

No. 9 of 2020.

Mineral Resources Development Company Limited Authorisation Act 2020.

Certified on: 26 JUN 2020



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ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation -
 - “assets”
 - “beneficial interest”
 - “beneficiaries”
 - “Board”
 - “Directors”
 - “equity benefit”
 - “liabilities”
 - “mining project”
 - “MRDC”
 - “MRDC Companies”
 - “MRDC Company”
 - “MRDC Shareholder”
 - “MRDC Shares”
 - “MRDC Subsidiary”
 - “National Executive Council”
 - “petroleum project”
 - “Prime Minister”
 - “project area landowners”
 - “Public Funds”
 - “royalty benefit”
 - “State”
 - “Trust”
 - “unconventional hydrocarbons project”.
3. Application of this Act.
4. Legislations not applicable to a Mineral Resources Development Company.

**PART II. - SHARES IN MINERAL RESOURCES DEVELOPMENT COMPANY
AND MINERAL RESOURCES DEVELOPMENT COMPANY'S
SUBSIDIARIES.**

5. Shares in Mineral Resources Development Company.
6. Shares in Mineral Resources Development Company's Subsidiaries.

**PART III. - INDEPENDENCE OF MINERAL RESOURCES DEVELOPMENT
COMPANIES.**

7. Independence of Mineral Resources Development Companies.

PART IV. - MINERAL RESOURCES DEVELOPMENT COMPANY.

8. Mineral Resources Development Company.
9. Board of Mineral Resources Development Company.

**PART V. - MINERAL RESOURCES DEVELOPMENT COMPANY'S
SUBSIDIARIES.**

10. Mineral Resources Development Company's subsidiaries.
11. Trust arrangements under the *Oil and Gas Act 1998*.

PART VI. - ADDITIONAL PROVISIONS.

12. Exemption from duties.
13. Application of Leadership Code.

PART VII. - MISCELLANEOUS.

14. Regulations.
15. Transitional provisions.
16. Repeal of *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.



No. of 2020

AN ACT

entitled

Mineral Resources Development Company Limited Authorisation Act 2020.

Being an Act to -

- (a) recognise the incorporation of Mineral Resources Development Company Limited as an entity that, together with its subsidiaries, holds on trust interests in petroleum, mining and unconventional hydrocarbons projects for beneficiaries including project area landowners, affected Provincial Governments and Local-level Governments; and
- (b) provide that the shares in Mineral Resources Development Company Limited are held on trust by the Prime Minister from time to time on behalf of the State; and
- (c) provide that Mineral Resources Development Company Limited and its subsidiaries are not the State or instrumentalities of the State and that their assets shall not be deemed as public assets; and
- (d) repeal the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*, and for related purposes,

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.

PART I. - PRELIMINARY.

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 from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of conscience, thought and religion conferred by Section 45; and
- (c) the right to freedom of expression conferred by Section 46; and
- (d) the right to freedom of assembly and association conferred by Section 47; and
- (e) the right to freedom of employment conferred by Section 48; and
- (f) the right to privacy conferred by Section 49; and
- (g) the right to freedom of information conferred by Section 51,

is a law that is made to comply with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular the National Goals and Directive Principles, namely -

- (i) national sovereignty and self-reliance; and
- (ii) national resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper regard for the rights and dignity of mankind.

(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* -

Mineral Resources Development Company Limited Authorisation

- (a) the reason for each such taking and acquisition are declared and described to facilitate the efficient and economical development and operation of MRDC and each MRDC Subsidiary, and of the assets acquired by them so that MRDC and each MRDC Subsidiary may contribute to the advancement of the social and economic welfare of the people of Papua New Guinea; and
- (b) such reason is 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, MRDC and each MRDC Subsidiary, as the case may be, in relation to each such taking or acquisition under this Act, the *Oil and Gas Act 1998*, the *Mining Act 1992*, the *Unconventional Hydrocarbons Act 2015* or any other Act 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) Insofar as this Act provides for 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* of any person who is not a citizen, this Act is made pursuant to Section 53(7) of the *Constitution*.

(4) 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*.

(5) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and is hereby expressed to be in the national interest.

