Doing business in Papua New Guinea
A Norton Rose Fulbright Guide 2018
Norton Rose Fulbright is a global law firm. We provide the world’s preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.
Preface

Doing business in Papua New Guinea is extraordinary. The country is blessed with an abundance of natural resources, is located in one of the fastest growing regions in the world, and is hungry to capture the potential benefits this could provide. As a result, the rewards of doing business in PNG can be immense, but at times so too are the challenges.

As with many emerging economies that rely heavily on the commercialisation of natural resources, PNG faces the challenge of developing the social and physical infrastructure required to support the needs of today while also planning for and funding the long-term socio-economic development of the country as a whole. This is a uniquely complex challenge in this culturally diverse country, where the majority of the population still live outside of urban centres and where over 800 languages are spoken. However there is additional progress expected this year as a result of the increased spotlight and investment being made for the Asia-Pacific Economic Cooperation (APEC) 2018 forum, which is being held in Port Moresby.

It is important for any organisation or individual looking to do business in PNG to understand they will need to demonstrate a commitment to the long-term goals of their PNG business partners, PNG stakeholders and PNG as a whole, if they wish to succeed in their endeavours. Too often in the past, foreign investors were seen to be focussed on their own short-term agendas, and as a result newcomers now find they can face increased regulatory and cultural hurdles when looking to start doing business in this country. Despite this, foreign investors can take comfort that the PNG Government is supportive of foreign investment.

Norton Rose Fulbright, in association with local counsel prior to establishing our local presence in Port Moresby in late 2016, has a long history and significant experience working in PNG. Our experienced lawyers’ in-depth knowledge of local business practices and culture, combined with our international reach and expertise in key sectors, enables us to provide clients with the highest standard of advice and service.

This inaugural edition of our Doing Business in Papua New Guinea guide provides insights based on our local knowledge and experience. All of the essential facts are here – we cover visas and work permits, types of business entities, business environment, policy on foreign investment, taxation, workplace relations and the means to forestall or resolve disputes, and more.

We hope you find this a useful resource and wish you great success in all your business dealings in Papua New Guinea, but of course it is never easy to capture every insight in one short document. If you have any questions about the issues discussed in this guide, we would be pleased to provide additional information.

Best regards

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Government

Papua New Guinea (PNG) is a democratic country with a constitutional monarchy. The head of state is Her Majesty Queen Elizabeth II, who is represented in PNG by the Governor General. PNG gained its independence on 16 September 1975.

Constitution

The Constitution is the highest law of PNG and it provides for

• a Parliament made up of members elected by universal suffrage
• the protection of the basic rights of citizens
• the separation of powers between Parliament, the Executive and the judiciary.

The Constitution also provides for a system of provincial and local government. Certain limited legislative powers are vested in the provincial and local governments. The Constitutional laws of PNG consist of the Constitution and secondary constitutional laws (described as ‘Organic laws’).

Organic laws are made and amended in a similar manner to amendments to the Constitution. Subject to Section 10 of the Constitution (construction of written laws) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective.

Underlying laws of PNG

The Constitution provides for the adoption of certain pre-independent statutes and the adoption of the common law of England (as at 16 September 1975) as the underlying law of PNG, except to the extent that it was inapplicable or inappropriate to the circumstances of PNG. As such there remains many similarities between PNG and English (Australian) law.

Parliament

The Constitution gives law making powers to the Parliament. Generally, the law making power of the Parliament can be exercised by a simple majority of members. In certain cases a greater majority may be required for laws that impact on certain guaranteed constitutional rights or in relation to Constitutional laws.

Executive

Executive power is vested in the Head of the State (acting through the Governor General) acting on the advice of, and in accordance with the directions of, the National Executive Council (NEC). The NEC is comprised of members of the Cabinet chosen by the Prime Minister. The Prime Minister is elected by a majority of members of the Parliament.

Judiciary

The PNG national judicial system is comprised of the Supreme Court, the National Court and a number of lower level courts. The court of first instance with unlimited jurisdiction is the National Court. Except in very limited cases, appeals from the National Court lie with the Supreme Court. The judges appointed to the National Court are also appointed to the Supreme Court. The Supreme Court is the highest court in PNG.
Business environment

PNG has a mixed economy in which both the Government and the private sector are active. Given PNG has an abundance of natural resources its primary industries are:

- mining
- petroleum and gas
- forestry
- agriculture
- fisheries.

