company be required to have at least one director who is resident in Tonga? AML mandates do not yet absolutely require this, but it appears that this is the direction that the standards are heading. To help future-proof the Companies Act, MCCTIL believes that a residency requirement may be appropriate for Tonga. Importantly, this could also be helpful for other good-governance reasons by ensuring that there is a local person in management who is available and answerable for the company's activities. Other Pacific Island countries that have undergone recent reforms include a director residency requirement, such as New Zealand, Australia, Cook Islands, Papua New Guinea and Palau.

MCCTIL recognises that this may impose new burdens and specifically seeks feedback on whether there should be a resident director for Tongan companies. If such a requirement is put into law, there would be a transition period allowing any non-compliant company to appoint a local director.

7.0 Transfer of shares

Section 85 of the current Companies Act addresses transfers of shares. It does not require these transfers to be reported to the Registrar within any timeframe. Instead, the change may not appear on the register until it is included in the company's next annual return. This means that the shareholder information on the MCCTIL register may not be current.

MCCTIL strongly recommends that all changes in shareholders be reported to the Registrar within 20 working days. This would largely treat shareholders the same as directors, who must now report any changes to the Registrar under current Section 158 of the Companies Act.

8.0 Overseas companies

International AML standards require countries to obtain beneficial ownership information from overseas companies registered to do business in their jurisdiction. The most straightforward way to accomplish this is to simply apply the same requirements to overseas companies as are applied to local companies, with any necessary modifications. This is the approach that MCCTIL recommends, with one exception: overseas companies that are listed on a public exchange would be exempt from mandatory BO reporting so long as they are compliant with the rules governing their stock exchange. The reason is that they may have literally thousands of shareholders. The Tonga Registrar would still be empowered to request beneficial ownership information in the event of an investigation, but the overseas company would not have to proactively report. This strikes a middle ground that should not overly burden any overseas listed companies.

9.0 Preliminary draft amendments

MCCTIL has prepared preliminary draft amendments to show how the proposals discussed in this Memorandum might be implemented. The text is included to assist stakeholders in giving specific comments and should not be taken as a final Ministry position. To be clear: **the proposed amending language is a draft**. The draft will be revised in light of consultation feedback and further legal review.

9.1 Interpretation

A. After the definition for "balance date" insert the following:

"bearer shares" means

(a) any share or other instrument which confers on the person in possession of the share or other instrument the rights and obligation of a shareholder in the company; and
(b) is transferable upon delivery or other means without registration of the transfer or without recording the identity of the holder in the company's share register.

"bearer share warrant" means any share warrant or other instrument which:

(a) entitles the person in possession of the instrument to subscribe for, receive or hold shares in the company; and

(b) is transferable by delivery or other means without registration of the transfer or without recording the identity of the holder in the company's share register.

"beneficial owner" has the meaning set out in Section 92(9).

B. After the definition for "Minister" insert the following:

"nominee director" has the meaning set out in Section 125A.

"nominee shareholder" has the meaning set out in Section 96A.

C. After the definition for "relevant interest" insert the following:

"resident director" means a person that is normally resident in the Kingdom of Tonga and is appointed to serve as a director of a Tonga company.

9.2 Beneficial ownership

Current Section 92 of the Companies Act would be repealed and replaced by new Sections 92 and 92A:

92. Trusts and beneficial ownership information

(1) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(2) Notwithstanding Subsection (1), the board of a company must –

(a) obtain and maintain adequate, accurate and current beneficial ownership information to identifying every beneficial owner of a share withing the meaning of subsection (9);

(b) maintain beneficial ownership information for 7 years in the same place as the company records are kept under Section 198.

(3) For a company already in existence at the time this Section 92 comes into effect, beneficial ownership information must be submitted to the Registrar on the prescribed form within 90 days from the date this Section 92 comes into effect.

(4) For a company that is incorporated after the date that this Section 92 comes into effect, beneficial ownership information must be submitted to the Registrar together with the application for incorporation submitted under Section 16.

(5) The board of a company shall ensure that a notice in the prescribed form of –

(a) a change in the beneficial owners of a company, whether as a result of a beneficial owners ceasing to act in that capacity or in the case of the existence of a new beneficial owner, or both; or

(b) a change in the beneficial ownership information of an existing beneficial owner-

is submitted to the Registrar on the prescribed form within [20?] days from the date of the board became aware of the change.

