



DEPARTMENT OF LABOUR AND INDUSTRIAL RELATIONS

Work Permit Guideline

A General Guide to the Foreign Employment System in Papua New Guinea

Issued by the Secretary, Department of Labour and Industrial Relations
in accordance with Section 55 of the *Employment of Non-citizens Act 2007*

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DEPARTMENT OF LABOUR AND INDUSTRIAL RELATIONS
Office of the Secretary

Foreword

I take great pleasure in presenting this **General Guide to the Work Permit System in Papua New Guinea**.

These Guidelines are produced under the authority of Section 55 of the *Employment of Non-citizens Act 2007*. This provision of the legislation allows the Secretary, Department of Labour and Industrial Relations to issue an easy-to-understand guide to Papua New Guinea's foreign employment laws.

These Guidelines provide instructions to employers about how to apply for a work permit for a non-citizen worker. They also contain other useful information about the Work Permit System which will assist clients in their dealings with the Department.

The information is presented in a user-friendly style and 'helpful hints' are included to explain potentially confusing rules or requirements.

The Work Permit System which is explained in these Guidelines is uniquely Papua New Guinean. It is the result of extensive consultation with stakeholders, particularly the business community. It is also a system which must continually evolve to meet the changing requirements of our labour market. For this reason, the Department welcomes feedback from all stakeholders about how we might improve the way in which we approach the regulation of foreign employment in Papua New Guinea.

These Guidelines should be read in conjunction with the **Guide to the Foreign Employment Industrial Divisions and Classification of Occupations** which is also available for purchase at a nominal fee from the Department. Other Guidelines on different work permit matters may be issued from time to time. Further information about the Work Permit System may also be obtained from **www.workpermits.gov.pg**.


I encourage employers, non-citizen employees, agents and any other persons to use the Guidelines as a source of information when applying for a foreigner work permit.

These Guidelines take effect from 1 January 2009.

David K.G. Tibu LLB
Secretary

List of Terms

Act	The <i>Employment of Non-citizens Act 2007</i> .
Advertised occupations	Means those jobs which must be advertised within Papua New Guinea before a non-citizen employee can be employed.
Application form	Refers to the form which is contained within the Regulation and which must be used when applying for a new work permit or the renewal of a work permit.
Authorised Officer	Is a person appointed by the Secretary who has powers to conduct inspections of workplaces to ensure employers and employees are complying with the law relating to foreign employment in PNG.
Bridging work permit	May be granted where: (1) a non-citizen has a valid work permit, (2) the non-citizen has applied for a new work permit for work in a different occupation or with a different employer, (3) the new work permit has not been granted and (4) the current work permit is due to expire. A bridging work permit allows the non-citizen to remain in PNG while the new work permit is processed. A bridging work permit is only valid for 60 days.
Business visa	Means an entry permit granted by Immigration for persons entering PNG to attend business meetings, board meetings, conferences, exploratory business visits or participate in business negotiation. Employment is strictly prohibited.
Cancellation	Refers to the cancellation of a work permit by the Secretary prior to the expiry of the work permit. A work permit which is cancelled is no longer valid.
Checklist	The application lodgment checklist has been developed to assist applicants in ensuring that all requirements have been met at the time of application.
Commercial work	Means work which is undertaken entirely (or mostly) for financial reward. Non-citizens who wish to work in PNG for commercial reasons must hold a General Work Permit.
Conditions	A work permit may be granted subject to certain conditions. Conditions are recorded on the work permit.
DLIR	Department of Labour and Industrial Relations. DLIR is the Government Agency responsible for administering the Work Permit System.
Employers' register	Every employer who employs non-citizen workers must keep a Register of Work Permits.
Employment	Means: (1) a normal employer/employee relationship, (2) work as a consultant, (3) self-employment, (3) voluntary work and (4) temporary, part-time and casual work.

Fee	Means the fee which must be paid for a work permit application. The fee is prescribed by the Regulation. Fees are non-refundable and non-transferable.
Foreign Employment Division	The Division of DLIR which is responsible for administering the Work Permit System.
FWPAS	The IT system that is used to administer the work permit system.
General work permit	Is granted for work of a commercial nature.
Good Corporate Citizens	Businesses which are recognised for their contribution to training PNG workers and for complying with PNG labour and other laws.
Immigration	Papua New Guinea Immigration and Citizenship Service.
Infringement notices	Are issued by the Secretary for a breach of the Act. The recipient of an Infringement Notice may pay the penalty specified in the Infringement Notice or elect to have the matter decided by the Court.
	An example, a helpful hint or an easy-to-understand explanation
IPA	Investment Promotion Authority. All foreign companies must register with IPA prior to conducting business in PNG and before applying for a foreigner work permit.
List of Occupations	Means the list of jobs identified within the PNG Labour Market.
Long term work permit	Can be granted for 1 year, 2 years or 3 years. Generally, long term work permits are granted for 3 years. Good Corporate Citizens may be granted work permits up to 5 years.
Non-citizen	Means a person who is not a PNG citizen.
Open occupations	Means those occupations which are open to citizens and non-citizens for employment.
Penalty	Means the fine payable for a breach of the Act.
Permanent Resident (PR)	Is granted by Immigration to non-citizens who meet certain requirements. No work permit is required by a non-citizen who has been granted PR.
Place of origin	Is the town or city in a country where a non-citizen and his or her dependents must be repatriated at the conclusion of their employment in PNG.
Prescribed	Means required or provided for by the Regulation.
Proficient	Means that a non-citizen is able to speak and understand a language (English, Pisin or Motu) for normal conversational purposes.

Regulation	Means the <i>Employment of Non-citizens Regulation</i> 2008.
Renewal	Means the renewal of an existing work permit with: (1) the same employer, (2) the same employee and (3) the same occupation.
Reserved occupations	Means those occupations that are reserved for PNG citizens only. A work permit may not be issued to a non-citizen for an occupation that is reserved.
Self-employed	Refers to a non-citizen who is working in an occupation but is not employed by an employer i.e. the non-citizen works for his or herself.
Short term work permit	Is granted for a period of 6 months only.
Spouse	Means the husband or wife of a person and includes a de facto relationship.
The Secretary	Means the Head of the Department of Labour and Industrial Relations.
Visitor visa	Means an entry permit granted by Immigration which allows a non-citizen to enter PNG as a tourist. Work is prohibited.
Volunteer	Means work which is undertaken entirely (or mostly) for reasons other than financial reward. Non-citizens who wish to work in PNG for voluntary reasons must hold a Volunteer Work Permit.
Work permit	Is a letter which is issued to an employer confirming that a work permit has been granted to a non-citizen employee. The work permit must be retained by the employer and produced to an Authorised Officer on request.
Work permit card	Is a card which is issued to each non-citizen who is granted a work permit. The work permit card has a photograph, thumbprint and information about the non-citizen employee. The work permit card must be retained by the employee (like a drivers licence) and produced to an Authorised Officer on request.
Work Permit System	Is the system administered by DLIR which regulates the employment of non-citizen (foreign) workers in the private sector in Papua New Guinea.
Working resident visa	A Working Resident Entry Permit allows a work permit holder to enter, remain and work in Papua New Guinea. Working Resident Entry Permits are issued by Immigration.

1. Who is required to hold a Work Permit?

1.1 A general rule

As a general rule, all non-citizens who seek employment in the private sector in Papua New Guinea must possess a valid work permit before they can commence employment. The work permit must be granted by the Secretary, Department of Labour and Industrial Relations in accordance with the *Employment of Non-citizens Act 2007*.

A non-citizen who works in Papua New Guinea without a valid work permit commits an offence.

1.2 Are certain non-citizen employees exempted from the requirement to hold a work permit?

The following categories of non-citizen employees do not require a work permit to engage in employment in Papua New Guinea:

- non-citizens employed in the Papua New Guinea Public Service (these employees must obtain clearance to work from the Department of Personnel Management)
- non-citizen employees of the Diplomatic Corps (locally engaged non-citizen employees of foreign Diplomatic Missions in PNG are not exempted from the requirement to hold a work permit)
- non-citizens appointed as Official Personal Staff
- non-citizens employed by certain Aid Donor Organisations such as AusAID and JICA (locally engaged non-citizen employees of Aid Donor Organisations in PNG are not exempted from the requirement to hold a work permit)
- non-citizens who have been granted Permanent Residency status

Non-citizen employees of Government Owned Corporations and Statutory Bodies must, in most cases, possess a work permit before undertaking employment in Papua New Guinea.

Certain Visa holders who enter PNG for specific, short-term purposes may be exempt from the requirement to hold a work permit (see Chapter 5: Employment).



Please note that you must actually be granted your Permanent Resident status to be exempted from the requirement to hold a work permit. It is not sufficient that you have lodged an application for Permanent Residency – until it is granted you are required to hold a valid work permit.

Remember

If you are unsure whether you need a work permit, please approach the Foreign Employment Division for assistance.

2. Labour and Immigration – Different Responsibilities

2.1 Separate Departments

Approval must be obtained from two separate Government Departments (DLIR and Immigration) before a foreign worker can commence employment in PNG.

2.2 Responsibility of DLIR (Foreign Employment Division)

In the first instance, all non-citizens must be granted a work permit by DLIR. The application for the work permit will be processed by the Foreign Employment Division (FED) of DLIR.

Any decision with respect to the application for a work permit will be decided by the Secretary, DLIR. The Secretary will consider the application in accordance with the *Employment of Non-citizens Act 2007* and the *Employment of Non-citizens Regulation 2008*.

DLIR is also responsible for monitoring the activities of foreign workers while they are in PNG. Where a non-citizen employee is found breaching the law, the Secretary may cancel the relevant work permit or impose a penalty on the employee and the company involved.



The Foreign Employment Division is responsible for processing and issuing Work Permits. It is not responsible for processing and issuing Visas and Passports.