2. INTERPRETATION.

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;
- “beneficial interest” means the interest held by beneficiaries in trust property held by a trustee for and on behalf of the beneficiaries under the terms of the relevant trust deed or other trust arrangement and includes rights to receive benefits, including income and proceeds of sale, arising in respect of the trust property;
- “beneficiaries” means the project area landowners identified by the Minister in an instrument in accordance with the *Oil and Gas Act 1998* and the *Unconventional Hydrocarbons Act 2015*, the affected Local-level Governments and the Provincial Governments; and
- “Board” means the Board of Directors of a Company;
- “Directors” means the members of the Board of Directors of a Company;
- “equity benefit” when employed in relation to -
 - (a) a petroleum project, has the meaning given to that term in the *Oil and Gas Act 1998*; and
 - (b) a mining project, means any equity benefit or any other benefit in relation to a mining project including by way of a beneficial interest in a licence or assets attributable to a licence granted to a beneficiary by the State by way of an Act or agreement; and
 - (c) an unconventional hydrocarbons project, has the meaning given to that term in the *Unconventional Hydrocarbons Act 2015*;

Mineral Resources Development Company Limited Authorisation

- “liabilities” include debts, obligations and liabilities of any nature and whether present or future, actual or contingent or liquidated or unliquidated;
- “mining project” has the same meaning given to that term in the *Mining Act 1992*;
- “MRDC” means Mineral Resources Development Company Limited, a company incorporated under the *Companies Act 1997*;
- “MRDC Companies” means any one or more of MRDC Subsidiaries;
- “MRDC Company” means any one of MRDC company, and includes each MRDC Subsidiary;
- “MRDC Shareholder” means the person holding, from time to time, the office of Prime Minister established by Section 142 of the *Constitution* and who holds the MRDC shares for and on behalf of the State;
- “MRDC Shares” means all of the issued share capital of MRDC and all rights in respect of unissued shares of MRDC;
- “MRDC Subsidiary” means wholly owned subsidiaries of MRDC that hold on trust for beneficiaries, an equity benefit, royalty benefit or any other benefit in relation to a petroleum project, mining project or unconventional hydrocarbons project;
- “National Executive Council” means the National Executive Council established under Section 149 of the *Constitution*;
- “petroleum project” has the meaning given to that term in the *Oil and Gas Act 1998*;
- “Prime Minister” means the person holding from time to time, the office of Prime Minister established by Section 142 of the *Constitution*;
- “project area landowners” has the meaning given to that term in the *Oil and Gas Act 1998* and the *Unconventional Hydrocarbons Act 2015*.
- “Public Funds” means Public Funds (or monies) as defined in the *Public Finances (Management) Act 1995*;
- “royalty benefit” when employed in relation to -
- (a) a petroleum project, has the meaning given to that term in the *Oil and Gas Act 1998*; and
 - (b) a mining project, means any royalty benefit or other benefit in relation to a mining project, whether attributable to a licence, or payment based on production or profits of the mining project, or otherwise, granted to a beneficiary by the State by way of an Act or agreement; and
 - (c) an unconventional hydrocarbons project, has the meaning given to that term in the *Unconventional Hydrocarbons Act 2015*;
- “State” means the Independent State of Papua New Guinea;
- “Trust” means the arrangements under which MRDC and the MRDC Subsidiaries hold assets vested in MRDC and the MRDC Subsidiaries, as trustee for and on behalf of beneficiaries including project area landowners, affected Local-level Governments and Provincial Governments, in accordance with the provisions of this Act and any other Act;
- “unconventional hydrocarbons project” has the meaning given to that term in the *Unconventional Hydrocarbons Act 2015*.

3. APPLICATION OF THIS ACT.

- (1) This Act is not limited in its application.
- (2) This Act binds -
 - (a) the State; and
 - (b) MRDC; and
 - (c) each MRDC Subsidiary; and
 - (d) the MRDC Shareholder.

4. LEGISLATIONS NOT APPLICABLE TO A MINERAL RESOURCES DEVELOPMENT COMPANY.

The following Acts do not apply to a MRDC Company:

- (a) *Kumul Consolidated Holdings Act 2002*; and
- (b) *Public Finance (Management)(Amendment) Act 2016*; and
- (c) *Public Money Management Regularization Act 2017*; and
- (d) *Attorney General Act 1989*; and
- (e) *Claims By and Against the State Act 1996*; and
- (f) *Audit Act 1989*; and
- (g) *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

**PART II. - SHARES IN MINERAL RESOURCES DEVELOPMENT COMPANY
AND MINERAL RESOURCES DEVELOPMENT COMPANY'S
SUBSIDIARIES.**

5. SHARES IN MINERAL RESOURCES DEVELOPMENT COMPANY.

- (1) The MRDC Shareholder shall at all times hold the MRDC Shares on trust for the State.
- (2) The MRDC Shareholder shall not do or permit anything to be done, including but not limited to -
 - (a) assigning; or
 - (b) mortgaging; or
 - (c) charging; or
 - (d) encumbering; or
 - (e) transmitting; or
 - (f) seizing; or
 - (g) transferring; or
 - (h) selling; or
 - (i) disposing,

the shares in MRDC, that would result in the State ceasing to be beneficially entitled to all of the MRDC Shares.

(3) On the date on which this Act comes into operation, the MRDC Shareholder is the person who holds the office of Prime Minister established by Section 142 of the *Constitution*.

