



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE COMPANIES BILL 2009

National Parliament Paper No. 2 of 2009

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1. TERMS OF REFERENCE

To examine and report to Parliament the Committee's observations and recommendations on:-

"The Companies Bill 2009"

2. FUNCTIONS OF THE COMMITTEE

In accordance with Section 62 of the Constitution, as read with Section 71 of the Standing Orders, the Bills and Legislation Committee's functions in addition to the provisions in Standing Orders 50 and 55, shall be to:-

- a. examine such matters as may be referred to it by Parliament or the Government;
- b. review all draft legislation prepared for introduction into Parliament;
- c. examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- d. monitor all motions adopted by Parliament which require legislative action;
- e. review current or proposed legislative measures to the extent it deems necessary;
- f. examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- g. make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

3. MEMBERSHIP

The Membership of the Bills & Legislation Committee comprises:

Hon. Severino Nuaiasi, MP (Chairman)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

4. PURPOSE OF THE BILL

The objects and reasons as stated in the Bill are as follows:

- “(a) to provide Solomon Islands with a new Act which reflects regional best practice and meets the needs of Solomon Islanders;
- (b) to introduce the significant global advances in company law which are not reflected in the current Act;
- (c) to support smaller companies which comprise the majority of companies operating in the economy;
- (d) to support a simpler approach which reflects regional best practice and has been tailored especially for the local environment;
- (e) to introduce single shareholder companies and community companies;
- (f) to provide a modern and appropriate codified statement of director’s duties as well as removing the compulsory requirement of a company secretary.”

5. BACKGROUND – WHY SOLOMON ISLANDS NEEDS A NEW COMPANIES ACT

The purpose of the proposed Companies Act is to provide the Solomon Islands with a Companies Act which reflects regional best practice and meets the needs of Solomon Islanders. The current Companies Act is based on the 1948 United Kingdom Act. This has been part of the legal system for almost 60 years with relatively little amendment. There have been significant global advances in company law and these are not reflected in the current legislation.

The existing Companies Act is drafted in a manner which primarily supports large companies. It is not designed to support smaller companies which comprise the majority of companies operating in the economy. The design of the new Companies Act supports a simpler approach which reflects regional best practice and has been tailored especially for the local environment. It includes a number of new innovations such as the introduction of single shareholder companies and community companies. It also provides a modern and

appropriate codified statement of director's duties as well as removing the compulsory requirement of a company secretary.

The Act has removed unnecessary discretion and removed much of the onerous and unnecessary reporting obligations which exist under the current Act. The Act will ultimately be supported by a new Registry which will provide greater certainty around transactions as well as greater efficiency.

The new Companies Act has been drafted following a robust consultation process. The project was supported throughout by a Steering Committee chaired by the Permanent Secretary of Commerce. The project commenced in mid 2006 and a wider range of interviews and meetings were conducted in Honiara and the provinces with the assistance from the Asian Development Bank. The data gathered throughout all consultations ultimately led to the development of a policy framework which led to the drafting of a Companies Bill.

In February 2008 an Exposure Draft containing a draft Bill was released for feedback and consultations were conducted following the release. A final Bill was drafted after all feedback had been considered and a further Bill was drafted and released in July 2008 for a further round of feedback and consultations. This was then taken into account when drafting the final Bill for approval by Cabinet and subsequent introduction to Parliament.

6. OBSERVATIONS ON THE COMPANIES BILL 2009

The Committee held its first public hearings on Friday 12 December 2008 and then again on Tuesday 10 March 2009 to receive evidence from the relevant government ministry and key stakeholders on the "**Companies Bill 2009**". The following witnesses appeared before the Committee:

- Permanent Secretary and Officials of the Ministry of Commerce, Industries and Employment,
- Companies Consultant, Asian Development Bank
- Business and Consumer Banking Manager, Westpac Bank
- Country Manager, Bank South Pacific
- General Secretary of the Solomon Islands Chamber of Commerce
- Technical Director, Small & Medium Enterprises Council of Solomon Islands

A schedule of witnesses appears at Appendix 1.

