Commencement: 12 July 1982

CHAPTER 140

CHARITABLE ASSOCIATIONS (INCORPORATION)

Act 32 of 1981
Act 8 of 2015
Act 21 of 2017

ARRANGEMENT OF SECTIONS

1. Interpretation
1A. Meaning of beneficial owner
2. Incorporation of committee of charitable association
3. Refusal of grant of incorporation
4. Applications for incorporation
5. Certificate of incorporation
6. Gazetting of incorporations
7. Registered Office
8. Vesting of assets and liabilities
8A. Annual reports
9. Validity of contracts of committees
10. Cancellation of certificates of incorporation
11. (Repealed)
12. Disposal of assets on cancellations
13. Committee to give notice of certain changes to Registrar
14. Transfer of interests in land
14A. Disclosure of confidential information
14B. Disclosure to foreign government agency
15. Inspection of register
15A. Powers of the Registrar to inspect
15AA. Registrar may require information and documents
15AB. On-site inspections
15AC. Registrar may request information or documents from a government agency
15B. Offence and penalty
15C. Indemnity from liability etc.
15D Appointment of authorised officers
16. Regulations
SCHEDULE 1 – Repealed
SCHEDULE 2 – Certificate of incorporation of committee of a charitable association

CHARITABLE ASSOCIATIONS (INCORPORATION)

To provide for the incorporation of committees of charitable associations and other purposes incidental thereto.

1. Interpretation

In this Act, unless the context otherwise requires –

"association" means any association or body or persons;

"beneficial owner" has the meaning given by section 1A;

"charitable purposes" includes objects of a religious, educational, cultural, scientific or sporting nature or for general social welfare and any other object the main purpose of which is not financial profit which the Minister declares to be charitable for the purposes of this Act;

"committee" means a committee:

(a) that has made an application under section 2; or

(b) for which a certificate of incorporation has been granted under section 2;

"confidential information" means information supplied to or obtained by the Registrar in the performance of the Registrar's functions or the exercise of the Registrar's powers under this Act, but does not include information that:

(a) can be disclosed under any provision of this Act; or

(b) is already in the public domain; or

(c) consists of aggregate data from which no information about a specific person or business can be identified;

"Court" means the Supreme Court of Vanuatu;

"domestic regulatory authority" means a body or agency established by or under a law of Vanuatu 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;

"Financial Intelligence Unit" means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

"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 Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or

(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 Vanuatu); and

(c) would be regarded by the courts of Vanuatu 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 Vanuatu;

"key person" means a member of a committee, or a beneficial owner of a member of a committee;

"law enforcement agency" means:

(a) the Vanuatu Police Force; or

(b) the Office of the Public Prosecutor; or

(c) the department responsible for customs and inland revenue; or

(d) the department responsible for immigration; or

(e) such other persons prescribed for the purposes of this definition;

"Registrar" means the Registrar appointed by the Minister for the purpose of this Act;

"Sanctions Secretariat" means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017.

1A. Meaning of beneficial owner

(1) A "beneficial owner" of a committee member is a natural person who ultimately controls the committee member.

(2) For the purpose of subsection (1), "control" means exercising influence, authority or power over the committee member, and includes circumstances where the committee member is acting as a nominee or proxy on behalf of another person or entity.

(3) For the avoidance of doubt, if a committee member is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the committee member is the natural person who:

(a) has a legal entitlement to 25% or more of the legal person or legal arrangement by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or

(b) otherwise exercises control, directly or indirectly, over the legal person or legal arrangement.

2. Incorporation of Committee of charitable association

(1) The Committee, having not less than six members, of any association established for charitable purposes may apply to the Registrar for a certificate of incorporation of the committee as a corporate body.

(2) The Registrar must either refuse to grant a certificate or grant a certificate.

(2A) The Registrar must grant a certificate if he or she is satisfied:

(a) that the application complies with this Act; and

(b) that the association is established for charitable purposes; and

(c) of the source of funds used to pay the capital of the committee; and

(d) that key persons are fit and proper persons.

(2B) In assessing whether or not a key person satisfies fit and proper criteria, the Registrar must take into consideration the following matters:

(a) whether the person has been convicted of an offence or is subject to any criminal proceedings;

(b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction;

(c) any other fit and proper criteria prescribed by regulations.

(3) When granting a certificate the Registrar may attach such conditions in addition to any that may be attached under section 3(4) as he may consider necessary for the proper functioning and welfare of the association.