Although the business environment in PNG can sometimes be challenging, foreign investors should take comfort that PNG Government is supportive of foreign investment and has enacted legislation that provides a level of protection that their property will not be nationalised without compensation.

Port Moresby Stock Exchange

There are currently 16 companies listed on the Port Moresby Stock Exchange, predominantly in the mining and oil and gas sectors, with a market capitalisation of approximately K54 billion.

Banking sector

The PNG banking sector is dominated by four main trading banks, being the, ANZ Papua New Guinea, Bank of South Pacific, Kina Bank and Westpac Bank PNG.
Foreign investment policy

The PNG Government welcomes foreign investment and also provides a level of guarantee that the property of a foreign investor will not be nationalised or appropriated unless it is for a public purpose, in accordance with law and with compensation.

The Investment Promotion Act 1992 (IPA Act) encourages, facilitates and monitors foreign investment in PNG.

Subject to the laws relating to taxation and exchange control, there is a general right to remit capital and earnings overseas and a guarantee that (with some exceptions) no tax, duty or other form of charge will discriminate against an investor on the grounds of its origin. These provisions apply to a foreign investor except where the investor could obtain more favourable treatment under any bilateral or multilateral agreement to which PNG is a party.

A certificate issued from the IPA to carry on a business constitutes the approval of the Government of PNG which is required in order for the Multilateral Investment Guarantee Agency to issue investment guarantees.

Government initiatives and incentives

The PNG Government provides a number of initiatives and incentives to encourage investment. Tax incentives are available for mining and petroleum projects. Tax incentives include tax rates of 30%, dividend withholding tax of 10%, royalties of 2% and interest paid by a resource project to a non-resident lender, being exempt from income tax and interest withholding tax.

Certain mining and petroleum projects are also eligible to take advantage of PNG’s tax credit scheme. The tax scheme allows for certain approved infrastructure to be funded through tax credits.

The Government also encourages the development of its agriculture industry. The Rural Development Incentive is a scheme introduced to allow income tax exemption on the net income of new business carrying on rural development in prescribed undeveloped districts that are not reliant on the exploitation of natural resources, for 10 years after the start of the business.

In addition, the Government also has incentives to encourage development in the following sectors:

Infrastructure
• Tax credit scheme to encourage companies to invest in public infrastructure projects

Manufacturing
• industrial plant depreciation – up to 100% of cost
• double deduction for export market development costs
• export sales exemption
• import duty drawback
• wages subsidy.

Tourism
• double income tax deductions
• accelerated depreciation
• goods and services tax exemptions
• double deduction for staff training
• new incentives for tourism accommodation
• infrastructure tax credits.
Visas and work permits

Visas for business people and skilled people

Non-citizens wanting to travel to PNG to work or for business must have a valid entry permit. Foreigners wanting to work in PNG can be employed by a PNG registered business, citizen, PNG company or a foreign registered company which has obtained the required Investment Promotion Authority (IPA) approval under the Investment Promotion Act 1992. A non-citizen must obtain a Work Permit from the Department of Labour and Industrial Relations and the relevant visa from the Immigration and Citizenship Authority before commencing work in PNG. There are a number of different types of visa.

Employing a non-citizen without a valid work permit is an offence.

A non-citizen who engages in employment or self-employment without a valid work permit is guilty of an offence.

The term of the entry visa will reflect the term of the work permit.

Applicants must be outside of the country at the time of granting the work permit, unless another work permit application has been lodged, eg a renewal of an existing work permit.

Term

A short term work permit entitles the holder to work up to 6 months from the date it is granted.

A long term work permit entitles the holder to work for 6 months up to 5 years from the date it is granted.

The principal legislation concerning the employment of non-citizens is the Employment of Non-citizens Act 2007, the Migration Act 1998 and associated regulations.

Business visits

Short-term single entry
The Business Short-Term Single Entry Permit is valid for 30 days per visa. Employment is prohibited.

Short-term multiple entry
The Business Short-term Multiple Entry Permit is valid for 12 months with a stay of up to 60 days permitted on each arrival. Employment is prohibited.
Business entities

A foreign investor has a wide range of business structures to choose from when doing business in PNG. The type of entity an investor chooses will depend on what best suits the particular needs of the investor.

