

No. 7 of 2001.

***Mining (Ok Tedi Mine Continuation (Ninth Supplement) Agreement Act
2001.***

Certified on: 20/12/2001.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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ARRANGEMENT OF SECTIONS.

PREAMBLE

1. Compliance with Constitutional requirements..
2. Interpretation.
 - “Affiliate”
 - “BHP Billiton Party”
 - “Commencement Date”
 - “Community”
 - “Community Mine Continuation Agreement”
 - “Contaminant”
 - “Effective Date”
 - “Environmental Claim”
 - “Environmental Law”
 - “Environmental Requirement”
 - “Foundation”
 - “Government Agency”
 - “Master Agreement”
 - “Mining Warden”
 - “Ok Tedi Mine Closure and Decommissioning Code or the Code”
 - “Ok Tedi Mine Continuation (Ninth Supplemental) Agreement”
 - “Pollution”
 - “Principal Agreement”
 - “Proceedings”
 - “Program”
 - “Program Company”
 - “Termination Date”
3. Approval of agreements.
4. Effect in relation to laws of Papua New Guinea.

5. Environmental Undertakings by the state in respect of the project.
6. Ok Tedi Mine closure and Decommissioning Code to apply to project.
7. Ancillary powers of Minister.
8. Execution of community mine continuation agreements and other acts binding.
9. Additional powers of mining wardens.
10. Master agreement exempt from stamp duty.
11. Tax status of foundation.
12. Commencement.
13. Acts binds the State.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Mining (Ok Tedi Mine Continuation (Ninth Supplement) Agreement Act
2001,***

Being an Act to provide for the approval and implementation of the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement relating to the continued development of certain mineral deposits in the Ok Tedi region of the Western Province and for related purposes,

Preamble

WE, the representatives of our People in the National Parliament;

a)

recognizing the economic social and infrastructure benefits of the Ok Tedi mine to the people of Papua New Guinea and particularly to the people of the Western Province; and

b) recognizing that the original approved proposals for the Ok Tedi mine contemplated the permanent retention of tailings and waste rock by that the tailings dam and engineered waste dumps as originally provided for proved unfeasible and that as a result the State approved measures for the management of tailings and waste rock to ensure the continuation of the Ok Tedi mine; and

c) recognizing that operating the Ok Tedi mine under these arrangements has resulted in adverse effects on the environment impacting landowners in the environs of, downstream from, the Ok Tedi mine for which compensation is being paid under the Restated Eighth Supplemental Agreement and other agreements; and

d) recognizing that there are concerns that the continued operation of the Ok Tedi mine could cause additional adverse environmental impacts, and that the closure of the mine before the expiry of its nominal mine life may be a method of ameliorating and shortening these impacts;

e) but recognizing:

Preamble *Mining (Ok Tedi Mine Continuation (Ninth Supplement) Agreement
2001*

(i)

that the Ok Tedi mine has made significant contributions to the advancement of the social and economic welfare of the people of Western Province in particular; and

(ii) that the Ok Tedi mine has generated and is generating a significant part of the gross domestic product and foreign exchange of Papua New Guinea; and

(iii) that as a result of the Company's activities, public health in the area of influence of the Ok Tedi mine has improved significantly since the Ok Tedi mine commenced operations; and

(iv) that as a result of the Company's activities, infrastructure has been provided, income and wealth has been generated for the State and Western Province, job opportunities have been created, business development opportunities have been created, better transportation facilities have been provided and better education and training opportunities have been provided; and

f)

recognizing that the State, BHP Billiton and the Company have consulted widely on the likely impact on the environment of the continued operation of the Ok Tedi mine; and

g) recognizing that it is the informed view of the Communities affected, as reflected in discussions with the Communities, and all other stakeholders (except BHP Billiton) that the economic social and infrastructure benefits of the Project outweigh any detrimental impact of the continuation of the mine and that therefore the Ok Tedi mine should continue to operate; and

h) recognizing that BHP Minerals, a majority shareholder in the Company, desires to dispose of its share holding but recognizes the desire of all other major stakeholders in the Ok Tedi mine to continue to operate; and

i) recognizing the BHP Billiton desires that BHP Minerals' shareholding in the Company be held for the long term benefit of the people of Papua New Guinea, and particularly for the people of the Western Province; and

j) taking account of the National Goals and Directive Principles (including, in particular, the goals that Papua New Guinea should, among other things, be economically independent and its economy basically self-reliant and that Papua New Guinea's natural resources and environment should, among other things, be conserved for the collective benefit of all Papua New Guineans); and

k) taking account of the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interest not only of the present generation but also future generations),

have resolved that the following Act should be passed: –

MADE by the National Parliament to come into operation in accordance with Section 12.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS..