(4) On the date set out in the certificate of incorporation a committee shall become a body corporate and may sue and be sued and do and suffer to be done all that corporate bodies may do and suffer to be done.

3. Refusal of grant of incorporation

(1) When refusing to grant a certificate of incorporation the Registrar shall give reasons for such refusal in writing to the applicant committee.

(2) The Registrar may refuse to grant a certificate for the reason that the objects of the association discriminate against any person, group of persons or class of persons.

(3) (Repealed)

(4) (Repealed)

(5) (Repealed)

4. Applications for incorporation

(1) An application to the Registrar under section 2 must:

(a) be in the prescribed form; and

(b) include:

(i) details of each key person; and

(ii) details as required by the Registrar of the source of funds used to pay the capital of the committee.

(2) The application shall be accompanied by a copy of the articles of association or other documents setting up the association.

(3) The Registrar may require evidence to certify the particulars in the application and such other evidence or information as he may consider necessary.

5. Certificate of incorporation

(1) A certificate of incorporation hereunder shall be in the form set out in Schedule 2 and such certificate bearing the seal and signature of the Registrar shall be conclusive evidence of the incorporation of the committee named therein and the date thereof.

(2) The Registrar shall not issue a certificate of incorporation in a name he considers undesirable or resembles too closely the name of any already incorporated committee or other body whether incorporated or not.

6. Gazetting of incorporations

The Registrar shall publish in the Gazette a notice of every incorporation under this Act.

7. Registered office

A committee incorporated hereunder shall have a registered office at which any legal process may be served.

8. Vesting of assets and liabilities

(1) On the date set out in a certificate all assets and liabilities held for the benefit of the association named in the certificate including any interest in land referred to in its application shall vest in its committee.

(2) The Director of the department responsible for land shall register a committee incorporated hereunder as owner of all interest in land listed in an application for incorporation upon the lodging with him of a copy of the application for incorporation of each committee incorporated under this Act certified by the Registrar accompanied by a certified copy of the certificate of incorporation.

8A. Annual reports

(1) A Committee must provide to the Registrar within 3 months after the anniversary of the incorporation of the Committee, a report on the operations of the Committee for the preceding year.

(2) An Annual report under subsection (1) must be made to the Registrar in the prescribed form and must be accompanied by the prescribed annual report filing fee.

(3) The Minister may by Regulation prescribe the form of an annual report and the amount of fee to be paid under subsection (2).

(4) If a Committee fails to file an annual report required under subsection (2), the Registrar must at least 10 working days prior to the date that is 3 months after the anniversary of incorporation of the Committee, give notice to the Committee to comply with this section.

(5) If a Committee fails to comply within 14 days after the expiry of a final notice issued by the Registrar under subsection (4), the Registrar is to appoint a Receiver for the purposes of rectifying all breach of the Committee or cancel the certificate of incorporation dissolving the Charitable Association and disposing of the assets according to the Constitution of the Committee.

(6) The Registrar may issue a fine to a Committee for failing to comply with a notice issued under subsection (4) and (5).

(7) The Minister may by Regulation, prescribe the amount of fine to be paid under subsection (6).

(8) For the purposes of this section **anniversary** means the annual recurrence of the date on which a Committee was registered in a previous year.

9. Validity of contracts of committees

(1) All contracts made in writing by a committee incorporated hereunder whether required by law to be in writing or not shall be validly made, varied or discharged if signed by not less than two committee members.

(2) All contracts which under the law may be made orally shall be validly made, varied or discharged orally if so done on behalf of a committee by any person acting with express or implied authority.

10. Cancellation of certificates of incorporation

(1) If the Registrar is of the opinion that –

(a) an incorporation hereunder was obtained by fraud, misrepresentation or mistake; or

(b) any of the objects of an association, the committee of which has been incorporated have become unlawful; or

(c) a committee incorporated hereunder or its association is discriminating against any person, group of persons or class of persons; or

(d) an association, the committee of which has been incorporated, is being used for an unlawful purpose; or

(e) a committee incorporated hereunder or its association is not functioning or by reason of the state of its affairs, able properly to function or has become dissolved; or

(f) a committee incorporated hereunder has failed to comply with any of the provisions of this Act; or

(g) a committee has contravened a provision of the Anti–Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or

(h) the fit and proper criteria are not met as required under this Act or Regulations; or

(i) the rules or policies relating to the source of funds of the committee are not acceptable.

he may require the responsible committee by notice in writing to show cause within 30 days as to why its incorporation should not be cancelled.