2.3 PNG Immigration and Citizenship Services (Immigration)

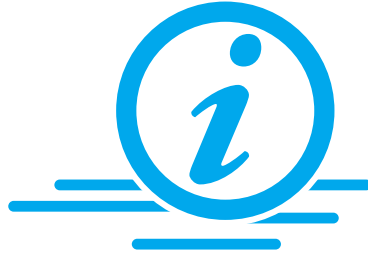
Once a non-citizen has been issued with a work permit, he or she must apply to Immigration for the appropriate Entry Permit (Visa). A Visa allows a non-citizen to enter PNG and to remain for a specific period. Any decision with respect to a Visa application will be made in accordance with the *Migration Act 1978* and Regulation.

Non-citizen employees who have been issued with a work permit are granted a specific Visa called the 'Working Resident Entry Permit'. Immigration also issues many other types of Visas such as: Visitor Visa, Business Visa and Student Visa. Immigration also issues Permanent Resident Visas and Papua New Guinean Passports.

Immigration is responsible for monitoring the entry, stay and exit of non-citizens, including foreign workers, to PNG. Where a non-citizen is found breaching the provisions of their Visa, Immigration may deport them from the country.



Immigration is responsible for processing and issuing entry permits (visas) and passports. It is not responsible for processing and issuing work permits.



Helpful Hints

The Different Roles and Responsibilities of Labour and Immigration

Labour	Immigration
Assess and process work permit applications for non-citizens seeking to work in the private sector	Assess and process Working Resident Entry Permit (Visa) applications for non-citizen employees who have been granted work permits
Assess work permit applications in accordance with the <i>Employment of Non-citizens Act 2007</i> and Regulation	Assess Visa applications in accordance with the <i>Migration Act 1978</i> and Regulation
Assess applications against the List of Open, Advertised and Reserved Occupations	Undertake an assessment to ensure that the non-citizen employee is of good character
Assess whether the applicant has the relevant qualifications, skills and experience for the position	Undertake an assessment to ensure that the non-citizen employee is in good health
Ensure professional registration requirements are met (where applicable)	Obtain the necessary police clearance
Undertake an assessment of the applicant's English language proficiency	Verify that the non-citizen employee has a valid passport for entry into Papua New Guinea
Issue a work permit (to the employer) and a work permit card (to the non-citizen employee)	Issue a Visa and place the Visa into the non-citizen's passport
Undertake compliance and integrity checks to ensure employer and employee are abiding by the conditions of the work permit and the relevant legislation	Screen all non-citizen employees on arrival into Papua New Guinea Undertake compliance and integrity checks to ensure that Visa holders are abiding by the conditions of their Visa and the relevant legislation

3. Employment Agents

3.1 Roles and responsibilities

In most cases, employers wishing to employ a non-citizen worker will engage the services of a Papua New Guinean Employment Agent to assist with the application process. For this reason, it is particularly important that there is a good understanding of the roles and responsibilities of Employment Agents.

3.2 What is an Employment Agent?

For the purpose of these Guidelines, an Employment Agent is a person who assists businesses to engage the services of non-citizen employees, including obtaining a work permit, assisting with Training Plans and obtaining a Visa for the non-citizen.

The activities of Employment Agents are regulated by the *Employment Act 1978*.

Employment Agents must be registered and issued a license by the National Employment Services of DLIR. This license must be renewed on an annual basis. Employment Agents are required to submit certain information and reports to the National Employment Service on a regular basis.



For more information on the license requirements and regulations that apply to Employment Agents please contact: The Assistant Secretary, National Employment Service on telephone (675) 3252546 or Ground Floor, Moale Haus, Waigani.

3.3 Do I need to use an Employment Agent?

An employer does not need to engage the services of an Employment Agent to obtain a work permit. An employer may use a member of its own staff (e.g. Human Resource Manager) to perform this task.

It is up to the employer to decide whether or not they wish to engage an Employment Agent or whether they wish to apply for a work permit without the assistance of an Employment Agent.

However, an employer may only apply for a work permit for a non-citizen employee of their own company – they must be registered as an Employment Agent to obtain a work permit for an employee of another organisation.



An Employment Agent provides the 'link' between the employer and the Department of Labour and Industrial Relations – an Employment Agent is not a representative of DLIR.



Helpful Hints

Roles and Responsibilities of Employment Agents

Employment Agents must...	Employers & Employees must...	Foreign Employment Division must...
<p>Ensure the work permit application form is correctly filled in and all necessary documents are attached</p> <p>Complete the Lodgement Checklist</p>	<p>Ensure the work permit application form is correctly filled in and all necessary documents are attached</p> <p>Sign the application form and certify that the information provided is true and correct</p>	<p>Verify that the work permit application form is correctly filled in and all required documents are attached</p> <p>Return the application to the Agent or Employer if it is incomplete</p>
<p>Ensure requests for additional information from FED are passed on to clients and the information is provided in a timely manner</p>	<p>Provide any additional information requested by FED</p>	<p>Inform Employment Agents of any outstanding requirements or additional information in relation to a work permit application</p>
<p>Regularly follow-up on the progress of the work permit application with FED and update clients on regular basis</p>	<p>Follow-up on the progress of work permit with Employment Agents</p>	<p>Update the Employment Agent/ Employer about the status of the work permit application</p>
<p>For approved applications, collect work permit and work permit card from FED and deliver it to clients</p>	<p>Retain work permit and ensure work permit card is provided to non-citizen employee</p>	<p>Approve work permit and issue work permit and work permit card</p>
<p>Inform clients if an application is refused by FED</p>	<p>Consider lodging an appeal to the Minister to have the decision to refuse the work permit overturned</p>	<p>Refuse application if it does not meet legal requirements</p> <p>Inform applicant of the refusal and the grounds for the refusal in writing</p>
<p>Maintain a good understanding of the legal requirements regulating the employment of non-citizens in PNG</p>	<p>Maintain a good understanding of the legal requirements regulating the employment of non-citizens in PNG</p>	<p>Provide advice to all stakeholders on the requirements of PNG's foreign employment laws</p>

4. Papua New Guinea's Foreign Employment Laws

4.1 What laws apply?

The employment of foreign workers in Papua New Guinea is specifically regulated by the following laws:

- *Employment of Non-citizens Act 2007*
- *Employment of Non-citizens Regulation 2008*

Copies of the Act and the Regulation may be obtained directly from the Foreign Employment Division Office. The legislation may also be downloaded free of charge from the internet at www.paclii.org (follow the link to PNG Laws).

4.2 Compliance with PNG laws

All non-citizens who are granted the right to work in PNG must also comply with Papua New Guinea's laws.



Section 54 of the *Employment of Non-citizens Act 2007* states:
'An employer or a non-citizen who is granted a work permit under this Act shall comply with any other law applying to the non-citizen and employer and such compliance is deemed to be a condition of every work permit issued under this Act.'

4.3 What is the purpose of the *Employment of Non-citizens Act 2007*?

The primary purpose of the *Employment of Non-citizens Act 2007* is set out in Section 1 of the Act:

*"(1) The purpose of this Act is to provide a **balance** between the needs of the economy for foreign labour and the aspirations of Papua New Guineans for decent work by-*

- (a) assisting business to attract and retain the services of qualified, skilled and experienced non-citizens without unnecessary impediments; and*
- (b) promoting a work permit system that contributes to the creation of employment, training and skills-acquisition opportunities for all Papua New Guineans."*

Of course, the legislation has a variety of purposes (such as protecting the rights of non-citizen workers) but this is the main purpose of the law.

4.4 Foreign employment - a careful balancing act

Papua New Guinea's foreign employment system must carefully balance competing interests.

On the one hand, Government understands that the business community has a legitimate need to recruit foreign workers. Business is the engine-room of the economy.

Businesses in Papua New Guinea must be allowed to attract qualified, skilled and experienced foreign workers where these workers cannot be recruited from within the country. To achieve this objective, the work permit system must ensure that business is able to engage non-citizen workers without unnecessary impediments and 'red-tape'.

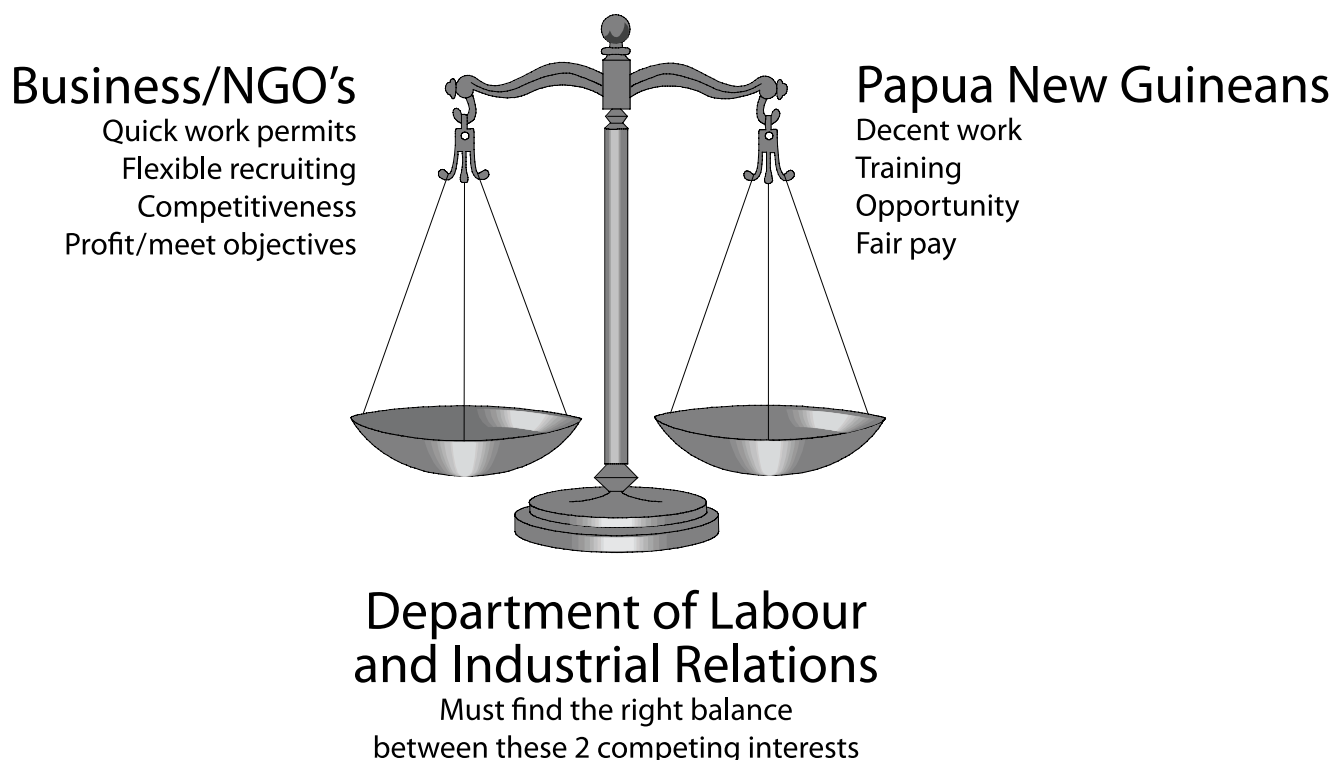
On the other hand, the Papua New Guinea Constitution recognizes that all citizens have the right to participate fully in the economy of their country.

