

**PROPOSED LEGISLATION TO REPEAL AND REPLACE THE  
ASSOCIATIONS INCORPORATION ACT 1966**

**ARRANGEMENT OF SECTIONS**

**Contents**

- 1. Title.**
- 2. Commencement.**

**Part I  
Preliminary Matters**

- 3. Preliminary matters.**
- 4. Act binds the State.**
- 5. Interpretation.**
  - “accounting period”
  - “address”
  - “annual donations amount”
  - “annual gross revenue amount”
  - “annual meeting”
  - “applicant for incorporation”
  - “association”
  - “balance date”
  - “charitable purpose”
  - “committee”
  - “committee member”
  - “digital format”
  - “document”
  - “donation”
  - “electronic”
  - “employee threshold amount”
  - “financial statements”
  - “grants”
  - “incorporated association”
  - “material interest”
  - “member”
  - “member benefit association”
  - “membership”
  - “objector”
  - “overseas association”
  - “prescribed form”

“prescribed qualifications for incorporation”  
“property”  
“public notice”  
“public officer”  
“public service association”  
“register”  
“Registrar”  
“regulations”  
“relative”  
“relevant offence”  
“rules”  
“shadow committee member”  
“signature”  
“special resolution”  
“this Act”

## **Part II Incorporation**

### **Division 1**

#### **Requirements for and process of incorporation**

6. **Essential elements of an incorporated association.**
7. **Meaning of “charitable purpose.”**
8. **Notice of intention to apply for incorporation of association.**
9. **Power to take steps to incorporate an association.**
10. **Disqualification to register as incorporated association.**
11. **Objection to incorporation.**
12. **Appeal from decision of Registrar.**
13. **Application for incorporation.**
14. **Incorporation.**

### **Division 2**

#### **Effect of incorporation**

15. **Separate legal personality.**
16. **Capacity and powers.**
17. **Vesting of property.**

## **Part III Incorporated Association Name**

18. **Name of incorporated associations.**
19. **Change of name.**
20. **Direction to change name.**
21. **Use of name.**

**Part IV  
Rules**

- 22. Incorporated association must have rules.
- 23. Substitution, adoption, amendment or alteration of rules, etc., after incorporation.
- 24. Obligations, etc., not affected by substitution, adoption, amendment or alteration of rules, etc.

**Part V  
Committee Members and their powers and duties**

**Division 1.**

**Particulars concerning committees and their committee members**

- 25. Consent required to be committee member.
- 26. Appointment of first and subsequent committee members.
- 27. Removal of committee members.
- 28. Committee member ceasing to hold office.
- 29. Resignation of committee member.
- 30. Notice of change of committee members or details of committee members.
- 31. Remuneration of committee members.

**Division 2.**

**Qualifications of Committee Members and their Disqualification**

- 32. Qualifications of committee members of incorporated associations.
- 33. Prohibited person may apply for leave to be committee member, etc.
- 34. Court may disqualify persons.
- 35. Who may apply for disqualification order.
- 36. Process in seeking a disqualification order.

**Division 3.**

**Powers of management**

- 37. Management of incorporated association.
- 38. Contracts.
- 39. Disposal of property held on trust.

**Division 4.**

**Committee member duties and liabilities and enforcement**

- 40. Committee members' duty of care.
- 41. Reliance on information and advice.
- 42. Duty in relation to material self interest.
- 43. Avoidance of transactions where there is an undisclosed material interest.
- 44. Effect of avoidance on third parties.
- 45. Use of incorporated association information.

## **CONSULTATION DOCUMENT JUNE 2019**

- 46. Offence of serious breach of duty to act in good faith and in best interests of incorporated association.
- 47. Removal of committee member by court.
- 48. Defences.
- 49. Extended meaning of committee member for purposes of liability.
- 50. Exclusion of member liability.
- 51. Indemnity and insurance.
- 52. Injunction restraining contravention of Act or rules.
- 53. Proceeding against committee member of incorporated association for breach of duty.
- 54. Proceeding to enforce incorporated association committee member compliance.

### **Part VI Public Officer**

- 55. Appointment of first and subsequent public officers.
- 56. Qualifications of public officers.
- 57. Removal and other vacancy in the office of the public officer.
- 58. Notice of change of public officer or public officer details.
- 59. Powers of public officer.
- 60. Duty of care of public officer.
- 61. Duty of public officer in relation to material self interest.
- 62. Offence of serious breach of duty by public officer of incorporated association.

### **Part VII Members**

- 63. Liability of members.
- 64. Rights of members.
- 65. How member approval may be exercised.
- 66. Ordinary and special resolutions.
- 67. Procedures for meetings of the members.
- 68. Annual meeting of the members.
- 69. Special meeting of the members.
- 70. Written resolution in lieu of meeting.
- 71. Procedure for written resolution in lieu of meeting.
- 72. Court may call meeting of the members.
- 73. Expulsion, suspension of members.

### **Part VIII Records, Reports and Disclosures**

#### **Division 1. Accounting records**

- 74. Incorporated associations must prepare and keep accounting records.
- 75. Form and content of accounting records.

**Division 2.**  
**Annual Report and Annual Return**

- 76. **Obligation to prepare annual report.**
- 77. **Providing annual report for inspection by members.**
- 78. **Contents of annual report.**
- 79. **Annual return.**

**Division 3.**  
**Financial statements**

- 80. **When incorporated associations must prepare financial statements.**
- 81. **Content of financial statements.**
- 82. **Financial statements must be audited.**
- 83. **Member benefit association may opt out of preparing financial statements.**

**Division 4.**  
**Auditor**

- 84. **Requirements concerning Auditor.**
- 85. **Resignation, casual vacancy and replacement of auditor.**

**Division 5.**  
**Inspection of incorporated association records.**

- 86. **Inspection of incorporated association records by members.**
- 87. **Place and manner of inspection.**
- 88. **Request for information by a member.**

**Part IX**  
**Member register**

- 89. **Member register.**
- 90. **Court may rectify member register.**
- 91. **Beneficial ownership of membership.**

**Part X**  
**Administration of incorporated associations**

**Division 1**  
**Transactions**

- 92. **Validity of transactions.**
- 93. **No constructive notice.**

**Division 2**  
**Pre-incorporation contracts**

- 94. Pre-incorporation contracts may be ratified.
- 95. Warranties implied in pre-incorporation contracts.
- 96. Failure to ratify.

**Division 3**  
**Registered office and postal address**

- 97. Registered office and postal address.
- 98. Change of registered office and postal address.
- 99. Requirement to change registered office or postal address.

**Part XI**  
**Amalgamations**

- 100. Incorporated associations may amalgamate.
- 101. Contents of amalgamation proposal.
- 102. Notice of propose incorporation.
- 103. Content of amalgamation public notice.
- 104. Registration and approval of the amalgamation.
- 105. Certificate of amalgamation.
- 106. Effect of certificate of amalgamation.
- 107. Effect of amalgamation on other registers.
- 108. Power of court in relation to amalgamations.

**Part XII**  
**Removal from the register**

**Division 1**  
**Removal from register**

- 109. When removal from register is effective.
- 110. Grounds for removal.
- 111. Request for removal.

**Division 2**  
**Procedure for removal from register**

- 112. When notice of removal required.
- 113. Objection to removal.
- 114. Procedure for objection.

**Division 3**  
**Effect of removal from register**

- 115. Property of incorporated association vests with Registrar.
- 116. Liability continues.

**Division 4**

**Restoration of incorporated association to register**

- 117. Restoration to register after failure to file annual return.
- 118. Court may order restoration.
- 119. Restoration to register.
- 120. Vesting of property in incorporated association on restoration to register.

**Part XIII**

**Overseas Associations**

**Division 1**

**Preliminary**

- 121. Conducting operations or carrying on business.
- 122. Consequences of conducting operations or carrying on business without registration.
- 123. Name of overseas association.
- 124. Use of name in Papua New Guinea.

**Division 2**  
**Registration**

- 125. Application for registration.

**Division 3**

**Administration of overseas associations**

- 126. Annual Return.
- 127. Allocated month.
- 128. Accounting records and financial statements.
- 129. Notice of change of committee members, etc.
- 130. Registered office and postal address.
- 131. Agent for overseas association.
- 132. Change of registered office or postal address.

**Division 4**

**Removal of overseas association from the register**

- 133. Removal of overseas association for failure to make annual return.
- 134. Other grounds for removal.
- 135. Procedure for objection to removal.
- 136. Effect of removal.

137. Overseas association ceasing to conduct operations in Papua New Guinea.

**Part XIV**  
**Service of process and other notices**

138. Service of notices in legal proceedings.  
139. Service of other documents.  
140. Service of notices on committee members.  
141. Service of other documents on committee members.  
142. Delivery of documents to members of incorporated associations.  
143. Additional provisions related to service.

**Part XV**  
**Winding up**

144. Winding up.  
145. Distribution of surplus assets.

**Part XVI**  
**Registrar powers and duties**

**Division 1**  
**Maintaining the register**

146. Register.  
147. Registration of documents.  
148. When document registered.  
149. When registrar may reject document for registration.  
150. No presumption of validity or invalidity.  
151. Inspection of register.  
152. Copies and certified copies of documents.

**Division 2**  
**Changes to register**

153. Rectification or correction of register.  
154. Registrar may require information.  
155. Register may amend register.

**Division 3**  
**Inspection by registrar**

156. Registrar may inspect and obtain documents.  
157. Restrictions on disclosures.  
158. Disclosure in liquidation.

**Division 4**  
**Miscellaneous matters**



## **CONSULTATION DOCUMENT JUNE 2019**

- 159. Appeals from registrar decision.**
- 160. Liability of registrar.**
- 161. Extension of time.**
- 162. Special cases.**
- 163. Regulations.**

### **Division 5 Enforcement matters**

- 164. Prosecutions.**
- 165. False statements.**
- 166. Fraudulent use or destruction of property.**
- 167. Falsification of records.**
- 168. Carrying on business fraudulently.**

### **Part XVII TRANSITION**

- 169. Application for re-registration of existing incorporated association.**
- 170. Failure to apply for re-registration.**
- 171. Application for re-registration of existing overseas incorporated association.**
- 172. Certificate of re-registration.**
- 173. Meaning of existing incorporated association.**

### **SCHEDULE 1 –**

#### **Matters to be Provided for in the Rules of an Association.**

**Contents**

**1. TITLE.**

This Act is the Associations Incorporation Act 2019.

**2. COMMENCEMENT.**

This Act comes into force on a date to be appointed by the \_\_\_\_\_.

**Part I**

**Preliminary Matters**

**3. PRELIMINARY MATTERS.**

This Act has the following purposes:

- (a) to provide for the efficient registration and incorporation of associations in Papua New Guinea; and
- (b) to provide for the efficient registration and monitoring of overseas associations or similar non-profit entities so that they may operate in Papua New Guinea under a proper regulatory regime;
- (c) to provide for proper but not excessive regulation and administration of incorporated associations in Papua New Guinea; and
- (d) to provide increased transparency for incorporated associations;
- (e) to provide for the efficient and orderly liquidation of insolvent associations.

**4. ACT BINDS THE STATE.**

This Act binds the State.

**5. INTERPRETATION.**

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

**“address”** includes residential address and postal address;

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

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

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

(e) grants; and

(f) donations.

