

Chapter 363C.

Mining (Ok Tedi Third Supplemental Agreement) Act 1983.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 363C.

Mining (Ok Tedi Third Supplemental Agreement) Act 1983.

ARRANGEMENT OF SECTIONS.

1. Interpretation.
 - “the commencement date”
 - “the Third Supplemental Agreement”
2. Approval of agreement.
3. Effect in relation to laws of Papua New Guinea.
4. Ancillary powers of Ministers.

SCHEDULE 1

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Mining (Ok Tedi Third Supplemental Agreement) Act 1983,

Being an Act to provide for the approval and implementation of a third Supplemental Agreement relating to the development of certain mineral deposits in the Ok Tedi region of the Western Province.

1. INTERPRETATION.

In this Act—

“**the commencement date**” means 15 March 1983, being the date on which the *Mining (Ok Tedi Third Supplemental Agreement) Act 1983* came into force;

“**the Third Supplemental Agreement**” means the supplemental agreement, a copy of which is set out in Schedule 1.

2. APPROVAL OF AGREEMENT.

The Third Supplemental Agreement is approved and has affect according to its tenor.

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

¹The Third Supplemental Agreement has the force of law for the full term provided for therein as if contained in this Act and shall apply notwithstanding anything to the contrary in any other law in force in the country.

4. ANCILLARY POWERS OF MINISTERS.

Notwithstanding anything in any other law (whether made before or after the commencement date), the Minister has power, on behalf of the State, to make all grants, issues, renewals and extensions required by or under the Third Supplemental Agreement to be made by the State, and is not bound in that regard by any provisions of any such law requiring or permitting

¹ Section 3 repealed and replaced by the *Mining (OK Tedi Agreements) (Amendment) Act 1986* (No. 26 of 1986), s 5. .

s. 4.

Mining (Ok Tedi Third Supplemental Agreement) 9999

any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provision.

SCHEDULE 1

THIRD SUPPLEMENTAL AGREEMENT

THIS THIRD SUPPLEMENTAL AGREEMENT is made BETWEEN—

- (1) THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter call "the State"); and
- (2) OK TEDI MINING LIMITED, a company incorporated in Papua New Guinea having its registered office at 6 Motea Toba Road, Six Mile, Port Moresby, (hereinafter called "the Company").

WHEREAS—

- A. By an agreement dated 22 March 1976 (hereinafter called "the Principal Agreement") between the State and Danpiet Mining Company Limited (hereinafter called "Danco") the State granted to Danco certain rights, set out in detail in the Principal Agreement, including rights to carry out investigations and studies in relation to, and undertake a Project involving the exploitation of, the Ok Tedi Deposits in Papua New Guinea.
- B. The Principal Agreement has been amended and assigned as set out in a Supplemental Agreement dated 26 June 1980 and a Second Supplemental Agreement dated 26 February 1981.
- C. The Parties intend by this Third Supplemental Agreement to resolve the issue of environmental liability between them in respect of any environmental damage that may be caused to the Fly River and its environs in the territory of the Republic of Indonesia.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. Definitions and Interpretation
 - 1.1 This Agreement is supplemental to the Principal Agreement and accordingly, unless otherwise defined herein, words and expressions which are given a certain meaning in the Principal Agreement are used herein with the same meanings. In addition, unless the context otherwise requires—
 - "Agreement" means this Third Supplemental Agreement;
 - "Arrangements" means the Arrangements for the Use of the Fly River by the Project, made pursuant to the Basic Agreement between the State and the Republic of Indonesia;
 - "Boundary Waters" has the meaning ascribed to it in the Arrangements;
 - "Parties" means the parties to this Agreement;
 - "Principal Agreement" means the agreement referred to in the first recital hereto, as amended by the Supplemental Agreement, the Second Supplemental Agreement, and as otherwise varied from time to time;
 - 1.2 The rules of interpretation set out in Clause 2 of the Principal Agreement shall, unless the context otherwise requires, apply to this Agreement. References to Recitals, Clauses or Schedules are, unless otherwise specified, references to the recitals, clauses and schedules of this Agreement.

2. **Effect on and of other laws**
 - 2.1 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 either expressly or by implication, in that law; or
 - (b) except as provided by this Agreement.
3. **Conditions Precedent**
 - 3.1 The Parties declare that this Agreement constitutes a material or substantial alteration of the Principal Agreement and accordingly pursuant to Clause 42.2 of the Principal Agreement the State shall as soon as is reasonably practicable introduce and sponsor in the National Parliament a Bill for an Act to approve this Agreement, which Bill shall be in a form agreed upon between the parties.
 - 3.2 This Agreement other than this Clause 3 shall not operate unless and until the Bill referred to in Clause 3.1 is passed as an Act and comes into force.
4. **Reimbursement Arrangements**
 - 4.1 (a) Subject to compliance with the relevant provisions of the Arrangements, including the granting of the necessary approvals thereunder, and in order to assist in the implementation of paragraph 10.1 thereof, the Company agrees that the rights and obligations of the Company and State, as specified in sub-clauses 29.3, 29.6, 29.7, 29.8, 29.9, 29.10 and 29.11 of the Principal Agreement, shall apply and operate in respect of the Boundary Waters and adjacent Indonesian bank.
 - (b) Notwithstanding Paragraph (a), the Company shall only be obliged to comply with clause 29.3 of the Principal Agreement in respect of the Boundary Waters to the extent necessary to establish the extent of any pollution of the Boundary Waters and adjacent Indonesian bank.
 - 4.2 (a) Within 30 days of any payment being made, pursuant to paragraph 10.2 of the Arrangements, by the State to the Republic of Indonesia on account of any damage caused by pollution from the Project, the Company shall reimburse to the State the amount of any such payment.
 - (b) Prior to making any payment pursuant to paragraph 10.2 of the Arrangements, the State shall consult with the Company upon the amount which shall be an adequate and reasonable payment to fulfil the State's obligations under that Paragraph.
 - (c) If at the time of reimbursement the Company considers that the amount paid by the State was unreasonable, it may submit the issue to arbitration pursuant to Clause 38 of the Principal Agreement, and thereafter the Company shall only be obliged to reimburse the State for the amount considered reasonable in the award of the arbitrator or arbitrators.

IN WITNESS whereof this Agreement has been duly executed by the Parties on the 4th day of March 1982.

SIGNED for and on behalf of THE INDEPENDENT
STATE OF PAPUA NEW GUINEA by TORE
LOKOLOKO, G.C.M.G., O.B.E., K.S.J., T. LOKOLOKO
Governor General, acting with and in accordance
with the advice of the National Executive Council,
in the presence of:

C. MURRAY

SIGNED for and on behalf of OK TEDI MINING LIMITED in the presence of: D.S. ADAM

V.M. TEMPLE

Office of Legislative Counsel, PNG