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 on a Proposed New Incorporated Societies Act

July 21, 2026

1.0 Introduction

The Ministry of Commerce, Consumer, Trade, Innovation and Labour (MCCTIL) seeks input on repealing and replacing the current Incorporated Societies Act. Tonga's nonprofit sector includes entities such as community groups, sports clubs, churches and other faith-based organizations, and even quasi-commercial bodies like trade groups. The law governing such a diverse collection of entities must be sufficiently robust to provide a good governance framework. While the current Act has served Tonga well for many years, nonprofit governance measures and registry practices have evolved significantly since its enactment in 1988. Some of the areas that could be improved include:

- The information that is required on an application to incorporate is out of step with modern incorporation practices, which require identification of the principals of an entity together with appropriate addresses, including for a registered office;
- The current Act does not have strong definitions of who is in charge of a society such as a committee or board (or other governing persons) and how they are to make decisions;
- The Act lacks clear directions on how the governing committee should behave, including basic duties to act honestly, in good faith and in the interests of the society, together with rules for disclosing and managing conflicts of interest;
- There should be a true annual return requirement that is enforceable through a de-registration process similar to that found in the Companies Act;

- The current law calls for limited financial statements to be submitted to the Registrar, but there are no requirements that a society keep basic accounting records;

- The existing Act does not contain the transparency measures needed to meet international standards concerning money laundering.

Other jurisdictions in the Pacific region, including New Zealand and Cook Islands, have reviewed and modernized their incorporated societies legislation. In 2022 New Zealand repealed and replaced its own Incorporated Societies Act with a modern framework. While that Act is helpful in pointing to the types of reforms needed in Tonga, it is also highly complex and many of its provisions are likely too burdensome for Tonga's smaller charitable organizations. Given this background, MCCTIL proposes a new Incorporated Societies Act for Tonga that would use the New Zealand Act as a guide, but streamlined and customised to fit within the Tonga nonprofit setting.

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

This Consultation Memorandum is a joint effort between the Ministry for Commerce, Consumer, Trade, Innovation and Labour (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 Incorporated Societies Act provides for the establishment of a member-based incorporated entity that is allowed to engage in various activities "not for pecuniary gain." A society is formed when a group of persons associate together for a lawful purpose other than for monetary gain and apply to the Registrar for incorporation under the Act. The legislation therefore focuses primarily on the organization and governance of a collective membership body rather than on the administration of charitable property held on trust.

Formation occurs through submission of an application to the Registrar accompanied by the society's rules or constitution. Upon incorporation, the society becomes a separate legal entity with perpetual succession capable of holding property, entering contracts, suing and being sued in its own name. Membership itself does not create proprietary rights in the assets of the society, which remain vested in the incorporated body rather than in individual members.

MCCTIL believes that this basic approach to how societies are formed, 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 primarily have to do with additional disclosures required to incorporate, whether different types of societies should be recognized, how societies should be managed and the duties that should apply to managers, filing annual returns, and the introduction of online filing. These issues are discussed below, and MCCTIL seeks feedback on your thoughts 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 societies 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 mirror those provisions.

2.2 Formation Requirements

Currently to incorporate a society an application must be submitted in paper form to MCCTIL. The application must be signed by five members of the proposed society and be accompanied by two copies of the society's rules along with copies of government-issued photo IDs of the signatories to the Application. Are these requirements appropriate?

The new law will recognize online filings, and the process to register will be substantially similar to that used for companies and business names. As for the rules, the online system will accept an electronic copy so there will be no need to print and supply a hard copy.

2.2.1 Number and nature of members

An initial question is how many persons must be members before a society can be formed. Under the current law there must be five (5) members to incorporate. Is this the correct number for Tonga? Some jurisdictions (including New Zealand) require 10 persons to be members at all times. A higher minimum may help ensure that a society is genuinely membership-based, but could make incorporation more difficult for small community groups.

Second, the current Act allows for corporate entities to be members of a society. Section 29. Corporate membership can be useful where several churches, clubs, associations or other organizations wish to form an umbrella body. On the other hand, some may consider that an incorporated society should be based primarily on individual members. MCCTIL seeks views on whether legal entities should continue to be permitted as members and, if so, whether any limits are needed.

2.2.2 Subtypes of societies?

Another question to consider is whether to distinguish between subtypes of incorporated societies. The nonprofit sector is very broad and includes many different types of organizations. Some organizations mainly serve the public, such as charities and social service groups, while others mainly exist to benefit their own members, such as sports clubs, professional associations, or chambers of commerce. MCCTIL is therefore exploring whether the new law should recognize two subtypes of nonprofit societies. These two subtypes could be called something like "public benefit" and "member benefit" and at the time of incorporation the society would indicate which type it is. Under this approach, a society established primarily for charitable, educational, religious, cultural, environmental, community, health, or other public-benefit purposes would be a "public benefit" society.

