

Background Note & Observations

1. This Report contains the legislative proposals, which would give effect to the recommendations contained in the Joint Assessment Report on the Review of the Legal and Regulatory Framework affecting not-for-profit, non-governmental organizations (NGOs) in Mauritius.¹ The Key findings and Recommendations of the Assessment Report are reproduced in Document 1.
2. The legislative proposals, based on those key findings and recommendations, are attached in documents 2 to 8 with explanatory memoranda about the proposed changes.

These proposals are meant, inter alia, to:

- (a) Affirm the right of informal (non-registered) associations to exist and carry out activities, in accordance with human rights guaranteed by the Constitution and international law;
- (b) Improve the registration process, in compliance with best international regulatory practices;
- (c) Ensure the register of associations is genuinely and speedily accessible;
- (d) Clarify the rights and duties incurred by an association prior to incorporation;
- (e) Ease the operation of associations;
- (f) Improve the process for the transformation of associations;
- (g) Improve the process for the winding up of associations;

¹ The Joint Assessment Report was prepared by the International Legal Consultant, Mr. David Moore, Program Director of the International Center for Not-for-Profit Law (ICNL) and the National Consultant, Mr. Rosario Domingue, CEO of the Law Reform Commission of Mauritius, after extensive consultations with all relevant stakeholders, in the context of the legal review of the NGO sector for the UNDP-Government of Mauritius project on 'Strengthening the NGO Sector in Mauritius'.

- (h) Improve the legal requirements for internal governance, in accordance with best international regulatory practices, by clarifying the duties and liabilities of officers and expressly prohibiting the distribution of profits and benefits, and self-dealing;
 - (i) Clarify the duties of officers and committee members;
 - (j) Streamline the procedures for reporting and auditing, inspection and monitoring;
 - (k) Clarify the concept of 'charitable'/'public benefit' status, the fiscal benefits it gives rise to, the procedure and requirements for obtaining such a status, as well as the accountability standards .
3. The proposals for change have stemmed from two strategic objectives: (a) that the Law should be in line with best international practices; (b) that the Law should be responsive to the needs of NGOs and challenges of society, in particular the imperatives of a new Social Partnership between Government/International Donors, the business community and the NGO sector.
 4. Before implementation of the proposed changes, there is a need to assess additional resources and training needs at the level of the Office of the Registrar of Associations and the Mauritius Revenue Authority [MRA] to ensure smooth implementation of proposed reforms.
 5. The new legal and regulatory framework also calls for Capacity Building of NGOs through Education about their Rights and Responsibilities under New Legal and Regulatory Framework and about the Exigencies of the New Emerging Social Partnership Policy Framework.

List of Documents

Doc. 1: Review of Legal and Regulatory Framework of NGOs: Key Findings and Recommendations

Doc. 2: Matrix of Proposed Amendments to Registration of Associations Act with Explanatory Comments

Doc. 3: Registration of Associations (Amendment) Bill

Doc. 4: Matrix of Proposed Amendments to Registration of Associations Regulations with Explanatory Comments

Doc. 5: Registration of Associations (Amendment) Regulations

Doc. 6: Matrix of Proposed Amendments to Current Tax Legislation with Explanatory Comments

Doc. 7: Provisions to be considered for inclusion in a Finance Bill

Doc. 8: Income Tax (Charitable Institution) Regulations

Document 1: Review of Legal and Regulatory Framework of NGOs: Key Findings and Recommendations

The assessment embraces all aspects of the NGO life-cycle – that is, the definition, existence, internal governance, external supervision, and termination of NGOs, and on their funding and fiscal treatment – and focuses on the following areas:

- Freedom of association, as protected by international law and the Constitution of Mauritius;
- The distinct legal forms available for NGOs, with predominant attention paid to associations, but also including not-for-profit companies, organizations established by Acts of Parliament, and other organizational forms;
- The legal treatment of foreign NGOs;
- The activity areas of NGOs, including public benefit activity, economic activity, and public policy activity;
- The fiscal framework for NGOs, with the emphasis on charitable or public benefit status and tax exemptions available to NGOs and their donors;
- The fiscal framework for NGOs, as it relates to various categories of income for NGOs, including income from economic activity, private giving and government funding;
- The framework for NGO/government cooperation;

Significantly, the assessment contains specific recommendations for the improvement of the legal and regulatory framework.

Definition and Typology of “NGO”

In Mauritius, as in most countries, the term “NGO” is not defined as a separate organizational form. Instead, it is used as a popular catch-phrase to embrace all organizational forms of not-for-profit, non-governmental organizations, including both membership forms (e.g., associations) and non-membership forms (e.g., non-profit companies). Among the universe of non-State actors, the legal framework in Mauritius makes available several alternative organizational forms for non-governmental, not-for-profit organizations, including:

- 1) Associations;
- 2) Youth organizations and clubs;
- 3) Sports clubs and federations, multi-sport organizations;
- 4) Employees superannuation fund;
- 5) Non-profit companies;
- 6) Trusts, including charitable trusts;

- 7) “Waqf” trusts;
- 8) Organizations established through a separate Act of Parliament.

It is generally consistent with good regulatory practice for the legal framework to make available this range of organizational forms, as it allows individuals and groups to pursue not-for-profit goals through membership, non-membership, and property-based forms.

Legal and Fiscal Framework: Key Findings and Recommendations

(1) Legal Existence of Associations: Associations have the right to exist informally or to seek legal entity status according to the Registration of Associations Act. As outlined below, the Associations Act could be improved to establish a more enabling environment for those groups voluntarily seeking legal entity status. The registration process should be clear, straightforward and speedy, and the Act should set forth clear, objective rules for transformation and cancellation.

(a) Mandatory Registration

- Issue: The Act mandates registration for all groups meeting the definition of association. Mandatory registration violates international law protecting freedom of association, and could hinder the formation of smaller community-based groups and ad-hoc coalitions that operate more effectively on an informal basis.
- Recommendation: Affirm the right of informal (non-registered) associations to exist and carry out activities, imposing time limits for registration only on those associations seeking legal entity status, and narrowing the grounds on which an association refused registration can be dissolved.

(b) Registration Procedures

- Issue: There are insufficient procedural safeguards to ensure a speedy registration process. Most strikingly, the Act does not include a fixed time period within which the Registrar must review registration applications; consequently, it can take more than six months or a year for applicants to be registered.
- Recommendation: Improve the procedural safeguards protecting the registration process, by defining a fixed time period within which the Registrar must review, decide upon and issue a decision regarding registration; by ensuring that all grounds for denial of registration are objective; and by clearly stating the rights and duties incurred by an association during the period of creation.

(c) Categorization of Associations

- Issue: While the Act does distinguish between large and small associations, the Act’s Regulations set the threshold for a “large association” so low (an annual revenue exceeding 8000 rupees for the past two years) that virtually all associations qualify as large associations. The distinction between large and small associations is a distinction without real meaning;
- Recommendation: Revise the Registration of Associations Regulations to distinguish meaningfully between large and small associations, as this has

regulatory implications for both internal governance and reporting to the Registrar.

(d) *Transformation*

- Issue: While the Associations Act provides for the merger of two or more associations into one, the Act does not provide for the splitting up or division of one association into two or more associations. It is consistent with good international practice to allow for division, as well as merger, on a voluntary basis, and according to clear procedures.
- Recommendation: Authorize the voluntary splitting up or division of one association into two or more according to the same or similar procedures provided for merger.

(e) *Cancellation and Liquidation*

- Issue: Section 15 of the Act, governing cancellation, is sufficiently broad and vague to invite, at least potentially, arbitrary decision-making. In addition, Section 18 of the Act, governing liquidation procedures, provides that the assets of the cancelled organization, in certain circumstances, shall be transferred to the State.
- Recommendation: Improve the cancellation and winding up procedures, by ensuring that the grounds for cancellation are exhaustive and objective, and by requiring the State to use the remaining assets for the same or similar purposes that the association was pursuing, ideally through distribution of the assets to another association.

(2) Transparency / Internal Governance: The legal framework can help ensure transparency by setting minimum standards for good governance of NGOs. Transparent, well-governed NGOs are critical to the capacity of the sector to meet their missions, address community needs and partner effectively with government. To improve NGO transparency:

(a) *Public Registry*

- Issue: By law, the register of associations must be maintained and accessible to all interested persons. In practice, however, it is not truly and speedily accessible.
- Recommendation: Ensure that the register of associations is genuinely and speedily accessible, while also guarding against the release of confidential information. A truly accessible public registry is a key tool to ensure transparency.

(b) *Amendment of Governing Rules*

- Issue: It is difficult and time-consuming to amend the governing rules of an association.
- Recommendation: Streamline the amendment process, by requiring a notification system, rather than registration, for all non-substantial amendments to the governing rules of an association.

(c) *Internal Reporting*

- Issue: Internal reporting requirements (including the audit requirement) apply to all associations, large and small alike, which can be unnecessarily burdensome on small associations. Indeed, many small associations cannot comply with the audit requirement, thereby leading to evasion and undermining the rule of law.
- Recommendation: Distinguish meaningfully between large and small associations, and require an audit only of large associations. To require small associations to undergo an audit is unrealistic and counter to good regulatory practice in other countries.

(d) *Duties and Liabilities*

- Issue: There are no provisions defining duties of the committee members or office-bearers, such as to act with care and diligence and in the best interests of the organization, to exercise loyalty to the organization, and to maintain confidentiality of non-public information.
- Recommendation: Clarify the duties and liabilities of officers and board (committee) members, and authorize the association or any affected person to sue for redress of any violations of these duties.

(e) *Safeguards against Conflicts of Interest*

- Issue: There are no specific rules relating to the prohibition against conflicts of interest, which would require officers and staff to avoid any actual or potential conflict of interest between personal and business interests and the interests of the association.
- Recommendation: Require that officers, committee members and employees of an association avoid any actual or potential conflict between their personal or business interests and the interests of the association.

(f) *Prohibition against Private Benefits*

- Issue: The Act fails to include clear rules against private enrichment, self-dealing and the distribution of assets to members or “insiders” of an NGO. These kinds of safeguards are fundamental to ensuring good governance and transparency.
- Recommendation: Include provisions prohibiting the distribution of profit, as profit, to members, founders, directors, etc., as well as rules guarding against private enrichment and self-dealing.

(g) *Expenditure Limits*

- Issue: The Associations Act and Regulations contain outdated expenditure limits, which are difficult to comply with and largely seem to be ignored by associations, thereby undermining respect for the rule of law.
- Recommendation: Remove all expenditure limits from the Registration of Associations Act, as they fail to recognize the diversity of spending practices within NGOs, and fail to enhance transparency.

(3) Accountability and Government Supervision: The legal framework should provide the government with appropriate tools to ensure that NGOs are meeting appropriate standards of accountability; at the same time, the level of government supervision should not impede or stifle the work of legitimate organizations. To strike the appropriate balance:

(a) Reporting and Auditing

- Issue: The Associations Act imposes the same reporting and auditing requirements on all registered associations. These requirements prove burdensome to many small associations, and are often ignored, thereby undermining the rule of law.
- Recommendation: Distinguish meaningfully between large and small associations, and require that only large associations comply with auditing and annual return requirements. This approach is consistent with international regulatory practices.

(b) Inspections

- Issue: The rules relating to inspections and special sanctions could be improved to include procedural safeguards and a graduated range of available sanctions.
- Recommendation: Include procedural safeguards to ensure that governmental inspections are conducted after advance notice and during normal business hours.

(c) Special Sanctions

- Issue: Section 37 of the Associations Act provides for a fine and/or imprisonment for an association, officer or other person who fails to comply with the Act. While it is important to allow for special sanctions for violations of the Associations Act, it is generally inappropriate to impose imprisonment as a penalty for violations of laws governing associations and other NGO forms. It is important to note that general criminal laws remain available against any individual who has engaged in criminal activity.
- Recommendation: Establish graduated levels of fines depending on the severity of the offence, and eliminate the possibility of imprisonment as a penalty for violations of the Associations Act.

(4) Other Not-for-Profit Organizational Forms: Moving beyond associations, the legal framework provides for several other organizational forms. This is important, as a truly enabling legal framework must ensure that individuals and groups are fully able to pursue not-for-profit missions through membership, non-membership and property-based forms. Generally, the legal framework affecting not-for-profit companies, youth organizations, sports organizations, employee superannuation funds, and trusts is sound. Specific recommendations relate to the following organizational forms:

- *Not-for-Profit Companies*: Raise legal awareness of the possibilities provided by the not-for-profit company form. The availability of the non-profit company is significant for those not wishing to establish a membership organization.
- *Parliamentary-Established Organizations*: Review specific Acts of Parliament establishing not-for-profit organizations to ensure that they properly address issues of internal governance and external supervision. Any review of these specific parliamentary acts should be conducted with the participation of the relevant organizations.
- *Foreign NGOs*: Revise the legal framework to allow foreign NGOs to operate in Mauritius through a branch or representative office, and to subject foreign NGOs to the same rules applicable to domestic entities. Currently, the legal framework fails to allow foreign NGOs, other than foreign associations, to register a branch office in Mauritius; instead foreign NGOs must register as a domestic organization. Enabling branch office registration could be critical in attracting additional resources to Mauritius.