**“annual meeting”** means a meeting required to be held under Section 68;

**“applicant for incorporation”** means the person or persons that have submitted an notice of intent to incorporate an association under Section 8 and a person that has submitted an application for incorporation under Section 13;

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

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

**“charitable purpose”** has the meaning set forth in Section 7;

**“committee”** means—

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

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

**“committee member”** means—

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

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

(c) for purposes of liability for an incorporated association, has the extended meaning set out in Section 44;

**“digital format”**—

(a) means a format in which information, a document, or register may be stored, accessed, and displayed by a computer or similar device; and

(b) includes a format specified as a digital format by regulations made under this Act; and

(c) includes any format (other than a photocopy document) produced by making a digital copy, image or reproduction of a document that is in hard copy format

**“document”** means a document in any form; and includes—

(a) any writing on any material; and

(b) information recorded or stored in a digital format by means of a tape recorder, computer, or other device; and

(c) a book, graph, or drawing; and

(d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

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

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

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

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

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

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

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

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

**“member”** means a person (or persons) whose name is entered on the member register of an association or incorporated association, or who has the right to vote for the election of committee members, or who satisfies the qualifications for membership set forth in the rules of the association or incorporated association, but a person is not a member merely by virtue of being a committee member or other officer or employee of the association or incorporated association;

**“member benefit association”** means an incorporated association that is formed and operated primarily for the benefit of its members;

**“membership”** means the rights and any obligations of a member or, in the case of a membership jointly held by two or more persons, all such members, pursuant to an incorporated association’s rules and this Act.

**“objector”** means a person who objects under Section 4 to the incorporation of an association under this Act;

**“overseas association”** means an association or other similar non-profit entity that is incorporated outside Papua New Guinea, whether or not it is registered under this Act;

**“prescribed form”** means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar, which may be in digital format;

**“prescribed qualifications for incorporation”** in relation to an association or incorporated association, means—

(a) that the association or incorporated association—

- (i) is formed; or
- (ii) is being formed; or
- (iii) is operating,

for the purpose of—

- (iv) providing recreation or amusement; or
- (v) promoting any of the following objects, including commerce; trade; industry; art; education; science; religion; health; cultural welfare; agriculture; soil, crop, livestock and poultry improvement; wildlife and wildland conservation; administering any community trust or fund; promoting pension or superannuation schemes; or any charitable purpose beneficial to the public; and

(b) that the association will apply its profits (if any) or other income in promoting its objects; and

(c) that the association will prohibit the payment of any dividend or distribution or payment in the nature of a dividend or distribution to its members;

**“property”** includes—

- (a) real and personal property; and
- (b) an estate or interest in real or personal property; and
- (c) a debt; and
- (d) anything in action; and
- (e) any other rights, interests, and claims of any kind in relation to property;

**“public notice”** means—

- (a) in all cases where required by law, notice by publication in a daily newspaper circulating generally throughout the country or in the National Gazette; but
- (b) in all cases where public notice is to be provided by the Registrar, the Registrar may publish the notice on the website maintained for the register.

**“public officer”**, in relation to an incorporated association, means the public officer or officers of the association appointed under Section 55;

**“public service association”** means an incorporated association that is formed for a charitable purpose that benefits the public interest;

**“register”** means the register of incorporated associations kept by the Registrar under Section 46;

**“the Registrar”** has the same meaning as in the *Companies Act 1997* only with regard to incorporated associations and overseas associations;

**“regulations”** means any regulations made under this Act;

**“relative”** means, in relation to any person, means—

- (a) any parent, child, brother, sister, stepparent, stepchild, stepbrother, or stepsister of that person; or
- (b) any spouse or de facto partner of that person; or
- (c) any parent, child, brother, or sister of a spouse or de facto partner of that person; or
- (d) a nominee or trustee for any of those persons.

**“relevant offence”** means—

- (a) an offence in connection with the promotion, formation, or management of an association or incorporated association or overseas association, company, business group, or in connection with the ownership of a business name, punishable by a term of imprisonment of not less than 3 months, whether or not a sentence of imprisonment was imposed; or
- (b) an offence under this Act; or
- (c) any offence involving fraud or dishonesty ; or
- (d) an indictable offence involving violence against persons; or
- (e) an offence of a kind that is referred to in Article 5 or 6 of the United Nations Convention against Transnational Organized Crime.

**“rules”** means a document referred to in Section 22;

**“shadow committee member”** is a person who, despite not being registered or formally appointed as a committee member—

- (a) acts in the role of a committee member; or
- (b) is a person in accordance with whose directions or instructions a committee member is required or is accustomed to act; or
- (c) who otherwise exercises control over committee member powers.

**“signature”** means, unless the context indicates otherwise—

- (a) the name of a person affixed with his or her own hand on a document; or
- (b) in the case of a document filed with the Registrar via electronic means, the name of a person affixed to the document by a method that the Registrar considers acceptable.

**“special resolution”** means a special resolution as defined in Section 66;

**“this Act”** includes the regulations.

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

## **Incorporation**

### **Division 1**

#### **Requirements for and process of incorporation**

##### **6. ESSENTIAL ELEMENTS OF INCORPORATED ASSOCIATION.**

An incorporated association must have—

- (1) a name that complies with Section 18; and
- (2) rules that address the matters set forth on Schedule 1; and
- (3) one or more members; and
- (4) three or more committee members, at least one of whom must be ordinarily resident in Papua New Guinea; and
- (5) 1 or more public officers, at least one of whom must be ordinarily resident in Papua New Guinea; and
- (6) a registered office.

##### **7. MEANING OF “CHARITABLE PURPOSE.”**

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

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

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

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

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

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

##### **8. NOTICE OF INTENTION TO APPLY FOR INCORPORATION OF ASSOCIATION.**

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

(2) A notice under subsection (1) shall—

- (a) be in the prescribed form; and
- (b) give details of the prescribed qualifications for incorporation of the association, including—
  - (i) the proposed name of the association; and
  - (ii) the names of the initial committee members and any shadow committee members; and
  - (iii) the name of the initial public officer or officers; and
  - (iv) the qualifications, if any, required to become a member of the association; and
  - (v) the address of the proposed principal place of business of the association, if known; and
  - (vi) any other place or places where the proposed association will conduct business;
  - (vi) the principal activity the proposed association will undertake, together with a statement of the objectives of the proposed association; and
  - (vii) whether the association will be a public service association or a member-benefit association; and
  - (viii) a statement that the proposed association will apply its profits (if any) or other income in promoting its objectives; and
  - (ix) a statement that the association will prohibit the payment of any dividend or distribution or other payment in the nature of a dividend or distribution to its members.
- (c) be submitted to and approved by the Registrar before publication; and
- (d) include a copy of the proposed rules of the proposed incorporated association; and
- (e) include a copy of any trusts that relate to the proposed association; and
- (f) contain the name, physical address and email address of the person or persons by whom it is given; and
- (g) contain such other particulars as the Registrar directs.

(3) Once approved for publication by the Registrar, the applicant may provide public notice of the intent to incorporate that must contain the following—

- (a) the proposed name of the incorporated association, together with the identification number assigned to the notice of intent lodged with the Registrar under subsection (1);
- (b) the qualifications, if any, required to become a member of the proposed incorporated association;
- (c) the address of the principal place of business for the incorporated association, if known;



- (d) the principal activity the proposed association will undertake, together with a statement of the objectives of the proposed association; and
- (e) a statement that for additional information the public is directed to the register website maintained by the Registrar.

(4) Where for any reason it seems desirable to do so, the Registrar may:

- (a) consider the notice of intent and decide whether, in the Registrar's opinion, the notice of intent complies with the requirements of this section;
- (b) direct the manner of publication for the purposes of this Section; and
- (c) give written notice of any decision or direction under this Section to the applicant for incorporation.

(5) A person referred to in subsection (1) may appeal to the Minister against the refusal of approval or any decision or direction given under this Section.

(6) A copy of an appeal under subsection (4) must be lodged with the Registrar, and the Registrar may lodge a response to the appeal with the Minister.

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

## **9. POWER TO TAKE STEPS TO INCORPORATE AN ASSOCIATION.**

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

## **10. DISQUALIFICATION TO REGISTER AS AN INCORPORATED ASSOCIATION.**

(1) Any entity which is incorporated under another act in Papua New Guinea may not simultaneously be registered as an incorporated association under this Act.

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

## **11. OBJECTION TO INCORPORATION.**

(1) A person may by written notice lodged with the Registrar, within one month after the publication of a notice under Section 8, object to the incorporation of the association on any of the following grounds:—

- (a) that the applicant for incorporation is not authorized by the committee of the association to make application for the incorporation of the association;
- (b) that the proposed association does not have the essential elements for incorporation under Section 6;
- (c) that the association was formed or is carried on, or is proposed to be incorporated, for an immoral or illegal purpose, or for profit, or a purpose contrary to public policy;
- (d) that the rules of the proposed association do not comply with the provisions of this Act;

- (e) that the name of the proposed association is not acceptable under Section 18;
- (f) that notice of intention to apply for the incorporation of the association was defective or not duly published under Section 8;
- (g) that the proposed incorporated society seeks to incorporate as a public service association when it should be incorporated as a member benefit association;
- (h) that the proposed incorporated society seeks to incorporate as a member benefit association when it should be incorporated as a public service association;
- (i) that any of the named committee members are ineligible to hold such office under Section 32; or
- (j) that any of the named public officers are ineligible to hold such office under Section 56.

(2) A notice of objection under this Section shall be on the prescribed form and set out fully—

- (a) the grounds of the objection; and
- (b) the name, address, email and other contact details of the person making the objection; and
- (c) include any documentation offered in support of the objection.

(3) On receipt of a notice of objection under this Section, the Registrar shall give the applicant for incorporation a notification—

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

(4) The Registrar shall—

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

(5) The Registrar may—

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

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

**12. APPEAL FROM DECISION OF REGISTRAR.**

(1) Subject to this Section, if the objector or the applicant for incorporation is dissatisfied with the decision of the Registrar under Section 11, they may appeal against that decision to a Principal Magistrate.

(2) Where an appeal under this Section is brought—

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

(3) An appeal under this Section—

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

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

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

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

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

**13. APPLICATION FOR INCORPORATION.**

(1) Subject to any decision of a Magistrate on the hearing of an appeal under Section 12, an applicant for incorporation, or some other person authorized for the purpose by the committee of the association concerned, may, after the expiration of a period of one month and within a period of six months after the publication of the notice, apply in writing to the Registrar, in the prescribed form, for the incorporation of the association.

(2) An application under subsection (1) shall be accompanied by a statement made by the applicant for incorporation declaring—

- (a) that he or she is authorized by the committee of the association to apply for the incorporation of the association under this Act; and

(b) that, on a date and in a newspaper specified in the declaration, public notice was given under Section 8 of intention to apply for the incorporation of the association; and

(c) that the particulars contained in the application are true.

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

#### **14. INCORPORATION.**

(1) As soon as the Registrar receives an application for incorporation that complies with Section 13, the Registrar must—

(a) enter the incorporated association on the Papua New Guinea register; and

(b) issue a certificate of incorporation of the association.

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

(a) all the requirements of this Act as to incorporation have been complied with; and

(b) on and from the date of incorporation stated in the certificate, the association is incorporated under this Act.

