

ARTICLES

Breaking the Seal: Why PNG's Companies Act Needs a Refresh

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Introduction

Papua New Guinea (PNG) stands at a pivotal moment in its economic development, with the potential to unlock significant growth by modernising its legal and regulatory frameworks. One area requiring immediate reform is the *Companies Act 1997* (the *Companies Act*), particularly the outdated requirement for companies to affix a company seal when executing documents, including deeds. This procedural relic, long abandoned by progressive economies such as the United Kingdom, Australia, and New Zealand, remains a legal formality in PNG. Not only does it create unnecessary obstacles to efficient business operations, but it also undermines the potential benefits of the reforms introduced by the *Electronic Transactions Act 2021* (the *ETA*).

The company seal, once a symbol of formal authorisation, has become redundant in the context of modern corporate governance. In today's global business environment, where speed, flexibility, and innovation are key drivers of success, requiring a physical seal slows down transactions and puts PNG businesses at a disadvantage. Corporate agreements are increasingly executed electronically and across borders, making the company seal an outdated formality.

This article explores the need to reform PNG's corporate laws to allow companies to execute documents, including deeds, without the requirement of a company seal. By adopting legal practices already in place in the United Kingdom, New Zealand, and Australia, PNG can improve its ease of doing business, attract foreign investment, and align with global best practices.

Historical Context: The Origin of the Company Seal Requirement

The use of company seals in corporate governance dates back centuries, with roots in medieval England. Originally, a seal was a physical stamp or impression on wax used to signify a company's formal approval of important documents, including contracts and deeds. This was before the advent of widespread literacy, where the use of a seal, rather than a written signature, was considered the highest form of legal authentication.

In this historical context, the seal provided a tangible guarantee that the corporation had formally agreed to the terms of the document. The practice was grounded in the legal presumption that a document bearing the seal of a company had been properly authorised by its governing body—typically the board of directors.¹ This made it an essential part of corporate transactions, where ensuring the legitimacy of company agreements was paramount.

Over time, the use of the company seal became an entrenched aspect of corporate law. As businesses expanded, legal systems across many countries, including PNG, carried over this requirement to modern statutory frameworks. Under the current *Companies Act*, certain key

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¹ See, eg, *Telikom PNG Ltd v Independent Consumer and Competition Commission* (2007) N3143; K. E. Lindgren, 'The Negative Corporate Seal Rule and Exceptions Thereto' (1974) 9 *Melbourne University Law Review* 412.

documents, especially deeds, must bear the common seal of the company to meet legal requirements.² Additionally, it remains common practice for key economic and legal stakeholders within PNG, such as financial institutions, to insist on corporates executing documents (e.g., loan and security documents) under seal, adhering to the traditional view that sealing signifies a higher level of formality and authenticity.

However, the original purpose of the company seal—ensuring formal approval and authenticity—has become outdated in today's legal and business environment.

In the modern world, corporate governance structures and verification methods have advanced significantly. Internal authorisation processes, board resolutions, and digital signatures now offer more efficient and secure ways to verify that a company has validly executed a contract. These advancements make the reliance on a physical seal not only unnecessary but also a barrier to efficient business operations.

In many jurisdictions, the requirement for company seals has already been abandoned in recognition of these changes. Leading common law countries like the United Kingdom, New Zealand, and Australia have reformed their company laws to allow documents, including deeds, to be executed by authorised company officers without needing to affix a company seal. This shift has facilitated faster, more flexible business transactions and reflected the realities of modern trade and corporate governance.

Despite the outdated nature of this requirement, PNG's corporate legal framework has yet to fully embrace these global reforms, leaving businesses bound by formalities that no longer serve a meaningful purpose.

Global Comparisons: Lessons from Other Jurisdictions

The corporate law landscape has evolved significantly in countries like the United Kingdom, New Zealand, and Australia, which have successfully reformed their statutes to allow companies to execute all forms of documents without the requirement for a company seal. These reforms have not only modernised corporate governance but have also streamlined business processes, promoted efficiency and enhanced trade.

