



## INVESTMENT PROMOTION AUTHORITY

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### ***Associations Incorporation Act 2023***

#### **Summary of New Obligations**

**September 2023**

The *Associations Incorporation Act 2023* (“the new Act”) was enacted by Parliament on 11 January 2023 and certified on 29 May 2023. The Act replaces the now repealed *Associations Incorporation Act 1966* (“the old Act”) and will be implemented in due course.

The Investment Promotion Authority (IPA), under the Registrar of Companies Office is responsible for the administration of key PNG business laws including the new Act, hence is responsible for implementing the new Act.

This summary of the new Act presents an overview of significant changes to the way incorporated associations are formed and operated. It has been prepared solely for general informational purposes and is not to be interpreted as providing legal advice. **No person should rely on the information contained in this document when making decisions on how the new Act may apply to a given situation. Further, no person should proceed with any corporate action that might be covered by the new Act without local legal advice.**

Given that the new Act is yet to be implemented, no Papua New Guinea court has interpreted the law. However, the new Act is based upon provisions and principals from the old Act, as well as the *Companies Act 1997 (as amended)*. Practitioners may be well served to look to interpretations of those other laws for guidance.

<b>Item</b>	<b>Description</b>	<b>Section</b>
<b>Online filing</b>	The new registry allows for all association filings to be submitted online. While the initial Notice of Intent can be submitted in paper, all other filings are required to be done via the online registry.	144, 161
<b>Re-registration</b>	All existing incorporated associations must re-register under the new Act within one year from the Act’s commencement. To make a re-registration, you will need to confirm the information currently in the database, make any necessary changes, and also supply some new information. The new information includes identifying current committee	167, 168

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	members and any public officers, stating your association's current business activities, and the subtype of association you have (see below for a discussion about subtypes). The re-registration filing is free and takes the place of the annual return in the first year. Failure to re-register will result in your association being removed from the register.	
<b>Initial incorporation</b>	Just as under the old law, new associations will still file a <b>Notice of Intent to Incorporate</b> to start the incorporation process. But the Notice of Intent will now require all the information relating to the proposed association, <u>including identifying committee members, business activities and any public officers</u> . Once the Notice is filed then the association must undertake to do a public notice of their intent to incorporate, just as was required under the old law.	6
<b>Subtypes of associations</b>	The new law recognizes two subtypes of association: i) public benefit, and ii) mutual benefit. A <b>public benefit association</b> is an incorporated association that is formed for a charitable purpose that benefits the public interest. A <b>member benefit association</b> is formed and operated primarily for the benefit of its members. You will need to designate what subtype of association you have in the Re-registration and on a Notice of Intent (Section 6). There are a few differences in the new Act on how public benefit and mutual benefit associations are treated, which are discussed below.	6
<b>Public benefit associations</b>	A public benefit association is one formed for a charitable purpose that benefits the public interest. The new Act defines "charitable purpose" in Section 5 very broadly to include the activities typically thought of as charitable. One key rule that applies to public benefit associations is what happens when they dissolve. The law makes clear that any surplus monies held by public benefit associations <u>may not</u> be paid out to their members. Instead, they may only be paid to another public benefit association (Section 143(4)). The reason for this rule is that otherwise it is possible that donations received from the public could wind up in private hands rather than going to the charitable works for which they were intended.	5
<b>Member benefits associations</b>	A member benefit association is formed for the benefit of its own members. These could be trade groups (like chambers of commerce) or could relate to several incorporated land groups that come together to form an umbrella association to further the interests of the individual ILGs. Member benefit associations are allowed to opt-out of annual meetings and certain reporting obligations if all of their members agree or if their rules allow.	66, 81
<b>Objections to incorporation</b>	Any person may object to the proposed incorporation of an association. The grounds for an objection are set out in the Act. The grounds for objection are broader than under the old law and include such things as the association is proposed to be incorporated for an immoral or illegal purpose, or for an improper profit, or a purpose contrary to public policy, or that a committee member or public officer is ineligible to hold office. If an objection is filed, the applicant is given an opportunity to respond, and then the Registrar issues a decision. This decision can be appealed to the Minister (Section 10).	9
<b>Rules</b>	Every incorporated association must have Rules. The Rules are to be attached to the re-registration or Notice of Intent forms. Schedule 1 to the Act sets out the matters to be addressed in the Rules, though the Rules may contain additional items. The Rules may always be changed, and if they are then the amended Rules must be filed with the Registrar.	20, 21
<b>Committee</b>	Associations have always had committees. The committee is the body that oversees and manages an incorporated association. It is the equivalent to a board of directors of a company. The new Act better defines the role of the committee and establishes a few new rules for committees.: i) each association must have always at least 3 members on the committees; ii) one of the committee members must be ordinarily resident in Papua New Guinea; iii) the committee members must be named on both the re-registration for existing associations and on the Notice of Intent to Incorporate for new associations.	4, 6
<b>Managing committee members</b>	Whenever the information related to a committee member changes (name, address), or there is a resignation and/or appointment of new committee member, this must be reported to the Registrar (Section 28). Committee members may be disqualified from	23-29

