



REPUBLIC OF NAURU

# REGISTRATION OF ASSOCIATIONS ACT 2020

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No. 33 of 2020

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An Act to create an enabling environment for the registration of associations, to make provision for corporate governance, financial accountability, to regulate and promote cooperation with other local or international organisations, communities and the Government and to monitor their activities and for other related purposes.

Certified: 23<sup>rd</sup> October 2020

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Enacted by the Parliament of Nauru as follows:

## **PART 1 - PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Registration of Associations Act 2020*.

### **2 Commencement**

This Act commences upon certification by the Speaker.

### **3 Objectives**

The objectives of this Act are to:

- (a) establish an administrative and regulatory framework within which associations which are not capable of being registered under any other laws or carrying out non profitable activities may register and conduct their affairs;
- (b) promote and require associations to maintain high standards of governance, transparency and accountability;
- (c) promote a spirit of mutual cooperation and shared responsibility between different associations, agencies of the Government and international organisations and bodies;
- (d) provide for the development of strong associations and to facilitate the foundation of effective function for organisational or public benefit;
- (e) promote and strengthen the capacity of associations that is sustainable and able to deliver professional services without any fees or remuneration; and
- (f) promote the development of self-regulation among associations.

### **4 Interpretation**

In this Act:

**'associate non-profit organisation'** includes foreign branches of international non-profit organisations;

**'association'** includes a society, club, institution, civil society or non-Government organisation or similar body, which is not formed for any pecuniary gain or profit;

**'body'** includes any group of persons joined together for a common purpose which are not capable of being incorporated or registered under any other written law;

**'beneficial owner'** means a natural person:

- (a) who has ultimate control, directly or indirectly, over a legal entity;
- (b) who ultimately owns, directly or indirectly, the legal entity; or
- (c) on whose behalf a legal entity is created;

**'beneficiary'** means a natural person, or group of natural persons who receive charitable, humanitarian or other type of assistance through the services of a non-profit organisation;

**'civil society'** means a non-profit organisation which includes a community based organisation but excludes any political parties or activities of political parties;

**'certificate'** means a certificate of registration or a certificate of compliance issued under this Act;

**'certificate of compliance'** means the certificate of compliance issued by the Registrar under *Section 30*;

**'certificate of registration'** means the certificate of registration issued by the Registrar under *Section 16*;

**'Court'** means the Supreme Court, unless stated otherwise;

**'dissolution'** means when an association ceases to operate, either voluntarily or compulsorily by an order of the Court;

**'domestic regulatory authority'** means a body or agency established by or under a law of the Republic that:

- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

**'donor'** means a legal person or arrangement or organisation which provides source of funds for capital or general operation of an association;

**'eligible association'** means an association established or formed not for pecuniary gain and meets the requirement under *Section 6* of this Act;

**'executive'** means the decision making body of an association or office bearers, that is established by the instrument of creation of an association;

**'executive member'** means a person appointed, in accordance with the instrument of creation of an association, to be a member of the executive body of an association;

**'foreign government agency'** means:

- (a) a body or agency established by or under a law of a foreign country;  
or
- (b) an arm, ministry, department or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

**'foreign serious offence'** means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Nauru, would be an offence against the laws of the Republic, for which the maximum penalty is imprisonment for a term of 12 months; or need to be more than 12 months
- (b) an offence prescribed by the Regulations;

**'foreign tax evasion offence'** means conduct that:

- (a) amounts to an offence against a law of a foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of the Republic); and
- (c) would be regarded by the Courts of the Republic as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in the Republic;

**'foreign association'** means a non-pecuniary or non-profit organisation that is registered in accordance with the relevant laws in a foreign jurisdiction and is applying for a certificate of compliance issued under *Section 30* or is operating in Nauru under a certificate of compliance;

**'instrument of creation'** means the instrument that establishes and governs an association, which include but are not limited to a Constitution, Rules or Bylaws;

**'key person'** means any person who is in charge of or controls the operations of the association other than the executive itself;

**'law enforcement agency'** means:

- (a) the Nauru Police Force;
- (b) the Office of the Director of Public Prosecution;
- (c) the department responsible for customs and revenue;
- (d) the department responsible for immigration; or
- (e) such other persons prescribed for the purposes of this definition;

**'Minister'** means the Minister for Justice and Border Control;

**'Nauru Financial Intelligence Unit'** means the Financial Intelligence Unit established under the *Anti-Money Laundering Act 2008*;

**'non-Government organisation'** means a private voluntary grouping of associations that are:

- (a) non-partisan, impartial and not operated for pecuniary gain that can be of national, district or community level;
- (b) whose sole objective is to best serve their members and the community in improving its services, environment conservation and preservation of natural resources, good governance, protection of human rights and the promotion of social welfare and community livelihoods, introduction of intellectually or vocationally uplifting trainings and the maintenance of sustainable development;

**'office bearers'** includes the executive, the trustees or any other key persons in an association;

**'pecuniary gain'** includes any profit;

**'Register'** means the Register of Associations established under *Section 11*;

**'Registrar'** means the Registrar of Associations appointed under *Section 8*;

**'Rules'** refer to the instrument or constitution establishing an association; and

**'serious offence'** means an offence which carries a penalty of imprisonment of 12 months or more or a fine of \$1,000 or more.