United Kingdom

As early as 1971, Lord Wilberforce advocated for the United Kingdom to eliminate the requirement of executing documents under seal, remarking:

Everybody knows that sealing is now a completely fictitious matter ... I would have hoped that we might have got rid of that mumbo-jumbo and aligned ourselves with most other civilised countries.³

Despite this sentiment, meaningful reform did not take place until 1989 when the *Companies Act 1985* (UK) was amended to allow a document signed by either a director and the company secretary, or by two directors, to have the same effect as if executed under the company's common seal.⁴

Today, the *Companies Act 2006* (UK) permits companies to execute all documents (including deeds) without the need for a seal, provided they are signed by either two authorised signatories

² See Section 155(1), *Companies Act 1997*.

³ Parliamentary debates on the *Powers of Attorney Bill 1971* (UK), Hansard (H.L.), 25 February 1971, vol. 315, col. 1213.

⁴ See Section 130(2), *Companies Act 1989* (UK), which inserted Section 36A into the *Companies Act 1985* (UK).

of the company, a director of the company in the presence of a witness, or a duly appointed attorney of the company.⁵ This reform reflects a broader move towards simplifying corporate procedures and reducing unnecessary formalities.

New Zealand

PNG's Companies Act has its roots in New Zealand's corporate legal framework and was closely modelled on the *Companies Act* 1993 (NZ). However, despite this shared foundation, the two statutes diverge significantly when it comes to the use of company seals.

New Zealand undertook substantial corporate law reforms in 1993 with the enactment of the *Companies Act* 1993 (NZ), replacing the earlier *Companies Act* 1955 (NZ). A notable feature of this reform was the removal of the requirement for companies to use common seals, including for the execution of documents, including deeds.

This shift toward seal-free execution was driven by recommendations from the New Zealand Law Commission. In its 1987 review of company law, the Commission questioned the necessity and usefulness of company seals in modern business practice.⁶ By 1989, the Commission had formally recommended the abolition of company seals.⁷

On adoption, the *Companies Act* 1993 (NZ) allowed companies to execute any document, including deeds, without the need for a company seal. Under section 180(1), a company could execute a document by having it signed by two or more directors. Alternatively, if the company's constitution permitted, a document could be signed by one director or another authorised person whose signature must be witnessed, or by a duly appointed attorney. This approach ensured that executed documents held the same legal effect as if they had been executed under a company's common seal.

A subsequent amendment in 1994 introduced Section 180(1A), which clarified that, notwithstanding Section 180(1), a company could still choose to use its common seal, provided it had one, thus allowing for optional seal use if desired.⁸

Australia

Australia is also aligned with the international standards set by jurisdictions like the United Kingdom and New Zealand. The *Corporations Act* 2001 (Cth) (the *Corporations Act*) allows companies to execute documents, including deeds, without the need for a company seal.

Prior to the *Corporations Act*, Australian corporate law was fragmented across the different states, and efforts to create a unified legislative framework were consistently thwarted by constitutional challenges.⁹ It was only with the passage of the *Corporations Act* that uniform company law was established, streamlining governance and providing consistency for Australian businesses.

The *Corporations Act* permits companies to execute all documents (including deeds) without the need for a seal, provided they are signed by either a director and a company secretary or by two directors. Additionally, companies retain the option to use a common seal or employ any other legally valid method of execution (including by a duly appointed attorney or agent).¹⁰

⁵ See Sections 44 and 47, *Companies Act* 2006 (UK).

⁶ New Zealand Law Commission, *Company Law: Preliminary Paper* (NZLC PP5, 1987).

⁷ New Zealand Law Commission, *Company Law: Reform and Restatement* (NZLCR9, 1989).

⁸ Section 20, *Companies Act* 1993 (*Amendment Act* 1994) (1994 No 6) (NZ).

⁹ See, eg, Cally Jordan, 'Unlovely and unloved: Corporate Law Reforms Progeny' (2009) 33 *Melbourne University Law Review* 626.

¹⁰ Section 127, *Corporations Act* 2001 (Cth).

Lessons for PNG

The experiences of the United Kingdom, New Zealand, and Australia provide valuable lessons for PNG as it considers reforming its own corporate laws. Embracing these modern practices would not only align PNG with international standards but also facilitate the growth and sustainability of its economy in a rapidly evolving global marketplace.

