

No. 3 of 1996.

Mineral Resources Development Company Pty Limited (Privatisation) Act 1996.

Certified on : 22/04/96

Parts I, IV & V on

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PTS II & III not yet

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1996.

Mineral Resources Development Company Pty Limited (Privatisation) Act 1996.

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S C H E D U L E.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1996.

AN ACT

entitled

Mineral Resources Development Company Pty Limited (Privatisation) Act 1996,

Being an Act to facilitate the privatisation of certain assets of the State and Mineral Resources Development Company Pty Limited transferred to a company (the Company) to be incorporated by Mineral Resources Development Company Pty Limited by -

- (a) providing for the approval and implementation of an agreement between the State, Mineral Resources Development Company Pty Limited and the Company under which the Company may acquire a participating interest in certain mining and petroleum development projects in Papua New Guinea; and
 - (b) requiring that the articles of association of the Company impose restrictions on the ownership of its shares so as to prevent any person, other than Mineral Resources Development Company Pty Limited, having a relevant interest in more than 15% of its issued share capital; and
 - (c) ensuring that the head office of the Company remains in Papua New Guinea; and
 - (d) the consequential amendment of various Acts,
- and for related purposes,

MADE by the National Parliament to come into operation -

- (a) in so far as relating to Parts I, IV and V - on certification; and
- (b) in so far as relating to Parts II and III - on the date on which the Option Agreement has been executed by all the parties to it.

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 of conscience, thought and religion conferred by Section 45 of the *Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and

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- (c) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (d) the right to privacy conferred by Section 49 of the *Constitution*; and
- (e) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made -

- (f) for the purpose of giving effect to the public interest in public order, public welfare and the development of underprivileged or less advanced groups or areas; and
- (g) in order to protect the exercise of the rights and freedoms of others; and
- (h) for the purpose of making reasonable provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) For the purposes of -

- (a) Section 29 of the *Organic Law on Provincial Government*; and
- (b) Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*,

it is hereby declared that this Act relates to a matter of national interest.

(3) Insofar as this Act provides for the compulsory taking of possession of any property or the compulsory acquisition of any interest in or right over any property within the meaning of Section 53 of the *Constitution* -

- (a) the purposes and reasons for each such taking or acquisition are hereby declared and described to be to facilitate improvement in the returns earned upon, and the efficient and economical acquisition and management of, the State's interests in Mining and Petroleum Projects so that they might better continue their significant contributions to the advancement of the order, welfare and development of the people of Papua New Guinea; and
- (b) each of those purposes and reasons is hereby also declared and described to be a public purpose and a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
- (c) the Act is also hereby expressed to be made in the national interest; and
- (d) the undertaking of the obligations of the State, MRDC or the Company, as the case may be, in relation to each such taking or acquisition under the *Mining Act 1992* or the *Petroleum Act* (Chapter 198), the conditions of any lease, licence or other tenement granted under the *Mining Act 1992* or the *Petroleum Act* (Chapter 198), the terms of any mining development contract or other agreement made in connection with the grant of such a tenement or the acquisition by the State or MRDC of a Participating Interest in a Mining Project or Petroleum Project and the terms of the Option Agreement shall constitute compensation made in connection with that taking or acquisition.

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2. INTERPRETATION.

In this Act, unless the contrary intention appears -

"associate" has the meaning given to it in Section 4;

"Company" means a company to be incorporated by MRDC and made the party to the Option Agreement referred to in the Option Agreement as "the Company";

"corporation" means a body corporate wherever formed or incorporated;

"Mining Project" has the meaning given to it in the Option Agreement;

"MRDC" means the Mineral Resources Development Company Pty Limited;

"officer", in relation to a corporation, has the meaning given to it in the *Companies Act* (Chapter 146);

"Option Agreement" means the agreement to be made between the State, MRDC and the Company, substantially in the form of the agreement contained in the Schedule with such amendments as may be agreed between the Minister, MRDC and the Company prior to the coming into operation of Parts II and III and, if that agreement is subsequently varied in accordance with Section 9, that agreement as varied and in force for the time being;

"Participating Interest" has the meaning given to it in the Option Agreement;

"Petroleum Project" has the meaning given to it in the Option Agreement;

"relevant interest", in relation to a share, has the meaning given to it in Section 3;

"share", in relation to the Company, means a share in the share capital of the Company and includes stock into which all or any of the share capital of the Company has been converted.

3. RELEVANT INTEREST.

(1) Subject to this section, a person holds a relevant interest in a share if he has any legal or equitable interest in that share.

(2) In addition to and without limiting the generality of Subsection (1), where a person -

(a) has entered into a contract to purchase a share; or

(b) has a right to have a share transferred to that person or as that person directs, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; or

(c) has a right to acquire a share, or a relevant interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which that person is the registered holder,

that person shall be deemed to have a relevant interest in that share.

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(3) A person shall not be deemed not to have a relevant interest in a share by reason only that the person has the relevant interest in the share jointly with another person.

(4) For the purposes of determining whether a person has a relevant interest in a share -

- (a) it is immaterial that the relevant interest cannot be related to a particular share; and
- (b) there shall be disregarded a relevant interest in a share -
 - (i) if the relevant interest is that of a person who holds the share as a bare trustee; or
 - (ii) of a person whose ordinary business includes the lending of money, if the person has a relevant interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; or
 - (iii) of a person whose ordinary business includes dealing in securities and who has authority to exercise powers as the holder of the relevant interest only because of instructions given to him, by or on behalf of another person, to dispose of the share on the other person's behalf in the ordinary course of business; or
 - (iv) of a person where that person has that relevant interest by reason only of holding a prescribed office; or
 - (v) that is a relevant interest of such person or of the persons included in such class of persons as is prescribed; and
- (c) such relevant interest shall not be disregarded by reason only of -
 - (i) its remoteness; or
 - (ii) the manner in which it arose; or
 - (iii) the fact that the exercise of a right conferred by the relevant interest is, or is capable of being made, subject to restraint or restriction.

4. ASSOCIATES.

(1) Where a person is deemed to be an associate of another person as provided by this section, the first-mentioned person shall be deemed to have a relevant interest in the shares in which that other person has a relevant interest.

