Proposed Amendments to Companies Act
Report on Public Consultations

Beneficial Ownership and Other Anti-Money Laundering and anti-Terrorist Financing Provisions

September 23, 2025

1.0 Background

In May 2025 the Investment Promotion Authority (IPA) distributed a Consultation Memorandum seeking stakeholder input on proposed legislative changes to the *Companies Act 1997* (as amended) (Companies Act). The legislative changes are necessitated by Papua New Guinea's (PNG) lack of compliance with international anti-money laundering standards.

These standards have been established by the Financial Action Task Force (FATF), the intergovernmental organization that leads global action to combat money laundering and terrorist financing (ML/TF). FATF oversees the Asia-Pacific Group (APG), a regional body that conducts assessments of countries called Mutual Evaluations. APG published its most recent MER of PNG in September 2024. Unfortunately, PNG received only a "Partially Compliant" rating and was found to have a low level of effectiveness in monitoring ML/TF risks. This is the lowest rating a country can have before being grey-listed.

One key FATF mandate involves "beneficial ownership" of companies. Generally, a "beneficial owner" is a 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. FATF Recommendations now require countries to enact laws requiring beneficial ownership disclosures and to make this information available to law enforcement and tax authorities. To assist in this FATF strongly recommends using a centralized beneficial ownership registry into which beneficial ownership (BO) information is disclosed, stored, and made available for government authorities. Other recommendations made to PNG included addressing nominee director arrangements and prohibiting bearer shares.

In response, IPA proposed a series of amendment to the Companies Act aimed at enhancing PNG's compliance with the ML/TF standards. A consultation Memorandum outlining the proposed amendment was widely distributed to the public and posted to the IPA website. A stakeholder workshop was convened in Port Moresby, attended by numerous representatives from government, the private sector and civil society. The IPA also received more than 20 substantive written submissions. IPA sincerely appreciates the time and effort invested by all contributors. Based on this feedback, the IPA has refined and improved several of the proposed provisions.

IPA received over 20 comments to the proposed legislation. The comments were particularly well-thought out and IPA very much appreciates the time all commentators put into their responses. IPA has made several changes to the proposed language in response to these comments, which is exactly how the process is to work.

There were two issues on which IPA sought specific feedback: 1) whether there should be an "ownership threshold level" to determine whether a person is a beneficial owner; and 2) whether beneficial ownership information should be strictly confidential to law enforcement only, whether it should be open to the public, or whether there should be some middle ground.

Responses to these two issues were spirited and diverse. There are many good arguments to be made on all sides of these issues and commentators offered views across the spectrum on each. While this represents fantastic feedback, it also means that in the end no real consensus emerged on either issue. This means that IPA will make a policy choice on each that will please some and not please others. The following is a discussion of the comments received on these key issues on which IPA acknowledged were open policy questions and sought specific feedback.

1.1 Beneficial ownership reporting thresholds

The majority of stakeholders thought that some ownership threshold was appropriate. Interestingly, most commentators from the financial sector[1] were in favor of a threshold while those from the business sector favored no threshold (meaning all beneficial ownership arrangements should be disclosed). Further complicating matters, some government agencies supported a threshold but others did not. For those commentators that supported a threshold there was no consensus on what that threshold should be. Finally, a few commentators thought there should be more than one threshold: a lower threshold for some higher-risk industries and higher one for less risky businesses.

The following represent a sampling of the various comments received[2]:

"The proposed 25% threshold for identifying beneficial ownership should be reconsidered. While this threshold is technically compliant with FATF standards and aligns with approaches adopted in Singapore and the United Kingdom, it is less stringent than Australia's 20% threshold. Importantly, FATF encourages countries with elevated money laundering and terrorist financing risks to adopt lower, or even zero, thresholds. Given Papua New Guinea's high-risk classification in the 2024 Mutual Evaluation Report, a threshold of 10% or no threshold at all would be more appropriate and defensible." From a Government agency.

"For PNG, 25% for general disclosure while 10% for high-risk sectors such as financial institutions and politically exposed persons." From a Government agency.

"[Commentator] recommends setting a 5% threshold for the disclosure of beneficial owners so as to align with Section 395 of the Capital Markets Act." From a Government agency.

"[Commentator] is in support of having an ownership threshold level that triggers disclosure requirements. Provided below are our comments:

- The threshold should be set at 20-25% as defined in the PNG *Anti-Money Laundering and Counter Terrorist Financing Act* noting that Australia and New Zealand also have 25% set as the threshold for beneficial ownership. According to the PNG *Takeover and Mergers Code* the rule is a person who holds or controls

[1] Though one major financial institution opposed having a threshold.

[2] The identities of the commentators are maintained as confidential to encourage all to speak freely.

- While it may be better to implement a lower threshold like 10-20%, the administrative burden would be far greater both on the general public and on the regulatory agencies as well.
- If the Companies Act were to specify an ownership threshold for BO disclosure, we would suggest this threshold be either:
    a) Consistent with the 25% threshold outlined in the Anti-money launder Act; or
    b) Set at a level slightly lower than 25%.
- Adopting a reporting threshold below the 25% mandated by the AML/CTF Act would be advantages for [Commentator] as it would provide [Commentator] with the means to verify the identities of smaller beneficial owners—should the need arise. This is, of course, conditional on our access to the BO information within the BO Registry. From an AML context, the need to scrutinize a customer's smaller beneficial owners may arise during the course of a business relationship." From financial institution.

"[This Commentator] supports the consideration of a 25% (direct or indirect) threshold to beneficial ownership disclosure in accordance with FATF requirements, noting that this would align PNG with the majority of international jurisdictions." From financial institution.

"There should not be a percentage threshold ownership of shares and all shares % for the beneficial owners should be captured/registered under each of the shareholders. Our view is that the threshold will only be applied under each of the Industries to adhered to the Industry CDD/KYC requirements. For e.g. the CDD guidance around the AML/CTF Act 2015 stipulate the 25%." From financial institution.

"We support the position that no threshold should be applied to trigger the requirement to disclose beneficial ownership. As noted in your example and based on local experience, thresholds are likely to create loopholes that encourage the use of multiple 'front' representatives or 'dummy' shareholders to avoid disclosure. A full-disclosure model ensures transparency and avoids circumvention." From a collective of business and industry groups.

"We understand that the FATF standards uses the 'significant ownership threshold' and the 'substantial control threshold' to determine if a person is a beneficial owner. The FATF standards and the definition of beneficial ownership in the PNG *Anti-Money Laundering and Counter Terrorist Financing Act 2015* both set an indirect and direct ownership threshold of 25%." From a private law firm.

"Thresholds for beneficial ownership disclosure should reflect the local business environment. A 25% threshold is commonly used internationally and is considered appropriate for PNG. However, in some cases, a 10% threshold may be more appropriate for sectors vulnerable to illicit financial activities." From a financing business.

"[W]e recommend a threshold of 20%. A lower threshold will enhance transparency and mitigate the risks of misuse of legal persons for illicit purposes—especially important in developing contexts such as PNG." From an insurance business.

"The threshold should be low to ensure that most or all people with relevant Beneficial Ownership and control interests are identified in the disclosures. Therefore, it is proposed that the threshold be set at 15%." From a women's financing business.

"We recommend setting a 10% threshold for beneficial ownership disclosure for all companies. For companies in high-risk sectors (e.g. mining, real estate, casinos, money service businesses), we recommend a 0% threshold — i.e. full disclosure." From a financing business.

"Since there are no restrictions on the number of Beneficial Owners, then there should really be no restrictions on the threshold for review, especially in consideration of layered ownership and control structures." From private citizen.

"The consultation requests specific feedback on the level of ownership that would trigger the proposed disclosure requirements. Requirement 2.5(f)(ii) of the EITI Standard requires the MSG to determine a threshold for beneficial ownership reporting, recommended to be 10%. The threshold for beneficial ownership reporting agree by the multi-stakeholder group is 5%." From an international body.

"TIPNG recommends that there should be a threshold level for BO disclosure and that it be set at 10%" for consistency with global extractive industries standards." From an international body.

As can be seen, while most commentators favor some kind of threshold, there are minority views as well that support having no threshold, meaning, all beneficial owners would report. Further, for those in favor of a threshold, there is no consensus on what that threshold should be. None of this is unexpected as there are legitimate practical and even philosophical differences of opinion on this topic.

Regarding the comment on possible alignment with the PNG *Anti-Money Laundering and Counter Terrorist Financing Act 2015* (AML/CFT Act), it is true that the AML/CFT Act uses a 25% share-or-voting-rights threshold to trigger beneficial-owner reporting in the context of financial transactions. However, the aims of the two laws are not exactly the same. The potential reforms to the *Companies Act* aim at broader corporate governance and general transparency issues rather than solely concerns over suspicious transactions. Law enforcement and tax authorities use beneficial ownership registers for different purposes than does a financial institution. This is evidenced by the comments received from at least one government law enforcement agency in favor of having no threshold. Further, there is no risk of inconsistency as the two laws target different items of concern. If there were no threshold in the Companies Act, financial institutions would not be burdened in any way: they would still comply with the mandates of the AML/CFT Act without regard to whether there was or was not a reporting threshold in the Companies Act. It is also instruction that a prominent trade group was in favor of having no threshold.

IPA has carefully considered all comments and has undertaken further direct discussions with the Financial Analysis and Supervision Unit (FASU) in light of the comments received. Based in large part upon PNG's precarious standing with regard to international AML compliance, IPA believes at this time there should be no threshold reporting level: all beneficial ownership arrangements should be disclosed.

IPA has further determined to not make distinctions based upon business activity. IPA considers that introducing different standards will lead to confusion and even claims of unfair treatment by targeted industries, along with the difficulties in selecting exactly which industries should be targeted. By making the threshold zero, these concerns are effectively addressed.

1.2 Beneficial ownership information: confidentiality vs public disclosure

The initial language in the proposed text provided for the minimum of disclosure: only to the Registrar and law enforcement. IPA acknowledged this was an open issue and sought specific feedback on this important matter.

The majority of commentators thought broader disclosure than that called for in the initial amendment was appropriate, but no clear standard emerged on how broad the disclosure should be. However, one point was clear: a clear majority of commentators from the financial sector believed that disclosing information to financial institutions to assist them in their know-your-customer due diligence obligations was very important. This would also align the AML/CFT Act which requires financial institutions to identify the beneficial owners of their customers. IPA agrees with these commentators.

Beyond that point, there simply was no consensus on what information should or should not be available to third parties—and indeed which third parties should have access. The following sampling of comments underscores the diversity of opinions:

"The BOR should be accessible to competent authorities only to protect privacy." From Government agency.

