

Consultation Report

Proposed Associations Incorporation Act Reform

Public Version

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Papua New Guinea Investment Promotion Authority

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1.0 Background

The Investment Promotion Authority (IPA) is undertaking a review of the *Associations Incorporation Act* 1966 (“the Act”). The Act has remained unchanged since its passage. This review is also being driven by deficiencies with the Act noted in the 2011 “Mutual Evaluation Report” (MER) prepared by the Asia/Pacific Group on Anti-Money Laundering. In response to the MER, the Government of Papua New Guinea has been working on a “National Anti-Money Laundering and Counter Terrorist Financing Strategic Plan 2017-2027” (NSP)¹ which contains a section that addresses AML issues related to Associations. The NSP states that Government will:

Conduct review of *Associations Incorporation Act* ... to ensure proper registration of Non-Profit Organisations (NPOs), enable information with respect to NPOs to be made available to investigative authorities with a view to ensure:

1. NPOs are not misused by terrorist organisations posing as legitimate entities;
2. NPOs are not used to exploit legitimate entities as conduits for [Terrorist Financing], including for the purpose of escaping asset-freezing measures, and
3. NPOs are not used to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.²

Against this background, IPA has sought public comment on proposed changes that would bring the Act into compliance with international anti-money laundering (AML) mandates. Further, IPA also sees this as an opportunity to address other issues that have been identified as problematic for local associations. These include such matters as:

¹ Last updated June, 2017, this has now been endorsed by the National Coordinating Committee. See also the related document “Money Laundering and Financing or Terrorism National Risk Assessment” dated September 2017.

² See Recommendations 23 and 24, page 33-34 of the NSP.

- improving the incorporation process by better defining what information is needed in the application and then making it all available on the IPA registry website so that the public may view this information prior to incorporation;
- creating subtypes of associations so as to be able to tailor specific Rules for each subtype;
- clarifying and expanding the proper grounds for an objection to the formation of the association;
- providing for a higher level of financial transparency for associations, including giving members certain rights to obtain more information about their association and in some cases require preparation of financial statements;
- defining the rights and responsibilities of the committee of the association and imposing affirmative duties upon the committee members to act in the best interest of their associations;
- clarifying the responsibilities of the public officer;
- making clear what powers an association has;
- requiring an annual filing so as to provide the registry with accurate information as to what associations are active or inactive;
- seeking greater participation by women in the use and management of associations; and
- setting forth in greater detail the role of the Registrar in administering the Act.

To facilitate the consultation process, IPA distributed a “Consultation Memorandum Seeking Stakeholder Input to Proposed Amendments to the Associations Act 1966” in June 2018. This Memorandum invited comments to be submitted to IPA by August 31, 2018. Further, IPA held four separate forums in July and August in Port Moresby, Lae, Kokopo, and Goroka, in which the public was invited to participate and provide comments. These events were well attended by various stakeholders. Additional written submissions were also received by IPA. This Report summarizes stakeholder input as well as IPA’s views on the proposed reform. The Report is divided into sections based upon topic.

The consultation process and the overall reform effort has been a joint effort between the Investment Promotion Authority and the Pacific Private Sector Development Initiative, an Asian Development Bank program undertaken with the generous support of the governments of Australia and New Zealand.

2.0 Overview of most frequent comments

Overall, the comments received were extremely supportive of the reforms the Associations Act proposed by IPA. Interestingly, most discussion in the public forums consisted of anecdotal reports of wrongdoing by associations’ committee members and their

public officers. All commentators felt that increased transparency in the financial dealings of associations would help address these issues. The following is a summary of the topics that received the most discussion during the public forums.

2.1. More regulatory oversight required

There were numerous comments received on a variety of topics that all amounted to a call for more Government oversight and regulation of associations and their committee members. For example, many stakeholders indicated a need for the Registrar to act against any association that was engaged in unlawful activities, that didn't comply with its own internal Rules, or that otherwise failed to comply with its stated objectives.

IPA understands the sentiment behind these comments and does not disagree that additional oversight would be beneficial. However, as a practical matter, IPA does not currently have the resources to become a true industry watch-dog overseeing the actions of every single association in PNG. IPA therefore believes that at this time the most efficient approach to these issues of good governance is to empower the actual members of each association to better police the entity themselves. This can be accomplished through such mechanisms as mandating financial transparency, requiring annual meetings, and making sure there are fair voting procedures for committee members. The Registrar would still have an important role to play in oversight and enforcement, but giving members more definitive rights will provide even greater accountability.

IPA also believes that imposing clear roles, responsibilities and liabilities for bad acts on committee members will help address this issue. Under the Company Act, directors of a company have affirmative duties placed upon them and there is a potential for personal liability for the failure to fulfill these duties. A similar approach for committee members under the Associations Act seems appropriate. All commentators who spoke on this issue supported this approach.

IPA also believes that implementing a significant public outreach program focusing on governance issues would be very helpful to the associations' sector. IPA can publish guidelines to the IPA website on good corporate governance that can assist associations in their ongoing activities. These guidelines will touch on issues including how best to elect committee members, how to include women in management positions, and how to give a greater voice to members.

2.2 Do not allow formation of competing associations

Some commentators felt that the law should prevent the formation of a new association in an area where an existing association was already working. IPA understands the thinking behind point given the limited resources that are usually available to associations. However, IPA is also wary of creating a situation where a pre-existing association gains what amounts to monopoly power over a particular segment of civil society. Consider, for example, the following three hypothetical scenarios:

- a) An association exists whose aim is to increase the amount of land available for parks in and around Port Moresby. If that association was poorly run and inefficient it would make no sense to prevent a new association being formed by other persons who had the same goal.
- b) An association exists to assist all coffee growers in “region A.” Assume there are 400 growers that are members in this association. All is well at first, however, over time, the committee starts to make decisions that favor the largest 50 growers. The remaining 350 small growers might want to break off from the original association to form their own association that is more responsive to their particular needs. IPA does not believe the law should prevent this sort of action from occurring by institution of a rule that says only one association can represent a particular region and/or economic activity.
- c) Assume there is an association called “The Papua New Guinea Commonwealth Games Committee, Inc.” which exists to assist athletes prepare for the Commonwealth Games. This assistance is broad and covers many aspects of what it takes to compete, from training to uniforms to nutrition. What if another group wanted to raise funds to help the families of Commonwealth Games participants travel to see their children compete? Should that group be able to form an association? If there was a rule in place that conferred veto power on an existing association it is possible that the Commonwealth Games Committee would oppose the formation of this new entity as they might believe it would take funds away from their core mission. How would IPA and, eventually, a court, handle such an objection?