(2) For the purposes of this section, the following persons are deemed to be associates of a person:-

- (a) the person's spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue or brother or sister of the person;
- (b) a partner of the person;
- (c) a corporation of which the person is an officer;
- (d) where the person is a corporation - any officer of the corporation;
- (e) an employer or employee of the person;
- (f) an officer of a corporation of which the person is an officer;

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- (g) an employee of a natural person of whom the person is an employee;
- (h) a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of the directors of the person;
- (i) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- (j) a corporation in which the person holds a substantial interest;
- (k) where the person is a corporation - a person who holds a substantial interest in the corporation;
- (l) the trustee of a trust estate in which the person holds a substantial interest;
- (m) where the person is the trustee of a trust estate - a person who holds a substantial interest in the trust estate; and
- (n) a person who is, by virtue of this section, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this section).

(3) For the purposes of this section -

- (a) a person is deemed to hold a substantial interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than 15% of the voting power in the corporation or holds relevant interests in not less than 15% of the issued shares in the corporation; and
- (b) a reference to control of the voting power in a corporation is a reference to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights; and
- (c) a reference to the voting power in a corporation is a reference to the maximum number of votes that might be cast at a general meeting of the corporation; and
- (d) subject to Subsection (4), a person is deemed to hold a substantial interest in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15% of the corpus or income of the trust estate.

(4) Where, under the terms of a trust, the trustee has a power or discretion as to the distribution of the corpus or income of the trust estate to beneficiaries, each beneficiary is deemed to hold a beneficial interest in the maximum percentage of corpus or income of the trust estate that the trustee is empowered to distribute to that beneficiary.

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5. APPLICATION.

(1) This Act binds the State.

(2) The Minister shall, prior to the coming into operation of Parts II and III, by written notice to MRDC and the Company, determine -

- (a) the Mining Projects and Petroleum Projects to be specified in Part A of Schedule 1 to the Option Agreement; and
- (b) the classes of Mining Projects and Petroleum Projects to be specified in Part B of Schedule 1 to the Option Agreement; and
- (c) the term of the Option Agreement, being a period not exceeding 25 years on and from the date of the coming into operation of Parts II and III.

PART II - THE OPTION AGREEMENT.

6. APPROVAL OF OPTION AGREEMENT.

The Option Agreement is ratified, approved and has effect according to its tenor.

7. EFFECT IN RELATION TO LAWS OF PAPUA NEW GUINEA.

The Option Agreement has the force of law for the full term provided for by this Act and the Option Agreement as if contained in this Act and shall apply notwithstanding anything to the contrary in any other law in force in the country, including, without limitation -

- (a) the *Central Banking Act* (Chapter 138) and any regulation made under that Act; and
- (b) the *Investment Promotion Act 1992* and any regulation made under that Act.

8. IMPLEMENTATION OF OPTION AGREEMENT.

(1) The implementation of the Option Agreement is hereby authorized and the Government, Ministers, officers, instrumentalities of the State and all bodies created by or under an Act for a public purpose are authorized, empowered and required to do all things necessary or expedient to carry out, and give full effect to, the Option Agreement.

- (2) A person shall not -
- (a) interfere; or
 - (b) do anything that interferes,

with the operation or implementation of the Option Agreement or with the ability of the parties to the Option Agreement to exercise rights or discharge duties or obligations, under the Option Agreement.

9. VARIATION OF OPTION AGREEMENT.

(1) The parties to the Option Agreement may from time to time by agreement, in writing, add to or substitute for, cancel or vary all or any of the provisions of the Option Agreement.

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(2) The Minister must cause a copy of an agreement under Subsection (1) to be laid before the Parliament within five sitting days following the making of the agreement.

(3) An agreement under this section may be revoked wholly or in part by resolution of the Parliament passed within five sitting days after a copy of the agreement is laid before the Parliament.

(4) Unless the agreement is revoked under this section, it will come into force on the expiration of the period within which it could have been revoked.

10. SPECIFIC PERFORMANCE.

The Option Agreement may be enforced by obtaining a decree of specific performance against the State in respect of its obligations under the Option Agreement.

11. APPROPRIATION.

Any sums required by the State to fulfil any liability from time to time arising under the Option Agreement shall be paid out of the Consolidated Revenue Fund which is hereby deemed to have been appropriated to the extent necessary.

PART III - CONSEQUENTIAL AMENDMENTS TO OTHER LAWS.

Division 1. - Amendment of Audit Act 1989.

12. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the *Audit Act 1989* is amended in the definition of "Government-owned company" by adding the following:-

"but does not include the company referred to as "the Company" in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* or any subsidiary of that company".

13. FUNCTIONS AND DUTIES OF THE AUDITOR-GENERAL (AMENDMENT OF SECTION 2).

Section 3 of the *Audit Act 1989* is amended in Subsection (2)(c) by adding the following:-

"except the company referred to as "the company" in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* and the subsidiaries of that company".

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Division 2. - Amendment of Mining Act 1992.

14. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the *Mining Act 1992* is amended -

- (a) by inserting after the definition of "Chief Warden" the following new definition:-

"'Company' has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*"; and

- (b) by inserting after the definition of "mining lease" the following new definitions:-

"'Mining Project' means a project -

- (a) for the construction, development and operation of facilities for the recovery, production, transportation and sale of minerals; and

- (b) specified or within a class specified in Schedule 1 to the Option Agreement;

'MRDC' means Mineral Resources Development Company Pty Limited;" and

- (c) by inserting after the definition of "non-mechanized mining" the following new definitions:-

"'Option' has the meaning given to it in the Option Agreement;

'Option Agreement' has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*; and

'Participating Interest' has the meaning given to it in the Option Agreement;"

15. NEW PART IIIA.

The *Mining Act 1992* is amended by inserting after Part III the following new Part:-

'PART IIIA. - ACQUISITION OF STATE INTERESTS.

"16A. ACQUISITION OF STATE INTERESTS.

