

The Papua New Guinea Mining Policy

PART 1. APPLICATION

1. This Policy Handbook shall be read with specific reference to the Mining Act 1992 (*and its subsequent revised amendment*) and any other mining sector policies and relates to the mining exploration, operation, administration and regulation of mining industry in Papua New Guinea.

PART 2. POLICY PURPOSE, AIMS & GUIDING PRINCIPLES

1. Purpose

- (a) To promote Papua New Guinea as an investment destination for mineral exploration and mining, and
- (b) To ensure that mining in Papua New Guinea is conducted in a socially, economically and environmentally sustainable manner.

2. Aim

- (a) To encourage investment in the Papua New Guinea mining sector,
- (b) To create opportunities for local participation in the benefit sharing for the State, landholders and for all Papua New Guineans,
- (c) To regulate the mining activities so they are done in socially, economically and environmentally sustainable manner.

3. Rationale

- (a) The Constitution calls for the “Wise use to be made of our natural resources” and “Equal distribution of wealth to all our people.” This is the guiding principle that this policy upholds and aspires to in its application.

Note: Being mindful of the sensitivity and expectations, the issue of mineral ownership is being addressed through the development of an effective and tangible benefit distribution mechanism that will give greater participation to our people in the development and exploitation of our mineral resources within the Constitutional directive.

4. Further Policy Developments

- (a) Some of the mining policies which are not legislated are nonetheless included in standard agreements. The National Government through the National Executive Council may issue policy directives from time to time.

PART 3. INTERNATIONAL LEGAL CONTEXT

1. Papua New Guinea aspires to conform to all international obligations and conventions that are ratified and adopted into domestic legislations.

PART 4. NATIONAL LEGAL CONTEXT

1. Mining in Papua New Guinea is carried out in accordance with the national mining laws formulated under the Constitution of Papua New Guinea,
2. Mining in Papua New Guinea is conducted within the following legal framework;
 - (a) The Constitutional Laws of the Independent State of Papua New Guinea, (Constitution Chapter No.1),
 - (b) Organic Law on Provincial & Local Level Government
 - (c) The Mining Act 1992 (*and its subsequent revised amendment*) and the Mining (Safety) Act 1977 (*and the subsequent revised amendment*) and their Regulations,
 - (d) The Environment Act 2000 and its Regulations.
3. Other National legislations relevant to mining industry including but not limited to those summarized in Attachment “**A**”.

PART 5. NATIONAL POLICIES AND DEVELOPMENT GOALS

1. This Policy will play important role in the mining sector to achieve the Government’s national development strategies and goals as per the;
 - (a) Papua New Guinea Vision 2050,
 - (b) PNG Development Strategic Plan 2010-30,

PART 6. MINING AGREEMENTS

1. The State shall enter into agreement in relation to a mining development or the financing of a mining development under a tenement,
2. The three (3) major mining agreements are;
 - (a) The Mining Development Contract (MDC),
 - (b) The Compensation Agreements (CA), and
 - (c) The Benefit Sharing Memorandum of Agreement (MOA).
3. Mining Development Contract (MDC)
 - (a) The Minister may, require mining to take place under a Mining Development Contract in accordance with the provisions of the Mining Act 1992 (*and its subsequent amendments*),
 - (b) The contract shall be between the State and the developer and relates specifically to the method of mining, processing the mineral, the infrastructure required and the financial or economic considerations involved.
4. Compensation Agreement
 - (a) A compensation agreement shall be agreed to and duly registered before the tenement holder enters into and occupies the mining tenement area for the purposes of exploration and mining,
 - (b) The parties to the agreement are the landholders and the developer of the mining project,
 - (c) The State shall maintain oversight on the Agreement to ensure its compliance.

5. Memorandum of Agreements (MOA)

- (a) The MOA shall be a benefit sharing agreement,
- (b) The parties to the MOA shall consist of the landholders, mine host Provincial and the Local -level Government(s), the developer and the State,
- (c) The MOA shall contain the undertakings of respective parties in (b) above,
- (d) Each party shall implement the MOA undertakings as per the agreement,
- (e) The MOA shall be reviewed every two (2) years or less as agreed to by parties concerned,
- (f) The MOA review in (e) shall not be a *renegotiation* of the terms of the agreement. It shall be a *review and an update* of the original agreement to assess the implementation of the parties' respective undertakings.

