

No. 5 of 2015.

Kumul Minerals Holdings Limited Authorisation Act 2015.

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ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with Constitutional requirements.
2. Interpretation.
 - “Accounting Period”
 - “Annual Plan”
 - “assets”
 - “Board”
 - “exploration licence”
 - “fit and proper person”
 - “IPBC”
 - “IPBC Act”
 - “Kumul Minerals Company”
 - “Kumul Minerals Company Shares”
 - “Kumul Minerals Holdings”
 - “Kumul Minerals Holdings Shares”
 - “Kumul Minerals Share Trust”
 - “Kumul Minerals Trust Deed”
 - “Kumul Minerals Trustee”
 - “liabilities”
 - “Majority State Owned Enterprise”
 - “minerals”
 - “mining”
 - “Minister”
 - “MRDC”
 - “MRDC Act”
 - “National Executive Council”
 - “NPCP”
 - “Permitted Superannuation Fund”
 - “person”
 - “Recognised Stock Exchange”
 - “Recognised University”
 - “Relevant Field”
 - “Sovereign Wealth Fund”
 - “State”
 - “State Owned Enterprise”
 - “subsidiary”
 - “Trustee Delegate”.

3. Application of the Act.

PART II. - KUMUL MINERALS SHARE TRUST.

4. Modification of Kumul Minerals Trust Deed.

PART III. - KUMUL MINERALS HOLDINGS.

5. Repeal of *Petromin Papua New Guinea Holdings Limited Authorisation Act 2007*.
6. Change of company name.
7. Establishment and operation of Kumul Minerals Holdings.
8. Independence of Kumul Minerals Companies.
9. The holding and disposal of Kumul Minerals Company Shares.
10. Directors of Kumul Minerals Holdings.
11. Directors of subsidiaries of Kumul Minerals Holdings.
12. Constitutions of Kumul Minerals Companies.
13. Approval of Annual Plans and dividend distributions.

PART IV. - KUMUL MINERALS HOLDINGS TO BE STATE NOMINEE.

14. Kumul Minerals Holdings to be State nominee.
15. Procedures for exercise of State nominee rights.

PART V. - TRANSFER OF MINING INTERESTS.

16. Transfer of mining interests held by Independent Public Business Corporation.
17. Transfer of mining interests held by Mineral Resources Development Corporation.

PART VI. - LIABILITY TO DUTIES.

18. Exemption from duties.

PART VII. - OTHER RIGHTS.

19. Rights in respect of directions under Sections 14, 15, 16 and 17.
20. No breach of contracts, etc.

PART VIII. - LEADERSHIP CODE.

21. Leadership Code not applicable.

PART IX. - REGULATIONS.

22. Regulations.

PART X. - TRANSITIONAL PROVISIONS.

23. Transitional provisions.



No. of 2015.

AN ACT

entitled

Kumul Minerals Holdings Limited Authorisation Act 2015,

Being an Act -

- (a) to recognise the establishment of Kumul Minerals Holdings Limited as a commercial enterprise that principally participates in the conduct of mineral exploration, development, production, processing and marketing activities, including all related upstream, midstream and downstream activities; and
- (b) to provide that Kumul Minerals Holdings Limited and its subsidiaries will not be the State or instrumentalities of the State and that their assets will not be public assets; and
- (c) to provide that the State will nominate Kumul Minerals Holdings Limited or its subsidiaries as the nominees of the State to acquire certain assets for the purposes of the *Mining Act 1992* and *Mining Regulation 1992* and for related purposes; and
- (d) to acknowledge that Kumul Minerals Holdings Limited and the Kumul Minerals Trustee will enter into the Kumul Minerals Trust Deed; and
- (e) to repeal the *Petromin Holdings Limited Authorisation Act 2007*, 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,

of the *Constitution* 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 -

- (h) national sovereignty and self-reliance; and
- (i) 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 respect or 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* -

- (a) the purpose and reason for each such taking and acquisition are declared and described to facilitate the efficient and economical development and operation of Kumul Minerals Holdings and each other Kumul Minerals Company, and of the assets acquired by them so that Kumul Minerals Holdings and each other Kumul Minerals 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 Kumul Minerals Holdings and each other Kumul Minerals Company, as the case may be, in relation to each such taking or acquisition under this Act, the *Mining Act 1992*, the conditions of any lease, licence or other tenement granted or issued under the *Mining Act 1992*, the terms of any mining contract or other agreement made in connection with such grant or issue or the acquisition by the State of participating interest in a mining 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) 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 Subsection 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.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“Accounting Period” means a calendar year commencing on each 1 January;

“Annual Plan” means a plan for activities of Kumul Minerals Holdings and its subsidiaries for the period starting 1 January and ending 31 December that includes -

- (a) a financial plan, including proposed borrowings and payment of dividends; and
- (b) an annual capital and expenditure budget; and
- (c) proposals for acquisition of assets; and
- (d) a forecast of the asset, liability and cash flow position of Kumul Minerals Holdings and its subsidiaries as at the end of the Annual Plan period; and

- (e) identification of assets for joint development between the State, Kumul Minerals Holdings and its subsidiaries and third party investors; and
- (f) proposal for amounts to be preserved for future capital expenditure on a five year rolling forecast basis; and
- (g) identification of assets for rehabilitation and restructure; and
- (h) proposals for sale of assets; and
- (i) proposals regarding financing for the purposes of this Act; and
- (j) proposals for amounts to be set aside on a contingency basis for specific projects; and
- (k) proposed timetables for the matters referred to in Paragraphs (a) to (i);

“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;

“Board” means the board of directors of a Kumul Minerals Company;

“exploration licence” has the meaning given to that term in the Mining Act;