(1) Notwithstanding any provision of any other Part or the terms of any agreement made by the State -

- (a) the State, MRDC and the Company shall each have the right to acquire and, as appropriate, transfer a Participating Interest in a Mining Project in accordance with the Option Agreement; and

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(b) without limitation -

- (i) the conditions of any exploration licence; and
- (ii) the conditions of any special mining lease, mining lease, lease for mining purposes or mining easement granted in relation to a Mining Project; and
- (iii) the terms of any mining development contract or any agreement referred to in Section 17 made in relation to a Mining Project,

granted or made after the coming into operation of Parts II and III of the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* shall recognise and provide for the exercise of those rights.

"(2) The State shall, subject to and in accordance with the Option Agreement, nominate MRDC or the Company to acquire its Participating Interest referred to in Subsection (1)."

16. GRANT OF A SPECIAL MINING LEASE (AMENDMENT OF SECTION 33).

Section 33 of the *Mining Act 1992* is amended -

- (a) in Subsection (1), by inserting before the words "The Head of State" the following:-

"Subject to this section,"; and

- (b) by adding the following new subsection:-

"(3) The Head of State, acting on advice, shall not grant a special mining lease under this section in relation to a Mining Project unless the Minister has first given to the Company written notice."

17. GRANT OF A MINING LEASE (AMENDMENT OF SECTION 38).

Section 38 of the *Mining Act 1992* is amended -

- (a) in Subsection (1), by repealing the reference to "Subsection (2)" and replacing it with the following:-

"this section"; and

- (b) by adding the following new subsection:-

"(4) The Minister shall not grant a mining lease under this section in relation to a Mining Project unless he has first given to the Company written notice."

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18. APPROVED PROPOSALS FOR A MINING LEASE (AMENDMENT OF SECTION 43).

Section 43 of the *Mining Act 1992* is amended -

- (a) in Subsection (1), by repealing the words "and may request the applicant to provide further information or to amend the application or proposals" and replacing them with the following:-

"and may request the applicant -

- (c) to provide further information and proposals, including, without limitation, information and proposals relating to -
- (i) the acquisition by the State or its nominee of a Participating Interest in the Mining Project to which the proposals relate; and
 - (ii) the transfer of some or all of the Participating Interest to the Company in accordance with the Option Agreement and other matters and transactions contemplated by the Option Agreement; or
- (d) to amend the application or proposals."; and

- (b) by inserting after Subsection (1) the following new Subsection:-

"(1A) The Minister may require the Board, in assessing the application, to consider whether the proposals include proposals which provide for the performance of the transactions contemplated in the Option Agreement on the terms specified in the Option Agreement."; and

- (c) by repealing Subsection (2) and replacing it with the following:-

"(2) Where the Board considers that the applicant has reasonably satisfied the requirements of Subsections (1) and (1A) the Board shall recommend approval of the proposals."

19. DUTIES OF REGISTRAR WHERE PRELIMINARY EXAMINATION SHOWS THAT REQUIREMENTS HAVE BEEN MET (AMENDMENT OF SECTION 103).

Section 103 of the *Mining Act 1992* is amended by repealing Subparagraph (b)(ii) and replacing it with the following:-

- "(ii) in the case of an application for the grant of a tenement in relation to a Mining Project, give written notice to the Company of the receipt of the application; and
- (iii) report in writing to the Board."

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20. NEW SECTION 103A.

The *Mining Act 1992* is amended by inserting after Section 103 the following new section:-

"103A. THE COMPANY MAY REQUIRE FURTHER INFORMATION.

(1) At any time after receipt by the Company of a notice under Section 103(b)(ii), the Company may request the applicant to provide to the Company, or to allow the Company access to, such information concerning the application and the proposals for development as the Company may reasonably require for the purpose of determining whether it will exercise the Option under the Option Agreement in respect of the Mining Project to which the application relates.

"(2) On receipt of a request under Subsection (1), the applicant shall provide to the Company or allow the Company access to the information requested within such reasonable period as the Company may specify in its request on the condition that the Company -

- (a) pays the reasonable costs of the applicant incurred in providing or allowing the Company access to the information requested; and
- (b) subject to Subsection (3), keeps the information confidential on such terms and conditions as the applicant may reasonably require.

"(3) The Company shall be permitted to disclose the information referred to in Subsection (2) to -

- (a) such of its employees, officers or agents whose duties in connection with the exercise of the Option require the disclosure of the information; and
 - (b) any adviser or other expert retained in connection with a proposal by the Company to exercise the Option,
- who undertake to keep the information confidential on such terms and conditions as the applicant may reasonably require.

"(4) A person who discloses the information referred to in Subsection (2) in contravention of the terms and conditions required by the applicant in accordance with Subsection (2)(b) or (3), is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years, or both."

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Division 3. - Amendment of Petroleum Act (Chapter 198).

21. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2(1) of the *Petroleum Act* (Chapter 198) is amended -

- (a) by inserting after the definition of "the Chief Inspector" the following new definition:-

"the Company' has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;" and

- (b) by inserting after the definition of "low water line" the following new definition:-

"MRDC' means Mineral Resources Development Company Pty Limited;" and

- (c) by inserting after the definition of "offshore area" the following new definitions:-

"Option' has the meaning given to it in the Option Agreement;

'Option Agreement' has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;

'Participating Interest' has the meaning given to it in the Option Agreement;" and

- (d) by inserting after the definition of "petroleum pool" the following new definition:-

"Petroleum Project' means a project -

- (a) for the construction, development and operation of facilities for the recovery, production, transportation and sale of petroleum; and
(b) specified or within a class specified in Schedule 1 to the Option Agreement;"

22. NEW DIVISION III.3A.

The *Petroleum Act* (Chapter 198) is amended by inserting after Division III.3 the following new Division:-

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'Division IIIA. - Acquisition of State Interests.

"31A. ACQUISITION OF STATE INTERESTS.

