INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 194.

Mineral Resources Stabilization Fund.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Finance at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in or in relation to this Chapter to—

"the Departmental Head"—should be read as references to the Secretary for Finance;

"the Department"—should be read as references to the Department of Finance.

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[1]Subsidiary legislation has not been up-dated.

Prepared for inclusion as at 1/1/1980.

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ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 194.

Mineral Resources Stabilization Fund Act.

Being an Act to provide for—

(*a*) the establishment of a Mineral Resources Stabilization Fund; and

(*b*) the establishment of a Mineral Resources Stabilization Fund Board of Management,

and for related purposes.

PART I.—PRELIMINARY.

1. Purposes of this Act.

The purposes of this Act are to ensure that—

(*a*) revenue accruing to the State from the development of the mineral resources of the country is dealt with in a manner that will promote national financial stability; and

(*b*) wide fluctuations in revenue accruing to the State from year to year as a result of changing world market prices for minerals do not interfere with the orderly progress of the Government's development program; and

(*c*) in the early years of independence in Papua New Guinea the revenue available to the Consolidated Revenue Fund from the mining operations in the Bougainville Province under the fiscal regime prescribed in the *Mining (Bougainville Copper Agreement) Act* rises steadily in line with the development needs of the country.

2. Interpretation.

In this Act, unless the contrary intention appears—

"the Board" means the Mineral Resources Stabilization Fund Board of Management established by Section 3;

"Bougainville mining enterprise" means the designated mining enterprise operated by Bougainville Copper Ltd. under the *Mining (Bougainville Copper Agreement) Act*;

"designated mining enterprise" means any mining enterprise engaged in mining activities under a special mining lease issued under or deemed to be issued under—

(*a*) Section 71 of the *Mining Act*; or

(*b*) **

(*c*) any similar provision of any prescribed Act;

(Amended by No. 62 of 1978, s. 1.)

"the Fund" means the Mineral Resources Stabilization Fund established by Section 8;

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"real purchasing power", in relation to a particular date, means the amount of money at that date deflated by an index considered by the Board to be appopriate and described by them in their annual report;

"the regulations" means any regulations made under this Act;

"this Act" includes the regulations.

PART II.—MINERAL RESOURCES STABILIZATION FUND BOARD OF MANAGEMENT.

3. Establishment of the Board.

(1) A body by the name of the Mineral Resources Stabilization Fund Board of Management is hereby established.

(2) The Board—

(*a*) is a corporation; and

(*b*) has perpetual succession; and

(*c*) shall have a seal; and

(*d*) has power to enter into contracts; and

(*e*) may sue and be sued in its corporate name.

4. Constitution of the Board.

The Board shall consist of—

(*a*) the Secretary for Finance, who shall be Chairman; and

(*b*) the Director of the Office of Minerals and Energy; and

(*c*) the Director of the Central Planning Office.

5. Meetings of the Board.

(1) The Board shall meet at such times and places as are, in the opinion of the Chairman, necessary for the efficient conduct of its affairs.

(2) Subject to this Act, the procedures of the Board are as determined by the Board.

6. Indemnity of members of the Board.

A member of the Board is not personally liable for any act of the Board, or of a member acting as such, done in good faith.

7. Annual report.

(1) The Board shall, as soon as practicable after 31 December in each year, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in a form approved by the Minister. *(Amended by No. 47 of 1977, Schedule 1.)*

(2) The report and statements referred to in Subsection (1) shall include details of—

(*a*) the amount certified by the Board under Section 12 for payment into the Consolidated Revenue Fund in the next year; and

(*b*) the estimates of revenue prepared by the Board under Section 10 for the next eight years, together with a detailed explanation as to the manner in which the estimates were calculated; and

(*c*) all payments into the Fund during the year; and

(*d*) all investments made during the year; and

(*e*) the total income received from investments during the year; and

(*f*) the total assets of the Fund,

together with any other information that—

(*g*) the Board considers relevant to the operation and management of the Fund; or

(*h*) the Minister directs to be included.

(3) The Minister shall cause the report and financial statements to be laid before the Parliament at the first meeting of the Parliament after their receipt by the Minister.

