

RESPONSIBILITIES OF COMMITTEE MEMBERS UNDER THE ASSOCIATIONS INCORPORATION ACT

Contents

- Associations Incorporation Act
- Rules of the association
- The committee
- Good governance
- Who are you responsible to?
- Meetings
- Record keeping
- Finances
- The Public Officer
- Name
- Contracts
- Common seal
- Reports to the Companies Office
- Resolving a dispute
- Using the common seal

Associations Incorporation Act

Under the Associations Incorporation Act, committee members and Public Officers have definite legal obligations

Accordingly, all committee members should be aware of the requirements of the Act itself and the Associations Incorporation Regulation.

Copies of these appear on this site. It may be possible also to obtain copies from the Companies Office, 4th Floor, Marion Tower, Douglas St., Port Moresby as the Registrar of Companies is responsible for administering the Act and Regulation.

The following information has been prepared to help committee members with their ongoing responsibilities once the association is incorporated.

Rules of the association

Every incorporated association must have rules. The association may have prepared its own rules, or may have adopted the Model Rules prepared by the Registrar of Companies (who is responsible for incorporated associations also). Copies of the Model Rules may be obtained from the Companies Office (either hard copy or on disc). They are also available on this site.

It is important to note that, if the association drafts its own rules, and there is any matter about which the drafted rules are silent, the model rules will apply to that matter. The model rules apply unless replaced by the registered rules of the association.

This means that, in almost every case, it is necessary to refer to all these documents to have a complete set of the legal provisions governing the constitution of the association:

- the *Associations Incorporation Act*

- the *Associations Incorporation Regulation*
- the statement of objects and purposes (as set out in the Form 2 – Application for Incorporation)
- the rules of the association, if it prepared its own rules; and
- the model rules!

To change the rules, a special resolution must be passed by members. The requirements for a special resolution will be set out in the rules (rule 32 of the Model Rules).

The committee

Each association must appoint a committee in accordance with the rules it adopts. A committee cannot be less than two in number. The size of the committee will be fixed by the rules of the association.

If the association adopts the 'Model Rules', the committee - in accordance with those rules - is to consist of four office-bearers and three ordinary members. The office-bearers are: president; vice-president; secretary and treasurer.

Many of the rules relating to the committee, how it is elected, how it functions, the office-bearers and their duties are set out in the rules. Remember – as discussed above – that the Model Rules are incorporated into the rules of each association except to the extent that they are changed or modified by adopted rules. A competent committee member should know the rules which apply to his association.

However these rules set out only the minimum requirements. A good committee will make additional arrangements – which can be added to the rules, can be by-laws or can remain as resolutions of the committee – for other matters considered important. Such matters include the nature of the financial records to be kept and the information to be provided to the committee for each meeting

Note that a committee member may hold more than one position.

The committee is responsible for management of the association. This includes:

- Establishing procedures to handle the money and property of the association for the safeguarding and safe use of assets of the association. Procedures should be agreed and written down in a policy statement or in the minutes. They should be made known to all Board members and to all who handle the money or property.

It is then up to the Committee to check from time to time and to make sure that the procedures are followed.

- Establishing policy or procedure, in relation to employees, for Occupational Health and Safety, for training and for gender fairness. The policy should establish a procedure to ensure that, when an employee is being selected, the best person for the job is chosen, not family or friends. The policy should be written, known to all relevant persons (including candidates) and the Committee should check that the agreed procedure is followed.
- A key task is devising a plan and a strategy to achieve the objects and purposes of the association. The plan should be prepared with measurable or identifiable targets so that the Committee can monitor progress and implementation of the plan.

- The Committee should identify critical success factors for the association. These may be financial indicators or other key indicators or both. There should be a system of measuring performance, reported to the Board each meeting, for comparison with performance targets.
- Periodically, the Committee should review its own effectiveness as a committee; whether it is performing as it should and means to improve performance. Among the matters for attention is planning the membership of the Committee and measures to recruit suitable persons to the Committee.

Good governance

The committee is also responsible for good governance of the association.

Good governance requires, as a minimum, that:

- the rules of the association and the requirements of all legislation and regulations are strictly observed;
- the affairs of the association are open and transparent;
- the affairs of the association are conducted honestly
- the affairs of the association are conducted with an appropriate degree of care, skill and diligence;
- proper regard is had to the rights and interests of all stakeholders; and
- the committee members all honour the duties arising from their position:
 - o to act in good faith in the interests of the organization as a whole;
 - o to avoid conflicts of interest;
 - o not to make improper use of information; and
 - o not to make improper use of the position.