(1) Notwithstanding any provision of any other Division or the terms of any agreement made by the State -

- (a) the State, MRDC and the Company shall each have the right to acquire and, as appropriate, transfer, a Participating Interest in a Petroleum Project in accordance with the Option Agreement; and
- (b) without limitation -
 - (i) the conditions of any petroleum prospecting licence; and
 - (ii) the terms of any agreement made by the State in relation to a petroleum prospecting licence; and
 - (iii) the conditions of any petroleum development licence or pipeline licence granted in relation to a Petroleum Project, granted or made after the coming into operation of Parts II and III of the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* shall recognise and provide for the exercise of those rights.

"(2) The State shall, subject to and in accordance with the Option Agreement, nominate MRDC or the Company to acquire its Participating Interest referred to in Subsection (1)."

23. APPLICATION FOR PETROLEUM DEVELOPMENT LICENCE (AMENDMENT OF SECTION 33).

Section 33(2) of the *Petroleum Act* (Chapter 198) is amended by adding the following new paragraph:-

- "(c) such information and proposals, or information and proposals in addition to or by way of alteration to information and proposals already supplied, relating to -
 - (i) the acquisition by the State or its nominee of a Participating Interest in the Petroleum Project in respect of which the application is made; and
 - (ii) the transfer of some or all of the Participating Interest to the Company in accordance with the Option Agreement and other matters and transactions contemplated by the Option Agreement."

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24. NEW SECTION 33A.

The *Petroleum Act* (Chapter 198) is amended by inserting after Section 33 the following new section:-

"33A. NOTICE OF APPLICATION TO BE PROVIDED TO THE COMPANY, ETC.,

(1) On receipt of an application under Section 32 or Section 48 in relation to a Petroleum Project, the Director or the Minister, as the case may be, shall give written notice to the Company of the receipt of the application.

"(2) At any time after receipt of a notice under Subsection (1), the Company may request the applicant to provide to the Company, or to allow the Company access to, such information concerning the application and the applicant's proposals as the Company may reasonably require for the purpose of determining whether it will exercise its Option under the Option Agreement in respect of the Petroleum Project.

"(3) On receipt of a request under Subsection (2), the applicant shall provide to the Company or allow the Company access to the information requested within such reasonable period as the Company may specify in its request on the condition that the Company -

- (a) pays the reasonable costs of the applicant incurred in providing or allowing the Company access to the information requested; and
- (b) subject to Subsection (4), keeps the information confidential on such terms and conditions as the applicant may reasonably require.

"(4) The Company shall be permitted to disclose the information referred to in Subsection (2) to -

- (a) such of its employees, officers or agents whose duties in connection with the exercise of the Option require the disclosure of the information; and
- (b) any adviser or other expert retained in connection with a proposal by the Company to exercise the Option, who undertakes to keep the information confidential on such terms and conditions as the applicant may reasonably require.

"(5) A person who discloses the information referred to in Subsection (2) in contravention of the terms and conditions required by the applicant in accordance with Subsection (3)(b) or (4) is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years or both."

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25. NOTIFICATION OF GRANT OF PETROLEUM DEVELOPMENT LICENCE (AMENDMENT OF SECTION 34).

Section 34(1) of the *Petroleum Act* (Chapter 198) is amended in Paragraph (b), by repealing the word and figures "Section 31(2)" and replacing them with the following:-

"Sections 31(2) or 33(2)(c);".

26. GRANT OF PETROLEUM DEVELOPMENT LICENCE (AMENDMENT OF SECTION 35).

Section 35 of the *Petroleum Act* (Chapter 198) is amended by adding the following new subsection:-

"(10) The Minister shall not grant a petroleum development licence under this section in relation to a Petroleum Project unless the Minister has first given to the Company written notice."

Division 4. - Amendment of Public Finances (Management) Act 1995.

27. NEW SECTION 38A.

Part VII of the *Public Finances (Management) Act 1995* is amended by inserting immediately before Section 39 the following new section:-

'38A. APPLICATION OF THIS PART.

This Part does not apply to transactions contemplated by the Option Agreement (as defined in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*)."

PART IV. - REQUIREMENTS REGARDING COMPANY'S ARTICLES OF ASSOCIATION.

28. COMPANY'S ARTICLES OF ASSOCIATION TO INCLUDE CERTAIN PROVISIONS.

(1) The articles of association of the Company shall -

(a) impose restrictions on the issue, transfer and ownership (including joint ownership) of shares in the Company so as to prevent a person from having relevant interests in shares in the Company that represent, in total, more than 15% of the total nominal amount of the issued share capital of the Company provided that, for the purposes of determining whether a person has a relevant interest in a share in the Company, the relevant interest of MRDC in shares in the Company shall be disregarded; and

(b) confer the following powers on the directors of the Company to enable the directors to enforce the restrictions referred to in Paragraph (a):-

(i) the power to do anything necessary to effect the transfer of shares held by a person;

Mineral Resources Development Company Pty Limited (Privatisation)

- (ii) the power to remove or limit the right of a person to exercise voting rights attaching to the shares;
 - (iii) the power to refuse to register a transfer of shares; and
- (c) require that the head office of the Company always be located in Papua New Guinea.

- (2) A resolution or special resolution of the Company that purports -
- (a) to amend the articles of association so that they do not comply with Subsection (1); or
 - (b) to ratify an act or omission that contravenes the requirements of Subsection (1),

shall have no effect.

PART V. - MISCELLANEOUS.

29. EFFECT OF THINGS DONE OR ALLOWED UNDER THIS ACT.

Nothing done or allowed under the Option Agreement or this Act -

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty or confidence; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy.

30. POWER OF MINISTER.

The Minister is empowered to execute all documents (including the Option Agreement and any agreement under Section 9) and exercise any discretion under this Act.

31. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, as are required or permitted to be prescribed or as are necessary or expedient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Sec. 2

OPTION AGREEMENT

AGREEMENT dated 1996 between:

1. THE INDEPENDENT STATE OF PAPUA NEW GUINEA (the *State*);
2. MINERAL RESOURCES DEVELOPMENT COMPANY PTY LIMITED, a company incorporated in Papua New Guinea of 8th Floor, Invesmen Haus, Douglas Street, Port Moresby (*MRDC*); and
3. [*] LIMITED, a company incorporated in Papua New Guinea of [*] (the *Company*).

