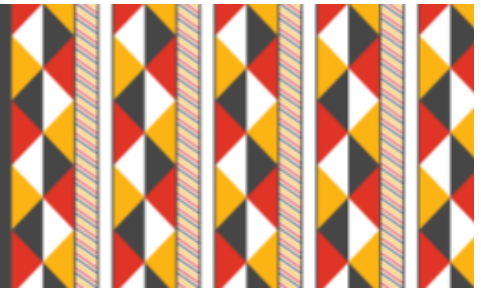




PNG Pulse

Keeping you informed

www.pwc.com/pg



January 2023

Investment Promotion Authority (IPA) update

As reported, the IPA launched their new Online Registry System at the beginning of December and all companies are required to re-register on the system before the end of November 2023. Unfortunately, the migration of existing information from the old to the new system has not yet been completed. The IPA recommends that entities wait for the migration of their data before taking steps to re-register. The most recent expectation is that migration will be completed in February. However, the new registry is available for new company incorporation.

Amendments to the Investment Promotion Act

The first sitting of parliament in 2023 saw the passing of the Investment Promotion (Amendment) Bill 2022 that introduces quite significant changes to the regulation of foreign investment. The history of the 2022 Bill started with the proposed Foreign Investment Regulatory Authority (FIRA) Bill that was circulated in 2019 and which proposed a new regulatory authority for foreign investment and a significant expansion of the Reserved Activities list (and consequent limits on foreign investment). This version of the bill ultimately did not proceed to the floor of Parliament. The new amendments to the IPA Act contained in the 2022 Bill retain much of the original policy intent from 2019. The key features of the amendments include:

- A new office of Registrar of Foreign Investment, within the IPA, whose function will be to maintain a register of foreign investment and for administering the provisions relating to foreign enterprises.
- Introduction of a new category of “Restricted Activities” which a foreign enterprise may carry on but subject to prescribed conditions, including a minimum level of investment and minimum level of citizen ownership. The list and proposed conditions are yet to be regulated.
- A requirement to review the Reserved Activities List and the Restricted Activities List at least every three years, together with a process for prior publication and consultation on proposed changes to the lists or the prescribed conditions at least six months before the changes are submitted to the IPA Board and the Minister for approval.
- Grand-fathering provisions for foreign enterprises currently carrying on activities that are, or subsequently become, reserved or restricted activities. This grandfathering appears to continue to apply even with a change in ownership or control of the enterprise.
- A reduction in the minimum period within which the IPA must notify the applicant of the grant or refusal of their application for certification from 35 to five working days. We note that in practice the current 35-day limit is rarely met.
- Replacement of the current six-monthly terms and conditions report with an annual report in a prescribed format, similar to a company annual return. Filing fees and late filing penalties will now apply to these foreign enterprise annual reports. The Registrar can also suspend the certificate if the filing is more than three months late and then automatically cancel the certificate after a period of 12 months suspension. The foreign enterprise is unable to carry on business during the suspension period.

The amendments are seen as a measured and balanced response to achieving the overall policy objective of increasing business opportunities for nationally owned SMEs whilst protecting existing foreign investors and providing greater certainty for new foreign investors. The grandfathering provisions will be particularly welcomed by existing investors.

New Associations Incorporation Act

The old 1966 Act has now been completely replaced by the Associations Incorporation Bill 2022. The old Act applied a very loose governance model to associations and this new act in many ways aligns the governance of associations with that for companies. This new legislation will require all existing associations to re-register, and in some cases, change their rules. It applies to all forms of association including sporting and social clubs, charitable bodies and not-for-profit organisations.

Key changes from the old act include:

- Classification under two sub-types of association – public benefit associations and members benefit associations a new definition of “charitable purpose” is included, although it differs from that in the Income Tax Act.
- A more detailed application and public notice process for incorporation of a new association.
- Formalisation of the duties, powers of management and responsibilities of committee members and the public officer. The public officer performs a role similar to that of a company secretary.
- Strengthened provisions for maintenance of accounting records, annual reporting to the members and auditing, although the requirement for an annual report and audited financial statements can be dispensed with in certain circumstances. Contents of the annual report are similar to those under the Companies Act.
- New requirement for filing of an annual return together with notices of changes in the names and details of committee members and the public officer. Filing fees and late filing penalties will apply. Where the association is required to prepare financial statements, a copy of those accounts is required to be filed with the annual return.
- A new provision to allow for the registration of foreign charities, religious organisations and NGOs that want to operate in PNG.
- Penalty provisions on both the association and its committee members/public officer for breaches of the requirements have been significantly increased.

Smaller associations may find some of the additional requirements quite onerous but overall the intent of the new legislation is to improve the governance of associations and their accountability to their members and the public for membership fees, donations and other forms of income of the association and the uses to which the funds are expended.

If you would like to know more about any of these developments or have any other questions, please get in touch with your usual PwC contact.

For more information, contact:

Peter Burnie

Partner

peter.burnie@pwc.com

© 2023 PricewaterhouseCoopers. All rights reserved.

PwC refers to the Papua New Guinea member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.