### **Division 2 Effect of incorporation**

#### **15. SEPARATE LEGAL PERSONALITY**

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

#### **16. CAPACITY AND POWERS**

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

(a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction so long as those activities and transactions are in furtherance of the stated objectives of the incorporated association; and

(b) for the purposes of Paragraph (a), full rights, powers, and privileges.

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

(a) act as trustee for any other association which has the prescribed qualifications for incorporation; and

(b) accept and hold on trust any property that is given to the association subject to any trust, and to carry out any such trust; and

- (c) invest its moneys in or on any security in which trustees are for the time being authorized by law to invest trust funds; and
- (d) open and operate bank accounts; and
- (e) borrow money on such terms and in such manner and on such security (if any) as the association thinks proper, for the purpose of carrying out its objects and purposes; and
- (f) secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving a mortgage, charge or security on or over all or any of the property of the association; and
- (g) to hold, own, purchase, sell, mortgage, or lease any land and to build on such land, and otherwise deal with the land as fully and effectually as a natural person could do.

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

## **17. VESTING OF PROPERTY**

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

(2) Where any property vested in the incorporated association under this Section is land registered under the *Real Property Act* 1913 of the former Territory of Papua (Adopted) or the *Lands Registration Act* 1924 of the former Territory of New Guinea (Adopted), the Registrar of Titles shall without formal transfer and without fee, on application by the incorporated association, enter or register the incorporated association in the appropriate register and on the grant, certificate of title, lease or other instrument evidencing title to the land as the owner of the land within the meaning of that Act.

## **Part III**

### **Incorporated Association Name**

## **18. NAME OF INCORPORATED ASSOCIATIONS.**

(1) An association shall not be registered by a name—

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

(2) Except with the consent of the Minister, an association shall not be registered by a name that is, in the opinion of the Registrar—

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

(3) The Minister shall cause any direction given under subsection (3) to be published in the National Gazette.

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

(5) It is sufficient if the abbreviation “Inc.” is used in place of the word “Incorporated”—

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

## **19. CHANGE OF NAME.**

(1) By special resolution, an incorporated association may change its name to any other name by which it could be incorporated under Section 18.

(2) An application for the approval of the Registrar to a change of name under this Section—

- (a) shall be in the prescribed form; and
- (b) shall be submitted within 20 days after the date of the meeting at which the special resolution for the change of name was passed; and
- (d) shall be lodged with the Registrar, together with such other documents (if any) as are prescribed.

(3) If the proposed new name of the incorporated association complies with Section 18, the Registrar shall register the change of name and—

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

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

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

(6) Where the committee of an incorporated association fails to comply with subsections (2) or (4), every member of the committee commits an offence and is liable on conviction to a penalty not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months, or both.

(7) A change of name of an incorporated association—

- (a) takes effect from the date specified in the certificate issued under subsection (3)(b); and
- (b) does not affect the identity of an incorporated association; and
- (c) does not affect rights or obligations of the incorporated association or any member thereof, or legal proceedings by or against the incorporated association,

and any legal proceedings that might have been continued or commenced by or against an incorporated association under its former name may be continued or commenced by or against it under its new name.

## **20. DIRECTION TO CHANGE NAME**

(1) This Section applies if the Registrar believes on reasonable grounds that an incorporated association has been registered under a name that contravenes Section 18.

(2) The Registrar may—

- (a) serve a written notice on the incorporated society requiring it to change its name within a date specified in the notice that is not less than 20 working days after service of the notice; and
- (b) if the incorporated society does not comply with the notice, enter a new name for the incorporated society on the register in the form of “Number x Incorporated Association Inc” with “x” being a unique number assigned to the incorporated association by the Registrar.

(3) On a change of name under subsection (2)(b),—

- (a) the Registrar must issue an amended certificate of incorporation for the incorporated association recording the new name; and
- (b) Section 19(4) applies to the registration of the new name as if the name of the incorporated association had been changed under Section 19.

## **21. USE OF NAME.**

(1) An incorporated association must ensure that its name is clearly stated in—

- (a) every written communication sent by, or on behalf of, the incorporate association; and
- (b) every document issued or signed by, or on behalf of, the incorporated association that evidences or creates a legal obligation of the incorporated association.

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

(3) However, the issuer or signatory is not liable under subsection (2) if—

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

## **Part IV**

### **Rules**

#### **22. INCORPORATED ASSOCIATION MUST HAVE RULES**

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

#### **23. SUBSTITUTION, ADOPTION, AMENDMENT OR ALTERATION OF RULES, ETC., AFTER INCORPORATION**

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



and an alteration of the rules of the incorporated association affects that liability, the committee of the incorporated association must, within one month after the alteration, give public notice of the substitution, adoption, amendment, or alteration.

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

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

(6) A committee member of an incorporated association who fails to comply with the provisions of subsection (2), (3) or (5) is guilty of an offence and is liable on conviction of a penalty not exceeding **PGK**

## **24. OBLIGATIONS, ETC. NOT AFFECTED BY SUBSTITUTION, ADOPTION, AMENDMENT OR ALTERATION OF RULES, ETC.**

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

## **Part V Committee Members and their powers and duties**

### **Division 1.**

#### **Particulars concerning committees and their committee members**

## **25. CONSENT REQUIRED TO BE COMMITTEE MEMBER**

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

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

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

## **26. APPOINTMENT OF FIRST AND SUBSEQUENT COMMITTEE MEMBERS**

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

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

**27. REMOVAL OF COMMITTEE MEMBERS**

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

**28. COMMITTEE MEMBER CEASING TO HOLD OFFICE**

(1) A committee member of an incorporated association ceases to hold office if he or she—

- (a) resigns; or
- (b) is removed from office in accordance with this Act or the rules of the incorporated association; or
- (c) becomes disqualified from being a committee member under Section 32; or
- (d) dies or becomes incapacitated; or
- (e) otherwise vacates office in accordance with the rules of the incorporated association.

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

**29. RESIGNATION BY COMMITTEE MEMBER**

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

(2) Subject to Section 139, the notice is effective when it is received at that address or at a later time specified in the notice.

**30. NOTICE OF CHANGE OF COMMITTEE MEMBERS OR DETAILS OF COMMITTEE MEMBERS**

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

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

(2) A notice under subsection (1) must—

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

(3) If an incorporated association fails to comply with this Section,—

- (a) the incorporated association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
- (b) every member of the committee commits who fails to comply is guilty of an offence and is liable, on conviction of a penalty not exceeding PGK [REDACTED]

**31. REMUNERATION OF COMMITTEE MEMBERS**

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

- (a) in accordance with its rules; or
- (b) pursuant to a special resolution under Section 66.

**Division 2.**

**Qualifications of committee members and their disqualification**

**32. QUALIFICATIONS OF COMMITTEE MEMBERS OF INCORPORATED ASSOCIATIONS**

(1) A natural person who is not disqualified by subsection (2) may be appointed as a committee member of an incorporated association.

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

- (a) a person who is under 18 years of age;
- (b) a person who is an undischarged bankrupt in any jurisdiction;
- (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under the *Companies Act 1997*;
- (d) a person who has been convicted of a relevant offence during the period of 5 years after the conviction;
- (e) a person in respect of whom an order is in force under the Papua New Guinea mental health legislation;
- (f) in relation to any particular incorporated association, a person who does not comply with any qualifications for committee members contained in the rules of the incorporated association.

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

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

(1) The prohibition in Section 32(2) does not apply if a person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.

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

(3) A person who contravenes an order granting leave under this Section commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED] months, or both.

**34. COURT MAY DISQUALIFY PERSONS**

(1) The Court may order that a person must not, without the leave of the Court, be or do any of the following for the period specified by the Court (which must not be more than 5 years):

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

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

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

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

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

(5) A person who fails to comply with an order under this Section commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED] months, or both.

**35. WHO MAY APPLY FOR A DISQUALIFICATION ORDER**

Any of the following persons may apply for a disqualification order under Section 34:

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

**36. PROCEEDS IN SEEKING A DISQUALIFICATION ORDER**

(1) An applicant for a disqualification order under Section 34 must give not less than 10 working days' notice of the intention to apply to the person against whom the order is sought.

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

**Division 3.  
Powers of Management**

**37. MANAGEMENT OF INCORPORATED ASSOCIATIONS**

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

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

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

**38. CONTRACTS.**

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

- (a) a contract that, if made between natural persons, would be by law required to be in writing under seal may be made on behalf of the association in writing under the common seal of the association;
- (b) a contract that, if made between natural persons, would be by law required to be in writing and signed by the parties to be charged, may be made on behalf of the incorporated association in writing signed by a person acting under its authority, express or implied;
- (c) a contract that, if made between natural persons, would by law be valid although made orally only (and not reduced into writing) may be made orally on behalf of the incorporated association by a person acting under its authority, express or implied,

and a contract so made is effectual in law and binds the incorporated association and its successors and all other parties, and may be varied or discharged in the manner in which it is authorized to be made.

**39. DISPOSAL OF PROPERTY HELD ON TRUST.**

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

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

(2) On an application under this Section, the Court may make an order authorizing the disposal of the property to which the application relates and directing the manner in which the proceeds arising from the disposal of the property shall be disposed of.

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

#### **Division 4.**

#### **Committee member duties and liabilities and enforcement**

#### **40. COMMITTEE MEMBERS' DUTY OF CARE**

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

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

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

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

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

- (a) the amount of a financial benefit received by the committee member to which the committee member is not entitled (plus expenses, including legal fees, accrued in recouping the financial benefit from the committee member);
- (b) an intentional infliction of harm to the incorporated association or its members;
- (c) a violation of this Act in relation to the duty to disclose a material interest; or
- (d) an intentional violation of criminal law.

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

#### **42. RELIANCE ON INFORMATION AND ADVICE**

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

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

(2) In subsection (1), **third party** means an employee of the incorporated association, a professional adviser or expert, or another committee member.

#### **43. DUTY IN RELATION TO MATERIAL SELF INTEREST.**

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

(2) However, subsection (1) does not apply if, before the exercise of the power,—

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

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

(4) For the purposes of subsection (2)(a), a committee member makes full disclosure of the interest if he or she discloses the nature and extent of the interest in writing to—

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

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

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

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

(8) A person fails to comply with this Section commits an offence and is liable on conviction to a penalty not exceeding **PGK** or to imprisonment for a term not exceeding **months** or both.

#### **44. AVOIDANCE OF TRANSACTIONS WHERE THERE IS AN UNDISCLOSED MATERIAL INTEREST.**

(1) A transaction entered into by an incorporated association in which a committee member of the incorporated association has a material interest that was not disclosed under Section 43(2) may be avoided by the incorporated association at any time before the expiration of one month after the transaction is discovered, subject to subsection (2).

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

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

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

(5) For the purposes of this Act—

- (a) a person seeking to uphold a transaction and who knew or ought to have known of the committee member's interest at the time the transaction was entered into has the onus of establishing fair value; and
- (b) in any other case, the incorporated association has the onus of establishing that it did not receive fair value.

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

#### **44. EFFECT ON AVOIDANCE THIRD PARTIES.**

The avoidance of a transaction under Section 44 does not affect the title or interest of a person in or to property which that person has acquired where the property was acquired—

- (a) from a person other than the incorporated association; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the person referred to in Paragraph (a) acquired the property from the incorporated association.

#### **45. USE OF INCORPORATED ASSOCIATION INFORMATION.**

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

- (a) for the purposes of the incorporated association; or
- (b) as required by law; or
- (c) in accordance with Subsection (2) or (3); or
- (d) in complying with Section 41.