The following section highlights the issues noted by the Committee in relation to the Bill:

Consultation & Culture

At the outset, the Committee was pleased with the assistance from the Asian Development Bank and the level of consultation that had taken place in relation to the development of this Bill. The key stake holders and representatives of the business sector informed the Committee that they had been in consultation with the ministry of Commerce, Industries and Employment, prior to the Committee's invitation for them to appear before the Committee. The Committee was given sufficient time to review as the Bill was placed before Parliament late last year, this allowed the Committee to consult and hold hearings.

The Companies Bill 2009 is a step forward in terms of encouraging the informal business sector to play their role in the country's economy, therefore the Committee is of the view that the Bill needs to be sensitive to the intricacies of our culture especially our land tenure systems. The Committee is of the view the Bill must not only look after the interest of the already established companies or the already developed industries in the formal sector, but also support the bulk of Solomon Islanders who are the resource owners and who are eager to start a company. Overall, the objective must be to improve the percentage of the people that are involved in developing Solomon Islands and the Committee is pleased that the Bill is striving to achieve this.

The Committee was also pleased to hear that the private sector generally supported the concept of the Bill. This was evident in the advice provided by representatives of the Chamber of Commerce, Westpac Bank and Bank South Pacific.

The Committee proposes to review legislation during parliamentary recess and recommends that future bills be given adequate time for the Committee to review and consult.

Community Companies

A significant aspect of the Companies Bill 2009 is the community companies. The committee notes that in Part 12 of the Bill introduces a total new concept to companies. The creation of community companies is a positive step in encouraging the informal business sector to participate in the formal economy and in create the productivity and life of the economy. The committee also sees the concept as a tool of promoting the efforts of womens groups and youth in the country.

Despite this, the committee is of the view that there are certain aspects that may hinder the effectiveness of community companies. Firstly, the committee notes that in order to incorporate a community company there needs to be a “community interest” which must be outlined on application. This may restrict the number of Community Companies that register, especially when there exist communities which are made up of different tribes and language groups.

Another challenge which community companies may encounter is the issue of land ownership. As most of the land in the country is communally owned, it is vital that the Bill take into consideration the cultural aspects of doing business. The Committees sees the need for a formal framework essential and commends the Bill for setting such a framework in its schedule.

The Committee supports the principle objectives of the Bill and with the notion of allowing the informal business sector to become formal, it also notes that barriers to participation will continue to exist. Barriers such as access to credit and financial assistance as well as the need to meet tax requirements, these may deter small rural companies and women from effectively participating in the economy.

The Committee recommends that there be a record on the number of Community Companies and that this monitored.

Registry Issues

The Committee believes that the Bill can only be effective and achieve its objectives once there is a well established registry office. This is important because effective registration of companies and their interests under the Bill cannot take place under the current systems. A robust registry will also enable

small businesses that would not be able spending a lot of money traveling to Honiara to undertake registration.

Whilst the Committee appreciates the relevance and practicality of having the registry office set up before the Act comes into full operation, it also feels that Parliament should pass Bills which then stall due to delays in the administrative processes required to make the Act effective.

On that basis, the Committee recommends that the necessary process of setting up the registry office be rapidly completed. The Committee proposes to keep track of the commencement of the Act by way of the Committee review of the proclamation in the Government gazette.

Implementation

The Committee also notes that there are also challenges that come with the proposed new act. It is important for Parliament to improve and update important legislation such as this but information on the bill must be disseminated out to people, not only here in Honiara but also in the rural and remote area to give them the opportunity to participate. Therefore the implementation of the Bill needs to be extremely robust. The Committee does not want local businesses struggling on their own and trying to work out what they need to do. It is very vital that there be public awareness.

As a means of parliamentary oversight, the Committee proposes to keep track of the commencement of the Act and its implantation by way of the Committee review of the proclamation in the Government gazette and forthcoming subsidiary legislation which relate to the act.

The Committee recommends that the government educate the general populace on the aspects of the bill as part of the implementation process.

7. RECOMMENDATION

The Committee has reviewed the Bill and recommends that the government monitor matters raised in the report, in terms of assessing its implementation and effectiveness in achieving its important objectives and report to Parliament 12 months after the commencement of the Act.