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the *Constitution*, namely –

- (a) the right to freedom arbitrary search of person or property and entry of premises, conferred by the Section 44 of the *Constitution*; and
- (b) the right to freedom from conscience, thought and religion and the practice of a person's religion and beliefs, including freedom to manifest and propagate a person's religion and beliefs in such a way as not to interfere with the freedom of others, conferred by Section 45 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right peacefully to assemble and associate and to form or belong to or, not to belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*) –

- (f) taking account of the National Goals and Directive Principles (including, in particular, the goals that Papua New Guinea should, among other things, be economically independent and its economy basically self-reliant and that Papua New Guinea's natural resources and environment should, among other things, be conserved and used for the collective benefit of all Papua New Guineans) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, the protection of children and persons under disability (whether legal or practical) and the development of underprivileged or less advanced groups or areas; and
- (g) in order to protect the exercise of the rights and freedom of others; and
- (h) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* –

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be –

s. 1.

*Mining (Ok Tedi Mine Continuation (Ninth Supplement) Agreement
2001*

- (i) to facilitate the efficient and economical development and operation of the Project so that, as recorded in the Preamble, it might continue its significant contributions to the advancement of the social and economic welfare of the people of Papua New Guinea in general and the people of Western Province in particular, including, without limitation, the contributions recorded in the Preamble; and
- (ii) better to give effect to the other matters set out in, and in the recitals to, the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement, and in the recitals to the agreements set out in the schedules to the other Acts referred to in Subsection (4),
and each of those purposes and reasons is hereby also declared to be described as –
 - (iii) a public purpose; and
 - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,

for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and

- (b) the obligations undertaken by the Company under the Principal Agreement, including in particular, but without limitation, those provisions of the Principal Agreement that are inserted by the Ok Tedi Mine Constitution (Ninth Supplemental) Agreement and the obligations of the Company under the Community Mine Continuation Agreements, constitute compensation procured (and accordingly made) by, and made on behalf of, the state in connection with each such taking and acquisition.

(3) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(4) For the purposes of any Organic Law from time to time and for the time being implementing Part VIA of the *Constitution*, it is hereby declared that each of the following Acts relates, in its entirety, to a matter of urgent national interest: –

- (a) the *Mining (Ok Tedi Agreement) Act 1976*;
- (b) the *Mining (Ok Tedi Supplemental Agreement) Act 1980*;
- (c) the *Mining (Ok Tedi Second Supplemental Agreement) Act 1981*;
- (d) the *Mining (Ok Tedi Third Supplemental Agreement) Act 1983*;
- (e) the *Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985*;
- (f) the *Mining (Ok Tedi Fifth Supplemental Agreement) Act 1985*;

- (g) the *Mining (Ok Tedi Sixth Supplemental Agreement) Act 1986*;
- (h) the *Mining (Ok Tedi Agreements) (Amendment) Act 1986*;
- (i) the *Mining (Ok Tedi Seventh Supplemental Agreement) Act 1986*;
- (j) the *Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995*; and
- (k) this Act,

and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

2. INTERPRETATION.

(1) Unless otherwise defined in this Act, words and expressions which are given a certain meaning in the Principal Agreement or in the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement are used in this Act with the same meanings.

(2) In this Act, unless the contrary intention appears –

“**Affiliate**” in relation to a corporation means any corporation which is related to that corporation within the meaning of the *Companies Act 1997*;

“**BHP Billiton Party**” means BHP Billiton and its Affiliates (except the Company) and its and their directors, officers, employees and agents and former directors, officers, employees and agents;

“**Commencement Date**” means the date on which this Act is certified by the Speaker of the National Parliament;

“**Community**” means residents of a village in one of the 6 geographical areas impacted by the Project known respectively as “Mine Area”, “Highway”, “Upper Ok Tedi”, “Lower Ok Tedi”, “Middle Fly” and “South Fly”, and “Community” means residents of any number of such villages;

“**Community Mine Continuation Agreement**” means an agreement between the Company and specified Communities which is –

- (a) entered into before the Termination Date; and
- (b) substantially in the form of, and with one or more of the Communities named in, the relevant agreement set out in the Second Schedule completed in each case with the necessary details where indicated, and with each agreement containing so many of the optional provisions as the parties to that agreement determine; and
- (c) certified prior to the Termination Date by the Minister under Section 7(1) for identification purposes to be a Community Mine Continuation Agreement for the purposes of this Act;