RECITALS

- A. It is the policy of the State to participate in the development of the State's resources by acquiring up to a 22.5% interest in petroleum development projects and up to a 30% interest in mining development projects in Papua New Guinea.
- B. MRDC is a company wholly owned by the State and has been nominated by the State to hold and manage all of the State's interests in mining and petroleum development projects.
- C. The Company has been incorporated as a wholly owned subsidiary of MRDC and will acquire certain of the interests of the State and MRDC in certain mining and petroleum development projects which are not required for the benefit of landowners or provincial governments.
- D. The State intends to make an initial public offering of up to 49% of the issued ordinary shares in the Company to the public in Papua New Guinea and elsewhere.
- E. In order to enhance the attractiveness of the initial public offering to potential investors, MRDC has, with the consent of the State, agreed to grant to the Company options to acquire:
 - (i) that part of the interest directly or indirectly held by the State or MRDC in certain existing mining and petroleum development projects, which is not held for the benefit of landowners or provincial governments;
 - (ii) a 25% interest in certain future mining development projects and a 20.5% interest in certain future petroleum development projects; and
 - (iii) any residual interest in a mining or petroleum development project held by the State or MRDC which, at any time following the exercise of the options referred to above, is not held by or for the benefit of landowners or provincial governments,on the terms and conditions of this Agreement.
- F. Under section 5(2) of the Mineral Resources Development Company Pty Limited (Privatisation) Act 1996, the Minister has determined that the option will apply to [NAME EXISTING PROJECTS] and to all future [NAME CLASSES OF FUTURE PROJECTS] development projects.

IT IS AGREED as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Act means Mineral Resources Development Company Pty Limited (Privatisation) Act 1996.

Authorisation includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, commission, licence, approval, authority or exemption from, by or with a Governmental Agency.

Business Day means any day on which the trading banks are open for business in Port Moresby.

Completion means the completion of the sale and purchase of a Participating Interest in a Project in accordance with Clause 4.

Developer means a person who applies for the grant of or holds a Tenement in connection with a Project.

Exercise Period has the meaning given in Clause 2.2.

Expert has the meaning given in Clause 3.1.

Governmental Agency means any government or governmental, semi-governmental or judicial entity or authority and includes any self regulatory organisation established under a statute or any stock exchange.

Information in relation to a Project means all information relating to the Project, or to the Participating Interest in the Project which the Company may acquire on exercise of the Option, and includes, without limitation:

- (a) geological, geophysical, economic or technical information relating to:
 - (i) the presence, absence or extent of deposits of Minerals or Petroleum in the area the subject of the Project; and
 - (ii) the actual or proposed design, construction, development and operation of the Project facilities;
- (b) details of any Project Property held or to be held in relation to the Project;
- (c) details of any Project Agreements entered into or to be entered into and each Tenement granted, applied for or proposed to be applied for in connection with the Project; and
- (d) accounting and financial information in respect of the Project including, without limitation, any budgets, forecast or other estimate in respect of the profit, loss or cashflow of the Project.

Landowner has the meaning given to the term "landholder" in the Mining Act.

Minerals means all valuable non-living substances excluding petroleum obtained or obtainable from land.

Mining Act means the Mining Act 1992.

Mining Project means a project for the construction, development and operation of facilities for the recovery, production, transportation and sale of Minerals.

Minister means the Minister responsible for the administration of the Act.

Minister for Mining and Petroleum means the Minister for Mining and Petroleum or other Minister or Ministers responsible for the administration of the Mining Act or the Petroleum Act for the time being.

Month means a calendar month.

Option means the right of the Company to acquire a Participating Interest in a Project under Clause 2.1.

Participating Interest in relation to a Project means:

- (a) an undivided beneficial interest in all Project Property including, without limitation:
 - (i) the ownership of and the right and benefit to receive in kind and to dispose of all Minerals or Petroleum, as the case may be, recovered or produced by the conduct of the Project; and
 - (ii) all other rights and benefits accruing after or arising out of the Project Agreements or any Tenement included in the Project Property; or
- (b) where all the Project Property is owned by a corporate entity with no other assets or liabilities other than those relating to the Project, a legal and beneficial interest in the issued voting share capital of that entity.

Petroleum means:

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, (whether in a gaseous, liquid, or solid state) and any other substance,

and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal, shale, or other rock.

Petroleum Act means the Petroleum Act (Chapter 198).

Petroleum Project means a project for the construction, development and operation of facilities for the recovery, production, transportation and sale of Petroleum.

Project means a Mining Project or a Petroleum Project:

- (a) specified in Part A of Schedule 1; or
- (b) within the class or classes specified in Part B of Schedule 1.

Project Agreements in relation to a Project means any agreement governing or establishing the rights and obligations of a Developer or the participants in an incorporated or unincorporated joint venture for the development of the Project in connection with the development or ongoing operation of the Project including, without limitation, any agreement which relates to the management of the Project.

Project Property in relation to a Project means all present and future property of whatever kind acquired or created or held for use by or on behalf of a Developer or the participants in a joint venture for the development of the Project in connection with the development of the Project including, without limitation, all Minerals or Petroleum, as the case may be, or other commodities to which the Project Agreements or the Tenements granted in relation to the Project apply and the facilities established or acquired by or on behalf of the Developer or such participants for the purpose of conducting Project operations.

Provincial Government has the meaning given in the Organic Law on Provincial Governments and Local - level Governments.

Purchase Price has the meaning given in Clause 3.1.

Security Interest means an interest or power:

- (a) reserved in or over any interest in any asset including, without limitation, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security or preferential interest or arrangement of any kind and whether existing or agreed to be granted or created.

Tenement means any lease, licence, claim, permit or other tenement or authority which confers or may confer pursuant to the Mining Act or the Petroleum Act a right to prospect, explore for, mine, recover, produce, transport or sell Minerals or Petroleum or construct, develop or operate facilities or conduct any other activity in Papua New Guinea ancillary to such activities.

Warranties means the warranties in Clauses 5.1 and 5.2.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a Clause or Schedule is to a clause of or schedule to this Agreement.
- (f) A reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns.