(6) The board of a company must take reasonable steps to identify and verify the accuracy of beneficial ownership information provided under this Section.

(7) A person who is a beneficial owner of a company must inform the directors of that company of their status as a beneficial owner and of any changes to their beneficial ownership information within [20?] days of the change.

(8) Beneficial ownership information is confidential and may only be disclosed to the following persons –

(a) to competent authorities, who shall have timely and direct access for the purposes of preventing and detecting money laundering, terrorist financing, tax avoidance or other unlawful activities; or

(b) to those classes of persons identified in regulations as being eligible to receive beneficial ownership information; or

(c) as directed by court order.

(9) For the purposes of this section,

(a) "beneficial owner" means a natural person who –

(i) ultimately, directly or indirectly, owns or controls a share or other equity interest in a company, including through ownership, voting rights, agreements, or other arrangement; or

(ii) exercises ultimate effective control directly or indirectly over a legal person or arrangement affecting shares or equity interests or is an ultimate beneficiary of a share or other securities in a company; or

(iii) directs, determines, or has substantial control over important decisions made by the company,

and "beneficial ownership" is to be construed accordingly.

(b) "beneficial owner information" means –

(i) full name and date of birth;

(ii) nationality, country of residence and residential address;

(iii) a current government-issued photo identification such as a passport, national identification card or equivalent;

(iv) a description of the nature and extent of control or beneficial ownership; and

(v) such other information as may be required on the prescribed form.

(c) "competent authorities" means Tonga and international law enforcement and tax authorities designated by or under an Act of the Kingdom of Tonga as having responsibility for the prevention, detection, investigation, prosecution or supervision of compliance in relation to money-laundering, terrorist financing, tax evasion or other unlawful activities, and any foreign competent authority to whom a domestic competent authority may lawfully disclose information under an Act of the Kingdom or an international agreement or arrangement.

(10) If a company fails to comply with Subsections (2), (3), (4), (5) or (6) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

(11) If a beneficial owner fails to comply with Subsection (7) the beneficial owner is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

(12) A person who intentionally discloses confidential beneficial ownership information in breach of Subsection (8) commits an offence and is liable on conviction to the penalty set out in Section 377(3).

92A. Beneficial ownership registry

(1) The Registrar shall ensure that a beneficial ownership register is established and maintained as part of the register of companies established under Section 367.

(2) The Registrar may exercise all powers set forth in Part XX in administering the beneficial ownership register.

9.2 Nominee shareholders

MCCTIL suggests that the following be added to the Companies Act as a new Sections 96A and 96B:

96A. Nominee shareholders

(1) In this Act –

(a) "nominee shareholder," in relation to a company, means a person that is –

(i) named on the register as a shareholder; and
(ii) by virtue of a contract, arrangement or other understanding, is obliged to follow the directions of another person on material matters affecting the company.

(b) “nominator” means the person that directs the nominee shareholder.

(2) A nominee shareholder must disclose their nominee status to the company and identify the name, address, postal address, nationality of their nominator together with a description of the contract, arrangement or other understanding under which they serve as a nominee shareholder.

(3) A nominee shareholder must disclose any change in their nominee status or any change in their details to the company within [20?] days of the change.

(4) A company must indicate on the application for registration of a company under Section 16 if any shareholder is a nominee shareholder together with the information required in subsection (2).

(5) A company must indicate on the notice of transfer of shares under Section 85 if any new shareholder is a nominee shareholder together with the information required in subsection (2).

(6) A company must indicate on the notice of issuance of shares under Section 46 if any new shareholder is a nominee shareholder together with the information required in subsection (2).

(7) If a nominee shareholder fails to comply with Subsection (2) or (3), the nominee is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

(8) If a company fails to comply with Subsections (3), (4) or (5) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3) and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3)

96B. Nominee shareholder transition

(1) Within [sixty?] days from the commencement of this Section, every nominee shareholder shall disclose their nominee status to the company together with the information set out in section 96A.