"For PNG, basic BO details like name, nationality, date of birth, natural of control should be made available for accountability purposes. Those sensitive information like residential address or ID numbers should be protected as private information. However, full access can be granted to competent authorities. A tiered access model is widely recommended and aligns with FATF guidance. For PNG, the following user types can be given access:

1. Law Enforcement – full access
2. Financial Institutions – verified access can be granted for due diligence purposes
3. Journalists – access BO data that concerns public interest
4. General Public – Basic BO data such as name, nationality, etc."

From Government agency.

"Beneficial Ownership information public accessibility should only be limited to certain information only." From financial institution.

"Tiered access based on [searcher] type should be considered to allow different industries to conduct verification searches/checks for their customers." From financial institution.

"In terms of public access, NSL recommends that IPA consider including a separate provision detailing the purpose and safeguards. At a minimum, the full name, the extent of ownership or control and the nationality and country of residence should be made available. However, private and sensitive personal information such as date of birth, residential address and official identification numbers should be kept confidential and released only to competent authorities." From Government agency.

"We recommend that the BOR adopt the current IPA protocols used for company shareholding disclosures. Specifically:

- Information should be available via a formal request mechanism and subject to a reasonable fee.
- Public access should be limited to name, nationality, and date of acquisition of beneficial ownership.
- Sensitive personal information (e.g., date of birth, home address, identification numbers) should remain confidential, available only to designated authorities or by court order." From an industry peak body.

"Tiered access: Only relevant authorities and institutions (e.g., law enforcement, financial institutions) should have access to comprehensive BO data, while public access could be limited to essential information." From financing business.

"For relevant authorities such as the Law Enforcement or Financial Institutions, it should be made accessible with a fee charged. For the Public, they should get a Court Order to obtain Beneficial Ownership information." From women's business.

"We recommend that public access for beneficial ownership information be applied consistently with respect to the other documents and information lodged with the Registrar." From a PNG law firm.

[W]e recommend that access be granted to members of the public who demonstrate a legitimate interest, such as financial institutions, civil society organizations, and others conducting due diligence, subject to safeguards." From an insurance business.

[This commentator] recommends…allow[ing] public access to non-sensitive BO information (e.g., name, nationality, nature or control), as consistent with the EITI standards. This enhances public oversight, due diligence by third parties and investors. Sensitive data (e.g., residential address or ID numbers) may be restricted." From an international body.

"There can be tiered access to information to prevent the potential harm identified by IPA, so while law enforcement can have full access, the public should at least know the name and real human owners of any company operating in Papua New Guinea. Having a publicly accessible registry is an essential tool for journalists and advocates to expose corruption in PNG. Furthermore, there shouldn't be artificial barriers, such as a fee or the need to identify oneself to access the information on the registry." From an international body.

In addition to these comments, there were a few issues that arose that deserve special mention.

1.2.1 Listed companies and disclosure of beneficial ownership information

Complicating IPA's assessment of the comments on this issue is that there is another parallel law that also regulates a small handful of companies. Consider the following comments from the Securities Commission of PNG (SCPNG) and PNG National Stock Exchange (PNGX) regarding listed companies:

> "SCPNG recommends that for publicly listed entities, substantial securities holder information should be disclosed to enhance market transparency and investor confidence as per section 402 CMA 2015. However, if is noted that Section 402 currently limits the disclosure of such information to the listed corporation, the operator of a licensed market, SCPNG, and relevant regulators or authorities. There is no provision under the CMA requiring that substantial securities holder information be made publicly available. Therefore, SCPNG agrees that BO information remain confidential, accessible only to appropriate law enforcement and tax authorities."

IPA acknowledges that a strong argument exists to treat listed companies differently than non-listed companies given that a similar parallel regime already exists in the *Capital Markets Act.* For this reason, IPA proposes that: i) all listed companies must comply with the requirement to keep and maintain BO information, but ii) a listed company will be deemed in compliance with the mandatory reporting requirements of the *Companies Act* beneficial ownership amendments if the listed company is in compliance with the *Capital Markets Act*. As a backstop, IPA will be authorized to request beneficial ownership information from a listed company as part of any investigation.[3] Listed companies will also need to comply with the law regarding nominee directors.

Given all this, new Section 72A will read:

> **"72A. BENEFICIAL OWNERS REPORTING OBLIGATIONS FOR LISTED COMPANIES.**
>
> (1) A listed company is deemed to comply with Section 72(2)(b) of this Act if, and to the extent that, it has satisfied the notification and disclosure requirements under the Capital Market Act 2015 relating to substantial securities holding in a listed company.
>
> (2) Subsection (1) does not affect:
>
> *(a)* the obligation of a listed company to maintain an internal register of beneficial owners under Section 72(2)(a); or

[3] This limited carve out follows FATF Guidance which recognizes that "alternative means" can be used to comply with Recommendation 24 where information is held by other agencies. [Guidance on Beneficial Ownership of Legal Persons, March 2023, para. 157.] While PNG's market-disclosure regime for listed companies is not identical to FATF-approved real-time BO reporting, they are similar in practical impact. The continuous market-disclosure and financial-reporting obligations imposed on listed companies in practical terms inhibit covert control via undisclosed beneficial interests. Plus, listed companies are subject to extensive financial reporting, making ML/TF activities more difficult. Finally, there are only 11 listed companies in PNG, and 4 of those are financial institutions subject to oversight under the PNG *Anti-Money Laundering and Counter Terrorist Financing Act 2015*.

(b) the obligation of a listed company to maintain beneficial ownership information for a period of seven years in the same place as the principal company register under Section 72(2)(c);

(c) the power of the Registrar to require a listed company, by written notice, to furnish any additional information necessary to verify the accuracy, completeness or currency of beneficial ownership information recorded under the Capital Market Act 2015.

(3) In this section, "listed company" means a company whose securities or any class of its securities have gained admission to be quoted on a stock market of a stock exchange.

(4) This section operates notwithstanding any other provision of this Act."

1.2.2 Extractive Industry

EITIPNG offered the following comments regarding public disclosure of beneficial ownership information:

> As noted above, the 2023 EITI Standard **requires** the public disclosure of beneficial ownership information of corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract (Requirement 2.5(c)). The 2023 EITI Standard further **encourages** countries to maintain a publicly available register of the beneficial owners of the corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s); the level of ownership; and details about how ownership or control is exerted (Requirement 2.5(a)).
>
> The IPA's proposal that the beneficial ownership register remain confidential could present challenges to Papua New Guinea's ability to fully implement Requirement 2.5 of the EITI Standard. The amendment of the Companies Act presents an opportunity for Papua New Guinea to mainstream EITI disclosures relating to beneficial ownership data into its regulatory framework for companies. This could be incorporated through an amendment to proposed section 72(8), for example:
>
> > *The Registrar may only disclose beneficial ownership information to competent authorities for the purposes of preventing and detecting money laundering, terrorist financing, tax avoidance and other unlawful activities,* ***for the purposes of complying with Papua New Guinea's commitments to disclose beneficial ownership information in line with the EITI Standard****, or as otherwise directed by court order.*

IPA acknowledges and does not disagree with the broad intent of PNGEITI's comments. However, it is the IPA's view that *Companies Act* is not the proper mechanism by which to address these very industry-specific concerns. Further, as a statutory authority, cannot commit PNG to an international standard that has not been mandated by Parliament, either directly or through enabling legislation. IPA therefore considers that PNGEITI should pursue a legislative solution

to this issue through its own consultation process, after which IPA would be willing to consider any consequential or appropriate amendments to the *Companies Act*.

1.2.3 Resolution: Disclosure of Beneficial ownership information

IPA welcomed the robust discussion and diversity of viewpoints on this topic. While there is no way to satisfy all commentators, IPA has attempted to address the concerns of the majority of commentators in light of the underlying reason for these amendments: compliance with FATF international anti-money laundering mandates.

While at this time FATF states a preference for public access, FATF does not *mandate* full public access. IPA will be guided by this fact. However, IPA also recognizes that FATF standards can evolve, so is cautious about putting definitive rules in the Act as they are more difficult to amend than are Regulations. For this reason, IPA proposes to:

- Provide in the amendments that disclosure to competent authorities is mandated, thus retaining proposed 72(8)(a); and

- Defer to the Regulations what other classes of persons are eligible to have access to the Register. At this stage IPA will support including financial institutions in the Regulations to assist them in their due diligence investigations under the AML/CFT Act.

Given that realistically it will at best be at least 4-6 months from the time of enactment before this reform could be fully implemented, IPA will seek further consultation on this issue as the time for commencement draws closer.

1.3.4 Politically Exposed Persons

A small number of respondents raised the issue of how to deal with what are termed "politically exposed persons" (PEPs). A PEP is generally defined as a person who holds a high-level political office like a Minister or the Head of an Agency.[4] FATF Recommendation 12 addresses PEPs, under which financial institutions are directed to give close scrutiny to PEPs in their financial transactions.

There is a theoretical overlap with beneficial owners and PEPs: a company with a PEP as a shareholder or director, or as a beneficial owner, should receive heightened scrutiny from financial institutions. But this does not mean that the *Companies Act* need mention PEPs specifically. So long as the beneficial ownership reporting regime is stringent, and so long as financial institutions have access to the information (as will be the case under new 72(8)), they can undertake their own due diligence checks on whether PEPs are involved with their client companies.

2.0 Beneficial Ownership

Proposed new Section 72 primarily addresses beneficial ownership.

[4] The PNG *Anti-Money Laundering and Counter Terrorist Financing Act* 2015 sets out a more detailed definition for PEPs.

2.1 Proposed 72(1)

Proposed Section 71(1) mirror language in the current Companies Act.

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

2.1.1 Summary of comments

There were no comments opposed to retaining this current language.

2.1.2 Table showing sample of actual comments received

There was only one substantive comment to subsection 72(1):

Comments on proposed new section 72(1)	
Specific stakeholder comments	IPA Response (as appropriate)
1. As it reads, is the term "share register" referring to the share register kept by the IPA or the Securities Commission?	1. The share register is the one maintained by the company itself under Sect. 67. Technically, it is this register that sets out the legal holders of shares. A company then reports what is maintained in its share register to the IPA Company Registrar.

2.1.3 IPA Resolution

IPA proposes retaining the language from the current Companies Act.

