

Australia: What you need to know about incorporating a PNG company

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Key Points

- This article is intended as a summary of the important information you need to know before incorporating a company in Papua New Guinea (**PNG**).
- Specialist advice should be sought about your specific circumstances.

Introduction

The process of incorporating a Papua New Guinea (**PNG**) company is simple and relatively cheap. But before you rush out the door to incorporate a PNG company, there are several things you need to know.

Setting up your PNG company

Requirements

Under the *Companies Act 1997* (PNG) a company must have:

- A name [**Note**: the name should not contravene any law, be misleading or identical to the name of another company]
- One or more shares
- One or more shareholders
- One or more directors [**Note**: at least one director must be a resident of PNG. A company is not required to appoint a secretary but can if it wants]
- A physical address in PNG (a P.O. Box will not be acceptable)

Constitution

There is no requirement for a company to have a memorandum and articles of association. A company constitution can be adopted at any time.

Forms to Complete

You can download the required forms (listed below) from www.ipa.gov.pg or collect them from the Companies Office located on the ground floor of IPA Haus, Munidubu Street, (Corner of Lawyers Rd & Champion Pde) Konedobu, Port Moresby, PNG.

- Form 1 Application for Registration of a Company

- Form 2 Consent of Directors of Proposed Company
- Form 3 Consent of Secretary of Proposed Company (if appointing a secretary)
- Form 4 Consent of Shareholder
- Form 6 Application of a Company Name

The cost

The prescribed fee for incorporating a company is 500 Kina (or about AUD\$230). A further fee of 50 Kina (or about AUD\$23) is required to reserve the name of the company.

Shareholding and Investment Promotion Authority Certification

A company which is wholly owned, or 50% or more owned or controlled by a PNG non-citizen, will require formal certification from the Investment Promotion Authority (**IPA**). It is not uncommon for the certification process to take 3 to 6 months (or more).

Without IPA certification

If you do not obtain IPA certification when required, you run the risk of any contracts your company enters into being found unenforceable. You may also be liable for breaches of the *Investment Promotion Act 1992*. Penalties may include fines not exceeding 100,000 Kina (approximately AUD\$46,000); and/or 2 years imprisonment.

If IPA certification is required you will need to complete Form 3 - Application for Certification (Form 3) and attach supporting documentation, which normally includes:

- Copy of Certification of Incorporation
- Budget/Cash flow forecast
- Positions and nationalities of staff to be employed
- CV or Personal Profile
- Police clearance report or Character check
- Passport copy
- Value of initial capital investments
- Copies of any agreements.

Prior to lodgement it is always recommended that a qualified and admitted PNG lawyer review the Form 3 for completeness.

IPA fees

The Form 3 prescribed fee is 2,000 Kina (or about AUD\$920).

Upon incorporation – company seal, VAT/GST & Employment Register

Once your PNG company is incorporated, there are a few other considerations you need to be aware of to avoid potential problems down the track.

Company seal

You need to obtain a company seal. Even though there is no express legislation requiring you to make a company seal, you are required to have a seal to issue share certificates or for entering into deeds and contracts. A company seal can be obtained from most print shops within a few days. Company seals cost about K50 (or about AUD\$20) depending on the size.

Registration for VAT and GST purposes

You should always consider obtaining tax advice from a qualified legal professional. Some things you need to be aware of include the requirement to appoint a PNG resident to be a public officer. Section 354 of the *Income Tax Act 1959* (PNG) provides that a company must (unless exempted by the Commissioner General) appoint a PNG resident to be a public officer. The appointment is required to be made within 3 months from the date the company starts business operations or derives income.

Employment Register

Your company may need to register as a "group employer" if it will employ more than one employee in PNG with a weekly salary of more than 126 Kina per week. If this is the case then the company **must** register as a "group employer". The process involves submitting a written notice to the Internal Revenue Commission.

Goods and Services Tax (GST)

Any business or individual whose annual turnover exceeds (or is likely to exceed) 250,000 Kina must register for GST. A business with a turnover of less than 250,000 Kina (or about AUD\$115,000) per year can register for GST on a voluntary basis. Registration forms are available for download at http://www.irc.gov.pg/tax_forms.html.

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