IPA fears that this sort of rule would result in dozens of court cases each year, not only clogging up the court system but also shifting resources from the provision of services to litigation costs.

IPA notes that preventing formation of a new entity that is working in the same space is certainly not the approach for company formation. For example, if Company X has been formed to operate a wholesale food distribution network in Lae there is no prohibition in the law that would prevent a competitor from forming a company for the wholesale distribution of food in Lae. Indeed, the competition between the two companies would almost certainly result in decreased food prices for consumers. Similarly, in theory at least, having two associations compete for the delivery of services should be good for the people being served as donations would tend to flow to the association that was most efficient in delivering value for money.

IPA acknowledges that issues around duplication of services is certainly relevant with regard to associations that are receiving Government³ funding. In that case, Government may not want to spread its resources amongst too many recipients that are acting in the same space. However, *these funding decisions are entirely separate* from the threshold question of whether a group may legally incorporate. IPA also acknowledges that different consideration may be in play with regard to overseas NGOs that seek to operate in PNG in the same area in which a local association already exists. That issue is discussed immediately below in Section 2.3 of this Report.

2.3 Registration of overseas NGOs

There are no provisions under the current Associations Act that address registration of overseas NGOs. All commentators recognized the need for such provisions in a revised law. Currently IPA, making the best of a bad situation, requires overseas NGOs to register as overseas companies. The new law will contain transition provisions that allow these entities to re-register under the Associations Act.

Commentators spoke to three specific issues with regard to overseas NGOs: i) the process by which they should be registered; ii) whether overseas should be required to partner with local Associations; and iii) making sure there is coordination of services to be provided. Each of these is discussed below.

Process of registration. Two commentators believed that overseas NGOs should be required to supply items such as background checks, financial records, lists of donors, etc., to be eligible to operate in PNG. IPA is sympathetic to the reasoning behind these comments. However, it must be acknowledged that the vast majority of overseas NGOs that seek to operate in PNG are engaged in truly charitable and socially-worthy activities. To encourage these good works PNG should not make it difficult for these entities to enter the country. When legislation is drafted IPA will seek to find a middle ground that protects PNG citizens but is also welcoming to foreign assistance. On a related topic, IPA believes that overseas NGOs should be monitored for compliance with laws and with their stated objectives. Therefore, IPA believes that enhanced annual reporting for overseas NGOs on their PNG-based activities should be required.

Requirement to partner with local associations. A few commentators stated that an overseas association should be required to partner with a local association. The following comment is typical of those made on this point:

³ The same thinking may apply to other donor agencies and institutions as well.

Allow foreign NGO registration unless a local association is already working in that sector. If this is the case, then the foreign NGO must partner with the local entity. This will assist in capacity building for the local NGOs. The contract must require capacity building for local counterparts, paid for by the international NGOs and/or donors.

IPA is reluctant to make this an absolute rule that sits within the Associations Act. IPA notes that with regard to overseas companies, they must obtain a “Foreign Certification” that allows them to implement proposed business activities within PNG. This process is required under the *Investment Promotion Act 1992* under which foreign investors are certified to enter PNG, but an exemption to the certification process can be granted to NGOs. IPA believes that at the time this exemption is sought then the IPA can review the exemption request to make certain the overseas NGO’s work in PNG is appropriate. One of the criteria against which this determination could be made is whether a local association is already engaged in the same work in the same region. IPA believes that handling this issue on this case-by-case basis will strike the right balance between being welcoming of foreign assistance yet still attempting to raise the capacity of local entities. IPA fears that imposing an absolute rule that an overseas association must always partner with a local entity might result in some international NGOs in looking elsewhere to provide assistance.

Requirement to comply with national NGO priorities. Many commentators felt that more coordination should occur to help prevent duplication of services offered by different overseas NGOs. IPA believes the best approach to this issue is the same as mentioned immediately above: use the “Application for Overseas Association Certification” process to screen overseas NGO’s activities to make certain they are in line with whatever national priorities exist from time to time.

3.0 Listing of all comments received from stakeholders

3.1 Formation Process

The current Act requires that a Notice of Intent to Incorporate first be presented to the Registrar, and if that is in order then newspaper publication of the intent is required. Members of the public have the right to object to the proposed incorporation, but only on limited grounds. If no objections are made, then the applicant has several more months to return to complete the application. If objections are lodged, then first the Registrar and ultimately the courts must decide if the incorporation should be allowed.

IPA sought comments on whether this process could be improved by requiring more information to be submitted as part of the Notice of Intent to Incorporate than is currently required. Under current law the public is not fully informed on all the important particulars of an association at the application stage so as to make a fully informed decision on whether to object to the association’s

incorporation. Instead, IPA reasons that information to be submitted in the initial Notice should mirror what will be required in the final application. Under IPA's proposed approach, matters such as the identity of the initial committee members, their gender, the association's membership qualifications, and the address of the intended principal place of business of the association would all be required to be submitted in the initial Notice of Intent to Incorporate. Many of these items will be addressed in the association's proposed Rules, which could be attached to the notice of Intent to Incorporate.

This approach would leverage the online registry administered by IPA. The information in the Notice of Intent can be published to IPA's registry website and would be viewable by the public for no charge. The publication of the Notice of Intent to Incorporate in the newspaper can reference this website, thus eliminating the need for IPA to publish all information in the paper, resulting in a large cost savings. Interested parties can view the entirety of the Notice of Intent for themselves to determine if they should raise an objection. IPA believes this change will bring much improvement to the formation process.