“fit and proper person” means a person determined as such in accordance with this Act after taking into account the following considerations:

- (a) that person’s probity; and
- (b) that person’s competence and soundness of judgment for fulfilling the responsibilities of the position; and
- (c) diligence with which that person is fulfilling or likely to fulfil those responsibilities; and
- (d) whether the interests of Kumul Minerals Holdings or its subsidiaries concerned are, or are likely to be, in any way threatened by that person being a member of the particular Board; and
- (e) that person’s conduct and activities in business or financial matters, including whether that person has -
 - (i) engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice; or
 - (ii) been engaged in any business practices which could be considered to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person’s method of conducting business or financial matters;

“IPBC” means Independent Public Business Corporation of Papua New Guinea, established under the IPBC Act, and which, upon the *Independent Public Business Corporation of Papua New Guinea (Kumul Consolidated Holdings) (Amendment) Act 2015* coming into operation, will be renamed Kumul Consolidated Holdings Limited;

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

“Kumul Minerals Company” means any one of Kumul Minerals Holdings and its subsidiaries and “Kumul Minerals Companies” means any one or more of them;

“Kumul Minerals Company Shares” means all of the issued share capital and all rights in respect of unissued shares of a Kumul Minerals Company;

“Kumul Minerals Holdings” means Kumul Minerals Holdings Limited, Company No. 1-59327, a company established and incorporated under the *Companies Act 1997*, which, prior to the coming into operation of this Act, was named Petromin Papua New Guinea Holdings Limited;

Kumul Minerals Holdings Limited Authorisation

- “Kumul Minerals Holdings Shares” means all of the issued share capital and all rights in respect of unissued shares of Kumul Minerals Holdings;
- “Kumul Minerals Share Trust” means the trust established under the Kumul Minerals Trust Deed;
- “Kumul Minerals Trust Deed” means the Petromin Trust Deed entered into between the Hon William Duma, the Rt Hon MT Somare, the President of the Law Society of Papua New Guinea, the President of the Institute of Certified Practising Accountants Papua New Guinea and the State Solicitor of the Independent State of Papua New Guinea dated 6 June 2007, which, in accordance with the provisions of this Act will be renamed the “Kumul Minerals Trust Deed” and will be amended so that under its terms the Kumul Minerals Trustee as trustee, holds the Kumul Minerals Holdings Shares for and on behalf of the State as beneficiary;
- “Kumul Minerals Trustee” means the person holding from time to time, the office of Prime Minister established by Section 142 (The Prime Minister) of the *Constitution* and who, as trustee under and subject to the terms of the Kumul Minerals Trust Deed and the terms of this Act, holds the Kumul Minerals Holdings Shares for and on behalf of the State;
- “liabilities” includes any and all debts, obligations and liabilities of any nature whatsoever and whether present or future, actual or contingent or liquidated or unliquidated;
- “Majority State Owned Enterprise” has the meaning set out in the IPBC Act;
- “minerals” has the meaning given to that term in the *Mining Act 1992*;
- “mining” has the meaning given to that term in the Mining Act;
- “Minister” means the Minister designated by the Prime Minister and published in the National Gazette with respect to the allocation of Ministerial duties and responsibilities of Ministers under Section 148 of the *Constitution*, to be the Minister who shall be responsible for the administration of this Act;
- “MRDC” means the Mineral Resources Development Company Pty Limited;
- “MRDC Act” means the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;
- “National Executive Council” means the National Executive Council established under Section 149 of the *Constitution*;
- “NPCP” means NPCP Holdings Limited, Company No. I-100145, and which, upon the *Kumul Petroleum Holdings Limited Authorisation Act 2015* coming into operation will be renamed Kumul Petroleum Holdings Limited;
- “Permitted Superannuation Fund” means a superannuation fund authorised under Subsection 8(1) of the *Superannuation (General Provision) Act 2000* and any fund of a similar nature established under the *National Provident Fund Act 1980*, the *Public Officers Superannuation Fund Act 1990* or the *Defence Force Retirement Benefits Act 1974*;
- “person” includes both natural persons and bodies corporate;
- “Recognised Stock Exchange” means any “stock exchange” approved under Section 20 of the *Securities Act 1997* and any “stock exchange” as defined in Subsection 2(1) of the *Companies Act 1997*;
- “Recognised University” means The University of Papua New Guinea, Papua New Guinea University of Technology, Divine Word University, Pacific Adventist University, a university that is a member of the Association of Commonwealth Universities and any other recognised and reputable university;

Kumul Minerals Holdings Limited Authorisation

- “Relevant Field” means any of the fields of geology, engineering, environment, climate, law, corporate governance, accounting, banking, economics, finance, human resources, marketing or business management;
- “Sovereign Wealth Fund” means the Sovereign Wealth Fund established by Section 212A (*Sovereign Wealth Fund*) of the *Constitution* and the *Organic Law on the Sovereign Wealth Fund*;
- “State” means the Independent State of Papua New Guinea;
- “State Owned Enterprise” has the meaning given to that term in the *Independent Public Business Corporation Act 2002*;
- “subsidiary” has the meaning set out in Subsection 5(1) of the *Companies Act 1997*;
- “Trustee Delegate” means the Minister.