(2) Within [ninety?] days after the commencement of this Section, each registered company that has had a nominee shareholder disclose their status under Subsection (1) shall deliver to the Registrar a nominee shareholder declaration in the prescribed form identifying all nominee shareholder together with the information required in Section 96A

(3) A nominee shareholder who fails to comply with Subsection (1) commits an offence and is liable on conviction to the penalty set out in Section 377(3).

(4) If a company fails to comply with Subsection (2) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

9.3 Nominee directors

MCCTIL suggests that the following be added to the Companies Act as a new Sections 125A and 125B:

125A. Nominee directors

(1) In this Act –

(a) “nominee director,” in relation to a company, means a person that is –

(i) named on the register as a director; and
(ii) by virtue of a contract, arrangement or other understanding, routinely exercises the functions of a director on behalf of and subject to the direct or indirect instructions of the person who nominated them.

(b) “nominator” means the person that directs the nominee director.

(2) A nominee director shall disclose their nominee status to the company within twenty days of becoming a nominee, together with the information set out in section (3).

(3) The company shall disclose a director’s status as a nominee to the Registrar on the prescribed form together with –

(a) where the nominator is an individual, the full name, date of birth, nationality, residential address, and copy of a government issued photo identification of the person that nominated them;
(b) where the nominator is an incorporated entity, the name, registration number and jurisdiction of incorporation;
(c) a description of the nature and extent of the relationship under which the nominee director was appointed;
(d) the date when the nomination occurred; and
(e) such other information as may be required by the prescribed form.

(4) A company must indicate on the application for registration of a company under Section 16 if any director is a nominee director together with the information required in subsection (3).

(5) A nominee director must disclose any change in their nominee status or any change in their details to the company within [20?] days of the change.

(6) A company must indicate on any change of director filing under Section 158 whether a director is a nominee director and if a director is a nominee director then also provide the information required in subsection (3).

(7) A nominee director is subject to all duties and liabilities of a director and cannot rely on the nomination arrangement as a defence

(8) If a nominee fails to comply with Subsection (2) or (5), the nominee is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

(9) If a company fails to comply with Subsections (3), (4) or (5) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3) and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

125B. Nominee director transition.

(1) Within [sixty?] days from the commencement of this Section, every nominee director shall disclose their nominee status to the company together with the information set out in section 125A.

(2) Within [ninety?] days after the commencement of this Section, each registered company that has had a nominee director disclose their status under Subsection (1) shall deliver to the Registrar a nominee director declaration in the prescribed form identifying all nominee directors together with the information required in Section 125A.

(3) A nominee director who fails to comply with Subsection (1) commits an offence and is liable on conviction to the penalty set out in Section 377(3).

(4) If a company fails to comply with Subsection (2) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 377(3).

9.4 Bearer shares

Section 41 of the current Tonga Companies Act defines the types of shares that a company may issue. This section should have new subsections (3)-(5) added to address bearer shares:

(3) A company must not issue a share or share warrant that is a bearer share and a share or share warrant that is issued in contravention of this subsection is a nullity.

(4) Notwithstanding subsection (3), a holder of any bearer shares or bearer share warrants shall have ninety days from the commencement date to convert all such bearer shares or bearer share warrants into registered shares and to register them in accordance with Section 87.

(5) Any bearer share or bearer share warrant not converted within the ninety-day period set out in Subsection (4) shall cease to have legal effect.

9.5 Resident directors

Current Section 13 of the Tonga Companies Act currently provides:

13 Essential requirements.

A company shall have -

(a) a name;

(b) a constitution;

(c) one or more shares;

(d) one or more shareholders, having limited or unlimited liability for the obligations of the company;

(e) one or more directors.

MCCTIL recommends that subsection (e) of this Section 13 be amended as follows:

(e) one or more directors, <u>of whom at least one must be resident in the Kingdom of Tonga</u>.

MCCTIL recognizes that there may be local companies that currently do not comply with this requirement and that therefore there should be a transition period that allows local companies with no resident director to find someone to undertake that role. Therefore, MCCTIL recommends the following be added as new Section 13A as follows:

13A Resident Director transition

Within [ninety?] days after the commencement of this Section, each registered company that does not have a resident director must appoint a resident director and notify the Registrar by a notice filed under Section 158.

