



INTERNATIONAL CENTRE FOR NOT-FOR-PROFIT LAW
Pacific Civil Society Law Programme

***Law and Civil Society Organisations in Papua New
Guinea: A Review of the Legislative Framework***

Country Report

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I INTRODUCTION

A Brief Country Facts

With a population of approximately 5.8 million people and a total land area of almost half a million square kilometres, Papua New Guinea is no doubt the largest island nation in the South Pacific. Located just off the northern-most tip of Australia, mainland New Guinea accounts for almost 90% of the country's land size, and is mostly mountainous with rolling foothills and coastal lowlands. Almost 860 languages are spoken throughout the country, with nearly 800 identified with mainland New Guinea. The country's indigenous population is the world's most culturally diverse and heterogeneous as it has thousands of communities scattered across the rugged jungle terrains of the mainland and far out on its archipelagic chain. *Tok pisin*, a version of Melanesian pidgin, serves as the lingua franca but is also one of the country's three official languages. The other two are English and *Motu*.

The country is a constitutional monarchy with the Queen of England as Head of State represented by a Governor-General. Its administrative set-up is made up of 19 provinces and the national capital district of Port Moresby, the capital city. It achieved its independence in 1975 and adopts parliamentary democracy with a unicameral parliament made up of 109 seats. The members of Parliament are elected every 5 years through a limited preferential voting (LPV) system applying universal suffrage with those of age 18 and above eligible to vote. In terms of tiers of government, the country has three levels – national, provincial and local - with a power structure characterised by top-down devolution of powers and functions.

The country's legal system is based largely on the Australian system which in turn has its roots in the English system or Common Law. The post-independence laws of the country thus comprised Acts of Parliament of the Independent State of Papua New Guinea, *kastomary* law, and 'the underlying

law'.¹ The judicial branch of the State consists of the Supreme Court as the highest appellate court, the National Court, District courts, local courts, and village courts.

As the largest economy of all South Pacific island countries, Papua New Guinea has since independence enjoy a period of economic success driven mainly by the exploitation of its vast natural resources. Its current nominal GDP is US \$4.5 billion and a per capita of US\$855. The country's economy relies mainly on exports of gold, copper ore, oil, natural gas, timber and fish. Exports account for almost 66% of GDP, thus, signifying the *export-based* status of the economy.

This report purports to present for readers some insight into the legislative framework currently governing or affecting civil society organisations (CSOs) in Papua New Guinea, both directly and indirectly. Whilst not intended to be comprehensive, the content will nonetheless make appreciable contribution to future reviews, scholarly work, as well as law reform exercises. And for those purposes, this report intends to provide basic baseline information that can be consulted by future researchers, law reformers, and civil society practitioners. It is hoped that the slight contribution made by way of this report will facilitate and boost any future initiatives tailored towards achieving an enhanced operating legal environment for the CSO community in Papua New Guinea.

B Nature and Types of CSOs

Given its status as the largest Pacific island country, Papua New Guinea has the most diverse forms of organisations that constitute its civil society. CSOs in the country comprise both incorporated and unincorporated organisations, membership and non-membership groups, and either operate for public benefit or private gain. Most international organisations classified as NGOs have representative offices in the country, but the bulk of incorporated organisations are local groups and societies. The non-membership organisations (in particular, international NGOs) mostly operate in the pursuit of activities for the

¹ '*Underlying Law*' is used to refer to the 'home-grown' common law of Papua New Guinea.

public benefit, thus, assuming the status of public benefit organisations, whilst the majority of local organisations were established principally for private gain.

A proliferation of community-based organisations pursuing socioeconomic goals and private gain for members (mutual benefit organisations - MBOs) is evident in the countryside, facilitated in part by special legislation that promotes entrepreneurship and growth of a cottage industry within local communities.² This informal productive sector has gradually gained reputation as a formidable force in the rural areas. Furthermore, emerging against the backdrop of a strong economy is poverty - a new problem that warrants intervention by the government, private sector and civil society. Existing on the peripheries of large-scale industrial sites are countless squatter settlements that are systematically becoming breeding grounds for crime and unemployment. This rising problem saw the emergence of a new breed of CSOs that operate mainly to tackle poverty and its associated *rascal culture* that are today seen as negative attributes of the country's economic boom.

Further, a category of growing influence in the country is that seeking environmental justice and equity for resource owners and local communities. Papua New Guinea is well-endowed with natural resources, but that richness is not reflected in the benefits derived by the people, if at all, in the development of such resources. Some of the most controversial industries in the country are mining and logging, which has gradually corroded Papua New Guinea's community lifestyle. The logging industry, for instance, *'is synonymous with political corruption, police racketeering and brutal repression of workers, women and those who questions its way...[and] provides a breeding ground for arms smuggling...and violence across the country.'*³ Taking on the might of multinationals involved in exploiting the nation's resources is an uphill battle for any simple poorly-equipped local community. The need for collective and coordinated action saw the challenge being taken up by civil society groups with a vested interest in environmental protection. It was thus acknowledged that

² One such legislation is the *Business Groups Incorporation Act 1974*

³ Centre for Environmental Law and Community Rights, 'Bulldozing Progress: Human Rights Abuses and Corruption in Papua New Guinea's Large Scale Logging Industry' (2006) 3.

civil society has a critical and important role to play in the country's democracy.⁴

In retrospect, CSOs in Papua New Guinea are mainly active in the areas of community development, youth, gender equality, human rights, good governance and transparency, environmental protection, education and capacity building, health, family welfare and domestic violence, food security and poverty alleviation. These are all areas supposedly serviced by the Government but for resource constraints, thereby warranting a working relationship and cooperation with CSOs.

II ENABLING LEGISLATIVE FRAMEWORK

A Constitutional foundation for a thriving Civil Society

The Constitution of Papua New Guinea is perhaps one of the most progressive in the region, capturing all elements necessary for a functioning democratic system of government. Whilst purporting to incorporate western principles that place greater emphasis on the rights of the individual, the Constitution similarly draws attention to the need for development of *kastom* values that promote social cohesion within society. In a region in which the freedoms of association and assembly bears the hallmarks of western liberalism, thus, not readily compatible with *kastom* which promotes collectivism, there is always call for a cautious application of such freedoms and rights. The fundamental rights and freedoms entrenched in the *Constitution of the Independent State of Papua New Guinea 1975* are qualified, thus, subject to the general qualifications prescribed in section 38 of the Constitution. By virtue of section 46, 'every person has the rights to freedom of expression and publication, except to the extent that the exercise of that right is regulated or restricted by law.' Similarly, section 47 stipulates that 'every person has the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations, except to the extent that the exercise of that right regulated or restricted by law.' It is thus obvious that

⁴ *ibid*

whilst providing the basic environment for a thriving civil society, the freedoms of expression, assembly and association are not absolute. In this connection, a restriction is deemed reasonably justifiable if imposed for the purpose of giving effect to the public interest in public safety, public order, public welfare, public safety, defence, public health, the protection of children and persons under disability, and the development of the under-privileged or less advanced groups or areas.⁵

B Purposes and Objects of CSOs

The statutory objects that render eligibility for registration are set out under various legislation, the most notable of which are the *Associations Incorporation Act 1966*, *Business Groups Incorporation Act 1974*, *Land Groups Incorporation Act 1974*, *Cooperative Societies Act 1982*, and the *Savings and Loan Societies Act 1961*. These pieces of legislation form the principal enabling legislative framework governing civil society organisations in the country. There is also a whole body of special legislation enacted by the country's Parliament for the incorporation of specific organisations. These special legislation and the specific bodies incorporated are set out in *Appendix I* of this report. Note however that the focus of this review is on the general enabling legal framework.

1 Statutory Objects

(a) Associations Incorporation Act 1966

This is the principal legislation governing CSOs in the country. Section 2 provides insight by defining the objects which qualifies an association for incorporation. Thus, an association will be rendered eligible for registration under the Act if it is formed or operated for the purpose of

providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or other objects

⁵ Section 38(1)

useful to the community and that ..[it] will apply its profits (if any) or other income in promoting its objects and...will prohibit the payment of any dividend or payment in the nature of a dividend to its members.

(b) Business Groups Incorporation Act 1974

The objects for registration can be appreciated by understanding the purposes of the Act as set out in s.1. Thus, the Act purports to facilitate and provide

(a) greater participation by local people in the national economy by the establishment by them of group business and other economic enterprises; and (b) for the use of sound principles in the management of business; and (c) some formal structure of business groups for the basic protection of the members of business groups and persons dealing with those groups; and (d) for the use of simple rules for the regulation and control of business groups; and (e) for the better and more effective settlement of certain disputes by (f) the incorporation of certain customary and similar groups, and conferring on them, as corporations, power to (i) conduct business enterprises; and (ii) borrow money; and (iii) acquire, hold, dispose of and manage land, and of ancillary powers; and (g) the encouragement of self-resolution of disputes within such groups, without requiring recourse to non-traditional courts.

(c) Land Groups Incorporation Act 1974

This Act was passed simultaneously with the *Business Groups Incorporation Act*, and was most probably enacted on a uniform policy promoting the socioeconomic development of local communities. The focus in this Act is customary landholding groups and their powers to deal with land in their corporate customary names. Thus, the Act purports to encourage⁶

(a) greater participation by local people in the national economy by the use of the land; and (b) better use of such land; and (c) greater certainty of title; and (d) the better and more effectual settlement of certain disputes, by (e) the legal recognition of the corporate status of certain customary and similar groups,

⁶ s.1

and the conferring on them, as corporations, of power to acquire, hold, dispose of and manage land, and of ancillary powers; and (f) the encouragement of the self-resolution of disputes within such groups.

