

No. 1 of 2023.

Associations Incorporation Act 2023.

Certified on : 29 MAY 2023



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No. 1 of 2023.

AN ACT

entitled

Associations Incorporation Act 2023,

Being an Act -

- (a) to repeal and replace the *Association Incorporation Act 1966*; and
 - (b) to provide for the efficient registration and incorporation of associations in Papua New Guinea; and
 - (c) to provide for the efficient registration and monitoring of overseas associations or similar non-profit organisations so that they may operate in Papua New Guinea under a proper regulatory regime; and
 - (d) to provide for proper regulation and administration of incorporated associations in Papua New Guinea; and
 - (e) to provide increased transparency and accountability for incorporated associations; and
 - (f) to provide for the efficient and orderly liquidation of insolvent associations; and
 - (g) comply with the anti-money laundering and counter terrorism obligations,
- and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the liberty of the person conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to freedom of assembly and association conferred by Section 47; and
- (d) the right to freedom of employment conferred by Section 48; and
- (e) the right to privacy conferred by Section 49; and
- (f) the right to freedom of information conferred by Section 51; and
- (g) the right to protection from unjust deprivation of property conferred by Section 53,

of the *Constitution*, is a law that is made for the purpose of complying with Section 38 of the *Constitution*, that is necessary for the purpose of giving effect to the public interest in public safety, public order and public welfare and is reasonably justifiable in a democratic society having proper respect and regard for the rights and dignity of mankind, taking into account the National Goals and Directive Principles and Basic Social Obligations.

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(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-Level Governments*, it is hereby declared that this Act relates to a matter of national interest.

2. **ACT BINDS THE STATE.**

This Act binds the State.

3. **INTERPRETATION.**

(1) In this Act, unless the contrary intention appears -

“accounting period”, in relation to an incorporated association, means a year ending on a balance date of the incorporated association and, where as a result of the date of the registration or incorporation of the association or a change of the balance date of the association, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period, but in no event can a given accounting period be longer than 15 months;

“address” includes residential address and postal address;

“annual donations amount” means a total amount of donations received by an incorporated association in an accounting period, but the term does not include dues required to be paid to be a member of an incorporated association;

“annual gross revenue amount” means the total revenues received by an incorporated association in an accounting period including, but not limited to -

- (a) monies received from the sale of goods and provision of services; and
- (b) land rents; and
- (c) royalties and other payments derived from land use; and
- (d) membership dues; and
- (e) grants; and
- (f) donations;

“annual meeting” means a meeting required to be held under Section 66;

“applicant for incorporation” means the person or persons that have submitted a notice of intent to incorporate an association under Section 6 and a person that has submitted an application for incorporation under Section 11;

“association” means an association, society, club, group, institution, Christian mission or other body in the country that has not incorporated;

“balance date” means the close of 31 December, but the committee members of the association may adopt a different date as the association’s balance date;

“charitable purpose” has the meaning given in Section 5;

“committee” means -

(a) in relation to an incorporated association, means the committee of the association; or

(b) in the case of an unincorporated association, if there is no named committee, the persons (however styled or titled) who have the management of the affairs of the unincorporated association, who number not less than the required quorum acting together as a committee;

“committee member” means -

(a) in relation to an incorporated association, a person named on the register as occupying the position of committee member of the incorporated association; and

(b) in relation to an unincorporated association, a person occupying the position of a committee member, however styled or titled; and

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(c) for purposes of liability for an incorporated association, has the extended meaning given in Section 47;

“Court” means a court of competent jurisdiction, unless expressly provided;

“digital format” -

- (a) means a format in which information, a document, or register may be stored, accessed, and displayed by a computer or similar device; and
- (b) includes a format specified as a digital format by regulations made under this Act; and
- (c) includes any format (other than a photocopy document) produced by making a digital copy, image or reproduction of a document that is in hard copy format;

“document” means a document in any form and includes -

- (a) any writing on any material; and
- (b) information recorded or stored in a digital format by means of a tape recorder, computer, or other device; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“donation” means a gift of money, goods or other property that are given to an incorporated association without expectation of repayment in order for the incorporated association to further its objects, but the term does not include grants or dues (or other fees) required to be paid to be a member of an incorporated association;

“electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic;

“employee threshold amount” means an amount of remuneration as established in the regulations;

“financial statements”, in relation to an incorporated association and a balance date, means -

- (a) a statement of financial position for the association as at the balance date; and
- (b) an income and expenditure statement for the association in relation to the accounting period ending at the balance date; and
- (c) a statement of cash flows for the association in relation to the accounting period ending on the balance date; and
- (d) any other financial statements in relation to the association or any group of associations of which it is a member as may be required by regulations made under this Act; and
- (e) any notes or documents giving information relating to the statement of financial position and other statements;

“grants” means monies or other value given to an incorporated association by the Government of Papua New Guinea or any political subdivision without the intent that the monies or value given are to be repaid;

“incorporated association” means an association incorporated or re-registered under this Act and includes a member benefit association and a public benefit association;

“material interest” means a financial interest of a committee member or a relative of a committee member in an action or transaction that would reasonably be expected to impair the objectivity of the committee member’s judgment when participating in the action or the authorisation of the transaction;

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- “member” means a person (or persons) whose name is entered on the member register of an association or incorporated association, or who has the right to vote for the election of committee members, or who satisfies the qualifications for membership set forth in the rules of the association or incorporated association, but a person is not a member merely by virtue of being a committee member or other officer or employee of the association or incorporated association;
- “member benefit association” means an incorporated association that is formed and operated primarily for the benefit of its members;
- “membership” means the rights and any obligations of a member or, in the case of a membership jointly held by two persons, both such members, pursuant to an incorporated association’s rules and this Act;
- “objector” means a person who objects under Section 9 to the incorporation of an association under this Act;
- “overseas association” means an association or other similar non-profit entity that is incorporated outside Papua New Guinea;
- “prescribed form” means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar, which may be in digital format;
- “prescribed qualifications for incorporation”, in relation to an association or incorporated association, means -
- (a) that the association or incorporated association -
 - (i) is formed; or
 - (ii) is being formed; or
 - (iii) is operating,for the purpose of -
 - (A) providing recreation or amusement; or
 - (B) promoting any of the following objects, including commerce, trade, industry art education, science, religion, health, cultural welfare, agriculture, soil, crop, livestock and poultry improvement, wildlife and wildland conservation, administering any community trust or fund, promoting pension or superannuation schemes, or any charitable purpose beneficial to the public; and
 - (b) that the association will apply its profits (if any) or other income in promoting its objects; and
 - (c) that the association will prohibit the payment of any dividend or distribution or payment in the nature of a dividend or distribution to its members;
- “property” includes -
- (a) real and personal property; and
 - (b) an estate or interest in real or personal property; and
 - (c) a debt; and
 - (d) anything in action; and
 - (e) any other rights, interests, and claims of any kind in relation to property;
- “public benefit association” means an incorporated association that is formed for a charitable purpose that benefits the public interest;
- “public notice” means -
- (a) in all cases where required by law, notice by publication in a daily newspaper circulating generally throughout the country or in the National Gazette; or

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- (b) in all cases where public notice is to be provided by the Registrar, the Registrar may publish the notice on the website maintained for the register;
- “public officer”, in relation to an incorporated association, means the public officer or officers of the association appointed under Part VI;
- “register” means the register of incorporated associations kept by the Registrar under Section 144;
- “Registrar” means the Registrar of Companies appointed under Section 394(2)(a) of the *Companies Act 1997*;
- “regulations” means any regulations made under this Act;
- “relative” means, in relation to any person, means -
- (a) any parent, child, brother, sister, stepparent, stepchild, stepbrother, or stepsister of that person; or
 - (b) any spouse or de facto partner of that person; or
 - (c) any parent, child, brother, or sister of a spouse or de facto partner of that person; or
 - (d) a nominee or trustee for any of those persons;
- “relevant offence” means -
- (a) an offence in connection with the promotion, formation, or management of an association or incorporated association or overseas association, company, business group, or in connection with the ownership of a business name, punishable by a term of imprisonment of not less than three months, whether or not a sentence of imprisonment was imposed; or
 - (b) an offence under this Act; or
 - (c) any offence involving fraud or dishonesty; or
 - (d) an indictable offence involving violence against persons; or
 - (e) an offence under Part VIA of the *Criminal Code Act* (Chapter 262); or
 - (f) an offence under the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*; or
 - (g) an offence under Part II of the *Proceeds of Crime Act 2005*;
- “shadow committee member” is a person who, despite not being registered or formally appointed as a committee member -
- (a) acts in the role of a committee member; or
 - (b) is a person in accordance with whose directions or instructions a committee member is required or is accustomed to act; or
 - (c) who otherwise exercises control over committee member powers;
- “signature” means, unless the context indicates otherwise -
- (a) the name of a person affixed with his own hand on a document; or
 - (b) in the case of a document filed with the Registrar via electronic means, the name of a person affixed to the document by a method that the Registrar considers acceptable;
- “special resolution” means a special resolution as defined in Section 64(3);
- “this Act” includes the regulations.

(2) A reference in this Act to the rules of an association or incorporated association includes a reference to the *Constitution*, regulations and by-laws (if any) of the association or incorporated association, howsoever titled.

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PART II. - INCORPORATION.

Division 1. - Requirements for and Process of Incorporation.

4. ESSENTIAL ELEMENTS OF AN INCORPORATED ASSOCIATION.

An incorporated association must have -

- (a) a name that complies with Section 16; and
- (b) rules that address the matters listed in the Schedule; and
- (c) one or more members; and
- (d) three or more committee members, at least one of whom must be ordinarily resident in Papua New Guinea; and
- (e) one or more public officers, at least one of whom must be ordinarily resident in Papua New Guinea; and
- (f) a registered office in Papua New Guinea.

5. MEANING OF "CHARITABLE PURPOSE".

(1) In this Act, unless the context otherwise requires, charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of art, education, science, religion, charity, health, cultural welfare, agriculture (such as soil, crop, livestock and poultry improvement), wildlife and wildland conservation, administering any community trust or fund, or other objects beneficial to the public at large.

(2) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in Subsection (1) is pursued.

(3) The promotion of religion may be a charitable purpose even if the incorporated association only benefits the members of a particular faith.

(4) To avoid doubt, if the incorporated association includes a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose, the presence of that non-charitable purpose does not prevent the incorporated association from qualifying for registration as a public benefit association.

(5) For the purposes of Subsection (4), a non-charitable purpose is ancillary to a charitable purpose of the incorporated association if the non-charitable purpose is -

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the incorporated association; and
- (b) not an independent purpose of the incorporated association.

6. NOTICE OF INTENTION TO APPLY FOR INCORPORATION OF ASSOCIATION.

(1) Where the committee of an association authorises a person to apply for the incorporation of the association under this Act, that person may lodge a notice of the intention to apply for the incorporation of the association under this Act.

(2) A notice under Subsection (1) must -

- (a) be in the prescribed form; and
- (b) give details of the prescribed qualifications for incorporation of the association, including -
 - (i) the proposed name of the association; and

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- (ii) the names of the initial committee members and any shadow committee members; and
 - (iii) the name of the initial public officer or officers; and
 - (iv) the qualifications, if any, required to become a member of the association; and
 - (v) the address of the proposed principal place of business of the association, if known; and
 - (vi) any other place or places where the proposed association will conduct business; and
 - (vii) the principal activity the proposed association will undertake, together with a statement of the objectives of the proposed association; and
 - (viii) whether the association will be a public benefit association or a member benefit association; and
 - (ix) a statement that the proposed association will apply its profits (if any) or other income in promoting its objectives; and
 - (x) a statement that the association will prohibit the payment of any dividend or distribution or other payment in the nature of a dividend or distribution to its members; and
 - (c) be submitted to and approved by the Registrar before publication; and
 - (d) include a copy of the proposed rules of the proposed incorporated association; and
 - (e) include a copy of any trusts that relate to the proposed association; and
 - (f) contain the name, physical address and email address of the person or persons by whom it is given; and
 - (g) contain such other particulars as the Registrar directs.
- (3) Once approved for publication by the Registrar, the applicant may provide public notice of the intent to incorporate that must contain the following:
- (a) the proposed name of the incorporated association, together with the identification number assigned to the notice of intent lodged with the Registrar under Subsection (1); and
 - (b) the qualifications, if any, required to become a member of the proposed incorporated association; and
 - (c) the address of the principal place of business for the incorporated association, if known; and
 - (d) the principal activity the proposed association will undertake, together with a statement of the objectives of the proposed association; and
 - (e) a statement that for additional information the public is directed to the register website maintained by the Registrar.
- (4) Where for any reason it seems desirable to do so, the Registrar may -
- (a) consider the notice of intent and decide whether, in the Registrar's opinion, the notice of intent complies with the requirements of this section; and
 - (b) direct the manner of publication for the purposes of this section; and
 - (c) give written notice of any decision or direction under this section to the applicant for incorporation.
- (5) A person referred to in Subsection (1) may appeal to the Minister against the refusal of approval or any decision or direction given under this section.

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(6) A copy of an appeal under Subsection (5) must be lodged with the Registrar, and the Registrar may lodge a response to the appeal with the Minister.

(7) The decision of the Minister on an appeal under Subsection (5) is final.

7. POWER TO TAKE STEPS TO INCORPORATE AN ASSOCIATION.

The committee of, and persons who are members of, an association, and their designated agents, that is proposed to incorporate under this Act may do all acts and things necessary or convenient for securing that incorporation.

8. DISQUALIFICATION TO REGISTER AS AN INCORPORATED ASSOCIATION.

(1) Subject to Subsection (2), any entity which is incorporated under another Act in Papua New Guinea may not simultaneously be registered as an incorporated association under this Act.

(2) Subsection (1) does not apply to a political party registered under the *Organic Law on the Integrity of Political Parties and Candidates 2003* or any other Act that requires dual registration.

(3) For avoidance of doubt, an entity which is incorporated under another Act in Papua New Guinea may be a member of an incorporated association.

9. OBJECTION TO INCORPORATION.

(1) A person may by written notice lodged with the Registrar, within 60 days after the publication of a notice under Section 6, object to the incorporation of the association on any of the following grounds:

- (a) that the applicant for incorporation is not authorised by the committee of the association to make application for the incorporation of the association; or
- (b) that the proposed association does not have the essential elements for incorporation under Section 4; or
- (c) that the association was formed or is carried on, or is proposed to be incorporated, for an immoral or illegal purpose, or for improper profit, or a purpose contrary to public policy; or
- (d) that the rules of the proposed association do not comply with the provisions of this Act; or
- (e) that the name of the proposed association is not acceptable under Section 16; or
- (f) that notice of intention to apply for the incorporation of the association was defective or not duly published under Section 6; or
- (g) that the proposed incorporated association seeks to incorporate as a public benefit association when it should be incorporated as a member benefit association; or
- (h) that the proposed incorporated association seeks to incorporate as a member benefit association when it should be incorporated as a public benefit association; or
- (i) that any of the named committee members are ineligible to hold office under Section 30; or
- (j) that any of the named public officers are ineligible to hold office under Section 54.

(2) A notice of objection under this section must be in the prescribed form and set out fully -

- (a) the grounds of the objection; and
- (b) the name, address, email and other contact details of the person making the objection; and

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(c) include any documentation offered in support of the objection.

(3) On receipt of a notice of objection under this section, the Registrar must give the applicant for incorporation a notification -

- (a) stating that an objection has been received; and
- (b) providing an access to the objection made, together with access to any documentation supporting the objection, and the name and address of the objector; and
- (c) specifying a time within which the applicant for incorporation may submit a written response to the Registrar in relation to the objection, which must be no more than 30 days from the date of the written notification to the applicant.

(4) The Registrar must -

- (a) consider the objection and any written response from the applicant for incorporation and decide whether, in the Registrar's opinion, an application for incorporation should be accepted or rejected; and
- (b) give written notice of this decision to the objector and to the applicant for incorporation.

(5) The Registrar may -

- (a) reject an application for the incorporation of an association under this Act; or
- (b) cancel the incorporation of an association under this Act,

on the ground that it would be more appropriate for the association to be incorporated under the *Companies Act 1997* or another Act in Papua New Guinea.

10. APPEAL FROM DECISION OF REGISTRAR.

(1) Subject to this section, if the objector or the applicant for incorporation is dissatisfied with the decision of the Registrar under Section 9, they may appeal against that decision to a Principal Magistrate.