This would not result in significant differences in the ongoing regulation of the two subtypes. Instead, the principal distinction would arise when a society ceases operations and is dissolved. Under current law, the assets of a society is distributed in accordance with its rules. Section 27. This could lead to mischief. A society that accepted donations could dissolve and those donations could eventually find their way into the hands of the members. This is not good policy.

MCCTIL believes a better approach is that upon dissolution of a public benefit society, any remaining assets should continue to be used for similar charitable activities rather than being distributed privately to members. For that reason, MCCTIL is considering that upon winding up, the surplus assets of a public benefit society must be transferred to another recognized nonprofit body with a similar purpose. This would help ensure that assets originally intended for organizations that serve a public or charitable purpose remain dedicated to those purposes even after the organization itself ceases to exist.

The current Incorporated Societies Act does not distinguish between these different types of societies, and all societies are subject to the same legal framework regardless of their purpose. This approach has the advantage of simplicity, but it may not fully reflect the different roles that societies play within Tongan society. MCCTIL seeks feedback on whether it is appropriate to

distinguish between types of societies to allow for the application of different rules as appropriate, especially those involving distribution of assets upon ceasing to operate.

One caveat: classification under the Incorporated Societies Act would not by itself determine whether a society receives any tax exemption or other benefit under another law.

2.2.3 Name of society

The current Act states that no society may have a name identical to another society or a company or other "body corporate" operating in Tonga, unless the other party consents. Section 10. The word "Incorporated" must appear in the name under Section 5(a). There are also restrictions on using the word "Royal" in the name that should be retained. Section 3(3).

MCCTIL proposes a few minor changes to this approach to names. First, a society name should not contain the word "company" or abbreviation of company, which would suggest it is a for-profit company. Second, the name cannot contravene any other legislation in Tonga. Finally, the name cannot mislead the public about the nature of the society, be offensive, or be contrary to the public interest. These are all standard provisions in modern legislation regarding the name of incorporated bodies.

2.3 Management of the Society

A significant deficiency in the current Act is the lack of provisions that properly define how a society is to be managed. Indeed, there is not even a term in the Act that labels the management persons such as "directors" for a company. A modern law that establishes a corporate body must have provisions that define that body, establish how its members are chosen (or elected), and set out their rights and obligations.

The first step is to name the management persons. They could be directors, committee members, officers, or any other equivalent word. There should be provisions that specifically state that the management and affairs of a society are under the direction of these persons. For convenience, this Memorandum refers to the persons responsible for governing a society as "committee members," although stakeholders are invited to comment on the most appropriate term.

Second, just as with directors of a company or owners of a business name, all committee members for an incorporated society should be identified in the register. When a person is added to or ceases to be a committee member, or when an existing committee member changes their details, those changes should be filed in the register in a timely manner (such as 30 days).

Third, there should be a list of qualifications—or rather, disqualifications—of persons that can serve as committee members. Minimum standards would include that a committee member must be at least eighteen years old, should not be convicted of a serious offence or have been prohibited from acting as a director of a company.

2.3.1 Committee Members: residency requirement?

Some countries require that at least one committee member must normally reside in the country. This is to ensure that at least one person responsible for the entity is present in the country of formation. If this rule were imposed in Tonga, it is likely that the vast majority of incorporated societies would already comply given their nature. MCCTIL requests feedback on whether this would be a good rule for Tonga.

2.3.2 Committee members: duties and obligations

The new Act should impose basic duties on a society's committee members, such as a duty to act in good faith and in what the committee member believes to be the best interests of the society. There should also be a standard duty of care provision which would say that a committee member must exercise the care and diligence that a reasonable person with the same responsibilities would exercise. Finally, the new law should address conflicts of interest, which will basically require a committee member to disclose any conflicts and, except in circumstances permitted by the Act or the society's rules, not participate in the decision. For example, a committee member should disclose if the society is considering entering into a contract with a business owned by a close family member.