6. Committees under the MOA

- (a) The MOA shall require the establishment of committees comprising the relevant State Departments and Agencies and such other relevant stakeholders who are party to the MOA. The Committees shall be as follows;
 - (i) Monitoring and Review Committee (MRC) who shall monitor the implementation of the MOA and conduct Quarterly/Biannual Review Meetings; and/or
 - (ii) Such other Technical Committees (TC) with their responsibilities and functions clearly outlined or as necessitated by events, and endorsed by the MRC and annexed to the MOA to deal with issues on the environment, health & safety, socio-economic, research and technology and skills transfer and all technical issues relating to the project that are of concern to the parties.

PART 7. MINERAL OWNERSHIP AND EXPLORATION RIGHTS

1. Mineral Ownership

- (a) All minerals on or below the surface of any land, waters lying over the land and the seas within PNG jurisdiction are the property of the State. The State has the sovereign right to allow “suitable persons” to explore for, mine and sell the mineral resource.

2. Nature of Mineral Rights

- (a) The right to explore for, mine and sell mineral resources shall be granted in the form of tenements,
- (b) Tenements are fixed term over a fixed area and shall be granted to persons or companies committed to programs of explorations or mining development approved by the State,
- (c) Such tenements shall be granted for purposes of retaining mineral rights indefinitely.

3. Applications for Mineral Tenements

- (a) Applications for mineral tenements can be made by any person, company or joint ventures at any time over any area not covered by an existing tenement,
- (b) Tenements shall not be granted to land area or marine conserved and protected area reserved by the State,
- (c) Applications for the same area shall be considered one at a time in the order they are received.

4. Type of Tenements

- (a) **Exploration Licence (EL)** is granted for a term not exceeding two (2) years. The term, area and relinquishment of portions and other requirements for the granting of the EL shall be executed as per the Mining Act 1992 *(and its subsequent amendment)*,
- (b) Tenement holders shall prioritize their work plans and conduct outcome based business under the licensed tenements within the given time period,
- (c) **Mining Lease (ML)** shall be granted for a term not exceeding 20 years. The term, area and shape of ML and other requirements for the granting of the ML shall be executed as per the Mining Act 1992 *(and its subsequent amendment)*,
- (d) The ML shall be granted to small, medium and large scale mine developments,
- (e) **Alluvial Mining Lease (AML)** shall be granted as per Part V. Division 4 of the Mining Act 1992. AML shall not apply to offshore Mining,
- (f) **Lease for Mining Purposes (LMP)** shall be granted for the same term as that of the tenement with which it is associated,
- (g) The LMP shall be granted for construction of project infrastructure and facilities,
- (h) The **Mining Easement (ME)** shall be granted for the same term as the tenement with which it is associated,
- (i) The ME shall be granted for construction and operation of project facilities such as roads, power transmission lines, waterways, pipelines, bridges or tunnels,. etc onshore,

PART 8. THE FISCAL PROVISIONS

1. Mining Fiscal Terms and Tax Rates

- (a) The Mining Fiscal Terms and Rates shall be as in Attachment “**B**”,
- (b) Any amendments or variations to the Mining Fiscal Regime shall take effect through the National Government policy direction, the National Executive Council (NEC).

2. Mineral Royalty

- (a) All mineral royalties from mining in the PNG jurisdictions belong to the State as the sovereign owner of all minerals in PNG,
- (b) The holder of a mining lease is liable to pay a royalty to the State equivalent to 2% of the net proceeds of sale of minerals (calculated as net smelter return or f.o.b. export value, whichever is appropriate),
- (c) The State may elect to retain its right to royalty or to distribute it between the provincial government of a mine host province and the landholders of the land upon which the mineral resource is mined,
- (d) Where royalty is offloaded by the State, the landholders are entitled to at least 20% of the total amount of royalties paid to the State.

PART 9. EMPLOYMENT

- 1. The developer shall develop an Employment and Training Plan (ETP). The ETP shall be approved by the National Training Council (NTC) and shall be an annexure to the MOA document,
- 2. Preference in employment shall be given in the following order of priority to suitably qualified persons from the mining host province(s), then to other parts of the country and the rest of the world,
- 3. The developer shall give equal opportunity to women in terms of employment. The ETP shall be administered by the Monitoring and Review Committee.

