

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Consultation Memorandum
Seeking Stakeholder Input to Proposed Amendments to the
Companies Act of 1997, as amended
Regarding Anti-Money Laundering Matters
Beneficial Ownership, Nominee Directors, Bearer Shares

May 7, 2025

1.0 Introduction

International anti-money laundering mandates grow ever more stringent each year. The Financial Action Task Force (FATF) is 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. The Mutual Evaluation Reports (MERs) make country-specific recommendations on how to increase compliance with ML/TF standards. These standards are set out in a series of Recommendations issued by FATF. The failure to comply with the FATF Recommendations can lead to dire consequences as a country can be “grey-listed” or even “black-listed” for the worst offenders that fail to follow the Recommendations. A country that is grey-listed may face economic sanctions from international bodies such as the IMF and World Bank. It may also find it difficult to maintain overseas banking arrangements, settle cross-border transactions, obtain credit and attract foreign investment.

APG published its most recent MER of PNG in September 2024. Unfortunately, PNG as a whole 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. Urgent action is required by PNG to avoid being placed on the grey list.

FATF Recommendations cover many financial situations, but one of the most significant has to do with what is called “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. Internationally, 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. In PNG, it is often a non-named local person that stands behind the official, legal shareholder.

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. These requirements are primarily set out in FATF Recommendation 24.

To fully comply with Recommendation 24 PNG needs to do two things: i) enact legislation specifically drafted to comply with beneficial ownership and other similar ML/TF standards, and ii) create an effective means to gather, verify and maintain accurate beneficial ownership information about companies.¹ Compliance with Recommendation 24 will significantly help PNG's overall rating and its efforts to avoid the grey list.

The first step towards compliance with the FATF standards is to address deficiencies in the *Companies Act*, and this Consultation Memorandum sets out the following proposed changes to that Act:

- 1) Require companies to collect beneficial ownership information and report it to a new beneficial ownership registry (BOR) to be maintained by the Registrar of Companies. This BOR would be deployed on the same website as the current IPA business entities registries;
- 2) Require disclosure of nominee directors into the BOR register. A nominee director is a person nominated by an undisclosed party to act on behalf of that party. The proposed legislation would require disclosure of nominee arrangements, including a short description of the relationship between the officially named director and their nominator; and
- 3) Specifically prohibit bearer shares and bearer share warrants. Bearer shares are unregistered securities that are owned by whoever holds the physical stock certificate. Bearer shares allow for complete anonymity of the owners of shares in a company, which is why they are prohibited under FATF standards.

The legislation described above is not long and only would require adding a few short sections to the current *Companies Act*.

¹ These requirements may eventually be applied to other legally recognized entities such as associations, incorporated land groups, and even common law trusts. FATF requires a country to conduct what is called a "legal persons assessment" to determine which, if any, local entities present a heightened ML/TF risk and then to take appropriate actions. IPA is undertaking this risk assessment and its findings will be published later this year.

This Consultation Memorandum is a joint effort between the Investment Promotion Authority and the Pacific Private Sector Development Initiative, an Asian Development Bank program undertaken in partnership with the governments of Australia and New Zealand. This Consultation Memorandum will be widely distributed to the public and Government departments and agencies. All stakeholders are invited to submit questions and voice their comments on the issues raised in this Memorandum. Please use the following contact information for your questions and comments:

ggLegislativeReview@ipa.gov.pg

There is an urgency to this legislation as PNG is to undergo a follow-up APG evaluation in 2025 at which time APG may determine to grey list our country. Therefore, IPA requests all comments be submitted **no later than June 30, 2025**.

2.0 Beneficial Ownership

2.1 The FATF Standards: Overview

FATF Recommendation 24 deals with beneficial ownership of legal persons. The purpose of the Recommendation “is to prevent the misuse of corporate vehicles for money laundering or terrorist financing,”² and identify persons involved in corporate entities – either in an ownership or management or control capacity. FATF Recommendation 24 states in pertinent part as follows:

Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities [...]

The term “beneficial owner” refers to the natural person(s) who “ultimately owns or controls” a legal person or arrangement.³ The concept of beneficial ownership recognizes that the individual who ultimately owns or controls an entity may not be listed in official records. For instance, if an individual is shown on the IPA company register as the sole shareholder of a company, that individual is the official, legal owner of the shares. If there are no other persons involved with the company then that person would also be the beneficial owner as they receive the benefit of rights attached to the shares, such as the right to company profits. It is possible that legal ownership and beneficial ownership may be split: a person may be named as the legal owner in the public register but in fact a non-named person may actually receive the benefit of the shares, such as the right to receive distributions and profits.