(d) Cooperative Societies Act 1982

The cooperative movement has a long history in the country, dating as far back as 1947 when it was under Australian colonial administration. The movement initially consisted of simple village stores that later evolved into more diversified forms such as consumer societies and producers with marketing responsibilities for primary products, viz. cocoa, copra and coffee.⁷ The Cooperative Societies Act 1982 was the culmination of years of reform to the cooperative movement, as cooperative societies, for instance, were once required to be registered under the Companies Act as cooperative companies. Reverting to objects, s.21 of the Act stipulates that a society will be eligible for registration if its principal object is 'to promote common economic and social interest in accordance with cooperative principles.'

(e) Savings and Loan Societies Act 1961

This Act resembles credit union legislation found in other Pacific Island jurisdictions. And without doubt, the credit union movement has very strong roots in the rural areas which form the bulk of civil society in most island countries. The situation in Papua New Guinea is no exception as savings and loan societies, the equivalent of credit unions, have considerable following throughout the country, let alone, rural areas. The objects in the Act are unambiguous. Any group of persons may apply for incorporation as a society if their objects are 'to promote thrift among its members; educate its members in financial responsibility;...receive the savings of its members as contributions in the form of savings deposits; and to make loans to its members....'⁸

⁷ John Mugambwa, *The Saga of the Cooperative Movement in Papua New Guinea* (2005) 9[1] JSPL

⁸ s.9

2 Determination of Charitable, etc. Status

There is no centralised regulatory body for the conferment of charitable or public benefit status on CSOs. Thus, the status of a CSO is entirely dependent on a functional interpretation of its objects as well as the statute under which it is incorporated. Note however that the specific objects of CSOs are more clearly spelt out in their governing instruments such as constitutions, articles or rules.

For purposes of taxation and related purposes, s.25A of the Income Tax Act 1959 provides basis for implying that the Commissioner General is statutorily mandated to determine the 'charitable' status of a society, association, trust, or foundation. It is imperative that the conferment of charitable or public benefit status on CSOs be regulated under statute in order to avoid, among others, arbitrariness and potential abuse of self-conferred status.

3 Media Access and Exercise of Related Freedoms

CSOs in Papua New Guinea have over the years enjoyed a relatively free operating environment. This is demonstrated among others by the extent to which private media establishments are owned and or operated by some CSOs. Awareness programmes utilising the mass media that target corruption within the government bureaucracy, for instance, is not uncommon. A classic example is the Eco-Forestry Forum which consistently exposes through its quarterly bulletin corruption at a grand scale within the forestry sector. To date, no strict censorship laws have been enacted to prohibit or gag the media from disseminating information that is deemed anti-government. This could well be seen as indication of a healthy democracy in Papua New Guinea. But the exercise of the freedom of expression and publication in the country is not a laissez-faire affair, as all mediums of communication in any democracy will still be subject to state regulation albeit to varying degrees.

The Radio Spectrum Act 1996 regulates radiocommunication. Thus, any society or organisation wishing to operate a radiocommunication station will need to

obtain a licence pursuant to the Act.⁹ Further, r.51 of the Radio Spectrum Regulations 1997 allows for the granting of an amateur station licence ‘to a person on behalf of a school, college, club, institute or similar organisation....’ By definition, an amateur station licence allows for the operation of an amateur service through use of limited frequency bands specified or allocated by the licensing authority. Whilst restricting or regulating the exercise of the rights and freedoms enshrined in the Constitution,¹⁰ s.1 of the Act expressly stipulates that the law ‘is made for purposes of giving effect to the public interest in defence, public safety, public order and public welfare.’

Furthermore, the print media is similarly regulated by the Printers and Newspapers Act 1956 and the Printers and Newspapers Regulations 1958. By virtue of provisions of the Act, every printing press¹¹ and newspaper¹² has to be registered with the Registrar-General. Similarly, every newspaper must contain ‘the current name, occupation and place of abode of its printer and its publisher and a true description of the place where the newspaper is printed.’¹³

C Establishment and Incorporation

Registration processes are not standardised as each statute contains its own requirements and prescribed procedures for effecting incorporation. Set out below are the incorporation procedures prescribed in the following statutes: Associations Incorporation Act 1966, Business Groups Incorporation Act 1974, Cooperative Societies Act 1982, Land Groups Incorporation Act 1974, and the Savings and Loan Societies Act 1961.

⁹ s.7

¹⁰ Namely, (a) the right to freedom from arbitrary search and entry (s44); (b) the right to freedom of conscience, thought and religion (s 45); (c) the right to freedom of expression (s46); (d) the right to freedom of employment (s48); (e) the right to privacy conferred (s49); and (f) the right to freedom of information conferred by Section 51 of the Constitution.

¹¹ s.3

¹² s.5

¹³ s.9

1 Registration

(i) Associations Incorporation Act

The incorporation process is commenced by posting in a newspaper of wide circulation a notice of intention to apply for registration of an association.¹⁴ Such notice and the contents thereof require prior approval of the Registrar before publication. The rationale of such notice is to allow for any objections from the public or interested persons. Upon the expiry of one (1) month after the date of publication of the notice, an application for incorporation is to be made in the prescribed form to the Registrar,¹⁵ who, if satisfied with the application, may grant a certificate of incorporation.¹⁶ Particulars that need to be specified in the application include the name of the association, the objects and purposes of the association, the place or places where the association was formed and is carried on, and the full name, address and occupation of the applicant.¹⁷ Further requirements include a statutory declaration made by the applicant declaring to certain matters¹⁸ including the rules or trust deed of the association which ought to be submitted together with the application. Note that no minimum membership requirement is needed for registration.

(ii) Business Groups Incorporation Act

Application for registration can be made by or on behalf of a group by a minimum of three (3) members of such group's proposed committee.¹⁹ Such application can also be made orally to the Deputy Registrar who will reduce it to writing. Prior to incorporation, a notice calling for additional information deemed relevant as well as comments from the proposed dispute settlement authority of the group may be issued by the Registrar.²⁰ It is a prerequisite that

¹⁴ s.2

¹⁵ s.6

¹⁶ s.7

¹⁷ s.6(2)

¹⁸ These matters include (i) a declaration that the applicant is duly authorized by the association to make the application, (ii) that the notice was duly published in a newspaper on a certain date, and (iii) that the particulars contained in the application are true.

¹⁹ s.11

²⁰ s.12

every group applying for incorporation must have a dispute settlement authority comprising persons identified either by name or office, or as determined in such manner as specified in the group's constitution.²¹ Note that incorporation may be refused if the Registrar 'is satisfied that the group characteristics are so temporary, evanescent or doubtful that the group does not have a corporate nature.'²² Similarly, such registration may also be refused if the Registrar 'is satisfied that the group is not a customary group and has no real connection with such a group; or (b) the group contains persons who are not members of the customary group applying for incorporation; or (c) the group contains members who are not natural persons; or (d) some other form of incorporation or of organization under some other Act would be more appropriate and effective.'²³ Every business group registered under the Act bears the words "Business (Inc)" or "Business Group (Inc)".²⁴

(iii) Cooperative Societies Act

By virtue of s.21 of the Act, any seven persons who are at least 18 years of age and citizens of Papua New Guinea may apply for registration as a society. Such application for registration is to be made to the Registrar within two (2) months of the election of the proposed society's board and officers.²⁵ Note however that an application for registration will not be considered by the Registrar unless he or she is satisfied that 'a meeting of the proposed society has been held and... attended by at least seven eligible persons; and (b) the meeting has agreed to a written statement showing (i) the objects of the proposed society;...(ii) the reason for believing that the proposed society will be able to achieve its objects; and (iii) the rules under which the proposed society will operate.'²⁶ Documents to be furnished with the application are two (2) copies each of written statement as to the objects and rules agreed at a meeting of the proposed society, and²⁷

²¹ s.40

²² s.11(4)

²³ s.11(5)

²⁴ s.11(7)

²⁵ ss.23 and 24

²⁶ s.22

²⁷ s.25

two copies of the proposed rules signed by any two Directors of the proposed society; and (c) two copies of a list showing the full names, descriptions and addresses of all the Directors; and (d) two copies of a list of eligible persons who have applied for membership of the proposed society; and (e) the full name, address and office of other office-holders(if any) elected at the meeting; and (f) two copies of a statement showing the name of the society.

The registration process is deemed complete with the issuance by the Registrar of a certificate of registration and the publication of a notice of registration in the national gazette.²⁸

(iv) Land Groups Incorporation Act

The terminology used in the Act is distinct as the word ‘recognition’ is used in place of registration or incorporation. Thus, ‘on application by or on behalf of the group the Registrar may recognize a customary group of persons as an incorporated land group, by issuing to it a certificate of recognition.’²⁹ A notice of application for recognition is to be published by the Registrar in the national gazette³⁰ ‘and given to any Local-level Government in whose area the group or any of the property of the group or any property that is proposed to become property of the group by virtue of the recognition is situated; and...to any Village Court within whose jurisdiction the group is, or will on recognition come.’³¹ The application for recognition is to be accompanied by the proposed constitution, and, where required by the Registrar, a list of all members of the group. Note that a number of customary landowning groups can apply for recognition as a single incorporated land group provided they share common interests and customs. Recognition may be refused by the Registrar on such grounds as specified in ss.4 and 6 of the Act, which includes temporary and evanescent group characteristics, and the lack of customary landownership rights. A group incorporated under the Act will bear in its name the words “Land Group (Incorporated)” or “Land Group (Inc)”.³²

²⁸ s.28

²⁹ s.5

³⁰ s.6

³¹ s.33(1)

³² s.5(8)

(v) *Savings and Loan Societies Act*

Section 10(1) stipulates that a minimum of 500 persons who desire to associate themselves as a savings and loan society may apply for registration under the Act. Every such application must contain³³

- (a) details of the proposed name and address of the society; and
- (b) a description of the group of persons to which membership is to be limited; and
- (c) a list of prospective members, together with their addresses and a statement of (i) their qualifications for membership of the society; and (ii) the amount that each prospective member proposes to deposit; and
- (d) the name and address of the provisional secretary; and
- (e) a copy of the proposed rules of the society; and
- (f) such other particulars as are prescribed or required by the Registrar

A certificate of registration will be issued by the Registrar upon being satisfied that the proposed society is viable and ‘the group to which membership is limited is such that reasonable personal contact is assured among the members.’³⁴ A society registered under the Act must bear the word “Limited” abbreviated as “Ltd”.³⁵ Further note that a cooperative company registered under the *Companies Act 1997* can apply for re-registration under s.34 of this Act as a loan ad savings society.