2.2 Proposed 72(2)

Proposed Section 72(2) sets out the basic requirement that the board of a company must maintain and then report beneficial ownership information to the Registrar:

> *(2) Notwithstanding Subsection (1), the board of a company must –*
>
> *(a) obtain and maintain sufficient beneficial ownership information to identify the beneficial owner of a share issued by the company;*
>
> *(b) report beneficial ownership information on the prescribed form to the Registrar; and*
>
> *(c) maintain beneficial ownership information for five years in the same place as the principal company register under Section 68(3).*

2.2.1 Summary of comments

All commentators agreed with the requirement that companies must report beneficial ownership information as called for in proposed 72(2). Several commentators suggested what can be fairly termed technical changes to the actual text.

2.2.2 Table showing sample of actual comments received

Comments on proposed new section 72(2)	
Stakeholder comments	IPA Response (as needed)
1. A few commentators noted that PNG companies are required to maintain company records for 7 years under Section 164 and thought that subsection (2)(c) should be consistent with that timeframe.	1. IPA concurs and will change the current 5 years to 7 years.

2. 72(2) places the obligation on the 'board' of a company to report. What happens if there is no board?	2. Every company is required by law to have at least 1 director. Section 13. A company with no directors will be struck from the register.
3. We note that proposed Section 72(2)(b) requires the board to report beneficial ownership information on the "prescribed form" to the Registrar.	3. The IPA registry system is now fully online, and any beneficial ownership registry would also be online. Under the law the online forms are the "prescribed forms". IPA anticipates that once the legislation passes there will be an implementation phase before commencement. During this phase the software will be designed to capture appropriate data fields to ID beneficial owners. There will be further consultations on those details at that time.
4. Technical suggestion: in (a) the term "sufficient beneficial ownership information" is used but later in (9) the word "sufficient" does not appear, these should be consistent.	4. IPA concurs and will make this change.

2.2.3 IPA Resolution

In light of these comments, IPA has made the following changes to proposed Section 72(2):

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

(a) obtain and maintain ~~sufficient~~ accurate and current beneficial ownership information to identify the beneficial owner of a share issued by the company;

(b) report beneficial ownership information on the prescribed form to the Registrar; and

(c) maintain beneficial ownership information for ~~five~~ seven years in the same place as the principal company register under Section 68(3).

2.3 Proposed 72(3)

Proposed new Section 72(3) sets out what amounts to a transition provision under which existing companies must report beneficial ownership to the Registrar within 90 days from the effective date of the amendment:

(3) For a company already in existence at the time this Section 72 comes into effect, beneficial ownership information must be lodged with the Registrar on the prescribed form within 90 days from the date this Section 72 comes into effect.

2.3.1 Summary of comments

All commentators recognized the need for this transition language. Few commentators offered more specific thoughts, which are as follows:

Comments on proposed new section 72(3)	
Stakeholder comments	IPA Response (as needed)
1. We submit that the timeframe of 90 days…is not adequate, particularly for large, publicly listed companies…. We recommend an increase of this timeframe to a 6-month transition period. 2. The proposed Section 72(3) is in order. [This commentator] suggests that a public notice be issued to ensure companies that existed prior to the amendment comes into effect are reminded to comply. 3. 90 days is a lot of time – in which many companies may opt to do something else (restructuring, winding up….) in order not to follow the law and to hide real beneficial owners. Therefore, 30 days is more than enough."	IPA notes that few comments were received on this topic. Of those that responded there was a mix of opinions.

2.3.3 IPA Resolution

IPA will follow the recommendation that the 90-day transition period is appropriate. IPA notes that there will be a time-lag between passage of these amendments and when a new beneficial ownership registry is ready to receive filings. This will effectively enlarge the transition period from 90 days to something more like 4-6 months, during which time all companies can gather the information needed to comply.

2.4 Proposed 72(4)

Proposed new Section 72(4) simply states that new companies must report beneficial ownership information at the time of their incorporation:

> *(4) For a company that is incorporated after the time this Section 72 comes into effect, beneficial ownership information must be submitted to the Registrar together with the application for incorporation submitted under Section 13.*

2.4.1 Summary of comments

There were few comments received on this provision as all commentators saw the obvious need for the provision. A few commentators offered the suggestion that this language be placed in Section 13 as opposed to Section 72.

2.4.2 Table showing sample of actual comments received

Comments on proposed new section 72(4)	
Stakeholder comments	IPA Response (as needed)
1. It is our recommendation that this section be included under Section 13(2) … for consistency with the requirements for incorporation listed therein.	

2.4.3 IPA Resolution

Section 13(1) of the Companies Act provides that the Application shall be on the prescribed form. In essence this allows the online registry intake form to set out what information is required. Section 13(2) sets out some minimum requirements for the Application. It does not contain all requirements: for instance, it does not mention the need to name shareholders and their shareholdings.

IPA agrees that Section 13 should reference these requirements. But, if 13(2) is to include a reference to beneficial ownership then it also should also mention shareholders, otherwise the reference to beneficial ownership will be misplaced. For this reason, IPA will seek to amend Section 13(2) so that it reads as follows:

> *"(2) Without limiting Subsection (1), an application under Subsection (1) shall state in relation to a proposed company –*
>
> *(a) the full name, residential and postal address, nationality and other prescribed information of every proposed director of the company; and*
>
> *(b) if any proposed director is a nominee director, the full name, address and other prescribed information of the person that nominated them, together with a description of the arrangements under which they were nominated;*
>
> *(c) 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 to be issued to each shareholder; and*
>
> *(d) if any shareholder is a nominee shareholder, the full name, address and other prescribed information of the person that nominated them, together with a description of the arrangements under which they were nominated; and*
>
> *(e) the full name, address, nationality and other prescribed information of all persons (if any) named as secretaries; and*
>
> *(f) the full name, address, nationality and other prescribed information of any beneficial owner (if any) of the company;*
>
> *(g) the postal address; and*
>
> *(h) the registered office; and*
>
> *(i) the address for service; and*
>
> *(j) any other prescribed information."*

2.5 Proposed 72(5)

This subsection imposes an obligation on the Board of a company to file the proper notices with the Registrar when a new beneficial owner(s) comes into existence or if there is a change in the status or other information for an existing beneficial owner. The initial proposed language

required the Notice to be filed within 30 days from the date the director became aware of the change. *It read:*

> *(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 30 days from the date the directors became aware of the change.*

2.5.1 Summary of comments

There were few comments received on this provision, likely as all commentators recognized that changes in beneficial owners must be reported to the Registrar.

2.5.2 Table showing sample of actual comments received

Comments on proposed new section 72(5)	
Stakeholder comments	IPA Response (as needed)
1. 30 days from the date the directors became aware of the change" is a subjective deadline, very difficult – if not impossible – to prove. It might easily happen that any of the directors will report no changes, and yet there will be no possibility to hold them accountable according to Paragraph 10 below, because it won't be possible to prove when they became aware of the changes. Therefore, it is suggested to replace the current wording "30 days from the date the directors became aware of the change" with the new wording "30 days from the date the change occurred. 2. We think imposing criminal penalties for the company and the other directors could lead to unfairly harsh outcomes, for example where the company has relied on a statement from the person who is alleged to be a nominee director to the effect that they are not a nominee director.	See response below

2.5.3 IPA Resolution

The first commentator raises a valid concern. Conversely, the notion behind the "knowledge" requirement is that it is inappropriate to hold directors criminally liable for a situation about which they had no knowledge: shareholders may simply not divulge their beneficial ownership relationship to the directors. The proposed amendments attempt to address this by imposing an obligation upon the beneficial owners themselves to report under proposed 72(6), but where people actively seek to evade the law, their disclosures will not be forthcoming.

IPA notes that there is a similar knowledge requirement in Section 137, where a company is required to file a notice of change of director within one month of "the company first becoming aware of the change." This would apply if a director changed their personal information (or even

died) and the company was unaware of the change.[5] So, there is precedent in the current law for having a knowledge requirement. IPA also notes that there are provisions in the current *Companies Act* where a knowledge standard is imposed, but it is calculated as follows: liability can attach where a director "is aware or there are reasonable grounds for so believing that a reasonable person in a like position would be so aware."[6]

IPA also notes that proposed Section 72(2) imposes an obligation on the Board "to obtain and maintain beneficial ownership information to identify the beneficial owner of a share issued by the company." Directors that fail to take steps to obtain beneficial ownership information can be held liable. In a case involving misrepresentation of beneficial ownership relationships, evidence could be produced as to whether directors took appropriate steps under 72(2) to learn about possible beneficial ownership relationships. These steps would be able to be objectively assessed as to whether they were appropriate in the given circumstances. There is no knowledge requirement in 72(2): there is strict liability where directors fail to comply with 72(2).

Finally, the second commentator underscores IPA's concern: that commentator suggests that it is unfair to impose potential criminal liability on directors for another person's misleading statements.

In light of the above, IPA believes the best approach is to maintain a knowledge standard in 72(5), but to add language that also imposes a "reasonable grounds" test. The final 72(5) would thus read as follows:

> *(5) ~~The board of a~~ 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 30 days from the date the directors became aware of the change <u>or where a reasonable person in a like position would be so aware of a change.</u>*

2.6 Proposed 72(6)

Section 72(6) provides that a person who is a beneficial owner must inform the directors of the company of their status.

> *(6) 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 30 days of the change.*

[5] Similar knowledge requirements are set out in Sections 170(4)(a), 273(2)(a) and 349(1)(d).
[6] Section 348(1)(b). Similar standards are found in Section 349(1)(d),

2.6.1 Summary of comments

No commentators objected to this language.

2.6.2 Table showing sample of actual comments received

Comments on proposed new section 72(6)	
Stakeholder comments	IPA Response (as needed)
1. No negative remarks were received. 2. One commentator suggested that a standard form be created by which beneficial owners would report their status to their company. IPA will keep this in mind during the implementation phase. IPA notes that the disclosure must consist of "their beneficial ownership information" which will be defined under the law.	

2.6.3 IPA Resolution

The proposed language for 72(6) will be retained with one minor change shown below:

> *(6) 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 or status within 30 days of the change*

2.7 Proposed 72(7)

Section 72(7) stated that the Registrar is not liable for the accuracy of beneficial ownership information:

> *(7) The Registrar shall not be liable for the accuracy of any beneficial owner information provided to the Registrar or disclosed to competent authorities.*

2.7.1 Summary of comments

A few commentators thought that this language could undercut the reform.

2.7.2 Table showing sample of actual comments received

Comments on proposed new section 72(7)	
Stakeholder comments	IPA Response (as needed)
Two commentators suggested that this language could undercut the validity of the information in the beneficial ownership register.	See response below and new language.