² FATF, Guidance on Beneficial Ownership for Legal Persons (March 2023), p. 6, para [9].

³ FATF, Guidance on Beneficial Ownership for Legal Persons (March 2023), p. 15, Box 2, covering definition of “beneficial owner.” Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. This definition has become widely accepted, and the OECD has endorsed the term through its multilateral framework in the area of tax transparency and exchange of information. See OECD (2016) Exchange of Information on Request, HANDBOOK FOR PEER REVIEWS 2016-2020, p. 19.

Beneficial ownership reporting laws assist countries beyond AML concerns as these laws help identify unnamed foreign nationals linked to a domestic company. Consider this example below:

Box 1: Example of Beneficial Ownership

Consider a local company with a sole shareholder that is listed on the registry being a citizen of PNG. In reality, that local person is acting on behalf of another person and all profits from the business flow to this other person, who could be a local PNG citizen or a foreign national. In this case, the legal ownership of the shares sits with the local citizen, but the beneficial ownership is held by the unnamed person.

This situation set out above is not unheard of in PNG, where “front” companies are sometimes used to avoid tax laws, and for foreign national to avoid local immigration and foreign investor certification requirements. Thus, beneficial ownership reporting requirements can not only further compliance with international AML standards, but also assist PNG in enforcing its own local laws.

2.2 Determining if someone is a beneficial owner

The FATF standards set out a two-pronged test to determining whether someone is a beneficial owner: i) do they have “significant ownership” interests; or ii) do they have ultimate effective control over the company.

Significant ownership.

First, a person qualifies as a beneficial owner if they own a significant ownership interest in the company. The FATF standards recognize that this can be defined by setting a threshold percentage ownership, such as 25% ownership of the company.⁴ This means that only persons that have beneficial ownership interests in 25% or more of a company’s shares would be required to report those interests. The FATF standards also recognize that the appropriate threshold percentage may be different for different countries, and in some jurisdictions, there might be no threshold amount: any person with *any* beneficial ownership interest whatsoever should be disclosed.

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

- In support of a threshold. If there is a threshold it means that small beneficial ownerships do not get caught up in the reporting regime.
- In opposition to a threshold. Oddly, the exact same argument for thresholds is also the main argument against them: having a threshold means that smaller beneficial ownerships do not get reported. This may not be a good thing. Consider the following example: the law says that only persons with 25% beneficial ownership interest must report. A company

⁴ FATF Recommendations, p. 93.

lists 5 official shareholders in the registry, each with 1/5th ownership, or 20%. Each one of these has a beneficial owner standing behind them. That company would never have to report anything if there is a threshold.

IPA specifically requests consultation feedback on whether there should be ownership threshold level that triggers disclosure requirements. If so, what should that level be?

Substantial management control.

The second test to determine if someone is a beneficial owner is whether they exert ultimate effective control over the company. Under the control test, the beneficial owner is a single individual with significant responsibility to control, manage, or direct a legal entity. This could include an executive officer or senior manager or any other individual who regularly performs similar functions. This a fact-based inquiry that will be different for each company.

2.4 Confidentiality of beneficial ownership Information

There is no absolute FATF mandate that beneficial ownership information be disclosed to the public.⁵ IPA recognizes that there may be legitimate reasons that a beneficial owner does not want to appear in the public registry. For example, a person that has been subject to domestic abuse may not want their personal information including their address to show in a public database. Such a victim might ask a 3rd party to be the officially named shareholder but in fact hold the beneficial ownership of the shares. Therefore, IPA has proposed that BO information would be confidential, and it could only be disclosed to appropriate law enforcement and tax authorities.

2.5 Information to be disclosed

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

- a) name of the beneficial owner;
- b) date of birth;
- c) nationality;
- d) address;
- e) some form of identification number (e.g., national ID, passport number), and
- f) date of acquisition of beneficial ownership.

The proposed legislation reform would follow these recommendations, and also ask for a short description of the nature of the relationship between a beneficial owner and a named shareholder.

⁵ FATF standards state a preference for public disclosure, but this is not required. The FATF standards are continually changing, so it is possible that this may be required in the future.