3. APPLICATION OF THE ACT.

- (1) This Act is not limited in its application.
- (2) Without limiting Subsection (1), this Act bindsw -
- (a) the State; and
 - (b) each Kumul Minerals Company; and
 - (c) the Kumul Minerals Trustee as trustee of the Kumul Minerals Share Trust; and
 - (d) Kumul Petroleum Holdings Limited and each of its subsidiaries; and
 - (e) the Trustee Delegate, if any, to whom the Kumul Minerals Trustee has delegated powers as provided in Subsection (5); and
 - (f) the IPBC and each of its subsidiaries.
- (3) The Kumul Minerals Trust Deed shall not be amended except in accordance with its terms.
- (4) If the Kumul Minerals Trust Deed is amended as provided in Subsection (3) then it shall apply in all respects as the Kumul Minerals Trust Deed under and for the purposes of this Act.
- (5) Rights, powers and privileges granted to or bestowed on the Kumul Minerals Trustee by this Act may, if so provided under the terms of the Kumul Minerals Trust Deed, be delegated to and exercised by the Trustee Delegate but to the extent only of the express provisions of that delegation and in any event, excluding the Kumul Minerals Trustee’s right of delegation itself, and then only for a limited period of no longer than five years unless such delegation is renewed or re-affirmed by the Kumul Minerals Trustee for a further period not exceeding five years on each occasion.

PART II. - KUMUL MINERALS SHARE TRUST.

4. MODIFICATION OF KUMUL MINERALS TRUST DEED.

- (1) Immediately following the coming into operation of this Act, the Kumul Minerals Trust Deed shall be modified on terms to be approved by the National Executive Council to reflect the changes effected by this Act including the following:
- (a) the parties to the Kumul Minerals Trust Deed will be the Kumul Minerals Trustee as trustee, the State as beneficiary and Kumul Minerals Holdings; and

Kumul Minerals Holdings Limited Authorisation

(b) the Individual Managers (as those terms are defined in the Kumul Minerals Trust Deed) will be removed as parties to the Kumul Minerals Trust Deed and all references to, and powers, rights, obligations and responsibilities of the Individual Managers will be removed from the Kumul Minerals Trust Deed, and such modifications shall be deemed to have satisfied Clause 13 (Amendment) of the Kumul Minerals Trust Deed.

(2) The office of the Kumul Minerals Trustee shall immediately and automatically succeed to each person who holds, from time to time, the office of Prime Minister, established by Section 142 (*The Prime Minister*) of the *Constitution*.

(3) The State as beneficiary of the Kumul Minerals Trust accepts each successive appointment as the Kumul Minerals Trustee of each person who holds, from time to time, the office of Prime Minister, established by Section 142 (*The Prime Minister*) of the *Constitution*.

PART III. - KUMUL MINERALS HOLDINGS.

5. REPEAL OF PETROMIN PAPUA NEW GUINEA HOLDINGS LIMITED AUTHORISATION ACT 2007.

On the coming into operation of this Act, the *Petromin Papua New Guinea Holdings Limited Authorisation Act 2007* is repealed in its entirety.

6. CHANGE OF COMPANY NAME.

(1) On the coming into operation of this Act, the name "Petromin Papua New Guinea Holdings Limited", is changed to "Kumul Minerals Holdings Limited".

(2) On the coming into operation of this Act, the Registrar of Companies appointed in accordance with Subsection 394(1) of the *Companies Act 1997* must proceed to -

- (a) enter the new name, "Kumul Minerals Holdings Limited", on the register of companies incorporated in Papua New Guinea; and
- (b) issue a certificate of incorporation in the prescribed form recording the change of name to "Kumul Minerals Holdings Limited".

(3) For the avoidance of doubt, the change of name under this section does not affect the identity of Kumul Minerals Holdings and does not affect any legal proceedings by or against Kumul Minerals Holdings.

7. ESTABLISHMENT AND OPERATION OF KUMUL MINERALS HOLDINGS.

(1) Kumul Minerals Holdings is established and incorporated under the *Companies Act 1997*.

(2) The constitution of Kumul Minerals Holdings must contain provisions that -

- (a) require it to operate as a commercial enterprise as efficiently as comparable businesses in Papua New Guinea and to maximise the value of shareholder investment in Kumul Minerals Holdings; and
- (b) provide that subject to Kumul Minerals Holdings satisfying the requirements of Paragraph (a), the principal objective for which Kumul Minerals Holdings has been established is to hold and develop mining and minerals interests and projects in Papua New Guinea, either alone or with others, and for that purpose -

Kumul Minerals Holdings Limited Authorisation

- (i) to participate, either alone or in conjunction with others, in the exploration for and the development, production, processing, transportation and marketing activities, including all related upstream, midstream and downstream activities, of and in respect of minerals and mining in Papua New Guinea; and
- (ii) where the economic, financial and technological circumstances permit, to be sensitive to the needs of the physical environment in which it operates and to utilise and develop its assets in line with the best practices and the principles of sustainable development; and
- (c) to exhibit a sense of social responsibility by having regard to the interests of the communities in which it operates.

8. INDEPENDENCE OF KUMUL MINERALS COMPANIES.

(1) Notwithstanding the identity of any party owning any of the shares in Kumul Minerals Holdings, each of the Kumul Minerals Companies are 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 Kumul Minerals Holdings or the subsidiary concerned; or
- (c) an instrumentality of the State.

(2) No asset of any Kumul Minerals Company -

- (a) shall be vested in or transferred to the State pursuant to this Act, the IPBC Act or the *Mining Act 1992*; and
- (b) is or shall be a public asset for any purpose and no such assets may be vested in or transferred to the State except on the liquidation of Kumul Minerals Holdings under Part XVIII of the *Companies Act 1997*,

except as provided in this or any other Act.

(3) No Kumul Minerals Company is or shall be entitled to render the State liable for its or their debts, liabilities or obligations.

(4) The State shall not guarantee or indemnify any -

- (a) Kumul Minerals Company in respect of any of its assets or liabilities (including any overdraft or other financial accommodation); or
- (b) third person in respect of any debt or liability of any Kumul Minerals Company, unless, in each particular instance, the National Executive Council with the express concurrence of Kumul Minerals Holdings expressly agrees that the State may do so.