## **PART 2 – ELIGIBILITY FOR REGISTRATION**

### **5 Associations eligible for registration**

- (1) An association is eligible to be registered under this Act if it has at least 7 members, formed and carried on for a lawful purpose and is established for:

- (a) educational, charitable, religious or benevolent purposes;
  - (b) promoting or encouraging literature, science or the arts;
  - (c) promoting or encouraging environmental protection or climate change adaptation activities;
  - (d) the conservation of resources or preserving any part of the environment, historic or cultural heritage of the Republic;
  - (e) the purpose of sports, recreation, amusement or local or international federation or affiliation of such sports, recreation, amusement bodies;
  - (f) establishing, carrying on, or improving a community social or cultural centre to promote the interests of the local community;
  - (g) providing medical treatment or attention or promoting the interests of persons who suffer from particular physical, mental or intellectual impairment or condition;
  - (h) collective organisation to promote common interests of persons who are engaged in or interested in particular business, trade or industry;
  - (i) promotion of the welfare of flora and fauna;
  - (j) promoting and advancing patriotism and national consciousness putting the Republic's interests first;
  - (k) promoting and advancing the employment, skills, welfare and interests of women or youths;
  - (l) promoting programs or activities for sustainable human development and future generations observing the principles of equity, cooperation and solidarity; or
  - (m) any other purposes which may be approved by the Minister.
- (2) An international civil society, federation of any association or associated organisation registered in a foreign jurisdiction are eligible associations which may register and obtain a certificate of compliance under *Section 30*.

## **6 Association not eligible for registration**

- (1) An association is not eligible for registration if it is formed or carried on for the purposes of securing pecuniary gain for its members from its operations.
- (2) For the purpose of subsection (1), an association procures pecuniary gain for its members where:



- (a) it has capital that is divided into shares or stocks held by its members;
  - (b) it carries on any activity for the purposes of securing pecuniary gain for its members; or
  - (c) it holds property in which its members have transferrable or disposable interest whether directly or indirectly including any form of beneficial ownership.
- (3) Notwithstanding subsections (1) and (2), the following associations or bodies are not eligible for registration:
- (a) a trade union;
  - (b) a corporation incorporated under the *Corporations Act 1972*;
  - (c) a business licensed under the *Business Licences Act 2017*;
  - (d) a firm registered under the *Partnership Act 2018*;
  - (e) a trust registered under the *Trusts Act 2018*;
  - (f) a bank or financial institution licensed under the *Banking Act 1975*;
  - (g) a non-government school registered under the *Education Act 2011*;
  - (h) an association or organisation specifically established by another written law;
  - (i) a relationship under an agreement that expressly provides the relationship between the parties for a pecuniary purpose; and
  - (j) such other associations or bodies which the Minister may deem appropriate.

## **7 Pecuniary gain**

- (1) Subject to subsection (2), an association is deemed not to be associated for pecuniary gain where:
- (a) the association itself makes a pecuniary gain, unless that gain or some part of it is divided, shared or distributed by members;
  - (b) the members of the association are entitled to divide among themselves the property of the association on its dissolution;
  - (c) the association is established for the protection or regulation of some trade, business or industry in which the members are

engaged or interested if the association itself does not take part in such trade, business or industry;

- (d) any member of the association derives or receives by way of salary as a servant or office of the association;
  - (e) the members of the association compete with each other for trophies or prizes other than money prizes;
  - (f) the association itself makes a profit from subscriptions, donations, sponsorships or sale of any rights; or
  - (g) a member of the association derives from the association any pecuniary gain to which he or she would be entitled as a member of the public irrespective of his or her membership.
- (2) An association may engage in profit making activities, which profit shall be used for the association's non-profit purposes or activities.

### **PART 3 – ADMINISTRATION**

#### **8 Registrar of Associations**

- (1) An office of the Registrar of Associations is hereby established.
- (2) The Secretary for Justice shall be the Registrar of Associations.
- (3) The Minister may, on the recommendation of the Registrar appoint a Deputy Registrar.
- (4) The Deputy Registrar may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.
- (5) The Registrar may from time to time delegate to any person all or any of the functions and powers exercisable by the Registrar under this Act, except this power of delegation.
- (6) A delegation under this Section does not prevent the concurrent performance of any function or exercise of any power by the Registrar.
- (7) The Chief Secretary in consultation with the Registrar may appoint such other staff as may be necessary.

#### **9 Functions of Registrar**

The functions of the Registrar shall include:

- (a) facilitation of the registration of associations, including the issuing of, renewal, cancellation of certificates under this Act;

- (b) establishment and maintaining a Register of Associations;
- (c) maintaining current information on all associations;
- (d) ensuring that all registered associations have appropriate internal controls in place, including an appropriate system to identify conduct which may involve any financial or other risks;
- (e) ensuring that operations of associations are available for Government and where necessary, to the public;
- (f) keeping and maintaining all associations records received by the Registrar under this Act;
- (g) any other functions under this Act or any other written law; and
- (h) do all things as are necessary to be done for the implementation, enforcement and administration of this Act.