Every Papua New Guinean is entitled to have access to employment and career advancement opportunities. Papua New Guineans must also be allowed the chance to train and develop their skills to their full potential. In short, the legislation recognizes that the work permit system must also look after the interests of Papua New Guineans.

The *Employment of Non-citizens Act* 2007 balances these two competing but legitimate interests.

It does this by delivering a fair outcome for the business community but, at the same time, promoting a system that also recognises the aspirations and needs of all Papua New Guineans.

Foreign Employment - A Balancing Act!



5. Employment

5.1 What is work?

When is a non-citizen assumed to be working in Papua New Guinea?

“Employment,” “employ” and “work” are defined in Section 3 of the *Employment of Non-citizens Act* 2007. The definition in Section 3 is very broad. It states that employment includes:

- an employer-employee relationship
- work as a consultant
- self-employment
- voluntary work in religious, charitable or non-government organisations
- work which is temporary, part-time or casual (note: a work permit will usually only be granted for permanent, full-time work)

5.2 Business Visas

Business Visas (or Business Short Term Multiple Entry Permits) are issued by Immigration.

Business visas are issued to foreigners who enter PNG for the following specific purposes i.e.

- for business meetings
- for board meetings and conferences
- to conduct an exploratory business visit
- to participate in a business negotiation

A Business Visa holder may not engage in employment whilst in PNG. If a non-citizen with a Business Visa is found working, he/she is in breach of the laws of PNG.

5.3 APEC Business Travel Card

Persons entering PNG with an APEC Business Travel Card are not allowed to engage in employment. An APEC Business Travel Card allows the holder to conduct business meetings, discussions and negotiations only.

5.4 Tourist Visa

Non-citizens entering PNG as tourists are strictly prohibited from engaging in any form of paid employment whilst in the country.

5.5 Other Visas

In limited cases, Immigration may issue a Visa to a non-citizen for a specific activity or purpose. For example, Visas may be issued to: Sportspersons, Emergency Relief Workers, Students, Persons on Cultural Exchange and Entertainers. These Visas are usually granted for a short period only and are strictly limited to the specified activity. Work permits are usually not required under these circumstances.

Further information about these Visa types can be obtained from Immigration or by obtaining a copy of the *Entry Permit Information Booklet* which is issued by Immigration.

5.6 What about volunteers?

Non-citizen volunteers are required to hold a valid work permit unless they are employed by a specified Aid Donor Organisation which has been formally recognized by Government.

However, the Department recognizes that non-citizen dependents of work permit holders may wish to engage in informal voluntary activities during their stay in Papua New Guinea. This could include such things as: fundraising for charities (e.g. sausage sizzles, selling raffle tickets); serving at the school canteen; or providing meals to homeless people or hospital patients.

A work permit is not required in these circumstances as long as the voluntary activity meets the following criteria:

- the activity occurs on an irregular basis
- there is no employment contract
- the volunteer receives no remuneration – either in cash or in kind
- the activity does not deprive a Papua New Guinean citizen of an opportunity for employment

6. Working without a Work Permit

6.1 It is an offence to work in PNG without a work permit

All non-citizens who are engaged in activities in Papua New Guinea that fall within the definition of employment must possess a valid work permit.

If you work in Papua New Guinea and you do not have a work permit you are guilty of an offence.

Depending on the circumstances, the following offences may apply:

- An employer who employs a non-citizen who does not have a valid work permit commits an offence and can be fined up to K20,000.00
- A non-citizen employee who is employed without a valid work permit commits an offence and can be fined up to K10,000.00
- A self-employed non-citizen who works without a valid work permit commits an offence and can be fined up to K10,000.00

It is possible that more than one offence may apply in the same situation.



Mr. Jones is the owner of Chopstix Restaurant. Mr. Jones employs Mrs. Smith, a non-citizen, to work as Marketing Manager for the restaurant. Chopstix Restaurant is investigated by officials from DLIR who discover that Mrs. Smith does not possess a valid work permit. In this case, Mr. Jones has committed an offence and can be fined up to K20,000.00. However, Mrs. Smith has also committed an offence and can also be fined up to K10,000.00.

6.2 The work permit must remain valid

It should be remembered that a work permit must remain valid i.e. it must continue to be valid in respect to the employer, the occupation and the non-citizen.



Mrs. Green is granted a 3-year work permit which allows her to work as the HR Manager for Shanghai Restaurant. However, after 1 year Mrs. Green decides to leave Shanghai Restaurant and accept employment as HR Manager with Red Dragon Restaurant. Mrs. Green keeps her current work permit which identifies Shanghai Restaurant as her employer.

In this case, Mrs. Green does not hold a 'valid' work permit which allows her to work for Red Dragon Restaurant. As a result, she has committed an offence and can be fined up to K10,000. Red Dragon Restaurant has also committed an offence and can also be fined up to K20,000.00.

7. Type and Purpose of Work Permits

7.1 Three types of Work Permits

Section 7 of the *Employment of Non-citizens Act* 2007 identifies the following work permit types:

- A General Work Permit
- A Volunteer Work Permit
- A Bridging Work Permit (see discussion at Chapter 17: What happens if my work permit is due to expire?)

7.2 General Work Permit

A General Work Permit will be granted where the employment contract between the employer and employee is for work of a commercial nature. The law defines commercial work as employment performed entirely or mostly for financial (i.e. money) reward.



Mr. Brown has been offered a position working with Able Communication Company as the Operations Manager. Mr. Brown is to be paid a full market salary and will receive other entitlements such as accommodation and car allowance. In this case, Mr. Brown will be undertaking work of a commercial nature and must make application for a **General Work Permit**.

7.3 Volunteer Work Permit

A Volunteer Work Permit will be granted where the employment contract between the employer and employee is for work of a voluntary nature. The law defines voluntary work as employment performed entirely or mostly for reasons other than financial reward.

A decision as to whether an employee qualifies for a Volunteer Work Permit requires careful consideration of factors such as: (1) salary, (2) allowances, (3) nature of the activities engaged in, and (4) the history of the organisation in PNG.



Ms. Lee has been offered a position with a community organisation as a Bible translator. Ms. Lee will receive a subsistence allowance and the organisation will provide basic accommodation whilst she is in PNG. In this case, Ms. Lee will be undertaking work of a voluntary nature and must make application for a **Volunteer Work Permit**.

Government recognizes the important contribution made by volunteer organisations in PNG. For this reason, the fee for a Volunteer Work Permit is significantly less than the fee for a General Work Permit (see discussion on Fees).

Non-citizens who are granted Volunteer Work Permits may not engage in work which is of a commercial nature while they are in PNG.

8. Duration of Work Permits

In accordance with Section 9 of the *Employment of Non-citizens Act* 2007 a work permit may be:

- A **Short Term Work Permit** - valid for up to six months from the date it is granted
- A **Long Term Work Permit** - valid from one year up to three years from the date it is granted (or 5 years for Good Corporate Citizens)
- A **Bridging Work Permit** - valid for sixty days from the date it is granted.

The employer must indicate the duration or term for which the work permit is sought at the time of application.

A Short Term Work Permit will only be granted for a period of 6 months. Short Term Work Permits will not be renewed. If the employer wishes to retain a non-citizen after the expiration of the Short Term Work Permit they must apply for a Long Term Work Permit.

A Long Term Work Permit may be granted for 1 year, 2 years or 3 years depending on the period of engagement. The employer may choose the duration of the work permit to suit their particular business needs. Only Good Corporate Citizens may be granted a Long Term Work Permit for 5 years.

A signed contract must be submitted at the time of application as evidence of the term of employment.



Employers are strongly encouraged to choose the maximum period allowed for a particular work permit *unless* the employer is certain the non-citizen employee will be required for a lesser period. For example, if you are applying for a Long Term Work Permit you should request the maximum period i.e. 3 years (or 5 years for Good Corporate Citizens).

9. Limitation of Work Permits

9.1 Specified employer, specified employee, specified occupation

Section 10 of the *Employment of Non-citizens Act 2007* provides that a Work Permit may only be issued:

- to a specified employer
- for a specified non-citizen and
- for a specified occupation

A Work Permit is non-transferable i.e. it may not be used by another non-citizen employee.

A non-citizen employee may not move from one position to another position within the same company (or another company) without making an application for a new work permit.



Mr. Singh is currently working for Company A as a Financial Controller. The company would now like to transfer Mr. Singh to the position of General Manager. In this example, Mr. Singh would need to have his current work permit cancelled and make application for a new work permit as his existing work permit only allows him to work as a Financial Controller.

Mr. Chin is currently working for Company A as Operations Manager. Company X has indicated that they would also like to employ Mr. Chin as an Operations Manager. In this example, Mr. Chin must have his current work permit cancelled and make application for a new work permit as his existing work permit only permits him to work as an Operations Manager with Company A.