- (g) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
- (h) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it. Without limitation, a reference to the Petroleum Act includes a reference to any legislative enactment for the regulation of the exploration and development of gas resources in Papua New Guinea.
- (i) A reference to *Kina* or *K* is a reference to the currency of Papua New Guinea.

1.3 Other laws

This Agreement is to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect this Agreement:

- (a) unless the contrary intention appears expressly in that law; or
- (b) except as provided by this Agreement.

1.4 Nature of Agreement

This Agreement shall be construed as an agreement between MRDC and the Company for the transfer by MRDC to the Company of a Participating Interest in a Project conditional only upon the exercise of the Option by the Company.

2. OPTION OVER PROJECTS

2.1 Option

In consideration of the payment by the Company to MRDC of K10,000, MRDC, with the consent of the State, grants to the Company options to acquire:

- (a) (*existing Projects*): that part of any Participating Interest directly or indirectly held or to be held by it or the State in each of the Projects specified in Part A of Schedule 1 which is not held by or on behalf of Landowners or a Provincial Government;
- (b) (*future Projects*):
 - (i) a 20.5% Participating Interest in each Petroleum Project; and
 - (ii) a 25% Participating Interest in each Mining Project,
 in relation to which an application for the grant of a Tenement for the development of the Project is made after the date of this Agreement and which is within the class or classes of Projects specified in Part B of Schedule 1; and
- (c) (*residual interests*): any Participating Interest in a Project held by it or the State which, at any time after the acquisition of a Participating Interest in respect of the Project under sub-clauses (a) or (b), is not held for the benefit of Landowners or a Provincial Government.

on the terms and conditions of this Agreement.

2.2 Exercise of Option

The Company may exercise the Option in respect of a Project by notice to MRDC substantially in the form set out in Schedule 2 given at any time during the 120 day period (the *Exercise Period*) following:

- (a) (*existing Projects*): in the case of the acquisition of a Participating Interest under sub-clause 2.1(a), the date on which the Company notifies MRDC that it intends to exercise the Option to acquire that Participating Interest;
- (b) (*future Projects*): in the case of the acquisition of a Participating Interest under sub-clause 2.1(b), the date on which the Company receives a notice that the Minister for Mining and Petroleum intends to grant a Tenement for the development of the Project under sections 33(3) or 38(4) of the Mining Act or section 35(10) of the Petroleum Act, as the case may be; and
- (c) (*residual interests*): in the case of the acquisition of a Participating Interest under sub-clause 2.1(c), the date on which MRDC notifies the Company that the Participating Interest is not held for the benefit of landowners or a Provincial Government.

2.3 Obligation unconditional

Notwithstanding any other provision of this Agreement, the right of the Company to exercise the Option and the obligation of MRDC to transfer to the Company a Participating Interest in a Project upon exercise of the Option shall be absolute and unconditional and shall not be affected by anything which may limit or prejudice it.

2.4 The Company as State's nominee

Without limiting Clause 2.3 or Clause 6.2(b), the State may, at any time after the exercise of the Option in respect of a Participating Interest under sub-clause 2.1(b), nominate the Company to take up the Participating Interest on substantially the same terms and conditions as this Agreement (as if MRDC was the transferor of the Participating Interest) and the completion of the transfer of the Participating Interest to the Company on such terms and conditions shall discharge the obligation of MRDC to transfer that Participating Interest to the Company.

3. PURCHASE PRICE

3.1 Purchase Price

The purchase price payable by the Company on the acquisition of a Participating Interest under this Agreement shall be the fair market value of the Participating Interest as agreed by MRDC and the Company. Failing an agreement between MRDC and the Company within 7 days of the date on which the Exercise Period commenced, the fair market value of the Participating Interest shall be the amount determined by an independent qualified person (the *Expert*) appointed in accordance with clause 3.2 (a).

3.2 Expert

- (a) The Expert shall be an independent qualified person agreed by MRDC and the Company. Failing such agreement within 14 days of the date on which the Exercise Period commenced, the Expert shall be an independent qualified person nominated by the President or Chief Executive Officer of the International Banks and Securities Association or any successor organisation or, if there is no successor, the Chairman of the Australian Stock Exchange Limited on the application of either MRDC or the Company.

- (b) The Expert shall be instructed to make its determination as promptly as possible and, in any event, within 30 days of the date of accepting its appointment. In making its determination, the Expert may rely on the advice of other qualified persons in the mining or petroleum industry.
- (c) The Expert shall act as an expert and not as an arbitrator and the written determination of the Expert shall be final and binding on the parties.
- (d) All costs incurred by the Expert in relation to its appointment under this Agreement shall be borne by MRDC and the Company in equal shares.

3.3 Fair market value

- (a) The Expert must certify in writing the sum (expressed in Kina) which, in the opinion of the Expert, is the fair market value of the Participating Interest as at the date on which the Exercise Period commenced on the basis that MRDC owns the Participating Interest and that the sale is an arm's length sale between a willing vendor and a willing purchaser and consistent with principles and practices customarily used by industry to value a Participating Interest in a Mining Project or a Petroleum Project of the same or similar kind as the Project.
- (b) Each of the parties shall promptly give to the Expert all information which the Expert may reasonably request to determine the fair market value of the Participating Interest.

4. COMPLETION

4.1 Place for Completion

Completion of the transfer of a Participating Interest under this Agreement shall take place at the offices of the Company on the Business Day following the date which is 30 days after the date on which the Company exercises the Option or on such other date as MRDC and the Company may agree.

4.2 Documents to be delivered

On Completion MRDC shall deliver to the Company the following:

- (a) all documents necessary to unconditionally transfer to or vest in the Company or its nominated subsidiary the Participating Interest;
- (b) all books, records, accounts, data, maps, notes, drawings and other information (regardless of form) constituting the Information relating to the Project in the possession or under the control of MRDC; and
- (c) all documents of title to or otherwise evidencing the Participating Interest including, without limitation, any share certificates and copies of any Project Agreement or Tenement.

4.3 Payment of Purchase Price

Subject to the satisfaction by MRDC of its obligations under this clause, the Company shall pay to MRDC the Purchase Price in Kina in cash or other immediately available funds to an account nominated by MRDC prior to Completion.