Hon. Severino Nuaiasi
Chairman
Bills & Legislation Committee
13 March 2009

APPENDIX 1: LIST OF WITNESSES & STAKEHOLDERS

- Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and Employment
- Mr. Terry Reid, Consultant, Asian Development Bank
- Mr. Rupeni Nawaqakuta, Advisor to the Legal Draftsman
- Mr. Norman Hiropuhi, Ministry of Commerce
- Mr. Primo Afeau - Barrister/Solicitor
- Mr. Paul Amau, General Secretary, Solomon Islands Chamber of Commerce
- Mr. Mark Corcoran, Country Manager, Bank South Pacific
- Mr. Leliana Firisua, Technical Director, Small & Medium Enterprises Council of Solomon Islands (SMEC)
- Mr. Cameron Waterson, Manager, Business and Consumer Banking, Westpac



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings Meeting No. 26 of 2008

Friday 12 December 2008, Parliament House, 10:00am

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Isaach Inoke Tosika, MP
Hon. Augustine Taneko, MP
Hon. Siriako Usa, MP

Absent

Hon. Japhet Waipora, MP
Hon. Nelson Ne'e, MP

Witnesses

Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and
Employment
Terry Reid, Consultant, Asian Development Bank
Mr. Rupeni Nawaqakuta, Advisor to the Legal Draftsman
Mr. Norman Hiropuhi, Ministry of Commerce

Secretariat

Mr. Warren Cahill, UNDP Parliamentary Strengthening Project Manager
Ms. Alice Willy, Committee Secretariat - Legal
Mr. Jude Devesi, Committee Secretariat

2. Opening Remarks & Prayers

The Chair welcomed Members of the Committee and secretariat staff. Hon. Inoke opened with a word of prayer.

3. Confirmation of Minutes of the Previous Meeting and Matters Arising

The minutes of the committee meeting held on 26 November 2008 were adopted on a motion by Hon. Sogavare. There were no matters arising.

4. Deliberation on Issues and Questions for the Public Hearing

The Committee considered the Chair's draft questions that were prepared by the secretariat. The Committee noted that the purpose of this meeting was to put as much information in the public domain prior to the consideration of the bills by the House at the next sitting in March 2009.

5. Public Hearing on the Companies Bill 2008 and the Companies (Insolvency and Receivership) Bill 2008

The Chair welcomed the witnesses and made an opening statement.

The Permanent Secretary to the Ministry of Commerce Industries and Employment made a statement to the Committee. This statement was tabled before the Committee.

The Technical Advisor to the Ministry briefed the Committee on the contents of the bills. He tabled the Consultation Summary in relation to the two bills.

The Committee questioned the witnesses.

A copy of the letter from the Auditor General to the Permanent Secretary on the proposed amendments to clause 130 (3) of the Companies Bill 2008 was tabled for the information of the Committee by the Permanent Secretary.

Evidence Concluded.

6. Close

The Chair thanked the PS and Officials for their attendance. Hon. Usa closed the Committee's deliberations with a word of prayer.

Meeting closed at 12:30 pm



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings Meeting No. 1 of 2009

Tuesday 10 March 2009, Conference Room 2, Parliament House, 10:00am

1. Members Present

Hon. Hon. Severino Nuaiasi, MP
Hon. Isaach Inoke Tosika, MP
Hon. Nelson Ne'e, MP
Hon. Japhet Waipora, MP

Secretariat

Mr. David Luta Kusilifu, Committee Secretariat

Witnesses

Mr. Primo Afeau - Barrister/Solicitor
Mr. Paul Amau, General Secretary, Solomon Islands Chamber of Commerce
Mr. Mark Corcoran, Country Manager, Bank South Pacific
Mr. Leliana Firisua, Technical Director, Small & Medium Enterprises Council of Solomon Islands (SMEC)
Mr. Cameron Waterson, Manager, Business and Consumer Banking, Westpac

In Attendance

Mr. Jeffery Wickham, Permanent Secretary, Ministry of Commerce, Industries and Employment

2. Opening Remarks & Prayers

The Chair welcomed Members of the Committee and secretariat staff. Honourable Inoke opened with a word of prayer.

The Chair then gave his opening remarks.

3. Consideration of the Companies Bill 2009 and the Companies (Insolvency & Receivership) Bill 2009

The witnesses made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

Discussion ensued.

Evidence Concluded.

4. Close

The Chair thanked the witnesses for their attendance. Hon. Waipora closed the Committee's deliberations with a word of prayer.

Meeting closed at 11:15 am.