



PACIFIC TRADE AND INVEST – CORPORATE GOVERNANCE REVIEW

MARCH 2018



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1. INTRODUCTION

- 1 The Pacific Islands Forum Secretariat (*PIFS*) has engaged Chapman Tripp to review the corporate governance framework for Pacific Trade Invest (*PTI*) – the Secretariat’s trade and investment promotion agency.
- 2 This work builds on a 2013 review which recommended, among other things, the establishment of a new and better coordinated private sector-led governance model, involving a central advisory board.¹
- 3 We have been asked to:
 - a) recommend two to three governance models, taking into account the 2013 Review, private sector needs and sustainability, including cost and policy implications
 - b) provide guidance on the legal implications of the proposed governance frameworks and current host country institutional and legal arrangements, and
 - c) provide a pathway for implementation.
- 4 This report incorporates the response from the PIFS and PTI offices to our draft report circulated in December and reflects input from meetings with various private sector and regional stakeholders, and through a dedicated stakeholder survey conducted in December/January.
- 5 The full record of consultation by Chapman Tripp is available at Appendix 8.

2. EXECUTIVE SUMMARY

- 6 We have identified two governance options.
 - a) Option 1: develop a network level strategic framework, supported by the appointment of a PTI General Manager (*GM*) reporting directly to the Secretary-General (*SG*).
 - b) Option 2: building on Option 1, establish a central governance board with strong private sector representation, the members of which would be selected for their skills and experience. The board would be chaired by the SC, with the GM acting as Board Secretary.
- 7 Within Option 2 are sub-options to establish the Board with either an advisory or a decision-making mandate.

¹ Kisserup International, *Review of the Pacific Islands Trade & Invest, 2013 (2013 Review)*.



- 8 Our recommendations have been informed by some key observations arising from our consultations. These are that:
 - i) PTI and PFIS share a strong regional development mandate that is best served by maintaining a structural relationship between the two organisations
 - ii) there is an asymmetry between PFIS' accountability for PTI's performance and the level of oversight it is able to exercise, and a shared frustration among Trade Commissioners at the quality of service and resourcing provided by PFIS
 - iii) although a number of policies have been put in place to align PTI offices, there are significant factors which undermine alignment and gear decision-making to the office level
 - iv) despite these difficulties, PTI has developed a network brand and there is support from Trade Commissioners for greater inter-office coordination.
- 9 The governance options presented in this report are intended to address these factors and put both PFIS and PTI on to a stronger footing going forward.
- 10 All of the Trade Commissioners expressed support in principle for the appointment of a network GM but the design of the brief and the choice of appointee will be crucial to the establishment of close and constructive working relationships. In particular it is important that:
 - i) the GM role augments rather than diminishes the Trade Commissioner role, and
 - ii) the GM is hired at Director-level to ensure he/she has sufficient seniority to foot it as an equal with the Trade Commissioners and access to adequate administrative and professional support.
- 11 Option 1 would also likely require a change in the way the New Zealand Ministry of Foreign Affairs and Trade (*MFAT*) and the Australian Department of Foreign Affairs and Trade (*DFAT*) fund the PTI network, to provide support at a network- rather than office-level.
- 12 In our view, Option 2 must build on Option 1, which provides the necessary management structure to support a dedicated governance body. Conversely, Option 1 could be implemented on its own, with Option 2 to follow at a later point.
- 13 The design objective in developing Option 2 is to create a board which will enhance PTI's service delivery value and relevance to stakeholders and contribute to increased trade and economic activity, to the advancement of the Pacific region.
- 14 The key challenge with Option 2 is that the benefits depend heavily on the quality of board members. The selection should be based on the capability they can bring to the



strategic direction of the network, performance evaluation, knowledge and experience of the export and investment sectors, and their insight into end-user needs.

- 15 The board’s effectiveness will depend in large part on the quality of its engagement with the Trade Commissioners so a litmus test for board composition should be to create a board which Trade Commissioners would value time in front of.
- 16 If the board is selected solely on a representational basis, or other factors are allowed to deflect attention from the contribution board members can offer the network, then the benefits are likely to be limited.
- 17 We considered three other options – devolving PTI into a loose association, creating a new standalone organisation or transferring PTI’s functions to another regional body - but decided not to pursue these any further. They would all have removed any ongoing role for PFIS and in our view would not serve PTI or PIFS going forward.
- 18 **Table 1** below provides a snapshot of the options analysis.

Table 1: Options analysis - snapshot

Criteria	Option 1	Option 2a (advisory board)	Option 2b (formal board)
Clear systems for direction setting, performance measurement, supervision and accountability	Partially enhanced – dedicated senior responsible resource	Enhanced – advisory experts to support better governance	Enhanced – formal governance oversight and accountability with Board
Alignment with PIFS mandate	Improved	Improved	Improved
Risk management	Partially enhanced – dedicated senior responsible resource	Enhanced – relevant export and investment expertise to support better governance	Enhanced – formal governance oversight and accountability with Board
Service user participation	No formal role (but user outreach through GM role)	Service user perspective on Board	Service user perspective on Board
Network coordination	Improved	Improved	Improved
Sustainable funding	Additional donor commitment required; option of member contributions		
Cost effectiveness	Low cost	Moderate cost	Moderate cost
Administrative burden	Streamlined	Consolidated reporting to Board	Consolidated reporting to Board



Ease of implementation	Low effort	Moderate effort	Moderate effort
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Summary of recommendations

- 19 Building on the 2013 Review, the starting point for structural reform is to promote a more integrated network to enable a more coordinated approach which will better serve the aspirations of the Pacific region.
- 20 Our recommendation is to pursue Option 1 as a priority. In our view, Option 1 on its own has the ability to promote greater regional integration.
- 21 Option 1 also lays the groundwork for implementation of Option 2. We consider that further conversation is required between PIFS and the Trade Commissioners to progress Option 2 but can see the potential of a network Board to:
 - a) further strengthen PTI at the network level
 - b) better promote stakeholder and regional economic and investment interests by providing access, through Board members, to the business skills and experience relevant to the investment and exporting sectors and insight into the realities of PTI's end user base
 - c) provide a clear split between governance and management within PTI
 - d) provide support for the Secretary General by ensuring appropriate oversight of PTI, and
 - e) in the case of a decision making Board, support a distinct governance structure for PTI and operational separation from PIFS.
- 22 If there is an appetite to pursue Option 2, the platform created by Option 1 will need to work effectively. Accordingly, we recommend that Option 2 should be pursued only after implementation of Option 1.
- 23 Our view is that a decision-making rather than an advisory Board is the better model because it provides greater clarity of roles and accountabilities for Board members, PIFS and PTI. It would also provide support and a structure for greater operational separation of PIFS and PTI.
- 24 We also recommend that ongoing governance training is provided to the PTI Board, either through a director training programme, or peer-to-peer through association with other trade promotion agencies, for example, NZTE.
- 25 PIFS can establish a board (advisory or decision making) within its existing legal framework. In our view, this would be simpler and cleaner than using a statutory



framework from a particular jurisdiction (e.g. the Fiji Companies Act). Moreover a Board established within the existing legal framework would benefit from the legal risk immunities currently available to the FOC.

3. CONTEXT

- 26 PTI began in the late 1980s with the establishment of the South Pacific Trade Office in Auckland and now includes offices in Sydney (1996), Tokyo (1996), Beijing (2000), and a representative in Geneva. With the exception of PIC Tokyo, PTI offices are established as sub-agencies of the PIFS.²

Previous reviews

- 27 A 2012 assessment noted that PTI's service delivery function was an "odd fit" with the policy and political focus of the PIFS, and recommended a broad review of the PTI network.³
- 28 PIFS commissioned Kisserup International to undertake this work in 2013. The Kisserup report acknowledged the network's ability to help promote prosperity within the Pacific region but noted a need for more standardisation (of services, eligibility criteria, reporting, monitoring and evaluation) among offices, and for better engagement with stakeholders in Forum Island Countries (FICs).
- 29 Kisserup also recommended changes to the structure and governance of PTI, including the appointment of:
- a) a PTI Managing Director, to develop and strengthen partnerships with public and private sector organisations, and
 - b) a private sector advisory board.

Recent developments within the PTI network

- 30 In response to the 2013 Kisserup recommendations, PIFS directed PTI offices to establish local private sector advisory boards (in lieu of a central advisory board).⁴ To date, PTI Auckland and PIC Tokyo have established private-sector advisory boards.

² PIC Tokyo is established as a separate international organisation – constituting a joint venture between the Government of Japan and the PIFS.

³ Winder, Lambourne and Vaai, *Review of the Pacific Islands Forum Secretariat* (May 2012), at pp 36 – 38.

⁴ PIFS, "Implementation of the recommendations of the review of the Pacific Islands Trade & Invest (PTI) Network" Circular No 171/14, 24 December 2014, Attachment 1 (Action Plan).



- 31 The New Zealand and Australian governments have in recent years moved to direct service agreements with their respective PTI offices.
- 32 The Australian Government has also increased its commitment to PTI, boosting PTI Sydney's budget, providing funding for a new coordinator role, although the position has not yet been filled, and supporting PTI Geneva through a Grant Agreement with PIFS. PTI Beijing received budget increases in 2016 and 2017 from China funds administered by PIFS.
- 33 Other recent developments include upgrades to the PTI web portal, Australia's roll out of a Customer Relations Management (*CRM*) system, and PIFS' appointment of a single PTI auditor (although we understand that some offices also retain separate local audit requirements).
- 34 We also understand that preliminary discussions are underway about expanding the PTI network into new markets, potentially including Korea, India and the United States/Canada.

General observations

- 35 Our report focuses on PTI's governance arrangements, and is not an effectiveness review. We assume the findings of the 2013 Review in relation to PTI's performance. A consistent message throughout our consultations was that PTI functions reasonably effectively at office level to achieve the objectives prioritised by that office and that the services PTI provides to enhance economic development in the region are largely valued by FICs.
- 36 Considerable work, investment and vision have enabled PTI to develop a single network brand with the current Trade Commissioners continuing to demonstrate focus, energy and a high level of aspiration toward achieving the objectives of the organisation.
- 37 The network will be best served by a considered and deliberative approach to PTI's future governance.