4.4 Adjustments

In respect of the acquisition of a Participating Interest under sub-clauses 2.1(a) or (c), MRDC and the Company shall, on Completion, make cash adjustments between them with respect to the period between the date on which the Exercise Period commenced and the date of Completion to take account of:

- (a) any Minerals or Petroleum, as the case may be, comprised in the Participating Interest produced and sold during that period; and
- (b) expenditure cash called and paid in respect of the Participating Interest during the that period,

so that the parties are restored to the position that they would have been in had Completion occurred on the date on which the Exercise Period commenced.

4.5 Tax base

For the purposes of section 163AK(1) and section 164B(1) of the Income Tax Act 1959 and subject to the provisions of the Income Tax Act 1959, the Company may designate such part or all of the Purchase Price as it may determine as:

- (a) capital expenditure;
- (b) exploration expenditure; or
- (c) capital expenditure as to part and exploration expenditure as to part,

and the State and MRDC irrevocably authorise the Company to sign on their behalf and in such form as the Company may determine the notice referred to in section 163AK(3) and section 163B(3) specifying that designation.

5. WARRANTIES

5.1 State and MRDC

In respect of each transfer of a Participating Interest under this Agreement, each of the State and MRDC represent and warrant to the Company that, as at the date of Completion:

- (a) *(title)* MRDC:
 - (i) is the beneficial owner of the Participating Interest free from all Security Interests (other than an existing or future charge or lien arising under or required by any applicable Project Agreement which has been disclosed to the Company prior to the exercise of the Option); and
 - (ii) has full power and authority to transfer to the Company good equitable title to the Participating Interest free from all Security Interests (other than an existing or future charge or lien arising under or required by any applicable Project Agreement which has been disclosed to the Company prior to the exercise of the Option);
- (b) *(agreement binding)*: the execution, delivery and performance of this Agreement has been duly and validly authorised by it and this Agreement is its valid and binding obligation and is enforceable against it in accordance with its terms; and

- (c) *(authorisations)*: all Authorisations and any third party consent required in connection with the execution, delivery or performance by it of this Agreement has been obtained or effected and remains in full force and effect.

5.2 MRDC

In respect of each transfer of a Participating Interest under this Agreement, MRDC represents and warrants to the Company that, as at the date of Completion:

- (a) *(Information)*: to the best of its knowledge and belief after due inquiry, all Information provided to the Company under or in connection with this Agreement is true and accurate in all material respects.
- (b) *(Participating Interest)*: in the case of any shares in a body corporate which comprise the Participating Interest, to the best of its knowledge and belief after due inquiry, there are no outstanding subscription agreements, options, rights or other analogous entitlements of any description to acquire any unissued shares or stock of any class of the issuing body corporate, or any securities convertible into or exchangeable for or which otherwise confer on the holder any right (whether or not upon the happening of any contingency or after any lapse of time and whether or not upon the payment or delivery of any consideration) to acquire any unissued shares or stock of any class of the issuing body corporate nor is the issuing body corporate committed to grant or issue any such option, right or security;
- (c) *(Project Agreements)*: to the best of its knowledge and belief after due enquiry, there is no breach of any material provision in any Project Agreement or Tenement comprised in the Participating Interest or to which the Participating Interest relates which has not been remedied; and
- (d) *(litigation)*: there are no actions, claims or other proceedings pending or threatened in any court or other tribunal which in any way might call into question the title of MRDC to the Participating Interest or the right of MRDC to complete the transfer of the Participating Interest to the Company in accordance with this Agreement.

5.3 Indemnity

MRDC shall on demand indemnify the Company against all proceedings, claims, damages, expenses or losses of any nature which the Company may sustain or incur as a result of or in connection with any breach of the Warranties.

5.4 Survival

The Warranties shall not merge on nor be extinguished by Completion or any other event.

6. UNDERTAKINGS

6.1 MRDC

MRDC undertakes to the Company as follows:

- (a) *(information and access)*: it will allow the Company full access to all Information within its possession or under its control relating to Projects and allow the Company to make copies of such Information;
- (b) *(confidentiality)*: it will use its reasonable endeavours to ensure that any confidentiality arrangement entered into by it in respect of a Project permits the disclosure of Information regarding the Project to the Company;

- (c) *(Participating Interest)*: it will not sell, assign, transfer, lease or otherwise dispose of all or any part of its Participating Interest in a Project other than to Landowners or Provincial Governments or in accordance with or as contemplated by this Agreement;
- (d) *(consents)*: it shall use its reasonable endeavours to obtain all necessary consents and authorisations required to enable the transfer of each Participating Interest to the Company in accordance with this Agreement; and
- (e) *(pre-completion)*: it will from the date of exercise of an Option hold and administer the relevant Participating Interest until Completion with due regard to the interests of the Company during that time and, without limitation:
- (i) it will conduct its affairs in relation to the Participating Interest in a businesslike and usual manner;
 - (ii) it will not exercise or refrain from exercising any vote, election or right, nor give or withhold any approval, consent or waiver in respect of the Participating Interest without the prior consent of the Company;
 - (iii) it will not request or accept any dividend payment or other distribution in respect of the Participating Interest except in the ordinary and normal course without the prior consent of the Company; and
- (f) *(further assurances)*: it will do all things necessary or expedient to carry out, and to give effect to, the transfer of the Participating Interest to the Company, including, without limitation:
- (i) exercising its rights to take up a Participating Interest in a Project as the State's nominee;
 - (ii) exercising its right to vote at any shareholders' meeting of any of its subsidiaries or, to the extent permitted by law, procuring that its nominee directors on the board of such subsidiary do all things necessary or expedient to carry out, and to give effect to, the transfer of a Participating Interest to the Company; and
 - (iii) it will comply with and observe and not commit any breach of a material term of any Project Agreement relating to the Participating Interest.
- (g) *(notice of residual interest)*: it will promptly notify the Company of the events referred to in Clause 2.2(c).