(2) A notice under subsection (1) shall if the Registrar is unable to serve it at the registered office of the committee or on one or more of its registered members be properly given if published in the Gazette and broadcast over a national radio network on not less than 3 non-consecutive days.

(3) If within 30 days of service of a notice a committee fails to satisfy the Registrar he may cancel its incorporation by notice published in the Gazette.

(4) A cancellation shall take effect at the end of 42 days after the date of publication of the notice of cancellation or on confirmation of cancellation by the Supreme Court under section 11 whichever occurs later.

(5) Upon a cancellation taking effect a committee shall cease to be a corporate body but without prejudice to liabilities incurred by it before or after cancellation.

(6) The Registrar may require any member of a committee that has ceased to be incorporated hereunder to return a certificate of incorporation and neglect or refusal to do so shall be an offence, a person convicted thereof being liable to a fine of VT 20,000.

(7) The Registrar shall cancel the incorporation of a committee incorporated hereunder on dissolution of its association.

11. (Repealed)

12. Disposal of assets on cancellation

If the articles, rules or constitution of an association, the committee of which has been incorporated hereunder, make inadequate or no provision on cancellation under section 10 or dissolution of the association for the disposal of assets vested in the committee the Minster shall upon cancellation make such order as he shall consider proper.

13. Committee to give notice of certain changes to Registrar

(1) A committee must give the Registrar written notice of a change in any or all of the following within 30 days after the change occurs:

(a) the registered office of the committee;

(b) the articles, rules or constitution of the association;

(c) a key person;

(d) the circumstances of a key person that may affect whether he or she meets fit and proper criteria;

(e) the rules or policies relating to the source of funds of the committee.

(2) If a committee fails to comply with subsection (1), the committee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

(3) If a committee fails to comply with subsection (1), the Registrar may cancel the certificate of incorporation of that committee.

(4) If a committee does provide the information as required under subsection (1), but the Registrar is not satisfied that:

(a) the key persons are fit and proper persons having regard to the matters referred to in subsection 2(2B); or

(b) the rules or policies relating to the source of funds of the committee are acceptable,

the Registrar may cancel the certificate of incorporation of the committee.

(5) Section 10 applies to the cancellation of the certificate of incorporation under this section.

14. Transfer of interests in land

A committee incorporated hereunder shall lodge with the Minister not less than 15 days before the transfer, details of any transfer of any interest in land that it intends to make.

14A. Disclosure of confidential information

(1) The Registrar may disclose confidential information if the disclosure:

(a) is required or authorised by the Court; or

(b) is made for the purpose of performing a function or exercising a power under this Act; or

(c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or

(d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or

(e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or

(f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

(g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or

(h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or

(i) is made to a foreign government agency in accordance with section 14B.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:

(a) for an individual – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or

(b) for any other person – a fine not exceeding VT75 million.

14B. Disclosure to foreign government agency

The Registrar may disclose confidential information 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; or

(ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or

(iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

(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.

15. Inspection of register

The Registrar shall make available for inspection his register of committees incorporated hereunder, and documents filed with him in relation thereto, on payment of the fee, prescribed in accordance with section 16(1).

15A. Powers of the Registrar to inspect

(1) The Registrar 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 investigation or audit 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:

(i) any matter that is the subject of an investigation; or

(ii) the documents or records that are relevant to an investigation.

(1A) Subsection (1) does not limit the powers of the Registrar in sections 15AA, 15AB and 15AC.

(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, Constitutional Entity or Provincial Government Council; or

(b) an officer employed in or in connection with any financial institution or insurance company; or

(c) a Committee member; or

(d) 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 punishable on conviction, by:

(a) for an individual – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or

(b) for any other person – a fine not exceeding VT75 million.

15AA. Registrar may require information and documents

(1) Subject to subsection (2), the Registrar may, by notice in writing to a committee, require the committee to provide the Registrar with information or documents, or both, specified in the notice within the period set out in the notice.

(2) The information or documents must relate to:

(a) the committee's integrity, competence, financial standing or organisation; or

(b) the committee's compliance with this Act or the Regulations.

(3) If the committee:

(a) refuses or fails to give the Registrar the information or documents required by the Registrar; or

(b) knowingly or recklessly gives the Registrar information or documents that are false or misleading,

the committee commits an offence punishable upon conviction by the penalty set out in subsection (4).

(4) The penalty is:

(a) for an individual member of the committee – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or

(b) for the committee– a fine not exceeding VT75 million.

