

No. 4 of 2018.

*Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement)(Amendment) Act  
2018.*

Certified on: 21 MAY 2018.



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**ARRANGEMENT OF SECTIONS.**

1. Compliance with constitutional requirements (Amendment of Section 1).
2. Interpretation (Amendment of Section 2).
3. Ancillary powers of Minister (Amendment of Section 7).
4. Mine Closure and Decommissioning Code (Amendment of Schedule 3).



No. 4 of 2018.

AN ACT

entitled

***Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) (Amendment) Act 2018,***

Being an Act to provide for amendments to the Ok Tedi Mine Closure and Decommissioning Code in relation to establishment and maintenance of the Ok Tedi Financial Assurance Fund and the investment and application of moneys forming part of that fund, and for related purposes,

MADE by the National Parliament.

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS (AMENDMENT OF SECTION 1).**

Section 1 of the Principal Act is amended in Subsection (4) by -

- (a) deleting the comma after Paragraph (j) and replacing it with “; and”; and
- (b) adding the following new paragraphs:

- “(ja) the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001*; and
- (jb) the *Mining (Ok Tedi Tenth Supplemental Agreement) Act 2013*; and
- (jc) the *Mining (Ok Tedi Mine Extension (Eleventh Supplemental) Agreement) Act 2014*; and
- (jd) the *Mining (Ok Tedi Twelfth Supplemental Agreement) Act 2017*.”.

**2. INTERPRETATION.**

Section 2 of the Principal Act is amended in Subsection (2) by inserting the following definitions in their proper alphabetical order:

- “Mine Closure and Decommissioning Code” means the document contained in the Third Schedule to the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001*;
- “Ninth Supplemental Agreement” means the agreement scheduled to the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001*;
- “Principal Agreement” means the agreement, a copy of which is set out in the Schedule to the *Mining (Ok Tedi Agreement) Act* (Chapter 363) as varied, amended, and supplemented by the agreements respectively set out in the Schedules to the Acts referred to in Section 1(2)(b) to (n).

**3. ANCILLARY POWERS OF MINISTER (AMENDMENT OF SECTION 7).**

Section 7 of the Principal Act is amended by inserting a new subsection after Subsection (3) as follows:

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“(4) 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 determinations or approvals (in his deliberate judgment) required by or under the Mine Closure and Decommissioning Code, 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 provisions.”.

**4. MINE CLOSURE AND DECOMMISSIONING CODE (AMENDMENT OF SCHEDULE 3).**

Schedule 3 (*Ok Tedi Mine Closure and Decommissioning Code*) of the Principal Act is amended -

(a) in Section 2.2 by inserting the following new definition:

“Excess Monies” means, at any time, the amount determined by the Company, acting through its board of directors and approved by the State to be the amount by which the monies belonging to the Ok Tedi Financial Assurance Fund exceed the amount required as Financial Assurance for work required under the Mine Closure Plan or any other provisions of the Code, at that time;” and

(b) by repealing Section 5.3 and replacing it with the following:

“5.3 Establishment and operation of the Ok Tedi Financial Assurance Fund -

- (a) the Company must establish a reserve account satisfactory to the State in the joint names of the Company and the State to be known as the Ok Tedi Financial Assurance Fund to which monies contributed by way of Financial Assurance must be credited and from which disbursements authorised by Section 5.5 may be debited; and
- (b) the Company may satisfy its obligations under Paragraph (a) by establishing a trust (on terms acceptable to the State) for the purpose of assisting the Company and the State in meeting their respective obligations under this Code; and
- (c) monies belonging to the Ok Tedi Financial Assurance Fund shall be held in -
  - (i) US dollars in an account or accounts in a bank or financial institution acceptable to the State; and
  - (ii) other investments dominated in US dollars or that provide guaranteed or secured US dollar payments on maturity, conversion or termination, provided that such investments -
    - (A) are reasonably expected to generate returns (in US dollar terms) at least equal to the returns available on US Treasury securities for an equivalent investment period; and

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- (B) can be readily liquidated in sufficient time to meet the payment of required costs under Section 5.5(b)(i) to (iii) as and when those costs fall due,
- and in each case, are in a form and subject to such terms and conditions that are acceptable to the State; and
- (d) Financial Assurance is to be provided by way of biannual contributions by the Company to the Ok Tedi Financial Assurance Fund; and
- (e) the first contribution to the Ok Tedi Financial Assurance Fund is to be made by the Company on or before 1 July 2002; and
- (f) the size of the biannual contributions to the Ok Tedi Financial Assurance Fund must be such that, when taken together with interest and other returns accruing on those contributions, by the estimated date of Cessation of Commercial Production (as may be varied from time to time) there are adequate amounts in the fund to undertake the Mine Closure Plan; and
- (g) interest and other returns accruing on all amounts deposited in the Ok Tedi Financial Assurance Fund must be credited to the Ok Tedi Financial Assurance Fund; and
- (h) the Company is not required to provide Financial Assurance in connection with its obligations under the Mine Closure Plan in any form other than that prescribed under this section; and
- (i) the Company's obligation to contribute to the Ok Tedi Financial Assurance Fund is suspended during any period which, under Clause 361.1 of the Principal Agreement, any failure on the part of the Company to comply with any of the terms and conditions and provisions of the Principal Agreement or the Approved Proposals, would not be grounds for termination."; and
- (c) by repealing Section 5.5 and replacing it with the following:
- "5.5 Disbursement from the Ok Tedi Financial Assurance Fund -
- (a) there can be no disbursements from the Ok Tedi Financial Assurance Fund except as prescribed in Subsection (b); and
- (b) disbursements from the Ok Tedi Financial Assurance Fund may only be used for the purpose of -
- (i) meeting the costs incurred by the Company, its contractors and agents in undertaking work required under the Mine Closure Plan; and

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- (ii) meeting the cost of work ordered by the State under Section 5.6; and
  - (iii) meeting the reasonable cost of all inspections undertaken under Section 6.2; and
  - (iv) meeting reasonable investment or management fees, Costs, expenses or other charges relating to the Ok Tedi Financial Assurance Fund (including any accounts or investments maintained by or for and on behalf of the Ok Tedi Financial Assurance Fund that has been approved by the State; and
  - (v) refunding all or part of any excess monies to the Company; and
  - (vi) refunding money, and the interest or other returns earned on it, to the Company, if in the opinion of the State, the money is no longer required as Financial Assurance for work required under the Mine Closure Plan and provided, Section 6.4(b) has been complied with; and
- (c) the Company and the State will agree on a mechanism for disbursements from the Ok Tedi Financial Assurance Fund to ensure prompt payment of amounts for which disbursements from the fund may be made under Section 5.5(b).”; and
- (d) in Section 5.7 by repealing Paragraph (c) and replacing it with the following:

“(c) If the State authorises the return of any monies to the Company under Section 5.5(b)(v) or (vi), that money will be assessable income under the *Income Tax Act 1959* and subject to taxation.”.

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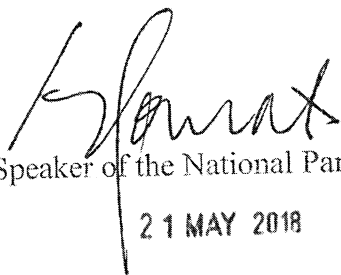
I hereby certify that the above is a fair print of the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement)(Amendment) Act 2018* which has been made by the National Parliament.



Clerk of the National Parliament.

21 MAY 2018

I hereby certify that the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement)(Amendment) Act 2018* was made by the National Parliament on 13 April, 2018.



Speaker of the National Parliament.

21 MAY 2018