6.2 State

The State undertakes to the Company as follows:

- (a) *(future Projects)*: it will promptly notify the Company on becoming aware of any proposal for the development of a Project including, without limitation, any application for a petroleum development licence under the Petroleum Act and any application for a mining lease or a special mining lease under the Mining Act;
- (b) *(MRDC obligations)*: it will procure that MRDC will at all times promptly and fully perform all of its obligations under this Agreement and, without limitation, if at any time MRDC fails to transfer to or vest a Participating Interest in the Company, it shall do all things necessary to transfer or vest the Participating Interest in the Company on exercise of the Option on substantially the same terms and conditions as the terms and conditions of this Agreement; and

- (c) (*further assurances*): it will do all things necessary and convenient to carry out and give effect to the transfer of a Participating Interest to the Company under this Agreement. Without limitation, it will:
- (i) ensure that, following the exercise of the Option, MRDC, as the State's nominee, takes up a Participating Interest in the Project sufficient to satisfy the rights of the Company under the Option;
 - (ii) transfer all or part of the Participating Interest held by it in a Project to MRDC to enable MRDC to perform its obligations under Clause 4; and
 - (iii) ensure that the exercise of any discretion by the Minister for Mining and Petroleum under the Mining Act or the Petroleum Act and the conditions of the grant of Tenements are not inconsistent with and provide for, as appropriate:
 - (a) the rights of the Company under this Agreement and the performance of the transactions contemplated by the Agreement;
 - (b) the rights of the Company to obtain access to Information in accordance with applicable provisions of the Mining Act or the Petroleum Act, as the case may be; and
 - (c) the grant of any Tenement for the development of a Project in the name of the Company and the Developer upon the transfer of a Participating Interest in the Project to the Company under this Agreement.

6.3 Company

Subject to any applicable provision of the Mining Act or the Petroleum Act, the Company undertakes to each of the State and MRDC that it shall keep all Information obtained by it under this Agreement confidential and shall not disclose such Information other than to:

- (a) such of its employees, officers or agents (*representatives*) whose duties in connection with the acquisition of a Participating Interest by the Company require the disclosure of the Information and provided that such representatives undertake to keep the Information confidential;
- (b) any adviser or other expert (*advisers*) retained in connection with a proposal by the Company to acquire a Participating Interest in a Project and provided that such persons undertake to keep the Information confidential;
- (c) any Governmental Agency, to the extent it may be necessary or desirable to do so, subject to the Company having first received the consent of MRDC and the Developer to the proposed disclosure;
- (d) the extent required by any relevant law, including the laws of Papua New Guinea and the Commonwealth and States of Australia; and
- (e) maintain or preserve the rights of the Company, its representatives or advisers in connection with any legal action or claim relating to the Participating Interest.

Provided that this Clause 6.3 shall not apply to any part of the Information which is already known to the Company or which is or subsequently comes into the public domain otherwise than as a result of a breach of this Clause 6.3.

7. STATE INDEMNITY

7.1 Obligations unconditional

The obligations of the State under this Clause and Clause 6.2 shall be absolute and unconditional and shall not be affected by anything which may limit or prejudice them including, without limitation, the present or future illegality, irregularity or defect in or attaching to the State's or MRDC's title to a Participating Interest.

7.2 Indemnity

The State shall on demand indemnify the Company from and against any liability, loss, cost or expense that the Company may sustain or incur as a consequence of the State failing to observe or perform its obligations under Clause 6.2.

8. TERM

This Agreement shall terminate on the date determined by the Minister under section 5(2) of the Act.

9. POWER OF ATTORNEY

For valuable consideration MRDC irrevocably appoints the Company as its attorney to do anything which MRDC is obliged to do under this Agreement following the exercise of the Option. Without limitation, the Company may execute any document or perform any act on behalf of MRDC which the Company considers necessary or expedient for the purpose of transferring a Participating Interest to the Company in accordance with this Agreement.

10. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

11. NOTICES

Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender:
- (b) in the case of the State may be given by the Minister and in the case of MRDC and the Company, must be signed by the Chief Executive Officer, any Director or the Secretary; and
- (c) will be taken to have been given or made (in the case of delivery in person or by post or facsimile) when delivered, received or left at the above address.

If delivery or receipt occurs on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in the place.

12. GOVERNING LAW

This Agreement is governed by the laws of Papua New Guinea. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

13. SEVERANCE

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

14. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. No waiver of any provision of, nor consent to any departure from, this Agreement by any of the parties shall be effective unless in writing and then only for the purpose for which it is given.

15. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

EXECUTED in Port Moresby.

SIGNED for and on behalf of)
THE INDEPENDENT STATE OF)
PAPUA NEW GUINEA by the)
Minister for [])
in the presence of:)

THE COMMON SEAL of the)
MINERAL RESOURCES DEVELOPMENT)
COMPANY PTY LTD was affixed)
by the authority of the)
Board of Directors in the)
presence of:)

Director

Director/Secretary

THE COMMON SEAL of [*])
LIMITED was affixed by the)
authority of the Board of)
Directors in the presence of:)

Director

Director/Secretary

SCHEDULE 1
Projects

PART A - Existing Projects

[List of existing projects as determined by the Minister under section 5(2) of the Act]

PART B - Classes of Future Projects

[List of classes of future projects as determined by the Minister under section 5(2) of the Act]

SCHEDULE 2
Notice of exercise of Option

To

Mineral Resources Development Company Pty Limited
8th Floor
Invesmen Haus
Douglas Street
Port Moresby

Attn: The Managing Director

Dear Sir

[*] PROJECT - NOTICE OF EXERCISE OF OPTION

We refer to the option Agreement between the Independent State of Papua New Guinea, Mineral Resources Development Company Pty Limited and [*] Limited (the *Company*) dated [*] 1996 (the *Agreement*). Terms defined in the Agreement have the same meaning when used in this notice.

Take notice that the Company now exercises the Option to acquire a [*]% Participating Interest in the [*] Project in accordance with Clause 2 of the Agreement.

Yours sincerely

[Chief executive officer/director]

I hereby certify that the above is a fair print of the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* was made by the National Parliament on 28 February 1996 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.