(2) Where an appeal under this section is brought -

- (a) by the objector, the applicant for incorporation must be joined as a party to the appeal;
or
- (b) by the applicant, the objector must be joined as a party to the appeal.

(3) An appeal under this section -

- (a) must be made within 28 days after the receipt by the appellant of notice of the decision in respect of which the appeal is brought or such extended time as a Principal Magistrate allows; and
- (b) must be instituted by written notice of appeal, setting out the grounds of the appeal and served on, or sent by registered post to -
 - (i) the Clerk of the District Court for the area in which the appeal is to be heard; and
 - (ii) the Registrar; and
 - (iii) any person who is required by Subsection (2) to be joined as a party to the appeal.

(4) Subject to the preceding provisions of this section, an appeal under this section must be instituted, heard and determined as prescribed.

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(5) On the determination of an appeal under this section, the Magistrate by whom the appeal is heard must, by order, determine whether or not the objection should be upheld.

(6) The determination of a Magistrate on the hearing of an appeal under this section is final.

(7) An appeal does not lie under this section against a decision of the Registrar as to whether an association should or should not be incorporated under a particular name or under a name of a particular kind.

11. APPLICATION FOR INCORPORATION.

(1) Subject to any decision of a Principal Magistrate on the hearing of an appeal under Section 10, an applicant for incorporation, or some other person authorised for the purpose by the committee of the association concerned, may, after the expiration of a period of 60 days and within a period of six months after the publication of the notice, apply in writing to the Registrar, in the prescribed form, for the incorporation of the association.

(2) An application under Subsection (1) must be accompanied by a statement made by the applicant for incorporation declaring -

- (a) that he is authorised by the committee of the association to apply for the incorporation of the association under this Act; and
- (b) that, on a date and in a newspaper specified in the declaration, public notice was given under Section 6 of intention to apply for the incorporation of the association; and
- (c) that the particulars contained in the application are true.

(3) An application under Subsection (1) must be accompanied by a copy of the rules that address the matters listed in the Schedule and any trusts relating to the association and, if the rules or trusts are embodied in a deed, a copy of the deed.

12. INCORPORATION.

(1) As soon as the Registrar receives an application for incorporation that complies with Section 11, the Registrar must -

- (a) enter the incorporated association in the Papua New Guinea register; and
- (b) issue a certificate of incorporation of the association.

(2) A certificate of incorporation of an association is conclusive evidence that -

- (a) all the requirements of this Act as to incorporation have been complied with; and
- (b) on and from the date of incorporation stated in the certificate, the association is incorporated under this Act.

Division 2. - Effect of Incorporation.

13. SEPARATE LEGAL PERSONALITY.

An incorporated association is a legal entity in its own right separate from its members and continues in existence until it is removed from the register.

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14. CAPACITY AND POWERS.

(1) Subject to this Act and to any other law, and to any special restriction or prohibitions in its rules or trust deed, and without prejudice to any other powers contained in its rules or trust deed or implied by law, an incorporated association has, both within and outside the country -

- (a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction so long as those activities and transactions are in furtherance of the stated objectives of the incorporated association; and
- (b) for the purposes of Paragraph (a), full rights, powers, and privileges.

(2) For the avoidance of doubt, the grant of authority in Subsection (1) includes, without limitation, the authority to -

- (a) act as trustee for any other association which has the prescribed qualifications for incorporation; and
- (b) accept and hold in trust any property that is given to the association subject to any trust, and to carry out any such trust; and
- (c) invest its monies in or on any security in which trustees are for the time being authorised by law to invest trust funds; and
- (d) open and operate bank accounts; and
- (e) borrow money on such terms, in such manner and on such security (if any) as the association thinks proper, for the purpose of carrying out its objects and purposes; and
- (f) secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving a mortgage, pledge, charge or secured interest on or over all or any of the property of the association; and
- (g) to hold, own, purchase, sell, mortgage, or lease any land and to build on such land, and otherwise deal with the land as fully and effectually as a natural person could do.

(3) The rules of an incorporated association may contain a provision relating to the capacity, rights, powers, or privileges of the incorporated association only where the provision restricts the capacity of the incorporated association or those rights, powers, and privileges.

15. VESTING OF PROPERTY IN THE INCORPORATED ASSOCIATION.

(1) On the incorporation of an association under this Act, any property held by a person, in trust or otherwise, for or on behalf of the association, is vested in the incorporated association, subject to any trust, covenant, contract or liability affecting the property.

(2) Where any property vested in the incorporated association under this section is land registered under the *Land Registration Act* (Chapter 191) and the *Land Act 1996*, the Registrar of Titles must without formal transfer and without fee, on application by the incorporated association, enter or register the incorporated association in the appropriate register and on the grant, certificate of title, lease or other instrument evidencing title to the land as the owner of the land within the meaning of that Act.

PART III. - INCORPORATED ASSOCIATION NAME.

16. NAME OF INCORPORATED ASSOCIATIONS.

- (1) An association must not be registered by a name -
 - (a) the use of which would contravene any law; or

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- (b) that is identical or almost identical to the name of another registered incorporated association, registered overseas association, a proposed incorporated association that has submitted a notice of intent to incorporate but has not yet incorporated and is still actively pursuing incorporation, registered company, registered overseas company, registered business group, or registered business name; or
- (c) that is identical or almost identical to a name that the company Registrar has reserved under the *Companies Act 1997* while that name reservation is active.

(2) Except with the consent of the Minister, an association or incorporated association must not be registered by a name that is, in the opinion of the Registrar -

- (a) undesirable; or
- (b) deceptive, offensive or otherwise misleading given the nature of the objects of the association, its location, or the composition of its members; or
- (c) a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(3) The Minister must cause any direction given under Subsection (2) to be published in the National Gazette.

(4) An incorporated association must have the word "Incorporated" or the abbreviation "Inc." as part of and at the end of its name.

(5) It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated"-

- (a) in the name of the incorporated association as appearing on its seal; or
- (b) when the name of an incorporated association is included in any document.

17. CHANGE OF NAME.

(1) By special resolution, an incorporated association may change its name to any other name by which it could be incorporated under Section 16.

- (2) An application for the approval of the Registrar to a change of name under this section -
- (a) must be in the prescribed form; and
 - (b) must be submitted within 20 days after the date of the meeting at which the special resolution for the change of name was passed; and
 - (c) must be lodged with the Registrar, together with the prescribed fee and such other documents (if any) as are prescribed.

(3) If the proposed new name of the incorporated association complies with Section 16, the Registrar must register the change of name and -

- (a) note the change on the certificate of incorporation; or
- (b) issue a new certificate of incorporation.

(4) The committee of an incorporated association that changes its name must, within 20 days after the date of filing the notice of name change with the Registrar, cause a public notice to be published indicating the name change.

(5) The committee of an incorporated association must file in the prescribed form and pay the prescribed fee a copy of the public notice published under Subsection (4) with the Registrar within 10 days from the date it was published.

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(6) Where the committee of an incorporated association fails to comply with Subsections (2), (4) or (5), every member of the committee commits an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one month, or both.

- (7) A change of name of an incorporated association -
- (a) takes effect from the date specified in the certificate issued under Subsection (3)(b); and
 - (b) does not affect the identity of an incorporated association; and
 - (c) does not affect rights or obligations of the incorporated association or any member or legal proceedings by or against the incorporated association; and
 - (d) does not effect any legal proceedings that might have been continued or commenced by or against an incorporated association under its former name may be continued or commenced by or against it under its new name.

18. DIRECTION TO CHANGE NAME.

(1) This section applies if the Registrar believes on reasonable grounds that an incorporated association has been registered under a name that contravenes Section 16.

- (2) The Registrar may -
- (a) serve a written notice on the incorporated association requiring it to change its name within a date specified in the notice that is not less than one month after service of the notice; and
 - (b) if the incorporated association does not comply with the notice, enter a new name for the incorporated association in the register in the form of "Number x Incorporated Association Inc" with "x" being a unique number assigned to the incorporated association by the Registrar.
- (3) On a change of name under Subsection (2)(b) -
- (a) the Registrar must issue an amended certificate of incorporation for the incorporated association recording the new name; and
 - (b) Section 17(4) applies to the registration of the new name as if the name of the incorporated association had been changed under Section 17.

19. USE OF NAME.

- (1) An incorporated association must ensure that its name is clearly stated in -
- (a) every written communication sent by, or on behalf of, the incorporated association; and
 - (b) every document issued or signed by, or on behalf of, the incorporated association that evidences or creates a legal obligation of the incorporated association.

(2) If a document referred to in Subsection (1)(b) does not correctly state the name of the incorporated association, every person who issued or signed the document (the issuer or signatory) is liable to the same extent as the incorporated association if the incorporated association fails to discharge the obligation.

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- (3) The issuer or signatory is not liable under Subsection (2) if -
 - (a) that person proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the incorporated association; or
 - (b) it would not be just or equitable for the issuer or signatory to be liable.

PART IV. - RULES.

20. RULES OF AN INCORPORATED ASSOCIATION.

- (1) Every incorporated association must have rules.
- (2) An association that is proposed to be or is incorporated under this Act must, by special resolution, adopt rules that address the matters listed in the Schedule.
- (3) An incorporated association that is re-registered under this Act must have rules in place that address the matters listed in the Schedule.
- (4) An incorporated association that is to be re-registered under this Act that does not have rules in place that address the matters listed in the Schedule must, by special resolutions, adopt rules that address the matters listed in the Schedule.
- (5) The rules of an incorporated association may address additional matters not listed in the Schedule.
- (6) Subject to this Act, the rules of an incorporated association are a binding contract between the incorporated association and each member.
- (7) The rules of an incorporated association have no effect to the extent that they contravene, or are inconsistent with, this Act or any other law.

21. SUBSTITUTION, ADOPTION, AMENDMENT OR ALTERATION OF RULES, ETC., AFTER INCORPORATION.

- (1) Subject to any restrictions in its rules, an incorporated association may by special resolution, substitute or adopt new rules or amend its existing rules.
- (2) The committee of an incorporated association must, within one month after -
 - (a) any substitution, adoption or amendment of its rules; or
 - (b) any alteration of the objects or purposes of the incorporated association; or
 - (c) any alteration of any trusts relating to the incorporated association (including the creation of new trusts),lodge with the Registrar in the prescribed form -
 - (i) notice of the substitution, adoption, amendment, or alteration; and
 - (ii) a copy of any instrument evidencing the substitution, adoption, amendment, or alteration.
- (3) Where, under the rules of an incorporated association, the members of the incorporated association are liable to contribute towards -
 - (a) the payments of the debts and liabilities of the incorporated association; or

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(b) the costs, charges and expenses of the winding-up of the incorporated association, an alteration of the rules of the incorporated association affects that liability, the committee of the incorporated association must, within one month after the alteration, give public notice of the substitution, adoption, amendment, or alteration.

(4) A substitution, adoption, amendment, or alteration of the rules, objects or purposes of an incorporated association, or of any trusts relating to an incorporated association (including the creation of new trusts), is of no effect until Subsections (2) and (3) have been complied with in respect of the substitution, adoption, amendment or alteration and the alteration has been filed in the register on the prescribed form.

(5) In the case of the alteration of the rules of an incorporated association, a notice under Subsection (2) must be accompanied by a statement that a special resolution authorising the alteration was duly passed.

(6) A committee member of an incorporated association who fails to comply with Subsections (2), (3) or (5) commits an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months, or both.

22. OBLIGATIONS, ETC., NOT AFFECTED BY SUBSTITUTION, ADOPTION, AMENDMENT OR ALTERATION OF RULES, ETC.

A substitution, adoption, amendment, or alteration of the rules, objects or purposes of an incorporated association does not affect any right, liability or obligation of the incorporated association or of any person, or any legal proceedings, existing or pending immediately before the alteration takes effect.

PART V. - COMMITTEE MEMBERS AND THEIR POWERS AND DUTIES.

Division 1. - Particulars concerning Committees and their Committee Members.

23. CONSENT REQUIRED TO BE A COMMITTEE MEMBER.

(1) A person must not be appointed a committee member of an incorporated association unless he has consented in writing in the prescribed form to be a committee member.

(2) The consents must be kept with the accounting records of the incorporated association.

(3) An incorporated association must, if required to do so by the Registrar, produce any consent specified in Subsection (1).

24. APPOINTMENT OF FIRST AND SUBSEQUENT COMMITTEE MEMBERS.

(1) A person named as a committee member in an application for incorporation, an application for re-registration or in an amalgamation proposal holds office as a committee member from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a committee member in accordance with this Act.

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(2) All subsequent committee members of an incorporated association must, unless the rules of the incorporated association provide otherwise, be appointed by an ordinary or special resolution of the members.

25. REMOVAL OF COMMITTEE MEMBERS.

Subject to the rules of an incorporated association, a committee member may be removed by ordinary resolution of the members.

26. COMMITTEE MEMBER CEASING TO HOLD OFFICE.

- (1) A committee member of an incorporated association ceases to hold office if he -
- (a) resigns; or
 - (b) is removed from office in accordance with this Act or the rules of the incorporated association; or
 - (c) becomes disqualified from being a committee member under Section 30; or
 - (d) dies or becomes incapacitated; or
 - (e) otherwise, vacates office in accordance with the rules of the incorporated association.

(2) Despite ceasing to hold office, a former committee member of an incorporated association remains liable under the committee member liability provisions of this Act for his conduct while a committee member.

27. RESIGNATION BY COMMITTEE MEMBERS.

(1) A committee member of an incorporated association resigns if he signs a written notice of resignation and delivers it to the registered office of the incorporated association.

(2) Subject to Section 137, the notice is effective when it is received at that address or at a later time specified in the notice.

28. NOTICE OF CHANGE OF COMMITTEE MEMBERS OR DETAILS OF COMMITTEE MEMBERS.

(1) An incorporated association must ensure that the following notices in the prescribed forms are filed with the Registrar for registration:

- (a) notice of a change in the committee members of the incorporated association, whether as the result of a committee member ceasing to hold office or the appointment of a new committee member, or both; or
- (b) notice of a change in the name of a committee member; or
- (c) notice of a change in the residential address, postal address or other contact details of a committee member.

(2) A notice under Subsection (1) must -

- (a) specify the date of the change; and
- (b) include the full name, residential address, postal address and other contact details of every person who is a committee member of the incorporated association from the date of the notice (including continuing committee members); and
- (c) be filed with the Registrar within one month after -
 - (i) the change occurring, in the case of the appointment or resignation of a committee member; or

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- (ii) the incorporated association first becoming aware of the change, in the case of the death of a committee member or a change in the name, residential address, postal address or contact details of a committee member.
- (3) If an incorporated association fails to comply with this section -
 - (a) the incorporated association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
 - (b) every member of the committee who fails to comply, commits an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three months, or both.

29. REMUNERATION OF COMMITTEE MEMBERS.

Committee members of incorporated associations may receive remuneration and other benefits from an incorporated association only -

- (a) in accordance with its rules; or
- (b) pursuant to a special resolution under Section 64.

Division 2. - Qualifications of Committee Members and their Disqualification.

30. QUALIFICATION OF COMMITTEE MEMBERS OF INCORPORATED ASSOCIATIONS.

(1) Subject to Subsection (2), a natural person may be appointed as a committee member of an incorporated association.

(2) The following persons are disqualified from being appointed or holding office as a committee member of an incorporated association:

- (a) a person who is under 18 years of age; or
- (b) a person who is an undischarged bankrupt in any jurisdiction; or
- (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under Section 425, 426 or 428 of the *Companies Act 1997*; or
- (d) a person who has been convicted of a relevant offence during the period of five years after the conviction; or
- (e) a person in respect of whom an order is in force by a licensed medical health practitioner or a Court that the person is of unsound mind; or
- (f) in relation to any particular incorporated association, a person who does not comply with any qualifications for committee members contained in the rules of the incorporated association.

(3) A person who is disqualified from being a committee member but who acts as a committee member is taken to be a committee member for the purposes of any provision of this Act that imposes a duty or an obligation on committee members of an incorporated association.

31. PROHIBITED PERSON MAY APPLY FOR LEAVE TO BE COMMITTEE MEMBER, ETC.

(1) The prohibition in Section 30(2)(c) does not apply if a person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.

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(2) Any person that the Court grants leave may attend and be heard at the hearing of an application for leave under this section.