IPA also believes this approach will compel groups to more carefully think through their intended operations at an early stage. Currently it is quite easy to prepare and submit a Notice of Intent. IPA has literally hundreds of Notices of Intent clogging up the registry that have been filed but then abandoned for lack of follow-through. If a group is required to provide more information up front—in essence to undertake more planning and due diligence—then they are more likely to follow-through on their efforts, and the advance planning will assist them in being successful.

Narrative summary of comments received. No commentator disagreed with the overall approach by IPA to: i) require additional information from the group as part of the Notice of Intention to Incorporate, and ii) post all this information to the IPA public website.

A few commentators suggested adding additional procedures prior to allowing a group to incorporate as an association, such as holding public forums. The Table below sets out actual comments received by IPA with regard to the formation process.

Formation Process	
Number	Comment
3.1.1	<p>Have existing requirements largely remain the same, but include a few additional steps prior to the lodgment of the Notice of Intention to Incorporate with the IPA. These steps are:</p> <ul style="list-style-type: none">a) Write a letter of expression to the IPA to advise on plansb) Run 3 awareness meetings and have minutes of each meeting provided when the Notice of Intention to Incorporate is lodgedc) Require 20 members to incorporated) All office-bearers must have a "membership profile" and be at least 18e) Require selection of a public officer within 14 days of formation

Formation Process	
3.1.2	<p>Yes, enhancing the Formation process is key to the reform</p> <ul style="list-style-type: none"> • Know the intent of the Association, committee members must include awareness and consultation • Ownership to the association • Good governance • Responsibilities to all association members • Accountability • Leadership/ integrity • Sustainability of association especially for cooperative organisations • Benefits, compensation plan
3.1.3	Require a proposed association to conduct a (low-budget) “road show” about itself “every working day” in a public venue, like a marketplace, bus-stop, etc. The presentation materials should cost no more than K100 and must involve all the Committee Members presenting for at least one week each.
3.1.4	<p>Notice of Intent to Incorporate must include/mention of all sites/locations where association plans to operate.</p> <p>If a particular office site mentioned in the Notice is not built within 3 months, the Committee Members should be automatically sued by the Registrar.</p>
3.1.5	Established a Body in the Province to implement a screening process to be conducted in the Province before its being registered by IPA.
3.1.6	Include names/address/gender info about all committee members and any officers up front (and include them on extracts like with companies)

3.2 Should there be subtypes of Associations?

The current Act takes a one-size-fits-all approach to associations: there are no subtypes. IPA believes that there may be benefits to having each Association self-designate as “charitable” or “mutual/member benefit” (like a trade association that seeks to directly help its own members). These designations could help in crafting specific legal Rules for each subtype, for example, Rules around how assets of dissolving association are to be distributed should differ for a truly charitable enterprise that has raised funds via public donations vs. an entity like a Chamber of Commerce that is funded by payments from its members. For charitable entities, any excess funds should be distributed to the community that was being served by the entity or to another charity. For member-associations, it may be appropriate to return assets to the members that paid for them via dues. If the law recognized the subtype “Charitable Association” vs. what might be called a “Member Benefit Association” then it would be possible to craft such distinctions in the law.

Narrative summary of comments received. The vast majority of commentators agreed that designating subtypes would be beneficial to PNG. Some commentators were concerned about how to draft the definitions for these subtypes, which is a valid point, and IPA will certainly circulate a draft of the Bill for further commentary prior to submitting it to Cabinet.

Several commentators offered suggestions on the specific subtypes that should be recognized, such as “sport,” “religious,” “health,” “agriculture,” etc. While IPA believes collection of this information is very valuable, IPA does not believe these sorts of designations should be legal subtypes set out in the Act. Instead, this information should be captured in the registry as “business activities” or “primary objective” designations in the initial formation process. They would then be updated over time via the annual return. These statistics would then allow Government to better allocate resources.

The following are the actual comments received by IPA with regard to whether association subtypes should be recognized.

3.2 Association subtypes?	
Number	Comment
3.2.1	<p>It is very true that the definition section is very critical in making sure that those entities that are formed fall within each definition. One distinction would be are this association is really a charitable association or is it more of a member driven trade group like a chamber of commerce to promote their business interest. This should be the part that we should be looking at.</p> <p>Another related issue is that members in associations paid subscription fees and the association owns assets. What will happen when this particular association dissolves?</p> <p>On the other hand, what happens to charity money that is collected by charitable associations? We need to be very careful with that because we don't want those money to get disappeared without any trace.</p>
3.2.2	<p>Type of associations – expand the definition of associations to include other association types such as:</p> <ul style="list-style-type: none"> - Community Development (CHARIBTABLE) - Professional (research, academic, etc.) - Land Owner Groups (Beneficial Owners) - Political Associations
3.2.3	<ul style="list-style-type: none"> - Raised the issue on the type of associations - Criteria - Consider member benefits - Charitable/Religious <p>Raised the issue of subtypes, to what extent do we classify them and as charitable or religious to have it transited into normal associations.</p>
3.2.4	How would the Act distinguish between “charitable” and “religious” as there seems to be a cross-over (many could be considered “both”).
3.2.5	Act would need a mechanism for change in subtype.

3.2 Association subtypes?	
	Related comment, audits should be performed to ensure the association is properly classified.
3.2.6	<p>Yes, there should be subtypes. Subtypes could include:</p> <ul style="list-style-type: none"> • volunteers • trade associations (salary deductions) • youth • sports association • student • church • women's groups • workers' association (like teachers) • Farmers • Scouts • ILGs • Health-related
3.2.7	<p>Subtypes, Yes e.g. Sports, Agriculture, churches, there is an overriding Body Code of Conduct for Sports, Agriculture, churches Wide range of Groups youths, women's groups, special needs, professional groups, etc.</p>
3.2.8	Cross-reference subtypes of Associations with the "Civil Society Organizations" list. CSOs cover a wide range of groups and operate at various levels of society.
3.2.9	Strongly agree there should be subtypes.
3.2.10	How do we differentiate between an association established by an act of parliament and normal association due to tax implications by IRC? Do they remain under the act of parliament or are they going to register with the IPA?
3.2.11	Associations must be sustained by a bigger body in the province, especially for the sporting and women's groups.

