



DEPARTMENT OF MINERAL RESOURCES

MINERALS POLICY HANDBOOK

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DEPARTMENT OF MINERAL RESOURCES

MINERALS POLICY

INTRODUCTION

This handbook covers policy applying to minerals in general.

Basic Goals

The Independent State of Papua New Guinea considers the development of the State's mineral resources to be amongst its highest priorities. The State is committed to development of these resources in a way which maximises the benefits of minerals exploitation for the people of Papua New Guinea while minimising the social, environmental and economic disruption that this sometimes brings. The State recognises that to develop its mineral resources successfully at present it must use the expertise and financial resources available overseas until these have been successfully developed domestically. To attract overseas investors the State must foster a stable regulatory, economic and political environment which encourages investors to make long term commitments to the exploration and development of the country's mineral wealth.

Policy Documents

The principal elements of minerals policy can be found in the following legislation and regulations:

- Mining Act and Mining Safety Act
- Sections B and C of the Income Tax Act
- Foreign Exchange Act and Regulations
- Mineral Resources Stabilisation Act
- Environment Act
- ~~Environmental Planning Act~~
- ~~Environmental Contaminants Act~~
- ~~Water Resources Act~~
- Land Act
- Customs Act

Some of the minerals policies which are not legislated are nonetheless included in standard agreements. The principal standard agreement relating to the minerals industry is the Mining Development Contract (MDC) which the State negotiates with the project developer in the case of large scale mining projects. Large scale mining projects are projects with a capital cost in excess of US\$75 million.

Policies are also set from time to time by the National Executive Council (NEC).

MINERALS LEGISLATION

Minerals Ownership and Exploitation Rights

Ownership of Minerals

In PNG all minerals on and below the surface of any land are the property of the State which has the right to allow suitable persons to explore for, mine and sell mineral resources.

Nature of Mineral Rights

The rights to explore for, mine and sell mineral resources are granted in the form of tenements. Tenements are fixed term over a fixed area and are granted to persons or companies committed to programs of exploration or mining development approved by the State. Such tenements are not granted for the purposes of retaining mineral rights indefinitely.

Applications for Mineral Tenements

Applications for mineral tenements may be made by any person, company or joint venture at any time over any area not covered by an existing tenement or not otherwise reserved by the State, and applications for the same area are considered one at a time in the order they are received.

Tenements

The passing of the Mining Act 1992 greatly simplified administration of tenements and reduced the number of tenements available.

Tenements available are as follows:

Exploration Licence (EL) - granted for a term not exceeding 2 years and renewable for 2 year terms over an area not exceeding 2,500km².

Mining Lease (ML) - granted for a term not exceeding 20 years and renewable for terms of up to 10 years. Normally granted for small to medium scale, and some alluvial mine developments. The holder must comply with approved proposals for development and other prescribed mining lease conditions.

Special Mining Lease (SML) - granted for a term not exceeding 40 years and renewable for terms of up to 20 years. Normally granted for large scale projects and requires a Mining Development Contract to be negotiated. The holder must comply with approved proposals for development and other prescribed mining lease conditions.

Alluvial Mining Lease (AML) - granted for a term not exceeding 5 years and renewable for terms of up to 5 years for an area not exceeding 5ha. The holder must be a landowning citizen.

Lease for Mining Purposes (LMP) - granted for the same term as that of the tenement with which it is associated. It is granted for construction of project infrastructure and facilities.

Mining Easement (ME) - granted for the same term as the tenement with which it is associated. It is granted for construction and operation of project facilities such as roads, power transmission lines, waterways, pipelines, bridges or tunnels.

All tenements with the exception of SMLs are granted by the Minister responsible for mining matters on recommendation by the Mining Advisory Board Council. SMLs are granted by the Head of State.

A full description of provisions of the Mining Act are contained in the Mining Act 1992 available from the Department of Mineral Resources.

Fiscal Provisions

Royalty

The holder of a Special Mining Lease or Mining Lease must 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).

General Taxation Provisions

Corporate Taxes

Income tax is levied at a rate of 25% on Mining Lease projects and 35% on Special Mining Lease projects. The tax is based on gross operating income less deductions for allowed operating expenses which include depreciation of capital assets and amortisation of exploration expenses.

Depreciation rates are set by the Commissioner of Internal Revenue on the basis of his estimation of the economic life of the capital assets. Depreciation deductions can include plant construction costs, feasibility and environmental studies costs and pre-production management costs.

Exploration expenditure can be accumulated for up to 11 years and when income from the project begins is amortised over 5 years or life of mine, whichever is shorter. Deductions for amortisation cannot be claimed at such a level as to result in a tax loss.

Operating losses may be carried forward for up to 7 years but there is no provision for losses to be carried back.

Import Duties

Import duties in PNG are generally levied on all imported goods other than basic foodstuffs. They are levied on a CIF basis and are deductible or depreciable depending on the class of imported item. In the case of Special Mining Lease mining ventures, the government has allowed the importation of goods with a specialised purpose for mining including plant, machinery, vehicles, reagents and other supplies at an average duty rate based on a prescribed basket of goods. Currently this rate is established at 14.62%. The general import duty rate is 11%, therefore the average duty rate for SMLs would only be viable for goods which attract a rate in excess of 14.62%.

Dividend Withholding Tax

All resident companies paying dividends, including mining companies, are required to deduct a 17% dividend withholding tax. It may in some cases be reduced to 15% for non-resident shareholders in countries with which PNG has double taxation agreements.