Business entities used by non-residents in PNG include branch offices of parent companies, subsidiaries of parent companies, partnerships, limited partnerships, joint ventures, and trusts.

While it is possible to conduct business in PNG through any of the above structures, most foreign investors will use a company as the vehicle for their investment.

IPA Certification

A foreign enterprise carrying on business in PNG will be regarded as a 'foreign enterprise' and must, unless an exemption applies, obtain certification from the IPA, under the IPA Act. A foreign enterprise is defined under the IPA Act as any enterprise that is 50% or more owned and controlled, directly or indirectly, by a non-citizen of PNG. A foreign enterprise will also need to be aware that some activities are also reserved only for PNG citizens such as alluvial mining. As such, foreign investors should seek legal advice before investing in, or commence carrying on business in, PNG.

Before making an application for IPA certification, the foreign enterprise must either register the foreign company or establish a new company in PNG, under the Companies Act 1997 (Companies Act).

If a foreign business enters into a contract, agreement or understanding without IPA certification, the arrangement may be found to be void and unenforceable in PNG.

A company using a business name other than its own name must register its business name with the IPA.

PNG subsidiary

A foreign enterprise may wish to incorporate a wholly owned company in PNG. In order to incorporate a new company, an application must be made to the Registrar of Companies in the prescribed form and signed by the applicant.

Under the Companies Act, every company incorporated in PNG must have at least one director who is ordinarily a resident of PNG. In addition, companies must have an address for service in PNG.

Branch office

If the foreign enterprise wants to carry on a business in PNG and does not want to establish a PNG company, it can establish a branch office. However, the foreign enterprise must still be registered as a foreign company under the Companies Act before making an application for certification under the IPA Act.

Partnership

Parties may wish to enter into a partnership, under which two or more entities agree to carry on business in common with a view to jointly deriving profit.

Each partner is jointly and severally liable with all the other partners for all debts and obligations of the partnership that are incurred while the relevant person or entity is a partner. Terms not dealt with in a partnership agreement may be regulated by the Partnership Act, 1951.

Unincorporated joint venture

A foreign investor wishing to do business in PNG may also conduct business in PNG as part of an unincorporated joint venture. It may do so directly (in which case it will need IPA certification) or through a PNG subsidiary.

Trusts

Business in PNG can also be conducted through a trust. Where the trustee is a company it will need to comply with the requirements of the Companies Act and the IPA Act (as applicable).
Workplace relations

PNG workplace relations laws are made up of common law principles, various Acts, Awards and Common Rules which apply to employees engaged from within the town boundaries of Port Moresby, Lae and other defined regions. Non-citizens employed in PNG are also required to comply with the following legislation:

- Employment of Non-Citizens Act
- Employment of Non-Citizens Regulation 2008
- Migration Act (Ch 16)
- Migration Regulation (Ch 16).

If an award or common rules apply, the minimum terms, conditions and entitlements take precedence over those stipulated under the Employment Act and must be followed when entering into contracts of employment.

Employment conditions
The Employment Act prescribes certain minimum employment conditions.

Ordinary working hours
Typically employees work a 42 hour week. Most employees will work eight hours per day from Monday to Friday and two hours between 7 am and 12 noon Saturday.

Under the relevant labour laws employees must not work in excess of 12 hours in any one day. However maximum hours may be exceeded in certain circumstances.

Payment of overtime
An employer may make an agreement with an employee to allow the employee to take time off during normal working hours at least equal in length to the overtime worked.

It is a legal requirement that payment of overtime must be made as soon after performance of that duty as is convenient to the employer but not later than seven days after the next day on which payment of current wages would normally be due or on termination, whichever occurs first.

Sick leave
Employees that have served a period of not less than six months are entitled to be paid sick leave of 6 days per year. Sick leave may be accumulated to a maximum of 18 days exclusive of sick leave credits for the current year.

Annual leave
An employee is entitled for each year of continuous service to a period of 14 days leave.

Long service leave
Although long service leave entitlements are not expressed in the Employment Act, usually long service leave is the same as that specified under the Common Rules being 6 months leave after 15 years continuous service. Pro rata entitlements apply after three years continuous service at three and a half days per year.

