

No. 60 of 1955.

Mining Development Act 1955.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 60 of 1955.

Mining Development Act 1955.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Mining Development Act 1955,

Being an Act to encourage the mining industry.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**borrower**” means a person who applies for an advance by way of loan under Section 2;

“**company**” means a company incorporated or registered under any law in relation to the registration or incorporation of companies;

“**developmental mining**” means mining operations that, in the opinion of the Minister, are necessary or desirable for the purpose of determining the size and value of an ore body and the subsequent development of workings to facilitate the economic extraction of ore from it;

“**gold**” includes—

- (a) platinum, osmium, iridium and any metal belonging to the platinum group of metals; and
- (b) gold and any earth or substance containing or having mixed in its substance, or set apart for the purpose of extracting, platinum, osmium, iridium or a metal belonging to the platinum group of metals;

“**mine**” means land held or occupied under the *Mining Act 1937* of the former Territory of Papua (Adopted) or the *Mining Act 1928* of the former Territory of New Guinea (Adopted) where mining operations are carried on;

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“**mineral**” does not include petroleum or helium found in association with petroleum;

“**mining operations**” are operations on a mine for the purpose of obtaining or prospecting for gold or minerals;

“**officer**” means an officer of the Department;

“**the regulations**” means any regulations made under this Act;

“**this Act**” includes the regulations.

PART II. – ADVANCES FOR DEVELOPMENTAL MINING.

2. PURPOSES OF ADVANCES.

A person may apply to the Departmental Head for an advance by way of loan for—

- (a) carrying on developmental mining; and
- (b) procuring, erecting and connecting machinery, plant or appliances for that purpose; and
- (c) providing other works and things that, in the opinion of the Departmental Head, are necessary for that purpose.

3. APPLICATIONS FOR ADVANCES.

(1) An application under Section 2 shall be in the prescribed form and shall be accompanied by—

- (a) a description of—
 - (i) the mine on which the mining operations are to be performed; and
 - (ii) all workings on the mine and an accurate plan and sections of them; and
- (b) a description and valuation of all machinery, plant and effects on the mine; and
- (c) a statement of the encumbrances (if any) affecting the mine, machinery, plant or effects; and
- (d) a statement showing—
 - (i) the developmental mining proposed to be performed; and
 - (ii) the object of the mining; and
 - (iii) the probable cost of the mining, and of any machinery, plant and effects proposed to be purchased in connection with it; and
- (e) a statement showing—
 - (i) the manner in which, and the work on which, it is proposed to expend the advance; and
 - (ii) the period of time during which the expenditure will be incurred; and
 - (iii) the time when, and the amounts in which, the advance will be required; and
- (f) if the application is made by a company—

- (i) evidence of the incorporation or registration of the company in the country, and a copy of its memorandum and articles of association; and
- (ii) particulars as to the amount of uncalled capital of the company, and of its assets and liabilities.

(2) A borrower shall also furnish to the Departmental Head such further evidence, documents or information as he, by written notice to the borrower, requires.

(3) A borrower shall verify all evidence, statements and information furnished under this section by statutory declaration.

4. REFERENCE TO PROFESSIONAL OFFICERS.

(1) The Departmental Head may refer an application for an advance to the Mining Engineer, Mines Inspector, Geologist or other officer authorized for the purpose by the Minister, for report.

(2) A report under Subsection (1) shall be made after personal examination of the mine to which the application relates, and shall—

- (a) fully describe the character of the mine and of the lead, lode, reef, vein, seam or other mineral formation contained in it; and
- (b) state whether the performance of the proposed mining operations would or would not, in the opinion of the reporting officer, be developmental mining; and
- (c) state whether, in the opinion of the reporting officer there is reasonable probability of the proposed operations proving to be of a remunerative character, giving the reasons and grounds for the opinion; and
- (d) state whether the machinery, working plant and appliances are of a character and description properly adapted to the proposed mining operations; and
- (e) give such other information as is prescribed or as the Departmental Head requires.

5. AGREEMENT WITH BORROWER.

(1) After considering all the evidence and reports relating to it, the Departmental Head may recommend to the Minister the granting of the application with or without modification.

(2) On receiving a recommendation under Subsection (1), the Minister may, on behalf of the State, enter into an agreement with the borrower undertaking, subject to this Act, to advance out of moneys appropriated for the purpose by way of loan to the borrower, such sum or sums as he, in that particular case, approves.

(3) An advance under Subsection (2) shall be payable in instalments of such amount and at such times as are specified in the agreement.

(4) No instalment shall be paid until it is proved to the satisfaction of the Minister that—

- (a) for every kina to be advanced the borrower has, out of his own capital, previously, actually and properly expended on mining operations on the mine the same amount; and—
- (b) the borrower has—
 - (i) properly expended, in mining operations on the mine, all previous instalments advanced by the State; and
 - (ii) paid all interest (if any) due on any such instalments.