Comparative context

- 38 In developing governance options for PTI, we have had regard to the structure and practice of other organisations with similar functions and objectives. In general, trade promotions agencies internationally function under a variety of institutional and governance arrangements. There is no standard institutional structure, but rather a range of models to inform thinking around PTI's future governance arrangements.
- 39 For example, the Caribbean Export Development Agency (CEDA) is a standalone international organisation with a board comprising one appointee from each of the 14



Member States and a mix of public and private sector experience.⁵ The Board is accountable to a Council of Trade Ministers and meets semi-annually. It appoints from within its membership an Executive Committee of eight Directors.

- 40 At the domestic level, New Zealand Trade and Enterprise (NZTE) stands out as the primary example of a private-sector led trade promotion agency. NZTE is a New Zealand Crown entity and has an independent Board comprising seven directors, all with private sector experience. In contrast, Austrade and the UK Department of International Trade, however, do not have independent boards, instead reporting to the relevant Minister.
- 41 Within the island state context there is similar variation. For example, Investment Fiji, the PNG Investment Promotion Authority and Mauritius Board of Investment are governed by Boards of Directors with a mix of government and private sector representatives. In Samoa, similar functions are undertaken by the Industry Development and Investment Promotion Division of the Ministry of Commerce, Industry and Labour, responsible to the relevant Minister.
- 42 The NZTE example, and a number of the island state trade and investment promotion authorities, indicate a trend or preference toward at least some private sector involvement in entity governance. Option 2 is consistent with this international experience.

4. DESIGN PARAMETERS

Governance

- 43 The definition of governance we have adopted as appropriate to this review is “*the systems and processes concerned with ensuring the overall **direction, effectiveness, supervision and accountability** of an organisation*”.⁶ In this context, governance arrangements should provide for:
 - a) *deliberate and effective direction-setting* to determine the organisation’s long-term vision and strategy
 - b) *performance measures* to monitor progress toward achieving the organisation’s objectives

⁵ Agreement Establishing the Caribbean Export Development Agency.

⁶ We have adopted the same definition as Professor Beattie adopted in his supporting paper to the Pacific Plan Review 2012: Anthony Beattie, *Governance of International Organisations*, at 2, citing Cornforth 2005. Broadly, this definition goes beyond the *Cadbury* approach, focusing on the makeup and role of the governors, and focuses on the systems and processes that support effective governance functions: (cf, *Report of the Committee on the Financial Aspects of Corporate Governance*, 1992, otherwise known as the *Cadbury Report*).



- c) *adequate supervision or oversight* of management and operations, including appropriate risk management (legal, reputation, financial), and
- d) *clear and appropriate accountabilities* for delivering on the organisation's vision and strategy.

Three key themes underlying this review

- 44 Three key governance-related themes have emerged from the consultation feedback and inform the options presented below.

Compatibility of the PIFS' and PTI's roles

- 45 The first is a common concern, expressed by participants in our consultations and previous reviewers, regarding the perceived incompatibility between the roles of PIFS and PTI.
- 46 From PIFS' perspective, the concern is that there is:
- a) a conceptual misfit between its policy role and the PTI service delivery model and, arising from this
 - b) a cultural misfit because, not atypically for policy units, PIFS has a strong analytical (and potentially cautious) focus, working within frameworks and supported by back office services that are better suited to public bureaucracy. The PTI culture by contrast is necessarily market focused, transaction orientated and capable of making and implementing decisions within commercial timeframes.
- 47 PIFS also feels exposed by the misalignment between its legal and reputational responsibility and its actual ability to oversee PTI, a risk which is exacerbated by incentives within PTI for decisions to be made on an individual office basis (discussed further below).
- 48 This exposure was highlighted by an internal audit of one office in 2015, which identified a lack of policies and procedures, employment contractual details and systematic performance reviews, and shortcomings in financial processes and reporting.⁷
- 49 For the Trade Commissioners, the issue is more a question of performance, specifically:

⁷ Report from the Audit and Risk Sub-Committee, 15 – 16 December 2015, p 9.



- a) a perceived ambiguity within PFIS around the ownership of PTI which manifests itself in limited available capacity⁸ at senior levels for PTI services, and long lag times in the execution of key decisions (including signing off of financial accounts), and
- b) regular and recurring issues about slow and burdensome PIFS back office processes.

A regional network or a loose association?

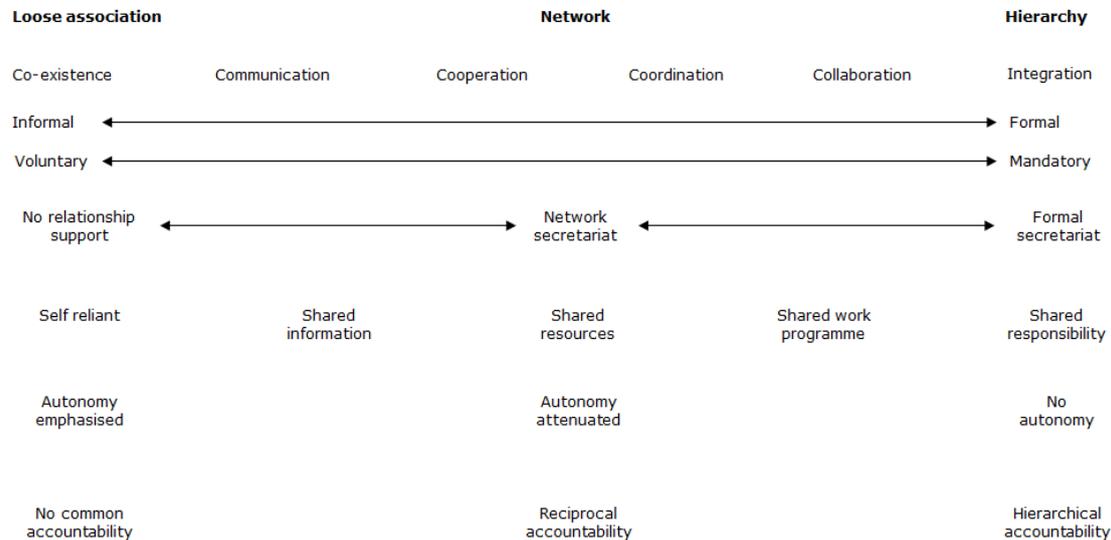
- 50 The second theme relates to whether PTI is truly a 'networked' organisation. The general consensus seems to be that PTI currently operates more as a loose association than as a regional network but that greater coordination is possible and desirable.
- 51 In our view, strengthening PTI as a network ought to be achievable without losing the ability for individual offices to respond to the needs and circumstances of their host market and the expectations of their donors.
- 52 The objective should be to strike a balance between those functions that will be served by greater coordination, and those functions that should continue to be pursued at an office level, taking into account specific market contexts.
- 53 Professor Anthony Beattie provides a useful conceptual framework for considering network governance in his paper for the Pacific Plan Review.⁹ Figure 2 below presents a continuum from a loose network structure (informal, voluntary, autonomous, co-existent) to full integration (formal, mandatory, hierarchical, collaborative).

⁸ Trade Commissioners emphasised that their concern was the availability of senior executives' time, and they had strong confidence in the capability of those people, when available, to add value to the functioning of the network.

⁹ See in particular Ramalingam's Network-Hierarchy Spectrum, and its application to whole-of-government or inter-agency integration models: see Beattie, above n 10.



Figure 2: Continuum of organisational integration



54 At present, PTI sits left of centre on the continuum. The options discussed in this report are designed to move PTI somewhere to right of centre.

55 This is consistent with the feedback from the stakeholder survey, which indicated strong support for closer collaboration between offices and general agreement that this would deliver greater benefits to both end-users and the region.

The role of end service users in PTI's governance

56 The third theme reflects a key finding in the 2013 Review, being the need to embed service user perspectives into the organisation. Steps have been taken at the local level to address this concern, in particular through the appointment of local advisory boards in Auckland and Tokyo. However, there remains no formal private sector engagement in PTI's governance at the network level.

57 A key consideration for this review is whether and how to access the governance benefits of:

- i) people with skills and experience within the investment and export sectors to ensure that PTI's interventions maximise value, are designed to meet gaps in the market, and business risk and opportunities are appropriately overseen;
- ii) ensuring end user perspectives are properly understood, inform planning and decision making, and that the system has tools to ensure that this understanding is always fresh and relevant.



Funding considerations

- 58 PTI is currently funded primarily by donors, with member contributions funding PIFS' resource allocation to PTI and a proportion of PIC Tokyo operations.
- 59 PTI's total budget is around FJD8 – 9 million per annum, which includes a PIFS' contribution of around FJD1.2 million, comprising primary funds, specific member contributions and donor contrast. By contrast, PIFS' annual primary budget is around FJD19 – 21 million.
- 60 We understand that PIFS is moving to a new Sustainable Funding Strategy ("SFS") the premise of which is that public or club goods benefitting all PIFS members should be funded by membership contributions and that private or merit goods (which benefit only one or some members) should be funded on a user-pays basis or by donor funds.¹⁰
- 61 The SFS states that service delivery (which in SFS includes PTI) ought to be funded as a private or merit good – that is, either by donor funds or on a user pays basis.
- 62 We query whether that assumption fits with respect to PTI because it is arguable that aspects of PTI's work constitute a public or club good – e.g. delivering services that cannot be delivered by the market and targeting assistance at SMEs.
- 63 From a practical perspective, however, it seems likely that, in the short to medium term, PTI will continue to rely predominantly on donor funding. The prospect of a user-pays model was raised in consultations, but in our view would be a slower burn.¹¹
- 64 Accordingly, any additional funds, or change to the funding model, will require negotiation and agreement with PTI donors. At present, donor funding tends to be tightly targeted:
- (1) MFAT and DFAT funding for PTI is largely committed to output purchasing at the office level, with only limited funding (if any) available at the network level, and
 - (2) Japanese Government funding is committed solely to PIC Tokyo (which the Japan Ministry of Foreign Affairs considers sits outside PIFS).

¹⁰ PIFS Sustainable Funding Strategy, at 13 – 14.

¹¹ The stakeholder survey asked for feedback on possible user pays models, with most participants supporting a formula based on ability to pay or a success fee, and some support for a standard upfront fee or a formula based on the cost of the services provided.



- 65 We understand that Chinese government funding is more flexible, but is also targeted at funding PTI Beijing operations.
- 66 We therefore proceed on the basis that, in an evaluation of governance options, we should consider:
- a) whether the option is likely to be supported by donors, and how donor funding might be structured,
 - b) the possibility for PTI to trial a user pays component in future, and
 - c) if there is a case for funding the additional costs of Options 1 or 2 through member contributions.