The PNG Institute of Directors promotes good governance. More information on this topic can be found on this site.

Who are you responsible to?

Each committee member legally owes duties and responsibilities to the organization as a whole – to the organization of which he or she is an office bearer.

The committee member will identify all stakeholders within the organization – those who hold a position or office or a standing in the organization such as members, fellow Committee members, employees, management, Public Officer and Auditor.

He or she will also have a clear understanding of the 'external' stakeholders. These are others who have an interest in the success of the organization such as suppliers, customers, clients, the organization which the committee member represents (if any), the public, the Government

Meetings

It is the responsibility of the committee to ensure that meetings are held within the appropriate times. This means both meetings of the committee and meetings of members.

Rules about the calling of meetings and the conduct of meetings are found in the rules of the association (which may mean, in the Model Rules).

The annual general meeting (AGM) must be held at least once in each calendar year and within six months of the end of the association's financial year. In practice this means, for almost all associations, that the AGM must be held not later than 30 June in each calendar year.

Financial accounts must be presented to the members at each AGM. Note that the financial affairs of the association MUST be audited. The auditor must be a competent person who is not the Public Officer or a member of the committee. Failure to have the accounts audited means the association is guilty of an offence and is liable to a fine.

An Annual Report on the activities of the association should also be given to members at or before the AGM. This Annual Report and the accompanying financial accounts should give a full report to members of the activities of the association. There is no annual return or annual filing in the Companies Office.

If an extension of time is needed to hold the AGM, an application should be made to the Companies Office.

Record keeping

The committee is responsible for making sure that these records are maintained:

- a register of all members
- minutes of all meetings
- financial records.

If a member of the association wants to inspect these records, they can do so at any reasonable time, upon request.

Finances

The finances of the association are the responsibility of each individual Board member and also of the Board as a whole. It is a legal duty of committee members to know and understand the finances – it is a breach of duty to "leave it to the accountant".

If a committee member does not understand the finances, it is his or her responsibility to seek advice or training so that he or she can do so. It is also his or her responsibility to ensure that proper accounts are kept, that they are up-to-date, and provided to committee members at least 24 or 48 hours before the meeting so that there is time to consider them properly.

The accounts of the association must be audited at least once each year.

The Public Officer

In an incorporated association, the Public Officer holds a position of real importance. He or she is the primary contact for the association. Unlike a company, an incorporated association is not required to have a registered office - the Public Officer is the contact instead. Documents served on the association are served on the Public Officer. He or she is also responsible for lodging documents with the Companies Office.

The committee must, within 14 days after incorporation, appoint a natural person who ordinarily resides in the country to be the public officer. If the office becomes vacant, the committee must, within 14 days, appoint a natural person who ordinarily resides in the country to fill that vacancy. Notice of the appointment must be given to the Companies Office within 14 days of the appointment.

If the committee fails to do so, the association is guilty of an offence. The penalty is a fine not exceeding K20.00

The public officer may, unless the rules of the association otherwise provide, hold any other office in the association except the office of auditor. It is not necessary that he be a member of either the committee or the association.

Name

The name of the association as it appears on the Application for Incorporation (Form 2) (and possibly repeated in Clause 1 of the constitution) is the exact name of the association.

The name of an incorporated association must appear on documents – that includes each notice, advertisement, bill of exchange, cheque, promissory note, endorsement, order, receipt or other document. It must be in a conspicuous place and in letters easily legible.

The penalty for failure to comply is a fine not exceeding K40.00.

It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated" when the name of an incorporated association is included in any document.

Contracts

The manner in which legally binding contracts are made by or on behalf of an incorporated association are as follows:

- 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;
- a contract that, if made between natural persons, would be by law required to be in writing and signed by the parties, may be made on behalf of the association in writing signed by a person acting with its authority;
- 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 association by a person acting under its authority.

The authority required is a resolution of the committee. If a member or committee member or office-bearer acts without a resolution of the committee, the association is not legally bound. Instead, that person himself or herself may be legally liable. However this does not prevent the committee giving one person a general authority to incur obligations which bind the association (often the authority is limited to amounts less in value than a nominated amount.).

Common seal

Unless the rules provide otherwise, the common seal, like the books and records, should be held in the custody of or under the control of the Public Officer.

The common seal should not be used except with the authority of a resolution of the committee.

Unless the rules of the association provide otherwise, when the seal is used it should be countersigned by either:

- two committee members; or

