

# SETTING UP AN INCORPORATED ASSOCIATION

## Contents

- What is an incorporated association?
- What are the main benefits of incorporating as an association?
- Qualifications for an incorporated association
- Incorporation
- Setting up a new incorporated association
- Converting an existing organisation into an incorporated association
- The forms
- How much does it cost to incorporate an association?
- Name
- The rules of the association
- The Committee
- The Public Officer
- Common seal
- Record keeping
- Common problems of incorporation
- Sample forms

## What is an incorporated association?

Whereas the object of most businesses is to make money for their owners, there are many organisations whose object, in contrast, is to provide a benefit to the community. Thus community groups are formed for various reasons: to form sporting clubs; to run professional or industry groupings; to serve charitable, community or religious interests. Where these organisations make a financial profit from their activities, that profit is put back into the organisation or into the community - it is not paid to the members.

In order to operate effectively, however, such organisations often find that they have to enter into contracts, which can make their members personally liable for costs and expenses. This is where the option of becoming an incorporated association can provide great advantages.

An incorporated association is a separate legal entity; in law it is separate and distinct from the individuals who are its officers and members. So is a company. The essential difference between an incorporated association and a company is that the purpose of a company is to make money or profits for its shareholders whereas an incorporated association, being a community organisation, is not allowed to pay profits to its members.

Being a community organisation serving the community, an incorporated association is given advantaged treatment in respect of taxation and in respect of costs and fees. Because of this advantaged treatment, applicants to set up an incorporated association must establish that the organisation is genuinely for the community benefit, so the procedure is a little more complicated than to set up a company.

Following the introduction of the *Companies Act 1997*, an incorporated association has become the preferred type of organisation or legal structure for many religious and charitable entities, so many other organisations have taken the steps to change into an incorporated association; many new incorporated associations have been set up.

## What are the main benefits of incorporating as an association?

It allows your organisation, among other things, to:

- create a legal entity that is separate from the individual members
- provide a certain amount of limited liability for members
- continue regardless of changes to membership
- enter into enforceable contracts including buying and selling property
- sue (but also be sued)
- accept gifts.

### **Qualifications for an incorporated association**

For the reasons given above, an organization must satisfy certain conditions to qualify as an incorporated association. These "prescribed qualifications for incorporation" are set out in section 1 of the *Associations Incorporation Act* to mean

- (a) that the 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 commerce, industry, art, science, religion, charity, pension or superannuation schemes or other objects useful to the community;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 payment in the nature of a dividend to its members;

The Notice of Intention to incorporate must give details of how the proposed association will qualify.

### **Incorporation**

'Incorporation' is a specialist word meaning to create a 'separate legal body', recognised by the law as being legally distinct from the persons who are its officers, employees and members. It is achieved by registering the appropriate documents with the Registrar of Companies (who is responsible for incorporated associations also) and by obtaining his Certificate of Registration.

The steps to incorporation vary, depending on whether your group is already in existence as an organisation having some other type of legal structure or whether you are starting from the beginning.

### **Setting up a new incorporated association**

The Registrar of Companies has also provided information on incorporation. A copy of his information is also available on this site, entitled *Incorporation under the Associations Incorporation Act Chapter 142*

If the organisation does not already exist, the steps are, in summary:

1. Any two or more persons may agree to:

- authorise one of them to apply for incorporation of an association;
- agree on a statement of the objects and purposes of the proposed association;
- approve a set of rules (also called 'constitution').

The proposed rules must comply with detailed requirements of the *Associations Incorporation Act* and also of the *Associations Incorporation Regulation* (see the article *Requirements of the Association Incorporation Act Ch 142* referred to above) but to simplify the task the Registrar of Companies has provided a set of 'model rules' which can be adopted by the organisation. These model rules can also be found on this site.

- Nominate at least two people to be the first committee members of the proposed association, or more than two if the proposed constitution so requires.

The Model Rules require four office-bearers and three ordinary members on the committee.