Assessment criteria

67 We have distilled the following criteria based on the design parameters above, to inform our assessment of PTI’s current governance arrangements and options for governance reform.

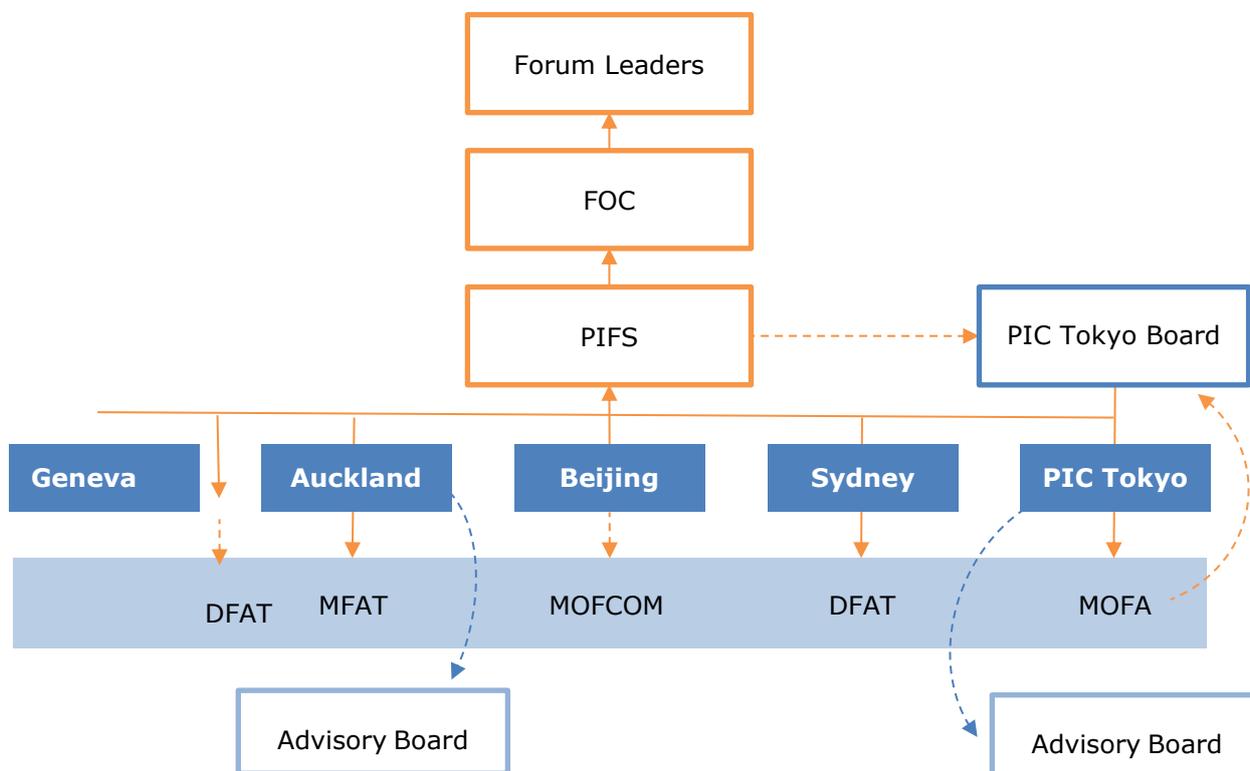
#	Criteria	Application
1	Governance model should provide clear systems and processes for: <ul style="list-style-type: none"> — direction setting — performance measurement — supervision, and — accountability 	Do the governance arrangements provide for the performance of each of these functions?
2	Alignment with PIFS mandate	Do the governance arrangements for PTI align with PIFS’ mandate?
3	Risk analysis	Do the governance arrangements allow for effective risk management (legal and reputational) for both PIFS and PTI?
4	Private sector participation	Do the governance arrangements incorporate end user perspectives and skills?
5	Network co-ordination	Do the governance arrangements sustain and promote greater network coordination?
6	Sustainable funding	Is the governance arrangement likely to attract donor support (i.e. committed funds)? Will it keep the door open to user contributions in future? Is there a case for funding all or part of the model through member contributions?
7	Cost effectiveness, administrative burden	Are governance arrangements cost effective?
8	Ease of implementation	What level of effort will be required to implement the governance arrangements?



5. CURRENT GOVERNANCE ARRANGEMENTS

68 We describe in Appendix 3 PTI’s existing governance arrangements and the legal basis for those arrangements. Figure 1 below provides a snapshot of the governance structure.

Figure 1: PTI governance structure at a glance



69 Below we discuss some of the key features and challenges of the current governance arrangements.

PTI functions and objectives

70 PTI’s functions and objectives have a bearing on the first governance theme – concern around PTI’s ‘fit’ within PIFS. For reasons set out below, our view is that PTI and PIFS are sufficiently compatible to support the existing sub-agency structure (a view generally supported in consultations), but compatibility can be improved.



- 71 The network has a common vision and mission statement, set out in the PTI Annual Report:¹²

"We work together to create greater international opportunities for Pacific Islands businesses in order to build a better future through more sustainable communities and greater prosperity.

Our mission [is t]o contribute to the sustainable economic development of Pacific Islands countries by creating opportunities for successful connections for exporters, investors and stakeholder organisations."

- 72 PTI's objectives are variously stated in the arrangements constituting each of the PTI offices, but in essence are:

- a) to grow exports from FICs, and
- b) to increase investment into FICs.

- 73 There is necessarily some variation in the activities and priorities of each PTI office, reflecting their particular host-market context. Each office provides core transaction-based trade and investment facilitation services:

- a) trade facilitation services include matching Pacific exporters with overseas buyers, providing business development, promotional and branding assistance, and coordinating exhibitions and events to boost Pacific exports;
- b) investment facilitation services (provided by all PTI offices except Geneva) include investment matching, connecting investors to Pacific businesses and decision makers, promoting investment opportunities, and providing business documentation assistance and specialised business advice for investees.

- 74 Some PTI offices also provide specialised services relating to tourism promotion (Sydney, Tokyo, Beijing); creative arts promotion (Sydney and Beijing); communications, knowledge and information services, including market update and intelligence reports, graphic and website design, public relations assistance, and assistance with annual and strategic report writing (Auckland and Sydney).

- 75 We understand that PTI offices target interventions toward small and medium sized businesses to ensure PTI is filling a gap in the market, rather than duplicating or crowding out private sector initiative.

- 76 In addition, PTI performs a range of broader functions supporting regional development and political objectives. These include:

¹² Pacific Trade and Invest, *Annual Report 2015*, at 6.



- a) targeting interventions to support regional development priorities, for example, increasing women’s participation in the economy by supporting women-owned and -managed businesses;
- b) acting as implementation agency on regional priorities, for example, on fisheries and potentially aspects of the PACER Plus agreement
- c) developing partnerships between the private sector, governments and regional organisations, including by hosting private sector engagement workshops;
- d) facilitating private sector engagement in the policy process, including with government and regional organisations, and
- e) acting as a diplomatic representative of the FICs in their host markets, particularly in Beijing but also in Tokyo.

77 This last function has important implications for governance choices.

78 The PTI Trade Commissioner in Beijing is considered to be the Forum’s diplomatic representative in Beijing and the PTI office is treated as a diplomatic mission. We received a strong message from both PTI Beijing and stakeholders within the Chinese Government that this political standing is an essential component of PTI Beijing’s value proposition and underpins its ability to undertake activities in China. In this context, PTI is an expression of the multilateral political relationship between China and the FICs. Similarly, PIC Tokyo also supports diplomatic relations between Japan and the Forum.¹³

79 The PTI offices in Auckland and Sydney are in a different position as both New Zealand and Australia have direct diplomatic relationships with the FICs at the multilateral level, as members of the Forum. Accordingly, in those jurisdictions PTI is funded solely to deliver trade and investment promotion outcomes.

80 We understand that preliminary discussions are underway to establish PTI offices in other markets, including South Korea and India. We do not know what is driving these moves but it seems reasonable to presume that, as non-Forum members, a primary driver will be the prospect of PTI supporting a political relationship between the host country and FICs.

¹³ PIC Tokyo plays an active role in the PALM, a three-yearly meeting between the Government of Japan and the FICs and PIC Tokyo is the first port of call for Japanese (inside and outside of government) seeking information on those FICs that do not have a separate diplomatic presence in Tokyo.



- 81 These broader functions indicate that PTI is playing a role beyond transactional service delivery to support the implementation of regional policy initiatives and diplomatic outreach.

Alignment with PIFS' regional development mandate

- 82 Although primarily a policy body, PIFS is also tasked with supporting the implementation of regional priorities, which, as above, is an important aspect of PTI's work. We consider there is a straightforward case for viewing PTI as a regional service, by applying the test for regional action in the Framework for Pacific Regionalism.¹⁴
- 83 In particular:
- a) PTI's intervention framework at an office level satisfies the 'market test' in that it seeks to provide services only where there is a market gap or failure
 - b) PTI's services are generally consistent with FIC priorities around sustainability and economic development and are often targeted toward specific regional priorities
 - c) PTI addresses several of the regionalism criteria in that it:
 - i) helps to realise economies of scale by pooling resources and providing a common service
 - ii) overcomes national capacity constraints, given that most individual FICs could not afford to have a physical presence in overseas markets
 - iii) complements national government efforts to promote trade and investment in their domestic economies, and
 - iv) facilitates economic integration, by encouraging business-to-business links and building private sector capacity within the Pacific region.
- 84 Other relevant features are that:
- a) Leaders' input is required to the extent that the establishment of PTI offices and host government support is premised on a political connection to the Forum
 - b) PTI can demonstrate a strong risk and sustainability assessment, based on a decades-long track record, and
 - c) PTI provides services that are not provided by any other organisation.

¹⁴ Framework for Pacific Regionalism, Annex 1.



85 PIFS' role in connection with PTI requires that it maintain capacity and expertise outside of its policy function. But there are opportunities in the arrangement for positive feedback loops between policy makers and those responsible for service delivery:

- a) PTI can facilitate private sector engagement in the policy development process
- b) PTI collects market data and intelligence that can be used to inform policy, and
- c) PTI's implementation functions bring a practical perspective to policy evaluation and design.¹⁵

86 While there are cultural differences between PIFS' core policy function and PTI's service delivery, our view is that both are compatible and can be accommodated within a single organisational structure. The options presented in this report are intended to enhance this compatibility.

