

# Investment Promotion Act Amendment Bill – Frequently Asked Questions

## For Foreign Investors

### Is PNG still open for foreign investment?

Yes! The PNG Government recognises the important contribution that foreign investment makes in the human and economic development of PNG. The proposed changes are designed to make it easier for responsible foreign investment while addressing some shortcomings in the system that were being exploited by a small number of foreign investors.

The Investment Promotion Authority remains the first point of contact for foreign investors seeking information on investment opportunities, and to facilitate foreign investment certification. Please see [www.ipa.gov.pg](http://www.ipa.gov.pg) for more information.

### Why is the Government changing the rules? What are the main changes?

The Government is making common sense changes to foreign investment settings in PNG in order to better protect MSMEs from competition in business activities that tend to be smaller-scale, onshore, and where PNG citizens have already demonstrated capability. These changes will not affect the majority of foreign investors in PNG.

The Government is amending the *Investment Promotion Act 1992* to institute most of the system improvements. A small number of changes will be enacted through changes of existing administrative practices, such as entry permits. Key changes are:

1. **Minimum investments for business/investor resident visas** – non-citizen owners of foreign investments will be required to show a minimum investment in PNG in order to obtain their residence visas. This class of visa also applies to overseas-headquartered foreign investments recruiting senior management staff for their PNG based operations.
2. **Reserved activities for PNG citizens** – the IPA will continue to reserve activities for citizens under the Reserved Activities List and regularly review the list
3. **Promotion of local-foreign partnerships** – a new ‘Restricted Activities List’ will be introduced to encourage PNG citizen participation in larger, more complex, and/or more capital-intensive businesses. Activities will be identified where foreign investment is allowed under certain conditions, which can include minimum local ownership and minimum investment levels.
4. **Grandfathering existing businesses** – in cases where existing foreign investors are engaged in activities which later become reserved or restricted, they will receive limited grandfathering from the changes
5. **Improved compliance and enforcement** – government agencies will upgrade their compliance and enforcement capacity and activities.

### When will the new rules come into force?

The Government has not set a date yet for when the new rules will come into force. The commencement date for changes will be advertised in advance to give businesses time to adjust.

### How will new foreign investment be treated?

The Government is keen to ensure that responsible foreign investment in line with PNG's development priorities is made quick and simple. The proposed changes create a new process for foreign certification that will make the majority of applications quicker, and provide clearer rules about when applications will be accepted or rejected.

Key changes are:

1. **Day-to-day foreign certification approvals will be undertaken by a Registrar of Foreign Investment** – IPA will appoint a Registrar to oversee registration activities
2. **The majority of applications will be granted by the Registrar unless there are disqualifying criteria** – these criteria are:
  - a. the applicant proposes to carry on an activity that is reserved for citizens
  - b. in the opinion of the Registrar, the application is incorrect or misleading or does not otherwise comply with the Act or Regulations
  - c. the applicant fails certain character requirements
  - d. the Registrar has reasonable grounds for believing the application is not genuine.
3. **Appeals provisions improved** – appeals from decisions of the Registrar can be made to the Board and afterwards to the Minister.

### Are existing businesses grandfathered under the changes?

Yes, existing businesses operating in activities that may become reserved or restricted in the future are grandfathered and may continue to operate as they can currently.

New basic controls on what activities may be included in the Reserved Activities List and Restricted Activities List will be included in the proposed changes. Further, a transparent review process will be instituted to enable business to be aware of, and participate in, any changes to the lists.

### What happens if I want to sell my business if it's grandfathered?

Any change to the ownership, shareholding or beneficial ownership or control of an enterprise carrying on business in **reserved activities** will lead to it losing its grandfathered status and the relevant activity revert to being reserved for citizens.

It is proposed that any change to the ownership, shareholding or beneficial ownership or control of an enterprise carrying on business in **restricted activities** will not lead to the loss of its grandfathered status.

### Will there be a minimum investment threshold for new investors?

The Government will introduce a minimum investment threshold for new investors and key staff seeking business/investor residence visas. This will be a new requirement by the Immigration and Citizenship Authority and will work in conjunction with changes to the Investment Promotion Act. Resident investors will need to show a minimum investment. The minimum investment will be set

after careful consideration of amounts used in other countries to ensure that the threshold is competitive.

Minimum investment thresholds may also be introduced in the Regulations for specified restricted activities.

### **Will there be changes to work permit requirements?**

No, existing work permit requirements are unchanged.

### **What is the Restricted Activities List? What activities will be included?**

The proposed changes introduce activities which are open to foreign investment, under defined conditions. These conditions will be standardised against the relevant activity and included in the Regulation.

### **How are reserved and restricted activities identified?**

Under the proposed changes, the Reserved Activities List and Restricted Activities List must be reviewed by the IPA Board at least every 3 years.

This review process is required to be public, and seek the views of government, the business community, and the public. The IPA Board's recommendations are published publicly and provided to the Minister for decision. If the Minister decides to reject a recommendation, he or she must publicly publish the reasons for the rejection.

The proposed changes places some basic controls on activities that cannot be reserved or restricted. An activity cannot be reserved or restricted:

- unless at least one Papua New Guinean citizen is involved in carrying out the activity, whether by himself or herself is
  - a member of a joint venture, or
  - a partner in a partnership, or
  - a trustee, or
  - an agent or employee,and carries out the business in PNG
- if fewer than 10 businesses operators conduct the activity in PNG
- is carried out on as a business, or part of a business, that produces or supplies goods and services which are used regularly by, or are otherwise important to the operation of, other business in PNG.

### **Are there changes to reporting requirements?**

Yes. Under the new rules, holders of foreign investment certificates must file annual status reports containing prescribed information. Failure to file an annual status report can lead to suspension or cancellation of a foreign investment certificate.

### What about other restrictions on foreign investment?

The Government is aware that there are other restrictions on foreign investment at sectoral levels. A broader reform process is underway to identify these restrictions and make them more transparent for prospective foreign investors.

### How can I provide comment on the draft Bill?

The draft Bill and other explanatory documents are available at [www.ipa.gov.pg](http://www.ipa.gov.pg). Comments must be received by **5 pm on Friday, 29 March 2019** to [ggLegislativeReview@ipa.gov.pg](mailto:ggLegislativeReview@ipa.gov.pg).



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