(5) Public Policy Activities: While NGOs in Mauritius are generally free to engage in public policy activity, including research, education and advocacy, the current legal framework does not allow for public interest litigation, through which NGOs can represent the interests of their own members.

- Recommendation: The ability of NGOs to participate in public policy development is fundamental to a healthy NGO/government relationship – and to ensuring a greater voice for individual citizens. In support of a broader public policy role, the legal system in Mauritius should allow for public interest litigation, so that an NGO can bring a legal action in its own name where its interests or those of its members are directly affected.

(6) Fiscal Framework: Charitable Status and Tax Exemptions: In virtually all countries, it is the fiscal framework for NGOs which is used to support, encourage and promote public benefit or charitable activities. By defining a public benefit or charitable status, which is available only to those NGOs meeting established criteria, and by linking this status with tax preferences and incentives, as well as more stringent accountability requirements, the law helps ensure that NGOs are able to pursue public benefit goals and meet community needs more effectively. Specifically, the Mauritian law should therefore address the following issues:

(a) *Public Benefit Status*

- Issue: The Income Tax Law of Mauritius does define a “charitable institution” status, but the application procedures are not written down or published for the benefit of NGOs; no application forms or guidelines are currently available.

Moreover, there is a potential accountability gap for those NGOs certified as charitable institutions, for the Law does not include enhanced accountability and transparency requirements for those organizations certified as charitable.

- Recommendation: Define the status as “public benefit” rather than “charitable institution” status; consider what purposes/activities should qualify as “public benefit” to be sure it is fully appropriate for the Mauritian context; define and apply clear application procedures for applying for “public benefit” status, and define and apply clear accountability requirements for public benefit organizations, which could include public disclosure of an annual return or report.

(b) *Tax Exemptions / Donor Incentives*

- Issue: Existing tax incentives available to both individual and corporate donors have been eliminated. The elimination of these incentives may have a direct impact on the ability of NGOs to attract funds, and will almost certainly discourage corporate social responsibility.
- Recommendation: Because donor incentives offer a clear and direct means for the State to encourage private support for public benefit causes, we first recommend that the reintroduction of tax incentives be considered. We recognize, however, that this may not be politically feasible, and so alternatively recommend monitoring the impact of the elimination of donor incentives to allow for a revisiting of the issue at the appropriate time.

(c) *VAT, Customs Duties*

- Issue: While tax exemptions are available to charitable institutions, exemptions from VAT and customs duties are available only for those charitable institutions *affiliated with MACOSS*, creating an inconsistency in the tax treatment of NGOs.
- Recommendation: To bring greater consistency to the tax treatment of NGOs, treat charitable institutions uniformly, providing the VAT and customs duty exemptions to all charitable institutions and not merely to those *affiliated with MACOSS*.

(7) Fiscal Framework: Funding Sources for NGOs: There is much confusion within the NGO sector over the ability of NGOs to engage directly in economic activities, and regarding the process for receiving a permit for public collections. Economic activities are especially critical to financial sustainability and the issue deserves clarification. By permitting NGOs to generate and receive income from a diverse range of resources, the fiscal framework helps to ensure the financial sustainability of NGOs, and their long-term ability to meet their mission goals and the community needs.

Recommendations in this area relate to both legal changes and to legal awareness:

- *Economic Activities:* Expressly affirm the right of associations and other not-for-profit organizational forms to engage directly in economic activities, with consideration given to appropriate limits.
- *Public Collections:* Raise awareness of the permitting process required by the Public Collections Act for public collections.

**Document 2: Matrix of Proposed Amendments to Registration of
Associations Act with Explanatory Comments**

MATRIX OF AMENDMENTS TO REGISTRATION OF ASSOCIATIONS ACT WITH EXPLANATORY COMMENTS

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
PART I – PRELIMINARY		
<p>1 Short title This Act may be cited as the Registration of Associations Act.</p>		
<p>2 Interpretation In this Act— “accounting date”, in relation to a registered association, means the closing date of its accounting period; “accounting period”, in relation to a registered association, means the period specified in its rules, in respect of which a statement of receipts and payments is to be prepared under section 20 (2); “association” — (a) means an organisation made up of not less than 7 persons having a formal structure with a common purpose, other than that of pecuniary gain to its members; but (b) does not include a political party; “auditor” means a person appointed as such by an annual general meeting of a registered association; “committee” means the body of persons which is entrusted with the management of a registered association; “foreign association” means an association formed outside Mauritius; “large association” means a registered association (a) the membership of which exceeds such</p>	<p>Section 2 of the principal Act is amended by deleting the following words— “mutual aid society” means an association of which one of the main objects is to provide benefits on the death of a member, his spouse or any of his relatives.</p>	<p>With the deletion of expenditure limits contained in section 19 (see below), there is no need to define a “mutual aid society” as a distinct category of association.</p>

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<p>number; or (b) the value of the assets of which, or the annual revenue of which in 2 consecutive years, exceeds such amount, as may be prescribed;</p> <p>“member” means a member of an association and, in the case of a foreign association, a member who is a resident of Mauritius;</p> <p>“Minister” means the Minister to whom responsibility for the subject of associations is assigned;</p> <p>“mutual aid society” means an association of which one of the main objects is to provide benefits on the death of a member, his spouse or any of his relatives;</p> <p>“office”, in relation to an association, means the principal place of business of the association;</p> <p>“officer — (a) means a person who forms part of a committee or is an auditor or secretary of an association; (b) does not include a member of the staff of an association who performs the duties of a secretary;</p> <p>“register” means the register to be kept under section 4;</p> <p>“Registrar” means the Registrar of Associations;</p> <p>“registered” means registered under this Act;</p> <p>“revenue” means the gross receipts of a registered association from any source;</p> <p>“secretary” — (a) means the secretary of an association; and</p>		

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<p>(b) includes—</p> <p>(i) any other person performing the duties of secretary; and</p> <p>(ii) in the case of a foreign association, the person who represents the association in Mauritius;</p> <p>“special resolution” means a resolution passed by a registered association in accordance with section 30;</p> <p>“village” has the same meaning as in the Local Government Act 1989;</p> <p>“youth club” means an association —</p> <p>(a) the members of which are —</p> <p>(i) over the age of 14; and</p> <p>(ii) under the age of 30; and</p> <p>(b) the aims and objects of which are to provide facilities for the spiritual, mental or physical training of its members.</p>		
<p>3 Application of Act</p> <p>(1) Nothing in this Act shall affect any other enactment which relates to</p> <p>(a) companies;</p> <p>(b) civil or commercial partnerships (including sociétés);</p> <p>(c) cooperative societies; or</p> <p>(d) trade unions.</p> <p>(2) This Act shall not apply to —</p> <p>(a) a youth club;</p> <p>(b) an association</p>	<p>Section 3 of the principal Act is amended by adding after subsection (2) a new subsection (3):</p> <p>(3) This Act shall not be construed as limiting the right of individuals to freedom of association, or to any other fundamental rights and freedoms, to an extent which is greater than what is afforded protection by the Constitution or as denying individuals rights which the Republic of Mauritius</p>	<p>This amendment seeks to affirm the right of informal (non-registered) associations to exist and carry out activities. It ensures that the Act is in compliance with the Constitution and international law protecting freedom of association. It underscores the right of smaller community-</p>

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<p>incorporated under any other enactment; and (c) a cooperative society.</p>	<p>is required to give effect to under international law.</p>	<p>based groups and ad-hoc coalitions to form and operate on an informal (unregistered) basis.</p>
PART II—REGISTRATION OF ASSOCIATIONS		
<p>4 Register of associations (1) The Registrar shall keep a register in which shall be entered the particulars of every registered association. (2) Any interested person may, on written application to the Registrar, inspect the register on payment of the prescribed fee.</p>	<p>Section 4 of the principal Act is amended by repealing subsection (2) and enacting the following new subsections – (2) Subject to subsection (3), the register shall be open to public scrutiny and any person shall be entitled to a copy of any entry in the register, upon payment of a reasonable fee to cover copying expenses, within 7 days of a written request to the Registrar. (3) The Registrar shall not give the public access to private information, such as home address and telephone number, relating to members, officers or staff of the association.</p>	<p>The newly proposed subsections 2 and 3 are intended to help ensure that the register of associations is genuinely and speedily accessible, while also guarding against the release of confidential information. A truly accessible public registry is a key tool to ensure transparency and to facilitate information-sharing.</p>
<p>5 Registration of associations (1) Subject to section 17 (2), every association other than a foreign association shall - (a) give notice of its formation to the Registrar within 14 days; and (b) apply to the Registrar for registration within 3 months, of its formation. (2) Every foreign association shall apply to the Registrar for registration before engaging in any activity in Mauritius. (3) Every notice or application under subsection (1) or (2) shall be signed by the secretary.</p>	<p>Section 5 of the principal Act is amended in subsection (1) by adding the words “seeking legal entity status” after the phrase “every association”.</p>	<p>This amendment seeks to affirm that the decision to apply to the Registrar for registration is a voluntary choice and therefore applies to an association “seeking legal entity status”.</p>

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<p>6 Application for registration</p> <p>(1) Subject to subsection (2), every application under section 5 shall be accompanied by —</p> <p>(a) 2 copies of the rules of the association;</p> <p>(b) a list of the members, showing their names, occupations and addresses;</p> <p>(c) a list of the officers, showing their titles, names and addresses;</p> <p>(d) a certified copy of the minutes of proceedings of the meeting at which the rules were approved and the officers were appointed;</p> <p>(e) a notice of the address of the office of the association; and</p> <p>(f) the prescribed fee.</p> <p>(2) An application for registration under section 5 (2) shall also specify —</p> <p>(a) the names and addresses of the person authorised to represent the foreign association in Mauritius;</p> <p>(b) the office of the association in Mauritius; and</p> <p>(c) the nature of the activity in which the foreign association intends to engage in Mauritius.</p> <p>(3) The Registrar may, by written notice, require the secretary to provide any further information he may reasonably require for the purpose of considering the application.</p> <p>(4) Where the Registrar is of</p>	<p>Section 6 of the principal Act is amended</p> <p>(a) by deleting in paragraph (b) of subsection (1) the word “occupations”;</p> <p>(b) by repealing subsection (2) and replacing it with the following-</p> <p>(2) An application for registration under section 5 (2) shall also specify —</p> <p>(a) the names, postal and e-mail address(es), and other contact information, of the individual(s) in Mauritius authorized to act on behalf of the foreign association;</p> <p>(b) the address of the office of the association in Mauritius; and</p> <p>(c) the nature of the activities in which the foreign association intends to engage in Mauritius.</p> <p>(c) by repealing subsection (3) and replacing it with the following new subsection-</p> <p>(3) Where all documents have not been submitted in support of an application, or the registration fee has not been paid, the Registrar shall, within 30 days of the submission of the application, give written notice to the applicant that, in accordance with the prescribed requirements for application,</p>	<p>(a) According to international good practice, required information usually includes the names and addresses of the founding members, but not their occupations. The relevance of their occupations is not clear and we recommend deleting this requirement.</p> <p>(b) Proposed amendments to subsection (2) would simply require additional contact information for the representative of a foreign association in Mauritius.</p> <p>(c) To ensure prompt government review of applications, it is important for the law to provide a fixed time period within which the Registrar must review, decide upon an application for registration. Currently, there are insufficient procedural safeguards to ensure a speedy registration process; consequently, it can take more than six months or a year for applicants to be registered. The newly proposed subsection</p>

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<p>opinion that the association does not comply with this Act or, as the case may be, with the Sports Act 2001, he shall give written notice to the secretary of the failure to comply and afford the association a reasonable time in which to comply with this Act or as the case may be, with the Sports Act 2001.</p>	<p>the application cannot be processed and state the deficiencies in the application.</p> <p>(d)by repealing subsection (4) and replacing it with the following new subsection-</p> <p>(4) The Registrar shall, within 30 days of the submission of a complete application, give written notice to the applicant whether or not the association has been registered.</p>	<p>(3) would require the Registrar to inform applicants that the application is incomplete. The newly proposed subsection (4) would require the Registrar to decide on the application within a fixed time period.</p>
<p>7 Grounds for refusal to register (1) An association shall not be registered where it does not comply with this Act or where —</p> <p>(a) any of its objects is unlawful;</p> <p>(b) it is engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order or has made, is making or is likely to make, available any resources, directly or indirectly, to a terrorist or a terrorist organisation or for the purposes of terrorism.</p> <p>(c) its rules are not clear or are ambiguous;</p> <p>(d) its name —</p> <p>(i) is the same as that of a registered association or so resembles that of a registered association that the public may be</p>	<p>Section 7 of the principal Act is amended by repealing subsection (1) and replacing it with the following-</p> <p>(1) An association shall not be registered where it does not comply with this Act or any other relevant enactment or, without prejudice to the generality of the foregoing, where</p> <p>(a) any of its objects is unlawful;</p> <p>(b) it is engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order or has made, is making or is likely to make, available any resources, directly or indirectly, to a terrorist or a terrorist organisation or for the purposes of terrorism;</p> <p>(c) its rules are not clear</p>	<p>The grounds for refusal to register should be a closed list of objective grounds. Vague provisions that open up the door to subjective and potentially arbitrary decision-making are therefore not warranted.</p> <p>With this principle in mind, the proposed amendments seek to provide greater objectivity to the review of the name of an association, allowing for refusal where there is another registered association with the same name or one so similar as to be misleading. The amendments also address the case</p>