2 Registration Authority

The current situation is characterised by a multiple of registrars appointed under different statutes. It is uncertain whether all functions and powers of those multiple registrars are conferred upon and performed by a single unit department or official within the government bureaucracy. Given the large population size of the country, the need for separate registrars and registers may bear some merit.

³³ s.10(2)

³⁴ s.11(1)

³⁵ s.13(3)

The registration of associations under that Associations Incorporation Act falls within powers of the Registrar of Companies appointed under the *Companies Act 1997*. As for business groups registered under the *Business Groups Incorporation Act*, there is a Registrar of Business Groups appointed under s.4 of the Act, with the same to be assisted by Deputy Registrars appointed by virtue of the same provision. The registration of societies under the Cooperative Societies Act is done by the Registrar of Cooperative Societies and Assistant Registrars appointed under s.2 of the Act. Similarly, a Registrar of Incorporated Land Groups is appointed under s.3 of the Land Groups Incorporation Act for purposes of managing the register of incorporated land groups. Given the nature of societies registered under the *Savings and Loan Societies Act*, the Governor of the Central Bank is charged with duties of the Registrar of Savings and Loan Societies. Note that the Registrar is also empowered to appoint Deputy Registrars for purposes of administering the Act.³⁶ The numerous registrars appointed under the above statutes provide indication of the multiple registers operated in the country. In the light of these multiple registers, prospects of centralising registration procedures and functions for CSOs appear as yet remote.

3 Management of Registers, Contents & Accessibility

As evident from the multiple registrars appointed under various statutes specified above, there is no statutory basis for a central register that operates as the single repository of information relating to CSOs. The crucial point though is that (with the exception of the Associations Incorporation Act) each and every Act expressly provides for the maintaining of a register which is accessible to the public.

Whilst the Associations Incorporation Act is ambiguous on this issue of public register, there is nonetheless provision for inspection by interested parties of documents kept in the custody of the Registrar. Thus, '[a] person may, on

³⁶ *Savings and Loan Societies Act 1961*, s.2

payment of the prescribed fee (a) inspect the documents kept by the Registrar relating to incorporated associations; and (b) require (i) a certificate of the incorporation of an association; or (ii) any other certificate issued under this Act; or (iii) a copy of or extract from any other document or any part of any other document kept by the Registrar.³⁷ This provision implies that a register of incorporated societies may be operated by the Registrar. Further, r.8 of the Associations Incorporation Regulations read with s.16 of the Act requires an association to have in its rules provisions dealing with the making and keeping of registers of members, officials and committee members.

A register of business groups incorporated under the *Business Groups Incorporation Act* and maintained by the Registrar is to contain various information including copies of applications for and certificates of incorporation, records of appeals, statements of assets and liabilities, and copies of accounts and records directed to be kept in the register by virtue of provisions of the Act.³⁸ Public access to such register for purposes of inspection of documents is, at all reasonable times guaranteed subject to the payment of a prescribed fee.³⁹

Section 89 of the *Cooperative Societies Act* requires each registered society to keep such registers and accounts as required by the Act. Entered in such registers will be particulars of directors, members and their respective shareholdings, loans and securities given made raised taken or guaranteed by the society including bonds issued and deposits received by the same. Whilst the Act is silent on whether registers kept by societies are open to the public, it nonetheless stipulates under s.17 that [t]he Registrar shall, on application by a person and on payment of the prescribed fee, permit that person to inspect the certificate of registration and the rules of a society and any other document required to be lodged with the Registrar under this Act.⁴⁰ The issuance by the Registrar of certified copies of certificates, rules and other documents lodged with the same will similarly attract a fee.

³⁷ s.28

³⁸ s.13

³⁹ s.13(4)

⁴⁰ s.17(1)

Furthermore, a register of incorporated land groups is to be kept by the Registrar under the *Land Groups Incorporation Act*. Such register is accessible to the public for a fee, and contains various information including copies of applications for and certificates of recognition. Also contained in the register are orders made by the Registrar, records of appeals, copies of accounts and records required to be kept in the register or forwarded to the Registrar, and statements made by the same.⁴¹

Whilst the *Savings and Loan Societies Act* does not specify the keeping of a register by the Registrar or the particulars to be entered therein, it nonetheless makes reference to the inspection of documents supposedly in the custody of the Registrar. Thus, by virtue of s.59(1) of the Act

A person may, on payment of the prescribed fee (a) inspect at the office of the Registrar the certificate of registration and the Rules of a society; and (b) obtain from the Registrar a certified copy of the certificate of registration of a society and a certified copy of its Rules; and (c) with the permission of the Registrar, inspect at his office and obtain from him a certified copy of, or extract from, the register of Directors, members or savings deposits of a society and the last statement of receipts and expenditure, assets and liabilities, together with the report on the annual audit referred to in Section 30(1), of a society.

Whilst inspection by non-members of a society attracts a fee by virtue of s.59(1), no fee is chargeable in respect of members and creditors of any such society seeking the services available under the said provision.⁴²

D Termination of Incorporation and Operation

The following mechanisms are available for termination of the existence of a registered association, group or society: (i) voluntary winding-up upon application, (ii) winding-up by court, or (iii) winding-up by the Registrar on specified grounds. These will be briefly discussed below.

⁴¹ s.7

⁴² s.59(2)

(a) *Associations Incorporation Act*

The provisions of the *Companies Act 1997* relating to the winding-up of unregistered companies apply to associations incorporated under the Associations Incorporation Act. Similarly, the Registrar may exercise his or her powers under s.34 of the Associations Incorporation Act for the cancellation of incorporation of an association. The said provision can be invoked if 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....'⁴³ Note that such cancellation can only be done after an enquiry as to the above grounds is lodged by the Registrar with the public officer⁴⁴ of the association.

(b) *Business Groups Incorporation Act*

By virtue of s.28 of the Act, the winding-up of a business group can be done by the Registrar either of his or her own motion, or at the request of such group or its creditors, or in giving effect to the report of a dispute settlement authority⁴⁵ or a court of competent jurisdiction. Winding-up by the Registrar can be done of his or her own motion if s/he is reasonably satisfied that⁴⁶

- (a) a business group has ceased to act as such; or
- (b) the circumstances of or circumstances affecting a business group have become such that, if the group were applying for incorporation under Section 11, he would refuse incorporation; or
- (c) a business group is unable, and is unlikely within a reasonable time to become able, to pay its debts; or
- (d) a business group has refused or failed to comply with a direction of the Registrar under Section 38; or
- (e) the affairs or activities of a business group, or of the dispute-settlement

⁴³ s.34(1)

⁴⁴ By virtue of s.13, a public officer is to be appointed by the committee of an incorporated association within 14 days of incorporation.

⁴⁵ By virtue of s.40 of the Act, every incorporated business group must have at least one dispute settlement authority to be composed of members specified in the constitution of such group.

⁴⁶ s.28(2)

authority of a business group, are so conducted as to be, subject to any relevant custom, oppressive or unfair to any of the members; or (f) a business group has failed to provide a statement of its assets and liabilities for not less than two successive years; or (g) for any other reason it is just and equitable that the affairs be wound up....

Further note that a creditor or prospective creditor can bypass the Registrar by petitioning the National Court to wind-up an incorporated group. Such creditor can file similar petition in the event the Registrar has failed to wind-up such group upon request.⁴⁷ As to the latter, such petition can also be made in the event an appeal to the Minister against the decision of the Registrar in refusing to wind-up a group has failed. A petition under s.29 will render Part XVIII of the *Companies Act* applicable mutatis mutandis as if the business group were a company.

(c) *Cooperative Societies Act*

A society may be wound up (a) voluntarily if so resolved by special resolution of the members⁴⁸ or (b) by the Registrar on such grounds as specified in the Act,⁴⁹ or (c) by order of the National Court.⁵⁰ Voluntary winding-up by special resolution requires the votes of at least two-thirds ($2/3$) of the members present and voting.⁵¹ Such resolution will not come into effect unless and until approved by the Registrar.⁵² The powers of the Registrar to compulsorily wind-up a society under s.128 can be exercised on the following grounds:

(a) that the number of members of the society has been reduced to less than seven; (b) that the society has not commenced business within 12 months, or such further period as the Registrar may in his discretion have allowed from the date of its registration; (c) that the society has not carried on any business for a continuous period of more than six months; (d) that an event or contingency has

⁴⁷ s.29

⁴⁸ s.127

⁴⁹ s.128

⁵⁰ s.129

⁵¹ s.82(1)

⁵² s.82(3)

occurred and the rules provide that on the occurrence of that event or contingency the society shall be wound up; (e) that the registration of the society was obtained by fraud or mistake; (f) that the society exists for an illegal purpose; (g) that the society has, after notice of a breach of this Act or its rules, refused or failed to take such steps as the Registrar has directed in relation to that breach.