87 In particular, we draw a distinction between:

- a) PIFS back office performance issues that should be able to be addressed through explicit service standards which are measured and reported against, and
- b) the ability of PTI to develop and maintain an organisational culture and operating attributes that are different from those required of PIFS, while maintaining an organisational relationship with the PIFS.

88 The former should be resolvable and the latter sustainable.

Structural challenges

89 In our view, PTI's governance arrangements give rise to two structural challenges:

- a) a misalignment between supervision and accountability - PIFS has, for various reasons, a low level of oversight of PTI operations but is nevertheless accountable to Forum Leaders, donors and the public for PTI's performance, and
- b) heavy gearing toward office-level decision making such that decisions that could have implications for the network as a whole, or for PIFS, are largely made on an office by office basis, without reference to a network governance framework.

90 These features have contributed to:

¹⁵ Examples given include the role PTI played in the promotion of harmonisation of business rules and investment as a key framework to help economic growth.



- a) concerns by PFIS around risk and to a general sense that PTI may not be assessing its role and intervention in a strategic manner with resulting loss of opportunity;
- b) an ambiguity around the ownership of PTI within PFIS and to operational difficulties for PTI offices; and
- c) low leveraging of the network's resources.

Misalignment between supervision and accountability

- 91 Supervisory arrangements by PIFS over PTI are primarily administrative rather than substantive, and are not well resourced. Trade Commissioners report to the PFIS Director - Economic Governance and, for day to day matters, offices liaise with the PFIS Trade Development Officer. But in both cases, responsibility for PTI is one duty among several duties for PIFS staff.
- 92 Policies have been put in place to seek to align PTI offices, including
- a) the adoption (relatively recently) of a common PTI brand
 - b) a common mission and vision statement (as set out in PTI's annual report)
 - c) some commonality in most of the Trade Office's constitutive documents, including core objectives to grow exports from, and investments into, the FICs
 - d) a common annual report and quarterly reporting framework
 - e) the appointment by PIFS of a common auditor and standard financial reporting, and
 - f) an annual meeting of Trade Commissioners in Suva to discuss their respective work programmes.
- 93 But standing against these push factors are some fairly substantial pull factors which undermine alignment. These include:
- a) limited resourcing at the centre to support and coordinate a network based approach
 - b) differences in funding arrangements, and in particular New Zealand and Australia funding their host offices directly rather than through PIFS, reinforcing a strong primacy of office approach
 - c) two of the offices have their own aspects of enhanced governance through either a formal board (a separate board oversees PIC Tokyo) or through advisory boards with members who bring market, governance, legal and other expertise that reflects the type of skills a formal board might seek to include (in the case of PTI



Auckland and PIC Tokyo). These initiatives enable the relevant Trade Commissioner to have office-based strategic discussions with an appropriately skilled forum, and are laudable initiatives. But, in the absence of strong network governance, they can add to the overall emphasis on an office-based approach; and

d) dual planning and accountability processes:

(1) except for Beijing and Geneva, all offices have performance accountability to their host countries:

(a) for PTI Auckland and Sydney, under direct service agreements with MFAT and DFAT respectively;

(b) for PIC Tokyo, under close supervision from the Japan Ministry of Foreign Affairs and Trade (akin to the level of supervision one would expect for an internal division of MOFA);

(2) offices develop their own separate planning and reporting documents, including some offices have formal published annual strategic plans which are solely office focused.

94 In addition, PIFS does not play an active role in direction-setting within the PTI network. There does not appear to be a network lens or strategy informing key strategic and resourcing decisions. Although PIFS has instituted some standard reporting requirements, there are no common performance measures or targets.

95 PIFS has sign-off on PTI reports and (for Beijing and Geneva) approval of budgets and expenditure but does not appear to comment substantively on the content of office reporting. And, while we understand that PIFS sometimes becomes involved in internal office operational issues, this generally happens only in serious cases.

96 The result is a decentralised and ad hoc structure. Overall, the Trade Commissioners share a sense of frustration at the costs attached to PIFS reporting requirements (as against the perceived utility of such reporting), at delays in signing off financial statements and perceived low investment in time and resources for PTI.

97 From PIFS' perspective, the concern is that it is not well placed to provide meaningful oversight of a market facing and transactional operation, whose outputs (at least for Auckland and Sydney) are agreed between the individual office and the donor. This creates, understandably, a sense of unease that PIFS is nevertheless accountable to Leaders, donors and the public for PTI's performance.

Gearing towards office-level decision making

98 The absence of a strong network strategic framework, strong governance from the centre, differing host country expectations and market characteristics have all



contributed to create a culture of office level decision-making which can undermine the aspiration that PTI act as an integrated network within a regional framework.

99 Key strategic and resourcing decisions (including decisions that could have broader ramifications for the network and PIFS) are made on an office by office basis, without reference to a network governance framework. This means that offices can take quite different approaches to regional issues.

100 We set out below a selection of examples of the types of decisions that are taken at the office-level, but may have network-level implications. We have deliberately sought to include examples across most of the key offices, to demonstrate this is a structural, rather than office specific, preference:

for example:

- a) PTI Beijing entering into memoranda of understanding with regional organisations, including the South Pacific Tourism Organisation;
- b) PTI Sydney facilitating a labour mobility initiative (the Kiribati Hayman Island project);
- c) PTI Auckland establishing a separate Pacific Hub website;
- d) offices implementing individual responses to difficulties associated with the roll-out of PTI Australia's CRM system across the network but no obvious evidence as to whether this aligns with a network approach to common customer data sets, and developing network wide market data to help inform the common reporting commitments;.

101 There is no evidence of a disciplined network-agreed screening process applied to ensure, on an ongoing basis, that PTI activities are focused on services that are value-adding and that meet the market gap. Nor is there evidence of inter-office management processes and senior management incentives to ensure consistent alignment with network-level objectives. Where network initiatives do exist, they appear to depend largely on the drive and influence of one or more Trade Commissioners from time to time.

Legal risk assessment

102 We consider that the risk to PIFS from the misalignment between supervision and accountability and the heavy gearing toward office-level decision-making is largely performance related and reputational, rather than legal.



103 Under their establishing arrangements, PTI offices in Auckland, Beijing and Sydney, and their staff, have the privileges and immunities accorded to international organisations in their respective jurisdictions.¹⁶

104 The immunity of international organisations is determined by the domestic law of the relevant jurisdiction, in the context of their constituting treaties.¹⁷ Accordingly, we can provide only general guidance.¹⁸ At a high level, however, immunity typically covers immunity from suit and legal process, immunity in relation to an organisation's property and assets, and tax exemptions. Limitations on the scope of immunity generally derive from an organisation's establishing treaty, or where, for example, an organisation has waived its immunity,¹⁹ or engaged in activities unconnected to its functions.²⁰

105 While employment disputes are generally covered by the scope of immunity, the establishing arrangements for New Zealand and Australia state that the terms and conditions of employment for locally engaged employees of the PTI offices will be determined by the relevant domestic employment law.²¹ These provisions could be interpreted as a limitation on the scope of immunity, although the point would be contestable.

106 There is no settled carve out for international organisations undertaking commercial activity (as there is in the law of state immunity). But in any case, PTI offices do not themselves engage in commercial activity (and indeed PTI Beijing is specifically prohibited from doing so).²² Trade and investment promotion activities necessarily interface with the commercial sector, but are themselves public in nature.

107 Overall, our view is that the privileges and immunities extended to the PTI offices in Australia, China and New Zealand are likely to protect the organisation from civil suit

¹⁶ Arrangement between the South Pacific Forum Secretariat and Government of New Zealand for the operation and management of the South Pacific Trade Commission Auckland, cl (i) (*New Zealand Arrangement*); Agreement between the South Pacific Forum Secretariat and the Government of the People's Republic of China on the Establishment of a Forum Trade Representative Office in China, Art 3.1 (*China Agreement*); Memorandum of understanding between the South Pacific Forum Secretariat and the Government of Australia for the operation and management of the South Pacific Trade Commission Sydney, cl (i) (*Australia Memorandum*).

¹⁷ The Vienna Convention on Diplomatic Relations does not apply to the personnel of international organisations.

¹⁸ This is particularly so in relation to China and Japan which are quite different legal systems to Australia, New Zealand and most of the Pacific Islands.

¹⁹ For example, in the US the International Tin Council was found to have waived its immunity by consenting to an arbitration clause providing for arbitration in New York: *International Tin Council v Amalgamet Inc* 524 N.Y.S.2d 971.

²⁰ Like many aspects of the law of organisational immunity, there is some controversy around whether, as a general rule, immunities will attach only to acts necessary for the performance of the organisation's functions.

²¹ New Zealand Arrangement, cl (vi); Australia Memorandum, cl (vi).

²² China Agreement, art 2.2.



(eg, for negligence or defamation) in most instances. Accordingly, legal risk to the PIFS from the operation of PTI offices is low.

108 The agreement establishing PIC Tokyo does not explicitly extend diplomatic privileges or immunities to that office. Whether immunities apply will be a matter of Japanese law. However, the direct risk to PIFS remains low as PIC Tokyo is established as a separate organisation, accountable to the PIC Board. As a member of the board, PIFS may have directors' duties in Japan but again this is a matter on which PIFS would need to take Japanese legal advice.

109 PIFS' formal accountability for PTI's performance and limited oversight creates a reputational risk. It has been able to mitigate this to some extent by appointing senior and capable Trade Commissioners but valid concerns remain. For example, activities with a pastoral care component (such as in the administration of scholarships or potentially labour mobility programmes) can give rise to issues involving the safety and wellbeing of programme participants towards whom PIFS has a duty of care. Any failure to discharge this duty will reflect directly on PIFS.

110 These concerns in our view stem from the current governance structure, and can be mitigated through governance reforms that address the misalignment between supervision and accountability.

Scope to increase service user participation

111 The 2013 Review identified a level of disconnect between PTI and private sector needs.²³ Participants in that review stressed the importance of ensuring PTI has a private sector focus with a goal, impact and results oriented structure.²⁴ The Review team stated it was "*clear that PT&I leadership and management has to reach out further to involve private sector*" and agreed with stakeholder recommendations for the development and strengthening of partnerships with private sector organisations.²⁵ It concluded that "*the appropriate coordination and governance structure will need to actively involve private sector*".²⁶

112 Each of the PTI offices has networks and processes in place to build relationships with service users. However, PTI's governance structure does not provide for input at the network level from external stakeholders. There is also no network level process (for example, regular service user surveys and end user focused performance metrics) to ensure that PTI's services are informed by, and relevant to, end user needs and expectations on an ongoing basis.