3.3 What groups should be able to form as Associations?

The original intent of the Associations Act was to allow a means by which charitable, religious and trade/business interest groups could incorporate. In recent years two types of groups have registered as associations that may not fit within this original intent: Incorporated Land Groups and political parties. Incorporated Land Groups (ILGs) are distinct legal entities created under the Land Groups Incorporation Act 1974. Oddly, many ILGs are also registered as an association. It is unknown why this practice started,

though anecdotal reports indicate this has occurred because banks are unwilling to open accounts for these entities based solely upon the ILG Certificate of Incorporation. Regardless, there is no reason for individual ILGs to be registered under two different laws and this practice should cease.

On a related note, one commentator remarked that sometimes several ILGs come together to form one association, like a “mother” organization. Each individual ILG would be a member of this mother association. This arrangement may make sense for certain organizational reasons. However, it does not make sense to use this type of association for for-profit business activities. Associations are prohibited from making distributions to their members, therefore there would be legal way for this mother association to collect business revenues and distribute them to the associations. Given these circumstances, IPA does not believe it appropriate to prohibit ILGs from being members of associations, but does think that such entities must be made aware of the for-profit limitations inherent in their structure. Further, new reporting obligations that will be imposed upon all associations should help the individuals that are members of the ILGs to see how monies flowing through the association are used.

Political parties are currently organized as associations. However, they are also registered under the “*Organic Law on the Integrity of Political Parties and Candidates*.” PNG should cease the practice of requiring political parties to be Associations and instead have them register only under their own law. This view is supported by the Registrar of Political Parties and legislation has been prepared to make this change

Narrative summary of comments received. All commentators believed that political parties should not be associations. The vast majority of commentators believed that ILGs should not be associations.

The following are the actual comments received by IPA with regard to whether some groups should not be associations.

3.3 What groups should be able to form as Associations?	
Number	Comment
3.3.1	Political parties may be more susceptible to money-laundering, so should not be Associations.
3.3.2	More regulation needed to ensure financial transparency as some political parties, through business arms, essentially function as companies. However, they still receive political donations.
3.3.3	ILGs should be able to register as a company.
3.3.4	ILGs should be registered and regulated with Lands Dept [Multiple comments received on this point]
3.3.5	Act should take into consideration that political parties often receive “donations” in line with their policies.
3.3.6	Do not allow political parties to register as Associations.

3.4 Clarify the grounds for objection to the formation of an association

Section 4 of the current Act sets out the grounds upon which an objection to the formation of an association can be made. Anecdotal reports from the IPA indicate that they often receive objections that are rational and compelling, but don't fit squarely within the confines of the list found in Section 4 of the current Act. For example, under Section 4, technically no objection could be made even if the applicant had been convicted of a felony for fraud in collecting monies for charity. IPA sought feedback on whether the grounds for objection to the formation of an association should more broadly defined, giving greater latitude to the objector.

Narrative summary of comments received.

All commentators thought that the grounds for objection to the formation of an association should be expanded. The comments in this regard generally fell within two categories: i) those that focused on quasi-criminal grounds such as prior fraud convictions or other non-compliance with law, and ii) those which believed that a new association should not be permitted if another already was working in a particular sector/region.

As discussed in detail earlier in this Report in Section 2.2, IPA is wary of creating a situation where a pre-existing association gains what amounts to monopoly power over a particular segment of civil society.

The following are the actual comments received by IPA with regard to grounds for objection to formation of an association.

3.4 Grounds for objection to formation of an association	
Number	Comment
3.4.1	Several commentators stated that an objection should be allowed where an association already exists that operates in the same area/sector as a newly-proposed association. One commentator suggested that a "coordination body" be established to minimize the duplication of roles by associations, stating: "The reality is that associations are popping up here playing the same role as another association that is in existence."
3.4.2	Reasons for legitimate objections should include the following: <ul style="list-style-type: none">• Failure to comply with money-laundering requirements• Non-compliance with law• Fraud• If the Association is actually profit-oriented
3.4.3	1-month period of objection is short, extension of 2 to 3 months for objection

3.4 Grounds for objection to formation of an association	
3.4.5	Include infringement on intellectual property rights (including any patents).
3.4.6	<ul style="list-style-type: none"> - Criminal - Reject a Public Officer is he/she has a criminal past - Financial Handling - IRC definition of associations

3.5 Financial Transparency

The association form has changed over the years so as to be used for organizations that handle very large sums of money with little or no accountability to their own members or financial reporting to the Registrar. The changes under consideration are aimed at bringing more transparency to associations, especially the larger organizations. It is critical to note that these changes *are required* by international AML guidelines and have been endorsed by the Government of PNG through a National Strategic Plan.

There a variety of ways in which to bring financial transparency to associations, and the IPA sought input on the best approach. The desired goal is to bring transparency to the larger associations without imposing undue burdens upon smaller, purely charitable entities. In this light, while the most all-inclusive change would be to require all associations to file annual audited financial statements with the Registrar, IPA was concerned that this approach would be too burdensome on smaller associations. Further, there are some associations that, as a matter of good public policy, might not be appropriate targets for financial disclosure requirements. For example, IPA wondered if it might not be appropriate to impose stringent financial reporting requirements on churches organized as associations. On this point, there were a significant number of commentators that believed religious entities should be subject to the same financial transparency Rules as any other association. These commentators believed there were numerous examples of fraudsters hiding behind the cloak of religion in order to defraud innocent people of donations.

Narrative summary of comments received. This topic received more comments than any other issue. All commentators believed that increased financial transparency was needed for PNG associations. Several commentators offered stories where bad actors had defrauded common people out of their money, and these commentators believed that increased financial reporting obligations and giving members more rights to inspect the books would help prevent these bad results.

The following are the actual comments received by IPA with regard to financial transparency.