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<p>deceived or misled; or (ii) is, in the Registrar's opinion, objectionable or otherwise unsuitable; or (iii) in the case of a foreign association, its registration would not be in the interest of Mauritius.</p> <p>(2) Where the Registrar refuses to register an association, he shall by written notice inform the secretary of the refusal and of the reason for the refusal.</p> <p>(3) Any person aggrieved by the refusal of the Registrar to register an association may, not later than 21 days after the date of a notice under subsection (2), appeal to a Judge in Chambers against the decision of the Registrar and on any such appeal, the Judge may make such order as he thinks fit.</p>	<p>or are ambiguous; (d) its name is the same as that of a registered association or so resembles that of a registered association or is so misleading that the public may be deceived or misled. If two or more associations submit applications for registration under the same name, the application that has been submitted to the Registrar first shall be approved and the later applicant shall be given the opportunity to choose a new name and modify the application to include the new name. (e) in the case of a foreign association, its registration would be prejudicial to the national security of the Republic of Mauritius.</p>	<p>where there are two or more applications pending from associations of the same name.</p>
<p>8 Certificate of registration (1) Where the Registrar is satisfied that an association should be registered, he shall register the association and its rules, and issue to the association a certificate of registration. (2) Any interested person may, on written application to the Registrar and on payment of the prescribed fee, obtain a copy of the certificate of registration of an association, or a copy or extract of the annual</p>	<p>The principal Act is amended by inserting immediately after section 8, the following new section 8A-</p> <p>8A. Pre-Registration Arrangements (1) Subject to subsection (2), any person who enters into a contract or incurs an obligation in the name of an unregistered association shall be personally liable.</p>	<p>Currently, the Act is silent as to which obligations incurred between its establishment and formal registration will be considered to carry over to the association once it becomes a legal entity. Laws of many countries have special rules with regard to the activities of</p>

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<p>return of an association under section 23 and of any other document relating to the registration of an association, certified by the Registrar.</p>	<p>(2) An association may, after registration and in accordance with its rules, decide to be bound by a contract or obligation entered into on its behalf by one of its members prior to its registration.</p>	<p>associations in the process of formation and the rights and obligations that can be incurred or transferred to an organization upon registration. The proposed amendment therefore seeks to state clearly the rights and duties incurred by an association during the period of creation, including issues about transfer of property.</p>
<p>9 Status and acts of associations (1) A registered association shall be a body corporate with perpetual succession and a common seal bearing its name and shall have all the rights and powers of a natural person. (2) Notwithstanding any other enactment, but subject to subsection (3), an officer may, when acting in accordance with the rules of the association, bind the association in the same manner as if his appointment were made by authentic deed. (3) No property worth more than 3,000 rupees and belonging to a registered association shall be disposed of, pledged, mortgaged or charged unless the transaction has been approved by special resolution. (4) A registered association may sue and be sued under its corporate name and service of any notice or process by or on the secretary shall be deemed to be service on behalf of or on the association.</p>	<p>Section 9 of the principal Act is amended by repealing subsection (3) and replacing it with the following subsection - (3) No immovable property belonging to a registered association shall be disposed of, mortgaged or charged unless the transaction has been approved by special resolution.</p>	<p>Limits on administrative expenses are rare and considered poor regulatory practice, due to the diversity of organizations (some may require higher administrative expenses than other, depending on their purposes and functions). Fundamentally, the enforcement of such limits would seem nearly impossible, thereby inviting organizations to ignore such limits in practice, and thereby undermining respect for the rule of law generally. Equally important, the sector is so diverse that one size does not fit all. Different associations will need to exercise</p>

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<p>(5) Subject to section 15 (3), any communication or notice addressed to a registered association shall be deemed to have been duly sent if forwarded to the office of the association or, in the case of a foreign association, to its principal place of business in Mauritius.</p> <p>(6) The secretary shall give written notice to the Registrar of any change in the address of the office of the association or, in the case of a foreign association of its principal place of business in Mauritius, within 14 days of the change.</p>		<p>different spending practices to pursue their mission effectively. Therefore, the newly proposed subsection (3) would remove the expenditure limit and simply require a special resolution for the disposal of immovable property.</p>
<p>10 Consequences of refusal to register</p> <p>(1) Where the Registrar has refused to register an association, the association shall be dissolved –</p> <p>(a) where no appeal has been lodged under section 7 (3), not later than one month after the date of a notice under section 7 (2);</p> <p>(b) where an appeal has been lodged under section 7 (3) and the appeal has been dismissed, not later than one month after the date of the dismissal of the appeal.</p> <p>(2) Where an association which is required to be dissolved is not dissolved within the time specified in subsection (1), the association shall commit an offence and the association shall be wound up by the Registrar in accordance with section 18.</p>	<p>Section 10 of the principal Act is deleted in its entirety.</p>	<p>In light of the fact that unregistered associations are free to operate under the Constitution and international law, section 10 serves no regulatory purpose and potentially infringes on fundamental freedoms. Should individuals or unregistered groups be engaged in criminal activity, then the State has authority to act against such individuals or groups based on the criminal law.</p>
PART III – RULES OF ASSOCIATIONS		
<p>11 Rules of association</p> <p>(1) The rules of every registered association shall make provision</p>	<p>Section 11 of the principal Act is amended by deleting in subsection (2) the words “on</p>	<p>The fee limit of 5 rupees is clearly outdated; the</p>

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<p>for the matters specified in the Schedule.</p> <p>(2) Every member shall, on his admission and on request made to the secretary, be entitled to receive, on payment of any fee fixed by the association which shall not exceed 5 rupees, a copy of the rules of the registered association.</p>	<p>payment of any fee fixed by the association which shall not exceed 5 rupees” and replacing them by the words “on payment of any reasonable fee as may be determined by the association”.</p>	<p>proposed amendment would leave this to the discretion of each association, as is appropriate.</p>
<p>12 Minors</p> <p>(1) Subject to subsection (2), a minor may, with the written consent of his responsible party, be admitted as a member of a registered association.</p> <p>(2) No minor shall be appointed the committee, or as an officer, of a registered association.</p>		
<p>13 Amendment of rules</p> <p>(1) Subject to subsections (2) and (3), a registered association may by special resolution amend its rules.</p> <p>(2) An amendment of the rules of an association shall not have effect until it is registered.</p> <p>(3) An application for the registration of an amendment of the rules of a registered association shall be signed by the secretary and shall be accompanied by —</p> <p style="padding-left: 40px;">(a) 2 copies of the proposed amendment of the rules;</p> <p style="padding-left: 40px;">(b) a certified copy of the minutes of proceedings of the general meeting at which the special resolution to amend the rules was approved; and</p> <p style="padding-left: 40px;">(c) a declaration signed by him that section 30 has been complied with.</p>	<p>Section 13 of the principal Act is repealed and replaced by the following new section-</p> <p>13. Amendment of rules</p> <p>(1) Subject to subsections (2) and (3), a registered association may amend its rules.</p> <p>(2) An amendment of the rules of an association shall not have effect until it is registered.</p> <p>(3) An application for the registration of an amendment of the rules of a registered association shall be signed by the secretary and shall be accompanied by —</p> <p style="padding-left: 40px;">(a) 2 copies of the proposed amendment of the rules; and</p> <p style="padding-left: 40px;">(b) a certified copy of the minutes of proceedings of the general meeting at which the amendment of the rules was approved.</p> <p>(4) The Registrar shall, within 30</p>	<p>To allow associations to amend their rules more easily and to ensure prompt government action regarding amended rules, the proposed legislative amendments remove the requirement for a special resolution and give the Registrar a fixed time period to review and register the amended rules.</p>

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	<p>days of the submission of amended rules, give written notice to the association regarding the registration of the amended rules.</p>	
<p>14 Rules to be binding (1) Subject to subsection (2), the rules of a registered association shall bind the association and every member and any other person claiming through a member to the same extent as if the member or other person had subscribed his name thereto. (2) No person shall be liable for any debt of a registered association contracted after he has ceased to be a member.</p>	<p>Section 14 of the principal Act is amended by deleting subsection (2) and replacing it with the following new subsection: (2) No member of a registered association shall be liable for any debt or obligation of the association, either during his membership or after he has ceased to be a member.</p>	<p>A core principle of law is that members of registered associations are insulated from personal liability. The amendment here seeks to make this expressly clear.</p>
PART IV - CANCELLATION, AMALGAMATION AND WINDING UP OF ASSOCIATIONS		
<p>15 Cancellation of registration of associations (1) Subject to section 17 (3) and to the other provisions of this section, the Registrar may cancel the registration of a registered association on the ground that — <ul style="list-style-type: none"> (a) the registration of the association was obtained by fraud or misrepresentation; (b) the association has engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order or has made, is making or is likely to make, available any resources, directly or indirectly, to a terrorist or a terrorist organization or for the purposes of terrorism. (c) the association has </p>	<p>Section 15 of the principal Act is amended in subsection (1) by deleting paragraph (e) and replacing it by the following paragraph- (a) the association has ceased to function, as is evidenced by the failure to submit its annual return to the Registrar for two consecutive years.</p>	<p>To ensure that the grounds for cancellation are objective, clear and predictable, the proposed amendment seeks to provide a basis to interpret the meaning of “cease to function”.</p>

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<p>contravened its rules or this Act, and has persisted in its default after the Registrar has given it written notice specifying the default and fixing a time which shall not be less than twenty-one days for remedying the default, and that time has expired;</p> <p>(d) the association has in any way misapplied its funds; or</p> <p>(e) the association has ceased to function.</p> <p>(2) Where the Registrar is satisfied that the registration of an association should be cancelled, he shall, with the approval of the Minister, give notice to the secretary of his intention to cancel the registration of the association and of the ground of his decision.</p> <p>(3) A notice under subsection (2) shall be given —</p> <p>(a) by registered post; or</p> <p>(b) where the secretary of the association cannot be found or is not known, by publication in the <i>Gazette</i> and in 2 daily newspapers.</p> <p>(4) An association may, not later than twenty-one days after the date of a notice under subsection (2), appeal to a Judge in Chambers against the decision of the Registrar in accordance with section 33 and, on any such appeal, the Judge may make such order as he thinks fit.</p> <p>(5) The registration of an association shall be cancelled and the association shall be wound up by the Registrar in accordance with section 18 —</p>		

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<p>(a) where no appeal has been lodged under subsection (4), not later than twenty-one days after the date of a notice under subsection (2);</p> <p>(b) where an appeal has been lodged under subsection (4) and the appeal has been dismissed, not later than one month after the date of the dismissal of the appeal.</p> <p>(6) The association may, before the expiry of the time specified in subsection (5), by special resolution designate to the Registrar a registered association to which any remaining property of the association shall be transferred.</p>		
<p>16 Voluntary winding up</p> <p>(1) Subject to subsections (2) and (3), a registered association may, by special resolution, decide that it shall be wound up and that any remaining property, shall be transferred to a registered association designated in the resolution.</p> <p>(2) Where an association has resolved that it should be wound up, the secretary shall, within 14 days after the resolution has been approved, give written notice of the resolution to the Registrar and lodge with him —</p> <p>(a) a certified copy of the minutes of proceedings of the general meeting at which the special resolution to wind up the association has been approved;</p>	<p>Section 16 of the principal Act is amended by deleting subsection (3) and replacing it with the following new subsection:</p> <p>(3) Registrar shall within 30 days of the receipt of a notice under subsection (2), and on being satisfied that the resolution to wind up the association has been approved in accordance with section 30, cause to be published a notice of the winding up in the <i>Gazette</i> and the association shall be wound up in accordance with section 18.</p>	<p>The intent of the proposed amendment is to place time limits on the government action relating to winding up, in line with best international practices.</p>

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<p>(b) a detailed statement of the assets and liabilities of the association; and (c) a declaration signed by him that section 30 has been complied with.</p> <p>(3) On receipt of a notice under subsection (2) and on being satisfied that the resolution to wind up the association has been approved in accordance with section 30, the Registrar shall publish a notice of the winding up in the <i>Gazette</i> and the association shall be wound up in accordance with section 18.</p>		
<p>17 Amalgamation</p> <p>(1) Subject to subsections (2) and (4), 2 or more registered associations may amalgamate to form one association if a special resolution to the effect is approved by every registered association concerned.</p> <p>(2) Where 2 or more registered associations have resolved to amalgamate, the secretaries of the registered associations concerned shall, within one month after the last registered association concerned to approve a special resolution has done so, jointly –</p> <p>(a) give written notice of the amalgamation to the Registrar; and (b) apply, under section 5, for the registration of the association formed by the amalgamation.</p> <p>(3) Where the Registrar registers an association formed by the amalgamation of 2 or more registered associations he shall cancel the registration of these registered associations.</p>	<p>New Section 17A inserted in principal Act The principal Act is amended by inserting immediately after section 17, the following new section 17A-</p> <p>17A. Splitting up</p> <p>(1) Subject to subsections (3) and (5), a registered association may, by special resolution, resolve to split up into two or more associations.</p> <p>(2) Each successor association shall be responsible for the debts and liabilities of the registered association, unless otherwise determined by special resolution.</p> <p>(3) The secretaries of the successor associations shall, within one month after the special resolution, jointly-</p> <p>(a) give written notice of the splitting up to the Registrar; and (b) apply, under section 5,</p>	<p>Currently, the Act does not provide for the splitting up or division of one association into two or more associations. It is consistent with good international practice to allow for division, as well as merger, on a voluntary basis, and according to clear procedures. The proposed amendment therefore seeks to accomplish this.</p>