(3) A person who contravenes an order granting leave under this section commits an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months, or both.

32. COURT MAY DISQUALIFY PERSONS.

(1) The Court may order that a person must not, without the leave of the Court, do any of the following for the period specified by the Court (which must not be more than five years):

- (a) be a committee member of an incorporated association; or
- (b) be a promoter of a proposed incorporated association; or
- (c) be a public officer of an incorporated association; or
- (d) in any way, whether directly or indirectly, be concerned in or take part in the management of an incorporated association.

(2) The Court may make the order if the person has -

- (a) been convicted of a relevant offence; or
- (b) been convicted of an offence under this Act; or
- (c) been convicted of fraud committed in relation to an incorporated association while a committee member of that incorporated association; or
- (d) found liable for a breach of duty to an incorporated association while a committee member or a member of the incorporated association; or
- (e) found liable for a breach of duty to a company while a shareholder or a director of the company; or
- (f) been convicted of an offence in any other jurisdiction that corresponds to any of the offences referred to in Paragraphs (a) to (c); or
- (g) been prohibited under the law of any other jurisdiction from acting as a committee member (however styled or title) of a non-profit entity or otherwise prohibited from being concerned or taking part in the management of a non-profit; or
- (h) become of unsound mind.

(3) An order may be made under this section even though the person concerned may be liable in respect of the matters that are the grounds for making the order.

(4) The Court must, as soon as practicable after an order has been made under this section, give notice of the order to the Registrar.

(5) A person who fails to comply with an order under this section, commits an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months, or both.

33. PERSONS WHO MAY APPLY FOR A DISQUALIFICATION ORDER.

Any of the following persons may apply for a disqualification order under Section 32:

- (a) the liquidator of the incorporated association; or
- (b) a member or committee member of the incorporated association; or
- (c) a creditor or former creditor of the incorporated association; or

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(d) the Registrar.

34. PROCESS IN SEEKING A DISQUALIFICATION ORDER.

(1) An applicant for a disqualification order under Section 32 must give not less than 20 days' notice of the intention to apply to the person against whom the order is sought.

(2) The person against whom the order is sought may attend the hearing and give evidence and call witnesses.

Division 3. - Powers of Management.

35. MANAGEMENT OF INCORPORATED ASSOCIATIONS.

(1) The business and affairs of an incorporated association must be managed under the direction and supervision of, its committee members.

(2) The committee members of an incorporated association have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the incorporated association.

(3) Subsections (1) and (2) are subject to any modifications, exceptions, or limitations contained in this Act or in the rules of an incorporated association.

(4) The members of an incorporated association may create a subcommittee consisting of members of the association.

(5) A subcommittee created by the members must be proportionally representative of the gender makeup of the membership at large.

(6) A subcommittee created by the members may submit a written report with recommendations to the committee regarding the management of the incorporated association and matters affecting the members.

(7) The committee must, within 30 days of receiving the subcommittee report, in respect of each recommendation -

(a) accept the recommendation and implement it; or

(b) reject it, in which case the committee must provide a written response to the subcommittee setting out the reason or reasons for the rejection.

36. CONTRACTS.

A contract or other enforceable obligation may be entered into by an incorporated association as follows:

(a) a contract that, if made between natural persons, would be by law required to be in writing under seal, may be, made on behalf of the incorporated association in writing under the common seal of the incorporated association; or

(b) a contract that, if made between natural persons, would be by law required to be in writing and signed by the parties to be charged, may be made on behalf of the incorporated association in writing, signed by a person acting under its authority, express or implied; or

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- (c) a contract that, if made between natural persons, would by law be valid although made orally only (and not reduced into writing) may be made orally on behalf of the incorporated association by a person acting under its authority, express or implied, is a contract so made effective in law and binds the incorporated association and its successors and all other parties, and may be varied or discharged in the manner in which it is authorised to be made.

37. DISPOSAL OF PROPERTY HELD IN TRUST.

(1) Where property is held by an incorporated association in trust, then notwithstanding that the deed or other instrument creating the trust or the rules of the incorporated association do not contain any power to dispose of the property, or forbid any such transaction, any person who is authorised to do so by the committee of the incorporated association may make application to the National Court for an order authorising the disposal of the whole or any portion of the property -

- (a) where the trusts in which it is held have -
- (i) come wholly or partially to an end; or
 - (ii) become unduly onerous; or
- (b) where for any other reason disposal appears proper.

(2) On an application under this section, the Court may make an order to authorise the disposal of the property to which the application relates and direct the manner in which the proceeds from the disposal of the property must be disposed of.

(3) On the making of an order under this section, the incorporated association may, subject to and in accordance with the terms of the order, dispose of the property freed from all trusts to which it was subject.

Division 4. - Committee Member Duties, Liabilities and Enforcement.

38. COMMITTEE MEMBER'S DUTY OF CARE.

(1) A committee member of an incorporated association, when exercising powers or performing duties as a committee member, must exercise the care, diligence, and skill that a reasonable committee member would exercise in the same circumstances taking into account, but without limitation -

- (a) the nature of the incorporated association; and
- (b) the nature of the decision; and
- (c) the position of the committee member and the responsibilities undertaken by the committee member.

(2) A committee member of an incorporated association must not act, or agree to the incorporated association acting, in a manner that contravenes this Act or the rules of the incorporated association.

(3) The assignment of certain functions and tasks to a public officer by the committee does not limit or eliminate the responsibilities imposed by this section on the committee members.

(4) Notwithstanding any other provision of this Act, a person who serves as a committee member of an incorporated association without remuneration or expectation of remuneration must not be liable to the incorporated association or its members for monetary damages for any action taken, or any failure to take any action, as a committee member, except liability for -

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- (a) the amount of a financial benefit received by the committee member to which the committee member is not entitled (plus expenses, including legal fees, accrued in recouping the financial benefit from the committee member); or
- (b) an intentional infliction of harm to the incorporated association or its members; or
- (c) a violation of this Act in relation to the duty to disclose a material interest; or
- (d) a conviction under or intentional violation of the *Criminal Code Act* (Chapter 262), or a violation of any other laws of Papua New Guinea that result in a criminal conviction.

(5) For purposes of Subsection (4), remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a committee member allowed by this Act.

39. RELIANCE ON INFORMATION AND ADVICE.

(1) For the purpose of this section, "third party" means an employee of the incorporated association, a professional adviser or expert, or another committee member.

(2) A committee member of an incorporated association may rely on information (reports, statements, financial data and other information) prepared or supplied and on professional or expert advice given, by a third party if the committee member -

- (a) acts in good faith; and
- (b) believes on reasonable grounds that the information or advice is within the competence of the third party to prepare, supply or give; and
- (c) makes proper inquiry where the need for inquiry is indicated by the circumstances.

40. DUTY IN RELATION TO MATERIAL INTEREST.

(1) A committee member of an incorporated association must not exercise any power as a committee member if the committee member has a material interest, whether directly or indirectly, in the exercise of the power.

(2) Subsection (1) does not apply if, before the exercise of the power -

- (a) the committee member makes full disclosure of the material interest; or
- (b) the rules expressly permit the exercise of the power despite the interest of a committee member in its exercise.

(3) Subsection (1) does not apply to a transaction entered into between the committee member and the incorporated association where the transaction is in the ordinary course of the incorporated association's business and on usual terms and conditions.

(4) For the purposes of Subsection (2)(a), a committee member makes full disclosure of the interest if the committee member discloses the nature and extent of the interest in writing to -

- (a) all the members, in the case of an action requiring member approval; or
- (b) all the other committee members, provided that they are not also interested in the exercise of the power.

(5) The rules of an incorporated association may contain additional restrictions on transactions involving the incorporated association and its committee members.

(6) A committee member with a material interest may attend and be counted in determining the presence of a quorum at a meeting of the committee which authorises the contract or transaction.

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(7) Unless provided in the rules, the setting of the compensation of committee members for services in any capacity by the committee must not be deemed to involve a material interest.

(8) A committee member who fails to comply with this section, commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

41. AVOIDANCE OF TRANSACTIONS WHERE THERE IS AN UNDISCLOSED MATERIAL INTEREST.

(1) A transaction entered into by an incorporated association in which a committee member of the incorporated association has a material interest that was not disclosed under Section 40(2) may be avoided by the incorporated association at any time before the expiration of one month after the transaction is discovered, subject to Subsection (2).

(2) A transaction cannot be avoided where the incorporated association receives fair value under it.

(3) For the purposes of Subsection (2), the question whether an incorporated association receives fair value under a transaction is to be determined on the basis of the information known to the incorporated association at the time the transaction is entered into.

(4) Where a transaction is entered into by an incorporated association in good faith in the ordinary course of its business and on usual terms and conditions, the incorporated association is presumed to receive fair value under the transaction.

(5) For the purposes of this Act -

(a) a person seeking to uphold a transaction and who knew or ought to have known of the committee member's interest at the time the transaction was entered into has the onus of establishing fair value; and

(b) in any other case, the incorporated association has the onus of establishing that it did not receive fair value.

(6) A transaction in which a committee member is interested can only be avoided on the ground of the committee member's interest in accordance with this section or the incorporated association's rules.

42. EFFECT OF AVOIDANCE ON THIRD PARTIES.

The avoidance of a transaction under Section 41 does not affect the title or interest of a person in or to property which that person has acquired where the property was acquired -

(a) from a person other than the incorporated association; and

(b) for valuable consideration; and

(c) without knowledge of the circumstances of the transaction under which the person referred to in Paragraph (a) acquired the property from the incorporated association.

43. USE OF INCORPORATED ASSOCIATION INFORMATION.

(1) For the purposes of this section, "private information" means information that -

(a) a person has or has access to in his capacity as a committee member or employee of the incorporated association; and

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(b) would not otherwise be available to that person, except for him being a committee member or employee of the incorporated association.

(2) A committee member of an incorporated association must not disclose private information to any person, or make use of or act on the private information, except -

- (a) for the purposes of the incorporated association; or
- (b) as required by law; or
- (c) in accordance with Subsection (2) or (3); or
- (d) in acting under Section 39.

(3) A committee member of an incorporated association may disclose, use or act upon private information if -

- (a) the disclosure or use of the private information is authorised by the rules or approved by special resolution of the members; or
- (b) the disclosure is authorised by the committee; or
- (c) it is required by law.

(4) A committee member of an incorporated association who acts in contravention of Subsection (2), commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

44. OFFENCE OF SERIOUS BREACH OF DUTY TO ACT IN GOOD FAITH AND IN BEST INTERESTS OF INCORPORATED ASSOCIATION.

A committee member of an incorporated association commits an offence if the member exercises powers or performs duties as a committee member of the incorporated association -

- (a) in bad faith towards the incorporated association; or
- (b) believing that the conduct is not in the best interests of the incorporated association; or
- (c) believing that the conduct will cause serious risk of loss to the incorporated association.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

45. REMOVAL OF COMMITTEE MEMBER BY COURT.

(1) The Court may remove a committee member from office in a proceeding commenced either by its members holding at least twenty percent of the voting power and additionally in the case of a public benefit association, the Registrar, if the court finds -

- (a) the committee member engaged in bad faith or dishonest conduct, or exercised a gross abuse of authority or discretion, or failed to disclose a known material interest, or that the committee member has committed a serious breach of the rules of the incorporated association; and
- (b) removal is in the best interests of the incorporated association.

(2) The Court that removes a committee member may bar that committee member from serving on the committee for a period prescribed by the court.

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(3) If the members of a public benefit association commence a proceeding under Subsection (1), they must make the public benefit association and the Registrar, parties to the proceeding.

46. DEFENCES.

(1) It is a defence for a committee member charged with an offence in relation to a duty imposed on the committee members of an incorporated association where the committee member proves that -

- (a) the committee members took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
- (b) the committee member charged with an offence took all reasonable and proper steps to ensure that the committee members complied with the requirements of this Act; or
- (c) in the circumstances the committee member charged could not reasonably have been expected to take steps to ensure that the committee members complied with the requirements of the Act.

(2) It is a defence for a committee member charged with an offence in relation to a duty imposed on the incorporated association where the committee member proves that -

- (a) the incorporated association took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
- (b) the committee member charged took all reasonable and proper steps to ensure that the incorporated association complied with the requirements of this Act; or
- (c) in the circumstances the committee member charged could not reasonably have been expected to take steps to ensure that the incorporated association complied with the requirements of the Act.

47. EXTENDED MEANING OF COMMITTEE MEMBER FOR PURPOSES OF LIABILITY.

(1) A person who is not otherwise a committee member of an incorporated association may be liable as a committee member of the incorporated association under this Act if the person is a shadow committee member.

(2) It is a defence to liability on the part of a shadow committee member if the shadow committee member shows that the committee member was not acting in accordance with the shadow committee member's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the committee member.

(3) A person is not a shadow committee member to the extent that the person acts only in a professional capacity.

48. EXCLUSION OF MEMBER LIABILITY.

To avoid doubt, if any action is approved by special resolution or written resolution in lieu of a meeting of the members, no member of an incorporated association is liable as a committee member or as a shadow committee member in respect of that action.

49. INDEMNITY AND INSURANCE.

(1) For the purposes of this section -

“committee member” includes a former committee member;

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises, and “indemnity” has a corresponding meaning.

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(2) An incorporated association must not indemnify a committee member of the incorporated association in respect of any criminal liability.

(3) Unless the rules provide otherwise, an incorporated association must not indemnify a committee member of the incorporated association or of any related incorporated association in respect of -

- (a) any liability to the incorporated association for any act or omission in his capacity as a committee member of the incorporated association; or
- (b) any liability to any person arising out of a breach or violation of Sections 39, 41 and 44.

(4) An incorporated association may, with the prior approval of the committee, effect insurance for a committee member, officer or employee of the incorporated association in respect of -

- (a) liability, not being criminal liability, for any act or omission in their capacity as a director or employee; or
- (b) costs incurred by that committee member, officer or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that committee member, officer or employee in defending any criminal proceedings in which they are acquitted.

(5) An indemnity given in breach of this section is void.

50. INJUNCTION RESTRAINING CONTRAVENTION OF ACT OR RULES.

(1) The National Court may impose an injunction on an incorporated association or a committee member of an incorporated association against any conduct that would contravene this Act or the rules of the incorporated association.

(2) The application for an injunction under Subsection (1) may be made by -

- (a) the liquidator or receiver of the incorporated association; or
- (b) a member or committee member of the incorporated association; or
- (c) a creditor or former creditor of the incorporated association; or
- (d) in the case of public benefit association, the Registrar.

(3) In granting an injunction the Court may also grant consequential relief.

(4) The Court may not make an order under this section in relation to conduct or a course of conduct that has been completed.

(5) The Court may, before final determination of an application for an injunction, make as an interim order, an order that could be made under Subsection (1).

51. PROCEEDING AGAINST COMMITTEE MEMBER OF INCORPORATED ASSOCIATION FOR BREACH OF DUTY.

A member or former member may sue a committee member of an incorporated association for breach of a committee member's duty owed to the member in that capacity.

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52. PROCEEDING TO ENFORCE INCORPORATED ASSOCIATION COMMITTEE MEMBER COMPLIANCE.

On the application of a member of an incorporated association, and if it is just and equitable, the National Court may -

- (a) order the committee members of the incorporated association to take any action that is required to be taken by the committee members under the rules of the incorporated association or under this Act; and
- (b) in making the order, also order any consequential relief that it thinks fit.

PART VI. - PUBLIC OFFICER.

53. APPOINTMENT OF FIRST AND SUBSEQUENT PUBLIC OFFICERS.

(1) A person named as a public officer in an application for incorporation or in an amalgamation proposal holds office as a public officer from the date of incorporation or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a public officer in accordance with this Act.

(2) All public officers of an incorporated association must, unless the rules of the incorporated association provide otherwise, be appointed by an ordinary or special resolution of the committee.

54. QUALIFICATIONS OF PUBLIC OFFICER.

(1) A natural person who is not disqualified by Subsection (2) may be appointed as a public officer of an incorporated association.