PART 10. EDUCATION AND TRAINING

1. The developer shall develop Training and Localization Plan (TLP) in consultation with the State through the National Training Council (NTC),
2. The Training and Localization Plan shall be an annexure to MOA document and shall be administered by the Monitoring and Review Committee.

PART 11. LOCAL BUSINESS PARTICIPATION

1. Where feasible, the developer shall give due consideration to reputable landholder companies on commercial arrangements to participate in major contracts in relation to mine development and operations,
2. The developer shall develop a Business Development Plan (BDP) in consultation with the State through the Department of Commerce and Industry,
3. The BDP shall be an annexure to the MOA document and shall be administered by the Monitoring and Review Committee,
4. The developer shall employ a Business Development Specialist to assist with the establishment and operation of landholder businesses.

PART 12. SUPPLY AND LOCAL PROCUREMENT

1. The developer shall develop a Supply and Procurement Plan (SPP), which shall be an annexure to the MOA and shall be administered by the Monitoring and Review Committee,
2. The developer shall give preferences to the well established suppliers in the mine host province(s) first and then to those reputable suppliers that are capable of meeting the specified service required that are established within Papua New Guinea before sourcing internationally.

PART 13. COMPENSATION

1. Tenement holders shall pay compensation to the landholders for exploration and mining activities on their land. Compensation shall be payable for the following;
 - (a) Deprivation of possession and use of land,
 - (b) Damage to land,
 - (c) Loss of economic plants and trees,
 - (d) Social disruption,
 - (e) Relocation or resettlement of affected people from within the project impact area.
2. Where applicable, the developer may determine compensation with reference to the Valuer General's rates as a minimum guide,
3. The developer shall take into account the current market rates for inconvenience(s) in (1) above when calculating compensation payments,
4. All Compensation Agreements between the landholder and the project developer must be registered with the Registrar of Tenements to be duly certified in accordance with law.

PART 14. NATIONAL PARTICIPATION

1. The State may elect to acquire up to a 30% participating interest in a mining projects as its guaranteed right,
2. Petromin Holdings PNG Limited is the duly nominated State entity that shall exercise the State option for and on behalf of the State pursuant to its constituent laws,
3. Equity interest by State or landholder shall be acquired on the percentage of the unrecouped sunk cost by the mining project company,

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4. Persons or entities opting to take up equity in the project shall do so on a commercial basis in consultation and subject to agreement with the State and the developer prior to the granting of the mining lease,
 5. The State shall allocate 5% equity to be shared equally between the provincial government of the mine host province and the customary landholders of the project lease areas on a free carry basis,
 6. Where no landholders are identified as in the case of offshore mining, the 5% equity interest shall be given to the mine host Provincial Government(s),
 7. Where more than one province is covered by the mining tenement, the percentage breakup of the State's 5% free carry equity shall be distributed as agreed between the parties,
 8. The Mineral Resources Development Company (MRDC) shall manage the equity for and on behalf of the landholders and the provincial government(s) pursuant to its constituent laws.

PART 15. SPECIAL SUPPORT GRANT (SSG)

1. The Special Support Grant shall be appropriated by the National Government to the mine host provincial government(s) to be used on approved social and economic infrastructure development projects,
2. The grant shall be equivalent to 0.25% of net sales value of mine products from the project,
3. A minimum of 20% of this grant shall be spent in the "*mine affected areas*",
4. The administration and implementation of the SSG shall be done in accordance with the Special Support Grant Guideline, through the Department of National Planning and Monitoring.

PART 16. TAX CREDIT SCHEME (TCS)

1. Under the Tax Credit Scheme the developer shall construct government approved infrastructure projects outside of the mining lease or elsewhere in Papua New Guinea,
2. The expenditures shall be up to a maximum of 0.75% of the assessable income, considered as income tax paid for that year,
3. The administration and implementation of the scheme shall be in accordance with the TCS Guideline through the Department of National Planning and Monitoring.

PART 17. PROJECT INFRASTRUCTURE

1. Provision of Infrastructure
 - (a) The development of the mine shall include the construction of all infrastructures which will be required by the project and where appropriate cater for the socioeconomic needs of the population affected by the project,
 - (b) Project infrastructure shall include operational facilities (Project Offices, accommodation, mining and processing plant, project area roads, pipelines, transmission lines, water, waste facilities) and the non-operational facilities (local government facilities, community and health centers, roads, wharves and air strips, etc),
2. Costs and Ownership of Infrastructure
 - (a) The capital cost of all project infrastructures shall be borne by the project developer. The State may contribute to the capital cost of non-operational facilities which shall be reimbursed by the project company,
 - (b) The developer shall transfer ownership of non-operational facilities from the project at no cost to the State at the time of the mine closure.