A defunct society can similarly be struck off the register if the Registrar has reasonable cause to believe that a registered society is no longer carrying on business or has ceased operation.⁵³ The procedure involved a one-month notice seeking confirmation from the society as to its current status, a non-response to which will warrant issuing of an additional notice for the cancellation of the society at the expiry of three months from the date of such notice.⁵⁴

(d) *Land Groups Incorporation Act*

The approach in this Act is almost similar to that in the Business Groups Incorporation Act. Thus, an incorporated land group can be wound up by the Registrar either of his or her own motion, or at the request of such group, or in giving effect to the report of a dispute settlement authority or court of competent jurisdiction.⁵⁵ Winding-up by the Registrar can be done of his or her own motion if s/he is satisfied that⁵⁶

(a) an incorporated land group has ceased to act as such; or (b) the circumstances of or circumstances affecting an incorporated land group have become such that, if the group were applying for recognition under Section 5, he would refuse recognition; or (c) an incorporated land group is unable, and is unlikely within a reasonable time to become able, to pay its debts; or (d) the affairs or activities of an incorporated land group, or of the dispute-settlement authority of an incorporated land group, are so conducted as to be oppressive or unfair to any of the members; or (e) for any other reason it is just and equitable that the affairs be wound up....

⁵³ s.148(1)

⁵⁴ s.148(2)

⁵⁵ s.15(1)&(2)

⁵⁶ s.15(2)

A reasonable opportunity is to be given to the incorporated land group and other interested parties to make representations on the question of proposed winding-up.⁵⁷

(e) *Savings and Loan Societies Act*

The Registrar may by notice published in the gazette order the winding-up of a society upon request by at least two-thirds of its members, or if the number of members is established to reduce below 20.⁵⁸ Additionally, the Registrar may order winding-up of a society if

the society has not commenced business within six months from the date of its registration under this Act, or has suspended business for a period of more than six months; or (d) the period (if any) fixed for the duration of the society has expired; or (e) an event has occurred on the occurrence of which the regulations or the Rules provide that the society shall be wound up; or (f) the registration of the society has been obtained by mistake or fraud; or (g) the society exists for an illegal purpose; or (h) the society has wilfully, and after notice from the Registrar, contravened or failed to comply with this Act or the Rules; or (i) the society is unable to pay its debts; or (j) a creditor of the society...requests, in the prescribed manner, that the society be wound up; or (k) in the case of an association—the Registrar is of opinion that the association is unable to operate efficiently; or (l) in the opinion of the Registrar, it is in the best interests of the members that the society should be wound up; or (m) accumulated losses of a society have eroded members' savings deposits; or (n) irregularities disclosed by the inspection and audit are serious in nature and remedial actions taken do not achieve normality of operations of a society.

The grounds prescribed for the exercise of power by the Registrar seems to be exhaustive and covers every possible scenario warranting the winding-up of a society.

⁵⁷ s.15(4)

⁵⁸ s.51

E Assets and Liabilities upon Liquidation or Winding-Up

1 Associations Incorporation Act

Upon winding-up of an association, no member is liable 'except as provided in the rules of the association, to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding-up of the association.'⁵⁹ After payment of the debts and liabilities of an association, and the costs, charges and expenses of winding-up, the surplus assets can be distributed subject to a resolution passed by a majority of at least two-thirds (2/3) of its members.⁶⁰ It is ambiguous amongst or to whom the surplus assets should be distributed. Such resolution is implemented by order of the National Court which can also alter the same on the grounds that the resolution is unjust or has not been passed.⁶¹

2 Business Groups Incorporation Act

The liability of a member of a business group is, upon winding-up, limited to the amount of his or her interest in the property of the group and any amounts owing to the same.⁶² This will not apply if the constitution or any relevant custom of the group states otherwise. It is worth noting that this limitation does not extend to a committee member who will be equally liable beyond his liability as a member of the group, for any debts of the group incurred during the period in which he was a member of the committee. This provision has the potential of deterring members from vying for or taking up positions within the committee of a business group.

Further, the property of a dissolved group remaining after the settlement of all debts will be vested by order of the Registrar⁶³

⁵⁹ s.26

⁶⁰ s.32(2)

⁶¹ s.32(3)

⁶² s.34

⁶³ s.35(1)

(a) as provided in the constitution of the group; or (b) in default of any such provision, as agreed on by the group; or (c) in default of any agreement or provision referred to in Paragraph (a) or (b), in accordance with the relevant custom; or (d) in default of any agreement, provision or custom referred to in Paragraph (a), (b) or (c), as determined by the dispute-settlement authority.

Outstanding property remaining after the dissolution of a group will be vested in the Registrar 'for all the estate and interest (legal and equitable) of the group in it at the date when the group was dissolved, together with all claims, rights and remedies that the group then had in respect of it.'⁶⁴ It is thus within the powers of the Registrar to sell, dispose of or deal with any such property as considered appropriate.

3 *Cooperative Societies Act*

A liquidator is appointed by the Registrar for cases of winding-up under ss.127 and 128, or the Court for purposes of winding-up under s.129 of the Act.⁶⁵ Such liquidator can be removed by the Registrar or Court, whichever is the case, in the event he or she 'dies or is for any reason unable to continue in office or desires to be relieved of his office....'⁶⁶ Note however that such removed liquidator is not relieved of any liability arising from an act, omission, or default made during his or her tenure as liquidator.⁶⁷ The Act requires the liquidator to determine the creditors and debtors of a society,⁶⁸ its assets and liabilities,⁶⁹ and to provide a final statement to the Registrar or Court disclosing particulars of the disposition of assets of the society.⁷⁰ The Act however fails to provide in detail a scheme of distribution or the order of priority for distribution of surplus assets of the society. These matters are impliedly left for further directions to be sought by the liquidator from the Registrar or Court.⁷¹

⁶⁴ s.35(2)

⁶⁵ ss.133-135

⁶⁶ s.136(1)

⁶⁷ s.136(2)

⁶⁸ s.138

⁶⁹ s.140

⁷⁰ s.145

⁷¹ s.143

The payment of debts of an incorporated land group upon winding-up is detailed in Schedule 1 of the Act. Thus, by virtue of para.1.3 of the Schedule, creditors (including secured creditors) who are not members of the group have priority over all other categories, whilst winding-up expenses and all incidental costs have second priority. All other subheads including rates, taxes, advances made to the group, and goods supplied or services rendered to the same that are due and payable attracts third priority. An interesting mechanism in the Act is the right conferred on creditors to take possession for a maximum period of five (5) years of customary land being property of the incorporated group for purposes of satisfaction of the debts.⁷² Note however that this right will not be invoked if so much of such land is inadequate to reasonably satisfy the subsistence requirements of members of the group and their families.

Further, the liability of a member of a group is, upon winding-up, limited to the amount of his or her interest in the property of the group and any amounts owing to the same.⁷³ This is excepted where the constitution or any relevant custom of the group provides otherwise. As regards distribution of the surplus assets or property of the group (excluding customary land), the Registrar will vest the property after settlement of all debts⁷⁴

(a) as provided in the constitution; or (b) in default of any such provision, as agreed on by the group; or (c) in default of any provision or agreement referred to in Paragraph (a) or (b), in accordance with any relevant custom; or (d) in default of any provision, agreement or custom referred to in Paragraph (a), (b) or (c), as determined by the dispute-settlement authority.

As hinted above, *‘any customary land owned by the group reverts to the persons who would be the customary owners if the group had never been recognized*

⁷² sch.1, para.1.5

⁷³ s.17

⁷⁴ s.18

*under ...[the] Act.*⁷⁵ But note the effect of para.1.5 of Schedule 1 to the Act which permits creditors of a group to take possession for a maximum period of five (5) years of customary land owned by the group for purposes of satisfaction of debts. These two provisions are not compatible given the subject matter of the Act is customary land. In simple, para.1.5 of the Schedule has the potential of disrupting cohesion, as in any traditional Melanesian society, land is sacred thus central to social stability within society.

5 *Savings and Loan Societies Act*

In the event a society is being wound up, past and present members of the society are liable to contribute to the assets of the society such amount as appear sufficient for the payment of ‘debts and liabilities of the society...costs, charges and expenses of the winding-up, and any sums required for the adjustment of the rights of the contributories among themselves.’⁷⁶ As special exception, a past member will however be exempted from liability in the event he or she had ceased to be a member for at least one year prior to the commencement of winding up. Exemption will similarly apply where the debts and liabilities were contracted when the member had already ceased membership. Note that the winding-up of a society is done by a liquidator appointed by the Registrar, and conferred with such powers as prescribed.⁷⁷ The liquidation process is deemed complete with the liquidator furnishing to the Registrar ‘an account and balance sheet showing the assets and liabilities of the society at the commencement of winding-up, and the mode in which the assets and liabilities have been applied and discharged.’⁷⁸ Note that the assets and liabilities of a liquidated society may be taken over by another society upon the approval of the Registrar.⁷⁹

⁷⁵ s.19

⁷⁶ s.54(1)

⁷⁷ s.52

⁷⁸ s.56

⁷⁹ s.55

F Appeals and Remedies

Whilst some statutes have relatively rigorous appeal regimes, others incorporate simple approaches that are less restrictive as regards the basis of appeal. The Associations Incorporation Act, for instance, falls within the first category, whilst the Savings and Loan Societies Act falls within the latter. Thus, the latter contains only a single provision for appeals which stipulates that any person 'aggrieved by a decision of the Registrar or of a liquidator may, within 30 days after the decision or within such further time as the National Court in any particular case allows, appeal as prescribed to the National Court, whose decision is final.'⁸⁰ By virtue of s.44 (and Part V inclusive) of the Business Groups Incorporation Act relating to the settlement of disputes, no decisions made by a dispute settlement authority or a court (other than the National Court) will be subject to appeal or review by a court. However, a decision of the Registrar will still be subject to appeal to the Minister. Thus, any 'person aggrieved by a decision of the Registrar...may appeal to the Minister...[who may] uphold the appeal or reject the appeal or refer the matter back to the Registrar for reconsideration, with such comments or directions as the Minister thinks appropriate....'⁸¹

Further, s.5 of the *Associations Incorporation Act* provides for appeals to the Principal Magistrate within 28 days of notice of the decision of the Registrar in affirming or negating an objection against incorporation of an association. An appeal to the Principal Magistrate against the cancellation of an association by the Registrar can similarly be lodged by the public officer,⁸² a creditor or member of an association within three (3) months of such cancellation.⁸³ The Act further provides for appeals to the Minister against the Registrar's decision to reject an application for incorporation,⁸⁴ or against the directions of the Registrar in purporting to effect certain actions or changes to ensure

⁸⁰ s.62(1)

⁸¹ s.45

⁸² The committee of an association is required under s.13 to appoint a natural person to be the public officer of the association.