PART III.—MINERAL RESOURCES STABILIZATION FUND.

8. The Mineral Resources Stabilization Fund.

There shall be a Mineral Resources Stabilization Fund, into which shall be paid such moneys as are specified by this or any other Act.

9. Application of Public Finances (Control and Audit) Act.

Except where this Act provides to the contrary, the provisions of the *Public Finances (Control and Audit) Act* relating to Trust Accounts within the meaning of that Act apply to and in relation to the Fund.

10. Preparation of estimates of revenue.

(1) The Board shall, before 31 December in each year, prepare a written estimate of the average annual revenue that, in its opinion, will accrue to the Government from the operations of designated mining enterprises during the period of eight years after that date. *(Amended by No. 42 of 1977, Schedule 1.)*

(2) In preparing the estimates referred to in Subsection (1)—

(*a*) the Board shall give due regard to—

(i) the price trends that, in its opinion, can be anticipated for the mineral products produced by the designated mining enterprises; and

(ii) the financial and operating results of the designated mining enterprises that, in its opinion, can be anticipated; and

(iii) the fiscal regime within which the designated mining enterprises will, in its opinion, operate (including any regime of withholding taxes); and

(iv) the earnings that, in its opinion, can be anticipated from the investment of moneys standing to the credit of the Fund,

during the period referred to in Subsection (1); and

(*b*) the Board's estimates in any year of average future copper prices shall vary, in so far as any increase in price is concerned, by no more than 10% from the average price, expressed in United States dollars, on the London Metal Exchange over the immediately preceding 20 years, as adjusted for variations in the exchange rate of the United States dollar relative to Papua New Guinea currency and in the internal purchasing power of the United States dollar; and

(*c*) the Board's estimates in any year of average future gold and silver prices shall vary, in so far as any increase in price is concerned, by no more than 10% from the average price, expressed in United States dollars, on the London Metal Exchange, over the year immediately preceding the day on which the estimates are prepared, as adjusted for variations in the exchange rate of the United States dollar relative to Papua New Guinea currency; and

(*d*) the Board shall not take into account the results that, in its opinion, can be expected from a designated mining enterprise until the enterprise has actually commenced commercial production.

(*Amended by No. 2 of 1983, s. 1.*)

11. Payments into the Fund.

(1) Notwithstanding anything in the *Income Tax Act 1959*, there shall be paid into the Fund—

(*a*) all moneys received by the State from or in respect of all designated mining enterprises by way of—

(i) payment of income tax and any additional tax under the *Income Tax Act 1959*, the *Mining (Bougainville Copper Agreement) Act* or any other law relating to the payment of income tax by any designated mining enterprise; and

(ii) payment of dividend (withholding) tax under the *Income Tax Act 1959* on dividends paid on stock or shares by any designated mining enterprise to a person who is a non-resident; and

(iii) payment of dividends on Government-owned stock, shares and debentures in any designated mining enterprises; and

(*b*) all moneys received as interest from moneys standing to the credit of the Fund invested under Section 14.

(2) In Subsection (1)(*a*)(ii)—

"person" has the same meaning as it has in Division III.13A of the *Income Tax Act 1959;*

"non-resident" has the same meaning as it has in the *Income Tax Act.*

(*Added by No. 62 of 1978, s. 2.*)

12. Payments out of the Fund.

(1) Subject to Subsection (2) and Section 13, the Board shall—

(*a*) when directed to do so by the Minister; and

(*b*) in the manner directed by the Minister,

pay out of the Fund into the Consolidated Revenue Fund in each financial year such amount as the Board, before 31 December in the preceding financial year, certifies to be payable for that year in accordance with Section 13. (*Amended by No. 42 of 1977, Schedule 1.*)

(2) Where the Minister thinks it necessary to do so, he may direct the Board to pay out of the Fund into the Consolidated Revenue Fund, instead of the amount certified by the Board under Subsection (1), an amount being not more than 10% higher than the amount so certified. (*Amended by No. 2 of 1983, s. 2.*)

(3) Where, in relation to an amount of income tax paid by a designated mining enterprise that has been paid into the Fund, there becomes due and payable to the enterprise under the *Income Tax Act 1959* an amount of refund of income tax, the amount of refund shall be paid by the Board to the enterprise from the Fund.