## **10 Powers of the Registrar**

The Registrar shall have all such powers necessary to perform his or her functions under this Act.

## **11 Register of Associations**

- (1) There shall be a Register of Associations.
- (2) The Registrar shall keep and maintain a Register of Associations as prescribed by regulations.
- (3) Upon the payment of prescribed fees:
  - (a) the Register shall be made available for inspection by any person during business hours; and
  - (b) certified copies of the entries in the Register be provided.
- (4) The particulars registered in the Register and the records kept and maintained by the Registrar under *Section 9(b) and subsection (2)* shall be evidence of the record of the associations kept and maintained by the Registrar.
- (5) A copy of or extract from any document contained in the Register certified to be a true copy or extract under the hand and seal of the Registrar, is admissible as evidence in any legal proceedings, as if it were the original document or a part of the document as extracted.
- (6) In any legal proceedings, a certificate issued under the hand and seal of the Registrar is prima facie evidence of the fact the requirements of this Act specified in the certificate:

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
  - (b) had been complied with, but at a date later than that specified in the certificate.
- (7) The Registrar may refuse to accept any document lodged and request that the document be amended, completed and re-lodged, or a new document be lodged, if he or she is of the opinion that the document:
- (a) contains matters contrary to law;
  - (b) by reason of any omission or mis-description has not been duly completed;
  - (c) does not comply with the requirements of this Act; or
  - (d) contains any error, alteration or erasure.
- (8) At the end of each financial year, the Registrar shall publish in the Gazette a list of:
- (a) registered associations;
  - (b) associations which have been deregistered; and
  - (c) associations which were suspended during the reporting period.

## **PART 4 – REGISTRATION, RENEWAL, VARIATION AND CANCELLATION**

### **12 Requirement to register**

- (1) An eligible association shall apply for registration under this Act, prior to commencement of any of its activities.
- (2) A person shall not operate in the Republic as an association unless registered under this Act.

### **13 Application for registration**

- (1) An application for the registration of an association shall be:
  - (a) in the prescribed form;
  - (b) accompanied by the instrument of creation of the association conforming to the requirements of this Act;
  - (c) accompanied by copies of relevant documents; and

- (d) accompanied by evidence of payment of the prescribed fee.
- (2) The application for registration of an association shall be accompanied by a certificate in the prescribed form by an executive member of the association:
  - (a) certifying that he or she is authorised by the association to apply for registration;
  - (b) providing the full name, residential and email addresses, telephone contacts and occupations of the executive of the association;
  - (c) a list of all members of the association;
  - (d) verifying the particulars contained in the application;
  - (e) certifying that the executive or office bearers have not been convicted of a serious offence or is subject to any criminal proceedings;
  - (f) certifying that the executive or office bearers are not listed on a financial sanctions list under a written law of the Republic or under a law of any other jurisdiction;
  - (g) providing the details of the source of funds for the capital of the association;
  - (h) verifying the copy of the instrument of creation of the association accompanying the application is a true copy and that the instrument of creation make provision for the matters in conformity with this Act; and
  - (i) undertaking that the association shall comply with all requirements of the *Beneficial Ownership Act 2017* or this Act.

#### **14 Determination of application**

- (1) The Registrar shall inform the applicant of his or her decision within 14 days of the lodgement of the application.
- (2) The Registrar may require the eligible association to provide additional information or clarification before determining the application.
- (3) Where the Registrar is satisfied that the application complies with the requirements of this Act, he or she shall issue the certificate in the prescribed form.
- (4) Every certificate issued under this section shall show the full name, address and the nature of the operation of the association.

**15 Declining application for registration**

- (1) The Registrar may decline to register an association where the Registrar is satisfied that:
  - (a) the application does not comply with the provisions of this Act;
  - (b) the information contained in the application is false, misleading or lack material particulars or accuracy of the same;
  - (c) the objects or purpose of the association is unlawful, repugnant, indecent or otherwise undesirable;
  - (d) the information contained in the application demonstrates that the association will not be able to properly function;
  - (e) the objective of the association does not satisfy the requirements in *Section 5*;
  - (f) the name of the proposed association:
    - (i) is identical to an existing registered association;
    - (ii) is similar to the name of another association or foreign organisation which is likely to mislead the public;
    - (iii) includes the words 'Republic of Nauru', 'Government 'or 'Republic 'which may mislead the public to believe that the association is affiliated with the Republic or the Government; or
    - (iv) will likely cause annoyance or offence to any person or class of persons or suggestive of blasphemy or indecency.
- (2) The Registrar may decline to register an association on such other grounds the Registrar deems appropriate.
- (3) The Registrar shall notify the applicant in writing of the decision to decline the registration:
  - (a) in accordance with *Section 14(1)*; and
  - (b) the reasons for the decision.
- (4) Where an application for registration is declined, a fresh application may be made with the necessary modification and in compliance with the requirements of this Act.