(5) For the purposes of Subsection (4)(a), no account shall be taken of money expended by the borrower that has already been taken into account for the purposes of that paragraph.

(6) The borrower shall pay to the State interest on the amount of the advance, calculated from the dates of payment of the respective instalments, at such rate as is charged from time to time by the Papua New Guinea Banking Corporation on overdrafts, by half-yearly payments, on dates specified in the agreement.

(7) The agreement shall contain such covenants, conditions, restrictions and provisions, not inconsistent with this Act, as the Minister requires.

6. SECURITY.

Before receiving an instalment of an advance, the borrower shall execute, at his own cost and to the satisfaction of the Minister, a first mortgage in favour of the State, of the whole of the mine and, in the case of a company, its other property and assets (except uncalled capital) to secure—

- (a) the repayment of the advance and interest; and
- (b) the due performance of the terms of the agreement; and
- (c) the provisions of this Act.

7. PAYMENT OF DIVIDENDS, ETC.

(1) Until it has performed all the terms of the agreement under which the advance was made, a company to which an advance has been made under this Part must not pay, credit or distribute, amongst all or any of its members, by way of dividend or otherwise, any of its money, property or assets.

(2) Where a company contravenes the provisions of Subsection (1) each director of the company with whose consent the payment, crediting or distribution was made is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(3) Where any money, property or assets of a company has or have been paid, credited or distributed to a person in contravention of Subsection (1), the money and

the value of the property or the assets is a debt due and payable to the company by the person.

8. RECOVERY OF ADVANCE.

Moneys advanced to or payable by a borrower under an agreement that are due and payable are recoverable by the State as a debt.

9. PROVISIONS APPLICABLE UNTIL MONEYS ADVANCED HAVE BEEN PAID.

(1) Until all moneys advanced under an agreement to a borrower have been repaid, and the terms of the agreement have been complied with—

- (a) the Minister may appoint a person to inspect and report on—
 - (i) the progress of the works; and
 - (ii) the state and condition of the property and plant of the borrower; and
- (b) the borrower shall, when so required by a person appointed by the Minister, allow—
 - (i) full inspection of; and
 - (ii) copies and extracts to be taken from,

all or any of the books, documents or records belonging or relating to the business of the borrower; and

- (c) the borrower shall, within such time as the Minister allows—
 - (i) supply such information as the Minister demands in relation to the borrower, or to the property, assets, undertaking, work and operations of the borrower; and
 - (ii) if required, verify the information by statutory declaration; and
- (d) in case of default by the borrower—the Minister may give notice to the borrower of his intention to enforce the security given by the borrower under Section 6.

(2) If the default continues after the expiration of 14 days from the service of a notice under Subsection (1)(d), the Minister may appoint a person to enter into possession of—

- (a) the mine; and
- (b) all other property and assets of the borrower comprised in the mortgage given by the borrower under Section 6.

(3) The person who is in possession under Subsection (2)—

- (a) has and may exercise the powers and authorities of a receiver and manager of the mine and of all other property and assets of the borrower comprised in the mortgage; and
- (b) may, with such assistants as are necessary, carry on the business of the borrower; and
- (c) if so directed by the Minister—may cause the mine, machinery, working plant and appliances and any other property and assets of the borrower comprised in the mortgage to be sold by public auction, by tender or by private contract, and the moneys realized by the sale shall, after payment of all expenses incurred by the Minister, be applied towards the payment of all moneys payable by the borrower to the State and the balance (if any) paid to the borrower.

10. APPOINTMENT OF AGENT BY BORROWER.

(1) During any absence of a borrower (not being a company) from the mine for any period of more than three days, he shall appoint, and at all times keep appointed, an agent who resides or works daily at the mine.

(2) If a borrower is a company, it shall appoint, and at all times keep appointed, as its agent some person who resides or works daily at the mine.

(3) The service of an order, demand, notice or requirement under this Act on a person under Subsection (1) or (2) appointed as an agent by the borrower shall be deemed to be service on the borrower.

(4) If the borrower—

- (a) not being a company—is absent from the mine for a period of more than three days and has not appointed an agent who resides or works daily at the mine; or
- (b) being a company—has not appointed an agent who resides or works daily at the mine,

the posting of an order, demand, notice or requirement under this Act at a conspicuous place on the mine shall be deemed to be service of the order, demand, notice or requirement on the borrower.

11. NON-COMPLIANCE WITH ACT.

Non-compliance—

- (a) by a borrower or his agent; or
- (b) if the borrower is a company, by the company, or by any of its officers or agents,

with this Act, or with an order, demand, notice or requirement of the Minister or a person appointed by him under this Act, constitutes a default by the borrower under the agreement.