²³ 2013 Review, pp 15 – 16.

²⁴ 2013 Review, p 38.

²⁵ 2013 Review, p 39.

²⁶ 2013 Review, p 39.





6. OPTIONS ANALYSIS

113 This section outlines the key features of Options 1 and 2, discusses the costs and potential benefits of each, and provides our recommendation on a way forward.

Option 1: Network strategic framework and appointment of General Manager

114 Option 1 is based on a renewed commitment to existing governance arrangements, with additional resourcing directed to support a network-level strategic framework.

115 Its core elements are:

- a) appointment of a PTI General Manager (*GM*) at Director level, reporting directly to the Secretary General, with responsibility for:
 - i) putting in place a PTI network-level strategic framework
 - ii) ensuring the network has appropriate supervisory and administrative support, including developing, in conjunction with Trade Commissioners and PIFS, back office service standards, reporting requirements and a performance monitoring framework
 - iii) developing effective methods of accessing and incorporating end user perspectives into the PTI work programme.
- b) a twice-yearly forum of Trade Commissioners, the GM and the SG to develop and monitor performance against a network strategic plan. A draft description of the function of these meetings is set out in Appendix 5;
- c) agreed protocols to guide decision-making, including guidance on when decisions should be made at network or office level;
- d) KPIs included in Trade Commissioner and GM employment contracts relating to network coordination objectives; and
- e) leading work on potential growth of the network.

116 To ensure the experience and seniority to play a leadership role within the network, the GM should be appointed at Director level. The GM should be based at PIFS and report directly to the SG.

117 The GM could sit on the PIFS Senior Management Team (*SMT*) or outside it, participating in SMT meetings only where agenda items related specifically to PTI. This judgement may depend largely on whether a greater degree of operational separation was desired between PTI and PIFS. A separate PTI budget line could be established, to be managed separately from PIFS' general operations, with internal contracting for administrative services.



118 Within PTI, we envisage an equal relationship between the GM and Trade Commissioners. The GM will have a network leadership role, which should augment rather than diminish the role and authority of the Trade Commissioners. In terms of reporting lines, the most straightforward would be for Trade Commissioners to report to the SG through the GM. Dotted line reporting could be established directly between the SG and Trade Commissioners on strategic matters. However, the SG should receive consolidated network reporting through the GM.

119 Option 1 does not require any structural change. PTI offices in Auckland, Beijing, Geneva and Sydney would continue as sub-agencies of PIFS; PIC Tokyo would remain a separate international organisation, responsible to the PIC Board.

120 Option 1 and its enhanced network approach would benefit if donor purchasing decisions for their respective office outputs are agreed through the GM and relevant office Trade Commissioner/twice-yearly forum, even if funding continues to be paid directly to individual offices.

Cost implications

121 The major cost is the GM salary and associated expenditure. As noted above, to engage with the Trade Commissioners as a peer and to lead the development of a network level strategy, it is important that the GM is appointed at Director level. To establish strong connections with PTI offices and in the supporting FICs and their end-user communities, the GM will need a travel budget. PIFS estimates the Director remuneration in the range of FJD185,798 to FJD204,523 per annum,²⁷ plus a travel budget of approximately FJD 20,000 and other work related expenses.

122 Other costs would include one additional PTI network meeting per year (on top of the existing annual strategy meeting).

123 We envisage that, in the first instance, PIFS would seek donor funding to cover the cost of implementing Option 1. If donor funding is not forthcoming, there is in our view a case for seeking additional voluntary member contributions, as happens now in respect of PIC Tokyo. Option 1 would also allow PTI to consider some form of user pays model at a later date.

Implementation steps

124 From an implementation perspective, Option 1 is relatively straightforward and would require:

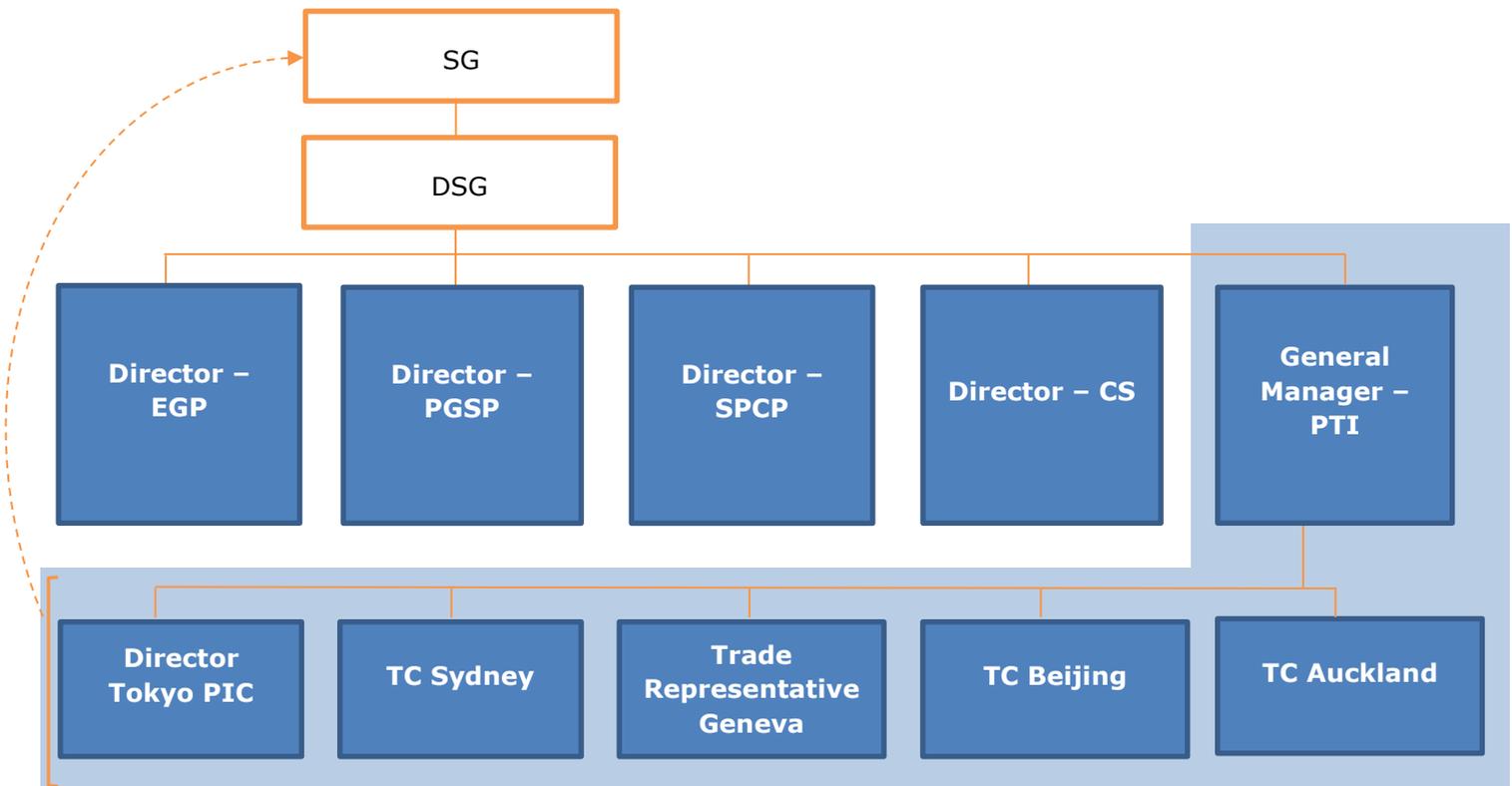
- a) confirmation of GM role description, including location of service (Suva)

²⁷ Including rental assistance, but not including other available benefits (ie, dependent children tuition fees).



- b) confirmation of funding availability in consultation with donors
- c) in principle approval of the FOC / Forum Leaders
- d) appointment of a GM
- e) the allocation of appropriate administrative support from within PIFS, potentially involving the operational separation of PTI from PIFS’s general budget and an agreed mechanism for the internal contracting of administrative services
- f) updating Trade Commissioner KPIs and reporting lines, and
- g) establishing a process to put in place a network level strategic framework and twice-yearly forums.

125 An organisational reporting chart based on Option 1 is set out below:



Option 2: Establish central PTI Board

126 Option 2 builds on Option 1, and establishes a central PTI governance board.

127 Its core elements are:



- a) establishment of a central governance board, comprising no more than five to seven members selected for their skills and experience
- b) SG being Permanent Chair of the Board, with PTI GM acting as Board Secretary
- c) Board to meet twice yearly, once to discuss the budget for the following financial year and once to review the previous year's performance. Other issues to be discussed at these meetings or, by exception, between meetings by phone or videoconference;
- d) Board to participate in setting network strategic plan, with Trade Commissioners and the GM reporting collectively to the Board on performance against the network strategic plan;
- e) Board to engage with donors directly, and support Trade Commissioners in their engagement with donors, as appropriate.

Advisory versus decision-making mandate

128 Within Option 2 are sub-options to establish the Board with either an advisory or a decision-making mandate.

- (i) Advisory mandate: Board established as an ad hoc advisory body, reporting to the Forum Trade Ministers Meeting or to the FOC, as appropriate. It would provide guidance and oversight to PTI, but would have no decision-making power.
- (ii) Decision-making mandate: a formal board with decision-making power delegated from FOC (as the executive governance body under the Agreement establishing the Pacific Island Forum). It would perform the functions of an ordinary corporate board – setting strategic direction, overseeing organisational performance, a role in appointing future Trade Commissioners, approving budgets, reporting to stakeholders etc. Terms of delegation would need to be approved by FOC, and endorsed by Leaders,²⁸ clarifying scope of delegated authority and ongoing reporting requirements etc.

129 A decision-making Board would be accountable to Leaders for PTI's performance (shifting the locus of accountability from PIFS to the PTI Board). This option would further support operational separation between PTI and PIFS, with the Board responsible for the PTI budget line, independent from PIFS' general budget.