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

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



(3) In this section, **private information** means information that—

- (a) the committee member has in his or her capacity as a committee member or employee of the incorporated association; and
- (b) would not otherwise be available to him or her.

(4) A committee member who acts in contravention of Subsection (1) commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to imprisonment for a term not exceeding [REDACTED] years, or both

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

(1) A committee member of an incorporated association commits an offence if he or she exercises powers or performs duties as a committee member of the incorporated association—

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

(2) A person who commits an offence under this Section is liable on conviction to a penalty not exceeding PGK [REDACTED] or to imprisonment for a term not exceeding [REDACTED] years, or both.

#### **47. REMOVAL OF COMMITTEE MEMBER BY COURT**

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

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

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

(3) If the members of a public service association commence a proceeding under Section (1) they shall make the public service association and the Registrar parties to the proceeding.

#### **48. DEFENCES**

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

- (a) the committee members took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
- (b) the committee member charged with an offence took all reasonable and proper steps to ensure that the committee members complied with the requirements of this Act; or

- (c) in the circumstances the committee member charged could not reasonably have been expected to take steps to ensure that the committee members complied with the requirements of the Act.
- (2) It is a defence for a committee member charged with an offence in relation to a duty imposed on the incorporated association where the committee member proves that—
  - (a) the incorporated association took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
  - (b) the committee member charged took all reasonable and proper steps to ensure that the incorporated association complied with the requirements of this Act; or
  - (c) in the circumstances the committee member charged could not reasonably have been expected to take steps to ensure that the incorporated association complied with the requirements of the Act.

#### **49. EXTENDED MEANING OF COMMITTEE MEMBER FOR PURPOSES OF LIABILITY**

- (1) A person who is not otherwise a committee member of an association or incorporated association may be liable as a committee member of the association or incorporated association under this Act if the person is a shadow committee member.
- (2) It is a defence to liability on the part of a shadow committee member if the shadow committee member shows that the committee member was not in fact acting in accordance with the shadow committee member's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the committee member.
- (3) A person is not a shadow committee member to the extent that the person acts only in a professional category.

#### **50. EXCLUSION OF MEMBER LIABILITY**

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

#### **51. INDEMNITY AND INSURANCE**

- (1) An incorporated association must not indemnify a committee member of the incorporated association in respect of any criminal liability.
- (2) Unless the rules provide otherwise, an incorporated association must not indemnify a committee member of the incorporated association or of any related incorporated association in respect of—
  - (a) any liability to the incorporated association for any act or omission in his or her capacity as a committee member of the incorporated association; or
  - (b) any liability to any person arising out of a breach or violation of sections 41, 43 and 46.
- (3) An incorporated association may, with the prior approval of the committee, effect insurance for a committee member, officer or employee of the incorporated association in respect of—

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

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

(5) In this section,—

**committee member** includes a former committee member; and

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

## **52. INJUNCTION RESTRAINING CONTRAVENTION OF ACT OR RULES**

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

(2) The application for an injunction under subsection (1) may be made by—

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

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

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

(5) The Court may, before finally determining an application for an injunction, make as an interim order an order that could be made under subsection (1).

## **53. PROCEEDING AGAINST COMMITTEE MEMBER OF INCORPORATED ASSOCIATION FOR BREACH OF DUTY**

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

## **54. PROCEEDING TO ENFORCE INCORPORATED ASSOCIATION COMMITTEE MEMBER COMPLIANCE**

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

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

**Part VI**  
**Public Officer**

**55. APPOINTMENT OF FIRST AND SUBSEQUENT PUBLIC OFFICERS**

- (1) A person named as a public officer in an application for incorporation or in an amalgamation proposal holds office as a public officer from the date of incorporation or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a public officer in accordance with this Act.
- (2) All public officers of an incorporated association must, unless the rules of the incorporated association provide otherwise, be appointed by an ordinary or special resolution of the committee.

**56. QUALIFICATIONS OF PUBLIC OFFICERS**

- (1) A natural person who is not disqualified by subsection (2) may be appointed as a public officer of an incorporated association.
- (2) The following persons are disqualified from being appointed or holding office as a public officer of an incorporated association:
  - (a) a person who is under 18 years of age;
  - (b) a person who is an undischarged bankrupt in any jurisdiction;
  - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under the *Companies Act 1997*;
  - (d) a person who has been convicted of a relevant offence during the period of 5 years after the conviction;
  - (e) a person in respect of whom an order is in force under the Papua New Guinea mental health legislation;
  - (f) a person who is not ordinarily resident in Papua New Guinea; and
  - (g) in relation to any particular incorporated association, a person who does not comply with any qualifications for public officer contained in the rules of the incorporated association.

**57. REMOVAL AND OTHER VACANCY IN THE OFFICE OF THE PUBLIC OFFICER**

- (1) Subject to the rules of an incorporated association, a public officer may be removed at any time by the committee.
- (2) The office of public officer of an incorporated association becomes vacant if the person holding that office—
  - (a) dies; or
  - (b) becomes bankrupt, or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors, or makes any assignment of his estate for their benefit; or
  - (c) becomes of unsound mind; or
  - (d) resigns their office by writing under their hand addressed to the committee of the association; or

- (e) ceases ordinarily to reside in the country; or
- (f) is removed from office.

**58. NOTICE OF CHANGE OF PUBLIC OFFICER OR PUBLIC OFFICER DETAILS**

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

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

(2) A notice under subsection (1) must—

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

(3) If an incorporated association fails to comply with this Section,—

- (a) the incorporated association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
- (b) every member of the committee commits who fails to comply is guilty of an offence and is liable, on conviction of a penalty not exceeding PGK XXXX.

**59. POWERS OF PUBLIC OFFICER**

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

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

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

(4) Nothing in this Section 59 shall eliminate—

- (a) any liability provided for in the rules of the incorporated association; and

- (b) any liability as a shadow committee member.

**60. DUTY OF CARE OF PUBLIC OFFICER**

(1) A public officer, when performing in such capacity, has the duty to act:

- (a) in good faith;
- (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) in a manner the public officer reasonably believes to be in the best interests of the incorporated association.

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

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

- (a) the amount of a financial benefit received by the committee member to which the committee member is not entitled;
- (b) an action taken in bad faith against the interests of the incorporated association or its members;
- (c) a violation of this Act in relation to the duty to disclose a material interest; or
- (d) an intentional violation of criminal law.

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

**61. DUTY OF PUBLIC OFFICER IN RELATION TO MATERIAL SELF INTEREST.**

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

(2) However, subsection (1) does not apply if, before the exercise of the power,—

- (a) the public officer makes full disclosure of the material interest to the committee; and
- (b) the committee then expressly permits the exercise of the power despite the material interest of the public officer.

**62. OFFENCE OF SERIOUS BREACH OF DUTY BY PUBLIC OFFICER OF INCORPORATED ASSOCIATION.**

(1) A public officer of an incorporated association commits an offence if he or she exercises powers or performs duties as a public officer of the incorporated association—

- (a) in bad faith towards the incorporated association; or
- (b) believing that the conduct is not in the best interests of the incorporated association; or

- (c) believing that the conduct will cause serious loss to the incorporated association.
- (2) A person who commits an offence under this Section is liable on conviction to a penalty not exceeding PGK or to imprisonment for a term not exceeding years, or both.

## **Part VI Members**

### **63. LIABILITY OF MEMBERS**

- (1) A member of an incorporated association is not liable to contribute towards the payment of the debts, liabilities or other obligations of the incorporated association, or for the costs, charges and expenses of the winding up of the incorporated association, by reason only of being a member.
- (2) The rules of an incorporated association may provide for liability for its members.
- (3) For avoidance of doubt, the limitation on liability for a member of an incorporated association set forth in this Section does not affect any liability a person may have as a shadow committee member.

### **64. RIGHTS OF MEMBERS**

- (1) The following powers may be exercised by the members only and may not be delegated under the rules or otherwise:
- (a) the power to substitute, alter or amend the incorporated association's rules;
  - (b) the power to substitute, alter or amend the association's objectives;
  - (c) the power to wind up the incorporated association (but this is subject to a provision in the rules which may allow the committee members to appoint a liquidator on the occurrence of an event specified in the rules).
- (2) The following powers may be exercised by the members unless the rules provide otherwise:
- (a) the power to appoint or remove a committee member; and
  - (b) the power to appoint an auditor.
- (3) The rules may provide for other matters to be decided or approved by members.

### **65. HOW MEMBER APPROVAL MAY BE EXERCISED**

- (1) A power referred to in section 64(1) must be exercised by special resolution under Section 66(3).
- (2) Unless the rules provide otherwise, a power referred to in section 64(2) may be exercised by ordinary resolution or at an annual general meeting of the members.

### **66. ORDINARY AND SPECIAL RESOLUTIONS**

- (1) Unless the rules provide otherwise, a membership held by two or more persons entitles each member to cast a single vote in all matters coming before the membership
- (2) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those members entitled to vote and voting on the question pursuant to a procedure approved by the rules.
- (3) A special resolution is a resolution approved by a majority of 75% (or, if a higher majority is required by the rules, that higher majority) of the votes of those members entitled to vote and voting on the question at an annual or special meeting of which not less than 21 days' prior notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

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

(5) Notice of the passing of a special resolution must be lodged by the incorporated association with the Registrar on the prescribed form within a period of 10 days after the passing of the special resolution, and thereupon a copy of the resolution shall be registered by the Registrar and, until registered, does not take effect.

(6) A notice under Subsection (4) must be accompanied by such other documents (including a copy of the special resolution) as are prescribed.

(7) Where the committee of an incorporated association fails to comply with the provisions of this Section, every member of the committee commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED], or both.

## **67. PROCEDURES FOR MEETINGS OF THE MEMBERS**

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

(2) Unless the rules provide otherwise, members may participate in any meeting of the members by means of remote communication (including by conference call). Members participating in a meeting by means of remote communication shall be deemed present and may vote at such a meeting and a record of such vote or other action shall be maintained by the incorporated association.

## **68. ANNUAL MEETING OF THE MEMBERS**

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

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

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

(4) A mutual benefit need not hold an annual meeting if its rules state that an annual meeting need not be held.

## **69. SPECIAL MEETING OF THE MEMBERS**

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

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

## **70. WRITTEN RESOLUTION IN LIEU OF MEETING**

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



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

**71. PROCEDURE FOR WRITTEN RESOLUTION IN LIEU OF MEETING**

(1) Any resolution made under Section 70 may consist of 1 or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of 1 or more of the members.

(2) A resolution made under Section 70 may be made without any prior notice being given to members.

(3) Within 10 days after a resolution is passed under section 70, a copy of the resolution must be lodged by the incorporated association with the Registrar on the prescribed form, and thereupon the resolution shall be registered by the Registrar and, until registered, does not take effect.

(4) Where the committee an incorporated association fails to comply with the provisions of this Section, every member of the committee commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED], or both.

**72. COURT MAY CALL MEETING OF THE MEMBERS**

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

(2) The grounds on which the Court may make the order include the following:

- (a) it is impracticable to call or conduct a meeting of members in the manner required by this Act or the rules; or
- (b) it is in the interests of an incorporated association that a meeting of the members be held.