(2) The following persons are disqualified from being appointed to hold office as a public officer of an incorporated association:

- (a) a person who is under 18 years of age; or
- (b) a person who is an undischarged bankrupt in any jurisdiction; or
- (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under Section 425, 426 or 428 of the *Companies Act 1997*; or
- (d) a person who has been convicted of a relevant offence during the period of five years after the conviction; or
- (e) a person in respect of whom an order is in force by a licensed medical health practitioner or a Court Magistrate that he is of unsound mind; or
- (f) a person who is not ordinarily resident in Papua New Guinea; or
- (g) in relation to any particular incorporated association, a person who does not comply with any qualifications for public officer contained in the rules of the incorporated association.

55. REMOVAL AND OTHER VACANCY IN THE OFFICE OF THE PUBLIC OFFICER.

(1) Subject to the rules of an incorporated association, a public officer may be removed at any time by the committee.

(2) The office of a public officer of an incorporated association becomes vacant if the person holding that office -

- (a) dies; or

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- (b) becomes bankrupt, or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors, or makes any assignment of his estate for their benefit; or
- (c) becomes of unsound mind; or
- (d) resigns from office by writing under his hand addressed to the committee of the association; or
- (e) ceases ordinarily to reside in the country; or
- (f) is removed from office.

56. NOTICE OF CHANGE OF PUBLIC OFFICER OR PUBLIC OFFICER DETAILS.

(1) An incorporated association must ensure that the following notices in the prescribed form are filed with the Registrar for registration:

- (a) a notice of a change in the public officer of the incorporated association, whether as the result of a public officer ceasing to hold office or the appointment of a new public officer, or both; and
- (b) a notice of a change in the name of a public officer; and
- (c) a notice of a change in the residential address, postal address or other contact details of a public officer; or
- (d) a notice of change of authority to bind the incorporated association to contracts.

(2) A notice under Subsection (1) must -

- (a) specify the date of the change; and
- (b) include the full name, residential address, postal address and other contact details of every person who is a public officer of the incorporated association from the date of the notice (including continuing public officers); and
- (c) be filed with the Registrar within one month after -
 - (i) the change occurring, in the case of the appointment or resignation of a public officer; or
 - (ii) the incorporated association first becoming aware of the change, in the case of the death of a public officer or a change in the name, residential address, postal address or contact details of a public officer.

(3) If an incorporated association fails to comply with this section -

- (a) the incorporated association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
- (b) every member of the committee commits an offence.

Penalty: A fine not exceeding K1,000.00.

57. POWERS OF PUBLIC OFFICER.

(1) A public officer of an incorporated association may -

- (a) perform the functions and tasks set forth in the incorporated association rules or, to the extent consistent with the rules, the functions and tasks prescribed by the committee; and
- (b) enter into contracts on behalf of the incorporated association but only if such authority has been granted by the committee to the public officer on the application to incorporate or on a notice of power to enter contracts filed with the Registrar on the prescribed form.

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(2) The authority of a public officer to enter into contracts may be removed by the committee at any time by filing a notice of termination to enter contracts with the Registrar in the prescribed form.

- (3) Nothing in Subsection (1) or (2) must eliminate -
- (a) any liability provided for in the rules of the incorporated association; and
 - (b) any liability as a shadow committee member.

58. DUTY OF CARE OF A PUBLIC OFFICER.

- (1) A public officer, when performing in such capacity, has the duty to act -
- (a) in good faith; and
 - (b) with the care an ordinarily prudent person in a position would exercise under similar circumstances; and
 - (c) in a manner the public officer reasonably believes to be in the best interests of the incorporated association.

(2) A public officer is not liable for any decision to take or not to take action, or any failure to take any action, as a public officer, if the duties of the office are performed in compliance with this section.

(3) Notwithstanding any other provision of this Act, a person who serves as a public officer of an incorporated association without remuneration or expectation of remuneration must not be liable to the incorporated association or its members for monetary damages for any action taken, or any failure to take any action, as a public officer, except liability for -

- (a) the amount of a financial benefit received by the public officer to which the public officer is not entitled; or
- (b) an action taken in bad faith against the interests of the incorporated association or its members; or
- (c) a violation of this Act in relation to the duty to disclose a material interest; or
- (d) a conviction under or intentional violation of the *Criminal Code Act* (Chapter 262), or a violation of any other laws of Papua New Guinea that result in a criminal conviction.

(4) For purposes of Subsection (3), remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a public officer allowed by this Act.

59. DUTY OF A PUBLIC OFFICER IN RELATION TO MATERIAL INTEREST.

(1) A public officer of an incorporated association must not exercise any power as public officer if he has a material interest, whether directly or indirectly, in the exercise of the power.

- (2) Subsection (1) does not apply if, before the exercise of the power -
- (a) the public officer makes full disclosure of the material interest to the committee; and
 - (b) the committee then expressly permits the exercise of the power despite the material interest of the public officer.

60. OFFENCE OF SERIOUS BREACH OF DUTY BY A PUBLIC OFFICER OF AN INCORPORATED ASSOCIATION.

A public officer of an incorporated association commits an offence if he exercises powers or performs duties as a public officer of the incorporated association -

- (a) in bad faith towards the incorporated association; or

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- (b) believing that the conduct is not in the best interests of the incorporated association; or
- (c) believing that the conduct will cause serious loss to the incorporated association.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years, or both.

PART VII. - MEMBERS.

61. LIABILITY OF MEMBERS.

(1) A member of an incorporated association is not liable to contribute towards the payment of the debts, liabilities, or other obligations of the incorporated association, or for the costs, charges and expenses of the winding up of the incorporated association, by reason only of being a member.

(2) The rules of an incorporated association may provide for liability for its members.

(3) For avoidance of doubt, the limitation on liability for a member of an incorporated association in this section does not affect any liability a person may have as a shadow committee member.

62. RIGHTS OF MEMBERS.

(1) For the purposes of this section, the term "major transactions" means -

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half of the incorporated association's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the incorporated association the value of which is more than half the value of the incorporated association's assets before the disposition; or
- (c) a transaction that has, or is likely to have, the effect of the incorporated association acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the incorporated association's assets before the transaction.

(2) The following powers may be exercised by the members only and may not be delegated under the rules or otherwise:

- (a) the power to substitute, alter or amend the incorporated association's rules; or
- (b) the power to substitute, alter or amend the incorporated association's objectives; or
- (c) the power to wind up the incorporated association (but this is subject to a provision in the rules which may allow the committee members to appoint a liquidator on the occurrence of an event specified in the rules).

(3) The following powers may be exercised by the members unless the rules provide otherwise:

- (a) the power to appoint or remove a committee member; and
- (b) the power to appoint an auditor; and
- (c) the power to approve a major transaction.

(4) The rules may provide for other matters to be decided or approved by members.

63. HOW MEMBER APPROVAL MAY BE EXERCISED.

(1) A power referred to in Section 62(2) must be exercised by special resolution under Section 64(3).

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(2) Unless the rules provide otherwise, a power referred to in Section 62(2) may be exercised by ordinary resolution or at an annual general meeting of the members.

(3) Unless the rules provide otherwise, each member, whether a sole member or part of a jointly held membership, must be entitled to one vote on all matters coming before the membership.

64. ORDINARY AND SPECIAL RESOLUTIONS.

(1) Unless the rules provide otherwise, a membership held by two or more persons entitles each member to cast a single vote in all matters coming before the membership.

(2) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those members entitled to vote and voting on the question pursuant to a procedure approved by the rules.

(3) A special resolution is a resolution approved by a majority of 75% (or, if a higher majority is required by the rules, that higher majority) of the votes of those members entitled to vote and voting on the question at an annual or special meeting of which not less than 21 days' prior notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(4) At a meeting to which Subsection (2) relates, unless a poll is demanded, a declaration by the chairman that the resolution has been carried is conclusive evidence of that fact.

(5) Notice of the passing of a special resolution must be lodged by the incorporated association with the Registrar on the prescribed form together with the prescribed fee within a period of 20 days after the passing of the special resolution, and thereupon a copy of the resolution must be registered by the Registrar and, until registered, does not take effect.

(6) A notice under Subsection (5) must be accompanied by such other documents (including a copy of the special resolution) as are prescribed.

(7) Where the committee of an incorporated association fails to comply with the provisions of this section, every member of the committee, commits an offence.

Penalty: A fine not exceeding K2,500.00 or imprisonment for a term of not exceeding two months, or both.

65. PROCEDURES FOR MEETINGS OF THE MEMBERS.

(1) Meetings of the members of an incorporated association must be held in accordance with the rules, and the rules must include provisions for the procedures governing those meetings.

(2) Unless the rules provide otherwise, members may participate in any meeting of the members by means of remote communication (including by conference call).

(3) Members participating in a meeting by means of remote communication must be deemed present and may vote at such a meeting and a record of such vote or other action must be maintained by the incorporated association.

66. ANNUAL MEETING OF THE MEMBERS.

(1) An incorporated association shall hold an annual meeting of members once every calendar year.

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(2) However, an incorporated association does not have to hold its first annual meeting in the calendar year of its registration, in which case it must hold that meeting within 18 months after its registration.

(3) A public benefit incorporated association need not hold an annual meeting if all of its members agree.

(4) A member benefit association need not hold an annual meeting if all of its members agree or if its rules state that an annual meeting need not be held.

67. SPECIAL MEETING OF THE MEMBERS.

A special meeting of members entitled to vote on an issue -

- (a) may be called at any time by one-third of the committee members; and
- (b) must be called by the committee on the written request of the members carrying together not less than 33% of the membership votes that may be cast on the issue.

68. WRITTEN RESOLUTION IN LIEU OF MEETING.

(1) Subject to Subsection (2), a resolution in writing signed or assented to by or on behalf of members who together hold not less than 75% of the membership votes entitled to be cast on that resolution at a meeting of members is as valid as if it had been passed at a meeting of those members.

(2) If, in respect of any matter, the rules of an incorporated association require approval by a greater majority than 75% of the votes entitled to be cast, the reference in Subsection (1) to 75% is taken to be that greater majority.

69. PROCEDURE FOR WRITTEN RESOLUTION IN LIEU OF MEETING.

(1) Any resolution made under Section 68 may consist of one or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to, by or on behalf of one or more of the members.

(2) A resolution made under Section 68 may be made without any prior notice being given to members.

(3) Within 20 days after a resolution is passed under Section 68, a copy of the resolution must be lodged by the incorporated association with the Registrar in the prescribed form together with the prescribed fee, and the resolution must be registered by the Registrar and, until registered, does not take effect.

(4) Where the committee of an incorporated association fails to comply with the provisions of this section, every member of the committee commits an offence.

Penalty: A fine not exceeding K2,500.00 or imprisonment for a term not exceeding two months, or both.

70. COURT MAY CALL MEETING OF THE MEMBERS.

(1) On the application of a committee member or creditor of an incorporated association or, in the case of a public benefit association, the Registrar, the National Court may order a meeting of the members of the incorporated association to be held or conducted in such manner as the National Court directs.

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- (2) The grounds on which the National Court may make the order include the following:
 - (a) it is impracticable to call or conduct a meeting of members in the manner required by this Act or the rules; or
 - (b) it is in the interests of an incorporated association that a meeting of the members be held.

71. EXPULSION, SUSPENSION OF MEMBERS.

(1) Except as provided in Subsection (4), no member of an incorporated association may be expelled by the committee except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

- (2) A procedure is fair and reasonable when either -
 - (a) not less than 15 days prior written notice of the proposed expulsion or suspension together with a statement of the reason is provided to the member; and
 - (b) the member is given the opportunity to be heard by the committee, orally or in writing, not less than five days before the effective date of the expulsion or suspension.

(3) The rules of a member benefit association or of a church (or council of churches) may provide for the expulsion of a member using a different procedure from that provided for in this section.

(4) In no event must a temporary suspension or other interruption of a member's right to use amenities, services or other facilities offered by the incorporated association be considered an expulsion by an incorporated association of a member.

(5) Any court proceeding challenging an expulsion or temporary suspension must be commenced by a member within one year after the effective date of their expulsion or temporary suspension.

PART VIII. - RECORDS, REPORTS AND DISCLOSURES.

Division 1. - Accounting records.

72. INCORPORATED ASSOCIATIONS MUST PREPARE AND KEEP ACCOUNTING RECORDS.

(1) The committee members of an incorporated association must ensure that accounting records are kept and comply with Section 73.

(2) Each incorporated association must keep accounting records for the current accounting period and for the last seven completed accounting periods of the incorporated association at the place of the principal place of business or the registered office of the incorporated association.

(3) If the committee members of an incorporated association fail to comply with Subsection (1), every committee member commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three months, or both.

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73. FORM AND CONTENT OF ACCOUNTING RECORDS.

- (1) The accounting records must -
 - (a) correctly record the incorporated association's transactions; and
 - (b) at any time enable the incorporated association's financial position to be determined with reasonable accuracy; and
 - (c) enable the incorporated association's financial statements if required to be prepared by this Act to be readily and properly audited.

- (2) Without limiting Subsection (1), the accounting records must contain -
 - (a) entries of money received, whether from sales of goods, provision of services, receipt of donations, membership dues, land rentals, royalties derived from the use of land or licences, receipt of grants, and any other source whatsoever; and
 - (b) for donations received over K10,000.00 in value from a single donor in a given accounting period, the name, jurisdiction and contact information for the donor; and
 - (c) entries of money spent and, for transactions over K20,000.00, details on the matters to which the money relates; and
 - (d) a record of the incorporated association's assets and liabilities.

- (3) If an incorporated association sells goods or provides services for cash in the ordinary course of carrying on a retail business -
 - (a) the incorporated association need not keep invoices for each retail transaction; and
 - (b) in respect of those retail transactions, a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient compliance with this section.

Division 2. - Annual Report and Annual Return.

74. OBLIGATION TO PREPARE ANNUAL REPORT.

- (1) Subject to Subsections (2) and (3), the committee of every incorporated association must, at least once every calendar year, prepare an annual report on the affairs of the incorporated association.

- (2) The committee of an incorporated association need not prepare an annual report where every member has given notice in writing to the incorporated association waiving the right to inspect a copy of the annual report.

- (3) The committee of a member benefit incorporated association need not prepare an annual report if its rules state that annual reports need not be prepared.

- (4) Where the committee of an incorporated association fails to comply with Subsection (1), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three months, or both.

- (5) The Registrar may, on the application of the incorporated association and for any special reason that the Registrar thinks fit, extend the period referred to in Subsection (1) even if, as a result, the period is extended beyond the calendar year.

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75. PROVIDING ANNUAL REPORT FOR INSPECTION BY MEMBERS.

(1) Every committee of an incorporated association that has prepared an annual report must cause a copy of the annual report to be made available for inspection at the principal place of business of the incorporated association and at the place where the incorporated association's records are kept, if different, on working days between the hours of 9:00 a.m. and 5:00 p.m. not less than one month before the date fixed for holding the annual meeting of members.

(2) Where the committee of an incorporated association fails to comply with Subsection (1), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three months, or both.

76. CONTENTS OF ANNUAL REPORT.

Every annual report for an incorporated association must be in writing and be dated and, must -

- (a) describe, so far as the committee reasonably believes that it will not be harmful to the objectives of the incorporated association -
 - (i) the nature of the activities of the incorporated association; and
 - (ii) the activities in which the incorporated association has an interest, whether as a member of another incorporated association or otherwise; and
- (b) include all financial statements required by this Act; and
- (c) describe any change in accounting policies since the last annual report; and
- (d) state the particulars of any material interests disclosed by committee members during the year; and
- (e) state, in respect of each committee member or former committee member of the incorporated association, the total of the remuneration and the value of other benefits (including the reimbursement of any expenses) received by that committee member or former committee member during the year; and
- (f) state the number of employees or former employees of the incorporated association, not being committee members of the incorporated association, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the total value of which exceeded the employee threshold amount per annum; and
- (g) state the total value of donations received and made by the incorporated association; and
- (h) state the total value of membership dues received by the incorporated association; and
- (i) state the total value of grants received by the incorporated association; and
- (j) state the names of the persons holding the office of committee member and public officer of the incorporated association as at the date of the annual report and the names of any persons who ceased to hold office as committee member or public officer of the incorporated association during the preceding year; and
- (k) be signed on behalf of the committee by two committee members of the incorporated association; and
- (l) contain any other information that may be required by rules of the incorporated association and by the regulations made under this Act.

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77. ANNUAL RETURN.