130 If a decision-making Board is established, then there will need to be some evolution in the relationship between individual offices and their respective host states, to ensure the Board is consulted. This should be able to be done within the scope of existing

²⁸ Based on the process adopted in establishing the SSCR.



establishing arrangements (which all provide for ongoing discussions between the host state and PIFS). However, it was also suggested that any governance change may be a useful catalyst for considering updating the establishing arrangements (most of which are now over 20 years old) to better reflect how the offices are operating in practice.

Legal analysis

- 131 There would be some work to be done in crafting the terms of delegation from FOC to the PTI Board, but in our view such delegation is permissible within the legal framework of the Agreement Establishing the Pacific Islands Forum (the *Agreement*).²⁹ The Board would essentially be established as a sub-committee of the FOC, and would report back to the FOC on an ongoing basis. The establishment of a decision making board within the existing legal framework will not create any greater legal risk than that attaching to the FOC currently, and the Board would benefit from the immunities that the FOC currently enjoys. The mere fact of labelling the decision making body as a board, or the individuals as directors, does not defeat these benefits or import the legal duties and responsibilities of a company board. Nonetheless, it may be prudent to ensure clarity in transactions with third parties by using organisational terms that are not synonymous with corporate bodies, for example “member” rather than “director” or other appropriate titles attributed to decision makers.
- 132 PTI offices in Auckland, Beijing, Geneva and Sydney would continue as sub-agencies of PIFS. PIC Tokyo would remain a separate international organisation, responsible to the PIC Board. In that sense, implementing option 2 would not affect existing privileges and immunities. It also would not require any changes to existing memoranda of understanding or arrangements establishing the PTI offices.
- 133 Auckland and Tokyo could preserve their current advisory boards under either Option 1 or 2. This would be a decision for the local offices to make based on their assessment of the on-going value of their current structures.
- 134 It is important to note that under the decision-making Board model, residual liability remains with PIFS, because PIFS will continue as the legal counterparty to any arrangements entered into by PTI. This does not increase PIFS’ legal exposure, and will still be an improvement on PIFS’ current risk profile because of the enhanced oversight of the PTI network.
- 135 One alternative would be amending the Agreement to establish PTI as an additional treaty body (in addition to the Forum Leaders’ meeting, FOC and PIFS). This option would create PTI as a separate entity from PIFS, but accountable in the same way to the FOC and Leaders. PIFS will have a better sense on this than we do, but it would

²⁹ We note that the UN Charter contains a provision specifically permitting “*Such subsidiary organs as may be found necessary may be established in accordance with the present Charter*”: art 7.2. There is no equivalent provision in the Agreement, but in our view the FOC is able to delegate its activities to a PTI Board without an explicit empowering provision.



seem that significant effort and political will would be required to amend the Agreement in this way.

136 We also considered other legal structures that could be utilised to create a PTI Board, such as corporate structures under Fijian (or other) domestic law, but in our view such an approach is unnecessary and undesirable. Using a domestic corporate structure would create issues around directors' duties and liability. It would also muddy the relationship between PTI and PIFS, and may require amendment to the memoranda of understanding and arrangements establishing each of the PTI offices. The Board also would not benefit from existing immunities attaching to the PIFS. For reasons discussed below, we have considered but do not recommend establishing the PTI Board as a standalone international organisation or corporate.

137 In terms of the legal accountability of the Board, the Board will be accountable to the FOC for the manner in which it exercises its delegated authority. The FOC can set expectations with Board, and hold the Board to account, including by removing Board members.

Board composition and appointment

138 Our view is that, for either an advisory or decision-making mandate, the Board should be comprised of skills-based appointees with the SG as Chair.

139 The skill sets represented on the Board should include experience in: business governance and business performance evaluation, exporting and investing, including into FICs.

140 Our view is that the representational component of PTI's governance should be achieved through the FOC (or Forum Trade Ministers Meeting, as appropriate), rather than through the PTI Board itself. Board selection criteria could include an objective of achieving sub-regional and gender representation, but the primary focus must be to achieve an appropriate skill range.

141 A useful litmus test is whether the board members would constitute a body that Trade Commissioners would value time in front of.

142 The Board would be appointed by FOC, following a selection process. The interview panel could comprise the SG, one or more Trade Commissioners, and a FOC and/or donor representative.

143 We suggest a Board size between 5-7 (including the SG). If the Board gets much larger than this, then there is an increase in the following attendant risks:

- a) increased likelihood of representation issues
- b) increased difficulty in achieving consistency of attendance



- c) increased difficulty in achieving a sense of decision making ownership, and
- d) increased costs.

144 It would also be possible to have a donor representative on the PTI Board, but our view is that this is not necessary (and may dilute the skills-based, private sector nature of the Board).

145 We would recommend on-going Board governance training, and make this a requirement of the Board. Some of this may be delivered through Board governance courses from regional providers of director training (e.g., the New Zealand Institute of Directors or comparable organisation). It would also be worth exploring with donors whether funding support could be provided for governance training and peer-to-peer support, with a focus on investment and trade (e.g., NZTE providing Board to Board support every couple of years).

Cost implications

146 Option 2 would entail some expense - flights to Suva once a year for directors plus honoraria for meetings, the provision of secretariat services to the Board, and additional reporting requirements for the Trade Commissioners and the GM. Our working costings are set out in Appendix 6.

147 PIFS will have a good handle on these costs, based on its recent experience of establishing the SSCR.

Implementation steps

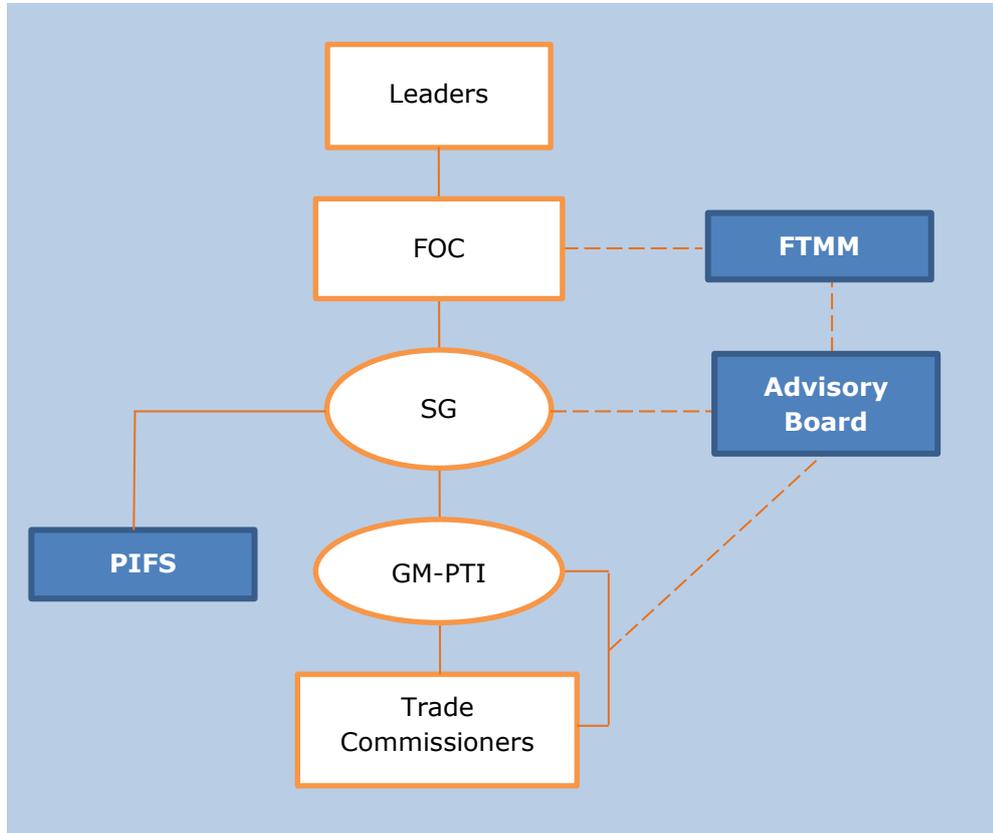
148 Implementation steps would include:

- a) confirm Board mandate and selection criteria (in consultation with Trade Commissioners and other interested stakeholders, i.e. PIPSO)
- b) confirm funding availability in consultation with donors
- c) in principle approval from the FOC / Forum Leaders
- d) undertake selection process for Board members
- e) recommendation to the FOC / Forum Leaders regarding appointments to the Board

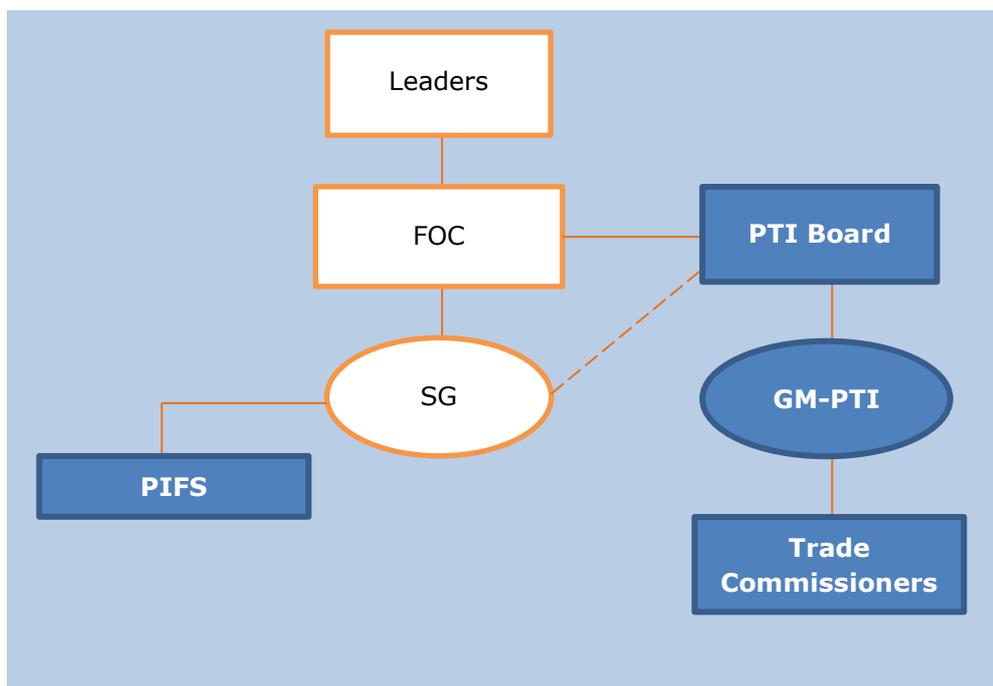
149 Organisational reporting charts based on Options 2a and 2b are set out below:



Option 2a



Option 2b





Other options considered

150 We have considered other governance reform options, all of which involve removing the PIFS role. These are:

- i) stepping back from the network aspiration and devolving PTI into a loose association of offices
- ii) creating a new stand-alone regional organisation, or
- iii) transferring the PTI function from PFIS to another regional body (i.e. SPC or PIPSO).