**16 Certificate of registration**

- (1) The Registrar may issue a certificate of registration to an association that has been registered under this Act and upon payment of the prescribed fee.
- (2) The certificate of registration shall be in the prescribed form and which shall contain:
  - (a) the name and address of the association;
  - (b) the scope of the operations of the association; and
  - (c) such other terms and conditions that may be prescribed.
- (3) A certificate of registration issued under this Section is valid for a period of 12 months.

**17 Effect of registration**

- (1) An eligible association once registered shall constitute a legal entity with perpetual succession which may:
  - (a) sue and be sued;
  - (b) enter into contracts and other legal obligations;
  - (c) acquire, hold, manage and dispose of real or personal property; and
  - (d) have the same powers as an individual to do all things necessary or convenient to carry out the objectives or purpose of the association.
- (2) The certificate of registration shall be conclusive evidence that the association:
  - (a) has met all the requirements for registration;
  - (b) has been registered in accordance with this Act; and
  - (c) is a legal entity.
- (3) The executive of the association shall have the power to:
  - (a) execute any binding contracts, instruments and documents;
  - (b) commence, continue or defend any proceedings in court or arbitration; or
  - (c) represent the association.

**18 Certificate shall be displayed**

- (1) A certificate shall be displayed in a conspicuous place in or at the association's registered or operational office.
- (2) An association which fails to comply with subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$5,000.
- (3) The executive of an association which fails to comply with subsection (1) commits an offence and upon conviction, each of the members are jointly or severally liable to a fine not exceeding \$3,000 or a term of imprisonment not exceeding 12 months or to both.

**19 Loss or destruction of certificate**

- (1) Where a certificate is lost or destroyed, the association shall notify and apply to the Registrar for a duplicate copy of the certificate in the prescribed form and pay the prescribed fee.
- (2) The Registrar shall issue a duplicate copy of the certificate within 7 days of the application under subsection (1).
- (3) An association, which without any reasonable excuse fails to notify the Registrar of the loss or destruction of a certificate under subsection (1), commits an offence and is liable to a fixed penalty of \$5,000.

**20 Renewal of registration**

- (1) An application for the renewal of registration shall be:
  - (a) made at least one month prior to the expiry date;
  - (b) made in the prescribed form; and
  - (c) accompanied with proof of payment of the prescribed fee.
- (2) An association applying for the renewal of its registration under subsection (1) shall:
  - (a) provide any changes or variation to the information and particulars in the application for renewal;
  - (b) provide its annual financial statements verified by a chartered accountant that provide the income and expenditure of the association; and
  - (c) satisfy the Registrar that the funds of the association have been fully accounted for and used in a manner consistent with



the objects or purpose of the association and the requirements of this Act.

- (3) An association is not liable for prosecution if it has:
  - (a) lodged an application for the renewal within 30 days of the expiration of its certificate;
  - (b) in the case of an application for renewal of registration, the association has lodged an application in less than 30 days of the expiry of a certificate, and has paid the late application fee prescribed by regulations.
- (4) In the case of an application made after the expiry of the registration, the association shall pay the:
  - (a) prescribed late application fee in subsection (3)(b); and
  - (b) fixed penalty of:
    - (i) \$500 where the renewal application is made within 30 days of the expiry of the registration;
    - (ii) \$2,000 where the renewal application is made after the expiration of 30 days but before the expiration of 60 days from the date of expiry of registration; and
    - (iii) \$10,000 where the renewal application is made after the expiration of 60 days from the date of expiry of registration.

## **21 Surrender of certificates**

- (1) Where an association ceases operations, is compulsorily dissolved or undergoes voluntary dissolution, the association shall notify the Registrar in writing and surrender its certificate.
- (2) Where a certificate is surrendered under subsection (1), the certificate shall lapse and be cancelled in the Register.
- (3) An association shall cease all of its operations and business, upon surrendering the certificate and shall not resume operations without prior restoration of the defunct association by the Registrar.

## **22 Grounds for cancellation of certificate**

Subject to *Section 23*, the Registrar may cancel a certificate of registration or certificate of compliance if the Registrar is satisfied that:

- (a) one or more terms and conditions prescribed in the certificate have been breached;

- (b) the association has ceased operation without complying with *Section 21* or has been inoperative for the preceding 12 months;
- (c) the association has less than 7 members;
- (d) the association is operating contrary to its instrument of creation;
- (e) the registration under the Act was obtained by fraud, misrepresentation or mistake;
- (f) the objects or purpose of the association have become unlawful;
- (g) the operations of the association is used for an unlawful purpose;
- (h) the association fails or neglects to comply with this Act;
- (i) a key person, beneficiary or associate non-profit organisation has contravened a provision of the *Anti-Money Laundering Act 2008* and *Counter Terrorism and Transnational Organised Crimes Act 2004* and any written law relating to financial sanctions;
- (j) a key person, beneficiary or associate non-profit organisation has been listed on a financial sanctions list under the laws of any jurisdiction;
- (k) the funds of the association is derived from an unlawful source or may be proceeds of crime under the *Proceeds of Crimes Act 2004*;
- (l) the association has failed to file an annual report in accordance with *Section 33*;
- (m) the association has requested for cancellation;
- (n) the association is dissolved under *Section 27*;
- (o) the transfer of operation of the association to another entity under *Section 29*; or
- (p) a foreign association has breached or contravened a written law or deregistered under the laws of the country of registration.