2.4 Rules

Current law requires each society to have rules which are to address the matters set out in Section 5 of the Act, including:

> (a) the name of the society, with the addition of the word "Incorporated" as the last word in that name;
>
> (b) the objects for which the society is established;
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> (c) the modes in which persons become members of the Society;
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> (d) the modes in which persons cease to be members of the Society;
>
> (e) mode in which the rules of the society may be altered, added to, or rescinded;
>
> (f) the mode of summoning and holding general meetings of the society, and of voting thereat;
>
> (g) the appointment of officers of the society;
>
> (h) the control and use of the common seal of the society;
>
> (i) the control and investment of the funds of the society;
>
> (j) the powers (if any) of the society to borrow money;
>
> (k) the disposition of the property of the society in the event of the winding up of the society;
>
> (l) such other matters as the Registrar may require to be provided for in any particular instance.

Generally, this list of items to be included in the Rules is appropriate. However, MCCTIL seeks feedback on the following possible updates to this list.

2.4.1 How to select and remove committee members

The Rules should establish how the committee members of a society are chosen, whether by appointment, election or otherwise. Current section 5 addresses this, but the requirement could be more explicit. The Rules should also indicate how a committee member can be removed from office, such as by a vote of the members through a special resolution. MCCTIL thinks that having these provisions in the Rules might lessen the chance of future internal conflicts.

2.4.2 Meetings of the committee members and of the members

The current Act requires a rule to state how a general member meeting is called. The Rules should probably also indicate how meetings of the committee members are handled.

Even though the Rules are to set out specifics of meetings, MCCTIL is considering whether the Act should set out some minimum standards. This would include normally requiring an annual general meeting, but allowing it to be waived if all members agree. It should be possible to attend meetings via electronic means to facilitate participation in country-wide societies by persons from different island groups. It should also be possible to address major issues via written resolutions that are agreed to by all the members. In other words, the entire governance framework should be clarified and modernized. MCCTIL seeks feedback on whether any other conditions or terms should be set out in law for meetings based upon your experiences with your societies.

2.4.3 Disposal of assets upon dissolution

Current Section 5(k) provides that the Rules must set out how property of the society is to be distributed upon winding up. This is good policy and should be retained. However, one refinement is worthy of consideration in Tonga. Earlier in Section 2.2.2 of this Consultation Memo there was a discussion around whether there should be subtypes of societies recognized.

As noted earlier, there are many types of entities that can be incorporated societies, including those that are traditionally considered charities that accept donations to do good works, and then those that are member-based societies such as trade groups or chambers of commerce that look after their members' collective interests. It is reasonable to expect that the distribution rules for these different types of entities should not be identical. MCCTIL proposes that for societies that are charitable in nature, their assets should only be allowed to be distributed to other nonprofits. For member-based societies, often the income is not derived from donations but rather from membership dues, so it may be appropriate to relax how assets are distributed on winding up and even allow excess funds to revert back to the members (subject to any restrictions attached to donated or grant-funded property). MCCTIL specifically asks for stakeholder input on this important issue.

2.5 Annual Returns and Compliance

Current law does not require a society to file an annual return. Section 23 (discussed in detail below) requires some basic financial statements to be filed for each annual accounting period,

but that is not the same as a true annual return. An annual return is intended to make certain that the information in the register is accurate and up-to-date, including the identification of committee members.

MCCTIL firmly believes that a true annual return requirement should be in the law. Incorporation of a society creates a legal person, and it is reasonable to expect that the public register should at least once a year have a filing from that legal person indicating it still exists and who is responsible for it.

The failure to file an annual return should have consequences, which could include either late filing fees, penalties on the committee members, or even removal from the active register. The current Tonga Companies Act provides that an entity that fails to file its annual return will eventually (after a grace period) be struck from the register. Once an entity is struck off, it then should still be able to come back into compliance by submitting back-due annual returns and paying a penalty fee. This model works well in Tonga and MCCTIL seeks feedback on whether it should be followed for incorporated societies.

MCCTIL wishes to emphasise that no society would be removed without prior notices and a reasonable opportunity to file the overdue return. But compliance is required in a modern corporate setting, even for NPOs.

2.6 Society records

The current Act does not contain any basic requirement that a society must maintain accounting records. For a small society, this may be no more complicated than maintaining reliable records of money received, money spent, assets and liabilities, together with receipts and bank records. The record retention period would be for a number of years and MCCTIL seeks input on how long this period should be: perhaps 5 or 7years would be appropriate?

Maintaining accounting records is a basic requirement for any incorporated entity and will help a society understand and account for how its money is received and spent. It is also important considering that the law requires financial reporting, discussed below.

A society should also be required to maintain an internal register of members. The Rules can establish how persons become and cease to be members, but where the Rules are unclear, the Act could provide as a default that any person entitled to vote for committee members is deemed to be a member.