- (1) The committee of an incorporated association must ensure that there is submitted to the Registrar for registration at least once in each calendar year during the month allocated to the incorporated association for the purpose, an annual return in the prescribed form or in a form the use of which by the incorporated association has been approved by the Registrar pursuant to Subsection (5), or as near to it as circumstances allow.
- (2) The annual return must be accompanied by the prescribed fee and dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required.
- (3) Where an incorporated association is required by Section 78 to prepare financial statements, a copy of those financial statements must be filed with the annual return submitted to the Registrar under Subsection (1).
- (4) Notwithstanding Subsection (1), an incorporated association need not make an annual return in the calendar year of its incorporation.
- (5) The Registrar may, on the application of any person, approve the use, of a form of annual return different from that prescribed, and may at any time, revoke, in whole or in part, any such approval.
- (6) The Registrar may by notice in the National Gazette declare that any information submitted to the Registrar under this section must not form part of the register.
- (7) The Registrar may amend the register to correspond with the information given in an incorporated association's annual return as to the address of its registered office or its postal address if the address given differs from the address entered in the register.
- (8) Where the committee of an incorporated association fails to comply with Subsection (1) or Subsection (3), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three months, or both.

Division 3. - Financial Statements.

78. WHEN INCORPORATED ASSOCIATIONS MUST PREPARE FINANCIAL STATEMENTS.

- (1) An incorporated association that, in any accounting period -
 - (a) has an annual gross revenue in an amount greater than the annual gross revenue amount threshold established by regulations; or
 - (b) receives grants in any amount; or
 - (c) receives donations from the public that exceed the annual donations amount threshold established by the regulations,must prepare financial statements in accordance with Section 79.
- (2) Subsection (1) does not apply if the Registrar, upon a showing of good cause by the incorporated association, determines that it would be unreasonable to prepare financial statements for a given accounting period.

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(3) If an incorporated association fails to comply with Subsection (1), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months, or both.

79. CONTENT OF FINANCIAL STATEMENTS.

(1) An incorporated association to which this section applies must ensure that, within four months after the incorporated association's balance date, financial statements that comply with Subsection (2) are prepared in relation to the incorporated association and that balance date.

(2) The financial statements must -

- (a) give a true and fair view of the matters to which the statements relate; and
- (b) comply with any applicable regulations made under this Act; and
- (c) be dated and signed on behalf of the incorporated association by the committee members of the incorporated association.

(3) The following periods must not exceed 15 months:

- (a) the period between the date of incorporation of an incorporated association and its first balance date; and
- (b) the period between any two balance dates of an incorporated association.

80. FINANCIAL STATEMENT MUST BE AUDITED.

(1) An incorporated association that is required to prepare financial statements must ensure that the financial statements are audited by a qualified auditor certified by an association of accountants constituted in Papua New Guinea and appointed by the committee to conduct the audit.

(2) If an incorporated association fails to comply with Subsections (1), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

81. MEMBER BENEFIT ASSOCIATION MAY OPT OUT OF PREPARING FINANCIAL STATEMENTS.

A member benefit association may opt out of preparing financial statements for an accounting period if the rules provide for opting out and -

- (a) the member benefit association did not receive donations from the public that exceed the annual donations amount threshold in the accounting period; or
- (b) the member benefit association did not receive grants in the accounting period.

Division 4. - Auditor.

82. REQUIREMENT CONCERNING AUDITOR.

(1) An incorporated association that is required by Section 78 to prepare financial statements must appoint an auditor at an annual meeting of the incorporated association.

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- (2) The auditor will hold office from the conclusion of the meeting until the conclusion of the next annual meeting and audit the incorporated association's financial statements.
- (3) The Registrar may appoint an auditor if -
 - (a) no auditor is appointed as required by Section 80; or
 - (b) a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring.
- (4) An auditor of an incorporated association must ensure, in carrying out the duties of an auditor under this Part, that the auditor's judgment is not impaired through any relationship with, or interest in, the incorporated association.
- (5) The auditor of an incorporated association must make a report to the members on the financial statements audited by the auditor which includes a statement -
 - (a) of the work done by the auditor; and
 - (b) whether, in the auditor's opinion, as far as appears from an examination of them, the incorporated association has kept proper accounting records; and
 - (c) whether the financial statements give a true and fair view of the matters to which they relate; and
 - (d) any other prescribed information.
- (6) An incorporated association must give notice to the Registrar of the resignation or removal of an auditor.
- (7) The notice must be -
 - (a) in the prescribed form; and
 - (b) given within 20 days after the auditor's resignation or removal.

83. RESIGNATION, CASUAL VACANCY AND REPLACEMENT OF AUDITOR.

- (1) An auditor may resign at any time by giving written notice to the incorporated association, and the incorporated association, must as soon as practicable, notify the members of the auditor's resignation.
- (2) The committee members may fill any casual vacancy in the office of auditor.
- (3) The committee of an incorporated association may, upon giving the auditor 20 days' prior notice, remove an auditor and replace the auditor by appointing a new auditor.
- (4) An auditor removed by a committee of an incorporated association may complete a written statement on the affairs of the incorporated association which must be kept with the accounting records of the incorporated association.

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Division 5. - Incorporated Association Records and Inspection.

84. INSPECTION OF INCORPORATED ASSOCIATION RECORDS BY MEMBERS.

(1) An incorporated association must keep the following records available for inspection in the manner prescribed in Section 85, by a member of the incorporated association, or by a person authorised in writing for the purpose by a member, who serves written notice of intention to inspect on the incorporated association:

- (a) the certificate of incorporation or registration of the incorporated association; and
- (b) the rules of the incorporated association; and
- (c) the member register required under Section 87; and
- (d) the full names, addresses and postal addresses of the committee members and public officer; and
- (e) details of the registered office and address for service of the incorporated association; and
- (f) minutes of all meetings and resolutions of members within the last seven years; and
- (g) copies of written communications to all members during the last seven years; and
- (i) copies of annual returns filed during the last seven years; and
- (k) any auditor's report or auditor's statements prepared by the auditor.

(2) Where an incorporated association fails to comply with Subsection (1), every member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

85. PLACE AND MANNER OF INSPECTION.

(1) An incorporated association must keep the incorporated association records referred to in Section 84 at its principal place of business and at its registered office, if different, on working days between the hours of 9:00 a.m. and 5:00 p.m. on each working day.

(2) A member or their representative may require a copy of, or extract from, a document which is available for inspection by the member to be sent to the member -

- (a) within ten days after the member has made a request in writing for the copy or extract; and
- (b) if the member has paid a reasonable copying and administration fee prescribed by the incorporated association.

(3) Where an incorporated association fails to comply with Subsection (1) or (2), every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two months, or both.

86. REQUEST FOR INFORMATION BY A MEMBER.

(1) A member may at any time make a written request to an incorporated association for information held by the incorporated association.

(2) A request under Subsection (1) must specify the information sought in sufficient detail to enable it to be identified.

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- (3) Within one month of receiving a request under Subsection (1), the incorporated association must -
- (a) provide the information; or
 - (b) agree to provide the information within a specified period; or
 - (c) agree to provide the information within a specified period where the member pays a reasonable charge to the incorporated association (which must be specified and explained) to meet the cost of providing the information; or
 - (d) refuse to provide the information and specifying the reasons for the refusal.
- (4) Without limiting the reasons for which an incorporated association may refuse to provide information under this section, an incorporated association may refuse to provide information where -
- (a) the disclosure of the information would or would be likely to prejudice the financial position of the incorporated association; or
 - (b) the disclosure of the information would or would be likely to prejudice the incorporated association's pursuit of its stated objectives; or
 - (c) the disclosure of the information would or would be likely to prejudice the financial position of any other person, whether or not that person supplied the information to the incorporated association; or
 - (d) the request for the information is frivolous or vexatious.
- (5) Where the incorporated association requires the member to pay a charge for the information, the member may withdraw the request, and is deemed to have done so unless, within one month of receiving notification of the charge, the member pays the charge.
- (6) The District Court may, on the application of a member who has made a request for information, where it is satisfied that -
- (a) the period specified for providing the information is unreasonable; or
 - (b) the charge set by the incorporated association is unreasonable,
- as the case may be, make an order requiring the incorporated association to supply the information within such time or on payment of such charge as the District Court thinks fit.
- (7) The District Court may, on the application of a member who has made a request for information, where it is satisfied that -
- (a) the incorporated association has sufficient reason to refuse to supply the information; or
 - (b) the incorporated association does not have sufficient reason to refuse to supply the information; or
 - (c) the incorporated association has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal,
- make an order requiring the incorporated association to either supply or not supply the information.
- (8) On completion of the court proceeding, the District Court may -
- (a) order the incorporated association to pay the reasonable expenses (including reasonable lawyers' fees) incurred in the proceeding if it finds that the incorporated association's refusal to supply information was unreasonable or made in bad faith; or
 - (b) order the member to pay the incorporated association's reasonable expenses (including reasonable lawyer's fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper or frivolous purpose.

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(9) Where the District Court makes an order under Subsection (7) or (8), it may specify the use that may be made of the information and the persons to whom it may be disclosed.

PART IX. - MEMBER REGISTER.

87. MEMBER REGISTER.

(1) An incorporated association must maintain a register of members that records the names, alphabetically arranged, and the last known address of each person who is, or has within the last five years been, a member, whether singly or as part of a jointly held membership.

(2) The member register must be kept in written form or in a form that is readily accessible and convertible into written form.

(3) The entry of the name of a person in the member register is evidence that the person is a member of the incorporated association and entitled to the benefits of membership.

(4) An incorporated association must treat a registered member as the only person entitled to -
(a) exercise the right to vote attaching to the membership; and
(b) receive notices; and
(c) exercise the other rights and powers attaching to the membership.

(5) Any clerical or minor error in a member register may be corrected where either the Registrar or every member of the committee of the incorporated association has agreed to the correction.

(6) If an incorporated association fails to comply with the requirements of this section, every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one month, or both.

88. COURT MAY RECTIFY MEMBER REGISTER.

If the name of a person is wrongly entered in, or omitted from, the member register of an incorporated association, the District Court may, on the application of the person aggrieved, order -

(a) rectification of the member register; or
(b) payment of compensation by the incorporated association for any loss sustained; or
(c) both rectification and payment of compensation.

89. BENEFICIAL OWNERSHIP OF MEMBERSHIP.

(1) For the purpose of this section, "beneficial owner" means the person who ultimately owns or controls the membership without their name appearing on the member register.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the member register, however, an incorporated association must -

(a) maintain sufficient information to identify the beneficial owner of a membership in the incorporated association if the committee of the incorporated association becomes aware that there is a membership with a beneficial owner; and
(b) disclose that information in a written notice to the Registrar on the written request of the Registrar without the necessity for a Court order requiring disclosure.

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(3) If an incorporated association fails to comply with Subsection (2), every member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

PART X. - ADMINISTRATION OF INCORPORATED ASSOCIATIONS.

Division 1. - Transactions.

90. VALIDITY OF TRANSACTIONS.

- (1) For the purpose of this section, "transaction" -
- (a) includes any contract or other obligation entered into by an incorporated association, or any transfer of property to or by an incorporated association, but does not include an indemnity provided to a committee member; or
 - (b) remuneration or other benefits given to a committee member.
- (2) The validity of a transaction entered into by an incorporated association is not affected by -
- (a) a failure to comply with this Act (except if the failure is a breach of Section 36); or
 - (b) a failure to comply with the incorporated association's rules; or
 - (c) the absence of express authority in the incorporated association's rules to enter into the transaction; or
 - (d) a failure by the incorporated association or its committee members to take any steps required by the rules to authorise entry into the transaction; or
 - (e) the fact that the transaction is not in the best interests of the incorporated association; or
 - (f) a breach of a duty by a committee member in connection with entry of the incorporated association into the transaction.
- (3) Subsection (2) does not limit -
- (a) Section 41 (which relates to avoiding transactions in which a committee member has a material interest); or
 - (b) Section 50 (which relates to injunctions to restrain conduct by an incorporated association that would contravene this Act or its rules); or
 - (c) Section 52 (which relates to a member proceeding to enforce committee member compliance with the rules or this Act); or
 - (d) the obligations and liabilities of committee members of an incorporated association in respect of any contract or other obligation, or transfer of property to or by the incorporated association.

91. NO CONSTRUCTIVE NOTICE.

A person is not affected by, and is not taken to have notice or knowledge of the contents of, the rules of the incorporated association or of other documents relating to the incorporated association merely because the rules or documents are -

- (a) registered on the Papua New Guinea register; or
- (b) available for inspection at the principal place of business or registered office of the incorporated association.

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Division 2. - Pre-incorporation Contracts.

92. PRE-INCORPORATION CONTRACTS MAY BE RATIFIED.

(1) For the purpose of this section and Sections 93 to 94, the term "pre-incorporation contract" means -

- (a) a contract purporting to be made by a proposed incorporated association before its incorporation; or
- (b) a contract made by a person on behalf of a proposed incorporated association before and in contemplation of its incorporation.

(2) Notwithstanding any law, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or where no period is specified, then within one month after the incorporation of the incorporated association in the name of which, or on behalf of which, it has been made.

(3) A contract that is ratified is as valid and enforceable as if the incorporated association had been a party to the contract when it was made.

(4) A pre-incorporation contract may be ratified by an incorporated association in the same manner as a contract may be entered into on behalf of an incorporated association under Section 36.

(5) Notwithstanding any law, where a pre-incorporation contract has not been ratified by an incorporated association, the incorporated association may not enforce it or take the benefit of it.

93. WARRANTY IMPLIED IN PRE-INCORPORATION CONTRACTS.

(1) Notwithstanding any law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the proposed incorporated association -

- (a) that the association will use reasonable efforts to be incorporated within such period as may be specified in the contract, or where no period is specified, then within a reasonable time after the making of the contract; and
- (b) that the association, once incorporated, will ratify the contract within such period as may be specified in the contract, or where no period is specified, then within a reasonable time after the incorporation of the incorporated association,

however, there is no implied warranty that incorporation of the association is guaranteed by the person making the pre-incorporation contract.

(2) The amount of damages recoverable in an action for breach of a warranty implied by Subsection (3) is the same as the amount of damages that would be recoverable in an action against the incorporated association for damages for breach by the incorporated association of the unperformed obligations under the contract if the contract had been ratified and cancelled.

(3) Where, after its incorporation, an incorporated association enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract, the liability of a person under Subsection (1) (including any liability under an order made by the Court for the payment of damages) is discharged.

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94. FAILURE TO RATIFY.

(1) A party to a pre-incorporation contract that has not been ratified by the incorporated association after its incorporation may apply to the National Court for an order -

- (a) directing the incorporated association to return property, whether real or personal, acquired under the contract to that party; or
- (b) for any other relief in favour of that party relating to that property; or
- (c) validating the contract whether in whole or in part.

(2) The National Court may, where it considers it just and equitable to do so, make any order or grant any relief it thinks fit and may do so whether or not an order has been made under another section to this Act.

Division 3. - Registered Office and Postal Address.

95. REGISTERED OFFICE AND POSTAL ADDRESS.

(1) An incorporated association must always have a registered office and valid postal address in the country.

(2) The registered office must be identifiable and easily accessible to the public.

(3) Subject to Section 96, the registered office and postal address of an incorporated association at a particular time is the place entered as its registered office on the register at that time.

96. CHANGE OF REGISTERED OFFICE AND POSTAL ADDRESS.

(1) Subject to the incorporated association's rules, the committee of an incorporated association may change the registered office or postal address of the incorporated association at any time.

(2) The incorporated association must file a notice of the change in the prescribed form with the Registrar for registration.

(3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than five days after the notice is registered.

97. REQUIREMENT TO CHANGE REGISTERED OFFICE OR POSTAL ADDRESS.

(1) An incorporated association must change its registered office where it is required to do so by the Registrar.

(2) The Registrar may require an incorporated association to change its registered office by notice in writing sent to the incorporated association at its registered office.

(3) The notice must -

- (a) state that the incorporated association is required to change its registered office by a date stated in the notice, not being a date that is earlier than one month after the date of the notice; and
- (b) state the reasons for requiring the change; and
- (c) state that the incorporated association has the right to appeal to the Court; and
- (d) be dated and signed by the Registrar.

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(4) A copy of the notice must also be sent to the address shown on the register for each committee member of the incorporated association.

(5) The incorporated association must change its registered office -

(a) by the date stated in the notice; or

(b) where it appeals to the District Court and the appeal is dismissed, within five days after the decision of the District Court.