## **23 Procedure for cancellation**

- (1) For the purpose of *Section 22*, before the Registrar cancels a certificate, he or she shall:
  - (a) inform the association of his or her intention to cancel the certificate;
  - (b) give an opportunity to the association to show cause against the intended cancellation of the certificate; or

- (c) where appropriate, give time to the association to rectify any irregularities capable of such rectification.
- (2) The association shall inform the Registrar of its intended course of action to remedy or rectify any matters giving rise to the notification for the intended cancellation within 7 days of the receipt of the notice.
- (3) Where the association fails to comply with the intended notice of cancellation, the Registrar shall cancel the certificate.

## **24 Cancellation of certificate to be complied with**

- (1) Where the Registrar has cancelled a certificate, the Registrar shall:
  - (a) notify the association; and
  - (b) direct the association and its executive to immediately cease its operations.
- (2) Where the executive fails to comply with the direction in subsection (1)(b) immediately prior to the cancellation of the certificate, the executive commits an offence and upon conviction each of them jointly and severally is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or to both.

## **25 Suspension of operations of association**

- (1) The Registrar may issue a notice to suspend the operations of an association where:
  - (a) a notice of intention to cancel is issued under *Section 23* and the association has either failed to or delays showing cause as to why the certificate of registration should not be cancelled; or
  - (b) the association has failed to apply for renewal of registration but continues to operate.
- (2) Where the Registrar suspends the operations of an association under subsection (1), he or she shall:
  - (a) notify the association in writing;
  - (b) direct the association and its executive to immediately cease its operations in the Republic; and
  - (c) notify the period of suspension and in default, the pre-emptory decisions which may be made.
- (3) Where the executive of the association or key person fails to comply with the direction in subsection (2)(b) immediately prior to the cancellation of the certificate, the executive or key person

commits an offence and upon conviction each of them jointly and severally is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both.

## **26 Variation or amendment to registration**

- (1) An association may vary or amend its particulars including the name of its registration by lodging with the Registrar a notice containing:
  - (a) details of the specific particulars to be varied or amended; and
  - (b) a signed resolution from the executive of the association authorising the variation or amendment.
- (2) On receipt of a notice in subsection (1), the Registrar if satisfied with the proposed variation or amendment to the particulars, shall:
  - (a) register the new particulars; and
  - (b) enter the new particulars in the Register.
- (3) The executive of an association shall provide to the Registrar a notice in writing of a change in any or all of the following particulars within 14 days after such change occurs:
  - (a) the registered office or place of operation of the association;
  - (b) the instrument of creation of the association;
  - (c) a key person;
  - (d) an associate non-profit organisation;
  - (e) beneficiaries;
  - (f) the circumstances of a key person that may affect whether he or she meets the fit and proper criteria; or
  - (g) the rules or policies relating to the source of funds of the association.
- (4) Where the executive of an association fails to comply with subsection (3):
  - (a) the executive commits an offence and upon conviction each of them jointly or severally is liable to a fine not exceeding \$10,000 or term of imprisonment not exceeding 3 years or to both; and
  - (b) the Registrar may cancel the certificate of registration of such association.

- (5) Where an executive of an association provides the information required under subsection (3) and the Registrar is not satisfied that:
- (a) the key persons are fit and proper persons having regard to the matters referred to in *Section 48*; or
  - (b) the rules or policies relating to the source of funds of the organisation are acceptable,
- the Registrar may cancel the certificate.

## **PART 5 – VOLUNTARY OR COMPULSORY DISSOLUTION**

### **27 Voluntary dissolution**

- (1) An association may be dissolved voluntarily where the association is solvent and it is resolved by a special resolution under its instrument of creation that it be dissolved.
- (2) Where an association has resolved to be dissolved in accordance with subsection (1), the association shall:
- (a) provide a copy of the special resolution for dissolution to the Registrar;
  - (b) inform the Registrar of the intention to dissolve;
  - (c) the time within which the dissolution process may be completed;
  - (d) the disposal or distribution of any assets of the association;
  - (e) the liabilities of the association; and
  - (f) any other matters that may be prescribed.
- (3) A voluntary dissolution of an association shall take effect by no later than:
- (a) in case of no assets for distribution, 14 days after the date on which the resolution of the dissolution is lodged with the Registrar;
  - (b) in case of assets for distribution, 7 days after the distribution of the assets is completed; or
  - (c) in any other case not exceeding 30 days from the date of the resolution for dissolution.
- (4) On receipt of the notice in subsection (1) or (2), the Registrar shall:
- (a) cancel the association's certificate; and

- (b) enter the relevant changes in the Register.