(3A) Where the Board is satisfied—

(*a*) that a dividend has been paid to a person in respect of stock or shares in any designated mining enterprise; and

(*b*) that moneys by way of dividend (withholding) tax or purporting to be dividend (withholding) tax have been paid into the Fund in respect of that dividend; and

(*c*) that that person is not liable under Section 189B of the *Income Tax Act 1959* to pay dividend (withholding) tax on that dividend,

the Board may pay to the Chief Collector of Taxes out of the Fund an amount not exceeding the amount of those moneys for payment to that person.

(Added by No. 62 of 1978, s. 3.)

(3B) The Board may—

(*a*) determine that an amount incurred or to be incurred for a specified purpose is an expense in the management of the Fund; and

(*b*) for the purpose of meeting or reimbursing that expense—pay that amount from the Fund.

(Added by No. 62 of 1978, s. 3.)

(3C) Where—

(*a*) a sum is paid into the Fund; and

(*b*) the Board is satisfied that that sum or part of that sum was paid in by mistake,

the Board may pay out of the Fund an amount equal to that sum or part, as the case may be.

(Added by No. 62 of 1978, s. 3.)

(4) No money, other than money authorized to be paid by this section, shall be paid out of the Fund.

13. Manner of calculation of amounts payable out of the Fund.

(1) Subject to Subsection (2), the amount to be paid into the Consolidated Revenue Fund in any year is the maximum amount that, in the opinion of the Board, provides a flow of revenue from the designated mining enterprises to the Consolidated Revenue Fund that is sustainable in terms of real purchasing power for each year of the next five years.

(2) Notwithstanding Subsection (1), the amount to be paid from the Fund to the Consolidated Revenue Fund from the Bougainville mining enterprise for each year shall be—

(*a*) until the maximum sustainable amount has been reached, an amount being a maximum of 20% more in terms of real purchasing power than the amount for the immediately preceding financial year in respect of—

(i) the financial year ending 30 June 1977; and

(ii) each financial year commencing on or after 1 January 1979; and

(*b*) in respect of the financial year commencing 1 July 1977 and ending 31 December 1977—an amount being a maximum of 20% more in terms of real purchasing power than one-half the amount of the immediately preceding financial year; and

(*c*) in respect of the financial year commencing 1 January 1978—an amount being a maximum of 20% more in terms of real purchasing power than twice the amount for the financial year commencing 1 July 1977 and ending 31 December 1977.

Amended by No. 47 of 1977, Schedule 1.)

14. Investment of moneys standing to the credit of the Fund.

With the prior approval of the Minister, the Board shall invest in prescribed securities such part of the moneys standing to the credit of the Fund as is necessary to achieve the stabilization objectives of the Fund.

15. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing the securities in which moneys standing to the credit of the Fund may be invested.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 194.

Mineral Resources Stabilization Fund Regulation.

ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 194.

Mineral Resources Stabilization Fund Regulation.

Made under the *Mineral Resources Stabilization Fund Act.*

1. Prescribed securities.

For the purposes of Section 14 of the Act, "prescribed securities" means the Mineral Resources Stabilization Fund Investment Account with the Central Bank.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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APPENDIX 1.

SOURCE OF THE MINERAL RESOURCES STABILIZATION FUND ACT.

Previous Legislation.

Mineral Resources Stablization Fund Act

as amended by—

Mineral Resources Stabilization Fund (Amendment) Act 1983 (No. 2 of 1983).

Prepared for inclusion as at 1/1/1983.

APPENDIX 2.

SOURCE OF THE MINERAL RESOURCES STABILIZATION FUND REGULATION.

Part A.—Previous Legislation.

Mineral Resources Stabilization Fund Regulation 1975 (Statutory Instrument No. 58 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference[1].
1	1

[1]The reference is to the section in the regulation set out in Part A.