2.7 Financial Reporting

The current Act requires basic financial information to be submitted annually to the Registrar. Section 23(1). The substance of the financial information that must be reported is set out in Section 23(1):

> (a) the income and expenditure of the society during the society's last financial year;

(b) the assets and liabilities of the society at the close of the said year;

(c) all mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.

It is reasonable to expect all incorporated bodies to prepare very basic financial reports as already set out in the current law. MCCTIL seeks input on whether these are the proper financials to prepare and file.

2.7.1 Approval at annual general meeting

All financials must first be approved by members at a general meeting before they are filed with the Registrar. Section 23(2). This could potentially be problematic if meetings are delayed or there is some unrelated internal dispute that causes the financials to be held hostage to the dispute. A modern approach obligates committee members to prepare the financials and submit them to the Registrar and make them available for inspection by the members. If the members are unhappy with the financials, they can raise their concerns with their society and its committee members, but this does not delay the filing of the financials with the Registrar. MCCTIL seeks feedback on whether financial statements should continue to require approval by members at a general meeting before being filed with the Registrar, or should responsibility for preparation and filing of the statements sit directly with management.

2.7.2 Disclosure of financials

MCCTIL also seeks guidance on whether financial statements should be publicly available to searchers or only available to the Registrar. Public access promotes accountability, particularly where a society receives donations or public funding. However, some societies may consider full public disclosure unnecessarily intrusive. This will become especially relevant once societies are implemented in the online register. Note that the exact same question is being asked in the Consultation Memo for incorporated charitable trusts, and it may be that a consistent rule would be beneficial for Tonga. MCCTIL seeks stakeholder input on this important question.

2.8 Registrar general powers

The current Act does not provide for much Registrar oversight of societies. Compare this to the Companies Act where the Registrar is empowered to undertake investigations of companies where some noncompliance with the law is suspected. MCCTIL seeks input on whether similar (but streamlined) Registrar powers should extend to incorporated societies. These might include the power to require missing information, correct obvious errors in the register, request production of records where noncompliance is suspected, investigate serious complaints, and apply to the court where necessary. Any such powers would be accompanied by notice requirements and rights to seek review of significant decisions.

3.0 International anti-money laundering mandates

Tonga, like all countries in the Pacific region, is expected to maintain laws that help prevent the misuse of legal entities for money laundering, terrorist financing, fraud, and other forms of financial crimes. These expectations are established through international standards developed by the Financial Action Task Force (FATF) and assessed in the Pacific through the Asia-Pacific Group (APG).

These international standards are relevant not only to companies. They also require countries to consider whether nonprofit entities may be misused and to maintain proportionate transparency measures appropriate to the risks involved. While the vast majority of nonprofit organizations operate for legitimate purposes and provide important services to their communities, international standards recognize that legal entities of any type can potentially be misused if basic information about their management and operations is unavailable.

A 2021 "Mutual Evaluation Report" conducted by APG on Tonga found several areas in the Tongan legal framework for nonprofit entities that could be strengthened. These included the continued use of paper-based filing systems, limited information about the persons managing nonprofit entities, and the absence of mechanisms to ensure that information held by the Registrar remains accurate and up to date.

Many of the reforms discussed in this Consultation Memorandum would help address these issues while also improving the general administration of incorporated societies. For example, introducing annual returns, maintaining accurate records, and supporting online filing all contribute both to good governance and to compliance with international standards. Further, identifying a person that is not formally appointed to the committee but regularly directs its decisions not only helps AML compliance but also represents good transparency for members.

MCCTIL does not propose to impose complex or burdensome requirements on small community organizations. Rather, the objective is to ensure that Tonga's legal framework reflects modern expectations, keeping in mind the nonprofit nature of these societies.

4.0 Transition to the new law

Existing incorporated societies would not be required to immediately re-register or satisfy all of the new registration requirements immediately upon commencement of the new Act. Instead, there would be a transitional period of one year during which every existing society would be required to re-register through the online register and confirm or update its basic information, including its current rules, registered office, contact details, and the persons responsible for its management. Re-registration would be free of charge and would take the place of the annual return in this transitional year. This would follow the approach previously used in Tonga when companies were moved onto the online register and would allow the Registrar to establish an accurate and current record of active societies.

A society that does not re-register within the one-year period would be removed from the active register. However, the society would have a further period of two years during which it could apply to be restored by completing the required filings, bringing its information up to date,

and paying any applicable late filing fees. After that period, restoration would require a more formal process, most likely through a court proceeding. MCCTIL seeks stakeholder views on whether these transition periods are reasonable and whether any additional assistance may be needed for existing societies during re-registration.