⁸³ s.35

⁸⁴ s.36

compliance with the intentions of the Act.⁸⁵ Note that no time frames are set for the institution of appeals under ss.36 and 38.

Section 25 of the *Land Groups Incorporation Act* stipulates that all proceedings or decisions the subject of dispute settlement processes under Part IV of the Act will not be subject to appeal or review. The provision nonetheless provide for the ‘reopening’ or review of a matter already decided by further referral to an ad hoc dispute settlement authority or a Village Court⁸⁶ sitting with members of the original as well as ad hoc dispute settlement authorities, and ‘such other customary authorities having customary jurisdiction over the members of the group as the Village Court thinks appropriate...’⁸⁷ Note however that for all other matters under the Act, appeals can be made to the Minister⁸⁸ or the District Court⁸⁹ against decisions of the Registrar. A rather interesting provision is s.34 which states that no legal representation will be permitted for all proceedings under the Act except for appeals in respect of debts under Sch.1.9.

The *Cooperative Societies Act* provides for the lodging of appeals to the Minister under s.18 against all decisions of the Registrar. Any such appeal must be made within one month of receipt of the decision of the Registrar. Additionally, an appeal can also be made to the National Court for the cancellation or variation of a resolution under s.110 requiring the placing of a society under official management.⁹⁰ Such appeal can be lodged within 14 days of passing of the resolution ‘by any creditor to whom the society owes, or representative of a group of creditors to whom collectively the society owes, more than 10% of the total unsecured debts of the society, or any member holding, or representative of a group of members holding collectively, not less than 10% of the paid up capital of the society...’⁹¹

⁸⁵ s.38

⁸⁶ s.25(2)

⁸⁷ s.25(4)(e)

⁸⁸ s.26

⁸⁹ Sch.1.9(2). This applies to orders made by the Registrar for the payment of debts upon winding up.

⁹⁰ s.122

⁹¹ s.122(1)

A striking provision in the *Cooperative Societies Act* is s.148(5) which provides for re-instatement to the register the name of a society being earlier struck off by the Registrar on the ground of being defunct. An appeal by way of application to the Court can be made by an aggrieved person within 15 years from the date of striking off from the register the name of the society. There may be good rationale or policy objectives for this excessively enlarged time period, but it potentially creates room for complacency, unnecessary future complications, disruption to management of the register, and undue prolongation of a matter that would otherwise be brought to finality on a timely basis.

III Administration and Governance

A Umbrella Organisation – Melanesian NGO Centre for Leadership

The Melanesian NGO Centre for Leadership (MNCL) is deemed successor to the PNG National Association of NGOs (NANGO) which died a natural death due to complacency and a perceived failure on the part of the CSO community. Efforts to revive NANGO in 2001 during the CDI/ACFID-NGO workshop proved unsuccessful when participants at the said workshop resolved otherwise.⁹² Nevertheless, MNCL now functions as the umbrella organisation for CSOs in Papua New Guinea. As its vision, MNCL works for⁹³

Peace and security amongst all our people [including] easy and equal access to basic information, social services and a sustainable livelihood. [MNCL also] envision a strong, vibrant NGO community, operating at all levels of society with well resourced, technically competent and accountable organisations led by skilled women and men dedicated to serving the best interests of the people and communities with whom they work.

⁹² Felicity Pascoe, *Reaching the peak: Contrasting experiences of NGOS in Solomon Islands and Papua New Guinea* (Centre for Democratic Institutions, ANU). The workshop referred to was jointly conducted by the Centre of Democracy Institutions and the Australian Council For International Development.

⁹³ www.piango.org/png

The Centre also has a mission that *'draws on the strength of Papua New Guinea's rich cultural heritage to promote social change and community development through NGO excellence and servant leadership.'*⁹⁴ Its current activities and strategic areas of focus include education and training, organisational support services, information and network programming, and governance. The multiplicity of its activities does not however confer upon MNCL "the teeth to bite" in terms of supervisory powers and the ordering of audits and investigations into accounts and affairs of member organisations. Whilst MNCL does not have such powers, it nonetheless has the support of numerous NGOs operating in the country, with an estimated nationwide membership of approximately 94.⁹⁵ But despite such level of affiliation, the figure portrays a different image of the country drawn against the general trend in the region characterised by a steady increase or even proliferation of CSOs. With a population of approximately 6-million people, the membership figure of 94 is almost equivalent to the estimated 100 CSOs registered in Samoa – a country with a population of just around 200'000 people.⁹⁶ But this relatively low affiliation figure may have been attributed to numerous factors, including the possibility of having in operation a number of umbrella bodies or coalitions with specific sectors of focus.⁹⁷ For instance, the Eco-Forestry Forum represents a coalition of NGOs focussing on environmental issues; the National Council of Churches is a coalition of religious NGOs, and the Madang NGO Forum is a territorially-based group of NGOs.⁹⁸ In any event, it was acknowledged that there is a noticeable weakness in the area of NGO leadership in the country which in turn impacted negatively on the level of coordination and cooperation within and between CSOs at the national level.

⁹⁴ *ibid*

⁹⁵ As at 31 January 2008.

⁹⁶ Tuvalu, a country with a population of just around 12'000 people (ie. 500 times less than the population of PNG) has an estimated membership of 50 NGOs which are affiliated to TANGO-the CSO umbrella body.

⁹⁷ Attempts by the author to verify this possibility has been unsuccessful.

⁹⁸ Pascoe, above, n 92.

B Governing Bodies

This section will briefly set out the types and forms of governing bodies that manage the affairs of incorporated groups, associations, and societies.

(i) Associations Incorporation Act

Incorporated associations are managed by committees elected according to their rules. Thus, the rules of an association must provide for such matters including the election or appointment of members of a committee, terms of office, and the filling of vacancies.⁹⁹

(ii) Business Groups Incorporation Act

The governing body of a business group is the committee appointed or elected according to its constitution. It is a requirement that membership of such committee must not be less than three (3).¹⁰⁰

(iii) Cooperative Societies Act

Section 66 of the Act stipulates that ‘the business and operations of a society shall be managed and controlled by a Board of Directors, and for that purpose the Board shall have and may exercise...all the powers of the society as if they had been expressly conferred on the Board by the society.’ Members of a board are elected according to the rules of a society. It is a requirement that a society must have at least three directors.¹⁰¹

⁹⁹ Sch.1, para.5

¹⁰⁰ s.14

¹⁰¹ s.67(2)

(iv) Land Groups Incorporation Act

An incorporated land group is to be managed by a committee appointed or elected according to its constitution. Thus, the latter must provide for the title, composition, membership, and manner of appointment of the committee.¹⁰²

(v) Savings and Loan Societies Act

A more rigorous management regime is prescribed for societies incorporated under the Act. Thus, a society will be managed by a Board of Directors consisting of at least five (5) members, a Supervisory Committee of at least three (3) members,¹⁰³ and a Loans Committee of at least three (3) members.¹⁰⁴ Members of the Board are eligible for membership of the Loans Committee. Members of the Board and Supervisory Committee are elected at the annual general meeting of a society, whilst the establishment of the Loans Committee is required to be prescribed in the rules of a society.

C Powers & Duties

Outlined below are the prescribed powers of incorporated bodies which are or may be exercised by their governing bodies. Whilst the powers prescribed in legislation are broad, detailed powers and functions are normally set out in the rules bylaws or constitutions of registered associations, groups or societies.

(i) Associations Incorporation Act

Upon incorporation, an association 'is a corporation with perpetual succession and a common seal and may acquire, hold and dispose of property and is capable of suing and being sued in its corporate name.'¹⁰⁵ In relation to its powers to hold property, an incorporated association may, in its name, 'hold, purchase or take on lease any land and sell, exchange, mortgage, lease or build

¹⁰² s.8(1)

¹⁰³ s.25

¹⁰⁴ s.26

¹⁰⁵ s.10

on the land (with power to alter and pull down buildings and rebuild) and otherwise deal with the land as fully and effectually as a natural person could do.¹⁰⁶ Additional powers of an incorporated association which may be exercised subject to any restrictions or prohibitions in its rules or trust deed are¹⁰⁷

to act as trustee for any other association which has the prescribed qualifications for incorporation; and (b) to 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) to 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) to open and operate on bank accounts; and (e) to 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) to 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.

(ii) *Business Groups Incorporation Act*

The incorporation of a business group renders it the status of a corporation with perpetual succession, thus, may sue and be sued in its own name, and for purposes of a 'more effective exercise and performance of its powers and functions, may do and suffer all things that a company may do or suffer.'¹⁰⁸ By virtue of s.18 of the Act, a business group may acquire, hold and dispose of land (other than customary land) and all rights appertaining thereto. It may similarly invest in securities, open and operate bank accounts, borrow money by way of fixed charge over assets of the group, and make repayments of raised or borrowed money as well as debts and liabilities through giving of mortgages, securities or charges over certain property of the group.¹⁰⁹ Note however that a business group is prohibited from borrowing money from the public or making any invitations to the same to deposit money with or lend money to the

¹⁰⁶ s.11

¹⁰⁷ s.20

¹⁰⁸ s.17

¹⁰⁹ s.18(2)

group.¹¹⁰ Additionally, a business group is permitted to distribute any profit to members (other than non-native members) of the group after the lodgement of a statement of its assets and liabilities with the Registrar.¹¹¹

(iii) Cooperative Societies Act

The registration of a society renders it a body corporate with perpetual succession with the powers to acquire and hold property, enter in binding agreements, institute and defence legal proceedings, and ‘do all things necessary for the furtherance of its objects....’¹¹² The general powers of a society which may be exercised subject to its rules include the power to¹¹³

raise money on loan for any of the objects of the society; (b) receive money on deposit; (c) acquire, by purchase or otherwise, shares in any other society; (d) make advances to its members against products delivered to the society; (e) invest in shares of companies carrying on business in the country or elsewhere when that investment is approved or is of a class approved by the Registrar.