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	holding this office (Section 30). Committee members may be paid, but only if the payment is authorized in their Rules or by special resolution (Section 29).	
<b>Committee member duties</b>	The new Act generally treats committee members like directors of a company. This includes imposing a specific duty of care upon committee members to “exercise the care, diligence, and skill that a reasonable committee member would exercise” on behalf of their association (Section 38). If a committee member has a conflict of interest, they must report this to the rest of the committee (Section 40). If a committee member acts in bad faith towards their association, then that person commits an offence (Section 44).	38-52
<b>Public officers</b>	Each association must have at least 1 or more public officers, at least one of whom must be ordinarily resident in Papua New Guinea. Additionally, if the public officer(s) is to have the ability to enter contracts on behalf of the association, this fact must be noted in the registry via a tick-box on the Re-registration form or on the Notice of Intent to Incorporate. You may change this designation later via a specific filing, as well as change the public officer themselves. The duties and obligations of the public officer are set out in Sections 53-60 of the new Act.	4, 6
<b>Determining Members</b>	The old law did not contain a direct definition of “member.” The new Act fixes this shortcoming. Members are defined as those persons whose name is entered on the internal member register maintained by the association, or who have the right to vote for the election of committee members, or who satisfy the qualifications for membership set forth in the rules of the association. However, a person is not a member merely by virtue of being a committee member or other officer or employee of the association. This allows associations to hire outside professional help without that outsider being considered a member.	3
<b>Memberships</b>	The new Act sets out a new definition for “membership,” which 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.” This term recognizes the fact that some associations allow for what are commonly called “family memberships.” Where husbands and wives jointly hold a membership, both parties have equal standing with regard to that membership. With regard to voting rights, the default position will be that each member has one vote (Section 64(1)). However, any association will be able to indicate in its Rules that each “membership” has one vote regardless of how many people are associated with a given membership. This approach will assist women in asserting their proper membership rights while still preserving the flexibility for individual associations to establish voting procedures for their own reasons.	3
<b>Liability of members</b>	The new Act makes clear that no liability attaches to a member just because they are a member. However, the Rules of an association may provide for liability for its members.	61
<b>Rights of members</b>	Certain transactions are deemed so significant that member approval must be obtained before the association can act. These include transactions involving more than 50% of the value of the association. Members must also approve altering the Rules or the objectives of the association, and deciding to wind up the association’s business. Finally, the Rules may provide for other matters to be decided exclusively by the members.	62
<b>Inspection rights of members</b>	Members have the right to inspect certain records of their association. The list of items that are subject to inspection is found in Section 84 and includes minutes of all meetings and resolutions of the members and any audited financial statements. Members may also submit written requests for information to their association which must be acted upon by the committee. A committee may decline to provide the requested information if disclosure could hurt the association. If the request is declined, the member may seek court relief.	84-86
<b>Member register</b>	Each association must keep a register listing all members and their last known address. In order to comply with international anti-money laundering mandates, beneficial ownership records must also be kept in the member register.	87-90
<b>How members act</b>	Members act via either holding a meeting or by special resolution. The new Act sets out the procedures for meetings and voting on special resolutions.	63-65