An employee who works in a different position or different company to that for which his or her work permit was granted, commits an offence under the *Employment of Non-citizens Act 2007* (see section on Offences and Penalties).

A work permit may be granted to a non-citizen for the purposes of providing consultancy or business services. However, these services must be limited to a specific area of the PNG economy (for example: Legal services or Financial services).

9.2 Conditions

Section 11 of the Act allows the Secretary to grant a work permit subject to certain conditions.

Where a work permit is granted subject to a condition, the conditions will be clearly stated on the work permit.

A person who breaches the conditions of a work permit is guilty of an offence (see section on Offences and Penalties).

10. Occupations Reserved for Citizens and Occupations which must be Advertised

10.1 Regulating non-citizen employment

Papua New Guinea has regulated the employment of foreign workers for many decades. All stakeholders of our foreign employment system would be familiar of the 'List of Reserved Occupations' or the requirement to advertise certain positions in PNG before a non-citizen worker can be engaged.

This system of regulation is unique to Papua New Guinea and has been developed to suit the particular needs of our labour market.



The first '**List of Occupations Reserved for Citizens**' was introduced on 2nd November 1972 by the Colonial Administration. This List was intended to encourage the employment of Papua New Guinean workers as the country moved towards independence.

10.2 Why regulate?

The Government of Papua New Guinea recognises that foreign investment and skills are needed for the country's economy to grow and for its people to prosper. For this reason, one of the key objectives of the work permit system is to assist employers to retain the services of qualified, skilled and experienced non-citizen workers where these skills cannot be found locally.

However, Papua New Guinea's foreign employment system must also look after the interests of its citizens.

The legislation does this by, amongst others, protecting or reserving certain jobs for Papua New Guinean workers. In addition, employers in Papua New Guinea are required to advertise certain jobs locally before they can engage the services of a non-citizen employee. These regulations are intended to ensure that Papua New Guineans are able to participate in, and benefit from, the economy of their own country.

10.3 Consultation with business

The Department of Labour and Industrial Relations is very sensitive to the needs of the business community. For this reason, the various rules in relation to reserved and advertised occupations have been developed in close consultation with business community. By law, changes to these arrangements can only be made after representatives of the business community have been consulted.

Consultation with members of the business community will usually be conducted through the National Training Council which is a statutory body representative of all sectors of PNG's economy.

10.4 Further information

The Department has produced a separate Guideline which explains which jobs are reserved for citizens, or which jobs require advertising in PNG.

This document, titled: ***A Guide to the Foreign Employment Industrial Divisions and Classification of Occupations*** contains the full Classification of Occupations and the rules (if any) regarding the employment of foreigners in these occupations.

All clients of the work permit system must obtain a copy of this Guideline which can be purchased from the Department for a nominal fee. Further information can be found at ***www.workpermits.gov.pg***.



It is important to note that some jobs in PNG are reserved for citizens. Other jobs must also be advertised in PNG first before a non-citizen can be engaged. Information about these requirements is contained in the ***Guide to the Foreign Employment Industrial Divisions and Classification of Occupations***.

11. Qualifications, Age and Professional Registration Requirements

11.1 Qualifications, skills and experience

A work permit application must contain sufficient evidence of a non-citizen's qualifications, skills and experience. This evidence must demonstrate that the non-citizen has the credentials to do the job for which they have applied for a work permit.

As a general rule, non-citizen employees should possess a degree or other tertiary qualification relevant to their field of employment. Applicants should also demonstrate appropriate work experience (at least 3-5 years) in order to qualify for a work permit.

Work permits may be granted to highly-skilled non-citizen workers who do not hold any tertiary qualifications. However, detailed proof of the employee's skills and job experience must be provided in an updated curriculum vitae (CV) as part of the work permit application.



Remember to provide an updated CV with your work permit application – many applications are delayed because an applicant's CV has not been updated.

11.2 Age requirements

No work permit will be granted to a non-citizen under the age of 22. This is because it is assumed that non-citizens of this age are not suitably qualified, skilled or experienced enough to provide training or learning opportunities to their PNG counterparts.

There is no upper age limit to the granting of a work permit. However, a non-citizen who is above the age of 65 years may have to provide a suitable medical clearance before they can be granted a work permit.

Retired missionaries who wish to remain in PNG may be exempted from the requirement to hold a work permit.

11.3 Professional registration

It is necessary for certain non-citizen employees in Papua New Guinea to register with a Professional Body before taking up employment.

For example, registration is required by the following Professional Bodies:

- Institute of Engineers PNG Inc
- Certified Practicing Accountants of PNG
- Nursing Council of PNG
- Maritime Safety Authority
- Pharmacy Board of PNG

- Law Society of PNG
- Medical Board of PNG
- Papua New Guinea Association of Surveyors
- Papua New Guinea Institute of Architects
- Civil Aviation Authority

It is a requirement of Section 16 of the Act that all applicants provide proof of registration with the relevant Professional Body *before* submitting an application for a Work Permit. This is usually done by submitting a letter or Membership Certificate from the relevant body together with the Work Permit application.

It is the responsibility of the employer and the non-citizen to ensure they are registered with the appropriate Professional Association. The Department will not be able to process an application until written proof of registration is provided.



Mr. Prasad, a citizen of India, has been employed with LikLik Goldmine as an engineer. Before Mr. Prasad can be granted a work permit, he must first register with the Institute of Engineers PNG Inc. Once he is registered, Mr. Prasad must attach the proof of his registration with his work permit application. Mr. Prasad's work permit application will not be accepted until he provides the necessary evidence of professional registration.

12. Language requirements

12.1 Sharing knowledge and community participation

Non-citizens are required to share their knowledge and experience with their Papua New Guinean counterparts. It is also important that non-citizens who come to work in PNG are able to communicate with Papua New Guinean citizens within the community.

For this reason, Section 17(1) of the Act requires all non-citizens to prove that they are proficient in English, *Pisin* or *Hiri Motu* before they can be granted a work permit. Proficient is defined in Section 3 of the Act. A person is proficient in a language if they are able to '*...to speak and understand a language sufficiently for normal conversational purposes.*'

12.2 English Speaking Countries

Applicants from the following countries are assumed to be proficient in English and do not need to submit evidence of English Language Proficiency at the time of application:

Antigua and Barbuda	Liberia	Sierra Leone
Australia	Malawi	Singapore
Bahamas	Malaysia	Solomon Islands
Barbados	Maldives	South Africa
Belize	Mali	St. Vincent & Grenadines
Canada	Malta	Swaziland
Cook Islands	Marshall Islands	Tanzania
Dominica	Mauritius	Tonga
Federated States of Micronesia	Namibia	Trinidad and Tobago
Fiji	Nauru	Tuvalu
Gambia	Nepal	Uganda
Ghana	New Zealand	United States of America
Grenada	Nigeria	Vanuatu
Guam	Niue	Zambia
Guyana	Palau	Zimbabwe
Ireland	Philippines	
Israel	Saint Kitts and Nevis	
Jamaica	Saint Lucia	
Kenya	Samoa and American Samoa	
Kiribati	United Kingdom	
Lesotho	Seychelles	

Applicants from all other countries must submit evidence of proficiency in English.

12.3 How can I prove my proficiency?

An applicant may prove his or her proficiency in English if the applicant-

- has an International English Language Testing System (IELTS) Certificate with a score of at least Band 4 in the General or Academic Module



IELTS is the internationally recognized method of testing English proficiency. The IELTS test can be taken in over 120 countries worldwide. IELTS is scored on a 9 band scale. Band 4 is defined as a limited user. A Band 4 user has basic competence in the English language which may be limited to familiar situations. Further information about IELTS can be obtained at <http://www.ielts.org>.

- has a certificate from a recognised English Language Instruction Institution which confirms that the applicant is proficient in English
- has completed at least 5 years of secondary education at a school or schools that taught in English
- has completed a 3 year tertiary qualification that was taught in English
- can otherwise show that they are proficient in English (see example below)



Some company's provide 'in-house' English Language Training for their employees. This training is usually conducted before the non-citizen comes to PNG. After completing the company training, the non-citizen employee will usually be issued with a certificate confirming that they are proficient in the English Language. This certificate is then attached to the work permit application.

This initiative is encouraged by DLIR. However, all companies must ensure that they have received **prior approval** from the Department for this type of arrangement. The Department will only give approval for these types of in-house arrangements where the English Language Tuition is of a suitably high standard and there is clear evidence that the training leads to English proficiency.

12.4 Exceptional Cases

In exceptional cases, the Secretary may grant a work permit to a non-citizen who is unable to demonstrate they are proficient in English. However, in these circumstances, the employer must provide evidence that the non-citizen will receive appropriate language training after they have arrived in PNG.



Mr. Fong, a Chinese National, is a highly skilled mining engineer. His services are urgently required by Golden Moon Mining Company. Unfortunately, Mr. Fong is not proficient in English. However, Golden Moon Mining has employed a PNG English Teacher to provide Mr. Fong with 2 hours of English Language Tuition a week after his arrival in PNG. This tuition will continue for 12 months or until Mr. Fong is able to demonstrate proficiency in English. Subject to the Secretary's approval, Mr. Fong may be granted a work permit and allowed to enter PNG even though he is not proficient in English.

12.5 Pisin and Hiri Motu

Applicants claiming proficiency in either *Pisin* or *Hiri Motu* will need to submit evidence of language ability at the time of making an application for a Work Permit.

Please discuss this issue with a member of the Foreign Employment Division before you make your application.

13. Certifying and Translating Documents

13.1 Certification

It is a requirement of Section 60 of the Act that all supporting documentation submitted as part of a work permit application must be certified as true and correct by a Justice of the Peace or other notary.



Applications cannot be certified by the employer or employee – they must be certified by an independent Justice of the Peace or Commissioner for Oaths. For education qualifications, a certified copy of the qualification from the institution or university where the qualification was obtained must be provided with the application.