2.7.3 IPA Resolution

IPA notes that liability protection for the Registrar and staff is already part of the existing Companies Act. Section 410 provides:

> *The Registrar or a Deputy Registrar and any person appointed or authorized by the Registrar or employed in the office of the Registrar is not liable to an action or other proceeding for damages*

> *for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act or the* Securities Act 1997.

The reason for this provision is clear: no business entity Registrar has the capacity to verify every single filing received by the office (which literally amount to several hundred thousand filings each year in PNG). Instead, business entities are obligated to submit truthful filings and false filings are punishable under law. This is the same formulation used throughout the world. It is also the exact same approach taken by tax authorities throughout the world: not every tax return is audited, it is simply not feasible to do so. Instead, false statements are punished when discovered through spot-checks or other means.

IPA also notes that it is not a licencing agency: it does not bestow licences on companies. Instead, it facilitates incorporation so that individuals may pursue business activities via an incorporated entity. If IPA were to be tasked with duties more like a licencing agency that examines qualifications, then it would need significantly more budget support to properly complete these tasks.

To resolve this issue, IPA is comfortable with omitting 72(7) in its entirety an instead inserting a new provision in proposed 72(B) that cross-references to existing 410 as follows:

> *Section 410 applies to the beneficial ownership register and to any act or omission done in good faith in relation to it.*

2.8 Proposed 72(8)

This proposed section is the primary language that deals with disclosure of beneficial ownership information to third parties.

> *(8) The Registrar may only disclose beneficial ownership information to competent authorities for the purposes of preventing and detecting money laundering, terrorist financing, tax avoidance and other unlawful activities, or as otherwise directed by court order.*

2.8.1 Summary of comments

IPA was well aware that this would be a topic warranting much discussion so highlighted it in the Consultation Memo. All of the comments around disclosure of beneficial ownership information were addressed in Section 1.2 of this Consultation Report. In summary, all commentators agreed with the requirement that companies must report beneficial ownership information to competent authorities (i.e., law enforcement). Most agreed that financial institutions should also have access. After that, there was a wide diversity of opinion on how best to proceed.

On a different topic, a few commentators questioned the phrase "and other unlawful activities" in subsection (8). Here is how one commentator put it:

> We note that the current drafting of proposed Section 72(8) extends to "other unlawful activities" and we strongly submit that this extends the scope of the section too broadly, unless "other unlawful activities" is clearly defined.

IPA acknowledges the concern. However, it is not feasible to list all the crimes that might be investigated via a beneficial ownership register. What if law enforcement suspected a company was being used in connection with child trafficking and sought the identity of the "true" owners of the company? If "child trafficking" was not listed in 72(8) would that mean that law enforcement could not seek information from the register? This is why the broad term was used in the initial draft. The term "unlawful" itself is a limitation: the activity must be illegal, not just immoral or otherwise improper.

IPA considered making a reference to the *Criminal Code Act 1974 (Chapter 262)* in lieu of the phrase "other unlawful activities." The problem is that the Criminal Code is not the only source of legislation that sets out crimes. Consider the following table showing just a few of the Act that criminalize actions:

Statute	**Crimes covered**
Customs Act 1952	Smuggling, duty evasion
Firearms Act 1968	Illegal possession, trafficking
Cybercrime Act 2016	Computer offences, data breaches
Environmental and Conservation Management Act 2014	Illegal logging, wildlife trafficking

2.8.2 Table showing sample of actual comments received

Comments on proposed new section 72(8)	
Stakeholder comments	IPA Response (as needed)
1. All commentators agreed law enforcement and other appropriate regulatory bodies should be able to access beneficial ownership information.	1. IPA agrees.
2. Several commentors would extend access to financial institutions to assist them in their statutory know-your-customer obligations.	2. IPA concurs that this disclosure is appropriate.
3. A few commentators argued in favor of making the beneficial ownership register open the public, while a few cautioned against this step.	3. IPA does not favor full public access at this time. However, IPA acknowledges that full public access may be mandated by FATF in the future so seeks to future-proof the text to plan for this eventuality.
4. The text should specifically mention non-proliferation of weapons of mass destruction.	4. IPA concurs and will add this text
5. One commentator noted that later in 72A there is a cross-reference to extending the Registrar's powers under Part XXI of the Companies Act to the new beneficial ownership register. This commentator suggested that more clarity might be needed to ensure confidentiality given how	5. IPA concurs and will make a small adjustment to the text.

Sect. 398(1) of the Companies Act generally grants public access to the register.	
6. One commentator offered a complete alternative to proposed (8) which would allow the Registrar to only disclose information to "competent authorities" and would further set conditions on access, such as the Registrar being satisfied the request for access was proper, that the competent authority made the request in writing, and that conditions could be imposed on the use of the information.	6. Generally, IPA does not believe that it is good policy to place restrictions on the use of this information by law enforcement. However, to future-proof the provision IPA is proposing a new subsection (c) would which allow for regulations to be issued along these lines. The Regulations would speak to the recipient of the information being allowed to use the information in their official capacity only.

2.8.3 IPA Resolution

As noted in the introductory section that discussed this subsection in detail, IPA welcomed the robust discussion and diversity of viewpoints on appropriate beneficial ownership disclosure. While there is no way to satisfy all commentators, IPA has attempted to address the concerns of the majority of commentators while giving due consideration to the underlying reason for these amendments: compliance with international anti-money laundering mandates.

IPA proposes to:

- Provide in the amendments that disclosure to competent authorities is mandated, thus retaining proposed 72(8)(a); but
- Defer to the Regulations what other classes of persons are eligible to have access to the Register. At this stage IPA will support including financial institutions as defined in the AML/CFT Act in the Regulations. Further consultations will be undertaken on a rolling basis on whether any other classes of persons should be included (such as "Designated Non-financial Business or Profession" persons in PNG);
- Allow for regulations to establish terms and conditions for access and use of the information, which might include language imposing obligations on recipients not to disclose information other than in compliance with their legal obligations;
- Change the definition of "competent authorities" in subsection 79(9)(c) as set out below.

Given that realistically it will at best be at least 6-8 months before this reform could be fully implemented, IPA will seek further consultation on this issue as the time for commencement draws closer, with the result being an update to the *Companies Act* regulations.

IPA proposes that subsection (8) should read as follows:

> *(8) Notwithstanding Section 398, beneficial ownership information is confidential and may only be disclosed as follows -*

(a) to competent authorities for the purposes of preventing and detecting money laundering, terrorist financing, proliferation of weapons of mass destruction, tax avoidance or other unlawful activities; and

(b) to those classes of persons prescribed in regulations as being eligible to receive beneficial ownership information, in accordance with the terms and conditions established by regulations for access to and use of the beneficial ownership information; and

(c) as directed by court order.

2.9 Proposed 72(9)(a)

Section 72 sets out three critical definitions, each of which will be discussed separately.

Proposed Section 72(9)(a) sets out the definition of "beneficial owner." Following the FATF Guidelines, it offers a two-part text: beneficial ownership status can be achieved through direct or indirect ownership of control of shares, or by exercising "substantial control" over important decisions made by the company.

(9) For the purposes of this section,

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

(i) owns or controls a share or other equity interest in a company; 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.

2.9.1 Summary of comments

Please see the lengthy discussion on the topic of a threshold reporting limit in the introductory section of this Report.

Aside from the prior discussion, most commentators were supportive of the proposed two-part definition. A few commentators noted that the *AML/CFT Act* sets out a definition that might be re-usable for the sake of consistency. Actually, there are two definitions for "beneficial owner in the *AML/CFT Act*. The first is found in the Interpretations section:

"beneficial owner" means a natural person who -

(a) has ultimate control, directly or indirectly, of a customer; or

(b) ultimately owns, directly or indirectly, the customer;

Then, the second definition is found in 5(3):

(3) For the purpose of a "beneficial owner" as defined in this section -

(a) "control" includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to make decisions about financial and operating policies; and

(b) "owns" means ownership, either directly or indirectly, of 25% or more of a person or unincorporated entity.

The Capital Market Act 2015 also has definitions that speak to control over voting rights. See generally Sections 4(3) and (5), and 276.

Another commentator offered the following:

> [This commentator] supports the inclusion of substantial management control as a test for identifying beneficial ownership. However, further guidance may be helpful to clarify what constitutes "ultimate effective control". While the consultation notes that control may rest with a single individual, in practice, multiple individuals may share significant control over a company's operations and strategic direction.
>
> Furthermore, control can be both direct and indirect and may be exercised by individuals without formal titles who have substantial influence over financial decisions, corporate structure, or the appointment and removal of directors. Clearer guidance would help ensure consistent application and prevent underreporting beneficial ownership due to differing interpretations of control.

Another commentator offered a similar observation:

> We note that this section was not detailed in the memorandum and recommend that clear guidelines and thresholds be published for applying the "control" test. This would provide clarity to companies and facilitate consistent application and compliance.

A few other commentators offered suggestions of a technical nature as shown below.

2.9.2 Table showing sample of actual comments received

Comments on proposed new section 72(9)(a)	
Stakeholder comments	IPA Response (as needed)
1. In our view, the definition should be consistent with the definition in section 5(3) of the AML Act. The AML Act defines control to include control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights and includes exercising control through the capacity to make decisions about financial and operating policies.	1. IPA generally concurs. The two laws seek to fulfill different purposes, but the language of the two is generally consistent. Some updates to the proposed text are shown below.
2. Prosecutors must often prove indirect control, which is complex and fact-intensive. Formal structures may obscure true control; documentation may be absent or offshore.	2. IPA acknowledges the difficulties in prosecuting AML cases. However, there is already a presumption that

Recommendation: consider statutory presumptions or interpretive guidance to assist courts in assessing control.	information contained on a register is accurate: all filings are submitted under penalty of law. Further, IPA does not think that any guidance it might offer would be authoritative to a court.
3. In Subsection (i), the words "ultimately, directly or indirectly" are missing before the word "owns".	3. IPA concurs and has made this addition.

2.9.3 IPA Resolution

IPA acknowledges that a few changes to the language would be beneficial. IPA proposes that new 72(9)(a) would read as follows:

> *(9) For the purposes of this section,*
>
> *(a) "beneficial owner" means a natural person who, whether individually or jointly –*
> *(i) ultimately, directly or indirectly, owns or controls any shares or voting rights or is an ultimate beneficiary of such shares or voting rights or other securities in a company; or*
> *(ii) exercises ultimate effective control directly or indirectly over a legal person or arrangement affecting any shares or voting rights or is an ultimate beneficiary of such shares or voting rights or other securities in a company; or*
> *(iii) holds or controls shares or voting rights in a company indirectly through one or more intermediary persons, companies, trusts or other legal arrangements, where those intermediaries are themselves directly or indirectly owned, controlled or beneficially owned by that natural person,*
>
> *and "beneficial ownership" is to be construed accordingly*.