151 Of the three, we explored the first most deeply in our draft report but did not offer it as a recommendation because it is our strong view that PTI should remain as part of PFIS and work toward strengthening PTI as a network. Instead we saw it as a counterpoint to our Options 1 and 2 with the risk that it could become the model of operating by default. It was encouraging to see that there was no interest among either PFIS or the Trade Commissioners in progressing it, and that there was a strong commitment to a network approach.

152 We did not progress the other two governance options for a variety of reasons. PIFS has some experience in transferring functions to standalone corporate or other entities (i.e. PIPSO). But creation of a new stand-alone organisation would run counter to the general direction from Leaders against the proliferation of new regional organisations in the Pacific. Transferring PTI functions to a corporate structure would create significant vulnerability. In particular, it would undermine the value proposition for donor support of PTI, particularly in respect of China where funding for PTI is premised on a relationship with Forum Island Countries.

153 In our view, transference of PTI's functions is not a practicable option as there is no other governmental agency which provides the capacity or a better fit with PTI's mandate than PIFS.

Discussion and recommendations

154 Our view is that Option 1 on its own would deal with several of the structural challenges facing PIFS and the PTI network:

- a) it would promote greater network integration
- b) it would address the misalignment between supervision and accountability by ensuring senior management capacity within PIFS to oversee the PTI network
- c) it would enable greater strategic alignment and coordination within the network by creating an overlay of network level leadership to coordinate strategy and planning



- d) for the PTI offices, it would ensure a dedicated resource within PIFS to facilitate administrative and other interactions with the centre, and
- e) specific KPIs around service-user engagement, with a permanent senior presence in the region.

155 Given that PTI's budget accounts for around a third of PIFS' overall financial activity, a dedicated senior manager would seem appropriate.

156 All of the Trade Commissioners expressed support in principle for the appointment of a network GM but the design of the role and the choice of appointee will be crucial to the establishment of close and constructive working relationships. In particular, it is important that:

- i) the GM role augments rather than diminishes the Trade Commissioner role
- ii) the GM has strong business experience in strategy, customer/stakeholder relations, and risk management (at a senior manager/governance level as opposed to a compliance/internal audit level), and
- iii) the GM is hired at Director level to ensure that he or she has equivalency of status with the Trade Commissioners, is able to ensure an effective voice within PIFs and has appropriate administrative and professional support.

157 Option 1 would also likely require a change in the way MFAT and DFAT presently fund the PTI network, by including support for network-level resource. Preliminary discussions with these donors indicate that they are open to considering network level support (although no commitments have been given).

158 In our view, PIFS should pursue Option 1 as a priority, irrespective of its view on Option 2.

159 The additional benefits in Option 2 would be to:

- a) further strengthen PTI at the network level
- b) better promote stakeholder and regional economic and investment interests by providing access, through Board members, to the business skills and experience relevant to the investment and exporting sectors and insight into the realities of PTI's end user base
- c) provide a clear split between governance and management within PTI
- d) provide support for the Secretary General by ensuring appropriate oversight of PTI, and



- e) in the case of a decision making Board, support a distinct governance structure for PTI and operational separation from PIFS.

160 If there is an appetite to pursue Option 2, it would need the platform created by Option 1 to work effectively. Accordingly, we recommend that if it is pursued, it should be pursued only after implementation of Option 1.

161 The main reasons an advisory board might be chosen over a decision making board are:

- a) there is a desire or requirement to retain decision making rights elsewhere;
- b) the advisory board would usually have a lower risk profile than a decision making board, and as such might attract a wider group of suitable applicants; and
- c) the advisory board is designed to be a representative body (e.g. the German corporate model has a lower tier advisory board representing stakeholders).

162 These reasons are less relevant here as:

- a) there is a desire to ensure governance decision making is exercised by people who have relevant skills and experience;
- b) the legal protections that attach to the PIF mean the legal risk profile between a PTI advisory board and decision making board is not substantially different and should not impact on the pool of applicants; and
- c) the Board is intended to be a skills based rather than representative Board.

163 The advantage of a decision-making board is that it moves the operational locus of accountability from PIFS (although, as noted above, residual legal liability will rest with PIFS). It would provide support and a structure for greater operational separation of PIFS and PTI. The Board would perform the role of the FOC, on the advice of the GM and Trade Commissioners (with nominal reporting through the SG), including approving the annual work programme and budget and reviewing PTI's annual report.

164 Finally the decision making board provides greater clarity of roles than an advisory board. This is a useful signal both for the board members, PTI senior staff and for the PIF more generally:

- a) For Board members: it removes any ambiguity around the value and importance of their roles – their decisions matter and people will act in reliance on them;
- b) For PTI: it means they have a single point of accountability and direction setting, and that single point is focused on the PTI business;



- c) For PIF: it makes clear that the Secretariat, while providing administrative support, does not have oversight responsibility.

165 For these reasons, while we see some value in an advisory Board, we think the decision making Board is the better model in this context.



8. LIST OF APPENDICES

Appendix 1: Terms of reference

Appendix 2: Text of survey

Appendix 3: PTI's existing governance framework

Appendix 4: Draft role description: PTI General Manager

Appendix 5: Draft purpose statement: Network strategy forum

Appendix 6: Draft appointment criteria, terms of reference for PTI Board

Appendix 6: Costings table

Appendix 7: Record of Consultation



Appendix 1: Terms of reference

[Separately attached]



Appendix 2: Survey

[separately attached]



Appendix 3: PTI's existing governance framework

- 1 This appendix provides a detailed description of PTI's current governance arrangements.

Legal and corporate arrangements

- 2 Each PTI office is established by an agreement or memorandum of understanding between PIFS and the respective host government, with some variation between those arrangements:
 - (a) The Sydney, Auckland and Beijing offices are established as sub-agencies of the PIFS, and remain responsible to, and the responsibility of, the SG. These PTI offices and their staff have the same privileges and immunities as the PIFS.
 - (b) PIC Tokyo is established as a separate international organisation, governed by a Board comprising representatives of the Japan Ministry of Foreign Affairs (*MOFA*) and the PIFS. PIC Tokyo advises that its staff do not enjoy diplomatic privileges and immunities in Japan.
 - (c) PTI Geneva is a single-person post, located within the PIF Mission to the WTO. There is no separate establishment agreement with the EU governing PTI Geneva.
- 3 The PTI offices are subject to various funding and associated corporate arrangements:
 - (a) PTI Auckland is funded by MFAT. General funds are paid directly to PTI Auckland under a 2015 Service Agreement (as amended). The Trade Commissioner is employed and paid directly by PIFS. Local staff are employed by PTI Auckland.
 - (b) PTI Sydney is funded by the Australian Department of Foreign Affairs and Trade (*DFAT*). General funds are paid directly to PTI Sydney. The Trade Commissioner is employed and paid directly by PIFS. Local staff are employed by PTI Sydney.
 - (c) PTI Beijing is funded by the Chinese government. Funds are paid directly to PIFS, which determines the budget for, and distributes funds to PTI Beijing and pays the Trade Commissioner salary. The Trade Commission is employed directly by PIFS, and other staff are employed locally.
 - (d) PIC Tokyo's operating budget is funded 90% by MOFA, and 10% by the PIF Member States. The 10% PIF contribution is determined by an agreed formula governing member contributions. In addition, MOFA funds 100% of PIC's programme budget. The Director and local staff are employed by PIC.
 - (e) PTI Geneva was, until 2016, funded by the European Union under the Pacific Integration Technical Assistance Project (*PITAP*), but is now funded by DFAT (DFAT also funds the PIF Mission to the WTO). DFAT provides funding to PIFS, which is



then distributed to PTI Geneva (all expenditure requires PIFS approval). The PTI officer in Geneva is employed directly by PIFS.

Direction setting

- 4 Strategic planning and decision-making within PTI occurs at an office-level. While the Trade Commissioners meet annually in Suva to discuss their respective work programmes, there is no formal strategic coordination or network-level strategy.
- 5 The PTI offices in Auckland, Sydney and Tokyo work closely with their host governments in setting their strategy and work plans. Auckland and Sydney offices do so in accordance with their service agreements with MFAT and DFAT, respectively. PTI Auckland's Advisory Board also has a role in setting the direction for the office (this may also be the case for PIC Tokyo in future, as it has also recently appointed a private sector advisory group).
- 6 PTI Beijing and PTI Geneva develop their strategic plans without significant input from either PIFS or their funders (Government of China and DFAT, respectively).

Effectiveness

- 7 PTI Auckland and Sydney are measured against the outputs/outcomes specified in their service agreements with MFAT and DFAT respectively. The offices in Beijing, Geneva and Tokyo do not appear to have specified external performance measures.
- 8 In recent years, PIFS has instituted a standard quarterly report for each PTI office, which provides a narrative of activities and qualitative outcomes, and standardised reporting of customer data (on 'services' provided and the value of milestones or deals concluded). The customer data is of some utility to those offices that report against quantitative outcomes, but is generally of limited utility to other offices whose outcomes are primarily qualitative (particularly Beijing and Tokyo, where businesses are generally uncomfortable about providing financial information externally, including to PTI). PTI Beijing advised that it has not been given quantitative performance targets, and would resist them because of the difficulty of measuring its impact in those terms.
- 9 Since 2010, the PTI network has also produced a common annual report (the PTI offices take turns preparing the report). The consolidated annual report describes PTI's high level functions, and reports on activities at an office level, and on a country-by-country level. The report is predominantly a narrative of activities, and there is no reporting against specific performance measures on a network-level basis.
- 10 In addition to this common reporting, PTI offices report variously in other ways:
 - a) PTI Auckland prepares a separate quarterly report, "*Trade Winds*", for MFAT, reporting on progress against agreed outcomes in the Service Agreement;



- b) PTI Sydney also reports to DFAT against its contracted outcomes. PTI Sydney has also recently decided to produce an individual annual report, in addition to the consolidated network report;
- 11 PTI Geneva is also required to provide a quarterly activity log to PIFS, in addition to its quarterly report.