Minimum rates of pay
There is a national minimum wage and a national youth minimum wage.
Termination

The *Employment Act* requires notice periods to be given as follows:

- 1 day notice if the employee has been employed for less than 4 weeks
- 1 week notice if the employee has been employed for not less than 4 weeks and less than 1 year
- 2 weeks’ notice if the employee has been employed for not less than 1 year and less than 5 years, and
- 4 weeks’ notice if the employee has been employed for 5 years or more.

The notice period in a contract of employment prevails over the *Employment Act*.

**Termination without notice**

Employers are able to terminate work contracts in certain circumstances without notice. The *Employment Act* sets out the grounds for termination without notice. Essentially these grounds are the same as provided under English common law. An employer may also terminate an employment contract immediately on other grounds such as theft of company property, possession of drugs and alcohol on site.

**Repatriation**

An employer is required to pay the expenses of repatriating an employee. An employer may also be liable to pay for the repatriation of dependents.

**Workers Compensation Act**

It is an offence, under the *Workers Compensation Act*, for an employer to employ any worker in any employment without a policy of insurance or indemnity, issued by a licensed insurer, for any injury to the worker arising out of or in the course of their employment.

The *Workers Compensation Act* provides for compensation to workers and their dependants in respect of injuries suffered by workers arising out of or in the course of their employment, and for related purposes.
Property

Customary land

Approximately 97% of land in PNG is held by its traditional owners under customary principles of land ownership. Customary land ownership rules vary depending on the region. However, generally the rules of ownership recognise the traditional users of land and personal and clan arrangements for land use.

A foreign investor cannot purchase or lease customary land directly from its traditional owners. If a foreign investor requires access to customary land, the Government would have to acquire the land from its traditional owners and then lease it to the foreign investor.

Alienated land

Land in PNG that is not customary land is known as alienated land. Alienated land is land which has been acquired from the customary owners by the Government either for its own use, or for private development. However, some alienated land is held as freehold other than by the Government. Most enterprises in which foreign investors are involved are located on alienated land.

Alienated land in PNG can be held either as freehold or leasehold from the State. However, freehold land makes up a small proportion of alienated land in PNG. Both freehold land and leasehold land are registered by the Registrar of Titles under a Torrens system of land registration (see below). Under this system, an original certificate of title (for freehold land) or State lease (for leasehold land) is kept on a register maintained at the Department of Lands & Physical Planning. Dealings with land are carried out by means of instruments which are perfected upon registration. A certificate of title or State lease kept on the register maintained by the Department should reveal at any time the exact location of the land in question, its dimensions, the present owner or lessee and may also reveal sub-leases and mortgages in which the title may be subject. Certain dealings in land may also require the approval of the Minister for Lands.

Land Board and Land Titles Commission

The Land Act establishes a Land Board which deals with applications for leases of State land. The Land Titles Commission administers the Land (Tenure Conversion) Act. The key functions of the Land Titles Commission include:

- authorising registration of customary land
- determining whether land is alienated land, and
- ascertaining who the owners of the customary land are.

The last of these functions can be critical for a foreign investor whose development proposal involves business activities on land which a variety of clans claim to own or to have the right to use.

In recent years, the importance of land ownership issues has been highlighted in a number of resource projects, public highways, educational facilities and other business operations in different parts of the country. These incidents have reinforced the need for a developer to establish and maintain a sound relationship with landowners in the vicinity of any proposed project.

Freehold land

In PNG, a non-citizen is precluded from owning freehold land under the Constitution and the Land (Ownership of Freeholds) Act.

However, there is a mechanism under the law for certain types of freehold land to be converted to leasehold land, so that it may be used by a non-citizen.
Leasehold land

Leasehold land can be more freely dealt with than freehold land. Leasehold land is land which the Government has acquired from its customary owners and leased to a natural person or company for a term of up to 99 years for a specific purpose.

The Land Act provides for:

- agricultural leases
- pastoral leases
- business and residence leases
- mission leases
- leases of government owned buildings
- special purpose agricultural and business leases, and
- urban development leases.

The Land Act also deals with the granting of licences, disposal and acquisition of customary land and regulation of compensation payments.

The Torrens system

PNG has a Torrens style system of land registration. The Land Registration Act sets out the process and provides forms required for the registration of any dealings of land.