2. Deliver to the Companies Office:

- a form of Notice of Intention in the correct form, plus
- a copy of the proposed constitution. See comments below about the form of the constitution.

The form of Notice of Intention can be found on this site. It is Form 1 and is the first of the forms which appear at the end of the *Associations Incorporation Regulation*

A sample of this form is at the end of this article.

The address of the Companies Office is:

The Registrar of Companies  
Business Registration Office  
PO Box 1281  
(4<sup>th</sup> Floor, Monian Tower, Douglas Street)  
Port Moresby NCD

There is no fee to be paid when lodging this form

When completing this form, the word "Incorporated" or its abbreviation "Inc." should NOT be stated in the name of the association, as it is still in the process of being approved.

3. If these forms are approved by the Registrar, he notifies the applicant who then publishes the Notice of Intention in the newspaper. It must be published in either the PNG Post Courier or the National as these are the only newspapers which satisfy the requirement of the Act of being a paper published in PNG at least once a week and circulating generally throughout the country. Notices published in other daily or weekly newspapers will not be accepted.

The applicant for the incorporation must pay the cost of the publication.

Two or more copies of the newspaper containing the notice should be kept for use later.

4. There is then a period of one month during which objections may be made.

If there is an objection, the Registrar will decide whether to allow or ignore the objection.

5. After the time for objections has passed, the applicant lodges with the Companies Office:

(i) A form of Application for Registration. This is Form 2 and is available as explained above. A sample of this form is at the end of this article.

When completing this form, the word "Incorporated" or its abbreviation "Inc." SHOULD be stated in the name of the association, as it is now an application for incorporation.

The form must specify:

- the objects and purposes of the association
- the place or places where the association was formed and is or will be carried on, and
- the full name, address and occupation of the applicant.

The objects and purposes of the association must be stated EXACTLY the same in all forms submitted, that is, in the Notice of Intention (Form 1), the Application for Registration (Form 2) and the constitution.

(ii) A statutory declaration made by the applicant declaring:

- that he is authorised by the committee of the existing or proposed association to apply for incorporation under the Act;
- that the particulars contained in the application are true; and
- that the Notice of Intention was published in ...(named)... newspaper on a ...(named)... day.

A sample declaration is at the end of this article.

(iii) A page of the newspaper containing the published Notice

(iv) Either:

(a) A copy of the constitution (and any trusts, if any, relating to the association) attached to a statutory declaration by the applicant that it is a true copy of the constitution or rules.

The word "Incorporated" or its abbreviation "Inc." SHOULD appear at the end of the name of the association in clause 1 of the constitution

The objects and purposes of the association must be stated EXACTLY the same in all forms submitted, that is, in the Notice of Intention (Form 1), the Application for Registration (Form 2) and the constitution.

A sample form of statutory declaration appears at the end of this article

OR

(b) If the association has adopted the Model Rules with or without modification, a statutory declaration by the applicant stating:

- the date of the meeting at which the Model Rules were adopted;

- a copy of the special resolution for the adoption of the Model Rules; and
- the modifications, if any, subject to which the Model Rules were adopted by the association.

A sample form of statutory declaration appears at the end of this article.

- (v) The fee of K70 in total, made up of Registration fee K50 and fee for the issue of the Certificate of Registration, K20

The fee must be paid in cash or by bank cheque made out to "Registrar of Companies"

6. If the documents are correct, the Registrar issues a Certificate of Registration.

As mentioned above, there is more information on these steps is set out in the article 'Requirements of the Association Incorporation Act Ch 142', a copy of which is available on this site.

### **Converting an existing organisation into an incorporated association**

If there is already an organisation in existence, it is likely that it will be either an unincorporated association or, in accordance with the old companies legislation which has now been replaced, a company limited by guarantee (such companies no longer exist under the *Companies Act 1997*).

The basic procedure is the same in both cases, although there may be minor variation depending on the constitution of the organisation. In the case of an unincorporated association, that will usually be its constitution; in the case of a company limited by guarantee, that will be its Memorandum and Articles of Association.