Why PNG Should Follow Suit: Key Benefits of Reform

The removal of the requirement for a company seal in executing contracts and deeds represents more than just a legal technicality; it is a step towards improving business efficiency, modernising corporate governance, and positioning PNG as a competitive player in the global economy.

Streamlined Business Operations

The current requirement for a company seal creates unnecessary procedural delays for businesses in PNG. In many cases, obtaining a physical seal can slow down critical transactions, such as securing financing, closing deals, or entering into supply chain agreements. This is particularly true for companies engaging with key economic and legal stakeholders within PNG and in cross-border transactions.

By eliminating the need for a physical seal, companies can execute documents more swiftly using authorised signatures, accelerating business processes. This would also reduce the administrative burden for smaller businesses that may not have formal legal departments or dedicated corporate officers to manage seal-related formalities.

Facilitating Digital Transformation

Business practices and transactions are increasingly occurring in the digital realm. Relying on a physical seal is impractical. Reforming the law would allow PNG businesses to adapt to the realities of digital transactions and more easily integrate into the fast-paced global economy.

The reforms introduced by the ETA were intended to enable cross border e-commerce and promote the digital economy in PNG. And while the ETA allows for the recognition and acceptance of digital signatures, it does not address company seals—which cannot be affixed electronically.

With the introduction of the ETA, natural persons can now execute any legal document (including deeds) digitally. Companies, however, remain constrained by a physical formality that adds no real value to the execution of legal documents. By reforming the *Companies Act*, PNG would be taking a further step toward embracing the digital economy. Allowing companies to execute documents with electronic or digital signatures, rather than physical seals, would allow business to participate fully in the digital economy.

Alignment with Global Best Practices

The absence of a company seal requirement in countries like the United Kingdom, New Zealand, and Australia reflects an international consensus that such formalities are unnecessary in the digital age. PNG risks being left behind if it continues to uphold the use of the company seal. By reforming the *Companies Act* to align with these jurisdictions, PNG can demonstrate its commitment to facilitating trade and fostering an open, competitive market that attracts investment.

Reducing Legal and Administrative Costs

Maintaining and using a company seal may seem like a minor administrative detail, but over time, the associated legal and operational costs can add up. The requirement to affix a physical seal often necessitates additional layers of internal review and documentation, which can delay transactions and increase costs.

By eliminating the company seal requirement, businesses can reduce these costs. Legal teams would no longer need to spend time managing and verifying the use of the company seal, and transactions could be completed with fewer formalities. This would free up valuable resources, allowing companies to focus on core business activities rather than bureaucratic processes.

Additionally, this reform would reduce the likelihood of procedural errors or technical issues arising from the incorrect use of a company seal. These issues, while seemingly minor, can result in costly delays, legal challenges, or even the invalidation of important contracts. A simpler execution process with authorised signatures would mitigate these risks and lower the administrative burden on companies.

Signatures

The belief that a corporate document is not valid or does not belong to a company simply because it lacks a seal is an outdated and unnecessary formality.¹¹ Requiring a company to execute a deed or certain regulatory or procedural forms under its common seal¹² - or the persistent insistence by key economic gatekeepers, such as commercial banks and government departments, that all corporate documents must bear a seal regardless of their nature - is an unnecessary bureaucratic hurdle, particularly in light of the reforms introduced by the ETA.

In PNG, a document bearing only the company seal without proper attestation is invalid and unenforceable. The seal must be affixed to the signature(s) of authorised signatory(ies) acting on behalf of the company.¹³ However, if a signature is already required to authenticate a document executed under seal, then the seal itself serves no independent legal function.

Requiring both a seal and a signature creates unnecessary duplication. Execution formalities should ensure certainty and reliability in corporate transactions, but these objectives can be achieved just as effectively—if not more so—through signature-based execution alone. A signature-only process simplifies administration, eliminating redundant procedural steps, additional record-keeping obligations, and the need for physical tools such as company seals.¹⁴

Beyond inefficiency, continued reliance on seals introduces practical risks. Unlike signatures, which can be individually verified using forensic analysis, seals are more susceptible to forgery and misuse. In PNG, company seals are not engraved or uniquely coded, making them easy to replicate without authorisation. Moreover, a seal does not inherently identify the person executing a document, meaning its application can be difficult to attribute unless additional

¹¹ As early as 1868, the English Courts acknowledged that a trading company can “carry on business by its agents, managers and others, and if contracts made by those persons are contracts which relate to [the] objects and purposes of the company ... they are binding upon the company, though not under seal ... a modern incorporation may make binding contracts in furtherance of the purposes of their corporation, without using their seal.” — *The South of Ireland Colliery Co v Waddle* (1868) LR 3 CP 463, CP.