**73. EXPULSION, SUSPENSION OF MEMBERS**

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

(2) A procedure is fair and reasonable when either:

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

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

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

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

## **Part VIII**

### **Records, Reports and Disclosures**

#### **Division 1.**

##### **Accounting records**

#### **74. INCORPORATED ASSOCIATIONS MUST PREPARE AND KEEP ACCOUNTING RECORDS**

- (1) The committee members of an incorporated association must ensure that accounting records are kept that comply with Section 75.
- (2) Each incorporated association shall keep accounting records for the current accounting period and for the last 7 completed accounting periods of the incorporated association at the place at principal place of business or the registered office of the incorporated association.
- (3) If the committee members of an incorporated association fail to comply with subsection (1), every committee member commits an offence and is liable on conviction to a penalty not exceeding **PGK** or to a term of imprisonment not exceeding  months, or both.

#### **75. FORM AND CONTENT OF ACCOUNTING RECORDS**

- (1) The accounting records must—
  - (a) correctly record the incorporated association's transactions; and
  - (b) at any time enable the incorporated association's financial position to be determined with reasonable accuracy; and
  - (c) enable the incorporated association's financial statements if required to be prepared by this Act to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records must contain—
  - (a) entries of money received, whether from sales of goods, provision of services, receipt of donations, membership dues, land rentals, royalties derived from the use of land or licences, receipt of grants, and any other source whatsoever; and
  - (b) for donations received over **PGK10,000** in value from a single donor in a given accounting period, the name, jurisdiction and contact information for the donor;
  - (c) entries of money spent and, for transactions over **PGK20,000**, details on the matters to which the money relates; and
  - (d) a record of the incorporated association's assets and liabilities.
- (3) If an incorporated association sells goods or provides services for cash in the ordinary course of carrying on a retail business,—
  - (a) the incorporated association need not keep invoices for each retail transaction; and
  - (b) in respect of those retail transactions, a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient compliance with this Section.

#### **Division 2.**

##### **Annual Report and Annual Report**

**76. OBLIGATION TO PREPARE ANNUAL REPORT.**

- (1) Subject to Subsection (2), the committee of every incorporated association shall, at least once every calendar year, prepare an annual report on the affairs of the incorporated association.
- (2) The committee of an incorporated association need not prepare an annual report where every member has given notice in writing to the incorporated association waiving the right to inspect a copy of the annual report.
- (3) The committee of a mutual benefit incorporated association need not prepare an annual report if its rules state that annual reports need not be prepared.
- (4) Where the committee of an incorporated association fails to comply with Subsection (1), every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] and a term of imprisonment not exceeding [REDACTED], or both.
- (5) The Registrar may, on the application of the incorporated association and for any special reason that the Registrar thinks fit, extend the period referred to in Subsection (1) even if, as a result, the period is extended beyond the calendar year.

**77. PROVIDING ANNUAL REPORT FOR INSPECTION BY MEMBERS**

- (1) Every committee of an incorporated association that has prepared an annual report shall cause a copy of the annual report to be made available for inspection at the principal place of business of the incorporated association and at the place where the incorporated association's records are kept, if different, on working days between the hours of 9:00a.m. and 5:00p.m. not less than one month before the date fixed for holding the annual meeting of members.
- (2) Where the committee of an incorporated association fails to comply with Subsection (1), every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] and a term of imprisonment not exceeding [REDACTED], or both.

**78. CONTENTS OF ANNUAL REPORT.**

Every annual report for an incorporated association shall be in writing and be dated and, shall—

- (a) describe, so far as the committee reasonably believes that it will not be harmful to the objectives of the incorporated association—
  - (i) the nature of the activities of the incorporated association; and
  - (ii) the activities in which the incorporated association has an interest, whether as a member of another incorporated association or otherwise; and
- (b) include all financial statements required by this Act; and
- (c) describe any change in accounting policies since the last annual report; and
- (d) state the particulars of any material interests disclosed by committee members during the year; and
- (e) state, in respect of each committee member or former committee member of the incorporated association, the total of the remuneration and the value of other benefits (including the reimbursement of any expenses) received by that committee member or former committee member during the year; and

- (f) state the number of employees or former employees of the incorporated association, not being committee members of the incorporated association, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the total value of which exceeded the employee threshold amount per annum; and
- (g) state the total value of donations received and made by the incorporated association; and
- (h) state the total value of membership dues received by the incorporated association;
- (i) state the total value of grants received by the incorporated association;
- (j) state the names of the persons holding the office of committee member and public officer of the incorporated association as at the date of the annual report and the names of any persons who ceased to hold office as committee member or public officer of the incorporated association during the preceding year; and
- (k) be signed on behalf of the committee by two committee members of the incorporated association; and
- (l) contain any other information that may be required by rules of the incorporated association and by the regulations made under this Act.

#### **79. ANNUAL RETURN.**

(1) The committee of a incorporated association shall ensure that there is submitted to the Registrar for registration at least once in each calendar year during the month allocated to the incorporated association for the purpose, an annual return in the prescribed form or in a form the use of which by the incorporated association has been approved by the Registrar pursuant to Subsection (5), or as near to it as circumstances allow.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required.

(3) Where an incorporated association is required by Section 80 to prepare financial statements, a copy of those financial statements shall be filed with annual return submitted to the Registrar under Subsection (1).

(4) Notwithstanding Subsection (1) an incorporated association need not make an annual return in the calendar year of its incorporation.

(5) The Registrar may, on the application of any person, approve the use, of a form of annual return different from that prescribed, and may at any time, revoke, in whole or in part, any such approval.

(6) The Registrar may by notice in the National Gazette declare that any information submitted to the Registrar under this section shall not form part of the register.

(7) The Registrar may amend the register to correspond with the information given in an incorporated association's annual return as to the address of its registered office or its postal address if the address given differs from the address entered in the register

(8) Where the committee of an incorporated association fails to comply with this section, every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] and a term of imprisonment not exceeding [REDACTED], or both.

**Division 3.**  
**Financial statements**

**80. WHEN INCORPORATED ASSOCIATIONS MUST PREPARE FINANCIAL STATEMENTS.**

(1) An incorporated association that, in any accounting period—

- (a) has an annual gross revenue in an amount greater than the annual gross revenue amount threshold established by regulations; or
- (b) receives grants in any amount; or
- (c) receives donations from the public that exceed the annual donations amount threshold established by the regulations;

—must prepare financial statements in accordance with Section 81.

(2) Subsection (1) does not apply if the Registrar, upon a showing of good cause by the incorporated society, determines that it would be unreasonable to prepare financial statements for a given accounting period.

(3) If an incorporated association fails to comply with subsection (1),—

- (a) the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED]; and
- (b) every committee member commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED] months, or both.

**81. CONTENT OF FINANCIAL STATEMENTS.**

(1) An incorporated association to which this section applies must ensure that, within 4 months after the incorporated association's balance date, financial statements that comply with subsection (2) are prepared in relation to the incorporated association and that balance date.

(2) The financial statements must—

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

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

- (a) the period between the date of incorporation of an incorporated association and its first balance date;
- (b) the period between any 2 balance dates of an incorporated association.

**82. FINANCIAL STATEMENTS MUST BE AUDITED.**

(1) An incorporated association that is required to prepare financial statements must ensure that the financial statements are audited by a qualified auditor certified by an association of

accountants constituted in Papua New Guinea and appointed by the committee to conduct the audit.

(2) If an incorporated association fails to comply with subsections (1),—

- (a) the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] and
- (b) every committee member commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED] months, or both.

### **83. MEMBER BENEFIT ASSOCIATION MAY OPT OUT OF PREPARING FINANCIAL STATEMENTS.**

A member benefit association may opt out of preparing financial statements for an accounting period if—

- (a) the rules provide for opting out; and
  - (i) the member benefit association did not receive donations from the public that exceed the annual donations amount threshold; or
  - (ii) the member benefit association did not receive grants in the accounting period.

## **Division 4. Auditor**

### **84. REQUIREMENTS CONCERNING AUDITOR**

(1) An incorporated association that is required by Section 80 to prepare financial statements must appoint an auditor at an annual meeting of the incorporated association.

(2) The auditor will office from the conclusion of the meeting until the conclusion of the next annual meeting and audit the incorporated association's financial statements.

(3) The Registrar may appoint an auditor if—

- (a) no auditor is appointed as required by section 82; or
- (b) a casual vacancy in the office of auditor is not filled within 1 month of the vacancy occurring.

(4) An auditor of an incorporated association must ensure, in carrying out the duties of auditor under this Part, that the auditor's judgment is not impaired through any relationship with, or interest in, the incorporated association.

(5) The auditor of an incorporated association must make a report to the members on the financial statements audited by the auditor which includes a statement—

- (a) of the work done by the auditor;
- (b) whether, in the auditor's opinion, as far as appears from an examination of them, the incorporated association has kept proper accounting records;
- (c) whether the financial statements give a true and fair view of the matters to which they relate; and
- (d) any other prescribed information.

(6) An incorporated association must give notice to the Registrar of the resignation or removal of an auditor.

(7) The notice must be—

- (a) in the prescribed form; and
- (b) given within 10 working days after the auditor's resignation or removal.

**85. RESIGNATION, CASUAL VACANCY AND REPLACEMENT OF AUDITOR**

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

**Division 5.**

**Incorporated association records and inspection**

**86. INSPECTION OF INCORPORATED ASSOCIATION RECORDS BY MEMBERS.**

- (1) A incorporated association shall keep the following records available for inspection in the manner prescribed in Section 87, by a member of the incorporated association, or by a person authorized in writing for the purpose by a member, who serves written notice of intention to inspect on the incorporated association:—

- (a) the certificate of incorporation or registration of the incorporated association;
- (b) the rules of the incorporated association;
- (c) the member register required under Section 89;
- (d) the full names, addresses and postal addresses of the committee members and public officer;
- (e) details of the registered office and address for service of the incorporated association;
- (f) minutes of all meetings and resolutions of members within the last seven years;
- (g) copies of written communications to all members during the preceding seven years;
- (i) copies of annual returns filed during the preceding seven years; and
- (k) any auditor's report or auditor's statements prepared by the auditor.

- (2) Where an incorporated association fails to comply with Subsection (1)—

- (a) the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED]; and
- (b) every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or a term of imprisonment not exceeding [REDACTED] or both.

**87. PLACE AND MANNER OF INSPECTION.**

- (1) An incorporated association must keep the incorporated association records referred to in Section 86 at its principal place of business and at its registered office, if different, on working days between the hours of 9:00a.m. and 5:00p.m. on each working day.
- (2) A member or their representative may require a copy of, or extract from, a document which is available for inspection by the member to be sent to the member—
  - (a) within ten days after the member has made a request in writing for the copy or extract; and
  - (b) if the member has paid a reasonable copying and administration fee prescribed by the incorporated association.
- (3) Where an incorporated association fails to comply with this Section—
  - (a) the incorporated association commits an offence and is liable on conviction to a penalty not exceeding **PGK**; and
  - (b) every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding **PGK** or a term of imprisonment not exceeding **PGK** or both

**88. REQUEST FOR INFORMATION BY A MEMBER**

- (1) A member may at any time make a written request to an incorporated association for information held by the incorporated association.
- (2) A request under Subsection (1) shall specify the information sought in sufficient detail to enable it to be identified.
- (3) Within one month of receiving a request under Subsection (1), the incorporated association shall—
  - (a) provide the information; or
  - (b) agree to provide the information within a specified period; or
  - (c) agree to provide the information within a specified period where the member pays a reasonable charge to the incorporated association (which shall be specified and explained) to meet the cost of providing the information; or
  - (d) refuse to provide the information and specifying the reasons for the refusal.
- (4) Without limiting the reasons for which an incorporated association may refuse to provide information under this section, an incorporated association may refuse to provide information where—
  - (a) the disclosure of the information would or would be likely to prejudice the financial position of the incorporated association; or
  - (b) the disclosure of the information would or would be likely to prejudice the incorporated association's pursuit of its stated objectives;
  - (c) the disclosure of the information would or would be likely to prejudice the financial position of any other person, whether or not that person supplied the information to the incorporated association; or
  - (d) the request for the information is frivolous or vexatious.