(4) The office of MRDC Shareholder shall immediately succeed to a person who holds, from time to time, the office of Prime Minister, established by Section 142 of the *Constitution*.

(5) The State, as the beneficial holder of the MRDC Shares, accepts each successive appointment as the MRDC Shareholder, of each person who holds, from time to time, the office of Prime Minister.

6. SHARES IN MINERAL RESOURCES DEVELOPMENT COMPANY'S SUBSIDIARIES.

MRDC and each MRDC Subsidiary, shall not do or permit anything to be done, including but not limited to -

- (a) assigning; or
- (b) mortgaging; or
- (c) charging; or
- (d) encumbering; or
- (e) transmitting; or
- (f) seizing; or
- (g) transferring; or
- (h) selling; or

Mineral Resources Development Company Limited Authorisation

(i) disposing,

the shares in a MRDC Subsidiary, that would result in the company that is a MRDC Subsidiary ceasing to be a wholly owned subsidiary of MRDC where that company holds on trust for the beneficiaries, an equity benefit, royalty benefit or any other benefits in relation to a petroleum project, a mining project or an unconventional hydrocarbon project.

PART III. - INDEPENDENCE OF MINERAL RESOURCES DEVELOPMENT COMPANIES.

7. INDEPENDENCE OF MINERAL RESOURCES DEVELOPMENT COMPANIES.

(1) Notwithstanding the identity of any party owning any of the shares in a MRDC Company, each of the MRDC Companies is not, and shall not 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 MRDC Company concerned; or
- (c) an instrumentality of the State; or
- (d) a Department of the National Public Service, and no officer in his capacity as an officer of the MRDC Company, is an officer in the National Public Service.

(2) An asset of a MRDC Company -

- (a) is not a public fund or a public asset for any purpose, except as provided in this Act or any other Act; and
- (b) shall not be vested in the State, transferred to the State or a nominee of the State, without fair and just compensation.

(3) A MRDC Company is not entitled to render the State liable for its debts, liabilities or obligations,

(4) The State shall not guarantee or indemnify -

- (a) a MRDC Company in respect of any of its assets or liabilities (including any overdraft or other financial accommodations); or
- (b) a third person in respect of any debt or liability of a MRDC Company,

unless, in each particular instance, the National Executive Council expressly agree that the State may do so.

(5) A MRDC Company shall perform its functions and duties and exercise its powers independently of, and free from interference or direction by -

- (a) the State or State Ministers; or
- (b) members of Parliament; or
- (c) other provincial or local-level governments; or
- (d) officers of the public service,

other than as set out in this Act or any other Act and the respective Company Constitution.

(6) For the avoidance of doubt, MRDC Companies may engage in all activities of a commercial enterprise including -

- (a) acquiring assets; and
- (b) developing assets; and
- (c) disposing of assets; and
- (d) borrowing and obtaining financial accommodation,

without limitation and acting independently from -

- (i) the State or State Ministers; or
- (ii) members of Parliament; or
- (iii) other provincial or local-level governments; or

Mineral Resources Development Company Limited Authorisation

(iv) officers of the public service,
other than as set out in this or any other Act and the respective Company constitution.

(7) Subsections (5) and (6) do not apply to any action taken by the MRDC Shareholder pursuant to the MRDC Shareholder's obligations under Section 5.

PART IV. - MINERAL RESOURCES DEVELOPMENT COMPANY.

8 MINERAL RESOURCES DEVELOPMENT COMPANY.

(1) MRDC is incorporated under the *Companies Act 1997*.

(2) The Constitution of MRDC shall contain provisions that give effect to the objects, powers and functions of MRDC.

9. BOARD OF MINERAL RESOURCES DEVELOPMENT COMPANY.

(1) The composition, including qualification of Directors and the appointment and removal of the Board of MRDC shall be provided for by the Constitution of MRDC.

(2) The Board of MRDC shall be responsible for directing, supervising and managing the company in accordance with the Constitution of MRDC.

(3) The remuneration of Directors shall be prescribed in the respective Constitutions of MRDC and each MRDC Company.

PART V. - MINERAL RESOURCES DEVELOPMENT COMPANY'S SUBSIDIARIES.

10. MINERAL RESOURCES DEVELOPMENT COMPANY'S SUBSIDIARIES.

(1) The Board of each MRDC Subsidiary shall comprise -

- (a) a majority of Directors representing the State as nominated by the Board of MRDC; and
- (b) a minority of Directors appointed pursuant to the Constitution of the MRDC Company, representing the beneficiaries on whose behalf the relevant MRDC Subsidiary holds interests; and
- (c) the Managing Director of MRDC as the sole executive director.