2.6 Enforcement

The APG evaluators look not only the legal framework for determining compliance with beneficial ownership standards but also gauge the “effectiveness” of that framework. In practice this means that the Registrar (and, ultimately, law enforcement) must be able to verify beneficial ownership information provided and also to investigate whether full disclosure has been made. The Registrar of Companies already has broad powers of inspection in the Companies Act. The proposed legislation simply extends these current powers to cover beneficial ownership information.

3.0 Nominee directors

The FATF standards now also require disclosure of *nominee directors*. These are persons who are named as the official directors of a company, but are actually acting on behalf of unnamed third parties. Nominee arrangements allow for the concealment of the identity of the person exercising control of the company. There can be legitimate reasons for the existence of nominee directors: for example, a lender may wish to have a presence on a company board to monitor their borrower’s activities. However, nominee arrangements must be disclosed under FATF standards.

The proposed legislation treats nominee directors much like regular directors. Their identity must be disclosed and updated whenever a change is made. The additional information that would be collected is: i) the person’s status as a nominee will be noted in the register; ii) the identity of the nominator will be collected; and iii) the nature of the nomination relationship must be provided (i.e., acting on behalf of a lender with a charge over the company).

It is an open question whether a director’s nominee status should be disclosed on the register or kept confidential. IPA specifically seeks stakeholder input on this question.

4.0 Bearer shares

FATF Recommendation 24 has evolved to place an increased scrutiny on “*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. The FATF standards now practically ban the use of bearer shares as there is no way to identify who the holder of bearer shares might be since the shares are freely transferable with no reporting.

The current *Companies Act* does not authorise the use of bearer shares and there is no evidence to suggest their use in PNG companies. However, to fully comply with FATF standards, IPA has proposed a very short amendment that will specifically ban bearer shares.

In jurisdictions where bearer shares were previously authorised the law should provide for a one-year transition where the holders of bearer shares have the chance to convert them into regular shares or else cash. There is no indication that bearer shares have ever been used in PNG and so IPA has not provided for a transition period in the proposed new language. Is a transition period necessary?

5.0 Overseas companies

The FATF Recommendations extend to overseas companies. Arguably this is overreach: a company's home jurisdiction should be the ultimate source of truth about its status and ownership structure. Under the FATF rules multinational corporations with offices in literally scores of countries must report the exact same information multiple times. IPA acknowledges that this can present a heavy administrative burden upon certain companies, but believes that PNG may be compelled to include coverage of overseas companies in the new law. To do so there could be a cross-reference in the part of the Act that governs overseas companies to new Section 72.

6.0 Proposed Legislation

The following sections set out proposed legislation that would be included in an amendment to the *Companies Act*. IPA seeks stakeholder input on all provisions.

6.1 Beneficial Ownership

Current Section 72 of the Companies Act would be repealed and replaced by new Section 72 and 72A:

72. Beneficial Ownership Information

- (1) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- (2) Notwithstanding Subsection (1), the board of a company must –
 - (a) obtain and maintain 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).
- (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.
- (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.
- (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.

(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.

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

(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.

(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.

(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.

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

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

(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).

(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).

72A. Beneficial Ownership Registry

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

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

6.2 Nominee directors

The Companies Act defines the role of "director" in Section 107. A new Section 107A could define "nominee director" and deal with disclosure obligations as follows:

107A. NOMINEE DIRECTORS.

(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).

IPA further proposes amending Section 13, Application for Registration, as follows:

13. APPLICATION FOR REGISTRATION.

(1) [no change here]

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

(a) the number of persons named as directors and nominee directors, if any, of the proposed company; and

6.3 Bearer shares

Section 38 defines the types of shares that a company may issue. A new subsection (3) could deal with bearer shares:

38. TYPES OF SHARES.

(1) Subject to the constitution of the company, different classes of shares may be issued in a company.

(2) Without limiting Subsection (1), shares in a company may–

(a) be redeemable within the meaning of Section 59; or

(b) confer preferential rights to distributions of capital or income; or

(c) confer special, limited, or conditional voting rights; or

(d) not confer voting rights.

(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.

6.4 Overseas companies

A new Section 380A would be added as follows:

80A. BENEFICIAL OWNERSHIP REPORTING BY OVERSEAS COMPANY.

An overseas company is subject to Section 72.