(6) Where an incorporated association fails to comply with this section, every committee member of the incorporated association commits an offence.

Penalty: A fine not exceeding K5,000.00.

PART XI. - AMALGAMATIONS.

98. INCORPORATED ASSOCIATIONS MAY AMALGAMATE.

Two or more incorporated associations may, by special resolution of each of them, amalgamate and continue as one of the participating incorporated associations, with or without a dissolution or a division of funds, in accordance with this Act, if the plan of amalgamation is approved as provided in Section 103.

99. CONTENTS OF AMALGAMATION PROPOSAL.

(1) An amalgamation proposal must include the following:

(a) the name and registration number of each incorporated association planning to amalgamate and the name of the surviving incorporated association into which each plans to amalgamate; and

(b) the terms and conditions of the planned amalgamation; and

(c) the manner and basis, if any, of converting the memberships of each amalgamating incorporated association into the surviving incorporated association; and

(d) if the amalgamation involves a public benefit association amalgamating into a member benefit association, the manner in which donations and grants received by the public benefit association will either be -

(i) distributed to another public benefit association prior to the amalgamation; or

(ii) expended in furtherance of the objectives of the public benefit association.

(2) The amalgamation proposal may outline -

(a) any amendments to the rules of the surviving incorporated association to be affected by the planned amalgamation; and

(b) any other provisions relating to the planned amalgamation.

100. NOTICE OF PROPOSED AMALGAMATION.

(1) Each amalgamating incorporated association must -

(a) send a copy of the amalgamation proposal to every secured creditor of each incorporated association; and

(b) give public notice of the proposed amalgamation that complies with Section 101; and

(c) file the amalgamation proposal with the Registrar in the prescribed form.

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(2) The steps set out in Subsection (1) must be taken not less than 30 days before the amalgamation is proposed to take effect.

101. CONTENT OF AMALGAMATION PUBLIC NOTICE.

The public notice required under Section 100 must -

- (a) state the names and registration numbers of the incorporated associations that are proposed to be amalgamated; and
- (b) state the date on which the amalgamation is proposed to become effective; and
- (c) state that the amalgamation proposal is available for inspection at the principal places of business and, if different, the registered offices of the amalgamating incorporated associations, and any other specified places, during normal business hours.

102. REGISTRATION AND APPROVAL OF THE AMALGAMATION.

(1) To complete the amalgamation, a prescribed application for amalgamation together with the following documents must be delivered to the Registrar for registration -

- (a) the final amalgamation proposal; and
- (b) a copy of the public notice that indicates the date upon which it was given; and
- (c) in respect of each amalgamating incorporated association, a certificate signed by the committee members certifying that the amalgamation proposal has been approved in accordance with this Act and the rules of each amalgamating incorporated association.

(2) The Registrar must not approve an amalgamation involving a public benefit association amalgamating into a member benefit association if, in the Registrar's opinion, the amalgamation proposal does not provide adequate assurance that donations and grants received by the public benefit association -

- (a) have been distributed to another public benefit association; or
- (b) will be expended in furtherance of the objectives of the public benefit association.

103. CERTIFICATE OF AMALGAMATION.

(1) The Registrar must issue a certificate of amalgamation, without delay after receiving the documents specified in Section 102, if the Registrar is satisfied that -

- (a) the incorporated association to be created by the amalgamation meets the requirements of Section 102; and
- (b) the incorporated association could be incorporated under the name set out in the notice of amalgamation.

(2) If the amalgamation proposal specifies a date on which the amalgamation is intended to become effective, the certificate of amalgamation must be expressed to have effect on the specified date, and it does not matter that the Registrar has received the documents on or before that date.

(3) The effective date mentioned in Subsection (2) must not be more than 60 days from the date the application for amalgamation is filed with the Registrar.

104. EFFECT OF CERTIFICATE OF AMALGAMATION.

On the date shown in a certificate of amalgamation -

- (a) the amalgamation is effective; and
- (b) the amalgamated incorporated association has the name specified in the amalgamation proposal; and

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- (c) the amalgamated incorporated association is entitled to all of the property, rights, powers, and privileges of each of the amalgamating incorporated associations; and
- (d) the amalgamated incorporated association is subject to all the liabilities and obligations of each of the amalgamating incorporated associations; and
- (e) any proceeding already commenced by, or against, an amalgamating incorporated association may be continued by, or against, the amalgamated incorporated association; and
- (f) a conviction, ruling, order or judgment in favour of, or against, an amalgamating incorporated association may be enforced by or against the amalgamated incorporated association; and
- (g) any provisions of the amalgamation proposal that provide for the conversion of memberships or rights of members in the amalgamating incorporated associations have effect as proposed.

105. EFFECT OF AMALGAMATION ON OTHER REGISTERS.

(1) The Registrar of Titles under the *Land Registration Act* (Chapter 191) or any other person with the function of maintaining registers, books or records, is not obliged, solely because an amalgamation becomes effective, to change the name of an amalgamating incorporated association to that of an amalgamated incorporated association in those books or register or in any documents.

(2) An instrument (whether or not it is an instrument of transfer) is, in the absence of evidence to the contrary, is sufficient evidence that the property to which it relates has become the property of an amalgamated incorporated association if the instrument -

- (a) is executed or purports to be executed by the amalgamated incorporated association; and
- (b) relates to property that was held immediately before the amalgamation by an amalgamating incorporated association; and
- (c) states that the property has become the property of the amalgamated incorporated association in accordance with this Act.

106. POWER OF COURT IN RELATION TO AMALGAMATIONS.

(1) A member or creditor of an amalgamating incorporated association, or a person to whom an amalgamating incorporated association is under an obligation, may, prior to the effective date of the amalgamation, apply to the National Court for an order under Subsection (2) on the ground that giving effect to the amalgamation proposal would unfairly prejudice the applicant.

- (2) On an application under Subsection (1), the National Court may make an order -
- (a) directing that effect must not be given to the proposal; or
 - (b) modifying the proposal in the manner specified in the order; or
 - (c) directing the incorporated association or its committee members to reconsider the proposal or any part of it; or
 - (d) allowing the proposed amalgamation to proceed with or without modification.

(3) An order under Subsection (2) may be made on any conditions that the National Court thinks fit.

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(4) A copy of the application to the National Court under Subsection (1) and any order issued under Subsection (3) must be served on the Registrar by the applicant for the order within 5 days.

PART XII. - REMOVAL FROM THE REGISTER.

Division 1. - Removal from Register.

107. WHEN REMOVAL FROM REGISTER IS EFFECTIVE.

An incorporated association is removed from the register when the Registrar registers a notice stating the incorporated association is removed from the register.

108. GROUNDS FOR REMOVAL.

Subject to Section 109, the Registrar must remove an incorporated association from the register if -

- (a) the incorporated association fails to file its annual return within the period of six months after the month allocated for filing the annual return; or
- (b) the incorporated association at any time does not comply with Section 4 of this Act; or
- (c) the incorporated association is in liquidation and -
 - (i) six months have elapsed after the completion of liquidation; and
 - (ii) the Registrar has not received the prescribed documents confirming completion of liquidation; or
- (d) the incorporated association is in liquidation and the Registrar receives the prescribed documents confirming completion of liquidation; or
- (e) there is filed with the Registrar a request under Section 109 for the incorporated association's removal; or
- (f) the Registrar has reasonable cause to believe that an incorporated association has ceased to exist, or that the transactions or nature of an incorporated association is such that it has not, or has ceased to have, the prescribed qualifications for incorporation; or
- (g) the incorporated association procured its registration through fraud; or
- (h) the incorporated association has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate any section of this Act or the *Criminal Code Act* (Chapter 262) or the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*; or
- (i) has applied any profits to a purpose other than promoting its objects; or
- (j) has engaged in fraudulent or unlawful actions.

109. REQUEST FOR REMOVAL.

(1) Any of the following persons may request the removal of an incorporated association from the register:

- (a) a person authorised to make the request by a special resolution of members entitled to vote and voting on the question; or
- (b) a committee member; or
- (c) any other person, if the rules so provide.

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- (2) A request for removal may be made on the grounds that the incorporated association -
 - (a) has ceased to carry on activities in furtherance of its objectives, has discharged in full its liabilities to all known creditors, and has distributed its surplus assets in accordance with its rules and this Act; or
 - (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the National Court for an order putting the incorporated association into liquidation.
- (3) The request must be -
 - (a) in the prescribed form and accompanied by the prescribed fee; and
 - (b) accompanied by prescribed third party consents (if any); and
 - (c) filed with the Registrar.

Division 2. - Procedure for Removal from Register.

110. WHEN NOTICE OF REMOVAL REQUIRED.

- (1) The Registrar must not remove an incorporated association from the register unless -
 - (a) public notice of the removal has first been given -
 - (i) for removal under Section 108(b), (c) or (f), by the Registrar; or
 - (ii) for removal under Section 108(d), by the liquidator; or
 - (iii) for removal under Section 108(e), by the person requesting removal; and
 - (b) the due date has passed without an application for an order under Section 112.
- (2) Public notice is not required for removal under Section 108(a).

(3) The public notice of removal must specify a date that is the due date for a person who objects to the removal to apply for an order under Section 112, which must not be less than 30 days from the date of the public notice.

111. OBJECTION TO REMOVAL.

- (1) No person may object to the removal of an incorporated association from the register under Section 108(a).
- (2) Any person may object to the removal of an incorporated association from the register under any of Section 108(b) to (j).
- (3) A person may object to the removal on any one or more of the following grounds:
 - (a) the incorporated association is still carrying on business or there is other reason for it to continue in existence; or
 - (b) the incorporated association is a party to a legal proceeding; or
 - (c) the incorporated association is in receivership or liquidation; or
 - (d) the person objecting is a creditor, member, or other person having a claim against the incorporated association; or
 - (e) for any other reason, removal would not be just and equitable.

112. PROCEDURE FOR OBJECTION.

(1) A person objects to the removal of an incorporated association from the register by applying to the National Court for an order that the incorporated association not be removed.

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(2) The application must be made on or before the date specified in the public notice of the removal.

(3) A copy of the application must be filed with the Registrar by the person that objects to the removal within five days from the date the application was filed with the National Court.

(4) The National Court may order that the incorporated association not be removed if the National Court is satisfied that the incorporated association should not be removed.

(5) A copy of the order made by the National Court must be filed with the Registrar by the association within five days from the date of the order.

Division 3. - Effect of Removal from Register.

113. PROPERTY OF INCORPORATED ASSOCIATION VESTS WITH REGISTRAR.

Sections 372 to 375 of the *Companies Act 1997* relating to the property of an incorporated association removed from the register apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the winding-up of incorporated associations.

114. LIABILITY CONTINUES.

The liability of any person (including a former committee member or member) in respect of any act or omission occurring before the incorporated association was removed from the register -

- (a) is not affected by the removal; and
- (b) continues and may be enforced as if the incorporated association had not been removed.

Division 4. - Restoration of Incorporated Association to Register.

115. RESTORATION TO REGISTER AFTER FAILURE TO FILE ANNUAL RETURN.

(1) Subject to Subsection (2), the Registrar must, on the application of a person specified in Subsection (3), restore to the register an incorporated association that has been removed from the register under Section 108(a) for failing to file an annual return.

- (2) The application must be -
- (a) filed with the Registrar within two years after removal from the register; and
 - (b) in the prescribed form (if any); and
 - (c) accompanied by all outstanding annual returns; and
 - (d) accompanied by the associated filing fees, including any late filing fees and penalties.

(3) A person may apply if the person was any of the following at the time the incorporated association was removed from the register:

- (a) a member, committee member, creditor, or entitled person of the incorporated association; or
- (b) a party to any legal proceedings against the incorporated association; or
- (c) a person with an undischarged claim against the incorporated association; or
- (d) the liquidator; or
- (e) a receiver of property of the incorporated association.

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(4) The Registrar may waive the requirement in Subsection (2)(c)(i) of all outstanding annual returns, or accept one or more partially completed annual returns, if the Registrar is satisfied that it is not practical for the applicant to fulfil the requirement.

116. NATIONAL COURT MAY ORDER RESTORATION.

(1) The National Court may, on the application of a person specified in Subsection (2), order restoration to the register of an incorporated association that has been removed from the register if the National Court is satisfied that -

- (a) at the time of removal -
 - (i) the incorporated association was still carrying on business or there was other reason for it to continue in existence; or
 - (ii) the incorporated association was a party to a legal proceeding; or
 - (iii) the incorporated association was in receivership or liquidation; or
 - (iv) the applicant was a creditor, member, entitled person, or other person having an undischarged claim against the incorporated association; or
- (b) for any other reason it is just and equitable to restore the incorporated association to the register.

(2) Any of the following persons may apply:

- (a) the Registrar; or
- (b) a member, committee member, creditor, or entitled person of the incorporated association; or
- (c) any other person who has the leave of the Court to apply.

(3) The National Court may make restoration conditional on compliance with any provisions of this Act or regulations made if the incorporated association had failed to comply with those provisions before it was removed from the register.

(4) The National Court may give any directions or make any order that may be necessary or desirable for the purpose of restoration to the register.

117. RESTORATION TO REGISTER.

(1) An incorporated association is restored to the register when the Registrar registers a notice stating that the incorporated association is restored to the register.

(2) An incorporated association that is restored to the register is treated as having continued in existence as if it had not been removed from the register.

118. VESTING OF PROPERTY IN INCORPORATED ASSOCIATION ON RESTORATION TO REGISTER.

Section 381 of the *Companies Act 1997* relating to the vesting of property of an incorporated association upon restoration to the register applies, so far as applicable and with the prescribed modifications (if any), to and in relation to an incorporated association that is restored to the register.

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PART XIII. - OVERSEAS ASSOCIATIONS.

Division 1. - Preliminary.

119. CONDUCTING OPERATIONS OR CARRYING ON BUSINESS.

(1) An overseas association may not conduct operations or otherwise transact business in Papua New Guinea until it obtains a certificate of registration as an overseas association under this Act and complies with all other applicable laws.

(2) For the purposes of this part, an overseas association does not conduct operations or otherwise transact business in Papua New Guinea merely because in Papua New Guinea it -

- (a) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
- (b) holds meetings of its committee members or carries on other activities concerning its internal affairs; or
- (c) maintains a bank account; or
- (d) effects a sale of property through an independent contractor; or
- (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside of Papua New Guinea; or
- (f) creates evidence of a debt or creates a charge over property or gives a security interest in property; or
- (g) secures or collects any of its debtor or enforces its rights in relation to securities relating to those debts; or
- (h) conducts an isolated transaction that is completed within a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
- (i) invests in funds or holds property.

120. CONSEQUENCES OF CONDUCTING OPERATIONS OR CARRYING ON BUSINESS WITHOUT REGISTRATION.

(1) An overseas association is liable for a penalty of up to K50,000.00 for each day it conducts operations or otherwise transacts business in Papua New Guinea without a certificate of registration.

(2) Notwithstanding Subsections (1), the failure of an overseas association to obtain a certificate of registration does not impair the validity of its corporate acts or prevent it from defending any proceeding in Papua New Guinea.

(3) The Registrar must collect all penalties due under this section.

121. NAME OF OVERSEAS ASSOCIATION IN PAPUA NEW GUINEA.

(1) An overseas association must not conduct operations or otherwise carry on business in Papua New Guinea unless its name could be registered under Section 16 as if it were incorporated under this Act.

(2) If the name of an overseas association seeking registration in Papua New Guinea is unavailable, it must choose a new name to use in Papua New Guinea that complies with Section 16.

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(3) An overseas association that changes its name must file with the Registrar a notice in the prescribed form together with the prescribed fee of the change of name within 20 days of the change of name.

(4) On receiving the notice, the Registrar must register the change of name on the Papua New Guinea register.

(5) If an overseas association fails to comply with this section -

- (a) the overseas association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
- (b) the overseas association commits an offence and is liable, on conviction, of a penalty not exceeding K10,000.00.

122. USE OF NAME IN PAPUA NEW GUINEA.

An overseas association that carries on business in Papua New Guinea must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in -

- (a) written communications sent by or on behalf of the incorporated association; and
- (b) documents issued or signed by or on behalf of the overseas association that evidence or create a legal obligation of the overseas association.

Division 2. - Registration.

123. APPLICATION FOR REGISTRATION.

(1) An overseas association that, on or after the commencement of this Act, that seeks to conduct operations or otherwise carry on business in Papua New Guinea, must first apply for registration.