At the time of registration, and by virtue of registration, the estate of the registered proprietor becomes absolutely free from any prior rival claims (except as prescribed by the Land Registration Act) or some other overriding statutory considerations. Any dealings involving land being granted or transferred to a foreigner or corporate entity require approval from the Minister of Lands and Physical Planning prior to registration.

Environmental laws

PNG has a number of laws relating to the environment and environmental protection. The most relevant are the Environment Act, 2000 (Environment Act), the Environment (Prescribed Activities) Regulation, 2002 and the Environment (Permits) Regulation, 2002.

Under the Environment Act, an enterprise cannot undertake certain actions, including mining exploration, gravel extraction and logging operations without a permit.

The Conservation and Environment Protection Authority of PNG is responsible for administering the Environment Act and associated regulations.
Intellectual property protection

PNG law recognises intellectual property rights and, in general, PNG legislation protecting intellectual property is consistent with international norms.

PNG is a signatory to the World Trade Organisation (WTO) and a member of General Agreement on Tariffs and Trade of the WTO. It is also a signatory to the Patent Cooperation Treaty, and a number of other intellectual property related treaties. Protection is available for a range of intellectual property rights through legislation and the common law.

Legislation covering intellectual property in PNG is the:

- **Patents and Industrial Designs Act 2000 (Patents Act)**
- **Trade Marks Act 1978 (Trade Marks Act), and**
- **Copyright and Neighbouring Rights Act 2000 (Copyright Act).**

**Patents**
The Patents Act provides for the grant of a patent for a patentable invention. The term of a standard patent is 20 years from the date of the patent. The patent cannot be renewed for an additional term.

**Trade marks**
The Trade Marks Act provides for the registration of trade marks for goods as well as services. The term of registration is 10 years, renewable for further periods of 10 years. The Trade Marks Act provides for a single application for registration of a trade mark for different classes of goods and services.

Any trade mark which is distinctive and not similar to another registered mark used for similar goods or services may be eligible for registration in PNG. Under PNG law, unregistered trademarks are protected through the common law action of “passing off”, provided the applicant can establish sufficient reputation in the mark. The benefit of registering a trade mark is that it gives the registered owner a presumption of distinctiveness. This means that it is not necessary for the registered owner to prove reputation in the mark.

**Copyright**
The Copyright Act provides for copyright in all original literary, dramatic, musical and artistic works, cinematograph films and sound recordings.

Computer programs are entitled to protection under the Copyright Act as a literary work. Transfer, assignment and licensing of copyrights, including computer software, is recognised in PNG.

Registration of copyright is not required in PNG. Copyright arises upon the creation of a work that has the requisite amount of originality, once the work has been reduced to a material form.

PNG is currently not a member of the Berne Convention for the Protection of Copyright in Respect of Literary and Artistic Works and the Universal Copyright Convention.

Three forms of moral rights are recognised in PNG in accordance with the provisions of the Copyright Act. They are:

- the right of attribution of authorship
- the right not to have your authorship falsely attribute
- the right not to have your copyright work subject to derogatory treatment.
- Copyright is protected during the life of the author and for a period of 50 years from the date of his or her death.

**Enforcement of IP**
Intellectual property rights are able to be enforced in PNG by the owner. The courts in PNG can make a wide range of orders including provisional seizure orders, interim injunctions or an award for compensatory damages.
Foreign Exchange Controls

Approval of the Bank of Papua New Guinea (Central Bank) is required for certain transactions, including:

- Agreements denominated in a foreign currency (i) between PNG resident entities and (ii) where a PNG resident is investing in another PNG resident or acquiring a PNG asset (obligations of both such agreements are required to be settled in Kina)

- Agreements requiring a PNG resident to provide a form of guarantee or security in favour of a non-resident entity (unless there is a benefit to PNG)

- Where a PNG resident opens and maintains foreign currency accounts.

While certain transactions do not require prior approval of the Central Bank, entities may nonetheless be obligated to report such transactions (ie the receipt of funds under foreign loans).

Residency

Under the *Central Banking Act*, persons deemed to be residents of PNG include:

- Companies incorporated in PNG

- Companies incorporated in foreign jurisdictions operating actively in PNG

- Partnerships which are formed in PNG and are operating actively in PNG.

An entity is deemed to be operating actively in PNG, if there exists some location (dwelling, place of production, or other premises) within the country from which the entity engages in economic activities and transactions.