<b>Item</b>	<b>Description</b>	<b>Section</b>
<b>Annual meeting of the members</b>	Each association must hold an annual meeting of its members. However, there are opt out provisions if all the members agree to skip the meeting. A special meeting of the members may be called at any time by 1/3 of the committee or upon written request of 33% of the membership votes. Written resolutions in lieu of meetings are allowed if 75% of the membership votes in favor of the action.	66-69
<b>Court-ordered meetings</b>	A committee member, member or creditor can petition a court to hold a meeting of the members. This addresses situations where a committee may be nonresponsive to the demands of a large faction of members to actually hold a meeting.	70
<b>Accounting records</b>	The old law provided an adequate financial framework for smaller, traditionally charitable or religious associations. However, the use of the association form has changed over the years to be used for organizations that handle very large sums of money, often with little or no accountability to their own members. The new Act contains provisions that increase financial transparency in favor of the members and impose additional reporting requirements on associations that either receive significant donations from the public or take in government grants. Section 72 requires all associations to maintain basic accounting records, and Section 73 provides further details around what is required. This includes the requirement to keep track of large donations (over K10,000) so as to be compliant with international anti-money laundering mandates.	72-73
<b>Annual Report</b>	The committee of an association must prepare an annual report for inspection by its members unless all members agree otherwise. The report must contain information about the nature of the association's activities, its financial statements, any self-interests reported by committee members, the total payments made to committee members, the number of employees and the aggregate payments to them, total donations received, total value of membership dues.	74-76
<b>Annual return</b>	Just as with companies, associations will now be required to submit an annual return to the Registrar. If the association is required to prepare financial statements under Section 78 then these statements must accompany the annual return. Failure to file will result in the association being struck off the register.	77
<b>Financial statements</b>	The new Act will require some associations to prepare audited financial statements. If during an accounting period an association has an annual gross revenue of over _____, or if the association received government money in the form of grants, or if it receives donations in excess of _____, the financial statements must be prepared and submitted to the Registrar together with the annual return. Section 79 sets out the required contents of the financial statements. However, member benefit associations may opt out of this requirement so long as they did not receive government grants or donations that exceed the threshold amounts. In other words, any association that receives either government grants or donations from the public over _____ must prepare audited financial statements.	78-80
<b>Associations and contracts</b>	Part X of the new Act set out how associations interact with the world, which is primarily through contracts. In principle the new law largely follows the PNG Companies Act in setting out how associations enter contracts and how pre-incorporation contracts can be ratified.	93-94
<b>Registered office address</b>	Every association must maintain a registered office address. Any change to this address must be notified to the Registrar, and takes effect no less than 5 days after that notice.	95-97
<b>Amalgamations</b>	Associations may amalgamate. The new Act sets out the procedure and necessary filings to complete the amalgamation, and includes the need to undertake a public notice of the proposed amalgamation. If your association seeks to amalgamate, it is highly advised you seek assistance of legal counsel to make certain all requirements are met as these are complicated transactions.	98-106
<b>Removal from the register— involuntary</b>	There are various reasons for the involuntary removal of an association from the register. The most common will initially be for the failure to Re-register in the first year after the new law commences. After the first year, the most common reason will likely be for the failure to file an annual return. There are other grounds for removal, including	107-108

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	that an association has fewer than 3 committee members, or that it procured its incorporation through fraud or otherwise is engaged in fraudulent activities. If the Registrar seeks to remove an association notice will be given first to the association and, in some cases, public notice is also required (Section 110).	
<b>Removal from the register--voluntary</b>	When an association decides to close its doors, it should file a request for removal with the Registrar so as to do wind up properly. The new Act sets out the process for this action, including when a public notice is required (Section 110).	109
<b>Objections to removal</b>	Certain persons are allowed to object to the removal of an association. The primary objector is usually a creditor who seeks to be paid from an association's assets. The new Act sets out the procedure for raising objections.	111-112
<b>Property of removed association</b>	The new Act follows the provisions in the PNG <i>Companies Act 1997</i> that relate to how the property of a removed association is treated.	113
<b>Restoration after removal</b>	Associations that are removed from the register may be restored. This is most common in cases where an association neglects to file an annual return. The association (or other interested persons like a creditor) may file an application for restoration with the Registrar together with required supporting documents and all filing fees and penalties. A court may also order the restoration of an association. In practical terms, once an association is restored it is as if it was never removed.	115-118
<b>Overseas associations: Re-registration</b>	The old law did not have any provisions regarding overseas associations, often called "nonprofit" entities in their home jurisdiction. For this reason, IPA required overseas nonprofits to register as overseas companies under the <i>Companies Act 1997</i> . All overseas nonprofits that currently registered as overseas companies will be required to re-register under the new associations act as overseas associations. The failure to do so will result in their registration being struck from the company register	
<b>Overseas associations: new registrations</b>	All overseas nonprofits that intend to "carry on business" in PNG must first register as an overseas association. Section 119 helps define the term "carry on business". Failure to do so can result in hefty penalties of K50,000 for each day the overseas nonprofit operates in PNG without being registered. The name the overseas association must use in PNG must comply with Section 121 and 122. The actual application for registration (Section 123) must be accompanied by evidence of incorporation from the home jurisdiction in English.	119-123
<b>Overseas associations: Foreign Enterprise Certification</b>	All overseas entities operating in PNG are required to obtain a foreign enterprise certification. However, Section 26 of the <i>Investment Promotion Act 1992</i> allows nonprofits engaged in religious, charitable, educational or other socially useful purpose to apply for an exemption to foreign enterprise certification process. The application for exemption form is available online. Once it is filed there is a public comment period during which objections can be raised to the application.	
<b>Overseas associations: annual returns and records</b>	Overseas associations must file annual returns just like local PNG associations. Failure to file will cause the overseas company to be de-registered. Additionally, an overseas association will be subject to preparing accounting records and, if applicable, financial statements regarding its activities in PNG.	124-126
<b>Overseas association: maintaining info</b>	Overseas associations must provide information on their committee members and various addresses, and must update the registry if there is any change in this information.	127-130
<b>Overseas associations: removal for annual return</b>	Overseas associations can be removed from the register for a variety of reason, just like local PNG associations. If the removal is due to failure to file an annual return, the overseas association may file an application to restore the association for up to 2 years after removal. Additionally, any other person may seek restoration through a court action.	131
<b>Overseas associations: removal for other reasons</b>	Just as with local PNG associations, an overseas association can be removed from the register for other reasons, including that it has engaged in fraudulent or unlawful actions or has applied profits made in PNG to a purpose other than promoting its objects. The Registrar will give a 30-day notice prior to removal, and objections are permitted.	132-134