Section 327(b) would therefore need to be amended to be consistent with this new resident director requirement as follows:

(1) Subject to this section, the Registrar shall remove a company from the Tongan register if -

(a) [unchanged]

(b) the Registrar is satisfied that -

(i) the company, has ceased to carry on business; or

(ii) the company has failed to file its annual return within a period of six months after the date allocated; or

(iii) <u>the company fails to appoint and maintain a resident director under Section 13(e)</u>.

9.6 Changes in shareholders

There are two different transactions that can result in a new shareholder for a company: when a company issues new shares and when an existing shareholder transfers their shares to a third party. The current Companies Act already requires a company to file a notice with the Registrar when it issues new shares.

For transfers of shares, there is currently no requirement to alert the Registrar when this occurs. This not only violates AML mandates but also is simply not good practice for an online registry system that seeks to provide current information about companies. MCCTIL proposes that a new subsection 85(5A) be inserted after current subsection 85(5) as follows:

> (5A) The Board of a company shall deliver to the Registrar for registration, within [20?] days of a transfer of shares completed under subsection (4), a notice in the prescribed form of the transfer of the shares.

Subsection 85(6) contains an enforcement provision. It must be expanded to include this new obligation to report transfers of shares. MCCTIL suggests that it be amended to read:

> (6) If a company fails to comply with subsections (4) <u>or (5A)</u> -
>
> (a) the company commits an offence and is liable on conviction to the penalty set out in section 377(1); and
>
> (b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 378(1).

9.7 Overseas companies

Section 345 sets out what an overseas company must provide on its application for registration. MCCTIL recommends substituting a new subsection (2) which add text requiring beneficial ownership information and the disclosure of nominee directors and shareholders.

> (2) Without limiting Subsection (1), the application must –
>
> (a) state the name and registration number of the overseas company in its jurisdiction of incorporation; and
>
> (b) state the full names and addresses of the directors and any nominee directors, if any, of the overseas company at the date of the application; and
>
> (c) state the full name, address, nationality and other prescribed information of every shareholder of the company, together with the number of shares and class of shares issued to each shareholder; and
>
> (d) state the full name, address, nationality and other prescribed information of any nominee shareholders; and
>
> (e) provide the beneficial owner information for any beneficial owners of the overseas company; and
>
> (f) where the overseas company has a place of business in Tonga, state the full address of the place of business in Tonga or, if the overseas company has more

than one place of business in Tonga, the full address of the principal place of business in Tonga of the overseas company; and

(g) have attached evidence of incorporation of the overseas company and a copy of the instrument constituting or defining the constitution (if any) of the company, and, if not in English, a translation of such documents certified in accordance with Regulations made under this Act; and

(h) state the full name and address of one or more persons resident or incorporated in Tonga who are authorised to accept service in Tonga of documents on behalf of the overseas company; and

(i) include any other prescribed details.

Then, a new subsection (3) would be added as follows:

(3) Notwithstanding Subsection (2)(c), (d) and (e), an overseas company whose shares are listed on a recognised public stock exchange —

(a) complies with Subsection (2)(c) and (d) by providing the required information concerning its ten largest shareholders, including whether any of those shareholders is a nominee shareholder; and

(b) is not required to provide beneficial ownership information under Subsection (2)(e), provided that the company is compliant with the ownership and disclosure requirements of the stock exchange on which it is listed.

(4) The Registrar may, by written notice, require an overseas company referred to in Subsection (3) to provide beneficial ownership information where the Registrar reasonably requires that information in connection with an investigation. The company must provide the information within the period specified in the notice.

One note. The current Companies Act does not require shareholder information for overseas companies doing business in Tonga. However, the new foreign investor law requires shareholders to be named, so that requirement is now met. However, as a matter of best register practice, shareholders really should be named on the initial application for registration, which is why new 345(2)(c) and (d) appear above.

9.8 Record keeping

Section 198 of the Act should be updated to make clear that companies are required to maintain beneficial owner information for 7 years alongside other company records. Section 198 should also be updated to require the director of companies that are dissolved to maintain their records for seven years after dissolution.

9.9 Penalties

Sections 377 and 378 will be updated to include references to new penalties called for in this Amendment once it is finalized.