(2) For the avoidance of doubt, except to the extent of an inconsistency with the provisions of this Act, the *Companies Act 1997* applies to MRDC Subsidiaries including the appointment and conduct of Directors of MRDC Subsidiaries.

- (3) Any action undertaken in compliance with Subsection (1) shall not be regarded as -
- (a) prejudicially affecting, or being 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 party 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, modifies 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. TRUST ARRANGMENT UNDER THE OIL AND GAS ACT 1998.

(1) Subject to Subsection (2), where by an act or agreement the State grants to project area landowners, affected local-level governments or affected provincial governments, any equity benefit, royalty benefit or any other benefit in relation to a petroleum project, whether by way of a beneficial interest in a licence or assets attributable to a licence or payments based on production or profits of the petroleum project, or otherwise, that benefit shall be received and held upon trust for those persons by a corporate trustee which is wholly owned by MRDC.

(2) Subsection (1) shall not apply to monetary grants made by the State to a local-level government or provincial government or any interest in building or other infrastructure provided to a local-level government or provincial government where the building or infrastructure is not a dedicated project facility of the petroleum project.

(3) Where a benefit is held by a trustee upon trust pursuant to Subsection (1), the benefit shall be held in accordance with the following requirements and in accordance with any requirements set out in or pursuant to the *Oil and Gas Act 1998*:

- (a) the terms of the trust shall be set out in a deed approved by the Minister administering the *Oil and Gas Act 1998* upon the recommendation of the Board or MRDC; and
- (b) any such deed may be amended or replaced by MRDC at any time on terms approved by the Prime Minister after consulting with the Minister administering the *Oil and Gas Act 1998* based on the recommendation of the Board of MRDC; and
- (c) any amendment or replacement of a deed proposed by MRDC shall be deemed to take legal effect upon approval by the Prime Minister; and
- (d) the amendment or replacement of a deed in compliance with this subsection, shall not be regarded as prejudicially affecting, or being a breach of or a default under the amended or replaced deed, or under any other contract, deed, instrument or agreement (written or otherwise) or otherwise, a civil wrong; and
- (e) any equity interest or equivalent in a petroleum project held by a MRDC Company shall not without the consent of MRDC be sold or transferred or charged, mortgaged or otherwise encumbered other than for the purpose of financing the activities of the trustee in that petroleum project or securing its joint venture obligations in that petroleum project.

PART VI. - ADDITIONAL PROVISIONS.

12. EXEMPTION FROM DUTIES.

Notwithstanding anything contained in any other law, any transfer or direction to transfer or direction to acquire in respect of any asset or right of whatever nature is exempt from any duties, fees, charges, rates, excises or other imposts of a similar kind otherwise charged or imposed on any person under any statute in respect of any such transfer or direction to transfer or assumption, assignment, transfer, acquisition or vesting.

13. APPLICATION OF LEADERSHIP CODE.

(1) Subject to Section 26 of the *Constitution*, the office of a member of the Board of any MRDC Company is not an office, except for the membership by the following ex-officio members:

- (a) the departmental head responsible for petroleum matters; and
- (b) the departmental head responsible for mineral policy matters; and
- (c) the respective provincial governments.

(2) An employee of any MRDC Company is not a person holding an office, to which Section 26 of the *Constitution* applies and for the avoidance of doubt, no declaration may be made in respect of any office held by that person.

PART VII. - MISCELLANEOUS.

14. REGULATIONS.

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 giving effect to this Act and generally for achieving the purpose of this Act.

15. TRANSITIONAL PROVISIONS.

(1) In this Section, the term "Repealed Act" means the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

(2) A reference in any Act, regulation, rule, by-law, instrument or document to the Repealed Act, or any provision thereof shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

(3) For the avoidance of doubt, except as set out in this Act, any agreement entered into by MRDC or any MRDC Company under the Repealed Act is not affected by the coming into operation of this Act.

(4) A director currently on the Board of MRDC shall remain in office for a term of five years after the coming into operation of this Act and after that, that director shall cease to be a director and the office of the director shall become vacant.

(5) A director currently on the Board of a MRDC Company who represents the beneficiaries shall remain in office for a term of five years after the coming into operation of this Act and after that, that director shall cease to be a director and the office of a director shall become vacant.

16. REPEAL OF MINERAL RESOURCES DEVELOPMENT COMPANY PTY LIMITED (PRIVATISATION) ACT 1996.

The *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* is repealed.

I hereby certify that the above is a fair print of the *Mineral Resources Development Company Limited Authorisation Act 2020*, which has been made by the National Parliament.


Acting Clerk of the National Parliament.

26 JUN 2020

I hereby certify that the *Mineral Resources Development Company Limited Authorisation Act 2020*, was made by the National Parliament on 9 June 2020 by an absolute majority as required by the Constitution.


Speaker of the National Parliament.

26 JUN 2020