13.2 Translation

Section 2 of the *Employment of Non-citizens Regulation* 2008 requires all documents (which are not in English) to be accompanied by a translation into English. The translation must be accompanied by a statement in English from the translator setting out:

- the translator's full name, address and occupation
- the translator's qualifications
- a statement that the translation is true and correct



Statement by Translator

I, **Zheng Wei** confirm as follows:

1. My address is 12 Bird Street, Hubei, China
2. I am a lecturer in English at the China National University, Beijing
3. I have a Bachelor Degree in English Language from China National University
4. I confirm that the translation of the attached documents is true and correct

Signed:
Zheng Wei
1 July 2010

Remember

Where documentation is not certified, or a certified translation is not provided, the work permit application will be returned as incomplete.

14. Employment of Dependents

14.1 Can a dependent be granted a work permit?

There is no restriction on the employment of a dependent of a non-citizen who is already working in Papua New Guinea.

However, any application by a dependent of a non-citizen for a work permit will be considered against all of the requirements of the *Employment of Non-citizens Act 2007*.

14.2 Work permit must be granted offshore

If a dependent is granted a work permit they will have to leave PNG before the work permit can be granted. This is because the dependent does not possess a valid work permit (see discussion Chapter 15: Requirement to be Outside the Country).

14.3 What is the status of a dependent's work permit?

A dependent who is granted a work permit possesses that work permit in their own right – it is not 'linked' to the work permit held by their spouse or parent.



Mrs. Anne is a teacher at a local primary school in Lae. She arrived in PNG on 1 January 2007 and her work permit is valid until 1 January 2010. Mrs. Anne's husband, Mr. Brian, accompanied Mrs. Anne to PNG as her dependent. Mr. Brian is not employed.

On 1 January 2008, Mr. Brian is offered a job with a local company in Lae. Providing Mr. Brian and the company are able to meet all the requirements, Mr. Brian may be granted a work permit which allows him to legally work in PNG. Mr. Brian will have to leave PNG before his work permit can be granted.

Mr. Brian may continue to work in PNG until such time as his work permit expires (1 January 2011). Mrs. Anne's work permit expires on 1 January 2010. She does not wish to continue working in PNG. However, providing Mrs. Anne changes her visa status to 'dependent', she may also continue to remain in Papua New Guinea until her husband's work permit expires.

15. Applying for a Work Permit

15.1 Application Forms

All applications for a work permit, regardless of the type of work permit, must be submitted using the prescribed application forms contained in the *Employment of Non-citizens Regulation* 2008.

There are different application forms for:

- Application for New Work Permit and Short Term Work Permit (Form 1 - Green Form)
- Application for Renewal of Existing Work Permit (Form 2 - Orange Form)
- Application for Bridging Work Permit (Form 3 - Blue Form)

Applications submitted on incorrect or out-of-date forms will not be accepted under any circumstances. Application forms are available free-of-charge from the Foreign Employment Division office or may be downloaded from **www.workpermits.gov.pg**.

Work permit applications must be lodged at the offices of the Foreign Employment Division, Ground Floor Moale Haus, Waigani, Port Moresby.

15.2 Requirement to be Outside Country

Section 19 of the *Employment of Non-citizens Act* 2007 creates a general rule that a Work Permit applicant must be outside of Papua New Guinea at the time the work permit is granted. However, a non-citizen may be granted a work permit (new or renewal) while they are in Papua New Guinea if the non-citizen already holds a valid work permit.

You may be required by the Department to provide proof (e.g boarding pass) that you have left PNG.



While he is on holiday in PNG, Mr. Lim is offered a job with Company A. Because he does not hold a valid work permit, Mr. Lim will have to leave PNG before his work permit can be granted.

Mr. Green has made an application to renew his work permit with Company B. Mr. Green may remain in PNG at the time his renewal is granted provided that his original work permit remains valid.

Mrs. White has been in PNG for 2 years as a dependent of Mr. White. A private hospital in Port Moresby has offered Mrs. White a job as a Nursing Trainer. Mrs. White will have to leave PNG before her work permit can be granted because she does not have a valid work permit.

Remember

The test is whether you have a valid work permit.

If you have a valid work permit, you can stay in PNG while you apply for another work permit. If you don't have a valid work permit, you will have to leave PNG before your work permit can be granted.

15.3 The Application (Lodgement) Checklist

The Checklist is designed to ensure that all the required information is submitted as part of the work permit application. By correctly completing the Checklist, clients can avoid unnecessary delays in the processing of work permit applications.

Application Checklist (for new work permit application)

- Copy of photo page of employee's passport ✓
- Copy of updated curriculum vitae ✓
- Copy of job description ✓
- Certified evidence of education qualifications ✓
- Copy of employment contract signed by both employee and employer ✓
- Two recent, clear, colour passport sized photographs of employee ✓
- Employee's right thumb print – *note: if you have provided your thumb print with a previous work permit application, you do not need to provide it again* ✓
- Evidence of membership of professional association (where relevant) ✓
- Evidence of English Language Proficiency (where relevant) ✓
- Employer's Certificate of Incorporation from Investment Promotion Authority (IPA) ✓
- Evidence of payment of fee (non-refundable) ✓
- If the applicant does not hold a valid work permit, the applicant is outside PNG ✓

Supporting documents should be attached to your application in the order they appear in the checklist. The Secretary may request other necessary documents if required.

15.4 Making a New Work Permit Application

Section 18 of the Act provides that an employer shall make application for a work permit prior to engaging a non-citizen in any occupation. What this means is that an employee cannot be employed under any circumstances in PNG unless a work permit has been granted.

An application for a new work permit must be made on *Form 1: Application for New Work Permit*.

15.5 Renewing an Existing Work Permit

Section 26 of the Act provides that an existing work permit holder may make application to renew a work permit prior to the expiration of their existing work permit. A renewal only applies if the application is for the same position in the same company. If an employer wishes to transfer an employee to a new position, then an application for a new work permit in accordance with Section 18 of the Act must be made.

An application for the renewal of a work permit must be made on *Form 2: Application for Renewal of Work Permit*. Please note that *Form 2* has its own checklist.



Do not wait until the last moment before submitting your renewal application! Renewal applications should be made **3 months** prior to the expiration of the work permit. This will allow sufficient time to process the renewal before the work permit expires.

15.6 What are the requirements for renewal?

In accordance with Section 26 of the Act, the Secretary will take into account a number of factors to determine whether to renew the work permit. These factors are:

- The conduct of the non-citizen
- The extent to which the work permit applicant and employer have contributed to the training and development of Papua New Guineans (see example below)
- Any other matters that the Secretary considers appropriate

It is essential when making application for the renewal of a work permit that appropriate evidence of training and development of Papua New Guinean workers is provided. Renewal applications that fail to provide adequate evidence of training and development will be refused.



Renewal of Work Permit Report on Training and Human Resource Development Prepared by ABC Steel Works

As a company, we have provided the following training and development opportunities for our Papua New Guinean staff:

- We recently sponsored training for 5 apprentices at the Pacific Vocational College. All of these apprentices graduated with a Certificate IV in Engineering which is recognized internationally;
- We conduct monthly in-house training for our PNG staff. All staff receive a 'Training Book' which records their attendance. The training is conducted by our expatriate staff who use this opportunity to share their knowledge with their PNG counterparts;
- We have an informal mentoring program within our business. Under this program, our expatriates coach and mentor our younger PNG workers;
- We recently engaged the services of the National Aids Council Secretariat (NACS) to conduct HIV/Aids awareness training for all our staff.

We promote the training and development of our PNG staff in a number of other ways and would be happy to provide additional evidence to the Department if necessary.

Signed:
Mr. Peter Browne, CEO
1 July 2010

An employer who has submitted multiple renewal applications may provide a single explanation of the training and development activities for all renewals.

15.7 Provision of False or Misleading Information

Applications found to contain false or misleading information will be refused by the Secretary.

Where a Work Permit is granted, and it is later found that false or misleading information was given as part of the work permit application, then the Secretary may choose to cancel that work permit (see Cancellation section).

Where cancellation occurs, the matter will be referred to Immigration for entry permit cancellation and the non-citizen may be removed from Papua New Guinea.



Helpful Hints

You must...

- Ensure that you complete all fields of the application form
- Write clearly and use capital letters
- Use the checklist at the top of the application to ensure you have attached the required supporting documentation
- Make sure the employee's CV is current and up-to-date
- Make sure the employment contract is signed by both the employer and the employee
- Where required, ensure evidence of English Language proficiency is provided
- Copies of supporting documents such as education qualifications must be certified as true copies
- Where necessary, ensure all supporting documentation is accompanied by an English translation
- Ensure the right thumb print of the employee has been provided. Remember to use proper fingerprint ink so the print is clearly identifiable
- Ensure that both the employer and employee have signed the application form
- Ensure work permit fee is paid

Remember

By following these simple rules you can ensure that your application is assessed and processed quickly and efficiently

16. Granting of Work Permits

16.1 Secretary's discretion

Section 22 of the Act provides that the Secretary may choose to either grant or refuse a work permit application.

16.2 Processing timeframe

It is a statutory requirement under the Act that all new work permit applications and all renewal applications be dealt with within 42 days (6 weeks).

If all of the documentation is correct, the Department will usually process a work permit application within 3 weeks.

Should you have any questions regarding the status of an application, you should contact your Agent who will contact the Foreign Employment Division for further assistance. If you have not engaged the services of an Agent, you may contact the Foreign Employment Division directly.

16.3 Refusal of Applications

Where an application is refused by the Secretary, written notification outlining the reasons for the decision will be provided to the applicant.

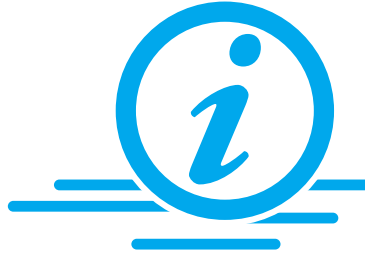
16.4 Appeal

Where an applicant is aggrieved with the Secretary's decision, then an appeal in writing may be made to the Minister for Labour and Industrial Relations. In such cases the appeal must:

- Be made within 14 days of receiving the notification of refusal
- Be in writing
- Clearly specify the grounds for the appeal
- Be accompanied by evidence of payment of the prescribed non-refundable fee.