PART 18. TOWNSHIP DEVELOPMENT

1. The developer and the State shall collaborate to develop integrated and economically viable townships in the Mining Lease project areas,
2. The township shall cater for the permanent employee residence and to service the local community's socioeconomic needs.

PART 19. LOCAL DOWNSTREAM PROCESSING

1. Of all minerals extracted in PNG, one third (1/3) shall be processed onshore not less than six (6) months before delivery to the refinery, provided that a processing plant is built and has the capacity to;
 - (a) Produce internationally acceptable products (including London good delivery bars of gold),
 - (b) Provide fully and adequate security for mine products at all stages of production, storage and delivery,
2. The processor shall comply with the terms and conditions commercially competitive with those available internationally thereof, in pricing and time of delivery of refined products,
3. There shall be no interference with the developers existing contracts with other external refiners that were entered into in good faith,
4. The contract shall be negotiated in good faith and renewed on an annual basis.

PART 20. MINE CLOSURE PLAN

1. The developer shall submit a Conceptual Mine Closure Plan at the time of the application for a Mining Lease. The Conceptual Mine Closure Plan shall form an integral part of the tenement application and as part of the proposals for development.
2. The developer shall provide updates during project quarterly meetings on the implementation of the Mine Closure and Rehabilitation programs

3. Mine Closure Plan shall include:

- (a) Physical Closure Plan ,
- (b) Environment Rehabilitation Plan,
- (b) A Social Mitigation Plan,
- (c) Consultation mechanisms with stakeholders;
- (d) Post Closure Monitoring Plan.

4. Mine Closure Bond

- (a) The developer shall establish a financial security bond for the purposes of mine closure. The financial security may include;
 - i. An irrevocable, unconditional letter of credit issued to the State by a Bank or a parent company,
 - ii. A security or guarantee issued to the State by a bank or a company legally able to do so,
 - iii. Security interests in unencumbered assets, goods, documents of title, securities, chattels, instruments, monies, intangibles or interest arising from assignments of accounts including a pledge of assets.

PART 21. TRANSPARENCY & ACCOUNTABILITY

- 1. The State, the developer and the landholder associations of a mining project shall each publish a quarterly report of the benefits that are derived from a mining project and the recipient of the respective benefits,
- 2. Copies of these reports shall be produced to the Mineral Resources Authority and the Department responsible for mineral policy matters a week before the end of each quarter,
- 3. The entities referred to under (1) and (2) above shall ensure all necessary information are published in the print media, organization websites, and respective offices.

PART22. COMMUNITY AWARENESS AND CONSULTATION

1. The developer in consultation with the State shall conduct periodic social, economic and environmental awareness programs in the mining project area during the lifecycle of the project,
2. The developer and the State may collaborate with community-based organizations including local churches and schools in disseminating relevant information to people concerned,
3. The developer shall carry out community relations work right from the feasibility study phase for purposes of awareness and assistance to the local communities.

PART 23. STRUCTURE AND ORGANIZATION

1. Landholder Group Structures

- (a)** Landholders from the mining project shall be represented by their Umbrella Landowner Association in any development forums, consultation meetings and the MOA negotiations and reviews.

Note: The formation of an Incorporated Land Group (ILG) by any one landowner will not give the landowner any special recognition. The State will only recognize and deal with the Umbrella Landowner Association formed through this structure and where the representation is done through a general election by all landowners through an openly transparent and fair process.

2. Women & Youth Participation

- (a)** The *Women in Mining National Action Plan* shall be given full recognition by the State, developer and other relevant stakeholders.

PART 24. SOCIAL MAPPING & LANDHOLDER IDENTIFICATION

1. The developer and the State shall carry out social mapping and landholder identification study at the exploration phase of the project in accordance with internationally recognized guidelines,
2. The Social Mapping and Landowner Identification Study report shall be submitted to the State as part of the proposals for mine development prior to the granting of a mining lease.

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For further information, please contact:

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Potential developers are also advised to make contact with the PNG Chamber of Mines and Petroleum which offers a wide range of assistance to its members. Its address is:

The Executive Officer
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