

No. 1 of 2007.

Petromin PNG Holdings Limited Authorization Act 2007.

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AN ACT

entitled

Petromin PNG Holdings Limited Authorization Act 2007,

Being an Act:

- (a) to recognise the establishment of Petromin PNG Holdings Limited as a commercial enterprise and to provide that Petromin PNG Holdings Limited is not the State or an instrumentality of the State and that its assets are not public assets; and
- (b) to permit the State to nominate Petromin PNG Holdings Limited as the nominee of the State to acquire certain assets for the purposes of the *Mining Act 1992* and the *Oil and Gas Act 1998* and for related purposes; and
- (c) to authorise the State to direct Mineral Resources Development Company Limited to transfer certain assets to Petromin PNG Holdings Limited; and
- (d) to authorize the State to direct Independent Public Business Corporation to transfer certain assets to Petromin PNG Holdings Limited;
- (e) to make consequential amendments to certain other Acts to facilitate the application of this Act.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

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 of religion conferred by Section 45 of the *Constitution*;
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*;
- (c) the right to assembly and association conferred by Section 47 of the *Constitution*;
- (d) the right to freedom of employment conferred by Section 48 of the *Constitution*;
- (e) the right to privacy conferred by Section 49 of the *Constitution*; and
- (f) the right to freedom of information conferred by Section 51 of the *Constitution*;

is a law that is made to Section 38 of the *Constitution* for the purposes of giving effect to the public interest in public welfare.

(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 purpose and reason for each such taking and acquisition are declared and described to be to facilitate the efficient and economical development and operation of the Company and of the assets acquired by it so that the Company might thereby contribute to the advancement of the social and economic welfare of the people of Papua New Guinea; and
- (b) such purpose and reason is hereby also declared to be a reason that is reasonably justified in a democratic society that has proper regard for the rights and dignity of mankind; and
- (c) this Act is hereby expressed to be in the national interest; and
- (d) the undertaking of the obligations of the State or the Company, as the case may be, in relation to each such taking or acquisition under this Act, the *Mining Act 1992* and the *Oil and Gas Act 1998*, the conditions of any lease, licence or other tenement granted or issued under the *Mining Act 1992* or the *Oil and Gas Act 1998*, the terms of any mining development contract, petroleum development contract or gas agreement or other agreement made in connection with such grant or issue or the acquisition by the State of participating interest in a Mining Project or a Petroleum Project and the terms of any such taking or acquisition as provided for in this Act, shall constitute compensation made in connection with that taking or acquisition,

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

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates, in its entirety, to a matter of national importance.

2. INTERPRETATION.

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

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any corporation, securities, choses in action and documents of any kind;

“**Company**” means Petromin PNG Holdings Limited, a company incorporated under the *Companies Act 1997*;

“**IPBC**” means Independent Public Corporation, established under the *Independent Public Business Corporation of Papua New Guinea Act 2002*;

“**Mining Project**” has the meaning set out in the *Mining Act 1992*;

“**Minister**” means the Minister responsible for the administration of this Act;

“**MRDC**” means Mineral Resources Development Company Limited; and

“**Petroleum Project**” has the meaning set out in the *Oil and Gas Act 1998*.

(2) It is declared that –

- (a) application of *Public Finances (Management) Act 1995* by this Act, the Company is not a public body for the purposes of the *Public Finances (Management) Act 1995*; and

- (b) application of the *Claims By and Against the State Act 1996* by this Act, the *Claims By and Against the State Act 1996* does not apply to claims by or against the Company; and
- (c) application of *Independent Public Business Corporation of Papua New Guinea Act 2002* by this Act, the *Independent Public Business Corporation of Papua New Guinea Act 2002* and any other powers and authorities under that Act does not apply to –
 - (i) the Company or any of its subsidiaries; and
 - (ii) the assets of the Company or of its subsidiaries; and
 - (iii) any of the shares or rights in respect of shares of the Company or any of its subsidiaries; and
- (d) application of the *Audit Act 1989* by this Act, the account of the Company and its subsidiaries are not subject to inspection and audit under the *Audit Act 1989*.

3. APPLICATION OF THE ACT.

- (1) This Act is not limited in its application.
- (2) Without limiting Subsection (1), this Act binds –
 - (a) the State; and
 - (b) the Company and the subsidiaries of the Company; and
 - (c) MRDC and the subsidiaries of MRDC; and
 - (d) IPBC.