15AB. On-site inspections

(1) The Registrar may conduct on-site inspections at the business premises occupied by a committee at any time during normal business hours.

(2) The Registrar may for the purposes of subsection (1):

(a) enter the business premises of the committee during ordinary business hours; and

(b) inspect and take copies of any books, accounts and documents of the committee that relate to:

(i) the committee's integrity, competence, financial standing or organisation; or

(ii) the committee's compliance with this Act or the Regulations.

(3) The committee must cooperate fully with the Registrar by:

(a) giving the Registrar all the information, and making available the documents the Registrar requires; and

(b) if necessary, giving the Registrar appropriate workspace and reasonable access to office services, during the inspection.

(4) If a person intentionally obstructs the Registrar in the exercise of the Registrar's powers under this section, the person commits an offence punishable upon conviction by:

(a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) in the case of a body corporate - a fine not exceeding VT 75 million.

(5) In this section, a reference to the Registrar includes a person appointed by the Registrar in writing as an authorised officer for the purposes of this Act.

(6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

15AC. 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 Financial Intelligence Unit;

(b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

(c) the Sanctions Secretariat;

(d) a law enforcement agency;

(e) a domestic regulatory authority;

(f) 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), (c), (d) or (e).

15B. Offence and penalty

(1) A Committee that contravenes any provisions of this Act commits an offence punishable on conviction by a fine not exceeding VT 125 million.

(2) Upon conviction under subsection (1), the Registrar is to cancel the certificate of Incorporation of the Committee under paragraph 10(1)(f) of the Act and is to dispose of the assets of the Committee according to the Constitution of the Committee.

(3) In addition to subsection (2), if an asset is determined to be the proceed of crime under the Proceeds of Crimes Act [CAP 284], the Registrar is to produce a report on the asset and revert the same to the Attorney General to apply for forfeiture orders under that Act.

15C. Indemnity from liability etc.

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.

15D Appointment of authorised officers

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

16. Regulations

(1) The Minister for the better carrying out of the provisions of this Act may by Order make regulations not inconsistent with this Act.

(2) Without derogating from the generality of subsection (1) the Minister may by Order –

(a) prescribe fees payable on applications for incorporation;

(b) repeal or amend the Schedules;

(c) prescribe fees for certification of documents by the Registrar.

SCHEDULE 1 (Repealed)

(Section 4)

SCHEDULE 2

(Section 5)

CERTIFICATE OF INCORPORATION OF COMMITTEE OF A CHARITABLE ASSOCIATION

I HEREBY CERTIFY THAT The committee of the .....

Association has this day been incorporated under the name, The .....

Committee (Inc.) under the provisions of the Charitable Associations (Incorporation) Act Cap. 140 subject to the conditions contained in the Schedule.*

DATED this .....day of ....., 20.....

Registrar of Charitable Associations

SCHEDULE
Conditions of Incorporation

**delete unnecessary wording if no conditions are attached.*

Table of Amendments (since the Revised Edition 1988)

1	*Amended by Act 21 of 2017*	*14A*	*Inserted by Act 21 of 2017*
1A	*Inserted by Act 21 of 2017*	*14B*	*Inserted by Act 21 of 2017*
2(2)	*Substituted by Act 21 of 2017*	*15A*	*Inserted by Act 8 of 2015*
2(2A) and (2B)	*Inserted by Act 21 of 2017*	*15A(1A)*	*Inserted by Act 21 of 2017*
3(heading)	*Substituted by Act 21 of 2017*	*15A(3)*	*Substituted by Act 21 of 2017*
3(3),(4) and (5)	*Repealed by Act 21 of 2017*	*15AA*	*Inserted by Act 21 of 2017*
4(1)	*Substituted by Act 21 of 2017*	*15AB*	*Inserted by Act 21 of 2017*
8(2)	*Title of Director updated per Act 24 of 2003*	*15AC*	*Inserted by Act 21 of 2017*
		15B	*Inserted by Act 8 of 2015*
8A	*Inserted by Act 8 of 2015*	*15B(1)*	*Amended by Act 21 of 2017*
10(1)(g),(h) and (i)	*Inserted by Act 21 of 2017*	*15C*	*Inserted by Act 21 of 2017*
11	*Repealed by Act 21 of 2017*	*15D*	*Inserted by Act 21 of 2017*
13	*Substituted by Act 21 of 2017*	*Schedule 1*	*Repealed by Act 21 of 2017*