(5) The Kumul Minerals Companies shall pursue their objectives and perform their functions and duties and exercise their powers and authorities independently of, and free from, interference or direction by the State, State Ministers or Members of the National Parliament or other Provincial or Local-level Governments or officers of the public service other than as provided expressly in this or any other Act.

(6) For the avoidance of doubt, the Kumul Minerals Companies are free to engage in all of the activities of a commercial enterprise including, without limitation, acquiring, developing and disposing of assets and borrowing and otherwise obtaining financial accommodation, independently of, and free from, interference or direction by the State, Ministers or Members of the National Parliament or other Provincial or Local-level Governments or officers of the public service, other than as provided expressly in this or any other Act.

(7) Subsections (5) and (6) do not apply to any action taken by the Kumul Minerals Trustee in accordance with the terms of the Kumul Minerals Trust Deed.

(8) No Kumul Minerals Company is a Department of the National Public Service, and no officer of a Kumul Minerals Company (including the Managing Director) is an officer in the National Public Service.

9. THE HOLDING AND DISPOSAL OF KUMUL MINERALS COMPANY SHARES.

(1) Subject to this Act, the Kumul Minerals Trustee shall acquire and hold all of the Kumul Minerals Holdings Shares under the terms of the Kumul Minerals Share Trust.

(2) The Kumul Minerals Trustee shall not do or permit anything to be done that would or could result in the State ceasing to be beneficially entitled to all of the Kumul Minerals Holdings Shares.

(3) No Kumul Minerals Company shall do or permit anything to be done that would or could result in -

- (a) a breach of Subsection (2); or
 - (b) a Kumul Minerals Company that has benefitted from a transfer or direction to transfer or a nomination under Section 17 of the *Mining Act 1992* or the terms of any exploration licence, ceasing to be a wholly owned subsidiary of Kumul Minerals Holdings.
- (4) The prohibitions contained in Subsection (3) shall not apply -
- (a) to an issue or transfer of shares in a Kumul Minerals Company, other than Kumul Minerals Holdings, to a Permitted Superannuation Fund where that issue or transfer is expressly permitted by this or any other Act; or
 - (b) to a listing of shares in a Kumul Minerals Company, other than Kumul Minerals Holdings, on a Recognised Stock Exchange where that listing is expressly permitted by this or any other Act.

10. DIRECTORS OF KUMUL MINERALS HOLDINGS.

(1) The Board of Kumul Minerals Holdings shall comprise of seven directors.

(2) At least five of the directors of Kumul Minerals Holdings must be citizens of Papua New Guinea and not more than two of the directors of Kumul Minerals Holdings may be non-citizens of Papua New Guinea.

(3) One of the directors of Kumul Minerals Holdings shall be the Managing Director of Kumul Minerals Holdings.

Kumul Minerals Holdings Limited Authorisation

(4) Each of the directors of Kumul Minerals Holdings, other than the Managing Director, shall be appointed for a term of up to three years with such respective terms of office ensuring an orderly system of retirement, reappointment and replacement as are determined from time to time by the Kumul Minerals Trustee.

(5) In determining the respective terms of directors of Kumul Minerals Holdings necessary to satisfy the requirements of Subsection (4), the Kumul Minerals Trustee shall seek to ensure that no more than 50% of the directors retire in any 12 month period.

(6) In respect of the Board of Kumul Minerals Holdings -

(a) no person shall be appointed to, or remain on the Board if that person -

- (i) is not a fit and proper person as determined by the Kumul Minerals Trustee; or
- (ii) except in the case of the Managing Director, is an employee or other executive officer of any Kumul Minerals Company; or
- (iii) has been a director of Kumul Minerals Holdings for a maximum period of nine years in aggregate, provided that nothing in this Subparagraph (iii) shall apply to a Managing Director; or
- (iv) has turned 72 years of age; or
- (v) does not, as a minimum, hold an undergraduate degree bestowed by a Recognised University; or
- (vi) is a member, or candidate for election as a member, of the National Parliament, or a Provincial Government or Local-level Government or is a Member of a Local-level Government Special Purposes Authority appointed under Section 42 of the *Local-level Governments Administration Act 1997*; or
- (vii) is an officer or employee of the public service or a statutory authority or agency; or
- (viii) is an office-holder, or candidate for election as an office-holder, in a registered political party; and

(b) the requirements of Subparagraph (a)(v) may be waived by the Kumul Minerals Trustee in respect of no more than one director who otherwise satisfies the remaining requirements of Subparagraph (a) and who has at least 15 years' senior management experience in any business or field that provides significant involvement with the mining sector and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current directors of Kumul Minerals Holdings; and

(c) except as may be provided in this or any other Act, a person who has held an office or position or who has been a candidate for election as referred to in Subparagraphs (a)(vi), (vii) and (viii), shall not be appointed as a director of Kumul Minerals Holdings until 12 months have elapsed following that person ceasing to hold the office or position or ceasing to be a candidate for election; and

(d) a director who intends to nominate to hold office as referred to in Subparagraph (a)(vi) shall resign as a director no later than six months prior to such nomination.