IPA then agrees with those commentors who suggested the addition of further guidance on what it takes to have "effective control" over a company by including a new subparagraph (b) that aligns with the existing *AML/CFT Act*:

> *(b) For purposes of this Section, "effective control" includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to make decisions about financial and operating policies.*

2.10 Proposed 72(9)(b)

Proposed Section 72(9)(b)[7] defines "beneficial owner information," which is the information that must be provided by a beneficial owner to the company and which in turn would be filed by the company with the Registrar.

[7] This will become subsection (c) in the final version of the amendment.

(b) "beneficial owner information" means –

(i) full name and date of birth;

(ii) 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) for publicly traded companies, beneficial ownership information means the name of the exchange upon which the company's shares are traded together with its registration number on that exchange.

2.10.1 Summary of comments

The discussion in the introductory section of this Report discusses in detail how the text should be changed with regard to listed companies. The remaining comments received were technical in nature.

2.10.2 Table showing sample of actual comments received

Comments on proposed new section 72(9)(b)	
Stakeholder comments	IPA Response (as needed)
1. One commentator suggested a few more identifiers for personal identification information. 2. The term "publicly traded" is not defined or used in the Companies Act. The relevant terminology is "the company is subject to a listing agreement with a stock exchange". 3. One commentator suggested including "former names" in the list of information that must be provided.	1. IPA concurs, see added text below. 2. IPA will change the text accordingly. 3. IPA understands the thinking behind this, but fears that the impact would be to discriminate against women, who often that the names of their spouse.

2.10.3 IPA Resolution

The proposed language will remain the same as to individual persons. For listed companies, a change will be made to add a new subsection (c) which recognizes the reporting obligations already present in the *Capital Market Act*.

IPA has also added a new subsection (*b*)(v) to allow for flexibility to add new data fields to future-proof this provision should international standards change.

(b) "beneficial owner information" for individuals means –

(i) full <u>legal</u> name, <u>nationality</u>, and date of birth;

(ii) country of residence and residential address;

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

(iv) the date on which the beneficial ownership was acquired;

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

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

2.11 Proposed 72(9)(c)

Proposed Subsection 72(9)(c)[8] defines "competent authorities." This definition is important in that the amendment would grant automatic access to beneficial ownership information to competent authorities.

(c) "competent authorities" means Papua New Guinea and international law enforcement and tax authorities.

2.11.1 Summary of comments

There were no objections to this provision, though one commentator thought that listing agencies allowed access to the information would be helpful.

2.11.2 Table showing sample of actual comments received

Comments on proposed new section 72(9)(c)	
Stakeholder comments	IPA Response (as needed)
One commentator thought that other agencies should be specifically listed, such as FASU, RPNGC, OPP, ICAC and IRC.	IPA understands the intent behind this change, but is not convinced that it needs to be made. Agencies do sometimes change names, and new agencies are created, both of which would render this provision out of date.

2.11.3 IPA Resolution

(d) "competent authorities" means Papua New Guinea government bodies or authorities, designated by or under an Act of Papua New Guinea (including Regulations made under this Act) as having responsibility for the prevention, detection, investigation, prosecution or supervision of compliance in relation to money-laundering, terrorist financing, proliferation of weapons of mass direction, 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 Papua New Guinea or an international agreement or arrangement.

2.12 Proposed 72(10)

This subsection sets out penalties for noncompliance by a company.

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

[8] This will become subsection 72(9)(d) in the final amendment.

(a) the company commits an offence and is liable on conviction to the penalty set out in Section 413(3); and

(b) every Director commits an offence and is liable on conviction to the penalty set out in Section 414(3).

2.12.1 Summary of comments

All commentators agreed that there must be an enforcement mechanism consisting of penalizing those companies that fail to comply with Section 72.

2.12.2 Table showing sample of actual comments received

Comments on proposed new section 72(10)	
Stakeholder comments	IPA Response (as needed)
For proposed Section 71(10) the penalty provisions in Section 413 of the Companies Act appear to be proportionate to the offences.	IPA agrees.

2.12.3 IPA Resolution

These penalties are sufficient.

2.13 Proposed 72(11) and a new 72(12)

This subsection sets out penalties for noncompliance by a beneficial owner in failing to disclose their status to their company.

(11) If a beneficial owner fails to comply with Subsection (6) the beneficial owner is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3).

2.13.1 Summary of comments

All commentators agreed with enforcing the requirement that beneficial owners must report their status to their company.

2.13.2 Table showing sample of actual comments received

Comments on proposed new section 72(11)	
Stakeholder comments	IPA Response (as needed)
One commentator thought it better practice to set the penalty levels directly within Section 72 rather than refer to Section 413.	IPA notes that references to Section 413 (or 414-415) are made throughout the current Companies Act and for the sake of consistency will retain this approach.

2.13.3 IPA Resolution

IPA finds that these penalties are sufficient to ensure enforcement. However, IPA has also determined to include a penalty for anyone who improperly discloses confidential beneficial ownership information. IPA believes this will enhance trust in the entire reporting regime and encourage compliance. Therefore, a new 72(12) will be included as follows:

(12) If a person intentionally discloses confidential beneficial ownership information in violation of Subsection (8), that person is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3).

3.0 Beneficial ownership register

Proposed Section 72A [will now be 72B given the new 72A regarding listed companies] would allow the Registrar to establish a beneficial ownership registry that would reside in the same platform as does the existing company registry. The totality of proposed 72A reads as follows:

(1) The Registrar shall ensure that a beneficial ownership register is established and maintained as part of the register of companies established under Section 395.

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

3.1.1 Summary of comments

All commentators supported having a beneficial ownership register.

The cross-reference in 72A(2) to Part XXI in was intended to give the Registrar the ability to maintain an electronic beneficial ownership register and to attend to routine register administrative matters, such as: the power to rectify the beneficial ownership register under 395A; to accept or reject documents under 396; send notices under 399, etc.

A few commentators suggested that the Registrar specifically be given powers to verify beneficial ownership information and arrangements. This was another reason for the cross-reference to Part XXI as that part grants broad powers to the Registrar to investigate matters under the Companies Act. For example, Section 400 is the main provision giving the Registrar power to investigate whether any person has complied with the Act and with the Capital Markets Act 2015. Further powers are listed in Part XXI, Division 2.

3.1.2 Table showing sample of actual comments received

Comments on proposed new section 72A	
Stakeholder comments	IPA Response (as needed)
1. [This commentator] suggests that IPA clarifies whether the proposed extension of the Registrar's "current powers" is intended to specifically cover powers of inspection and inquiry in relation to beneficial ownership information, as defined under the Companies Act, rather than enforcement powers for breaches of relevant obligations, by way of example, as the title of the paragraph '2.6 Enforcement' suggests.	1. IPA concurs that additional clarification would be beneficial.

3.3.3 IPA Resolution

The proposed language will be retained in the final Bill with a small addition in (2) and a new (3) as follows [Note the section number is now 72B due to insertion of a new 72A as a result of consultations]:

72B. Beneficial Ownership Register

(1) The Registrar shall ensure that a beneficial ownership register is established and maintained as part of the register of companies established under Section 395.

(2) The Registrar may exercise all powers set forth in Part XXI, Division 1, in establishing, managing and administering the beneficial ownership register

(3) The Registrar may exercise all powers set forth in Part XXI, Division 2 to verify beneficial ownership information for companies including, but not limited to, the power to –

(a) Conduct inspections under Section 400;

(b) Require explanations under Section 401;

(c) Require statements regarding documents in Section 402;

(d) Exam persons under Section 403;

(e) Record examinations under Section 406;

(f) Disclose documents under Section 407; and

(g) Continue investigations after an appeal under Section 409.

(4) Section 410 applies to the beneficial ownership register and to any act or omission done in good faith in relation to it.

4.0 Nominee Directors

Proposed Section 107A defines "nominee directors" and would require their status to be disclosed on the register.

(1) In this Act, "nominee director", in relation to a company, includes a person that is appointed by another to occupy the position of director of the company.

(2) A nominee director shall disclose their nominee status to the company.

(3) The company shall disclose a director's status as a nominee to the Registrar together with the full name, address and postal address of the person that nominated the director.

(4) A nominee director is considered to be a director for purposes of Part VIII of this Act and is thereby subject to all the rights, duties and potential liabilities and defenses to liability of a director under the Act.

(5) If a company fails to comply with Subsections (3) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

(6) If a nominee director fails to comply with Subsection (2) that nominee director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

4.1.1 Summary of comments

Nearly all commentators[9] agreed that nominee directors should be addressed in the amendments. The main issue discussed was whether nominee status should be disclosed on the public register and, if so, whether the nominator's information should also be available. The following is a sampling of the comments received on this question.

"Nominee directors should be disclosed. However-

- Disclosure of nominee status should be made privately to the Registrar, not publicly.
- Guidance should be developed to clarify what constitutes a nominee relationship.
- Nominee directors should be held to the same duties and liabilities as regular directors." From a government agency.

"[A] nominee should be required to declare both their status and identity. For the purposes of best practice nominee directors have to declare their status to enhance transparency and prevent misuse of legal items." From a government agency.

"A director's nominee status should be disclosed to the Registrar and to the company itself. While the nominee director should be listed as a director for the public to know, the fact that he is a nominee should only be disclosed to the company and to the Registrar. Alternatively, the status of a nominee director can be disclosed on the IPA registry for transparency purposes, however, the identity of the nominator does not have to be included and kept confidential." From a financial institution.

"We fully support the proposal to require mandatory disclosure of nominee directors and the recording of their details, including the nominator's identity and nature of the relationship. This measure aligns with FATF standards and promotes accountability." From a collective of business and trade groups.

"Regarding the form of disclosure, we recommend:

- That a director's status as a nominee be disclosed on the company's public register;
- That the nominator's details be maintained in the BO register and made accessible only to competent authorities and those meeting [an access criteria to be set in regulations];
- That the law explicitly requires disclosure of nominee arrangements, including a brief description of the relations between the nominee and the nominator." From an insurance business.

"[This commentator] has no problem with the proposed insertion." From a quasi-government agency.

"Support public disclosure of nominee directors' status (but not necessarily their nominators' identities) in the register to enhance corporate transparency." From a government agency.

