

No. 15 of 2008.

Liquefied Natural Gas Project (State Participation) Act 2008.

Certified on: 22. 12. 2008



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No. of 2008.

AN ACT

entitled

Liquefied Natural Gas Project (State Participation) Act 2008,

Being an Act to provide for the State's nominee to acquire an interest in the LNG Project to be the Independent Public Business Corporation of Papua New Guinea, to authorise certain bonds to be issued to fund that acquisition and to make certain amendments to the *Petromin PNG Holdings Limited Authorization Act 2007* and the *Independent Public Business Corporation of Papua New Guinea Act 2002* and for related purposes,

MADE by the National Parliament to come into operation:-

- (a) in respect of Section 12 - to be deemed to have come into operation on 6 August 2008; and
- (b) in respect of Part 2 - to be deemed to have come into operation on 19 February 2008; and
- (c) in respect of the remainder of the Act - on certification.

PART 1. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS, ETC.

(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 from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom from 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
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*,

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

- (f) 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 obligations 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 underprivileged or less-advanced groups or areas; and
- (g) in order to protect the exercise of the rights and freedom of others; and
- (h) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* of any person who is not a citizen (and it is hereby declared that neither Petromin PNG Holdings Limited nor any of its subsidiaries is a citizen), this Act is made pursuant to Section 53(7) of the *Constitution*.

(3) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* of any person who is not a citizen -

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be -
 - (i) to facilitate the acquisition by or for the benefit of the State and the people of Papua New Guinea of a participating interest in the LNG Project; and
 - (ii) to facilitate the development of the LNG Project and thereby make significant contributions to the advancement of the social and economic welfare of the people of Papua New Guinea,and each of those purposes and reasons is hereby also declared to be described as -
 - (iii) a public purpose; and
 - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) the release of any obligation of the Petromin PNG Holdings Limited to make payment:-
 - (i) to the State of consideration for a participating interest in the LNG Project; or
 - (ii) to IPBC in consideration for the Oil Search Assets,constitutes compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

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(4) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(5) For the purposes of any Organic Law from time to time and for the time being implementing Part VIA of the *Constitution*, it is hereby declared that this Act relates, in its entirety, to a matter of urgent national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

(6) In so far as this Act is a law to authorise the raising of loans, it is hereby declared that this is a law to authorise and control the raising of loans for the purposes of Section 209 of the *Constitution* and that it is a law that is made on the recommendation of the Head of State, acting with, and in accordance with, the advice of the National Executive Council, as required by Section 210 of the *Constitution*.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“Bond Deed Poll” means the Bond Deed Poll dated [to be inserted after execution] executed by IPBC providing for the issue of certain bonds;

“Bonds” has the meaning set out in the Bond Deed Poll;

“Gas Agreement” means the agreement executed by the Independent State of Papua New Guinea, Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (Highlands) Limited, Ampolex (PNG Petroleum) Inc, Merlin Pacific Oil Company Limited, Oil Search Limited, Oil Search (Tumbudu) Limited, Oil Search PNG Limited, Merlin Petroleum Company, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited, AGL Gas Developments (PNG) Pty Limited, Santos Hides Ltd, Lavana Limited and Eda Oil Limited on 22 May 2008;

“IPBC” means the Independent Public Business Corporation of Papua New Guinea established under the *Independent Public Business Corporation of Papua New Guinea Act 2002*;

“Kroton” means Kroton No. 2 Limited Company No. 1-63957;

“LNG” means Liquefied Natural Gas;

“LNG Project” has the same meaning as in the Gas Agreement;

“LNG Project Borrowing Proposal” means the proposal by IPBC to proceed with the financial arrangements to fund the acquisition by IPBC, as trustee of the General Business Trust, or by Kroton acting in that capacity, of an interest in the LNG Project, including:-

(a) loan terms; and

(b) potential currency risks; and

(c) costs; and

(d) potential alternative financing options, if any; and

(e) proposed timetables for the matters referred to in Paragraphs (a) to (d).