(7) Without limiting Subsection (6), no person shall be appointed to the Board of Kumul Minerals Holdings at any time after the second anniversary of this Act coming into operation unless that person has at least ten years' experience working in -

(a) a Relevant Field; or

- (b) any business or field that provides significant involvement with the mining or minerals sector,
- (8) The members of the Board of Kumul Minerals Holdings shall be appointed by the Kumul Minerals Trustee as follows:
- (a) before any appointment is made, the Board of Kumul Minerals Holdings shall inform the Kumul Minerals Trustee of the number of vacancies to be filled and shall at the same time notify the Kumul Minerals Trustee -
 - (i) of persons, including from among their own number, who in their opinion have the qualifications and experience meeting the requirements for directors specified in this section and who are prepared to accept appointment as a member of the Board; and
 - (ii) of the details of those persons identified in Subparagraph (i), including their respective qualifications and experience; and
 - (b) the Kumul Minerals Trustee shall appoint the requisite number of Board members duly qualified under this section from the persons notified by the Board of Kumul Minerals Holdings under Paragraph (a); and
 - (c) in making appointments under Paragraph (b), the Kumul Minerals Trustee shall not be limited to the persons initially advised under Paragraph (a) and may request the Board to provide further names of qualified persons under that paragraph until the Kumul Minerals Trustee has completed the making of those appointments.
- (9) No director shall be appointed as Chairman of the Board of Kumul Minerals Holdings unless, for the purpose of satisfying the matters in Subsection (7), that director has a minimum five years' additional experience in those matters.
- (10) No director shall be appointed Chairman of Kumul Minerals Holdings while that director holds the position of Chairman of NPCP or Chairman of Independent Public Business Corporation.
- (11) The Chairman of the Board of Kumul Minerals Holdings shall be appointed as follows:
- (a) the Board of Kumul Minerals Holdings shall -
 - (i) identify those among their number having the qualifications and experience meeting the requirements specified in Subsections (6), (7) and (9) and who are prepared to accept appointment as Chairman of the Board of Kumul Minerals Holdings; and
 - (ii) notify the Kumul Minerals Trustee of those Board members as so identified and provide the Kumul Minerals Trustee with details of their respective qualifications and experience; and
 - (b) the Kumul Minerals Trustee shall select the Chairman from the Board members notified under Subparagraph (a)(ii) and the Board of Kumul Minerals Holdings shall appoint that person as the Chairman.

Kumul Minerals Holdings Limited Authorisation

(12) The directors of Kumul Minerals Holdings, apart from the Managing Director, shall be paid such annual remuneration and reasonable attendance allowances as are consistent with non-executive board appointments in comparable mining companies in the private sector and, in that respect -

- (a) the Chairman of the Board of Kumul Minerals Holdings shall, from time to time, commission and provide to the Kumul Minerals Trustee a report from an independent internationally recognised firm of human resources professionals or chartered accountants which recommends to the Kumul Minerals Trustee an appropriate annual remuneration and reasonable attendance costs for the directors; and
- (b) where the Kumul Minerals Trustee is not satisfied with the recommendations in the report provided under Paragraph (a), the Kumul Minerals Trustee may obtain a second report from an independent internationally recognised firm of human resources professionals or chartered accountants; and
- (c) the Kumul Minerals Trustee shall determine the annual remuneration and reasonable attendance allowances for directors consistent with the recommendations of the report provided under Paragraph (a) provided, however, that where a second report has been provided under Paragraph (b) and there is a substantial difference in the recommendations of the reports provided under Paragraphs (a) and (b), the determination of the Kumul Minerals Trustee will be consistent with the recommendations of a third report from an independent internationally recognised firm of human resources professionals or chartered accountants which takes into account the reports provided under Paragraphs (a) and (b).

(13) A Director of Kumul Minerals Holdings may be removed at any time by the Kumul Minerals Trustee provided, however, that no more than three directors may be removed by the Kumul Minerals Trustee in any 12 month period.

11. DIRECTORS OF SUBSIDIARIES OF KUMUL MINERALS HOLDINGS.

(1) The Chairman and directors of each of the wholly owned subsidiaries of Kumul Minerals Holdings shall be appointed by the Board of Kumul Minerals Holdings.

(2) The Boards of the wholly owned subsidiaries of Kumul Minerals Holdings shall each comprise no more than seven directors.

(3) One of the directors of each of the wholly owned subsidiaries of Kumul Minerals Holdings shall be the Managing Director of that wholly owned subsidiary.

(4) At least half of the directors of each of the wholly owned subsidiaries of Kumul Minerals Holdings shall be citizens of Papua New Guinea.

(5) The directors of each of the wholly owned subsidiaries of Kumul Minerals Holdings, other than the Managing Directors and any of the directors who is an employee, shall be appointed for a term of up to three years.

(6) No person shall be appointed to, or remain on, the Board of any wholly owned subsidiary of Kumul Minerals Holdings if that person is determined by the Board of Kumul Minerals Holdings not to be a fit and proper person.

(7) A director of a wholly owned subsidiary of Kumul Minerals Holdings may be removed at any time by the Board of Kumul Minerals Holdings.

(8) Subject to the *Companies Act 1997* and to the other provisions of this section, the directors of wholly owned subsidiaries of Kumul Minerals Holdings shall be paid such annual remuneration and reasonable attendance allowances as are determined by the Board of Kumul Minerals Holdings.

(9) The Chairman and directors of each of the subsidiaries of Kumul Minerals Holdings which is not a wholly owned subsidiary, shall be appointed in accordance with the relevant provisions of that subsidiary's constitution and the *Companies Act 1997*.

12. CONSTITUTIONS OF KUMUL MINERALS COMPANIES.

(1) The constitutions of each Kumul Minerals Company may contain provisions that give effect to but are not inconsistent with the provisions of this section.