"We strongly recommend that nominee director status, and the identity of the nominator, be publicly disclosed in the company register. Transparency in this area is key to deterring concealed control structures that facilitate ML/TF risks. Limited exceptions (e.g. threats to personal safety) could be allowed but should require Registrar approval on a case-by-case basis." From a finance business.

"[This commentor] fully supports disclosure, to include a clear description of the nature and extent of the relationship between the nominee and nominator. The information should be maintained in the beneficial ownership register and accessible by competent authorities. Consideration should be given to making nominee status publicly available." From an international body.

[9] One commentator questioned the policy reasons behind including language around nominee directors. The short answer is that this is required by FATF.

"[This commentator] recommends that a director's nominee status, and whom they are a nominee for, should be disclosed on the register, made publicly available and not kept confidential. Keeping nominee directors' status will enable corruption through shell company structures, evading detection by the public and law enforcement." From an international body.

4.1.2 Table showing sample of other technical comments received

Comments on proposed new section 107A	
Stakeholder comments	IPA Response (as needed)
1. [W]e recommend that the definition should be exclusive (i.e. ""nominee director" *means* […]" instead of "nominee director" *includes* […]" as otherwise the meaning is unclear.	1. IPA made this change.
2. Consider changing the definition along these lines: "a nominee director is a person that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the person who nominated him."	2. IPA has included this language.
3. We suggest that instead of having a standalone 107A(2) that Section 118 be amended to accommodate nominee directors.	3. IPA agrees there is merit to this suggestion. However, IPA believes that keeping the AML-related items in close proximity may assist future readers in comprehending all of their obligations.

4.3.3 IPA Resolution

IPA will continue to mandate reporting of nominee director status to the IPA. Regarding disclosure, the comments did not reveal a true consensus on the scope of disclosure. IPA takes note of FATF Guidance[10] which states:

> i. Nominee shareholders and directors must disclose that they are acting as a nominee (i.e., their nominee status) and the identity of the nominator upon whose instructions they are acting to the company.
>
> ii. The aforementioned information should be reported by the company or by the nominee to the relevant register or alternative mechanism as designated by the country (e.g., the shareholder register of the company, the company register or if a beneficial ownership register exists, to this register), regardless of whether the nominee arrangements are formal or informal.
>
> iii. The information should be obtained, held or recorded by the beneficial ownership registry or alternative mechanism, as applicable in the country.

[10] Paragraph 136(a), FATF Guidance titled "Beneficial Ownership of Legal Persons" published in March 2023.

iv. The country should include the nominee status of nominee directors and nominee shareholders in information that is public, e.g., by adding a label or an asterisk to the names of directors and shareholders who are nominee directors and shareholders, on the relevant registry.

This seems an appropriate compromise: nominee directors will be flagged in the public register, but details behind the relationship will only be available to those persons that have access to the beneficial ownership register. The IPA companies register is fully capable of implementing this requirement in as a flag can be added indicating that a director is a nominee. Please see new text below that mandates nominee status be shown on the "regular" company register.

IPA also acknowledges that some of the suggested technical changes to the language would be beneficial. IPA proposes that new 107A would read as follows:

107A Nominee Directors

(1) In this Act, "nominee director", in relation to a company, means a person that is appointed by another to occupy the position of director of the company and who by 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.

(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 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 of the nominator;

(c) a description of the nature and extent of the relationship under which the nominee director was appointed;

(d) the date upon which the nomination occurred; and

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

(4) A nominee director is considered to be a director for purposes of Part VIII of this Act and is thereby subject to all the rights, duties and potential liabilities and defenses to liability of a director under the Act.

(5) The status of a director as a nominee director shall be disclosed on the register maintained under Section 395, together with such information as may be required in regulations.

(6) A nominee director shall disclose any change in the information required in subsection (3) to the company within twenty days of the change.

(7) A company shall disclose any change in information required in subsection (3) to the Registrar within twenty days of the nominee director disclosure under subsection (6).

(8) If a company fails to comply with Subsections (3) or (7) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

(9) If a nominee director fails to comply with Subsections (2) or (6), that nominee director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

IPA also believes that a transition period will be necessary under which all existing nominee arrangements must be disclosed. This would be done through new 107B:

107B. Nominee Director Transition

(1) Within thirty days from the commencement of this Section every nominee director shall disclose their nominee status together with the information set out in section 107A(3).

(2) Within sixty days from the commencement of this Section every registered company that has had a nominee director disclose their status under (1) shall deliver to the Registrar a nominee director declaration on the prescribed form identifying all nominee directors together with the information required in Section 107A(3).

(3) If a nominee director fails to comply with Subsection (1) that nominee director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

(4) If a company fails to comply with Subsection (3) –

(a) the company is guilty of an offence and is liable on conviction to the penalty set out in Section 413(3); and

(b) every Director is guilty of an offence and is liable on conviction to the penalty set out in Section 414(3).

5.0 Bearer shares

Bearer shares are essentially unregistered securities. The owner of a bearer share is not named in any corporate records. Instead, whoever holds ("bears") the share holds the rights attached to the share. As bearer shares give the ownership to the person who possesses the bearer share certificate, they allow the true owners to remain completely anonymous. For this reason, the FATF standards dictate that bearer shares should not be allowed.

Papua New Guinea has never had any provision in law that recognizes bearer shares and there is no anecdotal evidence to suggest that they are in use. Still, in order to maximize compliance with FATF standards, IPA has proposed specific language to ban them.

IPA requested specific feedback from stakeholders on whether there should be any transition period just in case a PNG company had issued bearer shares.

5.1 Proposed new 38(3)

Proposed new subsection 38(3) would specifically prohibit the issuance of bearer shares and bearer share warrants.

> *(3) A company shall not issue bearer shares or bearer share warrants, and any bearer share or bearer share warrant issued in contravention of this Section is of no legal effect.*

5.1.1 Summary of comments

Nearly all commentators agreed that banning bearer shares and share warrants was proper. One commentator noted that this step was probably not necessary under existing law. IPA acknowledges this, but also notes that the FATF requirements strongly prefer a specifically stated ban on bearer shares, and as there is no harm in making this declaration, IPA finds that the language should be retained.

Most commentators stated that as these instruments were never authorized in the past there was no need for a transition period. However, a few commentators suggested that a short transition period was appropriate just out of an abundance of caution lest a local company be hurt by the new law. One such comment reads:

> "We suggest best practice would be to provide for a transit period. IPA should consider whether it would be more encouraging to institute a transition 'grace period' free from penalties, if companies were operating illegally (knowingly or unknowingly). Additionally, if PNG decides not to have a transition period, it should add a justification for why it considers that bearer shares have never been used given the 2017 National Risk Assessment did not look into this and so there may be an absence of evidence (therefore, it is not in line with the risk-based approach)." From a government agency.

5.1.2 Table showing sample of actual comments received

Comments on proposed new section 38(3)	
Stakeholder comments	IPA Response (as needed)
1. [This commentator] fully supports the express prohibition on bearer shares. As bearer shares are not recognized by the Companies Act there is no purpose in including a transition period unless IPA is aware of the existence of companies that have bearer shares.	1. IPA concurs that a specific ban is appropriate for compliance purposes.
2. Fully supports ban. Agrees no transition needed. [Several other comments like this one were received.]	2. Noted.
3. While [this commentator, a financial institution] acknowledges that bearer shares are not currently authorized under the Companies Act, IPA may wish to consider a short transition period such as 12 months as a precautionary measure to allow any legacy issues to be identified and addressed before the ban takes effect.	3. Noted, and IPA concurs. 4. Noted.

4. We agree with the proposed amendment under Section 30(3) to expressly prohibit bearer shares. This is a prudent and necessary reform to align PNG with FATF best practices.	

5.3.3 IPA Resolution

IPA agrees that there is not a need for a transition period. However, IPA acknowledges the comments in support of a transition and notes that a transition period will do no harm to PNG's upcoming APG evaluation. IPA also strives to obtain some level of consensus wherever possible. For this reason, IPA will include a short transition period. The final provisions [Section 38(3)-(5)] will read as follows:

> *(3) A company shall not issue bearer shares or bearer share warrants, and any bearer share or bearer share warrant issued in contravention of this Section is of no legal effect.*
>
> *(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 or registered share warrants and to register them in accordance with Section 67.*
>
> *(5) Any bearer share or bearer share warrant not converted and registered within the ninety-day period set out in (4) shall cease to have legal effect.*

6.0 Overseas companies

IPA noted in the Consultation Memo the reality that FATF standards require overseas companies to report beneficial ownership information.[11] IPA thus proposed a cross-reference in the part of the Act that governs overseas companies to new Section 72. This would be a proposed new Section 80A, which read as follows:

> 80A. BENEFICIAL OWNERSHIP REPORTING BY OVERSEAS COMPANY.
>
> An overseas company is subject to Section 72.

6.1 Summary of comments

Nearly all commentators agreed with the requirement that overseas companies must report beneficial ownership information.

A few commentators suggested that PNG should exempt those companies from jurisdictions that have beneficial ownership regimes if the overseas company can show compliance with that regime. This would certainly cut down on the administrative burden of submitting the same information to multiple jurisdictions and also eliminate the possibility of information being out of synch. IPA thinks this is exactly how the international framework should exist. Unfortunately, FATF offers no blanket "mutual recognition" regime under which a company incorporated in one

[11] See FATF Guidance titled "Beneficial Ownership of Legal Persons" published in March 2023. Paragraph 16 sets out the basic language on foreign entities. In PNG there are sufficient risks that foreign entities will be subject to some form of beneficial ownership reporting.

compliant jurisdiction is automatically exempt from filing beneficial-ownership (BO) data in another. It is true that FATF Guidance encourages a "multi-pronged approach" which arguably could including relying on foreign registries. The problem is that the "other" jurisdiction must be FATF Rec 24 compliant, and there are not many countries that have achieved this status. [12]

The following is a representative sampling of comments received:

> [This commentator] supports beneficial ownership reporting under the proposed Section 80A. The AML/CTF Act requires financial institutions…to identify beneficial owners as part of due diligence on customers. Our customers include overseas companies….
>
> "[This commentator] agrees that [mandating reporting from overseas companies] could be seen as overreach. However, we can also acknowledge that, unless competent authorities in Papua New Guinea are parties to information sharing agreements with similar competent authorities in overseas jurisdictions, addressing issues such as tax evasion could be compromised."
>
> "We agree with the proposed amendment to include overseas companies under Section 80A. However, we also acknowledge that enforcement will be challenging. As raised by the PNG Chamber, we encourage the Government to prioritize effective monitoring mechanisms and inter-agency coordination to ensure compliance and avoid regulatory gaps."
>
> "BO disclosure helps prevent the misuse of corporate structures for illicit activities. From the Public trust perspective, Transparency about who ultimately controls a company builds confidence among investors, regulators, and the public. Applying the same rules to both local and foreign entities ensures fairness and reduces regulatory arbitrage."
>
> "Yes, all foreign entities doing business in PNG should be required to disclose their BOs, especially given the risk of misuse of legal persons. This will ensure that PNG remains compliant with international standards and can prevent illicit financial activities."