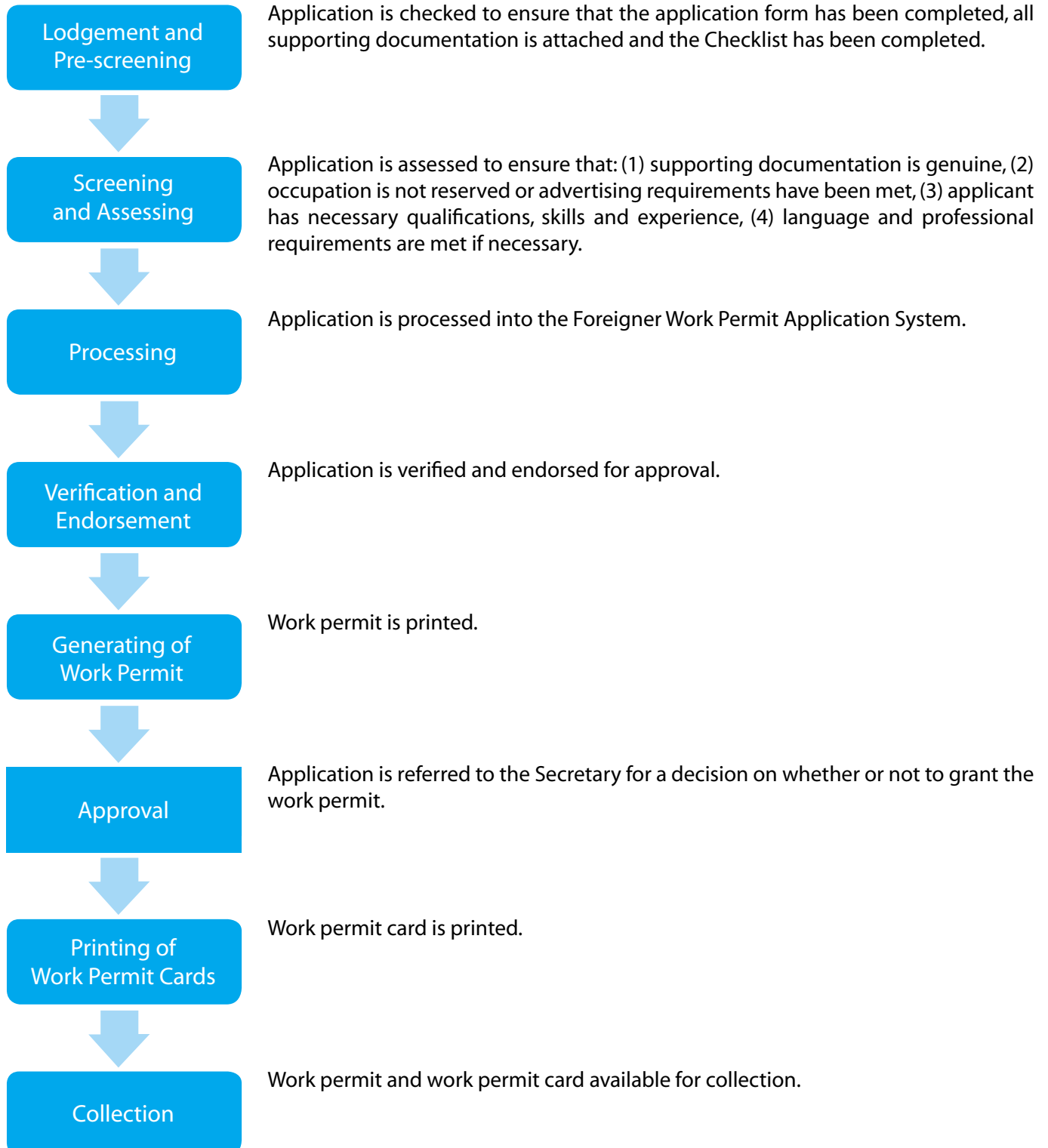
On receipt of an appeal, the Minister will, within 28 days, obtain the recommendation of the Secretary and consider all the information contained in the appeal. The Minister will then:

- Decide whether to grant or refuse the appeal
- Advise the applicant in writing of the reasons for the decision
- If the appeal is granted, direct the Secretary to grant the work permit



Helpful Hints

How is my Work Permit Processed?



17. What happens if my work permit is due to expire?

17.1 An important rule

You may NOT work in Papua New Guinea if you do not possess a valid work permit!

Significant penalties apply if you are caught working without a valid work permit. These penalties can be brought against both the company employing the non-citizen and the non-citizen worker (see Offences and Penalties section).

Non-citizens found to be working without a valid work permit may also be removed from Papua New Guinea and prevented from returning.

17.2 What happens if I have a work permit and it is about to expire?

If you have a work permit which is about to expire, you must immediately approach the Foreign Employment Division to ensure:

- your work permit is renewed (if you are staying with the same employer and in the same occupation)
- you obtain a new work permit (when changing employment)
- you are granted a Renewal Extension Letter (see discussion below)
- you are granted a Bridging Work Permit (see discussion below)

If you do not continue to hold a valid work permit, you will be required to leave PNG and you may be penalised for breaching the law.

17.3 My work permit is about to expire before it can be renewed

A renewal of a work permit occurs where a non-citizen wishes to remain in the same occupation with the same employer.

Provided a renewal application is submitted in time, work permit renewals will usually be processed prior to the expiration of the work permit.

However, in some cases it may not be possible to process the renewal application before the current work permit expires (or is due to expire). If the work permit is not processed in time, the employee will ordinarily have to leave PNG and wait outside the country for their work permit to be processed. Understandably, this is a significant cost to business.

To prevent this situation from occurring, the law has recognized that, in some cases, more time may be needed to process renewal applications.

In essence, where an application for renewal has been made before the expiry of an existing work permit, and a decision on whether or not to grant renewal application has not been made by the expiry date of the current work permit, then the work permit may be renewed for a further 60 days.

The requirements for the 60 day extension are as follows:

- the applicant possesses a valid work permit
- the applicant applies for the renewal (same applicant, same employer, same occupation) of that work permit
- the application for renewal is made prior to the expiry of the work permit
- the work permit renewal application has not been processed in time and the original work permit is due to expire

Under these circumstances, the applicant may be issued with a **Renewal Extension Letter** for 60 days. This letter must be taken to Immigration so that the relevant Visa extension can be granted. The sole purpose of the extension is to allow additional time to process the renewal application.



Mr. Foo has made application to renew his existing work permit as an accountant with Able Accountants. His application was lodged 3 months prior to the expiration date of his existing work permit (1 April). Due to time constraints, the Department of Labour and Industrial Relations has not been able to process Mr. Foo's renewal application by 1 April.

Mr. Foo may be provided with a Renewal Extension Letter which means his work permit will remain valid for a further 60 days to allow for processing of his renewal application. Mr. Foo must obtain a copy of the renewal extension letter and submit this to Immigration before his original work permit expires.

If Mr. Foo's renewal is not granted within 60 days he will have to leave PNG and wait outside the country until his work permit is processed.

17.4 My new work permit application is not processed in time

Different rules apply where a non-citizen is changing employment and has applied for a new work permit but their current work permit is due to expire before the new work permit can be granted. In these cases, the non-citizen may apply for a **Bridging Work Permit**.

A Bridging Work Permit may only be granted in those instances where a non-citizen:

- has a valid work permit
- has applied for a new work permit in a different occupation or with a different employer (i.e. not a renewal)
- the new work permit has not been granted
- the current work permit is due to expire

A non-citizen who finds themselves in this situation must immediately apply for a Bridging Work Permit. If they do not obtain a Bridging Work Permit they will have to leave PNG while their work permit application is processed.

Application for a Bridging Work Permit must be made in *Form 3* and must be accompanied by the prescribed fee.

A Bridging Work Permit is granted for 60 days only.

The Bridging Work Permit allows the non-citizen to remain in PNG while the new application for a work permit is processed.

The non-citizen may commence in their new job with their new employer once a Bridging Work Permit has been granted. However, the Bridging Work Permit is valid for 60 days and is no guarantee that the new work permit application will be approved.

The Bridging Work Permit must be taken to Immigration to ensure the necessary Visa extension is granted.



Mr. Johnson works for POM Hardware. Towards the end of his contract, Mr. Johnson is offered a new position with a different company, Lae Hardware. Lae Hardware applies for a new work permit for Mr. Johnson. Unfortunately, Mr. Johnson's new work permit has not been processed and his existing work permit is about to expire.

In these circumstances, Lae Hardware may apply for a Bridging Work Permit prior to the expiration of Mr. Johnson's existing work permit. If a Bridging Work Permit is granted it will allow Mr. Johnson to commence employment with Lae Hardware and remain in PNG for a period of 60 days whilst his new application is considered. The fact that Mr. Johnson has been granted a Bridging Work Permit does not guarantee that his new work permit will be approved.

Remember

The responsibility is on the non-citizen and their employer to ensure that the non-citizen has a valid work permit at all times.

18. Cancellation

18.1 Automatic cancellation of work permits

A work permit is automatically cancelled in the following circumstances:

- Section 29 of the Act provides that a work permit becomes invalid if the non-citizen ceases to hold a valid Visa (entry permit). In other words, if a non-citizen's entry Visa becomes invalid their work permit is automatically invalid
- In accordance with Section 30 of the Act, a work permit becomes invalid if a non-citizen's employment is terminated for any reason. In other words, if a non-citizen's employment ends, his or her work permit is automatically invalid

18.2 Secretary may cancel work permit

In accordance with Section 31 of the Act, the Secretary may cancel a work permit if:

- The work permit holder has not complied with the conditions of the work permit
- The work permit application contained information that was false or misleading
- The person who holds the work permit is not a 'fit and proper' person to continue to hold a work permit. For example, a person is not 'fit and proper' if:
 - they have been convicted of a criminal offence or have engaged in criminal activity
 - they have been assessed by the relevant authority as being a risk to national security
 - they are physically or mentally unable to continue performing their duties
 - they have mistreated Papua New Guinean workers
 - they have breached the Act

18.3 Opportunity to respond

Before the Secretary can cancel a work permit, the non-citizen and their employer must be advised in writing (show cause) of the allegations against them. Under the provisions of the Act, the non-citizen and their employer must be given 14 days to respond to the allegations.