(2) An application by an overseas association for registration must -

- (a) be filed with the Registrar; and
- (b) be in the prescribed form; and
- (c) contain the prescribed information; and
- (d) be signed by or on behalf of the overseas association; and
- (e) be accompanied by the prescribed fee.

(3) The application must also have attached -

- (a) evidence of the overseas association's overseas incorporation; and
- (b) if the evidence of its overseas incorporation is not in english, a certified translation of it.

(4) The Registrar must, on receiving a properly completed application for registration of an overseas association, without delay register the overseas association on the Papua New Guinea register.

Division 3. - Administration of Overseas Associations.

124. ANNUAL RETURN OF OVERSEAS ASSOCIATION.

(1) Each year in its allocated month, an overseas association registered in Papua New Guinea must file with the Registrar to register an annual return that -

- (a) is in the prescribed form; and

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- (b) confirms that the information on the Papua New Guinea register in respect of the overseas association is correct at the date of the annual return; and
- (c) is signed by or on behalf of the overseas association; and
- (d) is accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a date within the allocated month.

(3) Despite Subsection (1), an overseas association need not file an annual return in the calendar year of its registration or re-registration under this Act.

125. ALLOCATED MONTH.

(1) On registration or re-registration of an overseas association, the Registrar must allocate a month to the overseas association for filing its annual return.

(2) The Registrar may, by written notice to the overseas association, alter its allocated month.

126. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS.

(1) Part VIII of this Act shall apply to every registered overseas association as if that overseas association were a Papua New Guinea incorporated association within the meaning of that Part.

(2) When preparing accounting records and, if applicable, financial statement under Part VIII of this Act, the overseas association shall only be required to account for and report on its activities in Papua New Guinea.

127. NOTICE OF CHANGE OF COMMITTEE MEMBERS, ETC.

(1) An overseas association must ensure that the following notices in the prescribed form are filed with the Registrar for registration:

- (a) notice of a change in the committee members (howsoever titled in the jurisdiction of incorporation) of the overseas association, whether as the result of a committee member ceasing to hold office or the appointment of a new committee member, or both; or
- (b) notice of a change in the name of a committee member; or
- (c) notice of a change in the residential address, postal address or other contact details of a committee member.

(2) A notice under Subsection (1) must -

- (a) specify the date of the change; and
- (b) in the case of a change of committee member information, include the full name, residential address, postal address and other contact details of every person who is a committee member of the incorporated association from the date of the notice (including continuing committee members); and
- (c) be filed with the Registrar within 20 days after -
 - (i) the change occurring, in the case of the appointment or resignation of a committee member; or
 - (ii) the overseas association first becoming aware of the change, in the case of every other change.

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- (3) If an overseas association fails to comply with this section -
- (a) the overseas association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
 - (b) every member of the committee who fails to comply, commits an offence.

Penalty: A fine not exceeding K10,000.00.

128. REGISTERED OFFICE AND POSTAL ADDRESS.

- (1) An overseas association must always have a registered office and valid postal address in Papua New Guinea.
- (2) The registered office must be identifiable and easily accessible to the public.
- (3) The registered office and postal address of an overseas association at a particular time is the place entered as its registered office on the register at that time.

129. AGENT FOR OVERSEAS ASSOCIATION.

- (1) An overseas incorporated association may appoint a person or persons as its agent in Papua New Guinea by filing a notice of appointment in the prescribed form with the Registrar.
- (2) An act of the agent named on the register binds the overseas association.
- (3) An overseas association may remove an agent at any time by the committee by filing a notice of removal of agent in the prescribed form.
- (4) An overseas association must ensure that a notice of change of agent on the prescribed form is filed within 20 days of the change if any information of the register concerning an appointed agent is changed.

130. CHANGE OF REGISTERED OFFICE AND POSTAL ADDRESS.

- (1) The committee of an overseas association may change the registered office or postal address of the overseas association at any time.
- (2) The overseas association must file a notice of the change in the prescribed form together with the prescribed fee with the Registrar for registration.
- (3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than five days after the notice is registered.
- (4) An overseas association must change its registered office where it is required to do so by the Registrar.
- (5) If the committee of an overseas association fails to comply with this section -
- (a) the overseas association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
 - (b) the association commits an offence.

Penalty: A fine not exceeding K5,000.00.

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Division 4. - Removal of Overseas Associations from the Register.

131. REMOVAL OF OVERSEAS ASSOCIATION FOR FAILURE TO MAKE ANNUAL RETURN AND RESTORATION.

- (1) If an overseas association fails to comply with Section 124 and six months have elapsed without the overseas association filing a late annual return that otherwise complies, the Registrar must remove the overseas incorporated association from the Papua New Guinea register.
- (2) On the application of a committee member that complies with Subsection (3), the Registrar must restore to the register an overseas association that has been removed under Subsection (1).
- (3) The application must be -
- (a) filed with the Registrar within two years after removal; and
 - (b) in the prescribed form; and
 - (c) accompanied by outstanding annual returns and associated filing fees, late fees and penalties.
- (4) The National Court may, on application of any person aggrieved by the removal, order restoration to the register of an overseas association that has been removed from the register under this section or Section 135 if the National Court is satisfied that -
- (a) the overseas association was still conducting business or there was another reason for it to continue its registration; or
 - (b) the overseas association was a party to a legal proceeding; or
 - (c) the overseas association was in receivership or liquidation; or
 - (d) the applicant was a creditor, member, entitled person, or other person having an undischarged claim against the overseas association; or
 - (e) for any other reason it is just and equitable to restore the overseas association to the register.
- (5) The National Court may give any directions or make any order that may be necessary or desirable for the purpose of restoration to the register.
- (6) A copy of the restoration order from the National Court must be filed by the applicant with the Registrar as soon as practical after its issuance.

132. OTHER GROUNDS FOR REMOVAL.

The Registrar must remove an overseas association from the register where the Registrar has reasonable cause to believe that an overseas association -

- (a) has ceased to exist in its home jurisdiction; or
- (b) procured its registration through fraud; or
- (c) has ceased to carry on business in Papua New Guinea, or that the transactions or nature of the overseas association are such that it has ceased to have the qualifications of an overseas association; or
- (d) has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate any section of this Act or the *Criminal Code Act* (Chapter 262) or the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*; or

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- (e) has applied any profits made in Papua New Guinea to a purpose other than promoting its objects; or
- (f) has engaged in fraudulent or unlawful actions.

133. PROCEDURE FOR OBJECTION TO REMOVAL.

(1) The Registrar must give 30 days' prior notice to an overseas association before removing it from the register under Section 132.

(2) An overseas association may object to its removal from the register by applying to the National Court for an order that the overseas association not be removed.

(3) A copy of the application to the National Court must be filed with the Registrar by the applicant within five days of the application being made to the Court.

(4) The application must be made on or before the date specified in the Registrar's notice of the removal.

(5) The Court may order that the overseas association not be removed if the Court is satisfied that the overseas association should not be removed.

(6) A copy of any order from the National Court must be filed with the Registrar by the applicant within five days of its issuance.

134. EFFECT OF REMOVAL.

(1) The removal of an overseas association under either Section 131, 132 or 135 automatically appoints the Registrar as the overseas association's agent for service of process in any proceeding based on a cause of action arising from the overseas association's activities or business in Papua New Guinea.

(2) Upon receipt of process, the Registrar must forward a copy of the process to the overseas association by any means provided for under this Act.

(3) An overseas association that has been removed from the register under Section 132 or any other aggrieved person may apply to the National Court for reinstatement within one year after the effective date of the removal.

135. OVERSEAS ASSOCIATION CEASING TO CONDUCT OPERATIONS IN PAPUA NEW GUINEA.

(1) An overseas association registered under this Act that intends to cease to conduct operations or otherwise cease to carry on business in Papua New Guinea must -

- (a) give public notice of that intention; and
- (b) file with the Registrar a notice in the prescribed form stating the date on which it will cease to conduct operations or carry on business in Papua New Guinea, which date must be at least thirty days after the date of the public notice.

(2) The Registrar must remove an overseas association from the Papua New Guinea register as soon as practicable after -

- (a) the date specified in the notice given under Subsection (1)(b); or

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- (b) receipt of a written notice given by a liquidator that the liquidation of the assets in Papua New Guinea of the overseas association has been completed.

PART XIV. - SERVICE OF PROCESS AND OTHER NOTICES.

136. SERVICE OF NOTICES IN LEGAL PROCEEDINGS.

(1) A notice, demand, summons, writ or other document or process may be served on an incorporated association or an overseas association -

- (a) by delivery to a person named as a committee member on the register; or
- (b) by delivery to an employee at the principal place of business; or
- (c) by leaving the document at the registered office; or
- (d) by posting it to the registered office address; or
- (e) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (f) in accordance with an agreement with the incorporated association or overseas association.

(2) An incorporated association or overseas association may give a notice or make a demand by writing under the hand of a committee member, a public officer, or a legal practitioner.

137. SERVICE OF OTHER DOCUMENTS.

A document that is not a document in a legal proceeding may be served on an incorporated association or an overseas association as follows:

- (a) by any of the methods under Section 136; or
- (b) by posting it to the postal address shown on the register; or
- (c) by facsimile machine, telex, or emailing it to an electronic address used by the incorporated association or an overseas association.

138. SERVICE OF NOTICES ON COMMITTEE MEMBERS.

A document in any legal proceeding involving a committee member in his capacity as committee member may be served on the committee members as follows:

- (a) by delivery to the committee member; or
- (b) by leaving the document at the committee member's address (as that address is shown in the register); or
- (c) by leaving the document at the registered office of the incorporated association or an overseas association; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the committee member; or
- (f) by serving the document at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept service.

139. SERVICE OF OTHER DOCUMENTS ON COMMITTEE MEMBERS.

A document that is not a document in a legal proceeding may be served on a committee member as follows:

- (a) by any of the methods under Section 138; or

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- (b) by posting it to the committee member at the committee member's postal address (as that address is shown in the register); or
- (c) by posting it to the incorporated association's postal address; or
- (d) by emailing it to an electronic address used by the committee member.

140. DELIVERY OF DOCUMENTS TO MEMBERS BY INCORPORATED ASSOCIATION.

A notice, statement, report, account or other document to be sent or given to a member by an incorporated association may be -

- (a) delivered to that member's address as shown on the member register; or
- (b) hand delivered to that person; or
- (c) where an email address has been provided by the member for this purpose, emailed to an electronic address used by that person; or
- (d) by any other means permitted in the rules.

141. ADDITIONAL PROVISIONS RELATED TO SERVICE.

(1) Subject to Subsection (2) -

- (a) service of a document by delivery to a natural person is made -
 - (i) by handing the document to the person; or
 - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person; and
- (b) a document that is posted is treated as received five working days after it is posted; and
- (c) a document sent by means of a facsimile machine, telex, computer or other electronic device is deemed to have been received on the day following the day on which it was sent; and
- (d) for proving service of a document by post, it is sufficient to prove that -
 - (i) the document was properly addressed; and
 - (ii) all postal or delivery charges were paid; and
 - (iii) the document was properly stamped when posted; and
- (e) in proving service of a document sent by means of a facsimile machine, telex, computer or other electronic device, it is sufficient to prove that the document was properly transmitted to the person concerned.

(2) A document is not treated as having been served or sent, given, or delivered to a person if the person proves that, through no fault of the person, the document was not received within the time specified.

(3) Unless this Act specifically requires otherwise, notice or other communications from the Registrar may be delivered by any means the Registrar deems appropriate in the circumstances, including but not limited to -

- (a) email or other forms of electronic transmissions to an email address, fax number or other address provided by the incorporated association or overseas incorporated association for this purpose; or
- (b) email or other forms of electronic transmissions to an email address, fax number or other address provided by the committee members of the incorporated association for this purpose; or
- (c) by posting or delivery by courier to the registered office as shown on the register; or
- (d) having it published in a newspaper of general circulation in Papua New Guinea.

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- (4) A document derived from a device or facility that records or stores information electronically or otherwise is admissible in a proceeding as a copy of a notice given by the Registrar if -
- (a) it appears to be a copy of the notice; and
 - (b) it is certified by the Registrar as having been derived from such a device or facility.

PART XV. - WINDING-UP.

142. WINDING-UP.

(1) Subject to Section 143, the provisions of the *Companies Act 1997*, Part XVIII, Liquidations, relating to the winding-up of registered companies apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the winding-up of incorporated associations.

(2) In the application of the provisions of the *Companies Act 1997*, Part XVIII under Subsection (1) to the winding-up of an incorporated association a reference in those provisions -

- (a) to a company must be read as a reference to an incorporated association; and
- (b) to the directors of a company must be read as a reference to the members of the committee of an incorporated association; and
- (c) to the secretary of a company must be read as a reference to the public officer of an incorporated association.

143. DISTRIBUTION OF SURPLUS ASSETS.

(1) For the purpose of this section "surplus assets" means the assets of an incorporated association remaining on the winding-up of the incorporated association after payment of the debts and liabilities of the incorporated association and the costs, charges and expenses of the winding-up.

(2) Where, on the winding-up of an incorporated association, a resolution relating to the distribution of the surplus assets of the incorporated association has been passed by a majority of at least two-thirds of the members of the incorporated association, the National Court shall, subject to Subsection (3), make an order for the distribution of those assets in accordance with the resolution.

(3) Where -

- (a) the National Court considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in Subsection (2) would not be just; or
 - (b) such a resolution has not been passed,
- the National Court shall, subject to Subsection (4), make such order for the distribution of those assets as, having regard to the objects and purposes of the incorporated association being wound up, it considers just.

(4) The surplus assets of a public benefit association may only be distributed to another public benefit association.

PART XVI. - POWERS AND DUTIES OF REGISTRAR.

Division 1. - Maintaining the Register.

144. REGISTER.

(1) For the purposes of this Part, "incorporated associations" includes overseas associations.

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(2) The Registrar must ensure that a register of incorporated associations and overseas associations is kept and maintained.

(3) The register may be kept in the manner that the Registrar thinks fit including, either wholly or in part, by means of an electronic or digital format register.

145. REGISTRATION OF DOCUMENTS.

On receiving a document for registration under this Act, the Registrar must without delay -

- (a) register the document in the register (unless the Registrar rejects the document under Section 147); and
- (b) in the case of a document that is not an annual return, in writing notify the registration to the person from whom the document was received.

146. WHEN DOCUMENT REGISTERED.

For the purposes of this Act, a document is registered when -

- (a) the document itself becomes part of the register; or
- (b) the document or details of the document including the time and date of registration are recorded or stored in the electronic register.

147. REGISTRAR MAY REJECT DOCUMENT FOR REGISTRATION.

(1) The Registrar may refuse to register a document that -

- (a) is not in the prescribed form (if any); or
- (b) does not comply with this Act or regulations; or
- (c) is not printed or typewritten; or
- (d) if the register is an electronic or digital format register, is in a format that does not enable it to be registered; or
- (e) has not been fully and properly completed; or
- (f) contains material that is not clearly legible; or
- (g) is not accompanied by the prescribed fee, including any penalty or late fee that may apply.

(2) If Subsection (1) applies, the Registrar may require that -

- (a) the document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
- (b) a fresh document is submitted in its place.

148. NO PRESUMPTION OF VALIDITY OR INVALIDITY.

The registration or refusal of registration of a document by the Registrar does not affect, or create a presumption as to -

- (a) the validity or invalidity of the document; or
- (b) the correctness or otherwise of the information contained in the document.

149. INSPECTION OF REGISTER.

(1) Any person may, on payment of the prescribed fee (if any), inspect -

- (a) a document that is part of the register; or
- (b) a document or details of a document that have been recorded or stored in the digital format register.

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(2) An inspection made at the office of the Registrar must be made during the hours when the office is open to the public for business on a working day.

(3) Subsection (1) does not apply to any document or part of a document that is deemed confidential by the Registrar.

150. COPIES AND CERTIFIED COPIES OF DOCUMENTS.

(1) Any person may, on payment of the prescribed fee (if any), require the Registrar to give or certify -

- (a) a certificate of incorporation of an incorporated association; or
- (b) a certificate of registration of an overseas association; or
- (c) a copy of, or extract from, a registered document; or
- (d) details of a registered document that have been recorded or stored in the digital format register; or
- (e) a copy of, or extract from, a registered document that has been recorded or stored in the digital format register.