PART III. – ESTABLISHMENT OF PLANT FOR CRUSHING, ORE-DRESSING, CYANIDING OR SMELTING.

12. INTERPRETATION OF PART III.

For the purposes of this Part, “plant” means plant for testing the value of, or treating metalliferous material, and machinery and appliances for–

- (a) mechanically reducing rock, gangue, matrix, ore or other vein stuff, for the purposes of obtaining gold or mineral from it; or
- (b) classifying or dressing rock, gangue, matrix, ore or other vein stuff, and separating from it the gold or mineral contained in it; or
- (c) extracting gold or minerals from rock, gangue, matrix, ore or other vein stuff by any process.

13. PURCHASE, ETC., OF PLANT BY THE STATE.

The Minister may, out of moneys appropriated for the purpose–

- (a) purchase or hire and erect and operate plant; or
- (b) subsidize persons who are willing to erect and work plant for the public at such rates as are agreed on between the Minister and the person.

14. ERECTION OF PLANT.

(1) Plant purchased or hired by the Minister shall be erected only in places in which, from the report of the Departmental Head, Mining Engineer, Geologist, Mines Inspector or other officer authorized for the purpose by the Minister, the Minister is satisfied that–

- (a) large deposits of metalliferous ores exist; and
- (b) plant and appliances for testing or treating such deposits in bulk at reasonable rates are not available; and
- (c) the establishment of plant is necessary for the development of mining.

(2) A subsidy under Section 13(b) shall not be granted in respect of the erection or working of plant at any place other than a place at which plant purchased by the Minister may, under this Act, be erected.

15. RATES FOR TESTING AND TREATING.

(1) The rates charged by the Minister for testing or treating metalliferous material shall be as prescribed or as are determined by the Minister by notice in the National Gazette.

(2) The rates charged by a subsidized person for testing or treating metalliferous material shall be the rates agreed on with the Minister under Section 13.

16. STEALING FROM PLANT.

(1) A person who takes or removes gold, gold amalgam or concentrates from a plant shall be deemed to have stolen the gold, gold amalgam or concentrates unless he proves that the taking or removal was with the permission of the person operating the plant.

(2) A person receiving the gold, gold amalgam or concentrates with knowledge of its or their unpermitted removal from the plant shall be deemed to have received the gold, gold amalgam or concentrates knowing it or them to have been stolen.

(3) In an information or complaint charging a person with stealing gold, gold amalgam or concentrates from a plant, it is sufficient to lay the property in the gold, gold amalgam or concentrates in the person operating the plant from which the gold, gold amalgam or concentrates were stolen.

PART IV. – ASSISTANCE FOR BORING.

17. MINISTER MAY PAY WHOLE COST OF BORING FOR GOLD, ETC.

If he is satisfied, after receiving the report of the Departmental Head, Mining Engineer, Geologist or other officer authorized for the purpose by the Minister, that the boring is in the general interest of Papua New Guinea, the Minister may, out of moneys appropriated for the purpose, pay the whole cost of drilling for gold, minerals or water in any locality.

18. AGREEMENT TO PAY PROPORTION OF COST.

The Minister may enter into an agreement with a person to pay, out of moneys appropriated for the purpose, a proportion of the cost (not exceeding 50% of the total cost) of drilling for gold, minerals or water.

PART V. – MISCELLANEOUS.

19. PURCHASE AND HIRE OF BORING PLANT.

The Minister may—

- (a) out of moneys appropriated for the purpose, purchase boring plant and accessories; and
- (b) hire plant and accessories in accordance with the regulations.

20. ADVANCE OR EXPENDITURE OF MONEYS FOR DRAINING OR MAKING ROADS.

(1) The Minister may, out of moneys appropriated for the purpose, advance or expend moneys—

- (a) to drain a mining area; or
- (b) to assist mining by sinking or cross-cutting for further ore occurrences; or
- (c) to make roads in a mining area; or
- (d) to assist mining development by granting subsidies on ore produced as the result of developmental work and crushed by means of plant operated by the State or approved by the Minister; or
- (e) to provide an adequate supply of water to a mine.

(2) An advance under Subsection (1) shall be made on such terms and conditions as are prescribed.

21. ASSISTANCE IN MARKETING.

Where ores or concentrates are to be marketed outside the country, the Minister may, on such terms and conditions as are prescribed or as he thinks proper, and out of moneys appropriated for the purpose, make advances on any such ores or concentrates not exceeding 50% of the estimated value of the ores or concentrates.

22. 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 penalties of fines not exceeding K100.00 for offences against the regulations.