3.5 Financial transparency	
Number	Comment
3.5.1	Monthly financial reports and yearly external audits to be posted on the IPA website “on time every time.” If not, Committee Members to have liability akin to company director’s liability. Docs to be included are: income statements, balance sheets, cashflow statements.
3.5.2	Members must be given greater platform to access financial records.
3.5.3	Records management-must be effective, prudent and in compliance with financial best practices.
3.5.4	Even though a non-profit entity, an association is still a commercial body, handling finances for the common good. As such, it requires strict management practices, financial management and alternating audits, to remove bias that is usually inherent in prolonged unchanged management.
3.5.5	If an audit requirement is put in place, perhaps allow for an exception if all the members agree.
3.5.6	<p>“Sports in PNG are run predominantly by volunteers under the National Federation structure (National, Provincial and Club). About 98% of our members (NFs) are small, voluntary, not-for-profit incorporated associations run by volunteer Executives. Most of these NFs cannot afford accountants to audit their books.”</p> <p>“To promote transparency, we support the idea to have reporting tiers based on monetary levers for financial disclosures and that consideration is given to organisations such as sporting bodies.”</p>
3.5.7	Current Sec. 23 of the Act says that each association must have an audit of its “financial affairs” by a “competent person” each year. There is no definition of “financial affairs” or “competent person” in the Act.
3.5.8	Require detailed reporting. Registrar to deploy a super-computer to make sure all books balance/reconcile properly. If not, prosecute accordingly. Include reference to info filed with IRC.
3.5.9	<p>Possible criteria for imposing financial reporting requirements:</p> <ul style="list-style-type: none"> • Kina Threshold • Membership Size • Value of Assets • Finding Sources (government, donor, membership funding)
3.5.10	Every association must have their books audited by an independent third party.
3.5.11	All budgets should go through the Registrar to be approved, especially when members are not aware of what the committee has approved.
3.5.12	<p>Financial reporting should be on a quarterly basis.</p> <p>Kina threshold: small association = less than K50,000, large = more than K50,000. But all must report regardless of size.</p>
3.5.13	Challenge source of funds must be expressed clearly \: No Standard and Rules to how to receive and use money, donations, grants, etc. from donors and government authorities
3.5.14	Consult with treasury on the implications of the financial management act and its requirements on transparency and good governance;

3.5 Financial transparency

3.5.15	Why would we exempt religious organizations from reporting? In PNG many of these are large, delivering services in rural areas using Government money and member/donor financing. [This comment was voiced by many participants in the workshops conducted by IPA.]
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3.6 AML Compliance

Closely related to the previous issue of financial transparency, international AML standards require additional protections to ensure illicit funding does not flow through associations to avoid taxation or to support international criminal activities. Some of the AML provisions that IPA is considering including in amendments to the Associations Act include: i) “know thy donor” Rules that require associations to keep records identifying larger donors and the amount of funds they supply; ii) keeping up-to-date member lists; iii) granting the Registrar powers of inspection without the need to first obtain a court order to make sure a given association is following its stated objectives and keeping adequate records.

Narrative summary of comments received.

The following are the actual comments received by IPA with regard to AML compliance.

3.6 AML considerations	
Number	Comment
3.6.1	Minimum threshold of donor funds, if it exceeds the funds, must come under the scrutiny of the IPA, it must be intended for the purpose and objectives of the associations.
3.6.2	Policy must follow the AMLCTF NSP, associations must be in aligning to the Government’s policy.
3.6.3	All payments made by an association must be paid using a commercial banking system designed for rural areas. [BSP “cash agent” or ANZ “Go Money.”] EFTPOS receipts to be scanned and emails to persons concerned. Similarly, all deposits to the association must be banked using a commercial banking system.

3.7 Formalize role of committee members

Conceptually, the committee of an association is roughly equivalent to a board of directors of a company. However, the current Act is largely silent as to the responsibilities and potential liabilities for committee members. IPA asked for comments on whether the Act would benefit from a specific statement of rights and duties for persons acting as committee members, including addressing such

things as: imposing a duty of loyalty upon committee members, defining and addressing conflicts of interest, and calling for liability for the intentional misuse of funds. The PNG Companies Act imposes these sorts of duties and liabilities upon the directors of a company and could serve as a model for the Associations Act. The IPA also suggested that when considering the duties that should be imposed upon committee members, it is also likely that some modifications to those found in the Companies Act would be appropriate. This is because many committee members for charitable associations serve on a volunteer basis and thus should not be subject to the same level of scrutiny as would directors in a for-profit enterprise that are paid for their time.

Narrative summary of comments received.

The following are the actual comments received by IPA with regard to the rights and responsibilities of committee members.

3.7 Formalize role of committee members	
Number	Comment
3.7.1	Committee member duties must be similar to companies, especially liabilities. Roles and responsibilities must be reviewed and they must understand, must change. The ultimate power must end with the committee, not the public officer.
3.7.2	Chairman and committee members must be liable to repay missing funds.
3.7.3	Agree, Company Act to be a model for Association Act, identical process
3.7.4	Name and roles of committee must have a certain number, proper identification, roles with the IPA.
3.7.5	IPA to assist, adopting company provisions to fiduciary of company directors (no need to go to Court)
3.7.6	Changes made to either the committee members or to the Rules must be reported to the members
3.7.7	Associations must only be always be administered by a short-term, selected "qualifying and rotating management team", who are impartial. They need not be members. Many existing not transparent Associations' are abused, by a contrived "majority". Continuous control can "contrived" to dominate to make changes to the original association objective(s).
3.7.8	Management committee members must <u>never be re-elected for more than two (2) terms</u> , to enable the "commonness of interests, instilled in other members, to be exercised by their voluntary participation. There must be no long-term committee group since the common interest group is a perpetual objective for members

3.7 Formalize role of committee members

3.7.9	<p>Committee members should have ‘terms of reference’ setting out duties. The different positions should be:</p> <p>Chairperson/President—endorsed by the Institute of Directors’ Provincial charter and not holding any public office.</p> <p>Vice Chairperson—same as the Chair.</p> <p>Treasurer—a PNG certified public accountant not holding public office.</p> <p>Secretary—an admitted lawyer by profession endorsed by the PNG Law Society and accountable to them</p> <p>Public Officer—a professional in Public Policy Management, endorsed by the PNG Public Administration Society or similar.</p>
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3.8 Role of the public officer

The current Act actually does not set out many specific powers for the public office, but by tradition the public officer has become a key person for their association. Therefore, IPA asked whether the role and responsibilities of the public officer should be better defined. There is a relationship between this question and the prior issue around better defining the role of committee members. Specifically, if committee members are to be subject to duties similar to a board of directors of a company, then there is a question as to what duties should be imposed upon the public officer. Is this person to be treated like a director, or are they more akin to being an officer of the entity, like a general manager, that is hired to implement the committee’s policies? The answer to that initial question should determine the relative allocation of duties and responsibilities between the committee and the public officer.