(2) The Registrar may, by writing under his hand, certify that, on a date specified in the certificate -

- (a) a specified association was, or was not, an incorporated association; or
- (b) a specified person was, or was not, a committee member or a public officer of a specified incorporated association; or
- (c) a specified person was, or was not, a committee member or an agent of a specified overseas association,

and such a certificate is, in all courts and before all persons acting judicially and for all purposes, evidence of the matters stated in the certificate.

(3) In any legal proceedings, a copy of any rules or trusts of an incorporated association, certified by the Registrar to be a true copy, is evidence that the rules or trusts were rules or trusts, as the case may be, of the incorporated association, and were in force on the date specified.

(4) Judicial notice must be taken of the signature of the Registrar appearing on a certificate under this section and of the fact that the person by whom the certificate purports to have been signed is the Registrar.

Division 2. - Changes to Register.

151. RECTIFICATION OR CORRECTION OF REGISTER.

(1) The Registrar may -

- (a) rectify the register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or
- (b) correct any particulars that appear to the Registrar to have been incorrectly entered in the register.

(2) Unless the rectification or correction relates solely to the person who provided it, the Registrar must not rectify or correct the register without first -

- (a) giving notice of the rectification or correction to the incorporated association and to persons whom the Registrar considers will be materially affected by it; and

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(b) allowing a person to whom notice is given a reasonable opportunity to object.

(3) This section does not limit the Registrar's power to amend the register under Section 153.

152. REGISTRAR MAY REQUIRE INFORMATION.

- (1) The Registrar may give notice to an incorporated association requiring it to provide -
- (a) corrected or updated details on any matter entered in the register for that incorporated association; and
 - (b) a certified copy of any document that has been or ought to have been filed with the Registrar for registration under this Act.

(2) The incorporated association must provide the information or certified copy within the time specified by the Registrar's notice, and that time must not be less than 10 working days after the date on which the Registrar sends the notice.

(3) An incorporated association that fails to comply with a notice under Subsection (1) commits an offence.

Penalty: A fine not exceeding K5,000.00.

153. REGISTRAR MAY AMEND REGISTER.

If information provided to the Registrar under Section 152 differs from the information shown in the register for the incorporated association, the Registrar may amend the register accordingly.

Division 3. - Inspection by Registrar.

154. REGISTRAR MAY INSPECT AND OBTAIN DOCUMENTS.

- (1) For the purpose of this section "relevant document," means a document that contains information relating to -
- (a) the incorporated association; or
 - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the incorporated association.
- (2) This section also applies to overseas associations.
- (3) For a purpose specified in Subsection (4), the Registrar or a person authorised by the Registrar may -
- (a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; and
 - (b) inspect and take copies of relevant documents; and
 - (c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; and
 - (d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of an offence; and
 - (e) require a person, in relation to information provided to the Registrar, to -
 - (i) confirm that the information is correct; or
 - (ii) correct the information.

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(4) The purposes for which the Registrar or a person authorised by the Registrar may act under Subsection (3) are to -

- (a) ascertain whether an incorporated association or a committee member of an incorporated association is complying with this Act; or
- (b) ascertain whether the Registrar should exercise any of his powers under this Act; or
- (c) ascertain whether information provided to the Registrar is correct.

(5) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power under Subsection (3).

(6) The Registrar may provide any or all relevant documents or copies of relevant documents obtained under this section to the Minister, the Minister for Justice and Attorney General, the Financial Analysis and Supervision Unit of the Bank of Papua New Guinea, any law enforcement agencies including the Royal Police Constabulary, and any person authorised to receive it for the purposes of, or in connection with, the exercise of a power under this Act.

(7) A person who fails to comply with a requirement under Subsection (3)(a) or (e) or contravenes Subsection (5), commits an offence.

- Penalty:
- (a) In the case of a natural person, a fine not exceeding K2,500.00 or imprisonment for a term not exceeding three months, or both; or
 - (b) In the case of a body corporate, a fine of K5,000.00.

155. RESTRICTIONS ON DISCLOSURES.

(1) A person that receives relevant documents under Section 154 must not disclose any relevant document, or information obtained, or report prepared, by that person except -

- (a) as required under Section 154; or
- (b) to the extent that the information, or information contained in the relevant document or report, is available under any Act or in a public document; or
- (c) in the course of criminal proceedings; or
- (d) subject to the Registrar's approval -
 - (i) with the consent of the person to whom the document, information, or report relates; or
 - (ii) for the purposes of, or in connection with, the exercise of powers under this Act; or
 - (iii) to a liquidator for the purposes of the liquidation of an incorporated association or the assets of an overseas incorporated association; or
 - (iv) for the purposes of detecting offences against any Act.

(2) A person who contravenes this section commits an offence.

- Penalty:
- (a) In the case of natural person, a fine not exceeding K2,500.00 or imprisonment for a term not exceeding three months, or both; or
 - (b) In the case of a body corporate, a fine of K5,000.00.

156. DISCLOSURE IN LIQUIDATION.

Despite any other enactment or rule of law, a report prepared by a person in relation to an inspection carried out by him is admissible in evidence in an application to the National Court to appoint a liquidator.

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Division 4. - Miscellaneous matters.

157. APPEALS FROM REGISTRAR'S DECISION.

(1) Unless otherwise specifically provided for, a person who is aggrieved by an act or decision of the Registrar under this Act may apply to the National Court within 15 working days after notification of the act or decision, or within any further time that the National Court may allow.

(2) The National Court may -

- (a) approve the Registrar's act or decision; or
- (b) give any direction that the National Court thinks fit; or
- (c) make any determination in the matter that the National Court thinks fit.

158. LIABILITY OF REGISTRAR.

The Registrar or a Deputy Registrar and any person appointed or authorised by the Registrar or employed in the office of the Registrar is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act.

159. EXTENSION OF TIME.

(1) Subject to Subsection (2), where by or under this Act an act or thing is required to be performed or done within a specified time, the Registrar may, in special circumstances, extend the time for the performance or doing of that act or thing.

(2) Subsection (1) does not authorise the Registrar to extend the time for the making of an appeal to the court under any section of this Act.

160. SPECIAL CASES.

(1) Where the Registrar is satisfied that, because of the special nature of the rules, method of control or operations of an association proposed to be incorporated under this Act, it would be appropriate and not inconsistent with the intention of this Act to do so, the Registrar may -

- (a) direct that some officer or authority of the association be incorporated in its place; or
- (b) direct that, on incorporation, the association, or some officer or authority of the association, stand, for the purposes of this Act, in the place of the committee, the members of the committee, the general meeting or the public officer; or
- (c) give such directions as the Registrar considers appropriate as to the form and manner of doing any other matter or thing under or for the purposes of this Act, and the person or authority by whom or by which it is to be done (including the substitution of some other instrument or procedure for a special resolution); or

(d) approve the rules of the incorporated association and waive some or all of the provisions of this act relating to the rules of associations,

and must give such further directions to ensure compliance with the intention of this Act as the Registrar considers proper.

(2) A person aggrieved by a direction or approval under Subsection (1) may appeal to the Minister, whose decision is final.

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161. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for -

- (a) prescribing the manner in which, and the persons by whom, and the directions or requirements in accordance with which, any forms prescribed for the purposes of this Act must or may be signed, prepared, completed or submitted, and generally regulating the signing, preparation, completion and submission of any of them; and
- (b) prescribing the times for the lodging of documents with, or the transmission of documents to the Registrar; and
- (c) prescribing the fees to be paid for or in respect of any matter or thing done under this Act; and
- (d) prescribing when penalties, late fees or other sums are payable under this Act, and the amount of any penalty, late fee or other sum; and
- (e) imposing penalties for offences against the regulations.

(2) The regulations may require that, in the prescribed cases, documents required by or under this Act to be lodged with the Registrar must be verified by statutory declaration by the prescribed persons.

Division 5. - Enforcement matters.

162. PROSECUTIONS.

(1) For the purpose of Sections 162, 163, 164 and 165, unless contrary intention appears, "incorporated association" includes an overseas association.

(2) The Registrar, or a person with the written consent of the Registrar may prosecute any offence against this Act.

(3) In any action or proceeding brought under this Act by the Registrar or against the Registrar the National Court may award costs against any party or claimant other than the Registrar, which costs the Registrar may recover as a debt due to the Registrar.

(4) Any fine or penalty to be paid by any person as a result of an action brought by the Registrar must be paid to the Registrar and, in addition to any other remedy, the Registrar may recover such fine or penalty as a debt due to the Registrar.

163. FALSE STATEMENTS.

- (1) Every person who, with respect to a document required by or for the purposes of this Act -
- (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omits, or authorises the omission from it of any matter knowing that the omission makes the document false or misleading in a material particular,
- commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding six months, or both.

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(2) Every committee member of an incorporated association who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report that relates to the affairs of the incorporated association and that is false or misleading in a material particular, to -

- (a) a committee member, auditor, member, or secured creditor of the incorporated association; or
 - (b) a liquidator, liquidation committee, or receiver or manager of property of the incorporated association; or
 - (c) where the incorporated association is a subsidiary of another incorporated association, a committee member or auditor of its holding incorporated association; or
 - (d) the Registrar,
- knowing it to be false or misleading, commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding six months, or both.

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

164. FRAUDULENT USE OR DESTRUCTION OF PROPERTY.

Every committee member, public officer, employee, or member of an incorporated association who -

- (a) fraudulently takes or applies property of the incorporated association for his own use or benefit, or for a use or purpose other than the use or purpose of the incorporated association; or
- (b) fraudulently conceals or destroys property of the incorporated association, commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

165. FALSIFICATION OF RECORDS.

Every committee member, employee, public officer or member of an association who, with intent to defraud or deceive a person -

- (a) destroys, parts with, mutilates, removes, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, electronic records or documents belonging or relating to the incorporated association; or
- (b) makes, or is a party to the making of, a false entry in any register, accounting records, electronic records or documents belonging or relating to the incorporated association, commits an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

166. CARRYING ON BUSINESS FRAUDULENTLY.

Every person who is knowingly a party to an incorporated association carrying on business with intent to defraud creditors of or donors to the incorporated association, commits an offence.

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Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

PART XVII. - TRANSITION.

167. APPLICATION FOR RE-REGISTRATION OF EXISTING INCORPORATED ASSOCIATION.

- (1) An existing incorporated association may apply for re-registration under this Act.
- (2) An application for re-registration must be -
 - (a) in the prescribed form; and
 - (b) signed by the person completing the application; and
 - (c) filed with the Registrar within one year after the commencement of this Act.
- (3) The application for re-registration must be accompanied by -
 - (a) the prescribed fee; and
 - (b) a copy of the rules as they exist immediately prior to re-registration.

(4) If the rules with which the existing incorporated association proposes to be re-registered are different from the existing rules, the application must be accompanied by the special resolution authorising the change.

168. FAILURE TO APPLY FOR RE-REGISTRATION.

(1) An existing incorporated association that does not apply for re-registration under this Act is removed from the register.

(2) The Registrar must, on a proper application to restore an existing incorporated association after the failure to re-register, restore to the register an existing incorporated association that has been removed from the register.

- (3) The application referred to in Subsection (2) must be -
 - (a) filed with the Registrar within two years after removal from the register; and
 - (b) be in the prescribed form; and
 - (c) accompanied by all outstanding annual returns and associated filing fees, together with any late filing fees and penalties.

(4) On the application of a committee member, member, or creditor of an existing incorporated association, or on application of the Registrar, the Court may -

- (a) direct the Registrar to make an application for re-registration on behalf of the existing incorporated association; and
- (b) make any other orders necessary to cause the re-registration of the existing incorporated association.

(5) The application referred to in Subsection (4) may be made within five years after the commencement of this Act.

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169. CERTIFICATE OF RE-REGISTRATION.

- (1) The Registrar must, without delay on receiving an application for re-registration of an existing incorporated association -
 - (a) enter the existing incorporated association on the register; and
 - (b) issue to the existing incorporated association a certificate of its re-registration.

- (2) A certificate of re-registration issued under Subsection (1) is conclusive evidence that -
 - (a) all the requirements for re-registration have been complied with; and
 - (b) on and from the date of re-registration stated in the certificate, the existing incorporated association is an incorporated association registered under this Act.

- (3) The re-registration of an existing incorporated association under this section does not -
 - (a) create a new legal entity; or
 - (b) affect membership rights of an existing incorporated association except as provided by this Act; or
 - (c) affect the property, rights, or obligations of the existing incorporated association except as provided by this Act; or
 - (d) affect proceedings by or against the existing incorporated association.

- (4) An existing incorporated association is not required to make an annual return under this Act in the year in which it is re-registered.

170. MEANING OF EXISTING INCORPORATED ASSOCIATION.

- (1) In this part, existing incorporated association means -
 - (a) an incorporated association incorporated under the *Associations Incorporation Act 1966*, immediately before the commencement of this Act; and
 - (b) an overseas association registered under the *Associations Incorporation Act 1966* or the *Companies Act 1997* as an overseas company.

- (2) An existing incorporated association does not include any incorporated association that is in liquidation.

171. INCORPORATION, LIQUIDATION OR OTHER PROCEEDING THAT IS INCOMPLETE ON COMMENCEMENT OF THIS ACT.

- (1) This section applies to an incorporation, liquidation, winding-up or receivership of an incorporated association (the "proceeding") that is incomplete on the commencement of this Act.

- (2) The balance of the proceeding must be conducted in accordance with the *Associations Incorporation Act 1966* in force immediately before the commencement of this Act with all necessary modifications.

172. REPEAL.

- (1) The *Associations Incorporation Act 1966* is repealed one year after the commencement of this Act.

- (2) There shall not be any association incorporated, or any overseas association registered, under the *Associations Incorporation Act 1966* after commencement of this Act.

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173. FURTHER TRANSITIONAL PROVISIONS.

Regulations made under this Act may supplement the transitional provisions set out in this part.

SCHEDULE.

Sec. 4(b).

MATTERS TO BE PROVIDED FOR IN THE RULES OF AN ASSOCIATION.

1. The name of the association.
2. The objects and purposes of the association.
3. The qualifications (if any) for membership of the association.
4. The membership subscriptions or dues (if any) to be made or paid by members of the association.
5. The names, constitution, membership and powers of the general committee, board of management or other governing authority of the association (referred to as "the committee" in the Act) and -
 - (a) the manner of election or appointment of committee members; and
 - (b) the terms of office of committee members; and
 - (c) the grounds on which, or reasons for which the office of a member of the committee becomes vacant; and
 - (d) the filling of casual vacancies occurring on the committee; and
 - (e) the quorum and procedure at meetings of the committee; and
 - (f) the quorum and procedure at meetings of sub-committees appointed by the committee; and
 - (g) the remuneration, if any, that committee members are entitled to receive.
6. The quorum and procedure at general meetings of members of the association and of any sub-committees appointed by any such meeting or constituted or established under the rules of the association.
7. The time within which, and the manner in which, notices of meetings and notices of motion are to be given, published or circulated, and the manner of calling general and special meetings of the association.
8. The sources from which the funds of the association are to be or may be derived.
9. The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other documents for and on behalf of the association.
10. The intervals between general meetings of members of the association (which must occur at least once a year per the Act).
11. Whether the accounts of the association are to be audited annually or more frequently (for incorporated associations required to prepare financial statements the act provides rules regarding auditing requirements).
12. Subject to Section 21, the manner of altering and rescinding the rules and of making additional rules.
13. Provision for the custody and use of the seal of the association.

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14. Subject to Section 21, the manner in which the objects or purposes of the association may be altered.
15. Subject to Section 72, the custody of books, documents and securities of the association.

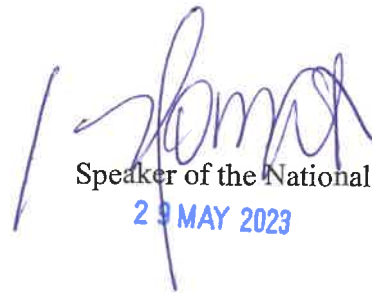
I hereby certify that the above is a fair print of the *Associations Incorporation Act 2023*, which has been made by the National Parliament.



Acting Clerk of the National Parliament.

29 MAY 2023

I hereby certify that the *Associations Incorporation Act 2023*, was made by the National Parliament on 11 January 2023.



Speaker of the National Parliament.

29 MAY 2023