Special Mining Lease Provisions

Holders of Special Mining Leases are taxed differently from other tenement holders. Income is “ring fenced” to isolate the income derived from the mining project only. Such entities are liable for Corporate Income Tax of 35% and Additional Profits Tax (APT). They also benefit from tax advantages during the investment recovery period which is the period in which the initial capital outlay is being recovered.

The APT and Investment Recovery provisions together enable the large investor to reduce his financial risk in the early period of a project but enables the State to tax the project at a higher rate once the initial investment has been repaid and the investor is making a high rate of return on his investment.

Investment Recovery Period

During the investment recovery period the holder of an SML may elect to make larger depreciation provisions than normal and is not liable to pay APT. The period begins upon receipt of assessable income and ends when cumulative mining income exceeds the capital cost of constructing the project.

Additional Profits Tax

APT is paid at a rate of 70% of assessable income less the Corporate Income Tax rate when accumulated “net cash receipts” exceed the equivalent of a rate of return on initial capital outlay of 20% or 12% plus the US Prime Rate.

National Participation

State Equity Option

The State may elect to acquire up to a 30% participating interest in mining projects on a fully contributing basis with no financial carry. To date this has only been exercised on SML projects. The decision on whether or not to participate is made at the grant of the mining lease.

Under the Option Agreement signed by Orogen Minerals Limited with the State, Orogen has the right, but not the obligation, to acquire from the State a 25% interest in all future mining development projects until the year 2021. (The State, through its wholly-owned subsidiary MRDC, holds 51% shareholding in Orogen.)

Landowner Equity

Landowners in SML project areas are entitled to 5% equity in the project to come from the State's share of equity. The cost of the equity will be negotiated on a case by case basis.

Project Infrastructure

Provision of Infrastructure

The development of a mine includes the construction of all infrastructure which will be required by the project and to cater for the needs of the population affected by the project. Project infrastructure includes operational facilities (project offices and accommodation, mining and processing plant, project area roads, pipelines and transmission lines, and waste facilities) and non-operational facilities (local government facilities, community and health centres, roads, wharves and airstrips, etc).

Costs and Ownership of Infrastructure

- a) The capital cost of all project infrastructure is borne by the project developer. However, the State may contribute to the capital cost of non-operational facilities but will be reimbursed by the project company.
- b) The State may purchase non-operational facilities from the project developer but must give the project developer priority to use the facilities.
- c) The operating costs of non-operational facilities may be borne by the State in proportion to its use of such facilities.

Tax Credit Scheme

Through the Tax Credit Scheme the developer can construct government approved infrastructure outside of the mining lease and have the expenditure, up to a maximum of 2% of assessable income, considered as income tax paid for that year.

Township Development

The State encourages the project developer to develop integrated, well serviced and economically viable townships in SML project areas, including such measures as the provision of employee accommodation and incentives to attract permanent residents. Mining Lease projects are treated on a case by case basis.

Local Processing

A proportion (one-third to date) of mine products of a project must be supplied for processing to local processors if local capacity exists and can produce processed minerals that meet internationally accepted standards and prices.

Local Business Development

For a major project on an SML, a company must employ a Business Development Officer as part of an Approved Business Development Plan to assist in the establishment of local businesses which can compete for project contracts and continue operating after the project is completed.

Local Procurement

Preference is given to contractors from the mining lease area, then to those in the Province and then to other National contractors. Contracts for goods and services apart from the main activities of mining and marketing must be offered to registered local businesses which are capable of meeting internationally accepted contractual terms. In the case of an SML, the awarding of contracts is monitored by a committee which is chaired by the Department of Commerce and Industry and includes Department of Mineral Resources, Provincial Government, landowner and project company representatives.

Training and Localisation

Preference in employment is given to suitably qualified people from the mining lease area first, then to those in the Province and then to those from

the rest of PNG. The project developer must implement an Approved Training and Localisation Plan to further the goal of localisation of the project work force. In SML projects the implementation of the plan is monitored by a committee which is chaired by the Department of Industrial Relations and includes Department of Mineral Resources, Provincial Government, landowner and project company representatives.

Development Forum

Prior to granting an SML it is a requirement for the Minister responsible for mineral resources to host a Development Forum consisting of representatives of all interested parties to the development project; National and Provincial Government, landowners and the project developer. The Forum discusses the proposed development, its likely effects and the way in which benefits will be distributed between the landowners, Provincial and National Governments.

Special Support Grant

The province in which a large scale project is located is eligible for a grant from the National Government known as the Special Support Grant (SSG) to be used for approved projects. The grant is equivalent to 1% of net sales value of mine products from the project. A minimum of 20% of this grant must be spent in the mine affected area.

Royalty Distribution

Distribution of royalty payments from mine products are usually negotiated between the Provincial Government and the landowners with the proviso that landowners receive at least 20%. Lately, especially with smaller projects, landowners have negotiated to receive a larger proportion of the royalties.

Compensation

Tenement holders are liable to pay compensation to landowners for exploration and mining activities on their land. Compensation is payable for the following:

- 1) Deprivation of possession and use of land
- 2) Damage to land
- 3) Loss of economic plants and trees
- 4) Social Disruption

Where applicable, compensation is determined with reference to the Valuer-General's published rates.

A project developer is required to enter into a Compensation Agreement with the landowners before mining commences and have it registered by the Registrar on recommendation from the Chief Warden.

For further information , please contact:

*The Secretary
The Department of Mineral Resources
Private Mail Bag
Port Moresby Post Office
Papua New Guinea*

Fax (+675) 3213701

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
PNG Chamber of Mines and Petroleum
PO Box 1032
Port Moresby Post Office
Papua New Guinea*

Fax (+675) 3217107