Supervision

- 12 Trade Commissioners report to PIFS' Director – Economic Governance, but supervision of the PTI network accounts for only a small part of the Director's duties. For day-to-day matters, PTI offices liaise with the PIFS Trade Development Officer, for whom management of PTI network affairs is also one among several duties.
- 13 PIFS' supervisory role includes sign-off on PTI reports, and approval of budgets and expenditure (primarily for PTI Beijing and Geneva). A common concern among Trade Commissioners is the time and effort it takes to obtain PIFS sign-off, which also suggests resource or some other constraint within PIFS in facilitating PTI operations.
- 14 Internal operational issues, including employment or relationship issues, are generally dealt with by the Trade Commissioners, with PIFS intervention only in serious cases.
- 15 With the exception of PTI Beijing and Geneva, all of the offices have a degree of supervision from their host governments. PTI Auckland and Sydney are subject to supervision in accordance with their service agreements with MFAT and DFAT, respectively. PIC Tokyo is subject to close supervision and direction from MOFA on a more *ad hoc* basis, and appears to be treated in large part as a division of MOFA.

Accountability

- 16 All of the PTI offices have some degree of formal accountability to PIFS, in that Trade Commissioners are formally employed by PIFS (or, in the case of PIC Tokyo, by the PIC Board of which PIFS is an equal part with the Japanese Ministry of Foreign Affairs). PTI offices are also accountable in the sense of providing common financial reporting and activity reporting. But, as above, there appears to be little (if any) substantive accountability to PIFS for priority-setting or performance.
- 17 Against this, PIFS itself is accountable to Leaders for the performance of the PTI network, and to donors for PTI funds administered by PIFS.
- 18 For Auckland and Sydney, the Trade Commissioners are required to negotiate dual accountabilities – in addition to being formally accountable to PIFS, they are also accountable in a substantive sense to their donors for delivering under their respective service agreements. For PIC Tokyo, the Director is accountable to the PIC Board, but in practice is also subject to separately accountability on a more



informal and ad hoc basis to MOFA. PTI Beijing and Geneva are not separately accountable to their donors, and so operate with little or no substantive accountability (in terms of being held to account against clear performance expectations).



Appendix 4: PTI Network General Manager – Role Description

Role of PTI General Manager, reporting directly to the SG and responsible for:

- (a) ensuring PTI acts effectively as a network and has the necessary systems, processes and decision making tools to assist it in doing so;
- (b) developing a PTI network-level strategic framework to guide decision making, and in particular to provide clear reference points for decisions that ought to be made at the network level, and those that can be properly made at the office-level;
- (c) promoting consistency of service delivery / operations across network (positioning PTI as a regional service), to the extent possible, taking into account differences in host market contexts;
- (d) ensuring PTI is effectively supported by PIFS. This will include making the GM responsible for developing , in conjunction with the Trade Commissioners, PIFS back office service standards , reporting requirements and a monitoring regime to improve performance in this area;
- (e) ensuring PTI has effective methods of accessing end user perspective and the PTI system is using tools to keep this fresh and relevant;
- (f) building visibility of PTI and connections with Pacific businesses and other regional stakeholders and ensuring PTI's services remain relevant and valuable to end users;
- (g) organising and supporting with relevant materials a formal twice yearly forum meeting with the Trade Commissioners and the PIFS SG to strengthen network functioning and decision making;
- (h) working with New Zealand and Australia as PTI donors, and the relevant Trade Commissioners, to ensure that purchasing decisions for their respective office outputs are agreed through and consistent with the network objectives;
- (i) advising the SG on appropriate network-related KPIs for Trade Commissioners, and the performance of the Trade Commissioners against those KPIs; and
- (j) assisting with the development of any new offices and ensuring that new offices are adequately supported and informed by the network requirements.



Appendix 5: Draft purpose statement – network strategy forums

Twice yearly strategy forums (to be held directly prior to PTI Board meetings, if established) are intended to provide for greater strategic alignment between the PTI offices.

Initial meetings to focus on establishing a strategic framework, clarifying roles and responsibilities, and a mechanism for ensuring that decisions are taken at the appropriate level (either at office or network level).

Once the strategic framework is up and running, one meeting should focus on budget and work plan for the following year, the other to review the previous year's performance.



Appendix 6: Appointment criteria, terms of reference and statement of delegation for PTI Board

PTI Advisory Board (advisory mandate)

Purpose

The Advisory Board's purpose is to provide oversight and guidance to the PTI network, a sub-agency of the Pacific Island Forum Secretariat focused on promoting economic development in the region through the facilitation of international trade and investment.

The Advisory Board's role will be to contribute to PTI's strategic planning, review PTI's performance against its objectives, and provide advice on opportunities and challenges. The Advisory Board will report regularly to FOC, the representative body of Forum members, on PTI's activities and performance.

Selection criteria

The Advisory Board should be appropriately skilled, informed, experienced and motivated to fulfil its role in providing oversight and guidance to the PTI network.

The Advisory Board will comprise [5 – 7] members who are citizens of Forum member or associate member countries.

Each member should have some or all of the following attributes, and across its members the Advisory Board should ideally have all of the following attributes:

- expertise in the export sector of Forum Island Countries
- expertise in investing in, or facilitating investments into, Forum Island Countries
- expertise in sustainable development, including social, environmental and economic factors
- demonstrated governance experience in the private, public or community sectors
- demonstrated experience in strategic priority setting and high-level advisory work

There will be an effort made to achieve gender and sub-regional representation on the Advisory Board.

Terms of reference

Terms of reference of the Board:

- reviewing and advising on development of PTI strategic plan;
- monitoring PTI performance against strategy;



- providing ongoing guidance to GM and Trade Commissioners on matters as they arise;
- reporting to the FOC and/or FTMM on PTI performance and strategic direction.

PTI Board (decision-making mandate)

Statement of delegation and terms of reference

On [x], Forum Leaders endorsed the formation of a Board to oversee Pacific Trade & Invest, responsible to FOC, and exercising authority delegated under Art V of the Agreement Establishing the Pacific Islands Forum (the Agreement) to the Pacific Trade and Invest (PTI) Board to the extent and on the terms set out below.

The purpose of the delegation is to enable the PTI Board to effectively oversee and guide the management and operation of the PTI network, which is a sub-agency of the Pacific Island Forum Secretariat focused on promoting economic development in the region through the facilitation of international trade and investment.

Members of the PTI Board are appointed for their skills and experience in trade and investment activity, and are well placed to support the PTI network.

It is intended that the PTI Board will report to the FOC on [an annual] basis, in accordance with the scope and terms of delegation below.

The PTI Board is authorised as follows, in accordance with Art V.3 of the Agreement:

- (a) to give general direction to the PTI network;
- (b) to approve, reject or amend the annual work programme and budget of the PTI network and any interim budget submitted by the PTI network; and
- (c) receive, examine and comment on the Annual Report of the PTI General Manager and/or Trade Commissioners on the operation of the PTI network.

The Board is also authorised to perform the ordinary functions of a Board, including:

- (a) approve, and from time to time review, PTI's vision and mission statement;
- (b) select and (if necessary) replace the General Manager and, in consultation with donors, as appropriate, Trade Commissioners;
- (c) ensure that PTI has an adequate management to achieve its objective and that a satisfactory plan for management succession is in place;
- (d) review and approve the strategic and financial plans prepared by management and to develop a depth of knowledge of PTI's activities so as to understand and question the assumptions upon which such plans are based and to reach an



independent judgment on the probability that such plans are appropriate and can be achieved;

- (e) review and approve individual financial decisions which the Board has determined should be referred to it before implementation;
- (f) monitor PTI's performance against its approved strategic and financial plans and to oversee PTI's operating results on a regular basis so as to evaluate whether the organisation is being properly managed;
- (g) ensure ethical behaviour by PTI, the Board and management, including compliance with each office's establishing agreement or memorandum of understanding, relevant laws and regulations and the relevant auditing and accounting principles;
- (h) foster high standards of ethical conduct and personal behaviour and hold accountable those directors, managers or other employees who engage in unethical behaviours;
- (i) ensure the quality and independence of PTI's external audit process; and
- (j) assess from time to time its own effectiveness in carrying out these functions and the other responsibilities of the Board.

In exercising its delegated authority, the PTI Board shall have regard to any direction received from the FOC.

The PTI Board shall report [annually] to the FOC on the performance and operation of the PTI network.

Selection criteria

[As above, for advisory mandate.]



Appendix 7: Costing Table – Working Document

Option 1	
Item	Cost per annum
PTI General Manager	FJD185,798 – 204,523, ³⁰
GM travel and other expenses	[FJD20,000]
One additional network strategy meeting	[FJD40,000]
Option 2	
Item	Cost per annum
Twice yearly board meetings (benchmarked against the cost of the SSCR)	FJD90,000

³⁰ Including rental assistance, but not including other available benefits (ie, dependent children tuition fees).



Appendix 8: Record of Consultation

To date, we have consulted with the following persons and organisations:

- PIFS Secretary General, senior management team, trade development officer and other staff
- Mike Greenslade, Trade Commissioner, PTI Auckland
- John Crawford and Peter Kiely, PTI Auckland Advisory Board members
- Charlotte Darlow, Michael Appleton, Tessa Te Mata, Tim Stewardson, New Zealand Ministry of Foreign Affairs and Trade
- Caleb Jarvis, Trade Commissioner, PTI Sydney
- Matt Harding, Australia Department of Foreign Affairs and Trade
- Ryuzo (Roy) Saito, Director, PIC Tokyo and team (Takehiro Kurosaki and Reiko Takada)
- Kazuyoshi Ogawa, Japan Pacific Islands Association / former PIC Tokyo Director
- David Morris, Trade Commissioner, PTI Beijing, and senior team (Isa Peng, Vivienne Song, Yolanda Jiang)
- China Chamber of International Commerce / China Council for the Promotion of International Trade
- China Ministry of Foreign Affairs and Ministry of Commerce
- Robyn Ekstrom, PTI Europe trade representative
- Josua Wainiqolo and team, SPC
- Diane Barr, PHAMA
- Howard Politini, Alisi Tuqa and staff, PIPSO
- Chris Cocker and Alisi Lutu, SPTO
- Wilco Liebrechts, The Crab Company – Fiji
- George Patel, Foods Pacific