(5) Where the incorporated association requires the member to pay a charge for the information, the member may withdraw the request, and is deemed to have done so unless, within one month of receiving notification of the charge, the member pays the charge.

(6) The Court may, on the application of a member who has made a request for information, where it is satisfied that—

- (a) the period specified for providing the information is unreasonable; or
- (b) the charge set by the incorporated association is unreasonable,

as the case may be, make an order requiring the incorporated association to supply the information within such time or on payment of such charge as the Court thinks fit.

(7) The Court may, on the application of a member who has made a request for information, where it is satisfied that—

- (a) the incorporated association has sufficient reason to refuse to supply the information; or
- (b) the incorporated association does not have sufficient reason to refuse to supply the information; or
- (c) the incorporated association has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal,

make an order requiring the incorporated association to either supply or not supply the information.

(8) On completion of the court proceeding the court may:

- (a) order the incorporated association to pay the reasonable expenses (including reasonable lawyers' fees) incurred in the proceeding if it finds that the incorporated association's refusal to supply information was unreasonable or made in bad faith; or
- (b) order the member to pay the incorporated association's reasonable expenses (including reasonable lawyer's fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper or frivolous purpose.

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

## **Part IX**

### **Member register**

#### **89. MEMBER REGISTER.**

(1) An incorporated association must maintain a register of members that records the names, alphabetically arranged, and the last known address of each person who is, or has within the last 5 years been, a member, whether singly or as part of a jointly held membership:

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

- (3) The entry of the name of a person in the member register is evidence that the person is a member of the incorporated association and entitled to the benefits of membership.
- (4) An incorporated association must treat a registered member as the only person entitled to—
- (a) exercise the right to vote attaching to the membership; and
  - (b) receive notices; and
  - (c) exercise the other rights and powers attaching to the membership.
- (5) Any clerical or minor error in a member register may be corrected where either the Registrar or every member of the committee of the incorporated association has agreed to the correction.
- (6) If an incorporated association fails to comply with the requirements of this section, every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED], or both.

**90. COURT MAY RECTIFY MEMBER REGISTER.**

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

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

**91. BENEFICIAL OWNERSHIP OF MEMBERSHIP.**

(1) No notice of a trust, whether express, implied, or constructive, may be entered on the member register.

(2) However, an incorporated association must—

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

(3) For the purposes of subsection (2), **beneficial owner** means the person who ultimately owns or controls the membership without their name appearing on the member register.

(4) If an incorporated association fails to comply with subsection (2)(b),—

- (a) the incorporated association commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] and
- (b) every committee member commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED] or to a term of imprisonment not exceeding [REDACTED] months, or both.

**Part X**  
**Administration of incorporated associations**

**Division 1**  
**Transactions**

**92. VALIDITY OF TRANSACTIONS.**

- (1) The validity of a transaction entered into by an incorporated association is not affected by—
- (a) a failure to comply with this Act (except if the failure is a breach of section 38); or
  - (b) a failure to comply with the incorporated association's rules; or
  - (c) the absence of express authority in the incorporated association's rules to enter into the transaction; or
  - (d) a failure by the incorporated association or its committee members to take any steps required by the rules to authorise entry into the transaction; or
  - (e) that fact that the transaction is not in the best interests of the incorporated association; or
  - (f) a breach of a duty by a committee member in connection with entry of the incorporated association into the transaction.
- (2) Subsection (1) does not limit—
- (a) Section 44 (which relates to avoiding transactions in which a committee member has a material interest); or
  - (b) Section 52 (which relates to injunctions to restrain conduct by an incorporated association that would contravene this Act or its rules); or
  - (c) Section 54 (which relate to a member proceeding to enforce committee member compliance with the rules or this Act); or
  - (d) the obligations and liabilities of committee members of an incorporated association in respect of any contract or other obligation, or transfer of property to or by the incorporated association.
- (3) In this section and sections, **transaction**—
- (a) includes any contract or other obligation entered into by an incorporated association, or any transfer of property to or by a incorporated association; but
  - (b) does not include—
    - (i) an indemnity provided to a committee member; or
    - (ii) remuneration or other benefits given to a committee member.

**93. NO CONSTRUCTIVE NOTICE.**

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

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

**Division 2**  
**Pre-incorporation contracts**

**94. PRE-INCORPORATION CONTRACTS MAY BE RATIFIED.**

- (1) In this section and in Sections 95 to 96 (inclusive), the term “**pre-incorporation contract**” means—

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

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

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

(4) A pre-incorporation contract may be ratified by an incorporated association in the same manner as a contract may be entered into on behalf of an incorporated association under Section 38.

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

#### **95. WARRANTIES IMPLIED IN PRE-INCORPORATION CONTRACTS.**

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

- (a) that the association will use reasonable efforts to be incorporated within such period as may be specified in the contract, or where no period is specified, then within a reasonable time after the making of the contract; and
- (b) that the association, once incorporated, will ratify the contract within such period as may be specified in the contract, or where no period is specified, then within a reasonable time after the incorporation of the incorporated association; but
- (c) there is no implied warranty that incorporation of the association is guaranteed by the person making the pre-incorporation contract.

(2) The amount of damages recoverable in an action for breach of a warranty implied by Subsection (1) is the same as the amount of damages that would be recoverable in an action against the incorporated association for damages for breach by the incorporated association of the unperformed obligations under the contract if the contract had been ratified and cancelled.

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

#### **96. FAILURE TO RATIFY.**

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

- (a) directing the incorporated association to return property, whether real or personal, acquired under the contract to that party; or

- (b) for any other relief in favour of that party relating to that property; or
- (c) validating the contract whether in whole or in part.

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

### **Division 3**

#### **Registered office and postal address**

#### **97. REGISTERED OFFICE AND POSTAL ADDRESS.**

- (1) An incorporated association shall always have a registered office and valid postal address in the country.
- (2) The registered office shall be identifiable and easily accessible to the public.
- (3) Subject to section 98, the registered office and postal address of a incorporated association at a particular time is the place entered as its registered office on the register at that time.

#### **98. CHANGE OF REGISTERED OFFICE AND POSTAL ADDRESS**

- (1) Subject to the incorporated association's rules, the committee of an incorporated association may change the registered office or postal address of the incorporated association at any time.
- (2) The incorporated association must file a notice of the change in the prescribed form with the Registrar for registration.
- (3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than 5 working days after the notice is registered.

#### **99. REQUIREMENT TO CHANGE REGISTERED OFFICE OR POSTAL ADDRESS**

- (1) An incorporated association shall change its registered office where it is required to do so by the Registrar.
- (2) The Registrar may require an incorporated association to change its registered office by notice in writing sent to the incorporated association at its registered office.
- (3) The notice shall—
  - (a) state that the incorporated association is required to change its registered office by a date stated in the notice, not being a date that is earlier than one month after the date of the notice;
  - (b) state the reasons for requiring the change;
  - (c) state that the incorporated association has the right to appeal to the Court; and
  - (d) be dated and signed by the Registrar.
- (4) A copy of the notice shall also be sent to the address shown on the register for each committee member of the incorporated association.
- (5) The incorporated association shall change its registered office—
  - (a) by the date stated in the notice; or

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

(6) Where an incorporated association fails to comply with this section, every committee member of the incorporated association commits an offence and is liable on conviction to a penalty not exceeding **PGK**.

## **Part XI Amalgamations**

### **100. INCORPORATED ASSOCIATIONS MAY AMALGAMATE**

Two or more incorporated associations may, by special resolution of each of them, amalgamate and continue as 1 incorporated association, with or without a dissolution or a division of funds, in accordance with this Act, if the plan of amalgamation is approved as provided in Section.

### **101. CONTENTS OF AMALGAMATION PROPOSAL**

(1) An amalgamation proposal must include the following:

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

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

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

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

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

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

(2) The amalgamation proposal may set forth:

- (a) Any amendments to the rules of the surviving incorporated association to be effected by the planned amalgamation; and

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

### **102. NOTICE OF PROPOSED AMALGAMATION**

(1) Each amalgamating incorporated association must—

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

- (b) give public notice of the proposed amalgamation that complies with Section \_\_\_\_;

- (c) file the amalgamation proposal with the Registrar on the prescribed form.
- (2) The steps set out in subclause (1) must be taken not less than 20 days before the amalgamation is proposed to take effect.

### **103. CONTENT OF AMALGAMATION PUBLIC NOTICE**

The public notice required under Section 101 must—

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

### **104. REGISTRATION AND APPROVAL OF THE AMALGAMATION**

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

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

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

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

### **105. CERTIFICATE OF AMALGAMATION**

(1) Without delay after receiving the documents specified in Section 104, if the Registrar is satisfied that the incorporated association to be created by the amalgamation satisfies the requirements of Section 104 and could be incorporated under the name set out in the notice of amalgamation, must issue a certificate of amalgamation.

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

### **106. EFFECT OF CERTIFICATE OF AMALGAMATION**

On the date shown in a certificate of amalgamation,—

- (a) the amalgamation is effective; and

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

#### **107. EFFECT OF AMALGAMATION ON OTHER REGISTERS**

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

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

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

#### **108. POWER OF COURT IN RELATION TO AMALGAMATIONS**

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

(2) On an application under subclause (1), the Court may make an order—

- (a) directing that effect must not be given to the proposal; or
- (b) modifying the proposal in the manner specified in the order; or
- (c) directing the incorporated association or its committee members to reconsider the proposal or any part of it.

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

## **Part XII**



## **Removal from the register**

### **Division 1**

#### **Removal from register**

#### **109. WHEN REMOVAL FROM REGISTER IS EFFECTIVE**

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

#### **110. GROUNDS FOR REMOVAL**

Subject to Section 111, the Registrar must remove an incorporated association from the register if—

- (a) the incorporated association fails to file its annual return within the period of 6 months after the month allocated for filing the return; or
- (b) the incorporated association at any time does not comply with Section 6 (Essential requirements); or
- (c) the incorporated association is in liquidation and—
  - (i) 6 months have elapsed after the completion of liquidation; and
  - (ii) the Registrar has not received the prescribed documents confirming completion of liquidation; or
- (d) the incorporated association is in liquidation and the Registrar receives the prescribed documents confirming completion of liquidation; or
- (e) there is filed with the Registrar a request under Section 111 for the incorporated association's removal; or
- (f) where the Registrar has reasonable cause to believe that an incorporated association has ceased to exist, or that the transactions or nature of an incorporated association are or is such that it has not, or has ceased to have, the prescribed qualifications for incorporation, or where the incorporated association has engaged in unlawful actions.