Any net surplus of a society may, after payment of 20% of such surplus to the Statutory Reserve Fund and with prior approval of the Registrar, be distributed to members by way of either a dividend on shares or a bonus or rebate.¹¹⁴

(iv) Land Groups Incorporation Act

By virtue of s.11 of the Act, a land group is upon incorporation a body corporate with perpetual succession attaining the power to sue or be sued in its own name, and ‘may do and suffer all things that a corporation may do or suffer.’ Whilst the powers of an incorporated land group is confined to land, its use and management, it can similarly

¹¹⁰ s.18(3)

¹¹¹ s.26

¹¹² s.30

¹¹³ s.38(2)

¹¹⁴ s.95

acquire, hold and dispose of customary land and rights in or in respect of customary land, in the manner (if any) and to the extent (if any) allowed by custom; and (b) acquire, hold and dispose of other land and rights in or in respect of other land; and (c) use and manage the land, or enter into agreements for the use or management of it; and (d) borrow money or accept property on credit...and (e) distribute any product of the land or any profits arising out of the use or management of it, and has any other powers necessary or convenient for the exercise of those powers.

(v) *Savings and Loan Societies Act*

A society upon registration becomes a body corporate with perpetual succession and the power to hold property, enter into contracts, institute and defend legal proceedings, and 'do all things necessary or convenient for the purposes of its constitution.'¹¹⁵ Further, an incorporated society may¹¹⁶

deposit money with an association of which it, or of which an association of which it is a member, is a member; and (b) deposit money in a bank; and (c) raise money on loan, subject to the approval of the Registrar, for the objects of the society and mortgage or pledge its property as security for the loan; and (d) invest funds in securities of or guaranteed by the State, or in other prescribed securities; and (da) invest funds in any institution, subject to the approval of the Registrar; and (e) insure its loans, funds or property against loss; and (f) hold, buy, lease, sell, surrender, exchange, mortgage or otherwise deal in property; and (g) do all other acts and things that are incidental or conducive to, or consequential on, the attainment of its objects.

In the case of loans, a society may exercise its power to grant a loan to a member and charge an interest thereon.¹¹⁷ However, such interest may not exceed one per centum (1%) per month on the unpaid balance of the loan

¹¹⁵ s.13(2)

¹¹⁶ s.15

¹¹⁷ s.42(2)

unless approved otherwise by the Registrar.¹¹⁸ Similarly, a society may charge, subject to the approval of the Registrar a levy or fee for the administration of a loan account.¹¹⁹

D Audit & Reporting Requirements

The preliminary question is whether certain statutory reporting and audit requirements are imposed on registered associations, groups or societies. There is strong argument that CSOs are private organisations, thus, should be accorded as much privacy as that enjoyed by individuals. Whilst that argument bears merit, there are certain factors that render it necessary for an appreciable level of accountability to be achieved in terms of public scrutiny into the affairs of CSOs. Such factors include the significant tax or similar benefits received from the state, funding from the public through donations gifts or fundraising activities, and the involvement of CSOs in activities affecting, to various degrees, the public. Besides public registers accessible to the public, there are mechanisms of accountability incorporated in legislation. These include annual audits, lodging of annual reports with the Registrar, and or the publication of statements.

The *Associations Incorporation Act* requires the committee of an association to have the financial affairs of the association audited properly every 12 months by a competent person who is not a public officer or member of the committee.¹²⁰ Similarly, the books and papers of the association may be inspected by the Registrar as and whenever required.¹²¹ Further, s.9 of the *Business Groups Incorporation Act* empowers the Registrar to inspect the book, register or records kept by a business group for purposes of determining whether an incorporated business group is complying with the Act.¹²² An annual statement of assets and liabilities is similarly required to be prepared by

¹¹⁸ s.42(5)&(6)

¹¹⁹ s.42(10)

¹²⁰ s.23

¹²¹ s.33

¹²² s.9

the committee of a business group and lodged with the Registrar.¹²³ Note that accounts and records furnished to the Registrar will be kept in the register of business groups,¹²⁴ thus, accessible to the public.

The *Cooperative Societies Act* prescribes a stringent regime to keep registered societies in check. Thus, the Registrar or any person appointed by him or her may examine all documents relating to the affairs of a society, as well as inspect, and count the cash and security in the custody of the same.¹²⁵ Distinct from other organisations, the operations of cooperative societies and functions of the Registrar, vis-à-vis functioning of the Act, are required by virtue of s.19 to be the subject of an annual report forwarded by the Registrar to the Minister for tabling in Parliament. Annual returns which must be forwarded by a society to the Registrar include a statement of the assets and liabilities of that society at the end of the financial year, and a copy of the audit report on the same.¹²⁶ As to the latter, s.98 of the Act stipulates that '[t]he accounts of a society shall be audited annually at the close of the financial year and at such other times (if any) as the rules provide.' Besides the Registrar, an audit report is similarly required to be forwarded to members of the society, or where impracticable, published by exhibition in the registered office of the society.¹²⁷ Note that such audit report forms part of the register of cooperative societies which can be inspected by the public.¹²⁸

The *Land Groups Incorporation Act*, whilst falling short of expressly providing for audit requirements nonetheless empowers the Registrar to 'direct that copies of the accounts and records [of the affairs of a group] be given to him to be kept in the register of incorporated land groups.'¹²⁹ Such accounts and records are normally prepared at the direction of the dispute settlement authority.¹³⁰

¹²³ s.23

¹²⁴ See s.24(2)

¹²⁵ s.12

¹²⁶ s.88

¹²⁷ s.102

¹²⁸ s.85

¹²⁹ s.27(3)

¹³⁰ s.27(2)

Further, the accounts and records of financial transactions of a society registered under the *Savings and Loan Societies Act* are to be audited annually by the Registrar or any person authorised by him,¹³¹ with reports of the same to be furnished to the Board of the society.¹³² The supervisory committee of a society is also charged with the responsibility to examine the affairs of the society, audit its books at least on a quarterly basis, and submitting an audit report to the annual general meeting. Moreover, s.50 of the Act provides that ‘each society shall [at the end of each financial year] send to the Registrar an audited statement of the receipts and expenditure, assets and liabilities of the society...[including] bi-annual accounts...and such other information as is required by the Registrar.’ It seems two separate audits by two distinct institutions – the Registrar and the Supervisory Committee – are prescribed in the Act. Finally, the functions of the Registrar under the *Savings and Loan Societies Act* are also the subject of an annual report to be furnished by the same to the Minister.¹³³ This is almost identical to the approach in the Cooperative Societies Act save for the additional process of tabling such report in Parliament by the Minister.

E Distribution of Profit & Gain

This section looks briefly at membership or mutual benefit organisations (MBOs) which are by nature operating for purposes of advancing the socioeconomic interest of members. The task therefore is to determine the extent to which legislation permits, if any, the distribution of profit or other gain to members. Whilst it is acknowledged that all CSOs registered under the foregoing legislation do derive in one way or another income or profit from various sources or economic activities, there is ambiguity in addressing this issue in some legislation, viz. *Associations Incorporation Act*, *Land Groups Incorporation Act* and the *Savings and Loan Societies Act*. In the absence of any such provisions, it cannot be determined whether members are prohibited from deriving personal gain or benefit from the income or profit of such organisations

¹³¹ s.4(1)

¹³² s.4(3)

¹³³ s.6

just by their mere status as members. The approach in the Cooperative Societies Act and the Business Groups Incorporation Act is much clearer and unambiguous, as organisations registered thereunder are deemed MBOs. In the case of incorporated land groups and the savings societies, some gain is nonetheless derived by members.

Section 13(2) of the *Land Groups Incorporation Act* stipulates that the product of land or any profit arising from the use and management of the same may be distributed by an incorporated land group. It remains ambiguous however whether entitlement to benefit from such distribution accrues to members of the group only. The *Savings and Loan Societies Act* provides for the payment of an interest of not more than 7% on the deposit of members.¹³⁴ Such interest may be increased upon approval of the Registrar.¹³⁵ Logically, the interest paid is normally sourced from the profits, if any, made by a society.

The *Business Groups Incorporation Act* expressly provides for the payment of dividends to members after meeting all liabilities. Thus, after the lodging of its statement of assets and liabilities with the Registrar the committee of a business group may distribute to the members of the group, in such manner as it thinks fit, all or any of the distributable profit of the group earned during the period to which that statement relates.¹³⁶ Note however that it is an offence to distribute any such profit to a non-native regardless of whether he or she is a member or not.¹³⁷ Furthermore, the net surplus of a society incorporated under the Cooperative Societies Act may be distributed to members by way of dividend on shares, or bonus or rebate in cash or shares to members.¹³⁸ Such distribution may be made after transfer of an amount equivalent to 20% of the net surplus to the Statutory Reserve Fund of the society.¹³⁹

¹³⁴ s.48

¹³⁵ s.48(2)

¹³⁶ s.26

¹³⁷ s.26(2)

¹³⁸ s.95

¹³⁹ See s.92

F Conflict of Interest & Accountability

Matters of conflicts of interest and the accountability of executive officers or members of the decision-making body or employees of a CSO are normally left to be addressed in the internal governing instruments of such organisation. Thus, special internal rules relating to conflict of interest are in general adopted by CSOs to reflect their own structures, operating environment and circumstances.