“**Contaminant**” has the meaning set out in the *Environment Act 2000*;

- “Effective Date”** has the meaning set out in the Master Agreement;
- “Environmental Claim”** means any claim made for a breach of or a failure to observe an Environmental Requirement;
- “Environmental Law”** means all legislation which directly or indirectly relates to or affects the environment and which, but for the operation of the Principal Agreement, would apply to the Project;
- “Environmental Requirement”** means any law or regulation, including without limitation any Environmental Law, and any notice, order, direction, requirement, prohibition or condition under any Environmental Law, which governs or relates to the control, use, treatment or handling of dangerous substances, the discharge or release of Contaminants or the protection of the Environment from damage from Pollution, and includes the environmental requirements of the Principal Agreement;
- “Foundation”** means Ok Tedi Development Foundation Limited established under Clause 6 of the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement;
- “Government Agency”** includes any National, Provincial or Local-level Government and any minister, department, office, commission delegate, instrumentality, agency, board or authority thereof, or corporation wholly owned thereby, whether statutory or otherwise, and any person or body with delegated authority from any such body;
- “Master Agreement”** means an agreement of that title dated on or about the date of the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement between the State, MROT, BHP Billiton, BHP Minerals, IMC, the Company and the Program Company;
- “Mining Warden”** means a warden appointed under the *Mining Act 1992*;
- “Ok Tedi Mine Closure and Decommissioning Code or the Code”** means the code which is set out in the Third Schedule;
- “Ok Tedi Mine Continuation (Ninth Supplemental) Agreement”** means the supplemental agreement a copy of which is set out in the First Schedule;
- “Pollution”** means environmental harm caused by the release of a Contaminant into the environment;
- “Principal Agreement”** means the agreements a copy which is set out in the Schedule to the *Mining (Ok Tedi Agreement) Act 1976* as varied, amended and supplemented by the agreements respectively set out in the Schedules to the Acts referred to in Section 1(4)(b), (c), (d), (e), (f), (g), (i) and (j) and by Ok Tedi Mine Continuation (Ninth Supplemental) Agreement;

“Proceedings” means any civil, administrative or criminal action to enforce a penalty or recover costs, expenses, damages or compensation, and includes any inquiry, commission of inquiry or investigation of any kind;

“Program” means the program referred to in recital J (a) of the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement;

“Program Company” means PNG Sustainable Development Program Limited, a company incorporated in Singapore;

“Termination Date” has the meaning set out in the Master Agreement.

3. APPROVAL OF AGREEMENTS.

(1) The Ok Tedi Mine Continuation (Ninth Supplemental) Agreement is approved and has effect according to its tenor.

(2) The Community Mine Continuation Agreements (including all schedules and annexures thereto) are approved and have effect according to their tenor.

4. EFFECT IN RELATION TO LAWS OF PAPUA NEW GUINEA.

(1) The Ok Tedi Mine Continuation (Ninth Supplemental) Agreement (including all schedules and annexures thereto) has the force of law for the full term provided for therein and applies notwithstanding –

- (a) anything to the contrary in any other law in force in the country; or
- (b) that the agreement might, but for this Act, be wholly or partly unenforceable.

(2) The Community Mine Continuation Agreements (including all schedules and annexures thereto) have the force of law for the full term provided for therein and apply notwithstanding –

- (a) anything to the contrary in any other law in force in the country; or
- (b) that any such agreement might, but for this Act, be wholly or partly unenforceable.

(3) Nothing in this Act affects the operation of the *Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995*.

(4) The Community Mine Continuation Agreements represent the final and binding agreement between the parties thereto on compensation and benefits payable to such of them as are affected by the Project.

(5) The fact that the Company has entered into the Community Mine Continuation Agreements does not derogate from the effect of the releases contained in and the compensation regime established by the *Mining (Ok Tedi Agreement) Act 1976* (as amended and supplemented) in relation to any community which does not enter into such an agreement.

(6) The *Fairness of Transactions Act 1993* has no application to any agreement given the force of law by this Act or by any of the Acts referred to in Section 1(4).

(7) A party to the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement or other beneficiary of a provision of a Community Mine Continuation Agreement may enforce that provision as if it were a party to that Community Mine Continuation Agreement.

5. ENVIRONMENTAL UNDERTAKINGS BY THE STATE IN RESPECT OF THE PROJECT.

(1) Subject to Subsection (3), neither the State nor any Government Agency may take, pursue or in any way support Proceedings against a BHP Billiton Party in respect of an Environmental Claim relating to the operation of the Project.