(2) The constitutions of the Kumul Minerals Companies may contain provisions providing that -

- (a) in the event of a vacancy in the office of a member of the Board of that company arising by operation of this section, the remaining members may act so long as their number is sufficient to constitute a quorum at a meeting of that company's Board; and
- (b) the exercise of a power or the performance of a function of the Board of that company is not invalidated by reason only of a vacancy in the membership of that Board; and
- (c) notwithstanding the discovery of -
 - (i) a defect in the appointment of a member of that company's Board; or
 - (ii) a person appointed as a member of that company's Board is subsequently disqualified from holding office as a member of that Board,

all meetings and acts of that company's Board and all acts of that person done before the discovery was made are valid as if the person had been or remained duly appointed and was not disqualified, and such provisions shall, by this section, be lawful and effective in accordance with their terms.

13. APPROVAL OF ANNUAL PLANS AND DIVIDEND DISTRIBUTIONS.

(1) Kumul Minerals Holdings or a subsidiary of Kumul Minerals Holdings shall not incur any expenditure, or acquire or dispose of any assets during an Accounting Period unless -

- (a) the expenditure or acquisition or disposal of assets is made in accordance with the Annual Plan presented by Kumul Minerals Holdings to the Kumul Minerals Trustee and approved by the National Executive Council in accordance with this section; or
- (b) the expenditure or acquisition or disposal of assets is presented by the Kumul Minerals Holdings to the Kumul Minerals Trustee and subsequently presented to the National Executive Council and approved by the National Executive Council; or
- (c) the total expenditure and value of acquisition of assets in any Accounting Period incurred by Kumul Minerals Holdings and its subsidiaries on a consolidated or group basis does not exceed -
 - (i) K10,000,000.00; or

Kumul Minerals Holdings Limited Authorisation

- (ii) such other limit not exceeding K25,000,000.00 as may be determined by the Kumul Minerals Trustee and advised to Kumul Minerals Holdings from time to time; or
- (iii) such other limit as may be advised by the Kumul Minerals Trustee to the National Executive Council and approved by the National Executive Council and advised to Kumul Minerals Holdings from time to time; or
- (d) the total value of disposal of assets in any Accounting Period incurred by Kumul Minerals Holdings and its subsidiaries on a consolidated or group basis does not exceed -
 - (i) K10,000,000.00; or
 - (ii) such other limit not exceeding K25,000,000.00 as may be determined by the Kumul Minerals Trustee and advised to Kumul Minerals Holdings from time to time; or
 - (iii) such other limit as may be advised by the Kumul Minerals Trustee to the National Executive Council and approved by the National Executive Council and advised to Kumul Minerals Holdings from time to time.

(2) Kumul Minerals Holdings shall, not later than three months before the end of each Accounting Period, submit to the Kumul Minerals Trustee an Annual Plan in respect of the activities of Kumul Minerals Holdings and its subsidiaries for the next Accounting Period and upon the Kumul Minerals Trustee being satisfied with the proposed Annual Plan, the Kumul Minerals Trustee shall submit the proposed Annual Plan to the National Executive Council for approval.

(3) If an Annual Plan is duly approved by the National Executive Council, it shall, notwithstanding the date of that approval, be binding in all respects from the commencement of the Accounting Period to which it relates.

(4) No changes to an Annual Plan shall be acted on or be considered valid or effective until approved by the National Executive Council.

(5) In the course of -

- (a) preparing the Annual Plan, in the case of Kumul Minerals Holdings; and
- (b) considering approval for the Annual Plan, in the case of the National Executive Council,

regard must be had to the need for Kumul Minerals Holdings and its subsidiaries to be able to meet their debts as and when they fall due.

(6) The Board of Kumul Minerals Holdings must, from time to time, declare dividends in accordance with Subsection (7) and may fix the time for payment of dividends, which shall be no later than two months after the end of each Accounting Period.

(7) Subject to Sections 50 and 51 of the *Companies Act 1997*, a dividend must be paid directly into the Sovereign Wealth Fund in accordance with the *Organic Law on the Sovereign Wealth Fund* in respect of each Accounting Period equal to the amount of available reserves of Kumul Minerals Holdings (being the accumulated realised earnings from prior periods and the profits earned in the current year) determined on a consolidated or group basis at the end of that Accounting Period less any amount required to be held by Kumul Minerals Holdings and its subsidiaries to meet the requirements of the approved Annual Plan.

PART IV. - KUMUL MINERALS HOLDINGS TO BE STATE NOMINEE.

14. KUMUL MINERALS HOLDINGS TO BE STATE NOMINEE.

(1) For so long as all of the Kumul Minerals Holdings Shares are held beneficially for and on behalf of the State, the State and the Minister responsible for the *Mining Act 1992* shall nominate Kumul Minerals Holdings (or one or more of its subsidiaries) as the exclusive nominee of the State in respect of the participating interest in a mining project for which the State's right to effect a nomination has arisen under the *Mining Act 1992* (including Section 17), the *Mining Regulation 1992* (including the terms of any exploration licence), any mining tenement, any other law or otherwise.

(2) Subsection (1) is subject to the State meeting its obligations with respect to the equity benefit to be granted to the project area landowners and the relevant Provincial and Local-level Governments, if any, in respect of the mining project concerned.

15. PROCEDURES FOR EXERCISE OF STATE NOMINEE RIGHTS.

(1) The Minister shall, between 90 and 120 days prior to the time the State is entitled to exercise a nomination right referred to in Subsection 14(1), give notice to Kumul Minerals Holdings of that pending nomination and shall in that notice -

- (a) provide full details of the participating interest and mining project concerned; and
- (b) advise Kumul Minerals Holdings of the State's obligations to project area landowners, Provincial Government and Local-level Government referred to in Subsection (2) (if any) in the mining project; and
- (c) advise Kumul Minerals Holdings that the Minister shall nominate a Kumul Minerals Company as proposed by Kumul Minerals Holdings as the exclusive nominee of the State in respect of the participating interest.