Taxation surveillance

Taxation clearance certificates obtained from the Internal Revenue Commission (IRC) are required for certain transactions including:

- remission of funds offshore in excess of K200,000 annually

- remission of funds of any amount offshore to a ‘tax haven’ as listed by the IRC.
Taxation

The PNG tax year runs from 1 January to 31 December each year. Applications may be made for a substituted tax year-end to coincide with the accounting year-end of an overseas parent company.

A company carrying on business or deriving income in PNG must appoint a resident in PNG to be its public officer. This must be done within three months after the company commences carrying on business or deriving income in PNG (unless an exemption applies).

PNG law does not allow for grouping or consolidation of tax returns and losses are not permitted to be offset between group companies.

The Internal Revenue Commission (IRC) is responsible for the collection of most of PNG’s taxation revenue.

Corporate Income Tax Rate

The income tax rate is 30% for a PNG resident company and 48% for a non-resident company. However different effective tax rates may apply where income is generated from mining, petroleum or gas operations.

Withholding Tax

Dividends
Where dividends are paid to either residents or non-residents, they are subject to 17% withholding tax. This rate may be reduced to 15% in certain circumstances.

Where dividends are paid out of mining income, the withholding tax rate is reduced to 10%. There is no withholding tax where dividends are paid out of oil or gas income.

Royalties
Royalties paid to residents are not subject to withholding tax. Non-residents are subject to withholding tax at a rate of 10%. Where a royalty is paid to a non-resident associate of the payee, they are subject to a 30% withholding tax rate. This rate may be reduced to 10% in certain circumstances.

Interest
Interest payments to either residents or non-residents are subject to withholding tax at 15%. This rate may be reduced to 10% in certain circumstances. There will be no interest withholding tax where:

- interest is paid or credited to a licensed financial institution in PNG, the Central Bank, or the state;
- interest is paid or credited by a resource company to a non-resident lender; or
- the interest income is otherwise exempt.

Business income
Businesses that make eligible business payments must withhold and remit 10% of all such payments where they are made to persons or organisations that do not have a certificate of compliance and are operating in certain industries.

Salary/wages
All organisations are required to register as a group employer within seven days of beginning to employ staff from which they are liable to deduct Salary and Wages Tax.

Where businesses are paying salary or wages to employees, they will be required to withhold salary or wages tax at the prescribed marginal rates, and remit to the IRC on the seventh day of the month following the month of payment. A remittance advice must be sent to the IRC each month even if there have been no payments of salary or wages.
Goods and Services Tax (GST)

A business or an individual, whose annual turnover exceeds or is likely to exceed K100,000 per annum must register for GST by lodging the required form with the IRC.

A company registered for GST, must submit a monthly GST return to the IRC. The return must be in a required form, setting out the amount of tax payable in respect of the taxable period by the company, together with any other prescribed particulars.

The standard rate of GST is 10%, but certain goods and services are exempt or zero-rated. Zero-rated goods and services include those goods and services that are exported, as well as goods and services (other than motor cars) supplied to mining, petroleum or gas companies.

Exempt goods and services include medical, educational, and financial services. Land is also excluded from GST, but buildings and other improvements are subject to the tax.

Where a company fails to comply with its GST obligations, the directors will be personally liable for a penalty equal to the outstanding tax liability.

Other taxes and duties

Customs Duty
Where applicable, Customs duty is levied on the transaction value of imported goods. The rate is calculated by reference to the Customs Tariff Act.

Stamp Duty
Stamp duty is imposed on documents evidencing certain transactions at varying rates. Duty charged on the conveyance of property rises to a maximum of 5% where the value of the property exceeds K100,000 and is payable by the purchaser. A 5% duty may also be payable on the unencumbered value of land where there is a transfer of shares in certain landholding companies.

Duty charged on the transfer of shares will generally be taxed at 1% of the value of the shares transferred.

Stamp duty may also be payable on documents executed outside PNG where those documents relate to property or matters in PNG.

Capital Gains Tax (CGT)
There is currently no CGT regime in PNG, but the introduction of a CGT regime has been recommended by a Tax Review Committee.