In summary, the steps are:

1. Pass a special resolution to:
  - apply to the Registrar of Companies for incorporation of the association
  - approve a statement of the objects and purposes of the proposed association
  - approve a set of rules that are consistent with the objectives
  - authorise a person to apply for incorporation

A special resolution usually requires that three-quarters of the members who are present and entitled to vote (including proxies where allowed) do vote in favour of the resolution.

2. Follow steps 2 - 6 set out above for a new incorporated association.
3. Section 12 of the Act makes special provision for vesting of property of the prior organization in the new association, but this is a topic on which the advice of a specialist (lawyer or possibly accountant) should be obtained. There may be important issues to be considered such as continuity of insurance, for example.

### **The forms**

The forms may be copied from or downloaded from this site. They are at the end of the *Associations Incorporation Regulation* Sample forms are at the end of this article.

The Registrar may refuse to accept an application, notice or other document that is required to be lodged with him under the Act if the application, notice or document

- is not printed; or
- is not on International A4 size paper of suitable weight and quality, and with a margin of at least 50 mm on the left hand side of the sheet; or
- has been, or appears to the Registrar to have been, altered in any particular.

For this purpose "printed" includes type-written, lithographed or reproduced by any mechanical means.

### **How much does it cost to incorporate an association?**

The fee payable to the Companies Office is K70

The association must pay for publishing the Notice of Intention in the newspaper

There is also a fee of K5 for lodging the Notice of Appointment of Public Officer.

A schedule of all other fees applicable to incorporated associations appears on this site.

They include additional fees if documents are not lodged on time.

### **Name**

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

The Registrar will not incorporate an association with a name which, in his opinion, is undesirable.

An incorporated association must have the word "Incorporated" or the abbreviation "Inc." as part of and at the end of its name.

Note that "Incorporated" or "Inc." are NOT included in Form 1 but ARE included in Form 2 and the constitution.

It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated":

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

### **The rules of the association**

The rules of the association (also called the constitution) must comply with the *Associations Incorporation Act* (section 16) and with the *Associations Incorporation Regulation* (section 8) which are very detailed. For this reason, the Registrar has prepared a set of 'model rules' which may be adopted by any association. A copy of the 'model rules' may be obtained from the Companies Office (either hard copy or on disc). They may also be obtained on this site.

The members of the proposed association may draft their own rules. However many find it simpler to adopt the model rules. To do so, all that is necessary is to draft a statement of objects and purposes (which are consistent with the prescribed qualifications for an incorporated association – see above) and to pass a special resolution adopting the Model Rules as the rules of the association. This is faster also,

for it avoids the necessity for the Registrar to examine the draft to ensure that it complies with the requirements.

It is important to note that if the association drafts its own rules, the model rules are deemed to form part of those rules, except to the extent that they are inconsistent with or are modified by the drafted rules. The model rules apply unless replaced by the registered rules of the association.

For those wishing to draft their own rules, the requirements are set out in the Act and Regulation in the places mentioned above and are available on this site. They are repeated in the article *Requirements of the Association Incorporation Act Ch 142*, also on this site.

### **The Committee**

Each association must appoint a committee in accordance with the rules it adopts. A committee cannot be less than two in number.

But 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.

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

The committee is responsible for the management and good governance of the association.

### **The Public Officer**

In an incorporated association, the Public Officer holds a position of real importance.

He or she is responsible for lodging documents with the Companies Office. He or she is also 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.

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.

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 provide otherwise, hold any other office in the association except the office of auditor.

The person authorised to apply for incorporation will be the Public Officer unless the rules state otherwise or until notice of a new Public Officer is given to the Companies Office.

The notice of appointment is Form 6 of the *Associations Incorporation Regulation*. A sample may be found on this site. A fee of K5 is to be paid to the Registrar of Companies for filing this form.

A public officer who fails:

- within 14 days of his appointment as public officer; or
- within 14 days after the change of his address,

to notify the Registrar of his appointment and his full name, address and occupation, or of the change of address, as the case may be, is guilty of an offence. The penalty is a fine not exceeding K40.00.