4. ESTABLISHMENT AND OPERATION OF THE COMPANY.

- (1) The Company has been incorporated under the *Companies Act 1997*.
- (2) The Company is required by the terms of its Constitution to operate as a commercial enterprise at least as efficiently as comparable business in Papua New Guinea and to maximise the value of the shareholder's investment in the Company.
- (3) To facilitate, in part, the ability of the Company to meet the requirements referenced in Section 4(2), the Constitution of the Company provides that –
 - (a) the majority of the directions of the Company must be PNG citizens who are independent of the State and relevantly qualified and experienced; and
 - (b) the majority of directions of the Company must be widely considered to be of good character and repute and of high business integrity in the PNG community and must satisfy minimum requirements as to tertiary level education and relevant work experience.
- (4) The Constitution of the Company provides that subject to the Company in all respect satisfying the requirements of Section 4(2), the principal objective for which the Company has been established is to hold and develop mining and petroleum tenements in Papua New Guinea and either alone or with others and for that purpose –
 - (a) to acquire from the State and from others, whether directly or as a nominee of the State, interests in mining and petroleum projects in Papua New Guinea;
 - (b) to engage in mineral and petroleum exploration, evaluation and development and the production and recovery of any naturally occurring minerals and petroleum, whether in solid, liquid, or gaseous form or mixed together or with other material and substances, and to process, sell, or otherwise dispose of the same;

- (c) to engage in and carry on, in all means, transportation, in Papua New Guinea and any part of the world, of mineral and petroleum or their derivatives whether in solid, liquid, gaseous or mixed together, of with other substances, and to sell or dispose of the same;
- (d) where the economic, financial and technological circumstances permit:
 - (i) to be sensitive to the needs of the physical environment in which the Company operates; and
 - (ii) to utilise and develop its assets in line with the best practices and principles of sustainable development; and
- (e) to exhibit a sense of social responsibility by having regard to the interests of the communities in which the Company operates.

5. STATUS OF THE COMPANY.

(1) the Company and the Company's subsidiaries are not, and shall for any purpose be taken or characterised as being –

- (a) the State; or
- (b) an agent of the State, unless expressly appointed for such purpose by the State with the express concurrence of the Company or the subsidiary concerned; or
- (c) an instrumentality of the State.

(2) Neither the Company nor any of the Company's subsidiaries is entitled to claim the benefit of sovereign immunity in relation to its or their actions or assets.

(3) The assets of the Company and the Company's subsidiaries, including the assets vested in or transferred to the Company or any such subsidiary pursuant to this Act, are not public assets for any purpose.

(4) Neither the Company nor any of the Company's subsidiaries is entitled to render the State liable for its or their debts, liabilities or obligations.

(5) The State does not, and shall not, guarantee or indemnify the Company or any of the Company's subsidiaries in respect of any of its or their assets or liabilities (including any overdraft or other financial accommodation).

(6) The State does not, and shall not, guarantee or indemnify any third person in respect of any debt or liability of the Company or any of the Company's subsidiaries unless, in each particular instance, the National Executive Council, with the express concurrence of the Company or the subsidiaries concerned, expressly agrees that the State shall do so.

6. ACQUISITION OF MINING AND PETROLEUM INTERESTS.

(1) For so long as over 50% of the issued shares in the Company are held by or on behalf of the State, the State through the Minister shall be entitled, but not obliged –

- (a) to transfer or direct the transfer to the Company or any of its subsidiaries, from time to time, of a participating interest in a mining development for which a right of acquisition by the State has arisen under an agreement in respect of a mining development to which Section 17 of the *Mining Act 1992* refers; and
- (b) to nominate the Company or any of its subsidiaries, from time to time, as the nominee of the State in respect of a participating interest in a Petroleum Project for which the State's right to effect a nomination has arisen under Section 165 of the *Oil and Gas Act 1998*.

(2) The State's entitlements through the Minister to transfer, direct a transfer or effect a nomination under Subsection (1) shall only apply to that participating interest that remains after the State has met its obligations to the project area landowners and the relevant Provincial and Local Level Governments under –

(a) in respect of mining interests, the relevant agreement in respect of the mining development concerned; and

(b) in respect of petroleum interests, Section 167 of the *Oil and Gas Act 1998*.

(3) In the event that the State through the Minister has elected to effect transfer to or direct a transfer to or effect a nomination of the Company or one of its subsidiaries, from time to time, in respect of a participating interest under the State's power to do so granted in Subsection (1) and the State through the Minister and the Company negotiating in good faith have agreed on the terms by which the Company or such subsidiary would make the acquisition concerned, including without limitation, the payment of consideration to the State, and the Company has agreed to be bound by those terms, then the State through the Minister shall effect such transfer or nomination to or in favour of the Company or such subsidiary in accordance with those agreed terms.