## **28 Dissolution by court**

- (1) An association may be dissolved by the Supreme Court where:
  - (a) the association was not at the time of registration eligible for registration under this Act;
  - (b) the registration of the association was obtained by fraud, misrepresentation or mistake;
  - (c) the association has fewer than 7 members and despite the notice of the Registrar, the association continues to operate;
  - (d) the association is unable to pay just debts;
  - (e) the association has engaged in activities outside the scope of its purpose or has ceased to carry on or pursue the purpose of its registration;
  - (f) the executive of the association has acted in an oppressive manner;
  - (g) the association either neglects to or wilfully refuses or fails to remedy any contravention of the Act, comply with the notice issued by the Registrar or any breaches of its own Rules;
  - (h) the association by acting as a legal entity secured pecuniary gain for the members of the association;
  - (i) the majority of the members passed a resolution that the association be dissolved but the executive failed to comply with such resolution; or
  - (j) it is just and equitable that the association be dissolved.
- (2) An application to the Supreme Court for the dissolution of the association shall be by a petition presented by the association, a member of the association, creditor, minority members or the Registrar.
- (3) The application shall be governed by the rules of civil procedure or the compulsory winding up procedure or rules for a corporation under the *Corporations Act 1972*.

## **29 Power of Registrar to require transfer of activities**

- (1) Where:
  - (a) an association has ceased its operations under this Act; or

- (b) the operation of the association is carried on by a body corporate or other entity registered under another Act or more appropriately be carried out by that other entity,

the Registrar may give notice to the association under this Section.

- (2) Where the Registrar has issued a notice, and the association requests the Registrar to transfer operations to a body corporate specified in the request, the Registrar may authorise the transfer accordingly.
- (3) The association is deemed to have dissolved and all operations ceased upon notification in the Gazette of the transfer of the operation by the Registrar.

## **PART 6 – REGISTRATION OF FOREIGN ASSOCIATIONS**

### **30 Registration and operation of foreign associations in the Republic**

- (1) A foreign association which has similar purpose or objective as is provided for an association under this Act, is an eligible association and intends to establish or operate or both, in the Republic shall apply to the Registrar for a certificate of compliance before commencing any operations or activities in the Republic.
- (2) The particulars to be provided by a foreign association applying for a certificate of compliance shall include:
  - (a) the registration or incorporation name contained in the registration or incorporation certificate issued by the relevant authority;
  - (b) current registration or incorporation certificate required under the relevant written law of the country of registration or incorporation;
  - (c) the date and place of registration or incorporation in the country of registration or incorporation;
  - (d) the registered office or place of operation of the association in the country of registration or incorporation;
  - (e) the full names of the executive, residential and email addresses, telephone contact, nationality and date of birth;
  - (f) the date of appointment of the executive;
  - (g) verification of the particulars contained in the application;

- (h) certification that the executive or office bearers have not been convicted of a serious offence in the country of registration or incorporation or is subject to any criminal proceedings;
  - (i) providing details of the source of funds for the capital of the association;
  - (j) verifying the copy of the Rules or instrument of creation of the association in the country of registration or incorporation accompanying the application is a true copy and that the Rules or instrument of creation makes provision for the matters in conformity with this Act;
  - (k) undertaking that the association shall comply with the requirements of beneficial ownership under the *Beneficial Ownership Act 2017* or this Act;
  - (l) name of key person of the foreign association in the Republic;
  - (m) address of the registered office or operational office of the foreign association in the Republic;
  - (n) Tax Identification Number issued under the *Revenue Administration Act 2014* and in the foreign jurisdiction where required;
  - (o) passport size photograph and identity instrument such as drivers' licence, bio page of passport or birth certificate of the executive or office bearers of the association;
  - (p) annual returns of the association required to be filed in the country of registration or incorporation.
- (3) If the Registrar is satisfied with the particulars submitted under subsection (2), the Registrar may register the foreign association and issue a certificate of compliance to the association.

### **31 Foreign associations subject to this Act**

This Act applies to a foreign association registered under this Part as if it were an association domiciled or registered as an association in the Republic.

## **PART 7 – RECORD KEEPING AND INSPECTION**

### **32 Duty of association to keep and maintain records**

- (1) The association shall ensure that its Rules provides for the keeping and maintenance of underlying documentation such as proper accounts and records relating to the operation of the association and such records shall be kept and maintained for a period not less than 7 years.



- (2) The records kept under subsection (1) shall include the following:
- (a) financial accounts verified by a chartered accountant;
  - (b) bank statements, which detail both domestic and international transactions;
  - (c) court proceedings;
  - (d) invoices;
  - (e) contracts;
  - (f) annual reports;
  - (g) details of the staff, key persons and beneficiaries;
  - (h) details of the associate non-profit associations of the association;
  - (i) the assets and liabilities of the association; and
  - (j) other matters prescribed by regulations.
- (3) An association that contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$50,000.