#### **111. REQUEST FOR REMOVAL**

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

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

(2) A request for removal may be made on the grounds that the incorporated association—

- (a) has ceased to carry on activities in furtherance of its objectives, has discharged in full its liabilities to all known creditors, and has distributed its surplus assets in accordance with its rules and this Act; or
- (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the incorporated association into liquidation.

(3) The request must be—

- (a) in the prescribed form; and
- (b) accompanied by prescribed third party consents (if any); and
- (c) filed with the Registrar.

## **Division 2**

### **Procedure for removal from register**

#### **112. WHEN NOTICE OF REMOVAL REQUIRED**

- (1) The Registrar must not remove an incorporated association from the register unless—
  - (a) public notice of the removal has first been given,—
    - (i) for removal under section 110(b), (c) of (f), by the Registrar;
    - (ii) for removal under section 110(d), by the liquidator;
    - (iii) for removal under section 110(e), by the person requesting removal; and
  - (b) the deadline date has passed without an application for an order under section 114.
- (2) Public notice is not required for removal under section 110(a).
- (3) The notice of removal must specify a date that is the deadline for a person who objects to the removal to apply for an order under section 114.

#### **113. OBJECTION TO REMOVAL**

- (1) No person may object to the removal of an incorporated association from the register under section 110(a).
- (2) Any person may object to the removal of an incorporated association from the register under any of section 110(b) to (f).
- (3) A person may object to removal on any 1 or more of the following grounds:
  - (a) the incorporated association is still carrying on business or there is other reason for it to continue in existence;
  - (b) the incorporated association is a party to a legal proceeding;
  - (c) the incorporated association is in receivership or liquidation;
  - (d) the person objecting is a creditor, member, or other person having a claim against the incorporated association;
  - (e) for any other reason, removal would not be just and equitable.

#### **114. PROCEDURE FOR OBJECTION**

- (1) A person objects to the removal of an incorporated association from the register by applying to the Court for an order that the incorporated association not be removed.
- (2) The application must be made on or before the date specified in the public notice of the removal.
- (3) The Court may order that the incorporated association not be removed if the Court is satisfied that the incorporated association should not be removed.

## **Division 3**

### **Effect of removal from register**

## **115. PROPERTY OF INCORPORATED ASSOCIATION VESTS WITH REGISTRAR**

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

## **116. LIABILITY CONTINUES**

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

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

### **Division 4**

#### **Restoration of incorporated association to register**

## **117. RESTORATION TO REGISTER AFTER FAILURE TO FILE ANNUAL RETURN**

(1) Subject to subsection (2), the Registrar must, on the application of a person specified in subsection (3), restore to the register an incorporated association that has been removed from the register under section 110(a) for failing to file an annual return.

(2) The application must be—

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

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

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

(4) The Registrar may waive the requirement in subsection (2)(c)(i) of all outstanding annual returns, or accept 1 or more partially completed annual returns, if the Registrar is satisfied that it is not practical for the applicant to fulfil the requirement.

**118. COURT MAY ORDER RESTORATION**

(1) The Court may, on the application of a person specified in subsection (2), order restoration to the register of an incorporated association that has been removed from the register under section 110 if the Court is satisfied that,—

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

(2) Any of the following persons may apply:

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

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

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

**119. RESTORATION TO REGISTER**

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

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

**120. VESTING OF PROPERTY IN INCORPORATED ASSOCIATION ON RESTORATION TO REGISTER**

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

**Part XIII**  
**Overseas Associations**

**Division 1**  
**Preliminary**

**121. CONDUCTING OPERATIONS OR CARRYING ON BUSINESS**

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

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

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

**122. CONSEQUENCES OF CONDUCTING OPERATIONS OR CARRYING ON BUSINESS WITHOUT REGISTRATION**

(1) An overseas association is liable for a penalty of up to **PGK** for each day it conducts operations or otherwise transacts business in Papua New Guinea without a certificate of registration. The Registrar **or the attorney general** may collect all penalties due under this subsection.

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

**123. NAME OF OVERSEAS ASSOCIATION IN PAPUA NEW GUINEA**

(1) An overseas association must not conduct operations or otherwise carry on business in Papua New Guinea unless its name could be registered under Section 18 if it were incorporated under this Act.

(2) If the name of an overseas association seeking registration in Papua New Guinea is unavailable, it must choose a new name to use in Papua New Guinea that complies with Section 18.

(3) An overseas association that changes its name must file with the Registrar for registration a notice in the prescribed form of the change of name within 10 working days of the change of name.

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

(5) An overseas association that contravenes this section commits an offence and is liable on conviction to a penalty not exceeding **PGK**.

#### **124. USE OF NAME IN PAPUA NEW GUINEA**

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

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

### **Division 2 Registration**

#### **125. APPLICATION FOR REGISTRATION**

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

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

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

(3) The application must also have attached—

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

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

### **Division 3 Administration of overseas associations**

#### **126. ANNUAL RETURN**

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

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

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

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

#### **127. ALLOCATED MONTH**

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

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

#### **128. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

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

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

#### **129. NOTICE OF CHANGE OF COMMITTEE MEMBERS, ETC.**

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

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

(2) A notice under subsection (1) must—

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

(3) If an overseas association fails to comply with this Section,—

- (a) the overseas association must, in addition to the regularly prescribed filing fee, pay a late filing fee to the Registrar; and
- (b) every member of the committee commits who fails to comply is guilty of an offence and is liable, on conviction, of a penalty not exceeding PGK 5,000.

**130. REGISTERED OFFICE AND POSTAL ADDRESS.**

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

**131. AGENT FOR OVERSEAS ASSOCIATION**

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

**132. CHANGE OF REGISTERED OFFICE AND POSTAL ADDRESS**

- (1) The committee of an overseas association may change the registered office or postal address of the overseas association at any time.
- (2) The overseas association must file a notice of the change in the prescribed form with the Registrar for registration.
- (3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than 5 working days after the notice is registered.
- (4) An overseas association shall change its registered office where it is required to do so by the Registrar.

**Division 4**

**Removal of overseas associations from the register**

**133. REMOVAL OF OVERSEAS ASSOCIATION FOR FAILURE TO MAKE ANNUAL RETURN**

- (1) If an overseas association fails to comply with section 126 and 6 months have elapsed without the overseas association filing a late return that otherwise complies, the Registrar must remove the overseas incorporated association from the Papua New Guinea register.
- (2) On the application of a committee member that complies with subsection (3), the Registrar must restore to the register an overseas association that has been removed under subsection (1).
- (3) The application must be—
  - (a) filed with the Registrar within 2 years after removal; and
  - (b) in the prescribed form; and
  - (c) accompanied by outstanding annual returns and associated filing fees, late fees and penalties.



**134. OTHER GROUNDS FOR REMOVAL**

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

- (a) has ceased to exist in its home jurisdiction;
- (b) procured its registration through fraud;
- (c) has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate any section or section of this Act or the criminal law of Papua New Guinea;
- (d) has conducted activities or transacted business seeking profit; or
- (e) has engaged in fraudulent or unlawful actions.

**135. PROCEDURE FOR OBJECTION TO REMOVAL**

(1) The Registrar must give 20 days' prior notice to an overseas association before removing it from the register under Section 134.

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

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

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

**136. EFFECT OF REMOVAL**

(1) The removal of an overseas association under either Section 133 or 134 automatically appoints the Registrar as the overseas association's agent for service of process in any proceeding based on a cause of action arising from the overseas association's activities or business in Papua New Guinea.

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

(3) An overseas association that has been removed from the register under Section 134 may apply to the Court for reinstatement within one year after the effective date of the revocation.

**137. OVERSEAS ASSOCIATION CEASING TO CONDUCT OPERATIONS IN PAPUA NEW GUINEA**

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

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

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

- (a) the date specified in the notice given under subsection (1)(b); or
- (b) receipt of a written notice given by a liquidator that the liquidation of the assets in the Papua New Guinea of the overseas association has been completed.

## **Part XIV**

### **Service of process and other notices**

#### **138. SERVICE OF NOTICES IN LEGAL PROCEEDINGS**

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

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

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

#### **139. SERVICE OF OTHER DOCUMENTS**

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

- (a) by any of the methods set out Section 138;
- (b) by posting it to the postal address shown on the register;
- (c) by facsimile machine, telex, or emailing it to an electronic address used by the incorporated association or an overseas association..

#### **140. SERVICE OF NOTICES ON COMMITTEE MEMBERS**

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

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

**141. SERVICE OF OTHER DOCUMENTS ON COMMITTEE MEMBERS**

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

- (a) by any of the methods set out in in Section 140;
- (b) by posting it to the committee member at the committee member's address (as that address is shown in the register);
- (c) by posting it to the incorporated association's postal address; or
- (d) by emailing it to an electronic address used by the committee member

**142. DELIVERY OF DOCUMENTS TO MEMBERS BY INCORPORATED ASSOCIATION**

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

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

**143. ADDITIONAL PROVISIONS RELATED TO SERVICE**

(1) Subject to subclause (2),—

- (a) service of a document by delivery to a natural person is made—
  - (i) by handing the document to the person; or
  - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:
- (b) a document that is posted is treated as received 5 working days after it is posted:
- (c) a document sent by means of a facsimile machine, telex, computer or other electronic device is deemed to have been received on the day following the day on which it was sent; and
- (d) for proving service of a document by post, it is sufficient to prove that—
  - (i) the document was properly addressed; and
  - (ii) all postal or delivery charges were paid; and
  - (iii) the document was posted.
- (e) in proving service of a document sent by means of a facsimile machine, telex, computer or other electronic device, it is sufficient to prove that the document was properly transmitted to the person concerned

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

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

- (a) email or other forms of electronic transmissions to an email address, fax number or other address provided by the incorporated association or overseas incorporated association for this purpose;
- (b) email or other forms of electronic transmissions to an email address, fax number or other address provided by the committee members of the incorporated association for this
- (c) by posting or delivery by courier to the registered office as shown on the register; or
- (d) having it published in a newspaper of general circulation in Papua New Guinea.
- (e) A document derived from a device or facility that records or stores information electronically or otherwise is admissible in a proceeding as a copy of a notice given by the Registrar if—
  - (i) It appears to be a copy of the notice; and
  - (ii) It is certified by the registrar as having been derived from such a device or facility.

## **Part XV**

### **Winding up**

#### **144. WINDING-UP.**

(1) Subject to Section 145, the provisions of the *Companies Act 1997* relating to the winding-up of registered companies apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the winding-up of incorporated associations.

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

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

#### **145. DISTRIBUTION OF SURPLUS ASSETS.**

(1) In this Section—

**“surplus assets”** means the assets of an incorporated association remaining on the winding-up of the association after payment of the debts and liabilities of the association and the costs, charges and expenses of the winding-up.

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

(3) Where—

(a) the National Court considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in Subsection (2) would not be just; or

(b) such a resolution has not been passed,

the Court shall, subject to subsection (4), make such order for the distribution of those assets as, having regard to the objects and purposes of the association being wound up, it considers just.

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

## **Part XVI**

### **Registrar powers and duties**

#### **Division 1**

##### **Maintaining the register**

#### **146. REGISTER**

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

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

(3) For purposes of this Part, the term “incorporated associations” includes registered overseas incorporated associations.

#### **147. REGISTRATION OF DOCUMENTS**

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

(a) register the document in the register (unless the Registrar rejects the document under section 149); and

(b) in the case of a document that is not an annual return, in writing notify the registration to the person from whom the document was received.