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<p>(4) The amalgamation shall take effect from the date of the registration of the new association under subsection (3).</p>	<p>for the registration of the new associations formed as a result of the splitting up.</p> <p>(4) Where the Registrar registers the associations formed by the splitting up of a registered association he shall cancel the registration of the registered association.</p> <p>(5) The splitting up shall take effect from the date of the registration of the new associations under subsection (4).</p>	
<p>18 Effect of Winding up</p> <p>(1) Where a registered association is required to be wound up under section 10, 15 or 16, all the property of that association shall vest in the Registrar who shall—</p> <p>(a) use the property towards meeting, as far as possible, all the debts and liabilities of the association and the costs of the winding up; and</p> <p>(b) transfer any remaining property to a registered association designated by the association under subsection (2) or (3).</p> <p>(2) Every association shall, on its formation, designate a registered association to which, in the event of the association being wound up, its remaining property under subsection (1) (b) shall be transferred.</p> <p>(3) A designation under subsection (2) may be varied —</p> <p>(a) by a resolution of the</p>	<p>Section 18 of the principal Act is amended in subsection (4) by deleting the words “the property shall vest in the State” and replacing them with the words “the State shall ensure that the remaining assets are used for the same or similar purposes that the association was pursuing, ideally through distribution of the assets to another registered association”.</p>	<p>It is a well-established principle of good regulatory practice that upon liquidation (proceeding from either a voluntary winding up or government cancellation), the assets will be transferred, after payment of creditors, to another association engaged in the same or similar pursuits. The proposed amendment to subsection (4) would therefore specifically require the State to use the remaining assets for the same or similar purposes that the association was pursuing, ideally through distribution of the assets to another</p>

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<p>annual general meeting of the association; or (b) by a special resolution under section 15 (6) or 16 (1).</p> <p>(4) Where— (a) a registered association has not designated an association under subsection (2) or (3) to which any property is to be transferred under subsection (1) (b); or (b) the association designated under subsection (2) or (3) refuses to accept any property to be transferred under subsection (1) (b); the property shall vest in the State.</p> <p>(5) Any transfer of property under subsection (1) shall be exempt from the payment of any duty, fee or charge which would otherwise be payable to the Government.</p> <p>(6) Any person who acts or purports to act as an officer of an association which has been wound up, or who fails to deliver to the Registrar any property of an association which is required to be wound up, shall commit an offence.</p>		<p>association.</p>
PART V — ADMINISTRATIVE PROVISIONS		
<p>19 Application of funds (1) Subject to this Part, no registered association shall apply its funds except for — (a) the furtherance of its objects; (b) the payment of — (i) reasonable emoluments to its</p>	<p>Section 19 of the principal Act is repealed and replaced by the following section-</p> <p>19. Prohibition against private benefits in the application of funds</p> <p>(1) No registered association shall distribute its assets, earnings or profits, as profit to</p>	<p>To ensure strong internal governance and prevent financial abuse, the Registration of Associations Act seems to rely, at least in part, on rigid limitations of expenditures rather than on the inclusion</p>

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<p>employees; (ii) reasonable allowances or expenses to its officers; and (iii) reasonable expenses for its administration, including the auditing of its accounts.</p> <p>(2) The committee of a registered association shall not incur any expenditure — (a) during the period between the accounting date and the next annual general meeting, in excess of one sixth of the expenditure in the preceding accounting period; (b) at any other time — (i) in excess of 1,000 rupees under any one item; (ii) in excess of 4,000 rupees in any year, unless the expenditure has been previously approved by a general meeting.</p> <p>(3) Except with the approval of the Minister, no mutual aid society shall, in any accounting period, incur expenditure— (a) under subsection (1) (b) (i) and (ii), in excess of 12 per cent; or (b) under subsection (1) (b) (i), (ii) and (iii), in excess of 15 per cent, of the revenue of the society during that period.</p> <p>(4) A registered foreign association shall not —</p>	<p>any person.</p> <p>(2) The assets, earnings and profits of a registered association shall be used solely to further the not-for-profit purpose or purposes of the association.</p> <p>(3) A registered association may apply its funds for the payment of — (a) reasonable emoluments to its employees; (b) reasonable allowances or expenses to its officers; and (c) reasonable expenses for its administration, including the auditing of its accounts.</p> <p>(4) The assets, earnings and profits of a registered association shall not be used to provide special personal benefits, directly or indirectly, to any founder, officer, member, employee or donor of the association or their family members and relatives.</p> <p>(5) Notwithstanding subsection (4), benefits may be made available to members of an association if they are made available on a non-discriminatory basis to all members.</p> <p>(6) The association or any person aggrieved may sue for redress for harm caused by a violation of the prohibition contained in this section.</p>	<p>of good governance safeguards. The proposed amendments to section 19 would remove the expenditure limits and replace them with legal safeguards against corruption, including the prohibition against private benefits and against self-dealing.</p>

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<p>(a) collect funds, or act as an agent, in Mauritius on behalf of any person;</p> <p>(b) except —</p> <p style="padding-left: 20px;">(i) with the approval of the Minister; and</p> <p style="padding-left: 20px;">(ii) on compliance with the Exchange Control Act,</p> <p>transfer its property or funds to any country outside Mauritius; and</p> <p>(c) make any payment in Mauritius —</p> <p style="padding-left: 20px;">(i) on behalf of a person not resident in Mauritius; or</p> <p style="padding-left: 20px;">(ii) in respect of any activity of the association other than its activities in Mauritius.</p> <p>(5) Where any payment is made in contravention of subsection (4), the Registrar may, on behalf of the foreign association, recover the amount paid from the person making the payment or from the payee.</p> <p>(6) Notwithstanding any other enactment, a suit by the Registrar under subsection (5) shall be entered before the Supreme Court by plaint with summons.</p>	<p>New section 19A inserted in the principal Act</p> <p>The principal Act is amended by inserting immediately after section 19 the following new section-</p> <p>19A. Economic activities</p> <p>(1) A registered association may directly engage in economic activities, provided any revenue generated from the economic activities is used solely to advance the association’s statutory goals.</p> <p>(2) The revenue generated from economic activities shall not be distributed as profit, directly or indirectly, to any founder, officer, member employee or donor of the association.</p>	<p>The new section 19A expressly affirms the right of associations to engage directly in economic activities to advance its mission.</p>
<p>20 Records and accounts</p> <p>(1) Every officer who is responsible for keeping any account of a registered association or for the collection, receipt, disbursement, custody or control of the money of the association shall keep a record of all money received and paid by him for and on behalf of the association and shall—</p> <p style="padding-left: 20px;">(a) at least once a year on the</p>		

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<p>accounting date; (b) on his resignation; (c) on vacation of his office; or (d) where required so to do by the rules of the association or this Act, render to the association a true account of all money received, and paid by him since his appointment or since he last rendered an account whichever occurs later.</p> <p>(2) The treasurer of every registered association shall, once a year, not later than one month after the accounting date, prepare and submit to the committee a statement of all receipts and payments of the association in respect of the accounting period and of the assets and liabilities of the association existing on the accounting date.</p> <p>(3) Every officer shall, if so required, hand over to the association the balance which on any audit appears to be due from him and all bonds, securities and effects, books, papers or other property of the association in his possession, under his control or entrusted to his custody.</p> <p>(4) Where an officer fails to comply with subsection (3) the committee, any member or the Registrar, acting on behalf of the association, may recover from him by judicial process —</p> <p>(a) the balance due upon any account last rendered by him; (b) all other money received by him on account of the association; and (c) all bonds, securities and</p>		

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<p>effects, books, papers or other property in his possession, under his control or entrusted to his custody.</p>		
<p>21 Audit (1) The committee of every registered association shall — (a) cause the statement prepared under section 20 to be audited by the auditor before submitting it to the annual general meeting; (b) (i) once a year not later than 2 months after the accounting date; and (ii) at such other times as may be required by the rules, cause the accounts of the association to be audited by the auditor. (2) The committee shall, upon written request by the auditor, submit the accounts of the association for audit.</p>		
<p>22 Annual general meeting (1) Every registered association shall, not later than 3 months after its accounting date, hold an annual general meeting. (2) The committee of every registered association shall submit for the approval of its members at the annual general meeting of the association - (a) the statement prepared under section 20 (2); and (b) in the case of a large association, an estimate of the expenditure of the</p>		

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<p>association, in the accounting period ending on the next accounting date.</p> <p>(3) The treasurer of every registered association shall, on the application of a member, deliver to him a copy of the statement of estimate required to be submitted for the approval of the members under subsection (2).</p> <p>(4) Every association shall, for a period of 12 months beginning not later than one week before the annual general meeting, cause a copy of every document required to be submitted to the meeting under subsection (2) to be prominently displayed, and made available for inspection by a member, at every place of business maintained by the association.</p>		
<p>23 Annual return</p> <p>(1) The secretary of every registered association shall, not later than 3 months after the accounting date in every year, forward to the Registrar a return containing —</p> <p>(a) a certified copy of the statement required to be submitted to the annual general meeting under section 22, together with a declaration specifying whether the statement has been approved by the meeting;</p> <p>(b) a statement of the names and postal addresses of the</p>		

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<p>officers of the association;</p> <p>(c) a return of the membership of the association as on 31 December of the preceding year; and</p> <p>(d) where the association has amended its rules during the accounting period, a copy of the rules of the association as amended.</p> <p>(2) The secretary shall, within 14 days of any change among the officers of a registered association, give written notice of the change to the Registrar.</p>		
<p>24 Register of members and records</p> <p>(1) Every registered association shall keep an up to date register of its members.</p> <p>(2) Every registered association shall retain —</p> <p>(a) for a period of not less than 3 years after the last date to which they relate —</p> <p>(i) all books, statements of account and auditors' reports;</p> <p>(ii) all registers of members, and all records of money paid by members to the association;</p> <p>(b) for a period of not less than 3 years after their date of origin, all minutes of meetings, vouchers, receipts, correspondence</p>		

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<p>and other documents relating to the affairs of the association.</p> <p>(3) Every registered association shall ensure that all the books and documents of the association and the register of its members are available for inspection by the Registrar or by a member at its office or, in the case of a foreign association, at its principal place of business in Mauritius.</p>		
<p>25 Officers</p> <p>(1) No person shall be qualified to become an officer or, having been so appointed or elected, shall act as such where —</p> <p>(a) he is an undischarged bankrupt; or</p> <p>(b) he has, within the 3 preceding years, been convicted of any offence involving fraud or dishonesty.</p> <p>(2) In the case of a large association, no person shall be qualified to be —</p> <p>(a) an officer, other than the auditor —</p> <p>(i) unless he has been a member for more than 6 months; or</p> <p>(ii) where the association has been registered for less than 6 months, he has been a member since the date of the registration of the association;</p> <p>(b) a president, treasurer or secretary, unless he can read and write English or French; (c) an auditor,</p>	<p>The principal Act is amended by inserting immediately after section 25 the following new section-</p> <p>25A. Duties of officers and committee members</p> <p>(1) Officers and committee members of a registered association shall ensure the association operates within the requirements of this Act and any other law, and they shall perform their functions with the degree of care, diligence and skill a reasonably prudent person would exercise in comparable circumstances.</p> <p>(2) Officers and committee members of a registered association shall act in the best interests of the association, shall exercise loyalty to the organization and shall not disclose information obtained in confidentiality.</p> <p>(3) Officers and committee members of a registered association shall avoid any actual or potential conflict between their personal or business interests and the interests of the association.</p>	<p>The Act currently does not define any duties for officers or committee members by which to ensure minimum standards of good performance. There is no legal obligation for officers or committee members to ensure organizational compliance with the law. Furthermore, there is no mention made of a duty to exercise loyalty to the organization, to execute responsibilities with care and diligence, or to maintain the confidentiality of non-public information about the organization. In contrast, the Companies Act does require directors to exercise their duties honestly, in good faith and in the best interests of the</p>