¹² See, eg, Section 155(1), *Companies Act 1997*; See also *Application by Justice Foundation for Porgera Ltd* (2022) SC2257.

¹³ *Ibid*

¹⁴ See, eg, Graham McBain, ‘Abolishing Deeds, Specialties and Seals Part II’ (2006) 20(2) *Commercial Law Quarterly* 11.

attestation is provided. This increases the risk of fraud, unauthorised use, and disputes over authenticity.¹⁵

Leading common law jurisdictions, including the United Kingdom, New Zealand, and Australia, have abolished the requirement for common seals, recognising that they offer no meaningful legal or commercial benefit in modern business practice. PNG's continued insistence on their use is outdated and unnecessary.

Proposed Legal Reforms: Drafting Suggestions for PNG

To modernise PNG's corporate legal framework, specific amendments should be introduced to the *Companies Act* to eliminate the requirement for a company seal when executing documents, including deeds. The proposed reforms should provide clear and practical alternatives to ensure corporate documents remain legally binding and enforceable without unnecessary formalities. The following amendments to the *Companies Act* are suggested to achieve this objective:

155. Method of Contracting.
- (1) A company may execute any document, including a deed, if that document is signed by:
 - (a) two directors of the company; or
 - (b) a director and the company secretary; or
 - (c) if there is only one director, by that director; or
 - (d) if the constitution of the company so authorises:
 - (i) a director of the company; or
 - (ii) any person or class of persons; or
 - (e) a person acting within the scope of the company's express or implied authority; or
 - (f) one or more attorneys appointed by the company in accordance with section 156.
 - (2) A company may execute a document as a deed:
 - (a) if it contains a clear statement that the document is a deed; and
 - (b) if it is validly executed in accordance with subsection (1); and
 - (c) without that execution being witnessed; and
 - (d) without using a seal; and
 - (e) regardless of whether the document is in physical or electronic form.
 - (3) Subsection (1) applies-
 - (a) whether or not that document was entered into in Papua New Guinea; and
 - (b) whether or not the law governing the document is the law of Papua New Guinea.
 - (4) A company may, but need not, adopt a company seal.
 - (5) A company that has adopted a company seal may, in addition to complying with subsection (1), choose to affix its company seal to the document.
156. Attorneys.
- (1) Subject to its constitution, a company may, by an instrument in writing executed in accordance with section 155(1)(a), (b) or (c), appoint a person as its attorney either generally or in relation to a specified matter.
 - (2) An act of the attorney in accordance with the instrument binds the company.
 - (3) Any power of attorney executed by a company shall be revoked upon the commencement of liquidation of the company or, if there is no liquidation, upon the removal of the company from the register kept pursuant to Section 395.

Moving PNG Forward

For PNG's economy to grow and thrive in a competitive global market, the country must embrace reforms that enable businesses to operate with greater flexibility and efficiency. Removing the company seal requirement is a relatively simple but impactful reform that could significantly transform PNG's economic landscape. This adjustment is not merely technical; it

¹⁵ See, eg, *Sengus Investments Ltd v Puio* (2022) N9999, where a fake common seal was intentionally imprinted over a signature to disguise that signature. The fraud was proved only because a portion of the signature remained visible to the left of the seal, allowing for a comparison that confirmed it differed significantly from that of the authorised signatory.

represents a critical step toward modernising the country's legal framework and fostering economic growth. By aligning its corporate laws with global standards set by countries like the United Kingdom, Australia, and New Zealand, PNG can eliminate unnecessary procedural hurdles, enhance legal certainty, and create a more efficient, business-friendly environment. Ultimately, this reform would help propel the country further into the digital age.