In South Pacific island countries (inclusive of Papua New Guinea) with legal systems based on the common law tradition, the moral and or legal duty to avoid a conflict of interest is an established legal doctrine of general application to those in fiduciary positions or positions of trust. As such, the trend or practice in the region shows disinclination towards the prescription of rules in legislation affecting CSOs for the prevention of conflict of interest. This is the situation with all legislation reviewed herein. Similarly, the doctrine governing conflict of interest has been well-developed by courts in the region, thus, is not necessarily a mysterious area to founders, directors or employees of CSOs. The more crucial area is enforcement of the doctrine by members of an organisation.

IV Economic Activities & Tax incentives

This part looks at the economic activities of CSOs and the tax incentives that they may enjoy as PBOs or MBOs. The first section looks at fundraising or revenue-producing activities in which CSOs may engage on an occasional, random or irregular basis. Discussion will focus on the types of privileges, if any, to which a CSO may be entitled, thus, avoiding what are otherwise seen as strict legal requirements for the lawful engagement in state regulated economic activities. The second part focuses on the types of taxes and exemptions that may apply in respect of the operation and income of CSOs as well as the interest of donors.

A Fundraising Activities

Special treatment afforded to CSOs in the facilitation of their fundraising activities are in various forms as demonstrated in the *Gaming Act 1959*, *Gaming Machine Act 1993*, and the *Liquor (Licensing) Act 1963*. Thus, a PBO or MBO may be exempted from complying with certain statutory requirements, or be the recipient of a permit to engage in what is otherwise a restricted activity, or is given a waiver of fees.

Section 5(2) of the Gaming Act exempts from distribution the gross takings from a lottery or totalizator conducted in relation to a horse-race if at least 'one-third is expended for a social, charitable, educational, religious or other purpose approved by the Provincial Administrator of the province in which the horse-race is held....' This exemption applies in light of the distribution formula prescribed under s.5(1) which requires 5% of the gross takings to be paid to the State, at least 85% to be paid out as prize money, and not more than 10% to be retained by the racing club.

The *Gaming Machine Act* provides for the legalisation and control of gaming machines and establishments in the country. Thus, a permit is needed for one to keep and operate a gaming machine within his or her premises. By virtue of s.25(2) of the Act, '[t]he Secretary of, or other person nominated for the purpose by, an organization or body established for social...literary, cultural or sporting purposes may make application to the Board on behalf of that organization or body for a special permit to keep an approved gaming...at a specified site for a period not exceeding one week and to operate such gaming machine' Thus, a sporting, cultural, literary or social organisation may apply for a special permit (opposed to an ordinary permit) to engage in fundraising activities with the use of gaming machines. Note however that no waiver of fees will apply for a special permit acquired under the Act. Further, the fee for an occasional licence issued under the *Liquor (Licensing) Act* may be waived by the Licensing Commissioner if profits made or to be made out of the sale of liquor under the said licence is to be applied principally for a bona fide charitable purpose.

B Tax Exemption and Deductions

(i) Stamp Duty

The legislative approach towards the issue of stamp duty is twofold; (i) a general exemption in the *Stamp Duties Act 1952*, or (ii) a special exemption by specific reference in a particular statute. A classic example of the latter is s.167 of the *Cooperative Societies Act* which stipulates that the Minister may waive stamp duty payable by a society

on an instrument or class of instruments on which stamp duty would, but for that notice, be payable by that society, those societies or that class of societies, as the case may be or (b) a fee payable by those societies, that society or the class of societies, as the case may be, in respect of the registration of a document or class of documents.

Provisions in the *Stamp Duties Act* are extensive and cover numerous transactions and instruments that directly or indirectly relate to the functioning and operation of CSOs. Thus, Schedule 1 to the Act prescribes detailed categories of exemptions that apply to organisations, societies or institutions that operate for religious, philanthropic, charitable, educational, or community service purposes. Thus, the following instruments or transactions made to or in the name of any organisation, society, institution, or body of persons associated for the above mentioned purposes will be exempted from stamp duty: (i) cheques, orders or drafts,¹⁴⁰ (ii) conveyance or transfer of real property to any such body,¹⁴¹ (iii) a deed of gift of property,¹⁴² (iv) deeds of settlement,¹⁴³ and (v) transfer or assignment of leases.¹⁴⁴ Additionally, cheques drawn by or transfer

¹⁴⁰ para.2(5)

¹⁴¹ para.5(4)

¹⁴² para.8(4)

¹⁴³ para.14(4)

¹⁴⁴ para.15(2)

of shares in societies registered under the Savings and Loan Societies Act will also be exempted from stamp duty.¹⁴⁵

(ii) Customs & Excise Duty

Organisations or societies classified as PBOs or MBOs are not automatically entitled to exemption from duty of customs or excise under the current regime. However, relief may be sought under the Customs Duty (Rebate) Act 1982 and the Customs Tariff Act 1990, both of which empower the Head of State to grant a rebate or exemption of duty respectively. Section 1(1) of the Customs Duty (Rebate) Act stipulates that *'[t]he Head of State, acting on advice, may, by notice in the National Gazette, specify any class or classes of goods; or any class or classes of goods exported or imported for a purpose specified in the notice in respect of which there may be paid a rebate of duty paid under the Customs Tariff Act 1990; or the Customs (Export) Tariff Act.'* The rebate is payable only upon application to the Commissioner General of Inland Revenue by parties who are qualified under the above provision.¹⁴⁶ Similarly, s.9 of the *Customs Tariff Act* provides for the Head of State to

exempt from import duty any goods (other than goods imported in relation to a commercial project) otherwise subject to import duty or substitute a reduced rate of import duty in respect of any goods subject to import duty.

Note that such exemption or reduced rate of import duty may relate to any class of goods or any goods or class of goods imported for a specified purpose.¹⁴⁷

(iii) Goods & Services Tax

The Goods & Services Tax Act 2003 expressly provides that a zero percent tax will be charged on goods and services supplied to a non-profit body falling within the categories of a religious, charity or community organisation.¹⁴⁸

¹⁴⁵ paras.2(6) and 16(2)

¹⁴⁶ s.2

¹⁴⁷ s.9(2)

¹⁴⁸ s.21

However, it is a fundamental requirement that such bodies must be ‘carrying on charitable activities and approved by the Commissioner for the purposes of th[e] Act, to the extent that those supplies or those services are not for use in carrying on a profit making taxable activity....’¹⁴⁹

(iv) Income Tax

The Income Tax Act 1959 incorporates two mechanisms for promotion of the causes of PBOs and MBOs – exemption and deduction. These will be discussed under two sections set out below.

(a) Exemptions

A functional and or purposive approach is adopted in determining whether or not a body corporate qualifies to have its income exempt from tax. Thus, income of bodies incorporated for promotion of the following purposes will be exempt from tax: religion, science, public education,¹⁵⁰ charity,¹⁵¹ music, art, literature,¹⁵² sport,¹⁵³ and the development of aviation or of agricultural pastoral horticultural viticultural manufacturing or the industrial resources of the country.¹⁵⁴ Special attention is given under s.25A for bodies established for charitable purposes, the same being defined as encompassing ‘relief of the poor, education and medical relief or any other object of general public utility not involving an activity for profit.’¹⁵⁵ In further translation of s.25A of the Act, a list of societies, associations, trusts, and foundations prescribed as established for charitable purposes is set out in s.5C of the Income Tax Regulations 1959 (appended hereto as Appendix II). A crucial point to note is that the validity of exemptions for prescribed ‘charitable purpose’ bodies is not permanent nor infinite but limited to a period of five (5) years from the date of exemption.¹⁵⁶ The

¹⁴⁹ *ibid*

¹⁵⁰ s.25

¹⁵¹ s.25A

¹⁵² s.27(a)

¹⁵³ s.27(b)

¹⁵⁴ s.27(c)

¹⁵⁵ subs.(1)

¹⁵⁶ Or for exemptions granted before passage of the amendment under the *Income Tax (Budget Provisions 2000) Act 1999*, the expiry date is 31 December 2000.

only exception is when an application is lodged for extension of the exemption prior to the expiry date.

Further, the income derived by a visitor to the country (foreigner) by virtue of his or her capacity as a representative of a society or association incorporated for religious, scientific, educational, philanthropic purposes will be exempt from tax.¹⁵⁷ Note however that such person must be present in the country not as a tourist but purely for certain purposes specified in the Act including research for the association or society.

(b) Deductions

Section 69A(1) of the Income Tax Act states that a gift of money exceeding fifty kina (K50) made by a taxpayer to a sporting body 'established...for the encouragement or promotion of an athletic game or athletic sport...shall be an allowable deduction'. Note that in the case of a gift in kind other than cash, the taxpayer will not qualify for a deduction unless the gift was acquired within 'the 12 months immediately preceding the making of the gift.'¹⁵⁸ A gift either in kind or cash made by a taxpayer to a charitable body approved by the Commissioner will also attract a deduction by virtue of s.69E of the Act. Conditions identical to that under s.69A also apply to s.69E, namely, a minimum of K50 and a cut-off time period of 12 months in the case of a gift in kind. It can be implied from s. 69E(1) that a society or association has to be approved by the Commissioner as a charitable body to render the donor taxpayer eligible for tax deduction.