(2) This section may be pleaded by a BHP Billiton Party as an absolute bar and defence to any Proceedings taken by the State or a Government Agency in breach of its terms.

(3) Subsections (1) and (2) do not apply to an Environmental Claim in respect of the acts or omissions of a BHP Billiton Party during the provision by that BHP Billiton Party of services to the Company after the Effective Date.

6. OK TEDI MINE CLOSURE AND DECOMMISSIONING CODE TO APPLY TO PROJECT.

(1) Subject to Subsection (2), the Ok Tedi Mine Closure and Decommissioning Code, and the mine closure plan approved under the Code, apply in respect of the operation of the Project after the Commencement Date to the exclusion of anything inconsistent with them in the Principal Agreement and any other laws or regulations applying to mine closure whether in force before or after the Commencement Date.

(2) The Provisions of the Principal Agreement and any other law relating to the mine closure and decommissioning which apply to the Project on the Commencement Date continue to apply until a mine closure plan is approved under the Ok Tedi Mine Closure and Decommissioning Code.

7. ANCILLARY POWERS OF MINISTER.

(1) The Minister may certify that an agreement between or purporting to be between the Company and one or more Communities substantially in the form of one of the agreements set out in the Second Schedule, completed in each case with the necessary details where indicated, and with each agreement containing so many of the optional provisions as the parties to the agreement determine, is a Community Mine Continuation Agreement for the purposes of this Act.

(2) Notwithstanding anything in any other law in force in the country at any time (whether before or after the commencement of this Act), the Minister has power, on behalf of the State, to make all grants, issues, renewals and extensions required by or under the Ok Tedi Mine Continuation (Ninth Supplemental) Agreement to be made by the State, and is not bound in that regard by any provisions of any such law requiring or permitting any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provision.

(3) The Minister shall cause to be published in the National Gazette the date which is determined to be the Termination Date under the terms of the Master Agreement.

8. EXECUTION OF COMMUNITY MINE CONTINUATION AGREEMENTS AND OTHER ACTS BINDING.

(1) The signature or other execution of a Community Mine Continuation Agreement by a person representing or purporting to represent a Community or clan, or that person's delegate, binds all of the members of that Community or clan to that Community Mine Continuation Agreement notwithstanding –

- (a) that there is no express authority for the person to sign or execute the Community Mine Continuation Agreement on behalf of the members of the Community or clan concerned; or
- (b) that not all representatives of the relevant Community or clan have signed or otherwise executed the Community Mine Continuation Agreement; or
- (c) that not all members of the Community are parties to the Community Mine Continuation Agreement; or
- (d) any requirement of the Underlying Law.

(2) The Acts and deeds of a person described in Subsection (1) in respect of any matter referred to in the relevant Community Mine Continuation Agreement bind each person on behalf of whom that person purports to be acting, and where a person purports to be acting on behalf of the whole of that person's Community or clan, that person's acts and deeds bind each existing and future member of that person's Community or clan, including, without limitation, children and persons who are subsequently born into, or who subsequently join, that Community or clan.

9. ADDITIONAL POWERS OF MINING WARDENS.

(1) A Mining Warden has, in addition to the functions and powers conferred by the *Mining Act 1992*, the powers and functions conferred by this Act and the Principal Agreement.

(2) In the case of a dispute, a certificate by a Mining Warden that –

- (a) a person represents a particular Community or clan; or
- (b) a person is a delegate of a person representing a particular Community or clan; or
- (c) a person is a member of a Community or clan,

is conclusive evidence of that fact.

s. 10. *Mining (Ok Tedi Mine Continuation (Ninth Supplement) Agreement
2001*

10. MASTER AGREEMENT EXEMPT FROM STAMP DUTY.

The Master Agreement is not subject to stamp duty under the *Stamp Duties Act 1952*.

11. TAX STATUS OF FOUNDATION.

(1) For the purposes of the *Income Tax Act 1959* –

- (a) the income of the Foundation is exempt from income tax; and
- (b) moneys paid or the costs of assets contributed to the Foundation may be claimed, and will allowed, as a deduction to the person who made the payment or contribution in the year of payment or contribution, as the case may be.

(2) For the purposes of the *Value Added Tax Act 1998*, tax on all supplies made by the Foundation is to be charged at a rate of zero percent.

12. COMMENCEMENT.

This Act shall come into operation –

- (a) in respect of Section 3(2) and Section 4(2) –on the Termination Date; and
- (b) in respect of Section 5 –on the Effective Date; and
- (c) in respect of the remainder –on the Commencement Date.

13. ACTS BINDS THE STATE.

This Act binds the State.

Office of Legislative Counsel, PNG