“Oil Search” means Oil Search Limited, a company incorporated in Papua New Guinea;

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“Oil Search Assets” means:-

- (a) shares or other interests in Oil Search held by IPBC (in its capacity as trustee or otherwise);
- (b) any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) forming part of the Share Holding pursuant to the terms of any Bonds to be issued pursuant to the Bond Deed Poll; or
- (c) any amounts deposited in the Quarantined Account in accordance with the Bond Deed Poll;

“Quarantined Account” has the meaning set out in the Bond Deed Poll; and

“Share Holding” has the meaning set out in the Bond Deed Poll; and

“Shares” means the shares contained in the Share Holding; and

“taxes” means the stamp duty imposed under the *Stamp Duties Act* (Chapter 117) or any other tax or impost of an analogous kind imposed by law.

PART 2. – AMENDMENTS TO THE *PETROMIN PNG HOLDINGS LIMITED AUTHORIZATION ACT 2007.*

3. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the *Petromin PNG Holdings Limited Authorization Act 2007* is amended -

- (a) by repealing the definition of “assets” and replacing it with the following:-
 - “assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any corporation, securities, choses in action and documents of any kind, but does not include any Oil Search Assets, the LNG Project Interests or assets held by IPBC in its capacity as trustee of the General Business Trust;
- (b) by inserting after the definition of “assets” the following new definitions:
 - “Bond Deed Poll” means the Bond Deed Poll dated [to be inserted after execution] executed by IPBC providing for the issue of certain bonds;
 - “Bonds” has the meaning set out in the Bond Deed Poll;
- (c) by inserting after the definition of “IPBC” the following new definitions:
 - “Gas Agreement” means the agreement executed by the Independent State of Papua New Guinea, Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (Highlands) Limited, Ampolex (PNG Petroleum) Inc, Merlin Pacific Oil Company Limited, Oil Search Limited, Oil Search (Tumbudu) Limited, Oil Search PNG Limited, Merlin Petroleum Company, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited, AGL Gas Developments (PNG) Pty Limited, Santos Hides Ltd, Lavana Limited and Eda Oil Limited on 22 May 2008;
 - “General Business Trust” has the meaning set out in the *Independent Public Business Corporation of Papua New Guinea Act 2002*;
 - “Kroton” means Kroton No. 2 Limited Company No. 1-63957;
 - “LNG Project” has the same meaning as in the Gas Agreement;

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“LNG Project Interests” means any interest in the LNG Project acquired at any time by IPBC (whether in its capacity as trustee or otherwise), or by Kroton acting in any such capacity, as nominee of the State pursuant to section 165 of the *Oil and Gas Act 1998* or clause 10 of the Gas Agreement;

(d) by inserting after the definition of “MRDC” the following new definitions:-

“Oil Search” means Oil Search Limited, a company incorporated in Papua New Guinea;

“Oil Search Assets” means:-

- (a) shares or other interests in Oil Search held by IPBC (in its capacity as trustee or otherwise);
- (b) any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) forming part of the Share Holding pursuant to the terms of any Bonds to be issued pursuant to the Bond Deed Poll; or
- (c) any amounts deposited in the Quarantined Account in accordance with the Bond Deed Poll;

“Quarantined Account” has the meaning set out in the Bond Deed Poll; and

“Share Holding” has the meaning set out in the Bond Deed Poll.

4. ESTABLISHMENT AND OPERATION OF THE COMPANY (AMENDMENT OF SECTION 4).

Section 4 of the *Petromin PNG Holdings Limited Authorization Act 2007* is amended by repealing Subsection 4(a) and replacing it with the following:-

- “(a) to acquire from the State and from others, whether directly or as a nominee of the State, interests in mining and petroleum projects in Papua New Guinea (other than any Oil Search Assets, and LNG Project Interests or any interest in the LNG Project).”.