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<p>unless he has such qualifications as may be prescribed.</p>	<p>(4) Officers and committee members of a registered association shall disclose any potential personal or business interest that might be adverse to the interests of the association.</p> <p>(5) Officers and committee members of a registered association shall not vote on issues in which their personal or business interests, or the personal or business interests of their family members or relatives, either by blood or marriage, may conflict with the financial interests of the association.</p> <p>(6) Officers and committee members of a registered association shall not allow any transaction between the registered association and an affiliated organization, or between the registered association and its founders, members, officers, members of the committee or employees, unless the committee determines after reasonable investigation that the transaction is in the best interests of and fair and reasonable to the association and that the association could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.</p> <p>(7) A registered association or any aggrieved individual or person may sue for redress for harm caused by the failure of an officer or committee member to carry out any of his duties.</p>	<p>company, as well as with the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. These same duties should apply to those responsible for association affairs.</p>
<p>26 Security</p>	<p>Section 26 of the principal Act</p>	<p>There is no need for</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>(1) Where the rules of a registered association provide that an officer shall be required to furnish security, no person shall take up appointment, or act or purport to act, as an officer unless he has furnished security in accordance with the rules.</p> <p>(2) The secretary of every registered association shall, within 15 days of the date on which an officer has furnished security under subsection (1), deposit the instrument witnessing the security with the Registrar.</p>	<p>repealed.</p>	<p>the law to address this issue, and we therefore recommend deleting section 26 entirely. The issue of “security” is an issue that is properly left to the discretion of the association.</p>
<p>27 Establishment of branches</p> <p>(1) Subject to the other provisions of this section, an association may establish branches.</p> <p>(2) Except where a branch established in a village is composed of more than 100 members, not more than one branch shall be established in a village.</p> <p>(3) Where an association establishes or dissolves a branch it shall give written notice of the establishment <i>or</i> dissolution of the branch, as the case may be, to the Registrar not later than 14 days after the date of the establishment or dissolution.</p> <p>(4) Where the officers of a branch are not all elected by its members, the number of officers to be elected or appointed by the members shall not be less than half the total number of officers of the branch.</p> <p>(5) Where an association has established a branch —</p> <p style="padding-left: 40px;">(a) no person shall be admitted a member of the branch except</p>	<p>Section 27 of the principal Act is repealed and replaced by the following new section-</p> <p>27. Establishment of Branches</p> <p>(1) An association may establish branches.</p> <p>(2) The manner in which a “branch” shall be organized shall be determined by the rules of the association.</p>	<p>Section 27, as currently written, addresses the issue of branches in burdensome detail. Under international good regulatory practices, it is important for the law to permit the establishment of branch offices, but the details can be left to the discretion of the association. This is the intent of the proposed amendment.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>by a decision of the committee and on the written recommendation of the branch;</p> <p>(b) the association and the branch shall each keep a register of members of the branch;</p> <p>(c) no person shall —</p> <p>(i) vote at a meeting of the branch;</p> <p>(ii) be a delegate of the branch;</p> <p>(iii) be an officer of the branch,</p> <p>unless he has been a member of the branch for more than 3 months.</p>		
<p>28 General meetings of large associations</p> <p>(1) Every notice convening an annual general meeting of a large association shall be published, not less than 14 days before the date of the meeting, in one daily newspaper approved by the Registrar.</p> <p>(2) Every notice under subsection (1) shall specify —</p> <p>(a) that the meeting is convened as an annual general meeting; and</p> <p>(b) that the matters to be considered at the meeting will include —</p> <p>(i) the statement of accounts of the association prepared under section 20 (2); and</p>	<p>Section 28 of the principal Act is repealed and replaced by the following-</p> <p>(1) Unless otherwise provided in the rules of an association, every notice convening an annual general meeting of a large association shall be published, not less than 14 days before the date of the meeting, in one daily newspaper approved by the Registrar.</p> <p>(2) Every notice under subsection (1) shall specify —</p> <p>(a) that the meeting is convened as an annual general meeting; and</p> <p>(b) the matters to be considered at the meeting.</p> <p>(3)The secretary shall, within 14 days of the receipt of a request</p>	<p>The proposed amendment is intended to ease the operations of associations, by allowing associations to provide for alternative means of notice for a general assembly meeting; and by removing the proxy limitations.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>(ii) where appropriate, the election of the officers.</p> <p>(3) Subject to section 30 (2), at a general meeting of a large association —</p> <p>(a) subject to the rules of the association, a member may vote by proxy through another member;</p> <p>(b) no member shall vote as proxy for more than 9 members.</p>	<p>made by one third of all the members of the association, convene a general meeting of the association which shall be held within one month.</p> <p>(4) Subject to the rules of the association, a member may vote by proxy through another member.</p>	
<p>29 General meetings of delegates</p> <p>(1) Subject to subsection (2) and section 28, where the general meeting of a large association consists in a meeting of delegates of branches of the association, the association shall, not later than 14 days before the general meeting, give each branch written notice of the general meeting, specifying —</p> <p>(a) the matters to be considered at the meeting;</p> <p>(b) the number of delegates to be elected by the branch; and</p> <p>(c) the number of delegates to be elected by every other branch of the association.</p> <p>(2) Every branch shall, not later than 7 days after receiving a notice under subsection (1), convene a branch general meeting at which —</p> <p>(a) all the matters to be discussed at the general meeting of the delegates shall be considered; and</p> <p>(b) the delegates to</p>	<p>Section 29 of the principal Act is repealed.</p>	<p>There is no need for the law to address this issue, and we therefore recommend deleting section 29 entirely. The issue of “general meetings of delegates” is an issue that is properly left to the discretion of the association.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>represent the branch shall be elected.</p> <p>(3) For the purposes of a general meeting of delegates of branches of a large association —</p> <p>(a) subject to paragraph (b), the rules of the association shall specify the basis, which shall be the same for all branches, on which the number of delegates of a branch shall be determined;</p> <p>(b) no branch shall be entitled to elect —</p> <p>(i) less than 2 delegates;</p> <p>(ii) any delegate unless the branch was established more than 5 months before the date of the general meeting.</p>		
<p>30 Special resolution</p> <p>(1) A special resolution shall be of no effect unless —</p> <p>(a) it has been approved by a majority of all the members of the registered association at a general meeting;</p> <p>(b) not less than 14 days notice of the general meeting and of the proposed resolution has been given to the members in the manner provided by the rules of the association; and</p> <p>(c) in the case of a large association, a</p>	<p>Section 30 of the principal Act is repealed and replaced by the following-</p> <p>(1) A special resolution shall be of no effect unless —</p> <p>(a) it has been approved by a majority of all the members of the registered association at a general meeting;</p> <p>(b) not less than 14 days notice of the general meeting and of the proposed resolution has been given to the members in the manner provided by the</p>	<p>This proposed amendment is intended to bring section 30 in line with the other amendments made above.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>notice that a general meeting is to be held to consider a special resolution has been published in a daily newspaper approved by the Registrar.</p> <p>(2) At a general meeting of an association held for the purposes of subsection (1) —</p> <p>(a) a member may vote by proxy through another member;</p> <p>(b) no member shall vote as proxy for more than 20 members.</p>	<p>rules of the association; and</p> <p>(c) in the case of a large association, unless otherwise provided in the rules of the association, a notice that a general meeting is to be held to consider a special resolution has been published in a daily newspaper approved by the Registrar.</p> <p>(2) At a general meeting of an association held for the purposes of subsection (1), a member may vote by proxy through another member.</p>	
PART VI- MISCELLANEOUS		
<p>31 Powers of Registrar</p> <p>(1) The Registrar may inspect and audit the books of a registered association and its bank and cash balances.</p> <p>(2) Every officer or former officer shall, on written notice from the Registrar, produce to him, at such time and place as may be specified in the notice, any book or document in the custody of the officer or former officer.</p>	<p>Section 31 of the principal Act is repealed and replaced by the following section-</p> <p>31. Powers of Registrar</p> <p>(1) The Registrar may verify, inspect or audit the books of a registered association and its bank and cash balances.</p> <p>(2) Subject to subsection (3), every officer or former officer shall, on written notice from the Registrar, produce to him, at such time and place as may be specified in the notice, any book or document in the custody of the officer or former officer.</p> <p>(3) The Registrar shall provide at least 14 days advance notice of</p>	<p>The proposed amendments provide additional procedural safeguards, such as, for example, limiting inspection to normal business hours and requiring advance notice.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>the inspection and only conduct the inspection during normal business hours, unless otherwise agreed by the parties.</p>	
<p>32 Inquiry into affairs and conduct of association (1) The Registrar — (a) may, if he has reasonable ground to believe that any condition specified in section 15 (1) exists in relation to a registered association; and (b) shall, upon the written application of— (i) one tenth of the members of a large association; or (ii) one fifth of the members of an association, other than a large association, call for all accounts, and documents relating to the association and institute an inquiry into the affairs and conduct of the association. (2) The Registrar may summon witnesses, and examine them on oath. (3) Any person summoned to attend as a witness or to produce any document before the Registrar shall be bound to obey the summons in the same manner as a witness is bound to obey a summons issued by the Supreme Court. (4) Any person who — (a) refuses or omits to attend at the time and place mentioned in a summons; (b) refuses to be sworn or</p>	<p>Section 32 of the principal Act is repealed and replaced with the following new section: 32. Resolution of Internal Disputes (1) Subject to subsection (2), disputes between members or between members and the committee shall be resolved internally, according to procedures provided in the rules of the association. (2) At a general meeting, any member shall be permitted to challenge any decision taken contrary to the law or the rules.</p>	<p>Section 32, as currently written, provides for a cumbersome inquiry procedure. One should not expect the Registrar, who is not a legally qualified person, to conduct a hearing in accordance with the law of evidence. The Registrar is seemingly burdened with requests to intervene into internal member disputes. There is no basis in law for such intervention. Instead, these disputes should be resolved internally or taken up with the courts. The proposed amendment seeks to make this clear.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>give evidence; or (c) fails to produce any document in his possession or under his control, shall commit an offence.</p> <p>(5) No evidence given before the Registrar shall —</p> <p>(a) give rise to any civil or criminal proceedings, other than a prosecution for perjury, against any person giving such evidence; or (b) be admissible against any person in any civil or criminal proceedings, except in the case of a witness who may be accused of having given false evidence before the Registrar conducting an inquiry under this Act.</p> <p>(6) Any person who gives false evidence before the Registrar shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months.</p> <p>(7) Every enactment relating to witnesses and evidence shall, subject to the other provisions of this Act, be applicable to every witness appearing, and to every evidence given, before the Registrar.</p> <p>(8) At the conclusion of the inquiry, the Registrar shall, subject to subsection (9), draw up and forward a report of his findings, together with his recommendations, to the Minister who may make such order in the matter as he thinks fit.</p> <p>(9) Where at the conclusion of an</p>		

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>inquiry the Registrar is of opinion that the registration of an association should be cancelled he shall comply with section 15.</p>		
<p>33 Appeals</p> <p>(1) Every notice of appeal under section 7 (3) or 15 (4) shall —</p> <p style="padding-left: 40px;">(a) be in writing; and</p> <p style="padding-left: 40px;">(b) specify the ground of appeal.</p> <p>(2) The Registrar shall as soon as practicable forward to the Master and Registrar, for transmission to the Judge in Chambers, the notice of appeal together with a statement of the material facts considered by him and of his decision on the whole matter and on any point which may be specified as a ground of appeal, and shall also furnish to the Judge any further information which the Judge may require and which he is able to furnish.</p> <p>(3) The Master and Registrar shall give to the Registrar written notice of the decision of the Judge on an appeal under this section, and the Registrar shall give effect to the decision.</p> <p>(4) No costs shall be awarded against the Registrar on an appeal under this section.</p> <p>(5) The Chief Justice may make rules for regulating the practice and procedure in respect of appeals under this section.</p>		
<p>34 Registrar's certificate to be evidence</p> <p>A certificate under the hand of the Registrar as to the names of the officers or members of a registered association or any other fact required by this Act to be registered shall be prima facie</p>		

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
Legislative Proposals for a New Legal and Regulatory Framework [November 2008]

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
evidence of the facts stated therein.		
35 Repealed by [Act No. 27 of 1986]		
36 Exemptions The Minister may, by regulations, exempt any association, including a foreign association, from registration under section 5.	Section 36 of the principal Act repealed.	Section 36 opens up the door to arbitrary decision-making. Repeal of the section 36 would help ensure the fair and equal treatment of all association applicants.
37 Offences and penalties Any association, officer or other person who fails to comply with this Act or any order made under section 32 (8) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.	Section 37 of the principal Act is amended by deleting the words "and to imprisonment for a term not exceeding 3 months".	Violations of the Act should be subject to fines, not imprisonment. The proposed amendment therefore removes reference to imprisonment.
38 Regulations (1) The Minister may make such regulations as he thinks fit for the purposes of this Act. (2) Any regulations made under subsection (1) may provide for the taking of fees.		
SCHEDULE (section 11) Matters to be provided for by the rules of registered associations 1 The name of the association. 2 The objects of the association. 3 The mode of admission, rejection and removal of members, the keeping of an up to date register of	The Schedule to the principal Act is amended by adding the following matters- 15 The procedure for amending the rules of the association 16 The procedure(s) for convening general meetings of the association.	The amendments here seek to bring the Schedule in line with the proposed amendments to the Act.

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
Legislative Proposals for a New Legal and Regulatory Framework [November 2008]

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>members.</p> <p>4 The mode of holding meetings, the right and mode of voting at such meetings.</p> <p>5 The appointment and removal of officers.</p> <p>6 The investment of any funds, the keeping of full and accurate accounts by the treasurer and the audit of such accounts.</p> <p>7 The accounting period of the association, which shall be 12 months.</p> <p>8 The furnishing of security by officers responsible for the collection and management of money on behalf of the association.</p> <p>9 The fines and forfeitures which may be imposed on any member of the association.</p> <p>10 The inspection of the books of the association by any person having an interest in the funds of the association.</p> <p>11 Where any financial benefits are payable to the members, the circumstances in which those benefits are to be paid and the amounts of those benefits.</p> <p>12 Where any remuneration is payable to an officer, the amount of the remuneration.</p> <p>13 The number of requisitionists, being not less than one tenth of the members who may require the holding of a general meeting of the association.</p> <p>14 The audit of the accounts of the association to be carried out at least once a year.</p>	<p>17 The procedure(s) for resolving internal disputes between members of the association or between members and governing bodies of the association.</p> <p>The Schedule to the principal Act is amended by deleting the following matter-</p> <p>8 The furnishing of security by officers responsible for the collection and management of money on behalf of the association.</p>	

Document 3: Registration of Associations (Amendment) Bill

THE REGISTRATION OF ASSOCIATIONS (AMENDMENT) BILL

(No. of ...)