Several commentators offered suggested technical changes to the actual text of proposed 80A, including suggesting it be placed in a different location in the Act.

6.2 Table showing sample of actual comments received

Comments on proposed new section	
Stakeholder comments	IPA Response (as needed)
1. The current wording suggests that overseas companies are only subject to section 72 and not proposed sections 13, 38 and 107A.	1. Overseas companies are by definition incorporated in other jurisdictions. The law of the place of incorporation is the primary legislation that governs how these entities are formed and operated. Thus, some AML requirements are more suitable to be imposed on overseas companies than others as PNG cannot impose its own internal rules on how foreign entities are

[12] The Guidance also makes clear that where "alternative means" are being used law enforcement must have adequate access to accurate and up-to-date BO information rapidly and efficiently. This means the home jurisdiction for the foreign entity must collect beneficial ownership information, it must be readily available, and there must be a sharing agreement between PNG and that other jurisdiction. In fact, there are few beneficial ownership registries in the region (none amongst the smaller Pacific Island countries) so compliance that relies on foreign jurisdictions just isn't practical at this time.

	organized. For example, if the UK were to authorize bearer shares (it does not) then a UK company could have bearer shares and PNG law could not prohibit that. On the other hand, an overseas company can be fairly asked to name its nominee directors as those are not fundamental to the structure of the entity.
2. [This commentator] recommends placing these provisions in the Part governing overseas companies.	2. IPA concurs. The citation to in the Consultation Memo a new "80A" was a typo.
3. [This commentator] acknowledges the proposed inclusion of overseas companies within the scope of the beneficial ownership reporting requirements. However, we note that applying these obligations to entities incorporated outside of Papa New Guinea raises questions of extraterritorial reach and enforceability. IPA may wish to consider providing a definition of any nexus criteria that may trigger such obligations. This could include factors such as registration under the Companies Act, carrying on business in PNG, or maintaining a physical presence in PNG. Clear nexus requirements should assist enforceability of any legislation regarding this area.	3. IPA concurs. A change to the text will be update to make clear that a company that is "carrying on business" in the country under Section 382 is subject to the reporting requirements of Section 72.

6.3 IPA Resolution

First, changes should be made to Section 386 which sets out what must be contained on the Application for Registration of an overseas company. The changes would result in the application for registration as an overseas company to be more in line with what is required of a local company, including requiring the identification of shareholders. Currently due to a historical quirk of the law, overseas shareholders are not collected at the time of registration as an overseas company but instead as part of the foreign investor certification. This is not particularly good practice and should be changed.

The new language would repeal current 386(2) and replace it with the following:

(2) Without limiting Subsection (1), the application must –

(a) state the name and registration number of the overseas company and 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 the country, state–

(i) the full address of the place of business in the country of the overseas company or, where the overseas company has more than one place of business in the country, the full address of the principal place of business in the country of the overseas company; and

(ii) the postal address of the overseas company's place of business, or principal place of business, as the case may be; 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, residential address and postal address of one or more persons resident or incorporated in the country who are authorized to accept service in the country of documents on behalf of the overseas company; and

(i) state whether the overseas company is carrying on or intends to carry on business in the country and the nature of the business activity; and

(j) include any other prescribed details.

(b) Immediately after Section 386(2) insert a new subsection 386(2A) as follows:

(2A) An overseas listed company complies with Subsection (2)(c) by suppling the required information on its ten largest shareholders.

Second, there should be ongoing obligations imposed on overseas companies that mirror those for local companies. Therefore, a new Section 386A is proposed which would read as follows:

386A. REPORTING OBLIGATIONS BY OVERSEAS COMPANY.

(1) An overseas company carrying on business in Papua New Guinea within the meaning Section 380 is subject to –

(a) Section 72;
(b) Section 78A;
(c) Section 78B;
(d) Section 107A; and
(e) Section 107B.

(2) An overseas listed company is deemed to comply with Section 72(2)(b) of this Act if, and to the extent that, it has satisfied the notification and disclosure requirements under the law governing its listing arrangement in the jurisdiction in which it is listed.

New subsection (2) requires explanation. After consultations with SCPNG IPA has determined to create a small exception to the beneficial ownership reporting requirements for PNG listed companies. This same exception should be extended to overseas listed companies. Overseas companies will still be required to obtain and maintain beneficial ownership information, but it only must be reported upon specific request from IPA.

7.0 Nominee shareholders

The Consultation Memo did not present proposed language regarding nominee shareholders. A tightly crafted beneficial ownership regime will end up collecting information on nominee shareholders. However, FASU (and two other commentators) correctly noted that FATF standards require addressing nominee shareholders, and it is possible that the FATF reviewers would not acknowledge that the beneficial ownership provisions that are proposed for PNG are sufficiently robust to deal with nominee shareholders. For that reason, IPA now proposes to include text covering nominee shareholders, which closely follows the format for nominee directors.

78A. Nominee Shareholders

(1) In this Act, "nominee shareholder", means a person who is –

(a) entered in a company's share register as the holder of shares; and

(b) by contract, arrangement or other understanding, routinely exercises the functions of a shareholder on behalf of and subject to the direct or indirect instructions of the person who nominated them.

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

(3) The company shall disclose a shareholder's status as a nominee to the Registrar 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 shareholder was appointed;
(d) the date upon which the nomination occurred; and
(e) such other information as may be required on the prescribed form.

(4) A nominee shareholder shall disclose any change in the information required in subsection (3) to the company within twenty days of the change.

(5) A company shall disclose any change in information required in subsection (3) to the Registrar in the prescribed form within twenty days of becoming aware of the change.

(6) A *nominee shareholder is considered to be a shareholder for the purposes of this Act and is thereby subject to all the rights, duties and potential liabilities and defenses to liability of a shareholder under the Act.*

(7) The Registrar may only disclose nominee shareholder information in accordance with Section (8).

(8) Notwithstanding Section 398, nominee shareholder information is confidential and may only be disclosed as follows -

(a) to competent authorities for the purposes of preventing and detecting money laundering, terrorist financing, proliferation of weapons of mass destruction, tax avoidance or other unlawful activities; and
(b) to those classes of persons prescribed in regulations as being eligible to receive beneficial ownership information, in accordance with the terms and conditions established by regulations for access to and use of the beneficial ownership information; and
(c) as directed by court order.

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

(a) the company commits an offence and is liable on conviction to the penalty set out in Section 413(3); and
(b) every Director commits an offence and is liable on conviction to the penalty set out in Section 414(3).

(9) A nominee shareholder who fails to comply with Subsections (2) or (4) commits an offence and is liable on conviction to the penalty set out in Section 414(3).

78B. Nominee Shareholder Transition

(1) Within thirty days after the commencement of this Section every nominee shareholder shall disclose their nominee status to the company together with the information set out in Section 78A(3).

(2) Within sixty days from the commencement of this Section every company that has a nominee shareholder shall deliver to the Registrar, in the prescribed form, a nominee shareholder declaration identifying all nominee shareholder together with the information required in Section 78A(3).

(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 414(3).

(4) If a company fails to comply with Subsection (1) –

(a) the company commits an offence and is liable on conviction to the penalty set out in Section 413(3); and
(b) every Director commits an offence and is liable on conviction to the penalty set out in Section 414(3)."

in Section 414(3).

8.0 Proposed new 13(2)(a)

Section 13 of the Companies Act sets out what must be provided on the initial Application for Registration. This section must be amended to account for the new regime governing nominee directors and shareholders. Indeed, Section 13 currently does not even specifically mention the need to name shareholders at all: that is left to collection via "the prescribed form." The requirement to name shareholders should be specifically made here, along with updating the other information that must be provided so as to align with modern register practices.

The changes to 13(2) are as follows:

13. APPLICATION FOR REGISTRATION.

(1) [no change here]

(2) Without limiting Subsection (1), an application under Subsection (1) shall state–

(a) the full name, residential address, postal address, nationality and other prescribed information of every director of the company and any nominee directors; and

(b) 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 to be issued to every shareholder; and

(c) the full name, address, nationality and other prescribed information of every nominee shareholder of the company;

(d) the full name, address, nationality and other prescribed information of all persons (if any) named as secretaries of the proposed company; and

(f) the full name, address, nationality and other prescribed information of any beneficial owners of the company;

(g) the postal address of the proposed company; and

(h) the registered office of the proposed company; and

(i) the address for service of the proposed company.

(f) the address for service of the proposed company.

Most of this information is already being captured in the online register so this does not represent a significant process change in practical terms.

9.0 Share Register: voting rights

All PNG companies are obligated to maintain an internal share register, which is the legally-operative register that set out shareholder information. Section 67 is the primary section that imposes this obligation. A few commentators noted that a small change to the language that requires the share register to also set out voting rights of the shareholders, which is especially relevant if a company has more than one class of shares. The proposed changes to Section 67(1) are shown below, which amount to inserting new paragraphs (a) and (b) in subsection (1).

In addition, a new paragraph (e) has been added to address "share warrants." The existing Act is silent on this and they should be addressed so as to help comply with AML standards.

67. COMPANY TO MAINTAIN SHARE REGISTER.

(1) A company shall maintain a share register that records the shares issued by the company and states–

(a) the number of shares authorized and issued; and

(b) the classes of shares, including the nature of associated voting rights; and

(c) whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(d) where any document that contains the restrictions or limitations may be inspected; and

(e) the particulars of any share warrants issued by the company, including, for each warrant –

(i) a unique serial number and the date of issue;

(ii) the name and address of the holder of the warrant;

(iii) the class and number of shares to which the warrant relates and any conditions attaching to the warrant; and

(iv) particulars of each transfer, replacement, cancellation or expiry of the warrant.