Any response must be taken into account by the Secretary before a final decision is made regarding the cancellation of the work permit.

18.4 Appeal

If a work permit is cancelled by the Secretary, the non-citizen or their employer may appeal to the Minister. The appeal must be lodged within 14 days of the Secretary's decision. An appeal must:

- be in writing
- state the grounds for the appeal
- provide proof the appeal fee has been paid

The Minister is required to give written notice of his or her decision within 28 days.

19. Repatriation

19.1 A legal obligation

In accordance with Section 40 of the Act, it is the legal obligation of every employer to ensure that their non-citizen employees are repatriated from Papua New Guinea if their employment is terminated for any reason.

The obligation to repatriate a non-citizen employee extends to the dependents of that non-citizen.

19.2 Place of origin

The non-citizen (and their family) must be repatriated to their Place of Origin. Place of Origin is defined in the law as: *'the town or city in a country to which a non-citizen has right of entry and residence'*.

A non-citizen is required to indicate their Place of Origin on the work permit application form.

19.3 What costs must be covered?

An employer must cover all reasonable costs for traveling, living and accommodation expenses from the date of termination until the employee (and their family) reach their place of origin.

19.4 Notification of repatriation

Following the repatriation of a non-citizen employee, an employer must notify the Department of the steps taken to repatriate the employee and their family. The employer must do this by completing the *'Statement of Arrangement for Repatriation and Cancellation of Work Permit'* form which is an attachment to the Regulation.

The completed form must be provided to the Department as soon as possible after the repatriation arrangements have been made.

19.5 Offence

It is an offence for an employer to fail to comply with the repatriation provisions of the Act. A Court may impose a fine of up to K10,000.00 for a breach of the law in this regard.



Repatriation - it is every employer's responsibility

20. The Work Permit and Work Permit Card

20.1 Issuing of permit and card

In accordance with Section 34 of the *Employment of Non-citizens Act* 2007, the Secretary shall issue the following documents once a work permit has been approved:

- A work permit to the employer
- A work permit card for the employee

The work permit is the formal legal document that confirms a work permit has been granted. The work permit card is a form of evidence that the work permit has been granted.

20.2 Must produce permit and card to an Authorised Officer

Section 35 of the Act requires that both a work permit and the work permit card must be produced on the request of an Authorised Officer. If requested, the employer must be able to show the work permit to an Authorised Officer. A non-citizen employee must be able to produce their work permit card if requested by an Authorised Officer.

Examples of when a person may be required to produce a work permit or work permit card includes when an Authorised Officer visits employment premises to undertake an inspection, or when a non-citizen attends the offices of the Foreign Employment Division.

Failure to produce either a work permit or work permit card is an offence under the Act and is subject to penalty not exceeding K1,000.00 (see section on Penalties and Offences).

20.3 Return of Work Permit and Work Permit Card

Section 36 of the Act provides that all work permits and work permit cards must be returned to the Department at the conclusion of the employee's employment. For example, a work permit and a work permit card must be returned when:

- a work permit is cancelled by the Secretary
- the employee is terminated
- the work permit expires

Failure to return a work permit or work permit card is an offence under the Act and is subject to a penalty not exceeding K1,000.00 (see section on Penalties and Offences).

20.4 Duplicate Work Permit and Work Permit Card

Where the Secretary is satisfied that a work permit or work permit card has been lost, defaced or destroyed, the Secretary may issue a duplicate work permit or work permit card in accordance with Section 38 of the Act. In such cases, the replacement work permit and work permit card will be clearly marked as a duplicate.

In circumstances where the work permit or work permit card has been defaced, it is a requirement that the work permit or work permit card is returned before a duplicate card is issued.

Sample Work Permit



GOVERNMENT OF PAPUA NEW GUINEA
Department of Labour & Industrial Relations
Office of the Secretary

The Personnel Manager

Coffee By The Numbers Limited
PO Box 100
Port Moresby

P O Box 5644, Boroko
National Capital District
01 April 2008

Dear Sir,

This is to confirm that this Department has approved the Foreigner Work Permit noted below for the following employee of your company:

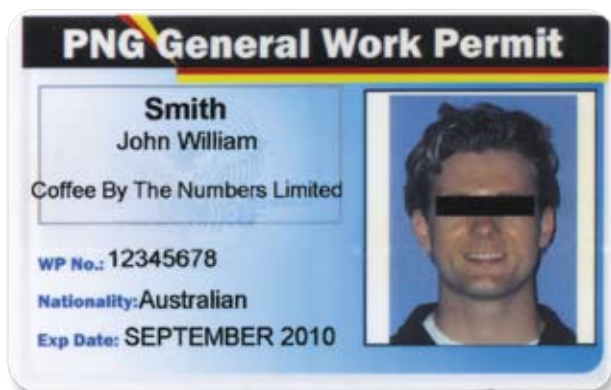
Employee Name	: Smith, John William
Work Permit Description	: General Work Permit
Conditions	: No Conditions
PNG Occupation Title	: Commercial Coffee Farmer or Farm Manager
PNG Occupation Code	: 121211
Company Position Code	: CCF01
Issue Date	: 01-Oct-2008
Permit Expires End Of	: 30-Sep-2010

Work Permit Number: 12345678

Yours faithfully,

David K. G. Tibu, LLB
Secretary

Sample Work Permit Card



21. Employer's Register of Work Permits

21.1 Keeping a register

Section 39 of the Act requires that all employers must keep a Register of Work Permits. The format of the Register of Work Permits is set out in the Regulation (see sample below).

21.2 Required information


The Register of Work Permits must contain the following information:

- A list of all current work permits granted to non-citizens employed by the employer
- A list of all work permits cancelled by the Secretary.

The Register of Work Permits must be made available to an Authorised Officer on request.

21.3 Offence

Failure to produce the Register of Work Permits is an offence under the Act and subject to a penalty not exceeding K1,000.00 (see section on Penalties and Offences).



EMPLOYER'S REGISTER OF WORK PERMITS

Name of employer: *Coffee By The Numbers Limited*

Principal place of business: *17 Paradise Street Goroka*

	Full Name (underline family name)	Occupation	Work Permit No.	Expiry Date	Has this Work Permit been Cancelled?
1	<i>John William Smith</i>	<i>Commercial Coffee Farm Manager</i>	<i>12345678</i>	<i>September 2010</i>	<i>No</i>
2	<i>Han Sun YUN</i>	<i>Accountant</i>	<i>87654321</i>	<i>March 2011</i>	<i>No</i>

**NOTE: Copies of all work permits and cancellation notices must be attached to this Register.*

Company Declaration

I certify that the information contained within this Register is true and correct:

(Print name): *Nancy Apo*

(Title): *Managing Director*

(Signature): *Nancy Apo*

Section 39 of the *Employment of Non-citizens Act 2007* requires that all employers keep an employers register in a format prescribed under the Regulation. It is acceptable for employers to reproduce the register to suit their own purposes. However, the information in this prescribed form must be included.

This register must be produced to an Authorised Officer on request.

22. Fees and Refund Policy

22.1 Refund Policy

All application fees are *non-refundable* and *non-transferable*.

What this means is that if a work permit application is refused then the application fee will not be refunded. Likewise, if an application is subsequently withdrawn, the application fee will not be refunded.

At the same time, if work permit holder departs PNG prior to the expiration of his or her work permit, then the work permit fee paid for that work permit is not transferable to another employee. The employer may recruit another non-citizen in the same position but they will have to pay the full fee.

22.2 Fees

The various fees charged under the Act are contained in Schedule 7 to the Regulation.

Fees must be paid by way of a bank cheque made out to the Department of Labour and Industrial Relations. You must retain the receipt as proof of payment. Payment will be taken to be made only when the cheque is honoured on presentation.

At the time of publication of these Guidelines, the fees are as follows:

Application for General Work Permit	K1000.00 for each year of the work permit
Application for Volunteer Work Permit	K100.00 for each year of the work permit
Application for Bridging Work Permit	K100.00
Application for General Short Term Work Permit	K500.00
Application for Volunteer Short Term Work Permit	K50.00
Application for Renewal of General Work Permit	K1000.00 for each year of the work permit
Application for Renewal of Volunteer Work Permit	K100.00 for each year of the work permit
Duplicate Work Permit	K100.00 for each copy
Duplicate Work Permit Card	K100.00 for each copy
Lodging an Appeal	K50.00
Copy of the Employment of Non-citizens Guidelines	K25.00 for each copy



Work permit application fees are **non-refundable** and **non-transferable**. Employers must make sure the application is in order and the non-citizen is committed to working in PNG. Once your application has been accepted your fee will not be refunded.

23. Authorised Officers

23.1 Who is an Authorised Officer?

An Authorised Officer is a person appointed by the Secretary who has powers to conduct inspections of workplaces to ensure employers and employees are complying with the law relating to foreign employment in PNG.

The appointment of an Authorised Officer must be published in the National Gazette.

23.2 Evidence of appointment

An employer or a non-citizen employee may request an Authorised Officer to provide evidence of their appointment as an Authorised Officer. Proof of appointment will either be:

- A copy of the National Gazette Notice confirming the appointment of the person as an Authorised Officer
- A letter signed by the Secretary, Department of Labour and Industrial Relations confirming the appointment of the person as an Authorised Officer
- A Department of Labour and Industrial Relations Identity Card confirming the appointment of the person as an Authorised Officer

An Authorised Officer may be accompanied by an Interpreter or other Observers. Interpreters and Observers do not need to be appointed as Authorised Officers but they do not have the powers of an Authorised Officer.