(2) The participating interest under Subsection 14(1) shall be the maximum participating interest the State is entitled to nominate for as referred to in Subsection 14(1) that remains after the State has met its obligations to the project area landowners and the relevant Provincial and Local-level Governments, if any, in respect of the mining project concerned.

(3) Within 60 days of such notice being given under Subsection (1), Kumul Minerals Holdings may notify the Minister -

- (a) confirming that the requirements of Subsection 14(2) are satisfied; and
- (b) providing the name of the Kumul Minerals Company it proposes as nominee, and if more than one, their respective participating interests in the relevant mining project; and
- (c) advising the participating interest that the State is to nominate for.

(4) The Kumul Minerals Company or Kumul Minerals Companies named under Paragraph 3(b) shall be wholly owned subsidiaries of Kumul Minerals Holdings.

(5) The notification under Subsection (3) shall be conclusive as to the matters stated therein and shall not be disputed by the Minister.

(6) Kumul Mining Holdings shall be responsible for the payment of the costs required for the State to meet its obligations to the project area landowners and the relevant Provincial and Local-level Governments referred to in Subsection 14(2).

(7) In the event that Kumul Minerals Holdings gives a notice as referred to in Subsection (3) within the 60 day notice period, the Minister and the State shall do all that is required to transfer or direct the transfer of or effect a nomination in respect of the participating interest to the Kumul Minerals Company concerned as proposed in that notice at the time of the grant of the licence or licences pursuant to which the mining project is conducted.

(8) In the event that the State through the Minister effects a transfer or direction to transfer or effects a nomination, the Minister may, by written notice, direct any person to -

- (a) provide to the Minister and Kumul Minerals Holdings all such assistance as may be required by the Minister to give effect to that transfer, direction to transfer or nomination; and
- (b) provide to the Minister and Kumul Minerals Holdings with full details of the licences or applications for licences to which such transfer, direction to transfer or nomination relates; and
- (c) give to the Minister or at the direction of the Minister, Kumul Minerals Holdings or any person, all certificates or other evidence or indicia of title to those licences or applications for licences; and
- (d) sign or execute any such transfer of those licences or applications for licences to the Kumul Minerals Company concerned,

and a person receiving any such notice of direction shall duly and promptly comply with same in all respects.

(9) A direction given under Subsection (8) shall not oblige a person to provide assistance that the person is not reasonably able to provide.

(10) The Kumul Minerals Company notified under Subsection (3) shall pay the consideration payable in respect of the nomination referred to in Subsection (1) in the manner provided for under the instrument in which the participating interest arises.

(11) The State shall not exercise its rights in respect of a participating interest in a mining project for which the State's right to effect a nomination has arisen under the *Mining Act 1992* (including Section 17), the *Mining Regulation 1992* (including the terms of any exploration licence), any mining tenement, any other law or otherwise in favour of any nominee other than Kumul Minerals Holdings and its subsidiaries notwithstanding that Kumul Minerals Holdings has -

- (a) failed to give a notice under Subsection (3) within the 60 day notice period; or
- (b) notified the Minister that it will not be nominating itself or proposing another Kumul Minerals Company for nomination under Subsection (3),

but nothing in this subsection shall apply to prevent the State from exercising its rights of nomination in favour of a corporate trustee which is wholly owned by MRDC in order to meet its obligations to project area landowners, Provincial Government and Local-level Government referred to in Subsection 14(2).

(12) The Minister shall -

- (a) promptly notify Kumul Minerals Holdings of all requests for the State to enter into or resume negotiations in respect of any mining agreement and in respect of any or all of the blocks the subject of any application for any licence in respect of which the State has not exercised the nomination right referred to in Subsection 14(1) and of the terms of any such mining agreement when finalised and provide Kumul Minerals Holdings with all information that the Minister has in respect of those matters; and
- (b) ensure that the exercise of any discretion under this Act and the conditions of the grant of licences under this Act are not inconsistent with this section; and
- (c) ensure that -
 - (i) reasonable prior notice is given to Kumul Minerals Holdings of all meetings to be attended by the State with the holders of licences or applications for licences under this Act to which Paragraph (a) applies, including all technical and commercial meetings and meetings to develop and agree on any mining agreement; and
 - (ii) representatives of a Kumul Minerals Company designated by Kumul Minerals Holdings are entitled to attend all such meetings and are afforded full representation on any negotiating team appointed by the State to lead negotiations on behalf of the State with such holders; and
 - (iii) Kumul Minerals Holdings receives all information from the holders of licences or applications for licences as the State is entitled to.

(13) At any meeting attended by Kumul Minerals Holdings or a representative of a Kumul Minerals Company designated by Kumul Minerals Holdings as provided in Subparagraphs (12)(c)(i) and (ii), Kumul Minerals Holdings or the designated representative shall -

- (a) provide to the State and to the holders of the licences or applications for licences concerned, or their respective representatives, written undertakings to keep confidential, on reasonable terms, any confidential information disclosed to them in respect of those assets in the course of or as a consequence of those meetings; and
- (b) be entitled to participate in all discussions at those meetings as the potential transferee, transferee by direction or nominee of the State under this Act, but nothing in this subsection shall oblige either the State or any of the persons holding the licences concerned to give effect to any request or requirement of Kumul Minerals Holdings.

(14) Nothing in the confidentiality undertaking shall preclude Kumul Minerals Holdings from divulging confidential information to the Minister or to the Kumul Minerals Trustee or to any Kumul Minerals Company or, subject to the execution by them of a confidentiality undertaking on terms reasonably required by the holders of the licences, to any bona fide potential acquirer of part or all of the participating interest which has been notified under Subsection (3) or any financier of the acquisition of part or all of the participating interest.