Please note that Norton Rose Fulbright does not advise on PNG taxation. For information about PNG taxation issues, please contact the IRC (www.irc.gov.pg) or contact one of our team members who would be pleased to make an introduction to qualified PNG tax advisers.
Dispute resolution

Courts

The PNG judiciary operates independently from the executive and legislative branches of the Government. The PNG courts encourage dispute resolution through a number of avenues including mediation and arbitration. The process of mediation is well-suited to PNG cultural traditions of reconciliation.

The National Court recognises the importance of Alternative Dispute Resolution and has specific rules relating to the accreditation, regulation and conduct of mediators. Before a matter can proceed in the National Court the court must not only be satisfied of the merits of the case, but also that the parties have made real and good faith effort to resolve the dispute through mediation.

Arbitration

Arbitration has become a commonly used mechanism of alternative dispute resolution for parties seeking a binding determination of their dispute. It is an alternative to court-based litigation that is generally more time and cost-efficient. The process is adversarial but, unlike the court system, the parties and the arbitrator can determine the degree of formality.

Enforcement of foreign arbitral awards

PNG is not a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

However, the Reciprocal Enforcement of Foreign Judgements Act 1976 provides reciprocal treatment for judgements given in foreign countries which accord reciprocal treatment to judgements given in PNG. Accordingly, in order to enforce a foreign arbitral award, an entity would need to ensure such award is:

- registered as a judgement by a court in the foreign country that already provides reciprocal treatment
- not older than 6 years after the date of judgement
- not subject to ongoing appeals, and
- registered in the PNG National Court.
Our commitment to Papua New Guinea

Norton Rose Fulbright has a long history and significant experience in PNG, acting in association with PNG counsel prior to opening our local office.

Our lawyers’ in-depth knowledge of the region and local business practices and substantial connections enable us to provide clients with the highest standard of client service.

We established a permanent in-country presence in PNG in November 2016, with the engagement of Karo Lelai as the Principal of Norton Rose Fulbright PNG. Karo and her support staff have since been joined in our Port Moresby office by associate Toli Yalapan, and we continue to interview candidates for other lawyer positions.

Our PNG expertise based in Australia has recently expanded with the addition of Paul Toua, a Special Counsel based in our Brisbane office. Paul is admitted to the National Court and holds an unrestricted practicing certificate to practice PNG law.

In addition to our investment in growing our ‘in country’ team in PNG, we are also committed to supporting the empowerment and nation-building of PNG, in line with our business principles of quality, unity and integrity. This includes our pro bono work on the purchase of land for the Seif Haus in Port Moresby and our PNG Legal Scholarship.

Norton Rose Fulbright PNG Legal Scholarship

Norton Rose Fulbright has created a scholarship to support the pursuit of quality in legal studies in Papua New Guinea. We created this scholarship to support PNG legal students who have already shown a commitment to their undergraduate studies.

In 2017 we named Alison Kult (second from right), a fourth year student at the School of Law at the University of PNG, as the first recipient of our annual scholarship to support the pursuit of quality in legal studies in PNG.

The Norton Rose Fulbright PNG Legal Scholarship has been designed to provide the recipient with ongoing support throughout their final year of undergraduate legal studies by providing up to K10,000 in payments and reimbursements for major costs related to their study and to reward high achievement in their final year studies. In addition to the scholarship, the judging committee also has the discretion to select up to two additional applicants to receive a highly commended award of K1,000 each.

Given the very high quality of applications from all the four shortlisted candidates in 2017, instead of awarding up to two highly commended awards we awarded three. Gideon Pogla (left), Naomi Riyong (second from left) and Benjamin Yalehen Jnr (right) received highly commended awards.

Judging has just been completed for the 2018 Norton Rose Fulbright PNG Legal Scholarship. Information about this year’s scholarship recipient and the other prize winners is available on our website here.

“I am thrilled, speechless and over the moon! ...Thank you very much for selecting me to be the recipient of the Norton Rose Fulbright Legal Scholarship. This is just unbelievable. I am humbled by your decision. Thank you once again...”

Alison Kult, Recipient, Norton Rose Fulbright PNG Legal Scholarship 2017
Contact us

For further information about doing business in Papua New Guinea, please contact one of our team

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The law referred to in this publication is as at 1 January 2018 unless otherwise stated. While every effort has been made to ensure the accuracy of this publication, it is for general guidance only and should not be treated as a substitute for specific advice. If you would like advice on any of the issues raised, please contact the relevant Norton Rose Fulbright office.

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