<b>Item</b>	<b>Description</b>	<b>Section</b>
<b>Overseas associations that cease to do business</b>	When an overseas association ceases to do business in PNG it must give a 30-day prior public notice of its intent to leave the country.	135
<b>Serving legal documents</b>	The new Act follows the <i>PNG Companies Act</i> regarding how legal process is served on an association, including serving any committee member or posting it to the registered office. Non-legal documents to associations and to members of associations may be delivered via email as well.	136-141
<b>Winding up</b>	When a local PNG association closes its doors the provisions of the <i>PNG Companies Act 1997, Part XVIII—Liquidations</i> , applies.	142
<b>Distribution of assets upon winding up</b>	Any surplus assets remaining after all creditors have been paid, the association will pass a resolution relating to the distribution. This resolution is presented to the National Court which will issue an order for the distribution in accordance with the resolution. If the Court finds the distribution proposed in the resolution to be unjust, the Court may make its own order. Provided, the surplus of a public benefit association may only be paid to another public benefit association. The reason for this rule is that otherwise it is possible that donations received from the public could wind up in private hands rather than going to the charitable works for which they were intended. There is no such limitation for mutual benefit associations as these are usually self-funded via membership dues.	143
<b>Registrar powers and duties</b>	The new Act follows the <i>Companies Act 1997</i> (as amended) in listing specific powers of the Registrar to administer the Act and an online registry.	144-150
<b>Correcting the register</b>	If a mistake is made when entering information on the register there is a process to correct (or rectify) it. If the mistake relates solely to the person who seeks the correct, the Registrar may simply correct it straightaway. An example would be an incorrect address for a committee member. The Registrar may also proactively seek confirmation of information in the register and correct it if an error is found.	151-153
<b>Registrar power of inspection</b>	The Registrar has the authority to inspect the records of an association, including bank records, to determine if the association is complying with law.	154-156
<b>Appeals of Registrar decisions</b>	Any person aggrieved by an act or decision of the Registrar may appeal to the National Court within 15 working days. The National Court shall then make a determination that it thinks fit.	157
<b>Regulations</b>	The Registrar is given the same power to issue Regulations as is found in the <i>Companies Act 1997</i> .	161
<b>Enforcement</b>	The Registrar is empowered to prosecute offences under the Act. There are several specific offences listed in the new Act: i) any person who makes false statements to the Registrar commits an offence; ii) if a committee member knowingly makes a false statement or furnishes a false statement or report; iii) falsification of records; and iv) carrying on business fraudulently.	162-166
<b>Transition: Re-registration of local associations</b>	There must be a way to smoothly transition from the old law to the new Act. This is complicated by the fact that the new Act contemplates additional data points to be submitted to the Registrar for each association, most pointedly the names of the committee members. Therefore, all existing incorporated associations will have one year from the date of commencement of the new Act to re-register. Re-registration will be free, and takes the place of the annual return for this first year. The failure to re-register in the first year will result in the incorporated association being removed from the register. However, an incorporated association is given an additional two years within which it can restore its registration by submitting the proper filings to the Registrar, together with a late fee.	167-169
<b>Transition: Re-registration of overseas associations</b>	The re-registration requirement applies to overseas nonprofits that may have registered as overseas companies as the old law had no specific provisions for overseas nonprofits. The failure of an overseas nonprofit to re-register under the new Associations Act would	170

Item	Description	Section
	cause it to be struck off the companies register and in effect result in it operating illegally in PNG	
<b>Transition: associations winding up</b>	If an existing association is currently winding up or has entered liquidation, that proceeding will be completed under the old law, not the new Act.	171
<b>Transition: Regulations</b>	The Registrar is empowered to issue specific regulations regarding transition and re-registration which may be in addition to, or in place of, or amend, the re-registration provisions in the Act. This safeguard was placed into the law in case some unforeseen circumstance arises that makes transitioning to the new Act difficult for our local associations.	172
<b>Repeal</b>	The existing law is repealed one year after the commencement of the new 2002 Act. This means that existing associations will continue to operate under the old law until they are re-registered.	173



**IPA**