Narrative summary of comments received.

The following are the actual comments received by IPA with regard to the role of the public officer.

3.8 Role of the public officer	
Number	Comment
3.8.1	<p>Do away with the role of public officer. Public officer does not carry the vision and objectives of the association.</p> <p>If PO to remain, he/she must be liability to penalties and have a limited role subject to the Committee.</p> <p>If PO to remain should have to disclose conflicts of interest just as do committee members (like company directors).</p>
3.8.2	Only persons of integrity must serve as public officers.
3.8.3	Give committee members signatory authority

3.8 Role of the public officer	
3.8.4	The name needs to change.
3.8.5	Anyone with a criminal record or a civil offence should not be a public officer.
3.8.6	Change the role to be a “compliance officer” monitoring the association’s activities. PO should be a “watch dog” similar to a company secretary. They could monitor AML compliance.

3.9 Corporate powers of an association enhanced

The current Act contains two sections that list the powers an association may exercise. Section 11 states that an association may hold, lease, mortgage or otherwise deal with land so long as its own internal Rules permit this. Then, Section 20 sets out what are called the “General Powers of an Association” which contains a broader list of powers properly exercised by an Association. Finally, there are inherent limitations in the activities in which an Association may engage. Section 1, which contains the definitions to be used in the Act, makes clear that an association can only act in furtherance of charitable, religious or community-based ends, that any profits must be used towards only those ends, and that no member may receive any payments in the form of dividends from an association.

Unfortunately, these grants of authority leave unclear the status of activities in which associations might naturally engage. For example, can associations hire employees? Can they purchase motor vehicles? Can they invest in stocks? This may seem like an academic question but, technically, the danger is that in listing certain powers of an association in the Act it implies that no other powers are available. For this reason, IPA questioned whether the powers of an association should be expanded to allow these entities to engage in *any* lawful activities so long as those activities are in pursuant of the allowable ends, meaning, charitable, religious or other community-based objectives.

Narrative summary of comments received. No commentator disagreed with this proposal. The few comments received in this area were about very specific concerns.

The following are the actual comments received by IPA with regard to enhancing corporate powers.

3.9 Corporate powers of an association		
Number	Comment	IPA Response (if appropriate)
3.9.1	Make sure all allowed activities align with a not-for-profit purpose.	IPA concurs.
3.9.2	3 signatories bank requirements	While this suggestion may make sense in some settings, IPA does not believe it is appropriate to put into law. Each association is free to enact whatever internal governance policies it deems appropriate via its Rules.
3.9.3	If corporate powers to be enhanced, then committee members must be treated like company directors.	IPA concurs.

3.10 Prepare and publish model Rules

IPA sought input on whether there should be model Rules (i.e., a Rules) published in the regulations which each association could elect to use. The current Act and its regulations do not have a full set of model Rules. Instead, there is an outline of the sorts of provisions that should be included in an association's model Rules.

There are several advantages to requiring an association to have internal model Rules, most notably that it brings certainty and transparency to the internal workings of the entity. By prescribing model Rules, associations would be able to adopt them as their own and thus save the expense of having custom Rules drawn up by professionals. However, IPA does not believe the standard model Rules should be required, and an association would be free to create its own Rules.

IPA is comfortable with the current checklist approach, but is also agreeable to publishing a true set of model Rules. IPA does believe that a few minor changes would be beneficial, including requiring a statement as to how compensation is to be paid to committee members and the public officer.

Narrative summary of comments received. All commentators believed that Model Rules were proper.

The following are the actual comments received by IPA with regard to model rules.

3.10 Prepare and publish model Rules	
Number	Comment
3.10.1	Definitely, there needs to be model Rules and incorporated into the Act.

3.10 Prepare and publish model Rules	
3.10.2	Items to be in Model Rules: Association Rules to include change of committee members, voting rights, change of signatories
3.10.3	Items to be addressed in Model Rules: Financial records, proposal plans, must be included in the Rules
3.10.4	NGO-subject to Companies Act but Directors are not paid. It's good that sitting allowances have been introduced, it's an incentive to serve.
3.10.5	Publish model Rules. Address items such as: <ul style="list-style-type: none"> • Format for meeting minutes • Meeting time Rules • Voting rights and procedures
3.10.6	Can be used as a guide to accommodate different subtypes.

3.11 Member rights

IPA sought guidance on whether the Associations Act should contain specific provisions that speak to member rights. The current Act does not really contain a definition of “member.” Instead, this is left to the model Rules, where Schedule 1, section 3 states that the model Rules must contain a statement concerning “The qualifications (if any) for membership of the association.”

IPA also notes that the Act and Schedule 1 are silent on issues such as whether members should have: i) any inspection rights over their association’s financial records: ii) the ability to force a general meeting; iii) the right to bring an action for the association not following its Rules or for misuse of association property or funds. These powers, if appropriate, would be placed in the Act and not left to the model Rules else an association could simply exclude them.

Narrative summary of comments received. The comments on this topic were varied. Many spoke to the need to clarify when member-meetings could be held. Others talked about the need for transparency, with members to receive more information than is currently available. In short, these comments reflected concerns about how individual associations have been managed. These are legitimate concerns, but in some cases trying to impose a legislative fix on the reported problem may not be practical.

The following are the actual comments received by IPA with regard to member rights.