5. ACQUISITION OF MINING AND PETROLEUM INTERESTS (AMENDMENT OF SECTION 6).

Section 6 of the *Petromin PNG Holdings Limited Authorization Act 2007* is amended by inserting after Subsection (2) the following new subsection:-

“(2A) Notwithstanding anything else in this Act:-

- (a) the State’s entitlement through the Minister to transfer, direct a transfer or effect a nomination under Subsection (1) shall not apply to any Oil Search Assets, any interest in the LNG Project, the LNG Project Interests or any assets held by IPBC in its capacity as trustee of the General Business Trust; and
- (b) any nomination or purported nomination of the Company or any of its subsidiaries, from time to time, as the nominee of the State pursuant to section 165 of the *Oil and Gas Act 1998* and Subsection (1) in relation to the LNG Project, whether made before or after this provision comes into effect, is void and of no effect.”.

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6. ACQUISITION OF PARTICIPATING INTERESTS HELD BY IPBC (AMENDMENT OF SECTION 8).

Section 8 of the *Petromin PNG Holdings Limited Authorization Act 2007* is amended by inserting after Subsection (1) the following new subsection:-

“(1A) Notwithstanding anything else in this Act, the State’s power through the Minister to direct IPBC to transfer to the Company or any subsidiary of the Company certain assets held by IPBC under Subsection (1) shall not apply to any Oil Search Assets, the LNG Project Interests or any assets held by IPBC in its capacity as trustee of the General Business Trust.

“(1B) Any direction or purported direction to IPBC to transfer any Oil Search Assets, the LNG Project Interests or any assets held by IPBC in its capacity as trustee of the General Business Trust to the Company, whether made before or after this provision comes into effect, is void and of no effect.”.

PART 3.— AUTHORIZATION OF BONDS.

7. AUTHORISATION OF LNG PROJECT BORROWING PROPOSAL.

(1) Notwithstanding any provision of the *Independent Public Business Corporation of Papua New Guinea Act 2002*, the LNG Project Borrowing Proposal (including any document contemplated by it and whether executed before or after this provision comes into effect), and the raising of financial accommodation and the expenditure of moneys pursuant to the financial arrangements referred to in the LNG Project Borrowing Proposal (including any document contemplated by it and whether executed before or after this provision comes into effect), are hereby ratified and approved and, without limitation, IPBC is authorised to proceed with the financial arrangements substantially in accordance with the LNG Project Borrowing Proposal.

(2) For the purposes of Section 34 of the *Independent Public Business Corporation Act 2002*, IPBC's approved annual plan for the year ending 31 December 2008 shall be deemed to incorporate and to have always incorporated the LNG Project Borrowing Proposal.

PART 4. - AMENDMENTS TO THE INDEPENDENT PUBLIC BUSINESS CORPORATION OF PAPUA NEW GUINEA ACT 2002.

8. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended -

- (a) by inserting after the definition of “enterprise” the following new definition:-
“Gas Agreement” means the agreement executed by the Independent State of Papua New Guinea, Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (Highlands) Limited, Ampolex (PNG Petroleum) Inc, Merlin Pacific Oil Company Limited, Oil Search Limited, Oil Search (Tumbudu) Limited, Oil Search PNG Limited, Merlin Petroleum Company, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe

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Limited, AGL Gas Developments (PNG) Pty Limited, Santos Hides Ltd,
Lavana Limited and Eda Oil Limited on 22 May 2008;

- (b) by inserting after the definition of "IPBC Working Capital Fund" the following new definitions:-
"Kroton" means Kroton No. 2 Limited Company No. 1-63957;
"LNG Project" has the same meaning as in the Gas Agreement;
- (c) by inserting after the definition of "Minister" the following new definition:
"MRDC" means Mineral Resources Development Company Limited.

9. ESTABLISHMENT OF THE CORPORATION (AMENDMENT OF SECTION 6).

Section 6 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended by inserting after Subsection (4) the following new subsection:-

"(4A) Neither the Corporation nor any of the Corporation's subsidiaries is entitled to claim the benefit of sovereign immunity in relation to its or their actions or assets."