### **Common seal**

An incorporated association must have a common seal that bears its name. This is usually a stamp that shows the association's name and possibly its logo. It must be held by the Public Officer and is only to be used with the authority of the committee.

It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated" on the common seal.

### **Record keeping**

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

- a register of all members
- a register of all committee 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.

### **Common problems of incorporation**

Form 1: The word "Incorporated" or its abbreviation "Inc." should NOT be stated in the name of the association, as it is still in the process of being approved.

Form 2: The word "Incorporated" or its abbreviation "Inc." SHOULD be stated in the name of the association, as it is now an application for incorporation.

Constitution: The word "Incorporated" or its abbreviation "Inc." SHOULD be stated in the name of the association in clause 1

Publication: The Notice of Intention (Form 1) must be published in either the PNG Post Courier or the National as these are the only newspapers which satisfy the requirement of the Act of being a paper published in PNG at least once a week and circulating generally throughout the country. Notices published in other daily or weekly newspapers will not be accepted. The applicant for the incorporation must pay the cost of the publication.

Objects and purposes: The objects and purposes of the association must be stated EXACTLY the same in all forms submitted, that is, in the Notice of Intention (Form 1), the Application for Registration (Form 2) and the constitution.

Appointment of Public Officer: The Notice of Appointment of a Public Officer must be lodged with the Registrar of Companies within 14 days. A fee of K5 is payable. An extra late fee of K5 is applicable after this time period has elapsed.

### **Sample forms**

Samples are given below of the following forms:

- Sample Form 1: Notice of Intention
- Sample Form 2: Application for the Incorporation of an Association
- Sample statutory declaration for Section 6(3)

- Sample statutory declaration for Section 6(4), (5) verifying drafted rules
- Sample statutory declaration for Section 6(4), (5) adopting Model Rules

Last updated 21.2.2003

This is not a substitute for legal advice. Users should obtain professional advice.

**PAPUA NEW GUINEA.**

***Associations Incorporation Act 1966.***

Reg Sec. 2.

Form 1.

**NOTICE OF INTENTION TO APPLY FOR THE INCORPORATION OF AN ASSOCIATION.**

I .....(Full name)....., of.....(Full postal address).....  
 , .....(occupation).....

a person authorized for the purpose by the committee of the association known as

.....,  
 give notice that I intend to apply for the incorporation of the association under the  
*Associations Incorporation Act 1966.*

The following are the details of the prescribed qualifications for incorporation as specified in Section 2 of the Act:

1. The association is formed (*or is being formed, or is operating*) for the purpose of:

*(Here set out the objects and purposes exactly as they appear in the proposed constitution. Take as much space as necessary)*

2. The association will apply its profits (if any) or other income in promoting its objects; and
3. The association will prohibit the payment of any dividend or payment in the nature of a dividend to its members.

Dated ..... 20 .

This notice has been approved by the Registrar of Companies.

Dated . . . 20 .

.....Registrar of Companies.

NOTE:—A person may, within one month after the publication of this notice, lodge with the Registrar an objection to the incorporation of the proposed association in accordance with Section 4 of the Act.

**PAPUA NEW GUINEA.**

***Associations Incorporation Act 1966.***

Reg., Sec. 3.

Form 2.

**APPLICATION FOR THE INCORPORATION OF AN ASSOCIATION.**

To the Registrar of Companies.

I .....(*Full name*)....., of.....(*Full postal address*).....  
.....(*occupation*).....

make application for the incorporation, under the provisions of the *Associations Incorporation Act 1966*, of .....

.....(*insert name by which association seeks to be incorporated*) .....  
and in support of the application I submit the following information:—

1. The name of the association is .....  
.....(*insert name by which association seeks to be incorporated*) .....
2. The objects and purposes of the association are:

*(Here repeat the objects and purposes exactly as they appear in the newspaper and in the proposed constitution. Take as much space as necessary)*

3. The association is situated (*or established*) at ..... (*insert place or places where the association was formed and is carried on*) ....