3.11 Member rights	
Number	Comment
3.11.1	Ownership must be transparent.
3.11.2	<p>Management team should organize annual meetings, send out notices 2 weeks in advance. All committees and committee members should set the agenda.</p> <p>Notices of AGM and special meetings must be advertised.</p>
3.11.3	Rules should be put in place to avoid conflicts of interest.
3.11.4	Executive Committee members to meet quarterly, to disclose financial information
3.11.5	<p>Annual General Meeting-must report/publish to your members (similar to Companies).</p> <p>Meeting minutes should be uploaded to IPA register.</p>
3.11.6	<p>Members must be defined as being registered and pay fees before voting and deciding on association responsibilities.</p> <p>Associations must show that the current members are participating in the activities of the association.</p> <p>There must be independent verification of this process, included in a transparent audit.</p>
3.11.7	<p>Often an association's high value assets, especially in real estate, become the subject of contentions. The protective majority manipulates for their own means. Even where the long-term members have contributed much, newer "majority" members with common ulterior motives easily overcome them.</p> <p>The current laws do not protect this STATUS. As a result, the majority benefits at the expense of the minority in every decision process, while biasness is a common factor, due the principles of "the majority Rules". Members are usually vulnerable for their lack of experience in association concepts and promotion of peace. Members naturally lack the ability to challenge and curb the advances of those with intent to install different changed motives.</p> <p>There must be "periodical Independent Review and Official Guidelines" given by an independent and appropriate Authority to protect the minority members past and future interests. That authority must have the powers to step in and manage or take over and dispose of the assets, in a normal tender process, conducted by an independent registered skilled party. The authority must arrange a replacement association. Since the original objective is no longer suitable, this independent alternative is necessary. Protection is necessary for long time registered members</p>
3.11.8	Association members must be able to contact each other, at all times, to be genuinely and socially associated
3.11.9	<p>Rules should allow for a "special meeting" to be called at any time by giving 21 days advance notice, called for by the Executive or by the Committee.</p> <p>Also allow members to call "only to issues of paramount interest" to the Association.</p>

3.11 Member rights

3.11.10	"Financial members" must have access to see annual financial reports
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3.12 Require annual returns and enforce compliance

IPA believes there are significant benefits to requiring all associations to file annual returns and to enforce compliance. There are two primary benefits to requiring an annual filing. The first is to provide the registry with accurate information as to what associations are active and which ones have ceased to exist. Currently there is no mechanism in place to determine if an association has ceased, and doubtless there are hundreds of associations shown as "active" on the register that are inactive. This is bad practice, and the AML guidelines speak against this situation.

The second reason to collect certain information about each active association so as to ensure that data held in the registry is accurate. The new amendments will require some biographical data about associations to be provided, such as key addresses. By requiring an annual filing this information is kept much more current than the current system in which this sort of information can quickly become dated as people tend to forget to make filings to update addresses.

IPA recognizes that imposing an annual filing requirement places both an administrative and financial burden upon small entities. These are legitimate points. For this reason, IPA proposes that any annual filing be limited to a short form that is easily completed, and that only a nominal fee be imposed, if any. Further, if an association is struck off for failure to comply, IPA believes there should be an easy manner by which the association can come back into compliance without the need for any court action.

Narrative summary of comments received. All commentators concurred that requiring annual filings and enforcing compliance was proper. Some commentators noted that coordination with IRC made sense. IPA concurs that an association should be able to select the date of filing its annual return to IPA to be the same time as their tax filings if the association so chooses. Other associations might want to file their annual return after their AGM, so the law should allow this flexibility.

The following are the actual comments received by IPA with regard to annual returns and compliance.

3.12 Require annual returns and enforce compliance

Number	Comment	IPA Response (if appropriate)
3.12.1	There should be consultation with IRC in terms of financial statements if	IPA will allow associations to select the month in which their annual return

3.12 Require annual returns and enforce compliance		
	the Associations are to lodge tax returns as well.	is due so that each association can choose the most convenient month.
3.12.2	Reporting is important to understand incomes, expenses, and whether: i) the association is achieving its objective, and ii) whether it truly is non-profit.	IPA concurs. IPA believes that all associations must keep basic accounting records that reflect the financial standing of each association. Certain associations should then be required to prepare financial statements, including those with a large annual turnover and those that receive Government funding/grants.
3.12.3	There is a lot of shift in the foreign NGOs and there is no track record of report or financial disclosure or project work.	IPA concurs that the annual return must be filed by foreign NGOs as well and they will be required to report on their activities within PNG. There may be other mechanisms that are also appropriate for monitoring foreign NGOs as well.
3.12.4	AR must be mandatory.	Noted.
3.12.5	Before submitted to IPA, AGM must be given to all members through notice board, NBC, etc. endorsed and signature of all financial members	Committee members will be required to file accurate annual returns under penalty of law. IPA does not believe that as a matter of law all financial members should be required to sign an annual return. Instead, the committee members will have legal responsibilities to file accurate documents.
3.12.6	Suggestion that all associations share the same date for submission of their annual return.	Companies file annual returns based upon their month of incorporation, but are given the choice to change that month if they find it more convenient to file the AR in a different month. IPA believes this is a fair system and proposes to use it for associations.
3.12.7	Support requirement for ARs. Suggest that Rules can be updated via the AR as many sport-related associations do not do this.	IPA concurs it is critical that associations update their Rules in the registry whenever changes are made. IPA believes these changes should be filed as soon as they are made and not just annually. Therefore, IPA believes the new law should require updates to Rules be filed within 20 days of the change, and liability imposed upon the committee members for the failure to do so. However, the comment is a good one from a practical perspective, and IPA will include on the AR form a prompt reminding the associations that any changes to the Rules must be filed.
3.12.8	Keep in mind special needs of rural associations when enforcing compliance	IPA understands the challenges that rural associations face. IPA will allow for annual returns to be filed in paper or online. If an association misses the deadline and is struck from the register, IPA will make reinstatement easy for the first 2 years without the need for any court action.