7. ACQUISITION OF PARTICIPATING INTERESTS HELD BY MRDC.

(1) For so long over 50% of the issued shares in the Company are held by or on behalf of the State, the State through the Minister shall be entitled, but not obliged, to direct MRDC or any subsidiary of MRDC to transfer to the Company or any subsidiary of the Company, from time to time, the participating interest in a Mining Project or a Petroleum Project held by MRDC or that subsidiary of MRDC in its own right and not held for or on behalf of any project area landowner, Provincial Government or Local Level Government.

(2) In the event that the State through the Minister has elected to give a direction under Subsection (1) and the State through the Minister and the Company negotiating in good faith have agreed on the terms by which the Company or such subsidiary of the Company would make the acquisition concerned, including without limitation, the payment of consideration to MRDC or the relevant subsidiary of MRDC, and the Company has agreed to be bound by those terms, then MRDC or such subsidiary of MRDC, on the direction of the State through the Minister, shall effect such transfer to the Company or such subsidiary of the Company in accordance with those agreed terms.

8. ACQUISITION OF PARTICIPATING INTERESTS HELD BY IPBC.

(1) For so long as over 50% of the issued shares in the Company are held by or on behalf of the State, the State through the Minister shall be entitled, but not obliged to direct IPBC to transfer to the Company or any subsidiary of the Company, from time to time, any asset held by IPBC which directly or indirectly, but not necessarily wholly or exclusively, relates to the holding of an interest in a Mining Project or a Petroleum Project in Papua New Guinea.

(2) In the event that the State through the Minister has elected to give a direction under Subsection (1) and the State through the Minister and the Company negotiating in good faith have agreed on the terms by which the Company or such subsidiary of the Company would make the acquisition concerned, including without limitation, the payment of consideration to IPBC, and the Company has agreed to be bound by those terms, then IPBC, on the direction of the State through the Minister, shall effect such transfer to the Company or such subsidiary of the Company in accordance with those agreed terms.

9. LIABILITY TO TAXATION AND DUTIES.

The State may through the Minister waive the payment by any person of any taxes, duties, fees, charges, rates, excise or other impost of any kind otherwise charged or imposed under any statute in respect of any nomination of, assumption by, transfer to, acquisition by, vesting in or entering into by the Company of any assets, liabilities, rights, contracts, deeds, instruments, agreements or other matters or things done under this Act including any registration, lodgement or other fees or amounts of any description which but for this section would be payable.

10. NO BREACH OF CONTRACTS, ETC.,.

The operation of any Sections 6, 7 and 8 is not to be regarded as –

- (a) prejudicially affecting, or a breach of or a default under, any contract, deed, instrument or agreement (written or otherwise) or otherwise, a civil wrong; or
- (b) a breach of or default under any provision of any contract, deed, instrument, or agreement prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) giving rise to any remedy by a part to, or causing or permitting the termination or discharge of, any contract, deed, instrument or such agreement or any judgment, order and process of a court which creates, modified or extinguishes assets, rights or liabilities (or which would do so if lodged, filed or registered in accordance with any law), because of a change in the beneficial or legal ownership or any asset, right or liability.

11. AMENDMENT OF AUDIT ACT.

The *Audit Act 1989* is amended in Section 1 by repealing the definition “Government-owned company” and replaced with the following:

‘Government-owned company’ means a company incorporated under the *Companies Act 1997*, a majority of the shares in which are held by, or on behalf of, the State but does not include the company referred to as the “Company” in the *Petromin PNG Holdings Limited Authorisation Act 2006* or any subsidiary of that company. ”

12. AMENDMENT OF INDEPENDENT PUBLIC BUSINESS CORPORATION OF PAPUA NEW GUINEA ACT.

The Independent Public Business Corporation is amended by inserting immediately after Section 59 the following new section:

“59A. APPLICATION OF SECTION 3, 50 AND 59

“(1) Section 3 does not apply to limit in any way or prevent the State from exercising its rights in respect of an acquisition of assets from the Corporation pursuant to Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007*.

“(2) Any assets which are to be transferred by the Corporation under Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007* shall, by this section, be transferred free of any trust to which they were subjected under Section 50.

“(3) Section 59 does not apply to anything done or effected in respect of a transfer of assets by the Corporation pursuant to Section 8 of the *Petromin PNG Holdings Limited Authorisation Act 2007*.”

13. REGULATION.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or given effect to this Act and generally for achieving the purpose of this Act, and in particular for prescribing fees and for prescribing penalties of fines not exceeding K20,000.00 and default penalties of fines not exceeding K2,000.00 for infringements of the regulations.

Office of Legislative Counsel, PNG