23.3 What powers does an Authorised Officer have?

An Authorised Officer may:

- Enter any workplace where a non-citizen is employed
- Inspect any work done by a non-citizen or any machinery and equipment used by a non-citizen
- Ask questions and request information about a non-citizen worker
- Examine any work permit or work permit card
- Examine and copy any register or record (including a passport and employment contract) which may be relevant to the employment of a non-citizen

23.4 Co-operation with Authorised Officers

All employers and non-citizen employees must co-operate with Authorised Officers and assist them to carry out their duties. Any person who fails to co-operate or obstructs an Authorised Officer is guilty of an offence and may be fined up to K5,000.00 or receive a term of imprisonment not exceeding 6 months.

24. Offences and Penalties

24.1 Offence and Penalties under the Act

The *Employment of Non-citizens Act* 2007 establishes a number of offence provisions. A person who commits an offence under the Act is liable to a fine and, in some cases, a term of imprisonment.

The various offences established by the Act are set out below.

24.2 Prohibition of Employment without Valid Work Permit

- In accordance with section 6(1) of the Act, a employer of a non-citizen who does not have a valid work permit commits an offence and can be fined an amount not exceeding K20,000.00.
- In accordance with Section 6(2) of the Act, a non-citizen who is employed without a valid work permit commits an offence and can be fined an amount not exceeding K10,000.00.
- In accordance with Section 6(3) of the Act, a self-employed non-citizen who works without a valid work permit commits an offence and can be fined an amount not exceeding K10,000.00.

24.3 Breach of Conditions

As provided for by Section 11(2) of the Act, a person who breaches the conditions in a work permit is guilty of an offence and can be fined up to K10,000.00.

24.4 Production of Work Permit and Work Permit Card

Section 35(2) of the Act makes it an offence for an employer or non-citizen employee to refuse to produce a work permit or a work permit card when requested to do so by an Authorised Officer. The penalty for such an offence is a fine not exceeding K1,000.00.

24.5 Return of Work Permit and Work Permit Card

In accordance with Section 36 of the Act, an employer and non-citizen employee must return a work permit and work permit card within 14 days of the cancellation of the work permit or the termination of the non-citizen's employment. A failure to comply is an offence and attracts a fine not exceeding K1,000.00.

24.6 Employer's Register

The failure by an employer to keep a register of work permits as required by Section 39 of the Act is an offence and carries a fine not exceeding K1,000.00.

24.7 Repatriation Requirements

An employer who fails to meet their obligation in relation to the repatriation requirements set out in Part X of the Act commits an offence and can be fined up to K10,000.00.

24.8 Offences against Authorised Officers

In accordance with Section 48(4) of the Act, a person who:

- refuses to co-operate with an Authorised Officer; or
- hinders or obstructs an Authorised Officer; or
- impersonates an Authorised Officer is guilty of an offence and can be fined up to K5,000.00 or imprisoned for a term not exceeding 6 months.

24.9 General Penalty

Section 57 of the Act provides that any person who fails to comply with a provision of the *Employment of Non-citizens Act 2007* which does not have a specific penalty provision is guilty of an offence and can be fined up to K1,000.00.

25. Infringement Notices

25.1 What is an Infringement Notice?

As we have seen, the *Employment of Non-citizens Act 2007* creates a number of offences. A person who commits an offence is liable to a fine and, in some cases, a term of imprisonment.

A breach of the Act will usually be referred to a competent Court for adjudication. However, Section 58 of the Act makes provision for the serving of an Infringement Notice as an alternative to having the matter dealt with by a Court.

In essence, an Infringement Notice may be served by an Authorised Officer if the Authorised Officer has reason to believe that the person has committed an offence under the Act.

25.2 Penalty

The Infringement Notice will specify a penalty. This penalty must not exceed 50 percent of the maximum fine provided by the Act.



It is an offence under Section 6(2) of the Act for a non-citizen to work in PNG unless that non-citizen has a valid work permit. The maximum penalty under the Act for a non-citizen who breaches this provision is K10,000.

Where an Authorised Officer has a reasonable belief that an employee has breached the provisions of Section 6(2), the Authorised Officer may serve an Infringement Notice on the employee. The maximum amount that may be specified within that Infringement Notice is K10,000 i.e. 50% of the penalty specified in the Act.

The recipient of an Infringement Notice may decide whether they wish to pay the penalty or have the matter determined by the Courts.

25.3 How do I pay the penalty?

The penalty must be paid by way of a bank cheque made out to the Department of Labour and Industrial Relations. You must retain the receipt as proof of payment. Payment will be taken to be made only when the cheque is honoured on presentation.

25.4 Where do I pay the penalty?

You must pay your penalty at the Department of Labour and Industrial Relations Head Office, Level 9, Pacific Place, Port Moresby, Papua New Guinea. This office is open from 8am to 1pm, Monday to Friday.

25.5 When is the penalty payable?

The penalty is payable within 28 days from the date of the Notice.

25.6 Can I apply for additional time to pay?

You can apply for additional time to pay the penalty. You must apply within 28 days of the date of the Infringement Notice. You must write to the Secretary, Department of Labour and Industrial Relations, and you must say how much extra time you want and why your request should be granted. You will receive written notice of the Secretary's decision regarding your request for additional time.

If you are not granted the extra time you sought, the penalty remains payable within 28 days from the date of this Notice, or 7 days after you were told that you would not be given the extra time to pay, whichever is the later.

25.7 Can the Infringement Notice be withdrawn?

Yes. The Secretary, Department of Labour and Industrial Relations has the right to withdraw the Notice either before or after the penalty is paid. If you have paid the penalty, and the Notice is withdrawn, your payment will be refunded.

25.8 Can I dispute liability for the offence in Court?

If you wish, the matter may be referred to Court. However, if you do that, and the Court finds against you, then, you could be:

- convicted of an offence; and
- ordered to pay an increased penalty, plus Court costs; and
- subject to other Court orders.

25.9 What happens if I pay the penalty within 28 days?

If the penalty is paid, then:

- your liability for the offence is discharged; and
- you will not be prosecuted for the offence in Court; and
- you will not be taken to have been convicted of the offence.

25.10 What happens if I do not pay the penalty?

If you do not pay the penalty within 28 days of the Notice (or any extra time allowed) you may be sent a Reminder Notice. Alternatively, the matter could be referred to Court and you will receive a summons to appear in Court.



Infringement Notices are similar to 'on-the-spot' fines which are handed out for certain Traffic Offences. You must pay the fine in the period allowed or the matter will be referred to Court.

26. Good Corporate Citizens of Papua New Guinea

26.1 Declaring a Good Corporate Citizen

Section 52 of the Act makes provision for certain employers to be declared Good Corporate Citizens of Papua New Guinea. The provisions of the Act are supplemented by Part VIII of the Regulation.

Good Corporate Citizenship is based on the belief that businesses that 'do the right thing' should be rewarded. In other words, the law should recognise those members of the business community in Papua New Guinea who make an outstanding contribution to the development of Papua New Guinean workers.

26.2 What are the requirements?

Good Corporate Citizens must be able to demonstrate a sound track record of:

- recruiting and training Papua New Guinean workers
- complying with the *Employment of Non-citizens Act 2007* and other PNG laws
- sound employment, industrial relations and occupational safety and health practices

Businesses will not be able to demonstrate good corporate citizenship by providing a one-off monetary gift. The good behaviour must be sustained - there must be evidence of a real, long-lasting commitment to the ideals of Good Corporate Citizenship.

26.3 Benefits

Good Corporate Citizens may be given the following benefits:

- 5 year work permits
- priority processing of applications and renewals
- public recognition through the displaying of the DLIR Good Corporate Citizen logo

26.4 Application

The Secretary may, from time to time, call for applications for Good Corporate Citizenship. These applications will be considered by the Secretary who shall make a recommendation to the Minister for Labour and Industrial Relations. Good Corporate Citizenship is awarded by the Minister and the names of recipients are published in the National Gazette.

26.5 Further information

The Department has produced separate Guidelines outlining the application and approval process to be followed for those companies who wish to be recognized as Good Corporate Citizens.

27. General

27.1 Exemptions

In accordance with Section 51 of the Act, the Secretary may exempt certain persons from all or any of the provisions of the Act. Any exemption must be published in the National Gazette and must explain the reasons for the exemption. If you wish to apply for an exemption you must write to the Secretary, DLIR setting out the reason for your application. Exemptions will only be granted if there are very compelling reasons.

27.2 Handover/Takeover

Employers who wish to engage a new non-citizen to 'overlap' with a current non-citizen worker should make an application for a Short Term Work Permit for the new employee. This will allow that employee to commence working while the current employee is in PNG. Prior to the expiry of the Short Term Work Permit an application can be made for a Long Term Work Permit.

27.3 Investment Promotion Authority Requirements

Employers are reminded of their obligations under the *Investment Promotion Act* 1992 to ensure that companies are registered in accordance with the law. The Department may require Foreign Companies to provide *Foreign Enterprises Certificate*. Further enquiries should be directed to the Investment Promotion Authority on telephone (675) 321 7311 or facsimile (675) 320 2237. Information about company registration can be found on the IPA website at www.ipa.gov.pg.

27.4 Job Hopping

Non-citizen employees are discouraged from changing employment or changing employers after they have been granted a work permit. DLIR will not grant a work permit to a non-citizen who has changed employment without a valid reason.

27.5 PNG Overseas Missions

Information about the work permit requirements can be obtained from all PNG overseas missions.

27.6 Temporary Relief Arrangements

Employers who wish to bring in non-citizens on temporary relief arrangements should ensure the employee is issued a Short Term Work Permit. It is not permissible for non-citizens to enter PNG for work purposes on a Tourist or Business Visa.

27.7 Training Plans

All matters relating to Training Plans have, for some time now, been dealt with by the National Training Council. All enquiries about Training Plans should be directed to: The Director, National Training Council, P.O. Box 1170, Boroko.

Remember

If you are unsure about the work permit requirements please approach a member of the Foreign Employment Division for assistance or go to www.workpermits.gov.pg.