**33 Annual report**

- (1) The executive of an association shall provide to the Registrar its annual report within 3 months after the end of the financial year, which is 30 June of each successive year.
- (2) There shall be no fees payable for lodging the annual report with the Registrar.
- (3) If the executive fails to lodge the annual report as required under subsection (1), the Registrar shall issue a notice to the association to show cause within 14 days as to why the registration of the association should not be cancelled.

**34 Powers of the Registrar or authorised officer to inspect**

- (1) The Registrar or an authorised officer may, by notice in writing, require a person to do all or any of the following:
- (a) produce for inspection, any documents or records that the Registrar considers necessary or relevant to an enquiry under this Act;
  - (b) make copies of or extracts from any such documents or records;

- (c) appear before the Registrar and answer all questions concerning any matter that is the subject of an enquiry or the documents or records that are relevant to an enquiry.
- (2) For the purposes of this section, a person includes:
- (a) an officer employed in or in connection with any Government Department, Statutory Corporation, Statutory Entity or Constitutional Entity;
  - (b) an officer employed in or in connection with any financial institution;
  - (c) a key person;
  - (d) a beneficiary, executive member or employee of an associate non-profit organisation; or
  - (e) any person that the Registrar considers to be in a position to assist him or her in the investigation.
- (3) A person who fails or refuses to comply with a requirement of the Registrar under this section, commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 5 years or both.

**35 Registrar may require information and documents**

- (1) Subject to subsection (2), the Registrar may, by notice in writing require the executive to provide information or documents or both, within a specified period.
- (2) The information or documents shall relate to:
- (a) the integrity, competence, financial standing or operation of the association and its executive; or
  - (b) compliance with this Act or the Regulations by the association and its executive.

**36 On-site inspections**

- (1) The Registrar or authorised officers may conduct on-site inspections at the registered or operational office of an association at any time during normal business hours.
- (2) The Registrar or authorised officer may for the purposes of subsection (1):
- (a) enter the registered or operational office of the association during normal business hours; and

- (b) inspect and take copies of any books, accounts and documents of the association in *Section 32*.
- (3) The executive and employees of the association shall cooperate fully with the Registrar by:
  - (a) giving the Registrar or authorised officer all the information, and making available the documents required; and
  - (b) if necessary, giving the Registrar or authorised officers appropriate workspace and reasonable access to office services, during the inspection.
- (4) In this section, a reference to the Registrar includes a person appointed by the Registrar in writing in *Section 38* as an authorised officer for the purposes of this Act.
- (5) An authorised officer shall produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

**37 Registrar may request information or documents from a government agency**

For the purpose of performing a function or exercising a power under this Act, the Registrar may request information or documents, or both, from any or all of the following:

- (a) the Nauru Financial Intelligence Unit;
- (b) a law enforcement agency;
- (c) a domestic regulatory authority;
- (d) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b) or (c).

**38 Appointment of authorised officers**

The Registrar may in writing appoint persons to be authorised officers for the purposes of this Act.

## **PART 8 – INFORMATION SHARING**

**39 Disclosure of confidential information**

The Registrar may disclose information kept and maintained under this Act, where the disclosure is:

- (a) required by an order of the Court;

- (b) made for the purpose of performing a function or exercising a power under this Act;
- (c) made to the Nauru Financial Intelligence Unit for the purpose of performing a function or exercising a power under the *Anti-Money Laundering 2008* and *Counter-Terrorism and Transnational Organised Crime Act 2008*;
- (d) made to a law enforcement agency for the purpose of investigating or prosecuting an offence against any written law of the Republic;
- (e) made to a law enforcement agency for the purpose of investigating or taking action under the *Proceeds of Crime Act 2008*;
- (f) made to a domestic regulatory authority for the purpose of carrying out its regulatory functions;
- (g) made to the Minister for the purpose of performing a function or exercising a power under any written law relating to financial sanctions; or
- (h) made to a foreign government agency in accordance with *Section 40*.

#### **40 Disclosure to foreign government agency**

The Registrar may disclose information kept and maintained under this Act to a foreign government agency if:

- (a) the Registrar is satisfied that the disclosure is for the purpose of:
  - (i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation;
  - (ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws;
  - (iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws;
  - (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
  - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Registrar is satisfied that:
  - (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and

- (ii) the agency is subject to adequate restrictions on further disclosure.

## **PART 9 – OFFENCES**

### **41 Conducting activities without registration**

- (1) An eligible association shall not conduct any activities or operate in the Republic without having registered under this Act.
- (2) An association, member of its executive or a key person who contravenes subsection (1), jointly or severally commit an offence and upon conviction are liable to:
  - (a) for an individual member of the executive or key person, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both; or
  - (b) for the association, a fine not exceeding \$200,000.

### **42 Conducting activities of a foreign association without a valid certificate of compliance**

- (1) A foreign association shall not conduct any activity or operate in the Republic if its registration and certificate have been cancelled or suspended under *Section 22 or 25*.
- (2) An association, member of its executive or key person who contravenes subsection (1), jointly or severally commit an offence and upon conviction are liable to:
  - (a) for an individual member of the executive or key person, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both; or
  - (b) for the association, a fine not exceeding \$200,000.

