INDEPENDENT STATE OF PAPUA NEW GUINEA.

Consultation Memorandum

Proposed Draft Associations Incorporation Regulations

under the Associations Incorporation Act 2023

September 2023

1. BACKGROUND

During 2018 and 2019 the Investment Promotion Authority (IPA) undertook a review of the framework and governing arrangements relating to the formation and operation of incorporated associations in Papua New Guinea. IPA conducted several public consultation sessions around the country seeking input on a possible reform resulting in a proposed draft legislation. This proposed draft legislation was circulated for comment and IPA also sought further feedback through multiple public forums held around the country. Based upon public comments and consultation feedback, appropriate changes were made to the proposed draft legislation and consequently was progressed through the government approval processes.

The *Associations Incorporation Act* 2023 ("the new Act") was enacted by Parliament on 11 January 2023 and certified on 29 May 2023. The new Act replaces the now repealed *Associations Incorporation Act* 1966 ("the old law") and requires accompanying regulations to enable its implementation.

2. SIGNIFICANT CHANGES IN THE NEW ACT

The *Associations Incorporation Act 2023* retains much of the spirit of the old law while modernizing the law and bringing new levels of transparency and accountability to incorporated associations. A comprehensive statement of the changes can be found in the document titled "*Associations Incorporation Act* 2023, Summary of New Obligations."

3. REGULATIONS

In order for the new Act to be implemented, sufficient new Regulations must be adopted. Most of the Regulations pertain to technical or procedural matters, such as how the online registry operates, how the public gains access to the registry, fees to be paid, and how the overseas entities must comply with the new Act and online registry standards. These provisions are straightforward, largely mirror regulations under the *Companies Act* 1997 (as amended) for the sake of consistency and should not be controversial.

There are two items in the proposed draft Regulations for which IPA especially seeks feedback.

3.1 Revenue and Donation Threshold Amounts

During the initial consultation phase on the framework and proposed draft legislation, many commentators expressed concern about the financial dealings of incorporated associations and called for stringent independent auditing requirements. IPA acknowledged this sentiment but also recognized that the vast majority of incorporated associations: i) are not engaged in illicit activities, and ii) are too small to be able to afford an auditor. IPA also believed that a more nuanced approach was needed rather than simply saying "the biggest incorporated associations must file audited reports." Therefore, the new Act contains pioneering language requiring that only certain targeted associations must have financial statements. Section 78 provides instances where an incorporated association would be required to have audited financials:

1) If an incorporated association has total gross revenues in excess of threshold amount established by regulations; or
2) If an incorporated association receives significant donations from the public over a threshold amount established in regulations.

IPA now seeks input on what these threshold levels should be. Consideration must be given to smaller incorporated associations that may be burdened as preparing financial statements do take time and money. However, the threshold amounts should not be so high that they encourage bad actors to take advantage of Papua New Guineans who make donations to charities. The threshold amounts should target only those incorporated associations for which there is ample justification to require more detailed financial statements, while not hurting small, charitable incorporated associations.

Additionally, there is also a requirement that where an incorporated association receives *any* Papua New Guinea Government grant of *any* size then financial statements would be required. The rationale here is that if taxpayer money is flowing to an incorporated association, then there should be accountability on how it is being spent.

3.2. Employee Threshold Amount

Section 76 of the new Act requires each incorporated association to prepare an annual report detailing its activities over the prior year. This report is to be made available to the incorporated association's members so that transparency is brought to the operations of the entity. The new Act lists several items that must be addressed in the report, including the following in paragraph (f):

> *76(f) "state the number of employees or former employees, not being committee members, 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."*

The intent is to help guard against an incorporated association taking in donations from the public and then paying out all the monies to so-called employees in the form of extremely high salaries. IPA seeks feedback on what the employee threshold amount should be that would trigger the need to include it in the annual report for the members.

4. CONSULTATION FEEDBACK

The IPA invites written submissions on the draft proposed Regulations until **21 October 2023**. Please send submissions or any queries to ggLegislativeReview@ipa.gov.pg.