#### **148. WHEN DOCUMENT REGISTERED**

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

(a) the document itself becomes part of the register; or

(b) the document or details of the document including the time and date of registration are recorded or stored in the electronic register.

#### **149. WHEN REGISTRAR MAY REJECT DOCUMENT FOR REGISTRATION**

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

(a) is not in the prescribed form (if any); or

(b) does not comply with this Act or regulations made under this Act; or

(c) is not printed or typewritten; or

(d) if the register is a digital format register, is in a format that does not enable it be registered; or

- (e) has not been fully and properly completed; or
- (f) contains material that is not clearly legible; or
- (g) is not accompanied by the prescribed fee, including any penalty or late fee that may apply.

(2) If subsection (1) applies, the Registrar may require that—

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

#### **150. NO PRESUMPTION OF VALIDITY OR INVALIDITY**

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

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

#### **151. INSPECTION OF REGISTER**

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

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

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

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

#### **152. COPIES AND CERTIFIED COPIES OF DOCUMENTS**

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

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

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

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

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

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

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

## **Division 2**

### **Changes to register**

#### **153. RECTIFICATION OR CORRECTION OF REGISTER**

(1) The Registrar may—

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

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

- (a) giving notice of the rectification or correction to the incorporated association and to persons whom the Registrar considers will be materially affected by it; and
- (b) allowing a person to whom notice is given a reasonable opportunity to object.

(3) This section does not limit the Registrar's power of amendment under section 155.

#### **154. REGISTRAR MAY REQUIRE INFORMATION**

(1) The Registrar may give notice to an incorporated association requiring it to provide—

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

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

(3) An incorporated association that fails to comply with a notice under subsection (1) commits an offence and is liable on conviction to a penalty not exceeding **PGK**.

(4) In this section and in section 155, **incorporated association** includes an overseas incorporated association.

#### **155. REGISTRAR MAY AMEND REGISTER**

If information provided to the Registrar under section 154 differs from the information shown in the register for the incorporated association, the Registrar may amend the register accordingly.

## **Division 3**

### **Inspection by registrar**

#### **156. REGISTRAR MAY INSPECT AND OBTAIN DOCUMENTS**

(1) For a purpose specified in subsection (2), the Registrar or a person authorised by the Registrar may—

- (a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; and
- (b) inspect and take copies of relevant documents; and
- (c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; and
- (d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of an offence; and
- (e) require a person, in relation to information provided to the Registrar, to—
  - (i) confirm that the information is correct; or
  - (ii) correct the information.

(2) The purposes for which the Registrar or a person authorised by the Registrar may act under subsection (1) are to—

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

(3) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power under subsection (2).

(4) The Registrar may provide any relevant documents or copies of relevant documents obtained under this section to the **Minister, the Public Prosecutor, and the police**, and any person authorised to receive it for the purposes of, or in connection with, the exercise of a power under this Act.

(5) A person who fails to comply with a requirement under subsection (1)(a) or (e) or contravenes subsection (3) commits an offence and is liable on conviction to a penalty not exceeding **PGK** or a term of imprisonment not exceeding **PGK** or both.

(4) In this section,—

**relevant document**, in relation to an incorporated association, means a document that contains information relating to—

- (a) the incorporated association; or
- (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the incorporated association; and
- (c) **incorporated association** includes an overseas incorporated association

#### **157. RESTRICTIONS ON DISCLOSURES**

(1) A person who receives relevant documents under Section **167** must not disclose any relevant document, or information obtained, or report prepared, by that person except—

- (a) as required under section 156; or
- (b) to the extent that the information, or information contained in the relevant document or report, is available under any Act or in a public document; or
- (c) in the course of criminal proceedings; or



- (d) subject to the Registrar's approval,—
  - (i) with the consent of the person to whom the document, information, or report relates; or
  - (ii) for the purposes of, or in connection with, the exercise of powers under this Act; or
  - (iii) to a liquidator for the purposes of the liquidation of a incorporated association or the assets of an overseas incorporated association; or
  - (iv) for the purposes of detecting offences against any Act.

(2) A person who contravenes this section commits an offence and is liable on conviction to a penalty not exceeding PGK [REDACTED].

#### **158. DISCLOSURE IN LIQUIDATION**

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

### **Division 4 Miscellaneous matters**

#### **159. APPEALS FROM REGISTRAR DECISION**

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

(2) The Court may—

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

#### **160. LIABILITY OF REGISTRAR.**

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

#### **161. EXTENSION OF TIME.**

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

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

**162. SPECIAL CASES.**

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

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

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

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

**163. REGULATIONS**

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

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

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

**Division 5**  
**Enforcement matters**

**164. PROSECUTIONS.**

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

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

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

(4) In this section and in sections 164, 165, 166, and 167, **incorporated association** includes an overseas incorporated association

#### **165. FALSE STATEMENTS.**

(1) Every person who, with respect to a document required by or for the purposes of this Act—

- (a) makes, or authorizes the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorizes the omission from it of any matter knowing that the omission makes the document false or misleading in a material particular,

commits an offence, and is liable on conviction to a fine not exceeding PGK or a term of imprisonment not exceeding or both.

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

- (a) a committee member, auditor, member, or secured creditor of the incorporated association; or
- (b) a liquidator, liquidation committee, or receiver or manager of property of the incorporated association; or
- (c) where the incorporated association is a subsidiary or another incorporated association, a committee member or auditor of its holding incorporated association; or
- (e) the Registrar,

knowing it to be false or misleading, commits an offence, and is liable on conviction to a fine not exceeding PGK and to a term of imprisonment not exceeding or both.

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

#### **166. FRAUDULENT USE OR DESTRUCTION OF PROPERTY.**

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

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

commits an offence, and is liable on conviction to a fine not exceeding PGK [REDACTED] and to a term of imprisonment not exceeding [REDACTED] or both.

**167. FALSIFICATION OF RECORDS.**

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

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

commits an offence, and is liable on conviction to [REDACTED].

**168. CARRYING ON BUSINESS FRAUDULENTLY.**

Every person who is knowingly a party to an incorporated association carrying on business with intent to defraud creditors of or donors to the incorporated association commits an offence and is liable on conviction to [REDACTED].

**Part XVII**  
**Transition**

**169. APPLICATION FOR RE-REGISTRATION OF EXISTING INCORPORATED ASSOCIATION.**

- (1) An existing incorporated association may apply for re-registration under this Act.
- (2) An application for re-registration must be—
  - (a) in the prescribed form; and
  - (b) signed by the person completing the application; and
  - (c) filed with the Registrar within 1 year after the commencement of this Act.
- (3) The application for re-registration must be accompanied by—
  - (a) the prescribed fee; and
  - (b) a copy of the rules, if different from the rules as they exist immediately prior to re-registration.
- (4) If the rules with which the existing incorporated association proposes to be re-registered are different from the existing rules, the application must be accompanied by the special resolution authorizing the change.

**170. FAILURE TO APPLY FOR RE-REGISTRATION.**

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

- (2) The Registrar must, on a proper application to restore an existing incorporated association after the failure to re-register, restore to the register an existing incorporated association that has been removed from the register.
- (3) The application referred to in subsection (2) must be—
- (a) filed with the Registrar within two years after removal from the register;
  - (b) be on the prescribed form; and
  - (c) accompanied by all outstanding annual return and associated filing fees, together with any late filing fees and penalties.
- (4) On the application of a committee member, member, or creditor of an existing incorporated association, or on application of the Registrar, the Court may—
- (a) direct the Registrar to make an application for re-registration on behalf of the existing incorporated association; and
  - (b) make any other orders necessary to cause the re-registration of the existing incorporated association.
- (5) The application referred to in subsection (4) may be made within five years after the commencement of this Act.

#### **171. APPLICATION FOR RE-REGISTRATION OF EXISTING OVERSEAS INCORPORATED ASSOCIATION.**

- (1) An existing overseas incorporated association that may have been registered as an overseas company under the *Companies Act 1997* must apply for re-registration under this Act.
- (2) An application for re-registration of an existing overseas incorporated association must be—
- (a) filed by the Registrar within 1 year after the commencement of this Act; and
  - (b) in the prescribed form.
- (3) The registration under the *Companies Act 1997* of existing overseas incorporated association that has not applied for re-registration in accordance with subsection (2) is removed from the company register

#### **172. CERTIFICATE OF RE-REGISTRATION**

- (1) The Registrar must, without delay on receiving an application for re-registration of an existing incorporated association —
- (a) enter the existing incorporated association on the register; and
  - (b) issue to the existing incorporated association a certificate in the prescribed form of its re-registration.
- (2) A certificate of re-registration issued under subsection (1) is conclusive evidence that—
- (a) all the requirements for re-registration have been complied with; and
  - (b) on and from the date of re-registration stated in the certificate, the existing incorporated association is an incorporated association or overseas incorporated association registered under this Act.
- (3) The re-registration of an existing incorporated association under this section does not—
- (a) create a new legal entity; or
  - (b) affect membership rights of an existing incorporated association except as provided by this Act; or

- (c) affect the property, rights, or obligations of the existing incorporated association except as provided by this Act; or
  - (d) affect proceedings by or against the existing incorporated association.
- (4) An existing incorporated association is not required to make an annual return under this Act in the year in which it is re-registered.

**173. MEANING OF EXISTING INCORPORATED ASSOCIATION**

For the purposes of this subpart, **existing incorporated association**—

- (a) means an incorporated association incorporated under the *Associations Incorporation Act 1966*, immediately before the commencement of this Act; and
- (b) an overseas incorporated association registered under the Association Incorporation Act or the Companies Act 1997 as an overseas company; but
- (c) does not include any incorporated association that is in liquidation.

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**SCHEDULE 1 – MATTERS TO BE PROVIDED FOR IN THE RULES OF AN ASSOCIATION.**

1. The name of the association.
2. The objects and purposes of the association.
3. The qualifications (if any) for membership of the association.
4. The membership subscriptions or dues (if any) to be made or paid by members of the association.
5. The names, constitution, membership and powers of the general committee, board of management or other governing authority of the association (in this item referred to as “the committee”) and–
  - (a) the manner of election or appointment of members of the committee; and
  - (b) the terms of office of members of the committee; and
  - (c) the grounds on which, or reasons for which the office of a member of the committee becomes vacant; and
  - (d) the filling of casual vacancies occurring on the committee; and
  - (e) the quorum and procedure at meetings of the committee; and
  - (f) the quorum and procedure at meetings of sub-committees appointed by the committee; and
  - (g) the remuneration, if any, that committee members are entitled to receive.
6. The quorum and procedure at general meetings of members of the association and of any sub-committees appointed by any such meeting or constituted or established under the rules of the association.
7. The time within which, and the manner in which, notices of meetings and notices of motion are to be given, published or circulated, and the manner of calling general and special meetings of the association.
8. The sources from which the funds of the association are to be or may be derived.
9. The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other documents for and on behalf of the association.
10. The intervals between general meetings of members of the association (which must occur at least once a year per the Act).
11. Whether the accounts of the association are to be audited annually or more frequently (for incorporated associations required to prepare financial statements the Act provides rules regarding auditing requirements).
12. Subject to section 64, the manner of altering and rescinding the rules and of making additional rules.
13. Provision for the custody and use of the seal of the association.

- 14.** Subject to section 64, the manner in which the objects or purposes of the association may be altered.
- 15.** Subject to section 74, the custody of books, documents and securities of the association.

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