Explanatory Memorandum

The objects of this Bill are to –

- (i) affirm the right of informal (non-registered) associations to exist and carry out activities, in accordance with human rights guaranteed by the Constitution and international law;
- (ii) improve the registration process and ensure the register of associations is genuinely and speedily accessible, in compliance with best international regulatory practices;
- (iii) ease the operation of associations and improve the process for the transformation and winding up of associations;
- (iv) improve the legal requirements for internal governance, in accordance with best international regulatory practices, by clarifying the duties and liabilities of officers and expressly prohibiting the distribution of profits and benefits, and self-dealing;
- (v) streamline the procedures for reporting and auditing, inspection and monitoring; and
- (vi) provide for related matters.

Minister of Labour,
Industrial Relations
and Employment

THE REGISTRATION OF ASSOCIATIONS (AMENDMENT) BILL

(No. of ...)

ARRANGEMENT OF CLAUSES

Clause

1. Short title.
2. Interpretation.
3. Section 2 of the principal Act amended.
4. Section 3 of the principal Act amended.
5. Section 4 of the principal Act amended.
6. Section 5 of the principal Act amended.
7. Section 6 of the principal Act amended.
8. Section 7 of the principal Act amended.
9. New section 8A inserted in the principal Act.
10. Section 9 of the principal Act amended.
11. Section 10 of the principal Act repealed.
12. Section 11 of the principal Act amended.
13. Section 13 of the principal Act amended.
14. Section 14 of the principal Act amended.
15. Section 15 of the principal Act amended.
16. Section 16 of the principal Act amended.
17. Section 17 of the principal Act amended.
18. Section 18 of the principal Act amended.
19. Section 19 of the principal Act amended.
20. New section 19A inserted in the principal Act.
21. New section 25A inserted in the principal Act.
22. Section 26 of the principal Act repealed.
23. Section 27 of the principal Act amended.
24. Section 28 of the principal Act amended.
25. Section 29 of the principal Act repealed.
26. Section 30 of the principal Act amended.
27. Section 31 of the principal Act amended.
28. Section 32 of the principal Act amended.
29. Section 36 of the principal Act repealed.
30. Section 37 of the principal Act amended.
31. Schedule to the Principal Act amended.
32. Commencement

A BILL

To amend the Registration of Associations Act to improve, in line with best international regulatory practices, the regulatory framework within which associations operate and to provide for related matters

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Registration of Associations (Amendment) Act 2008.

2. Interpretation

In this Act –

“principal Act” means the Registration of Associations Act.

3. Section 2 of the principal Act amended

Section 2 of the principal Act is amended by deleting the following words-

“mutual aid society” means an association of which one of the main objects is to provide benefits on the death of a member, his spouse or any of his relatives.

4. Section 3 of the principal Act amended

Section 3 of the principal Act is amended by adding after subsection (2) a new subsection (3) –

(3) This Act shall not be construed as limiting the right of individuals to freedom of association, or to any other fundamental rights and freedoms, to an extent which is greater than what is afforded protection by the Constitution or as denying individuals rights which the Republic of Mauritius is required to give effect to under international law.

5. Section 4 of the principal Act amended

Section 4 of the principal Act is amended by repealing subsection (2) and enacting the following subsections -

(2) Subject to subsection (3), the register shall be open to public scrutiny and any person shall be entitled to a copy of any entry in the register, upon payment of a

reasonable fee to cover copying expenses, within 7 days of a written request to the Registrar.

- (3) The Registrar shall not give the public access to private information, such as home address and telephone number, relating to members, officers or staff of the association.

6. Section 5 of the principal Act amended

Section 5 of the principal Act is amended in subsection (1) by adding the words “seeking legal entity status” after the phrase “every association”.

7. Section 6 of the principal Act amended

Section 6 of the principal Act is amended –

(b) by deleting in paragraph (b) of subsection (1) the word “occupations”;

(c) by repealing subsection (2) and replacing it with the following-

(2) An application for registration under section 5 (2) shall also specify –

- (a) the names, postal and e-mail addresses, and other contact information, of the individuals in Mauritius authorized to act on behalf of the foreign association;
- (b) the address of the office of the association in Mauritius; and
- (c) the nature of the activities in which the foreign association intends to engage in Mauritius.

(d) by repealing subsection (3) and replacing it with the following-

- (3) Where all documents have not been submitted in support of an application, or the registration fee has not been paid, the Registrar shall, within 30 days of the submission of the application, give written notice to the applicant that, in accordance with the prescribed requirements for application, the application cannot be processed and state the deficiencies in the application.

(e) by repealing subsection (4) and enacting the following new subsection-

- (4) The Registrar shall, within 30 days of the submission of a complete application, give written notice to the applicant whether or not the association has been registered.

8. Section 7 of the principal Act amended

Section 7 of the principal Act is amended by repealing subsection (1) and replacing it with the following-

- (1) An association shall not be registered where it does not comply with this Act or any other relevant enactment or, without prejudice to the generality of the foregoing, where
 - (a) any of its objects is unlawful;
 - (b) it is engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order or has made, is making or is likely to make, available any resources, directly or indirectly, to a terrorist or a terrorist organisation or for the purposes of terrorism;
 - (c) its rules are not clear or are ambiguous;
 - (d) its name is the same as that of a registered association or so resembles that of a registered association or is so misleading that the public may be deceived or misled. If two or more associations submit applications for registration under the same name, the application that has been submitted to the Registrar first shall be approved and the later applicant shall be given the opportunity to choose a new name and modify the application to include the new name;
 - (e) in the case of a foreign association, its registration would be prejudicial to the national security of the Republic of Mauritius.

9. New Section 8A inserted in the principal Act

The principal Act is amended by inserting immediately after section 8, the following new section 8A-

8A. Pre-Registration Arrangements

- (1) Subject to subsection (2), any person who enters into a contract or incurs an obligation in the name of an unregistered association shall be personally liable.
- (2) An association may, after registration and in accordance with its rules, decide to be bound by a contract or obligation entered into on its behalf by one of its members prior to its registration.

10. Section 9 of the principal Act amended

Section 9 of the principal Act is amended by repealing subsection (3) and replacing it with the following subsection -

- (3) No immovable property belonging to a registered association shall be disposed of, mortgaged or charged unless the transaction has been approved by special resolution.

11. Section 10 of the principal Act repealed

Section 10 of the principal Act is repealed.

12. Section 11 of the principal Act amended

Section 11 of the principal Act is amended by deleting in subsection (2) the words “on payment of any fee fixed by the association which shall not exceed 5 rupees” and replacing them by the words “on payment of any reasonable fee as may be determined by the association”.

13. Section 13 of the principal Act amended

Section 13 of the principal Act is repealed and replaced by the following section-

13. Amendment of rules

- (1) Subject to subsections (2) and (4), a registered association may amend its rules.
- (2) An amendment of the rules of an association shall not have effect until it is registered.
- (3) An application for the registration of an amendment of the rules of a registered association shall be signed by the secretary and shall be accompanied by —
 - (a) 2 copies of the proposed amendment of the rules; and
 - (b) a certified copy of the minutes of proceedings of the general meeting at which the amendment of the rules was approved.
- (4) The Registrar shall, within 30 days of the submission of amended rules, give written notice to the association regarding the registration of the amended rules.

14. Section 14 of the principal Act amended

Section 14 of the principal Act is amended by repealing subsection (2) and replacing it by the following new subsection:

- (2) No member of a registered association shall be liable for any debt or obligation of the association, either during his membership or after he has ceased to be a member.

15. Section 15 of the principal Act amended

Section 15 of the principal Act is amended in subsection (1) by deleting paragraph (e) and replacing it by the following paragraph-

- (e) the association has ceased to function, as is evidenced by the failure to submit its annual return to the Registrar for two consecutive years.

16. Section 16 of the principal Act amended

Section 16 of the principal Act is amended by deleting subsection (3) and replacing it with the following new subsection:

- (3) The Registrar shall within 30 days of the receipt of a notice under subsection (2), and on being satisfied that the resolution to wind up the association has been approved in accordance with section 30, cause to be published a notice of the winding up in the *Gazette* and the association shall be wound up in accordance with section 18.

17. New Section 17A inserted in principal Act

The principal Act is amended by inserting immediately after section 17, the following new section 17A-

17A. Splitting up

- (1) Subject to subsections (3) and (5), a registered association may, by special resolution, resolve to split up into two or more associations.
- (2) Each successor association shall be responsible for the debts and liabilities of the registered association, unless otherwise determined by special resolution.
- (3) The secretaries of the successor associations shall, within one month after the special resolution, jointly-
 - (a) give written notice of the splitting up to the Registrar; and
 - (b) apply, under section 5, for the registration of the new associations formed as a result of the splitting up.
- (4) Where the Registrar registers the associations formed by the splitting up of a registered association he shall cancel the registration of the registered association.
- (5) The splitting up shall take effect from the date of the registration of the new associations under subsection (4).

18. Section 18 of the principal Act amended

Section 18 of the principal Act is amended in subsection (4) by deleting the words ‘the property shall vest in the State’ and replacing them with the words “the State shall ensure that the remaining assets are used for the same or similar purposes that the association was pursuing, ideally through distribution of the assets to another registered association”

19. Section 19 of the principal Act amended

Section 19 of the principal Act is repealed and replaced by the following section-

19. Prohibition against private benefits in the application of funds

- (1) No registered association shall distribute its assets, earnings or profits, as profit to any person.
- (2) The assets, earnings and profits of a registered association shall be used solely to further the not-for-profit purpose or purposes of the association.
- (3) A registered association may apply its funds for the payment of –
 - (a) reasonable emoluments to its employees;
 - (b) reasonable allowances or expenses to its officers; and
 - (c) reasonable expenses for its administration, including the auditing of its accounts.
- (4) The assets, earnings and profits of a registered association shall not be used to provide special personal benefits, directly or indirectly, to any founder, officer, member, employee or donor of the association or their family members and relatives.
- (5) Notwithstanding subsection (4), benefits may be made available to members of an association if they are made available on a non-discriminatory basis to all members.
- (6) The association or any person aggrieved may sue for redress for harm caused by a violation of the prohibition contained in this section.

20. New section 19A inserted in the principal Act

The principal Act is amended by inserting immediately after section 19 the following new section-

19A. Economic activities

- (1) A registered association may directly engage in economic activities, provided any revenue generated from the economic activities is used solely to advance the association's statutory goals.
- (2) The revenue generated from economic activities shall not be distributed as profit, directly or indirectly, to any founder, officer, member employee or donor of the association.

21. New section 25A inserted in the principal Act

The principal Act is amended by inserting immediately after section 25 the following new section-

25A. Duties of officers and committee members

- (1) Officers and committee members of a registered association shall ensure the association operates within the requirements of this Act and any other law, and they shall perform their functions with the degree of care, diligence and skill a reasonably prudent person would exercise in comparable circumstances.
- (2) Officers and committee members of a registered association shall act in the best interests of the association, shall exercise loyalty to the organization and shall not disclose information obtained in confidentiality.
- (3) Officers and committee members of a registered association shall avoid any actual or potential conflict between their personal or business interests and the interests of the association.

- (4) Officers and committee members of a registered association shall disclose any potential personal or business interest that might be adverse to the interests of the association.
- (5) Officers and committee members of a registered association shall not vote on issues in which their personal or business interests, or the personal or business interests of their family members or relatives, either by blood or marriage, may conflict with the financial interests of the association.
- (6) Officers and committee members of a registered association shall not allow any transaction between the registered association and an affiliated organization, or between the registered association and its founders, members, officers, members of the committee or employees, unless the committee determines after reasonable investigation that the transaction is in the best interests of and fair and reasonable to the association and that the association could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.
- (7) A registered association or any aggrieved individual or person may sue for redress for harm caused by the failure of an officer or committee member to carry out any of his duties.

22. Section 26 of the principal Act repealed

Section 26 of the principal Act is repealed.

23. Section 27 of the principal Act amended

Section 27 of the principal Act is repealed and replaced by the following section-

27. Establishment of branches

- (1) An association may establish branches.
- (2) The manner in which a “branch” shall be organized shall be determined by the rules of the association.

24. Section 28 of the principal Act amended

Section 28 of the principal Act is repealed and replaced by the following section-

28. General meetings of large associations

- (1) Unless otherwise provided in the rules of an association, every notice convening an annual general meeting of a large association shall be published, not less than 14 days before the date of the meeting, in one daily newspaper approved by the Registrar.
- (2) Every notice under subsection (1) shall specify —
 - (a) that the meeting is convened as an annual general meeting; and
 - (b) the matters to be considered at the meeting.
- (3) The secretary shall, within 14 days of the receipt of a request made by one third of all the members of the association, convene a general meeting of the association which shall be held within one month.
- (4) Subject to the rules of the association, a member may vote by proxy through another member.