### **43 Providing false or misleading information**

- (1) An association, its executive or key person when required by the Registrar, shall not:
  - (a) refuse or fail to provide any information or document; or
  - (b) knowingly or recklessly provide false or misleading information.
- (2) An association, member of its executive or key person who contravenes subsection (1), jointly or severally commit an offence and upon conviction are liable to:

- (a) for an individual member of the executive or key person, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both; or
- (b) for the association, a fine not exceeding \$200,000.

**44 Obstruction of Registrar or authorised officer**

- (1) No person shall obstruct or hinder the Registrar or authorised officers in the exercise of his or her powers under this Act.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 12 months or to both.

**45 Registered name not to be assigned or transferred**

- (1) A person shall not assign, transfer or permit the use of the name of the association by another association.
- (2) A person who contravenes subsection (1), or a person who unlawfully uses the name of a registered association, commits an offence and upon conviction is liable to:
  - (a) for an individual member of the executive, key person or a person who uses the name of the association, a fine not exceeding \$20,000 or imprisonment for a term not exceeding 3 years or both;
  - (b) for the association, a fine not exceeding \$200,000.

**46 General offence**

- (1) An association, its executive or key person who contravenes any provision of this Act not specifically provided for under this Part, jointly or severally commit an offence and upon conviction is liable to:
  - (a) for an individual member of the executive or key person, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both; or
  - (b) for the association, a fine not exceeding \$100,000.
- (2) Upon conviction under subsection (1), the Registrar shall:
  - (a) cancel the certificate of registration of the association; and
  - (b) dispose of the assets of the association according to the instrument of creation of the association.

- (3) Subject to subsection (2), where an asset is determined to be a proceed of crime under the *Proceeds of Crimes Act 2004*, the Registrar shall produce a report on the asset and provide the same to the Director for Public Prosecutions to apply for forfeiture orders under that Act.

**47 Omission to act**

Where an executive or key person of an association fails or omits to do anything required, it is deemed to be authorised or approved by the association.

**PART 10 – MISCELLANEOUS**

**48 Disqualification on holding executive office**

- (1) Any person convicted of an offence under this Act is disqualified from holding executive office in any other association operating in the Republic for a period not exceeding 10 years.
- (2) Any association convicted of an offence under this Act:
  - (a) shall be immediately deregistered and have their certificate of registration cancelled; and
  - (b) is disqualified from applying for registration in the Republic under the same or different name for a period not exceeding 10 years.

**49 Appeals**

- (1) A decision of the Registrar is appealable to the Minister.
- (2) An appeal shall be lodged within 14 days of the notification of the decision by the Registrar.
- (3) The Minister shall consider and determine the appeal by:
  - (a) affirming the decision;
  - (b) allowing the appeal in whole or in part and substituting his or her own decision; or
  - (c) allowing the appeal and refer the application with directions to the Registrar for reconsideration.
- (4) In considering the appeal, the Minister may require the eligible association to provide any additional information or submission.
- (5) The Minister has the same powers to that of the Registrar to make a decision under this Section.

**50 Certification under the Business Tax Act and Employment and Services Tax Act**

For the purposes of certification under the *Business Tax Act 2016* and the *Employment and Services Tax Act 2014*, no association shall be given certification unless such association is registered under this Act.

**51 Protection from liability**

The Registrar and any person authorised by the Registrar, is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.

**52 Regulations**

- (1) The Cabinet may make regulations prescribing all matters that are necessary and expedient to achieve the objectives of this Act.
- (2) Without limiting the generality of subsection (1), any regulations made under subsection (1) may provide for the:
  - (a) particulars to be provided by an eligible association applying for registration;
  - (b) necessary forms and fees;
  - (c) form in which financial statements and annual returns are to be submitted; and
  - (d) particulars to be contained in the financial statements and annual returns.

**53 Transitional provisions**

All eligible associations and foreign organisations currently operating or conducting any activities in the Republic are required to register under this Act upon its commencement.



## **SCHEDULE**

### **Rules of the Association**

- (1) The Rules of the association shall provide for the following matters:
- (a) name of the association, registered office, email address, telephone contact;
  - (b) objects or purpose of the association;
  - (c) eligibility or qualification for membership
  - (d) suspension, removal or withdrawal of membership
  - (e) process for implementation or bringing rules into force
  - (f) process for amendments to rules;
  - (g) procedure for holding meetings;
  - (h) procedure for motions and passage of motions;
  - (i) procedure for appointment, suspension or removal of office bearers;
  - (j) control and use of seal or any other form of authentication of the association;
  - (k) provide for the funds, auditing and annual reporting of the income and expenditure of the association;
  - (l) provide for the process of receiving and utilising donations, gifts, grants or such other funds to further the objects or purpose of the association;
  - (m) provide for acquisition and disposal of property;
  - (n) provide for the means to borrow money;
  - (o) provide for the liquidation, involuntary or voluntary winding up or the cessation of the operations of the association.
- (2) The Rules of the association may contain any other matters which shall not be inconsistent with provisions necessary for the functions, powers or the ordinary operations of the association.