Dated ..... 20 .

.....(*Signature of Applicant*)

**PAPUA NEW GUINEA.**

**Oaths, Affirmations and Statutory Declarations Act**

Ch No. 317

Sec. 11(1)

Form 11

**STATUTORY DECLARATION**

I .....(Full name)....., of.....(Address).....  
.....(occupation)..... say on oath:

- 1. I am the applicant for incorporation under the *Associations Incorporation Act* of the association .....  
.....(Incorporated or Inc.).
- 2. The document attached hereto and marked with the letter "A" and signed by me for the purposes of identification is a true copy of the rules of .....  
.....(Incorporated or Inc.).

**AND I MAKE** this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act conscientiously believing the statements contained in it to be true in every particular.

Declared at .....(Place)..... this .....(day) ..... of ....(Month) 20 .....

Before me:

.....  
**A Commissioner for Oaths** (signature of applicant)I

Note: A copy of the constitution should be attached to this declaration and have written on it:

<p>This is the attachment marked "A" referred to in the attached statutory declaration of me .....(Name of applicant)..... made on the ..... (day) ..... of .....(Month) ..... 20.....</p> <p>..... (Signature of applicant)</p>
--

**PAPUA NEW GUINEA.**

***Oaths, Affirmations and Statutory Declarations Act***

Ch No. 317

Sec. 11(1)

Form 11

**STATUTORY DECLARATION**

I .....(Full name)....., of.....(Address).....  
....., .....(occupation)..... say on oath:

1. I am the applicant for incorporation under the *Associations Incorporation Act* of the association .....  
.....(Incorporated or Inc.).
2. I am duly authorised by the committee of the (*proposed*) association to apply for the incorporation under the *Associations Incorporation Act* of the the association  
.....(Incorporated or Inc.).
3. The particulars contained in the Application for Incorporation (Form 2) made by me and dated the ..... (*day*) ..... of .....(Month) ..... 20..... are true.
4. On the ..... (*day*) ..... of .....(Month) ..... 20..... there was published in the *PNG Post Courier / National* newspaper, being a newspaper published in PNG at least once a week and circulating generally throughout the country a Notice of Intention to apply for the incorporation under the *Incorporated Associations Act* of  
.....(Incorporated or Inc.).

**AND I MAKE** this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act conscientiously believing the statements contained in it to be true in every particular.

Declared at .....(Place)..... this .....(*day*) ..... of ....(Month) 20 .....

Before me:

.....  
**A Commissioner for Oaths**

.....  
(signature of applicant)I

**PAPUA NEW GUINEA.**

**Oaths, Affirmations and Statutory Declarations Act**

Ch No. 317

Sec. 11(1)

Form 11

**STATUTORY DECLARATION**

I .....(Full name)....., of.....(Address).....  
.....(occupation)..... say on oath:

1. I am the applicant for incorporation under the *Associations Incorporation Act* of the association .....  
.....(Incorporated or Inc.).
2. At a meeting of .....  
held on the ..... (day) ..... of .....(Month) ..... 20..... a Special Resolution was passed adopting (*with the modifications set out in the Special Resolution*) the Model Rules as the rules of  
.....(Incorporated or Inc.).
3. Attached hereto and marked with the letter "A" and signed by me for identification is a copy of the Special Resolution for the adoption of the Model Rules.

**AND I MAKE** this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act conscientiously believing the statements contained in it to be true in every particular.

Declared at .....(Place)..... this .....(day) ..... of ....(Month) 20 .....

Before me:

.....  
**A Commissioner for Oaths**

.....  
(signature of applicant)I

-----  
Note: A copy of the Special Resolution adopting the Model Rules (*and containing the modifications, if any*) should be attached to this declaration and have written on it:

<p>This is the attachment marked "A" referred to in the attached statutory declaration of me .....(Name of applicant)..... made on the ..... (day) ..... of .....(Month) ..... 20..... ..... (Signature of applicant)</p>
---