25. Section 29 of the principal Act repealed

Section 29 of the principal Act is repealed.

26. Section 30 of the principal Act amended

Section 30 of the principal Act is repealed and replaced by the following section-

30. Special resolution

- (1) A special resolution shall be of no effect unless —
 - (a) it has been approved by a majority of all the members of the registered association at a general meeting;
 - (b) not less than 14 days notice of the general meeting and of the proposed resolution has been given to the members in the manner provided by the rules of the association; and
 - (c) in the case of a large association, unless otherwise provided in the rules of the association, a notice that a general meeting is to be held to consider a special resolution has been published in a daily newspaper approved by the Registrar.
- (2) At a general meeting of an association held for the purposes of subsection (1), a member may vote by proxy through another member.

27. Section 31 of the principal Act amended

Section 31 of the principal Act is repealed and replaced by the following section-

31. Powers of Registrar

- (1) The Registrar may verify, inspect or audit the books of a registered association and its bank and cash balances.
- (2) Subject to subsection (3), every officer or former officer shall, on written notice from the Registrar, produce to him, at such time and place as may be specified in the notice, any book or document in the custody of the officer or former officer.

- (3) The Registrar shall provide at least 14 days advance notice of the inspection and only conduct the inspection during normal business hours, unless otherwise agreed by the parties.

28. Section 32 of the principal Act amended

Section 31 of the principal Act is repealed and replaced by the following section-

32. Resolution of Internal Disputes

- (1) Subject to subsection (2), disputes between members or between members and the committee shall be resolved internally, according to procedures provided in the rules of the association.
- (2) At a general meeting, any member shall be permitted to challenge any decision taken contrary to the law or the rules.

29. Section 36 of the principal Act repealed

Section 36 of the principal Act is repealed.

30. Section 37 of the principal Act amended

Section 37 of the principal Act is amended by deleting the words “and to imprisonment for a term not exceeding 3 months”.

31. Schedule to principal Act amended

(1) The Schedule to the principal Act is amended by adding the following matter-

8. The furnishing of security by officers responsible for the collection and management of money on behalf of the association.

(2) The Schedule to the principal Act is amended by adding the following matters-

15. The procedure for amending the rules of the association
16. The procedure(s) for convening general meetings of the association.
17. The procedure(s) for resolving internal disputes between members of the association or between members and governing bodies of the association.

32. Commencement

This Act shall come into operation on a day to be fixed by proclamation.

**Document 4: Matrix of Proposed Amendments to Registration of
Associations Regulations with Explanatory Comments**

**Matrix of Proposed Amendments to Registration of Associations Regulations 1979 [GN
50/1979] with Explanatory Comments**

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>1. These regulations may be cited as the Registration of Association Regulations 1979.</p> <p>2. In these regulations- "Act" means the Registration of Associations Act.</p> <p>3. For the purposes of section 2 of the Act, a large association shall be an association-</p> <p style="padding-left: 20px;">(a) whose membership as at the date of the last accounting period exceeds 200;</p> <p style="padding-left: 20px;">(b) the value of whose assets as at the date of the last accounting period exceeds 100,000 rupees; or</p> <p style="padding-left: 20px;">(c) whose annual revenue during the two consecutive years immediately preceding the last accounting period exceeded 8,000 rupees.</p> <p>4. The certificate of registration issued by the Registrar pursuant to section 8(1) of the Act shall be in the form set out in the First Schedule.</p> <p>5. The register of members to be kept by every registered association under section 24(1) shall be in the form set out in the Second Schedule.</p> <p>6. Every registered association shall keep a record of revenue, showing all the amounts of money paid by its members in the form of entrance fees and contributions and any other revenue it has received, in the form set out the Third Schedule.</p>	<p>* Regulation 3 of the principal regulations is repealed and replaced with- For the purposes of section 2 of the Act, a large association shall be an association whose annual revenue during two consecutive years immediately preceding the last accounting period exceeded 500,000 rupees.</p>	<p>The proposed amendment is meant to make more meaningful the distinction between a large and a small association. The distinction is based on revenue rather than number of members or assets.</p>
<p>7. (1) Every registered association shall keep a book of accounts showing all its receipts and payments. (2) Every payment effected by a registered association, which exceeds 100 rupees, shall be made by cheque.</p> <p>8. Every association shall keep its books, documents or records in English or French.</p> <p>9. No person other than a qualified accountant or a firm of qualified accountants shall be appointed auditor of a large association without the approval of the Registrar.</p> <p>10. The treasurer of a large association shall prepare his statement of receipt and payment in the form set out in the Fourth Schedule. Amended by [GN No. 88 of 1986]</p> <p>11. Where the rules of a registered association provide for the payment of funeral benefits to its members and their dependents, the registered association shall keep an up-to-date register of all its members and their dependents who are entitled to such funeral</p>	<p>* Regulation 7 of the principal regulations is repealed and replaced with the following- Every registered association shall keep a book of accounts showing all its receipts and payments.</p>	<p>In order to ease operation of associations, the requirement of payment by cheque for any sum exceeding Rs 100. is abrogated.</p>

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>benefits.</p> <p>12. Repealed by [GN No. 88 of 1986]</p> <p>13. The fees payable to the Registrar in respect of-</p> <ul style="list-style-type: none"> (a) an application for the registration of an association; (b) a copy of a certificate of registration of an association; (c) a copy or extract of the annual return of a registered association submitted to the Registrar under section 23 of the Act, (d) a copy of the rules of a registered association; and (e) any other document relating to the registration of an association which is certified by the Registrar; <p>shall be those specified in the Fifth Schedule</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">FIRST SCHEDULE</p> <p style="text-align: center;">(regulation 4)</p> <p style="text-align: center;">Certificate of Registration of Association</p> <p style="text-align: right;">Regd. No</p> <p>I hereby certify that the</p> <p>.....</p> <p>has this day been registered under the provisions of the Registration of Associations Act 1978.</p> <p>Dated this.....day</p> <p>of.....19.....</p> <p>..... Registrar</p>		

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p style="text-align: center;">-----</p> <p style="text-align: center;">SECOND SCHEDULE</p> <p style="text-align: center;">(regulation 5)</p> <p style="text-align: center;">Register of Members</p> <p style="text-align: center;">Date</p> <p>Serial No. Name Address of Date of payment of Subscription</p> <p style="text-align: center;">Birth</p> <p style="text-align: center;">Jan. Feb. Mar. Apr. May June</p> <p style="text-align: center;">Jul. Aug. Sept. Oct. Nov. Dec.</p> <p style="text-align: center;">Amended by [GN No. 88 of 1986]</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">THIRD SCHEDULE</p> <p style="text-align: center;">(regulation 6)</p> <p style="text-align: center;">Record of Revenue</p> <p>Total Amount Entrance fees Contribution Any other payment</p>		

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>paid (to be specified)</p>		
<p style="text-align: center;">FOURTH SCHEDULE</p> <p style="text-align: center;">(regulation 10)</p> <p>Statement of Receipts and Payments for the accounting</p> <p style="text-align: center;">Period ending of 19</p> <p>Amount of Cash in hand on 1st of19= Rs</p> <p>Amount of Cash in Book on 1st of..... 19= Rs</p> <p style="text-align: center;">Total (1) = Rs</p> <p>Subsidy received from Government= Rs</p> <p>Contribution received = Rs</p> <p>Entrance Fees received = Rs</p> <p>Interest received = Rs</p>		

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
 Legislative Proposals for a New Legal and Regulatory Framework [November 2008]

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
Donation received = Rs		
Any other revenue = Rs		
(Please mention names of items) = <u>Rs</u>		
Total (2) = Rs		
Total (1)+(2) = Rs		
Deduct		
Expenses incurred under the rules of the Association (to be specified in details)		
A. 1. Funeral benefits =Rs		
2. Salaries of Priests =Rs		
3. Etc Etc =Rs		

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
 Legislative Proposals for a New Legal and Regulatory Framework [November 2008]

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>B. 1. Emoluments to employees =Rs</p> <p>2. Allowances or Expenses</p> <p style="padding-left: 40px;">to officers =Rs</p> <p>3. Administrative Expenses</p> <p style="padding-left: 40px;">including auditing fees =Rs</p> <p>(to be specified in details)</p> <p style="padding-left: 40px;">Total (3) = Rs</p> <p style="padding-left: 40px;">Balance= Rs</p> <p>Amount of cash in hand on 1st of 19...</p> <p>Amount of cash in hand on 1st of 19...</p> <p>Statement of Assets and Liabilities as at of 19...</p> <p>ASSETS: Land and Buildings = Rs</p>		

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
 Legislative Proposals for a New Legal and Regulatory Framework [November 2008]

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
Furniture and Fittings = Rs		
Cash in hand = Rs		
Cash in bank = Rs		
Any other Assets = Rs		
(Please mention names of items)		
Total = Rs		
Less Liabilities = Rs		
(Please mention names of items)		
Association's Fund Total		
(Assets less liabilities) = Rs		
Signature of Treasurer		

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS															
<p>Date</p> <p>We, the undersigned, having had access to all the books and accounts and having examined the foregoing return and verified the same with the accounts and vouchers relating thereto, sign the same as found to be correct and duly vouched.</p> <p style="text-align: right;">Signature of Auditor/s</p> <p>.....</p> <p>Amended by [GN No. 88 of 1986]</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">FIFTH SCHEDULE (Regulation 13)</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 80%;"></th> <th style="width: 10%; text-align: right;">Rs cs</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">(i)</td> <td>Application for the registration of an association</td> <td style="text-align: right; vertical-align: top;">400.00</td> </tr> <tr> <td></td> <td>...</td> <td></td> </tr> <tr> <td style="vertical-align: top;">(ii)</td> <td>Copy of a certificate of registration of an association</td> <td style="text-align: right; vertical-align: top;">100.00</td> </tr> <tr> <td style="vertical-align: top;">(iii)</td> <td>Copy or extract of the annual return of a registered association submitted to the Registrar under Section 23 of</td> <td style="text-align: right; vertical-align: top;">100.00</td> </tr> </tbody> </table>			Rs cs	(i)	Application for the registration of an association	400.00		...		(ii)	Copy of a certificate of registration of an association	100.00	(iii)	Copy or extract of the annual return of a registered association submitted to the Registrar under Section 23 of	100.00		
		Rs cs															
(i)	Application for the registration of an association	400.00															
	...																
(ii)	Copy of a certificate of registration of an association	100.00															
(iii)	Copy or extract of the annual return of a registered association submitted to the Registrar under Section 23 of	100.00															

ACTUAL LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
<p>the Act a fee of 2 rupees per page plus</p> <p>(iv) Copy of the rules of a registered association a fee of 100.00 2 rupees per page of the rules plus</p> <p>(v) Any other document relating to the registration of an association which is certified 100.00 by the Registrar a fee of 2 rupees per page plus</p> <p>Amended by [GN No. 16 of 2004]</p>		

Document 5: Registration of Associations (Amendment)
Regulations

Government Notice No. of ...

THE REGISTRATION OF ASSOCIATIONS ACT

Regulations made by the Minister under section 38 of the Registration of Associations Act

1. These regulations may be cited as the Registration of Associations (Amendment) Regulations
2. In these regulations -

 "Act" means the registration of Associations Act;
 "principal regulations" means the Registration of Associations Regulations 1979.
3. Regulation 3 of the principal regulations is repealed and replaced with the following-

 For the purposes of section 2 of the Act, a large association shall be an association whose annual revenue during two consecutive years immediately preceding the last accounting period exceeded 500,000 rupees.
4. Regulation 7 of the principal regulations is repealed and replaced with the following-
 7. Every registered association shall keep a book of accounts showing all its receipts and payments.
5. These regulations shall come into operation on

Made by the Minister on

**Document 6: Matrix of Proposed Amendments to Current Tax
Legislation with Explanatory Comments**

MATRIX OF PROPOSED AMENDMENTS TO TAX LEGISLATION WITH EXPLANATORY COMMENTS

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
Income Tax Act		
<p>2 Interpretation In this Act— ... "charitable institution" means an institution approved by the Director-General the objects of which - (a) are of a public character; (b) do not yield any profits to its members; and (c) are exclusively - (i) the advancement of religion; (ii) the advancement of education; (iii) the relief of poverty, sickness and disability; (iv) the protection of the environment; (v) the advancement of human rights and fundamental freedoms; (vi) the promotion of any other public object beneficial to the community; (d) are to be carried out in Mauritius or elsewhere; ...</p>	<p>Section 2 of the Income Tax Act is amended by deleting the definition given to "Charitable institution" and replacing it with the following:</p> <p style="padding-left: 40px;">"charitable institution" means an institution approved by the Director-General – (a) the objects of which are of a public character; (b) which does not yield any profits to any founder, director, officer, member, employee or donor of the organization or their family members and relatives; (c) which is exclusively engaged in public benefit activities, whether in Mauritius or elsewhere, such as relief of poverty, sickness and disability, or the advancement of education or religion, or the protection of the environment, or the protection of human rights and fundamental freedoms, or any other activity beneficial to the community; and (d) which is managed in accordance with internal governance requirements as may be prescribed.</p>	<p>Improve fiscal framework for NGOs engaged in charitable, public benefit, activity by providing a clear definition of charitable status</p>
	<p>Income Tax (Charitable Institution) Regulations 2008</p> <p>Proposed Regulations to be made by the Minister under section 161(1)(a) of the Income Tax Act</p>	