C Non-Profit Companies

Distinct to the standard legislative approach in the region, the business interest of CSOs is well addressed in Papua New Guinea's laws. Thus, by virtue of the Income Tax Act, a society, association, or trust may incorporate and operate what is referred to as a non-profit company. This is defined as 'a company that is not carried on for the purposes of profit or gain to its individual members and

¹⁵⁷ s.21

¹⁵⁸ subs.2(b)

is, by the terms of the memorandum or articles of association, rules or other document constituting the company or governing its activities, prohibited from making any distribution, whether in money, property or otherwise, to its members.’ As the starting basis, a 100% exemption will apply in the event the taxable income of a non-profit company does not exceed K4’000. However, where the taxable income of the company is above K4’000 but does not exceed K6’000, ‘the maximum amount of tax payable is 50% of the amount by which taxable income exceeds K4’000.00.’¹⁵⁹ It is unclear what rate will apply if the profit made by the company which forms part of its taxable income exceeds K6’000.

V CONCLUSION

Whilst the CSO sector in Papua New Guinea share a lot of the problems common throughout the South Pacific as regards laws for an operating environment, there are numerous issues that are unique to the country’s circumstances and legal environment. Some of these issues, both specific and general, will be briefly highlighted below.

First, the distribution of assets upon winding-up of an association or society established for public benefit purposes (charitable inclusive) is not clearly addressed in the current regime. The primary argument is that surplus assets of an association or society established for the above purpose that is wound up should, as the strict rule, be transferred to another body with identical or similar purposes and functions. As the most appropriate legislation, the Associations Incorporation Act (under which most PBOs are registered) fails to incorporate any provision to this effect. A provision similar to s.55 of the Savings and Loan Societies Act would suffice for this purpose, or at least.¹⁶⁰

Similarly, whilst leaving the matter of distribution of surplus assets to be decided by resolution of members, s.32 of the Associations Incorporation Act however fails to provide guidelines as to the parties amongst or to whom the

¹⁵⁹ s.16

¹⁶⁰

s.55 provides: With the approval of the Registrar, and subject to such conditions as he imposes, an association may accept the transfer by the liquidator of a society of all or any of the assets and liabilities of the society.

said assets will be distributed. This issue not only apply to PBOs, but should equally apply to MBOs that receive assistance of measurable value from the state or private donors by way of funding or assets.

Second, the Cooperative Societies Act has fallen short of defining a scheme of distribution of assets and the order of priority in the event of winding-up of a society. This creates an avenue conducive for chaos and potential competition amongst and between members and creditors. Whilst s.143 provides for the Court to apply provisions of the Companies Act to the winding-up of a society in very rare circumstances, the problem is not necessarily addressed. Thus, it is imperative that first solutions or remedies must be provided first and foremost in the principal legislation of registration, i.e. Cooperative Societies Act.

Thirdly, certain mechanisms in the Land Groups Incorporation Act have the potential of disrupting social cohesion or causing disharmony within local communities. Of particular interest is para.1.5 of Schedule 1 to s.16 of the Act which allows creditors to take possession of land for a maximum period of 5 years for the satisfaction of a debt. Whilst para.1.5(7) of the Schedule attempts to protect the interest of landholding groups as against creditors, such protection is insignificant compared to the 'sacred' asset the possession and control over which is lost albeit temporarily. Given customary land is communally-owned and held 'sacred' in Melanesia, cultures and livelihood of communities is centred on and revolves around it. Thus, the removal of land by operation of law abound with alien concepts has the potential of yielding disruption to ordinary livelihood courses in tribal communities and possibly introducing disastrous consequences. This issue entails a proper or cautious approach towards the 'commercialisation' and 'commoditisation' of what are otherwise traditional objects upon which whole communities are reliant for identity and sustenance. Moreover, if the ultimate policy underlying the Act is for integration of tribal groups into the market economy, thereby driving their participation in the national economy, the same can be achieved through various means and programs without the need to use kastomary land as an alienable or tradable commodity.

Furthermore, one of the most important factors in fostering and facilitating a vibrant CSO sector is the tax regime in a country. Papua New Guinea is not without fault or defects when it comes to tax as considered against the interest of CSOs. Whilst problems with the tax regime by CSOs may be numerous, only a few of these will be briefly discussed as they directly impinge on the operations of this otherwise vital sector.

First, the maximum term of 5 years for exemptions under s.25A for charitable bodies may not necessarily be prescribed on meritorious grounds. For one reason, most societies and associations classified as charitable bodies or PBOs do not regularly change objects within or after 5 years. Despite providing the option for renewal,¹⁶¹ such do not necessarily guarantee a renewal as the ultimate decision rests with the Commissioner in the exercise of his or her discretion. The absence of statutory guidelines for renewal, compounded by the lack of provision for a committee of persons to consider the status of associations and societies raises questions as to the level of objectivity and impartiality of the Commissioner as the sole authority to grant 'charitable status'. In simple, there is room for arbitrariness and or abuse of discretion.

Secondly, the allowable deductions prescribed under s.69 of the Income Tax Act appear less attractive to promote growth of a philanthropic culture in the country. Deductions equivalent to the monetary or economic value of gifts do not always drive motivation and interest within the private donor community such as businesses and individuals.

Finally, non-profit companies serve as the sole or major source of funding for most PBOs. As such, a reasonable approach should be prescribed for non-profit companies that affiliate to or are owned by PBOs purposely for advancing and sustaining their public benefit or charitable causes. Non-profit companies are not wholly exempt from tax under current legislation,¹⁶² thus, warrant special attention. The argument for a 100% tax exemption is linked to numerous

¹⁶¹ s.25A(6)

¹⁶² See s.16 of the *Income Tax Act*

factors including the circumstance of the country. As to the latter, there is, among others, an insignificant tradition of philanthropy and charity giving in the country. Even those with private wealth are not always forthcoming in supporting the cause and activities of PBOs.

Appendix I

Special Legislation Incorporating Specific Bodies

The Catholic Church Joint Venture Agency Act 1994
Community Services Trust Act 2002
Divine Word University Act 1999
The Forsayth Prize Fund Trust Act 1978
The Girl Guides Association Act 1959
The Pacific Adventist University Act 1997
The Papua New Guinea Red Cross Society Incorporation Act 1976
Papua New Guinea Sports Foundation Act 2005
Papua New Guinea University of Technology Act 1986
Professional Boxing Control Board Act 1991
Levien Memorial Act 1972
Roman Catholic (Mission of the Divine Word) Act 1937
Roman Catholic Archdiocese (Port Moresby) Act 1961
Roman Catholic Society of Mary of Bougainville Incorporation Act 1975
Roman Catholic Society of the Divine Word Mission Act 1959
Salvation Army (Papua New Guinea) Property Trust Act 1973
Sarto Secular Institute Trust Act 1976
Scout Association of Papua New Guinea Incorporation Act 1975
St John Council Incorporation Act 1976
Summer Institute of Linguistics Act 1957
Swiss Evangelical Brotherhood Mission Act 1956
United Church in Papua New Guinea & Solomon Islands Incorporation Act 1969

University of Goroka Act 1997
University of Papua New Guinea Act 1983
University of Vudal Act 1997

Appendix II

Prescribed Charitable Bodies under Income Tax Act

APEX Papua New Guinea
Alliance Training Ltd
Boys Town–Wewak
Cheshire Homes
JF Leahy Trust
Kambang Holdings Ltd
Koki Everyman’s Hut
Life Line
Lions Clubs
National St. John Council of Papua New Guinea and its Foundations
Pasuwe Ltd
PNG Mentally Retarded Children’s Association
Port Moresby Community Development Group
Port Moresby Sheltered Workshop Assoc. Inc
Red Cross
Rotary Clubs of PNG
YMCA Youth Clubs
Ayaho Community Services Pty Ltd
Bougainville Copper Foundation (formerly Panguna Development Foundation)
YWCA
Boroko Sub-branch of the Returned Services League of Australia
Motu-Koitabu Trust
The Melanesian Awareness Foundation
Voluntary Service Overseas Trust Fund Papua New Guinea
Michael Somare Foundation Limited
University of Papua New Guinea Foundation

The Research and Conservation Foundation of Papua New Guinea Limited
Stack West Sepik Trust
Community Crime Prevention Trust
Independence Fellowship Trust
The Melanesian Awareness Foundation
KKB Foundation
Lower OK Tedi/Fly River Development Trust
Western Highlands Association for the Disabled
Kainantu Education Trust
The Melanesian Environment Foundation
The National Heart Foundation of Papua New Guinea Inc. (formerly the Hagen
Heart Foundation Inc)
The RSL Memorial Education Trust
Islamic Society of Papua New Guinea
Mt Sion Centre for the Blind
National Cultural Committee
Port Moresby City Mission
Royal Papua New Guinea Constabulary Legacy
Sir Buri Kidu Heart Institute Inc.
Callan Services for Disabled Persons
Kurumul Association of Self Help Groups
Life Outreach Ministries
Masonic Charitable Trusts
Alice River Trust Foundation for Rural Development Trust
Milne Bay Emergencies Fund-Raising Association Inc.
New Britain Palm Oil Limited Carry Share Trust
New Britain Palm Oil Limited Free Share Trust
Conservation Melanesia Incorporated
Women's Federation for World Peace
Family Federation for World Peace Unification
Hope Worldwide (PNG) Incorporated
Ling Stuckey Foundation
Misima Trust Fund

Development Foundation Limited
Papua New Guinea Conservation Trust Fund
New Britain Palm Oil Foundation Pty Ltd.

Table of Statutes

Associations Incorporation Act 1966
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Business Groups Incorporation Act 1974
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Companies Act 1997
Constitution of the Independent State of Papua New Guinea 1975
Cooperative Societies Act 1982
Cooperative Societies Regulation 2003
Customs Act 1951
Customs Duty (Rebate) Act 1982
Customs Tariff Act 1990
Excise Act 1956
Excise Tariff Act 1956
Gaming Act 1959
Gaming Regulation 1979
Gaming Machine Act 1993
Gaming Machine Regulation 1993
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