10.0 Company records

A few commentators suggested updating current Section 164, Company Records, to include a reference to the new beneficial ownership information that a company is to collect. IPA concurs but would also extend that to nominee shareholder and nominee director information. Additions to Section 164 are shown below:

164. COMPANY RECORDS.

(1) *Subject to Subsection (3) and to Sections 68 and 189, a company shall keep the following documents at its registered office:–*

(a) the constitution of the company;

(b) minutes of all meetings and resolutions of shareholders within the last seven years;

(c) an interests register;

(d) minutes of all meetings and resolutions of directors and directors' committees within the last seven years;

(e) certificates given by directors under this Act within the last seven years;

(f) the full names, addresses, and postal addresses of the current directors and secretary;

(g) copies of all written communications to all shareholders or all holders of the same class of shares during the last seven years, including annual reports made under Section 209;

(h) copies of all financial statements and group financial statements required to be completed by this Act for the last seven completed accounting periods of the company;

(i) the share register; ~~and~~

(j) The accounting records required by Section 188 for the current accounting period and for the last 7 completed accounting periods of the company; and

(k) the beneficial ownership information as required by Section 72 for the last seven years;

(l) the nominee shareholder information as required by Section 78A for the last seven years; and

(m) the nominee director information as required by Section 107A.

(2) The ~~references in~~ records listed in Subsection (1)(b), (d), (e), ~~and~~ (g), (k), (l) and (m) must be kept for a minimum of seven years from the date of creation, and the references in Paragraph (h) of that subsection to seven completed accounting periods include such lesser periods as the unless otherwise approved by the Registrar ~~may approve~~ by notice in writing to the company.

(3) The records referred to in Subsection (1)(a) to ~~(h)~~ (m) (inclusive) may be kept at such other place as the board thinks proper, notice of which is submitted to the Registrar in accordance with Subsection (4).

11.0 Definitions to include in the Interpretation section

A few commentators noted that the Interpretation section of the Companies Act, Section 2, would benefit from a few additional definitions, such as one for "bearer shares." IPA always planned to add any definitions that were appropriate once the substance of the amendment was finalized. Now that IPA has reviewed comments to the proposed text, IPA will include the following definitions in Section 2:

"Bearer share" 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 register of members.

"Beneficial owner" has the meaning set out in Section 72(9)(a);

"Beneficial owner information" has the meaning set out in Section 72(9)(c);

"Competent authorities" has the meaning set out in Section 72(9)(d);

"Listed company" means a company that is subject to a listing agreement with a stock exchange;

"Nominee Director" has the meaning set out in Section 107A

"Nominee shareholder" has the meaning set out in Section 78A

"share warrant" means a negotiable instrument, in such form as the company may determine and which has been recorded under Section 67, under which the holder is entitled to the shares specified therein under the terms and conditions in the instrument.

Note that with regard to "share warrants," Section 67 would now require them to be recorded in the company's share register.

11.0 Other Recommendations

Some commentators offered suggestions to enhance PNG's standing on AML compliance. IPA found the vast majority of these comments to be worthy, but not necessarily relevant to the proposed amendments to the Companies Act under consideration. The following are a few points that merit memorializing here so that they are remembered for future implementation efforts or additional reform.

11.1 Verification of information

Several commentators noted the challenge of verifying beneficial ownership information. This problem is not unique to PNG: often beneficial owners wish to remain in the shadows and therefore fail to disclose their status.[13] This situation is not unlike other areas of the law where persons are mandated to report some information to a government. Consider tax regime, where compliance is predicated upon filers truthfully declaring their revenues. How are these numbers to be verified? The primary enforcement tool is to severely penalize illegal behaviour when it is uncovered.

The beneficial ownership register will require filers to certify the truthfulness of all filings. This is current practice in the IPA-administered company register. IPA will also undertake, to the extent that resources are made available, compliance checks on companies. Most of these checks will target companies operating in high-risk sectors, but there will also need to be an element of randomness to the inspections to ensure overall compliance.

One commentator would support clear guidance from IPA on the process for correcting inaccurate or outdated beneficial ownership information: "Respectfully, we suggest that entities could be required to update the register within a defined period, such as 30 days, after becoming aware of any inaccuracies. This may assist to promote the integrity and reliability of the beneficial

[13] The same may be true for nominee director arrangements.

ownership register and ensure that the information remains current." IPA notes that proposed 72(5) requires updating beneficial ownership information when there is any change. This comes close to what this commentator proposes, but is not quite the same thing. IPA also notes that this issue is larger than merely dealing with AML-related information: all companies should file updates to *any* information in the register upon becoming aware that it is inaccurate.

Section 420 of the existing Act deals with "false statements." It provides

> ***420. FALSE STATEMENTS.***
>
> *(1) Every person who, with respect to a document required by or for the purposes of this Act–*
>
> *(a) makes, or authorizes the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or*
>
> *(b) omits, or authorizes the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular,*
>
> *commits an offence, and is liable on conviction to the penalty set out in Section 413(4).*
>
> *(2) Every director or employee of a company who makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to–*
>
> *(a) a director, employee, auditor, shareholder, or debenture holder of the company; or*
>
> *(b) a liquidator, liquidation committee, or receiver or manager of property of the company; or*
>
> *(c) where the company is a subsidiary, a director, employee, or auditor of its holding company; or*
>
> *(d) a stock exchange or an officer of a stock exchange; or*
>
> *(e) the Registrar,*
>
> *knowing it to be false or misleading, commits an offence, and is liable on conviction to the penalty set out in Section 413(4).*
>
> *(3) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorized the making of the statement.*

IPA proposes minor adjustments to this language to address the concern raised by this comment as follows:

> ***420. FALSE STATEMENTS.***
>
> *(1) Every person who, with respect to a document required by or for the purposes of this Act–*
>
> *(a) makes, or authorizes the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or*

(b) omits, or authorizes the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular,

commits an offence, and is liable on conviction to the penalty set out in Section 413(4).

(2) Every director, agent or employee of a company who makes or furnishes, or authorizes or permits the making or furnishing of, a document, statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to–

(a) a director, employee, auditor, shareholder, or debenture holder of the company; or

(b) a liquidator, liquidation committee, or receiver or manager of property of the company; or

(c) where the company is a subsidiary, a director, employee, or auditor of its holding company; or

(d) a stock exchange or an officer of a stock exchange; or

(e) the Registrar,

knowing it to be false or misleading, commits an offence, and is liable on conviction to the penalty set out in Section 413(4).

(3) Every director, agent or employee of a company who delivered or furnished a document to the Registrar under this Act which the director, agent or employee believed on reasonable grounds that it was true when delivered or furnished, and who subsequently becomes aware that it is false or misleading in a material particular, shall, within twenty days after becoming so aware, lodge with the Registrar a correction or replacement document containing the correct particulars.

(4) A person who fails to comply with this subsection (3) commits an offence and is liable on conviction to the penalty set out in Section 413(4)

(~~3~~5) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorized the making of the statement.

11.2 Need for reforms to other laws and entities

A few commentators noted that while the changes to the *Companies Act* are welcomed, other reforms are also needed to fully comply with FATF Recommendation 24. These reforms would include: i) extending reporting requirements to other entities such as Incorporated Land Groups (ILGs), Trusts and Associations; ii) making sure international agreements are in place for the sharing of information; iii) putting in place arrangements amongst various PNG agencies to help in verification efforts. IPA responses are as follows:

- Other entities. The commentator is not wrong. However, IPA does not have jurisdiction over ILGs or Trusts so cannot push forward legislation on those entities (nor on Cooperatives). IPA championed a new *Associations Incorporation Act* that is soon to take full effect that will significantly increase PNG's AML compliance. The new law addresses nominee directors (called "shadow directors" under the *Associations Incorporations Act*) and requires financial reporting for larger associations.

- International sharing agreements. The commentators are correct, sharing information across jurisdictions is a critical component in compliance assessments. This issue is beyond IPA's control as it is a national question. Perhaps FASU would be the better entity to address these issues.

- Sharing information within PNG. The new Amendments would specifically allow access to IPA-maintained information to law enforcement and tax agencies. IPA welcomes any cooperation that can be arranged internally to facilitate sharing information.

11.3 Beneficial Ownership Committee

One commentator suggested establishment of a beneficial ownership advisory committee that would deliberate on various issues that pertain to AML compliance. IPA is already overseen by an independent Board and this body together with the Management of IPA (and of course the Minister overseeing IPA) are the proper entities to consider policy implications that affect the *Companies Act*. With regard to AML compliance, IPA and its Board rely on advice from other agencies such as FASU for detailed analysis. Further, IPA and its Board are always open to public input as this Consultation process clearly shows. For these reasons, plus the administrative burdens and costs involved in administering a new committee, IPA declines at this time to include such language in the Act.

11.4 Layered or multi-tiered beneficial ownership structures

A concept related to beneficial ownership raised by a few commentators involves what is called "layered" or "multi-tiered" ownership structures. This is a situation where one or more levels of corporate vehicles are used to hide the ultimate owner of shares. One commentator (a licenced financial institution) fully described the challenge that these structures present in identifying beneficial owners:

> "Layered ownership and control structures significantly complicate the identification of Beneficial Owners (BOs), especially in Compliance and Anti-Money Laundering (AML) contexts.
>
> 1.Increased Risk and Complexity -Layered or multi-tiered ownership structures—where entities are owned by other entities across jurisdictions—are often used to obscure the true beneficial owners.
>
> 2.Tracing Through Ownership Chains - To identify BOs in layered structures, compliance teams must trace ownership and control through each link in the chain. This involves:
>
> * Understanding the type of entity and its ownership/control structure.
> * Aggregating ownership stakes across multiple entities to determine if any individual meets the BO threshold (e.g., 25% or more).
> * Recognizing that control may not be tied to ownership alone—it can also be exerted through agreements, trusts, or nominee arrangements
>
> 3. Verification Challenges - Verifying the using independent and reliable sources.

4. Nominee and Trust Structures - Nominee shareholders and trust arrangement can be flagged as high risk due to potential secrecy."

This commentator then offered various solutions that they deploy in their own business that may be helpful to IPA:

Solutions to consider

1. Company structure mapping as part of the newly established company registration.

2. Providing guidance on how to identify the ultimate beneficiary ownership via different entity structure matrix.

3. Apply threshold and control Criteria.

* Specific thresholds (e.g., 25% ownership or significant influence) to identify BOs.
* Consider control through other means, such as:
    ^Voting rights
    ^Board appointments
    ^Veto powers
    ^Contractual arrangements

IPA concurs with all of these points. The recommendations do not necessarily require changes to the proposed legislation but rather speak to how the legislation should be implemented. IPA will endeavor to implement company structure mapping as part of the new beneficial ownership register that will be deployed and offer guidance (or possibly regulations) on how companies should report these structures.