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>1. These regulations may be cited as the Income Tax (Charitable Institution) Regulations 2008.</p> <p>2. Interpretation</p> <p>In these regulations — “Act” means the Income Tax Act.</p> <p>3. Public benefit activities</p> <p>A public benefit activity shall be any lawful activity that supports or promotes public benefit by supporting or promoting one or more of the activities listed in the schedule to these regulations.</p> <p>4. Approval of institution</p> <p>(1) Any organization seeking approval of the Director-General as a ‘charitable institution’ shall file-</p> <p>(a) the documents in support of it being recognized legal personality for the conduct of not-for-profit activities; and</p> <p>(b) a completed application form stating-</p> <p>(i) the public benefit</p>	<p>Improve fiscal framework for NGOs engaged in charitable, public benefit, activity by providing for clear procedures to attain status, and by providing for accompanying transparency and accountability requirements which, in line with best international practices, includes public disclosure of an annual return.</p> <p>Crucial for the development of a Government-Business-NGO Social Partnership.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>purposes, for which the institution is organized and operated; and (ii) all of the principal activities that the institution may engage in.</p> <p>(2) Within 30 days of the receipt of an application, the Director-General shall notify by registered letter the institution of his decision to approve or not to approve it as a “charitable institution”, unless he requests, in writing, further information or clarification.</p> <p>(3) The Director-General shall cause to be posted on the website of the Mauritius Revenue Authority a list of the institutions approved as “charitable institution”.</p> <p>5. Internal Governance Requirements</p> <p>(1) A “charitable institution” shall be managed by a committee or board of at least five members, including a secretary, three of whom shall not be related to each other.</p> <p>(2) “Relative”, in relation to a person, means any other person connected with him by – (a) blood relationship as parent, grandparent, brother, sister, or brother</p>	

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>or sister of a parent, nephew, niece, or descendant;</p> <p>(b) marriage, as his spouse or the spouse of a person married to that other person or to a person specified in paragraph (a);</p> <p>(c) adoption, as his child or as a child of a person specified in paragraph (a) other than the adopted child of his nephew or niece; or</p> <p>(d) natural relationship, through a mother who has acknowledged her child.</p> <p>6.Submission of annual reports to Director-General</p> <p>(1)Every year, by 30 June at latest, a “charitable institution” shall submit to the Director-General a report highlighting its revenue and expenditure during the preceding year, as well as the activities it has engaged in.</p> <p>(2)Any interested person may inspect the report and be remitted a copy thereof on payment of a reasonable fee.</p> <p>7.Powers of Director-General</p> <p>(1)The Director-General, or one of the officers of the Mauritius Revenue Authority to whom he has delegated his authority, may</p>	

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>inspect the books and records of a “charitable institution”, after giving sufficient advance notice of the inspection.</p> <p>(2)The inspection shall be carried out during normal business hours.</p> <p>8.Cancellation of approval of institution</p> <p>(1)The Director-General may cancel his approval given to an institution where he has reasonable grounds to believe the institution is no longer to be regarded by its activities or the manner in which it is operated as a “charitable institution”, or where his approval was obtained by fraud or misrepresentation.</p> <p>(2)Where the Director-General is satisfied that the approval must be cancelled, he shall give notice of his intention to cancel the approval and of the ground of his decision.</p> <p>(3)A notice under sub-regulation (2) shall be given –</p> <ul style="list-style-type: none"> (a) by registered post; or (b) where the secretary of the institution cannot be found or is not known, by publication in the Gazette and in 2 daily newspapers. <p>(4)An institution may, not later</p>	

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	<p>than twenty-one days after the date of a notice under sub-regulation (2), appeal to a Judge in Chambers against the decision of the Director-General and, on any such appeal, the Judge may make such order as he thinks fit.</p> <p>(5)The approval of an association shall be cancelled–</p> <ul style="list-style-type: none"> (a) where no appeal has been lodged under sub-regulation (4); (b) where an appeal has been lodged under sub-regulation (4) and the appeal has been dismissed, not later than one month after the date of the dismissal of the appeal. <p>(6) Where approval is cancelled, the Director-General shall cause the institution to be erased from the list of the institutions approved as “charitable institution” posted on the website of the Mauritius Revenue Authority and shall publish a notice to that effect in the Gazette and 2 daily newspapers.</p> <p style="text-align: center;">SCHEDULE (regulation 3(2))</p> <ul style="list-style-type: none"> (a) Amateur athletics, (b) Arts, (c) Assistance to, or protection of physically or mentally handicapped people, (d) Assistance to refugees, (e) Charity, 	

Law Reform Commission of Mauritius [LRC] - Report on Law relating to NGOs:
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CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
	(f) Civil or human rights, (g) Consumer protection, (h) Culture, (i) Democracy, (j) Ecology or the protection of environment, (k) Education, training, and enlightenment, (l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination, (m) Elimination of poverty, (n) Health or physical well-being, (o) Historical preservation, (p) Humanitarian or disaster relief, (q) Medical care, (r) Protection of children, youth, and disadvantaged individuals, (s) Protection or care of injured or vulnerable animals, (t) Relieving the burdens of government, (u) Religion, (v) Science, (w) Social cohesion, (x) Social or economic development, (y) Social welfare, (z) Any other activity that is determined to support or promote public benefit.	

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CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
CUSTOMS TARIFF ACT		
<p>Under Part II of First Schedule, Item E 13, benevolent and charitable institutions affiliated with the Mauritius Council of Social Services or receiving a subsidy from Government are entitled to have goods, received as donations from abroad and related to their normal activities and not intended for sale, admitted free of customs duty</p>	<p>All benevolent and charitable institutions are entitled to have goods, received as donations from abroad and related to their normal activities and not intended for sale, admitted free of customs duty.</p>	<p>Provide for clear benefits attached to charitable status. Tax exemption to be linked with the purpose of the activity undertaken by the charitable institution, irrespective of whether or not it is affiliated with the Mauritius Council of Social Services or is in receipt of subsidy from Government.</p> <p>To bring greater consistency to the tax treatment of NGOs, treating all charitable institutions uniformly.</p>

CURRENT LAW	PROPOSED AMENDMENTS	EXPLANATORY COMMENTS
VALUE ADDED TAX ACT		
<p>Ninth Schedule Under Item 2 benevolent and charitable institutions affiliated with the Mauritius Council of Social Services or receiving a subsidy from Government are entitled to VAT exemption in respect of goods received as donations from abroad and related to their normal activities, not intended for sale.</p>	<p>All benevolent and charitable institutions are entitled to have goods, received as donations from abroad and related to their normal activities and not intended for sale, admitted VAT free.</p>	<p>Provide for clear benefits attached to charitable status. Tax exemption linked with the purpose of the activity undertaken by the charitable institution, irrespective of whether or not it is affiliated with the Mauritius Council of Social Services or is in receipt of subsidy from Government.</p> <p>To bring greater consistency to the tax treatment of NGOs, treating all charitable institutions uniformly.</p>

**Document 7: Provisions to be considered for inclusion in a
Finance Bill**

THE FINANCE BILL

(No. of ...)

....

Vice- Prime Minister and Minister of
Finance

THE FINANCE BILL

(No. of ...)

1. Section 2 of the Income Tax Act amended

Section 2 of the Income Tax Act is amended by deleting the definition of “charitable institution” and replacing it with the following:

“charitable institution” means an institution approved by the Director-General –

- (a) the objects of which are of a public character;
- (b) which does not yield any profits to any founder, director, officer, member, employee or donor of the organization or their family members and relatives;
- (c) which is exclusively engaged in public benefit activities, whether in Mauritius or elsewhere, such as relief of poverty, sickness and disability, or the advancement of education or religion, or the protection of the environment, or the protection of human rights and fundamental freedoms, or any other activity beneficial to the community; and
- (d) which is managed in accordance with internal governance requirements as may be prescribed.

2. Part II of First Schedule to Customs Tariff Act amended

Part II of First Schedule to Customs Tariff Act is amended by deleting in the second column to Item No. E 13 the words “affiliated with the Mauritius Council of Social Services or receiving a subsidy from Government”.

3. Ninth Schedule to Value Added Tax Act amended

The Ninth Schedule to the Value Added Tax Act is amended by deleting in item 2 the words “affiliated with the Mauritius Council of Services or receiving a subsidy from Government”.

Document 8: Income Tax (Charitable Institution) Regulations

Government Notice No. of ...

THE INCOME TAX ACT

Regulations made by the Minister under section 161(1)(a) of the Income Tax Act

1. These regulations may be cited as the Income Tax (Charitable Institution) Regulations

2. Interpretation

In these regulations —
“Act” means the Income Tax Act.

3. Public benefit activities

A public benefit activity shall be any lawful activity that supports or promotes public benefit by supporting or promoting one or more of the activities listed in the schedule to these regulations.

4. Approval of institution

(1) Any organization seeking approval of the Director-General as a ‘charitable institution’ shall file-

(a) the documents in support of it being recognized legal personality for the conduct of not-for-profit activities; and

(b) a completed application form stating-

- (i) the public benefit purposes, for which the institution is organized and operated; and
- (ii) all of the principal activities that the institution may engage in.

(2) Within 30 days of the receipt of an application, the Director-General shall notify by registered letter the institution of his decision to approve or not to approve it as a “charitable institution”, unless he requests, in writing, further information or clarification.

- (3) The Director-General shall cause to be posted on the website of the Mauritius Revenue Authority a list of the institutions approved as “charitable institution”.

5. Internal Governance Requirements

- (1) A “charitable institution” shall be managed by a committee or board of at least five members, including a secretary, three of whom shall not be related to each other.
- (2) “Relative”, in relation to a person, means any other person connected with him by –
 - (a) blood relationship as parent, grandparent, brother, sister, or brother or sister of a parent, nephew, niece, or descendant;
 - (b) marriage, as his spouse or the spouse of a person married to that other person or to a person specified in paragraph (a);
 - (c) adoption, as his child or as a child of a person specified in paragraph (a) other than the adopted child of his nephew or niece; or
 - (d) natural relationship, through a mother who has acknowledged her child.

6. Submission of annual reports to Director-General

- (1) Every year, by 30 June at latest, a “charitable institution” shall submit to the Director-General a report highlighting its revenue and expenditure during the preceding year, as well as the activities it has engaged in.
- (2) Any interested person may inspect the report and be remitted a copy thereof on payment of a reasonable fee.

7. Powers of Director-General

- (1) The Director-General, or one of the officers of the Mauritius Revenue Authority to whom he has delegated his authority, may inspect the books and records of a “charitable institution”, after giving sufficient advance notice of the inspection.
- (2) The inspection shall be carried out during normal business hours.

8. Cancellation of approval of institution

- (1) The Director-General may cancel his approval given to an institution where he has reasonable grounds to believe the institution is no longer to be regarded by its activities or the manner in which it is operated as a “charitable institution”, or where his approval was obtained by fraud or misrepresentation.

- (2) Where the Director-General is satisfied that the approval must be cancelled, he shall give notice of his intention to cancel the approval and of the ground of his decision.
- (3) A notice under sub-regulation (2) shall be given –
 - (a) by registered post; or
 - (b) where the secretary of the institution cannot be found or is not known, by publication in the Gazette and in 2 daily newspapers.
- (4) An institution may, not later than twenty-one days after the date of a notice under sub-regulation (2), appeal to a Judge in Chambers against the decision of the Director-General and, on any such appeal, the Judge may make such order as he thinks fit.
- (5) The approval of an association shall be cancelled–
 - (a) where no appeal has been lodged under sub-regulation (4);
 - (b) where an appeal has been lodged under sub-regulation (4) and the appeal has been dismissed, not later than one month after the date of the dismissal of the appeal.
- (6) Where approval is cancelled, the Director-General shall cause the institution to be erased from the list of the institutions approved as “charitable institution” posted on the website of the Mauritius Revenue Authority and shall publish a notice to that effect in the Gazette and 2 daily newspapers.

9. Commencement

These regulations shall come into operation on

Made by the Minister on

SCHEDULE
(regulation 3(2))

- (a) Amateur athletics,
- (b) Arts,
- (c) Assistance to, or protection of physically or mentally handicapped people,
- (d) Assistance to refugees,
- (e) Charity,
- (f) Civil or human rights,
- (g) Consumer protection,
- (h) Culture,
- (i) Democracy,
- (j) Ecology or the protection of environment,
- (k) Education, training, and enlightenment,
- (l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination,
- (m) Elimination of poverty,
- (n) Health or physical well-being,
- (o) Historical preservation,
- (p) Humanitarian or disaster relief,
- (q) Medical care,
- (r) Protection of children, youth, and disadvantaged individuals,
- (s) Protection or care of injured or vulnerable animals,
- (t) Relieving the burdens of government,
- (u) Religion,
- (v) Science,
- (w) Social cohesion,
- (x) Social or economic development,
- (y) Social welfare,
- (z) Any other activity that is determined to support or promote public benefit.