(15) The provisions of Subsections (11), (12) and (14) shall not apply in respect of licences in respect of which Kumul Minerals Holdings has no nomination rights due to application of the provisions of Subsection 14(2) or in respect of which its nomination rights have already been exercised or have otherwise expired or terminated under this section or Section 14.

PART V. - TRANSFER OF MINING INTERESTS.

16. TRANSFER OF MINING INTERESTS HELD BY INDEPENDENT PUBLIC BUSINESS CORPORATION.

(1) The State through the Minister shall be entitled but not obliged to direct the transfer to Kumul Minerals Holdings or any of its subsidiaries of a participating interest in any mining project or other interest in any mining assets held by IPBC or a Majority State Owned Enterprise or to which IPBC or a Majority State Owned Enterprise may become entitled from time to time.

(2) Where the State through the Minister has made a direction under Subsection (1), Kumul Minerals Holdings and IPBC, negotiating in good faith, shall seek to agree to the terms, including the payment of consideration if any, on which the transfer will take place.

(3) Where Kumul Minerals Holdings and IPBC do not reach agreement under Subsection (2) within 21 days of the date of direction by the Minister, the Kumul Minerals Trustee shall determine the terms, including the payment of consideration if any, on which that transfer referred to in Subsection (1) shall take place.

17. TRANSFER OF MINING INTERESTS HELD BY MINERAL RESOURCES DEVELOPMENT CORPORATION.

(1) The State through the Minister shall be entitled but not obliged to direct the transfer to Kumul Minerals Holdings or any of its subsidiaries of a participating interest in any mining project or other interest in any mining assets held by MRDC or a subsidiary of MRDC or to which MRDC or a subsidiary of MRDC may become entitled from time to time that is held in its own right and not held for or on behalf of any project area landowner, Provincial Government or Local-level Government.

(2) Where the State through the Minister has made a direction under Subsection (1), Kumul Minerals Holdings and MRDC, negotiating in good faith, shall seek to agree to the terms, including the payment of consideration, if any, on which the transfer will take place.

(3) Where Kumul Minerals Holdings and MRDC do not reach agreement under Subsection (2) within 21 days of the date of direction by the Minister, the Kumul Minerals Trustee shall determine the terms, including the payment of consideration if any, on which that transfer referred to in Subsection (1) shall take place.

PART VI. - LIABILITY TO DUTIES.

18. EXEMPTION FROM DUTIES.

Notwithstanding anything in any other law, any transfer or direction to transfer or direction to acquire in respect of any asset or right of whatever nature made under Sections 14, 15, 16 or 17 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.

PART VII. - OTHER RIGHTS.

19. RIGHTS IN RESPECT OF DIRECTIONS UNDER SECTIONS 14, 15, 16 AND 17.

(1) This Section applies following the issuance of a direction under Sections 14, 15, 16 and 17.

(2) Kumul Minerals Holdings may direct any person charged with the signing or executing, registering, receiving or recording of any transfer of a right, title or interest to which the direction or deemed direction applies to -

- (a) provide to Kumul Minerals Holdings all such assistance as may be required by Kumul Minerals Holdings to give effect to that transfer; and
- (b) provide Kumul Minerals Holdings with full details of the right, title or interest to which that transfer relates; and
- (c) give to Kumul Minerals Holdings all certificates or other evidence or indicia of title to which that transfer relates; and
- (d) sign or execute any such transfer of that interest to the Kumul Minerals Company concerned; and
- (e) register and record the transfer to the Kumul Minerals Company concerned notwithstanding that the transfer is not accompanied by the appropriate certificates or other evidence or other indicia of title to the interest concerned; and
- (f) issue replacement certificates or other evidence or indicia of title, duly noting the Kumul Minerals Company concerned as the registered or recorded holder of the interest concerned and to cancel all previously issued certificates or other evidence or indicia of title,

as is applicable to the role and function of that person and on receiving any such direction or notice that person shall duly and promptly comply with the same in all respects to the extent that that person is reasonably able to do so.

20. NO BREACH OF CONTRACTS, ETC.

Any actions undertaken in compliance with Sections 14, 15, 16 and 17 and the operation of Section 17 of the *Mining Act 1992* or the terms of an exploration licence, 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.

PART VIII. - LEADERSHIP CODE.

21. LEADERSHIP CODE NOT APPLICABLE.

Pursuant to Subsection 26(2) of the *Constitution* -

- (a) the office of a member of the Board of any Kumul Minerals Company is not an office; and
- (b) an employee of any Kumul Minerals Company is not a person holding an office, to and in relation to which Division III.2 of the *Constitution* applies and for the avoidance of doubt, no declaration may be made under any other Organic law or any act for the purposes of Subsection 26(3) of the *Constitution* in respect of any office held by that person.

PART IX. - REGULATIONS.

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 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, and in particular for prescribing fees and for penalties of fines not exceeding K200,000.00 or imprisonment for a term not exceeding five years or both for offences against this Act or the Regulations.

PART X. - TRANSITIONAL PROVISIONS.

23. TRANSITIONAL PROVISIONS.

(1) In this Part, the term "Repealed Act" means the *Petromin Papua New Guinea Holdings Limited Authorisation Act 2007*.

(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, any agreement entered into by Kumul Minerals Holdings or any Kumul Minerals Company under the Repealed Act is not affected by the coming into operation of this Act.

I hereby certify that the above is a fair print of the *Kumul Minerals Holdings Limited Authorisation Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

12 AUG 2015

I hereby certify that the *Kumul Minerals Holdings Limited Authorisation Act 2015* was made by the National Parliament on 5 June 2015, by an absolute majority as required by the *Constitution*.

Speaker of the National Parliament.

12 AUG 2015