

No. 41 of 1995.

Compensation (Prohibition of Foreign Legal Proceedings) Act 1995.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Compensation (Prohibition of Foreign Legal Proceedings) Act 1995,

Preamble

WHEREAS mining projects and petroleum projects in Papua New Guinea generate a significant part of the gross domestic product and the foreign exchange earnings of Papua New Guinea;

AND WHEREAS the continued successful operation of such projects is necessary to generate income and wealth for the State and to make significant contributions to the social and economic welfare of the people of Papua New Guinea;

AND WHEREAS it is proper and in keeping with the Constitutional Goal of political and economic independence that any compensation claims arising from such projects be determined and resolved within Papua New Guinea;

AND WHEREAS in pursuance of the provisions of the *Constitution* there is an established, competent and independent National Judicial System in Papua New Guinea together with other tribunals to determine and resolve such claims;

THEREFORE it is enacted as follows:—

Being an Act to prohibit the taking or pursuing in foreign courts of legal proceedings in relation to compensation claims arising from mining projects and petroleum projects in Papua New Guinea.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act—

(a) 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—

(i) the right to freedom of conscience, thought and religion and the practice of a person's religion and beliefs, including freedom to manifest and propagate a person's religion and beliefs in such a

way as not to interfere with the freedom of others, conferred by Section 45 of the *Constitution*; and

- (ii) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (iii) the right peacefully to assemble and associate and to form and belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*)—

- (iv) taking account of the National Goals and Directive Principles (including, in particular, the goals that Papua New Guinea should, among other things, be economically independent and its economy basically self-reliant and that Papua New Guinea's natural resources and environment should, among other things, be conserved and used for the collective benefit of all Papua New Guineans) and the Basic Social Obligations (including, in particular, the obligation to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, the protection of children and persons under disability (whether legal or practical) and the development of under privileged or less advanced groups or areas; and
 - (v) in order to protect the exercise of the rights and freedom of others; and
- (b) makes reasonable provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) For the purposes of—

- (a) the *Organic Law on Provincial Government*; and
- (b) the *Organic Law on Provincial Governments and Local-level Governments*,

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

2. APPLICATION.

This Act applies notwithstanding any provisions of the—

- (a) *Mining (Bougainville Copper Agreement) Act 1976*; and
- (b) *Mining (Ok Tedi Agreement) Act 1976*; and
- (c) *Mining (Ok Tedi Supplemental Agreement) Act 1980*; and

- (d) *Mining (Ok Tedi Second Supplemental Agreement) Act 1981*; and
- (e) *Mining (Ok Tedi Third Supplemental Agreement) Act 1983*; and
- (f) *Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985*; and
- (g) *Mining (Ok Tedi Fifth Supplemental Agreement) Act 1985*; and
- (h) *Mining (Ok Tedi Sixth Supplemental Agreement) Act 1986*; and
- (i) *Mining (Ok Tedi Agreements) (Amendment) Act 1986*; and
- (j) *Mining (Ok Tedi Seventh Supplemental Agreement) Act 1986*; and
- (k) *Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995*.

3. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**compensation claim**” means any claim, demand, suit or right of action (and whether based upon tort or any other wrong or liability whatsoever) in connection with or purportedly or allegedly in connection with—

- (a) a mining project; or
- (b) a petroleum project,
and which relates to or concerns—
 - (c) disposal of overburden, tailings, petroleum, produce water or other waste; or
 - (d) pollution; or
 - (e) effects upon the environment; or
 - (f) any effects upon or loss, taking, acquisition, forfeiture, extinction or determination of, or of possession of, any property, and whether or not that claim, demand, suit or right of action—
 - (g) extends to any other matter; or
 - (h) seeks—
 - (i) the payment of damages, compensation or any other form of monetary relief; or
 - (ii) any form of non-monetary relief; or
 - (iii) any combination of the forms of relief referred to in Subparagraphs (i) and (ii); or
 - (i) arose, was commenced or relates to circumstances existing—
 - (i) before the coming into operation of this Act; or
 - (ii) at any time after the coming into operation of this Act,

and for the purposes of this definition “**pollution**” and “**environment**” have the meaning given to them respectively in Section 3 of the *Environmental Contaminants Act 1978*;