10. FUNCTIONS OF THE CORPORATION (AMENDMENT OF SECTION 8).

Section 8 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended:-

- (a) in Subsection (2) by inserting after the words "the Corporation" the following:-
"(both in its capacity as trustee of each of the Trusts and otherwise)".
- (b) in Subsection (2)(d) by inserting after the words "financial accommodation in Papua New Guinea" and before the words ";and" the following:-
"and elsewhere."

11. POWERS OF THE CORPORATION (AMENDMENT OF SECTION 9).

Section 9 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended:-

- (a) in Subsection (3) by repealing the words "(both in its capacity as trustee of each of the trusts and otherwise)" and replacing them with the following:-
"(both in its capacity as trustee of each of the Trusts and otherwise)".
- (b) in Subsection (3)(p) by repealing the words "on behalf of the Trusts" and replacing them with the following:-
"as trustee of the Trusts."

12. DIRECTORS (AMENDMENT OF SECTION 11).

Section 11 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended by repealing Subsection 11(4)(b)(vi).

13. BORROWING POWERS OF THE CORPORATION (AMENDMENT OF SECTION 37).

Section 37 of the *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended:-

- (a) in Subsection (1) by inserting after the words "The Corporation" the following:-
"(both in its capacity as trustee of each of the Trusts and otherwise)".

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- (b) in Subsection (2) by repealing the words "The Corporation" and replacing it with the following:-
"Subject to Section 7 of the *LNG Project (State Participation) Act 2008*, the Corporation".
- (c) in Subsection (2) by inserting after the words "entering into a financial arrangement" the following:-
"(other than financial arrangements referred to in Section 7 of the *LNG Project (State Participation) Act 2008*)".
- (d) in Subsection (6) by repealing the words "Subsection (1)" and replacing them with the following:-
"this section".
- (e) in Subsection (6)(a) by inserting after the words "the Corporation" the following:-
"(both in its capacity as trustee of each of the Trusts and otherwise)".

14. NEW SECTION 50A.

The *Independent Public Business Corporation of Papua New Guinea Act 2002* is amended by inserting after Section 50 the following new section:-

"50A. LIQUEFIED NATURAL GAS PROJECT.

(1) Notwithstanding any other law, the State hereby nominates, and ratifies and confirms any prior nomination of, Kroton as its nominee to acquire so much of the participating interest in the LNG Project as the State is entitled to acquire either pursuant to Section 165 of the *Oil and Gas Act 1998* or clause 10 of the Gas Agreement.

(2) Nothing in Subsection (1) applies to the equity benefit granted by the State under Section 167 of the *Oil and Gas Act 1998* and the State may nominate MRDC or a wholly owned subsidiary of MRDC to hold that equity benefit.

(3) Any nomination contrary to Subsection (1) or Subsection (2), as the case may be, whether made before or after this Section comes into effect, is void and of no effect."

PART 5. - EXEMPTION FROM STAMP DUTIES.

15. EXEMPTION.

Notwithstanding anything contained in any other law:-

- (a) the transfer of the Shares; and
- (b) the issue or transfer of the Bonds,

are exempt from taxes.

PART 6. - AMENDMENTS TO THE INCOME TAX ACT 1959.

16. EXEMPTION OF CERTAIN INTEREST INCOME (AMENDMENT OF SECTION 35).

Section 35 of the *Income Tax Act 1959* is amended by inserting after Subsection (2)(e) the following new subsection:-

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- “(f) interest derived by a non-resident lender pursuant to any financial arrangements entered into with the Independent Public Business Corporation of Papua New Guinea in connection with the LNG Project and whether derived before or after the Independent Public Business Corporation of Papua New Guinea, or Kroton No. 2 Limited Company No. 1-63957, acquires an interest in the LNG Project.”.

I hereby certify that the above is a fair print of the *Liquefied Natural Gas Project (State Participation) Act 2008* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Liquefied Natural Gas Project (State Participation) Act 2008* was made by the National Parliament on 25 November, 2008 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.