3.13 Registration of foreign NGOs

The current Act does not contain provisions allowing for the registration of foreign entities that operate for charitable or religious purposes in PNG. Because of this, IPA currently requires foreign NGOs to register in PNG as overseas companies so that there is at least some record of them in the country. However, IPA believes this is a bad fit and that foreign entities should be registered and regulated under proper provisions in the Associations Act.

Narrative summary of comments received. This topic received many comments during the four workshop sessions. All commentators believed that the Associations Act should be updated to allow for registration of foreign NGOs. As a practical matter, under this approach, those foreign NGOs that are currently registered as companies would re-register under the Associations Act.

A few commentators (mainly Department of National Planning representatives) believed that overseas NGOs should be forced to partner with local associations.

The following are the actual comments received by IPA with regard to foreign NGOs.

3.13 Registration of foreign NGOs	
Number	Comment
3.13.1	<p>Foreign NGOs should be required to partner with local associations that are operating in the same sector/location.</p> <p>PNG Dept. of National Planning has set out a policy titled “Civil Society Partnership Policy 2018-2023” that seeks to implement this approach by requiring international NGOs to enter contracts with national NGOs as a prerequisite to being allowed to operate in PNG.</p> <p>This will assist in capacity building for the local NGOs. The contract must require capacity building for local counterparts, paid for by the international NGOs and/or donors.</p> <p>Allow foreign NGO registration unless a local association is already working in that sector. If this is the case, then the foreign NGO must partner with the local entity.</p> <p>Associations forms, activities and agendas must relate to what the policy the Govt is pursuing, e.g. Coffee Subsidies, DSIP funds, etc.</p>
3.13.2	<p>They must lodge an expression of interest with the Registrar.</p>

3.13 Registration of foreign NGOs	
	Make intentions known 3 months in advance with IPA before coming into country
3.13.3	<p>Elements of registration should include:</p> <ul style="list-style-type: none"> ▪ Provide background information on history and put on website ▪ Share objectives and publish on website ▪ Provide financial history from donor country ▪ Funding sources to be declared ▪ Holding officers must be provided and background checks to be made, e.g. criminal records, nationality, etc. ▪ Duplication of Roles, proper screening process, assist local NGO's
3.13.6	Monitoring of overseas NGO activities is very important.

3.14 Clarify and enhance Registrar powers

The Registrar has broad grants of authority to administer the Companies Act. IPA believes similar grants of authority should be considered for inclusion in the Associations Act. This point is underscored by the AML guidelines which seek a strong central authority to oversee the actions of nonprofit entities. For example, it might be appropriate to allow the Registrar to inquire concerning the financial affairs of certain associations to make sure that accurate records for donations are being kept and that these donations are being spent for proper ends.

Narrative summary of comments received. All commentators agreed that enhanced regulation of the association sector was needed.

The following are the actual comments received by IPA with regard to enhancing the Registrar's powers under the Act.

3.14 Enhancing Registrar's powers		
Number	Comment	IPA Response (if appropriate)
3.14.1	Most people involved with Associations do not have knowledge of business laws or other rights they might have as members. "Therefore, I strongly agree that the Registrar should be given greater power to	IPA concurs. IPA also notes that it does not have the resources to undertake the level of oversight that many commentators think appropriate. IPA will leverage technology to the greatest extent possible

3.14 Enhancing Registrar's powers		
	monitor, evaluate and prosecute any Committee Member who acts willfully against the Association." PNG should leverage technology in the registry to assist this to the greatest extent possible.	to assist in this important work.
3.14.2	Registrar must have final powers of dissolution, not the Minister.	IPA believes that events which can cause dissolution should be set specifically forth in the legislation. This way the issue is fact-based and objective, not subjective.
3.14.3	Give more power to the Registrar. Most associations are made up of simple people. They do not necessarily understand the role and responsibilities that are part of running an association. If there is no complain, how do the concerns of the members get rectified? Therefore, the Registrar must also have rights to inspect and monitor.	IPA concurs. Additionally, international AML standards require that the Registrar be given inspection powers that can be exercised without the need for a court order.
3.14.4	<p>What happened to trade unions, sporting federations so called "brief case" associations who obtain money and then disappears? Who is the regulator? Duplication and lack of coordination among agencies.</p> <ul style="list-style-type: none"> - Members access to information - Financial transparency by committee members - Inspection powers by IPA/Registrar 	IPA concurs that transparency is critical, and the new law should give members greater inspection rights and impose duties upon committee members. However, IPA does not believe that it is its place to try to regulate the marketplace by trying to police whether activities by certain associations may overlap.

3.15 Other issues raised by commentators

IPA received several comments that were not made in response to IPA presentation. These comments are most welcome as obtaining input from the real stakeholders dealing with real problems are invaluable.

The following are the actual comments received by IPA on other matters.

3.15 Other issues raised by commentators	
Number	Comment
3.15.1	PNG is rural-based with accessibility issues: how do we incorporate their concerns in this reform process?
3.15.2	Simplify the forms and make it easier for common people to understand their rights
3.15.3	IPA to work with the Law Reform Commission in pursuing the reform.

3.15 Other issues raised by commentators	
	Most of the laws are quite outdated.
3.15.4	Government does not take into consideration SMEs in terms of tax. There is no planning and budget to assist SMEs so how can Government assist? Rural SMEs need support, e.g., Digicel Foundation is restrictive, so IPA to assist SMEs in start-up. Need fair distribution of and access to finance.
3.15.5	Concern: In order for IPA to administer Laws, it's good to have Provincial Offices. Need more dialogue in Provinces
3.15.6	Rural communities challenge-Literacy and training. Also, Capacity building for the association
3.15.7	There should be "KPIs" and objectives set prior to the formation of the association that have to be achieved with some set period of time (like, 2 years after formation). If KPIs/objectives not achieved, Registrar to call a meeting of Exec Committee and advise them that goals are at risk and that going forward the members does so at their own (financial?) risk.
3.15.8	Penalty provisions should be updated so as to create a true deterrent to bad acts. For those violations that are merely "administrative" and not done with malice charge a very small penalty, but for those that are willful penalties should be much more punitive.
3.15.9	Are there any criteria for transition?

IPA