“**compensation proceedings**” means any proceedings for or in pursuance of a compensation claim before any court, forum or other tribunal whether commenced or contemplated to be commenced before, at or after the coming into operation of this Act, and for the purposes of this definition a reference to “**proceedings**” includes, without limitation—

- (a) proceedings at first instance; and
- (b) interlocutory proceedings; and
- (c) proceedings by way of appeal; and
- (d) proceedings seeking review of any judicial or administrative act; and
- (e) proceedings seeking any prerogative writ or any order or relief to similar effect,

but does not include—

- (f) any proceedings for the enforcement of or based upon the judgement of a Papua New Guinea court; or
- (g) any proceedings brought before a foreign court with the express written agreement of each of the parties to those proceedings to submit to the jurisdiction, whether exclusive or non-exclusive, of that foreign court, but a person shall not be considered to have agreed to submit to the jurisdiction of a foreign court only by having appeared conditionally or unconditionally in that court;

“**foreign court**” means any court, forum or tribunal (by whatever name known) not established under the laws of Papua New Guinea;

“**mining project**” means—

- (a) the exploration for minerals in Papua New Guinea; or
- (b) the extraction of minerals in Papua New Guinea; or
- (c) the refining or processing of minerals in Papua New Guinea; or
- (d) the operation of a tenement under the *Mining Act 1992*; or
- (e) activities ancillary to the exploration for, or extraction, refining or processing of, minerals or the operation of a tenement including the transport of the minerals recovered to a port or points of dispatch from a port or other terminal,

and for the purposes of this definition, “**exploration**”, “**minerals**”, “**mining**” and “**tenement**” have the meaning given to them respectively in Section 2(1) of the *Mining Act 1992*;

“Papua New Guinea court” means any court, forum or tribunal (by whatever name known) established under the laws of Papua New Guinea;

“petroleum project” means—

- (a) the exploration for petroleum in Papua New Guinea; or
- (b) the recovery of petroleum in Papua New Guinea; or
- (c) the refining of petroleum or petroleum products in Papua New Guinea; or
- (d) the operation of a licence or pipeline licence or other petroleum operations under the *Oil and Gas Act 1998*;
- (e) activities ancillary to the exploration for, or recovery or refining of, petroleum or the operation of a licence or pipeline licence including the transport of the petroleum recovered to a refinery or port or point of dispatch from a port or other terminal,

and for the purposes of this definition **“petroleum”**, **“pipeline licence”** and **“licence”** have the meaning given to them respectively in Section 3(1) of the *Oil and Gas Act 1998*.

4. **PROHIBITION OF COMPENSATION PROCEEDINGS IN A FOREIGN COURT.**

(1) Subject to this section, no compensation proceedings may be taken or pursued in a foreign court.

(2) Subsection (1) does not apply in respect of compensation proceedings where proceedings have first been brought in a Papua New Guinea court for or in pursuance of the same or substantially the same compensation claim and—

- (a) having been served, the defendant to such proceedings has not, within the time permitted, submitted to the jurisdiction of the Papua New Guinea court; or
- (b) a final judgement has been given or a final determination has been made in relation to those proceedings in a Papua New Guinea court or a Papua New Guinea tribunal and the judgement or determination remains unsettled.

(3) Subject to Subsection (4), where, in contravention of this Act, compensation proceedings are taken or pursued in a foreign court in respect of a compensation claim, that compensation claim will cease to be actionable in Papua New Guinea and each act or omission alleged to give rise to that compensation claim will be deemed to have been justifiable in Papua New Guinea.

(4) This section does not apply to compensation proceedings—

- (a) commenced in a foreign court prior to the coming into operation of this Act; and

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- (b) withdrawn, discontinued or abandoned within 60 days of that coming into operation.

5. OFFENCE.

A person who, in contravention of Section 4, takes or pursues compensation proceedings in a foreign court, is guilty of an offence.

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

6. JUDGEMENTS OF FOREIGN COURTS IN RESPECT OF COMPENSATION CLAIMS NOT ENFORCEABLE IN PAPUA NEW GUINEA.

Notwithstanding any law to the contrary, a judgement of a foreign court, in relation to compensation proceedings prohibited under Section 4 made after the coming into operation of this Act is not enforceable in Papua New Guinea.

Office of Legislative Counsel, PNG