

No. 26 of 2006

Stamp Duties (2007 Budget Amendment) Act 2006

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No: of 2006.

Stamp Duties (2007 Budget Amendment) Act 2006.

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No. of 2006.

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ARRANGEMENT OF SECTIONS.

Being an Act to amend the *Stamp Duties Act* (Chapter 117),

MADE by the National Parliament to come into operation -

- (a) in respect of Section 1 - to be deemed to have come into operation on 10 August 2006; and
- (b) in respect of Section 2 - to be deemed to have come into operation on 10 February 1997; and
- (c) in respect of Section 5 - to be deemed to have come into operation on 17 November 2004; and
- (d) in respect of the remainder of the Act - to be deemed to have come into operation on 1 January 2007.

1. NEW SECTION 6A.

The Principal Act is amended by inserting after Section 6 the following new section:-

“6A. EXEMPTION FOR RAMU NICKEL PROJECT.

- “(1) In this section, unless the contrary intention appears -
- “MCC”, “Joint Venturers”, “Joint Venture Agreement”, “Special Mining Lease” and “Exploration Licence” have the same meanings respectively as in the Mining Development Contract – Ramu Nickel Project;
 - “Mining Development Contract – Ramu Nickel Project” means the Mining Development Contract – Ramu Nickel Project that was signed on 26 July 2000 by The Independent State of Papua New Guinea and Ramu Nickel Limited and Orogen Minerals (Ramu) Limited as amended by the Mining Development

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Contract Amendment Agreement Ramu Nickel Project that was signed on 10 August 2006 by the Independent State of Papua New Guinea, MCC Ramu NiCo Ltd, Ramu Nickel Limited, Mineral Resources Ramu Limited and Mineral Resources Madang Limited.

- (2) The following instruments are exempt from stamp duty -
- (a) the transfer of any interest in the Exploration Licences (or related mining information), the Special Mining Lease or any mining lease, lease for mining purposes, or mining easement arising from the entering into of the Joint Venture Agreement; and
 - (b) the subsequent transfer or issue of shares to any Chinese party who, on or before 10 August 2007 becomes a shareholder, directly or indirectly, in MCC; and
 - (c) the transfer of any interest in the Exploration Licences (or related mining information), the Special Mining Lease or any mining lease, lease for mining purposes, or mining easement arising from any Chinese party that is owned by the Chinese Government directly or indirectly becoming a Joint Venturer.”.

2. COMPANY RECONSTRUCTIONS (AMENDMENT OF SECTION 68A).

Section 68A of the Principal Act is amended -

- (a) in Subsection (1) (b) by inserting after the word “company” the following:-
“, or”; and
- (b) in Subsection (1) by adding the following new paragraph:-
“(ba) upon the transfer of property from a parent company to a wholly owned subsidiary; or ”; and
- (c) in Subsection (2)(a)(ii) by inserting after the words “ property from a subsidiary company” the following words:-
“or from a parent company”.

3. NEW SECTIONS 73B AND 73C.

The Principal Act is amended by inserting after Section 73A, the following new sections:-

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"73B. AGREEMENT FOR TRANSFER OF MARKETABLE SECURITIES AND REAL PROPERTY.

"(1) For the purposes of this Section, "agreement" includes an instrument that has the effect of vesting in any person a right to a transfer of a marketable security.

"(2) An agreement for the exchange of any marketable security for any other marketable security shall, for the purposes of this Act, be deemed to be an agreement for the transfer of the marketable security to be exchanged.

"(3) An agreement for the transfer of a marketable security is chargeable with the same ad valorem stamp duty to be paid by the purchaser or person to whom the property is agreed to be transferred as if it were a transfer of the marketable security agreed to be transferred or sold, and shall be stamped accordingly.

"(4) Where an agreement for the transfer on sale or exchange of any marketable security is constituted or evidenced by two or more instruments, it is sufficient if any one of the instruments is duly stamped.

"(5) Where an agreement has been duly stamped in accordance with this section, the transfer executed in pursuance of the agreement is not chargeable with ad valorem stamp duty, but is chargeable with the duty that would, but for this section, have been payable on the agreement.

"(6) On application, and on production of a transfer on sale of marketable security and of the agreement or agreements leading to the transfer, duly stamped, the Collector of Stamp Duties shall mark the transfer as duly stamped.

"(7) Where the full amount on which ad valorem stamp duty is payable cannot be immediately ascertained, duty may be paid on so much (if any) of the amount as is ascertainable, and the agreement may be stamped accordingly and marked "interim stamp only.

"(8) An agreement stamped under Subsection (7) is admissible in evidence for the sole purpose of proceedings to enforce specific performance or to enforce damages for the breach of the agreement.

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"(9) Where an agreement has been stamped under Subsection (7), Section 90 applies to the agreement, and on payment of the balance of the duty and the penalty (if any) assessed by the Collector of Stamp Duties the agreement shall be -

- (a) stamped with the amount of the balance and penalty; and
- (b) marked as duly stamped.

"73C. RECISSION OR ANNULMENT OF AGREEMENT.

"(1) Where an agreement referred to in Section 73B is rescinded or annulled, the ad valorem stamp duty paid on the agreement shall, subject to the delivery to the Collector of Stamp Duties of the instrument in which payment was denoted, and subject to this section, be refunded by the Collector of Stamp Duties to the party to the agreement by whom or on whose behalf the duty was paid, or to his executors, administrators or assigns.

"(2) An application for a refund under subsection (1) shall be made within three months of the agreement being rescinded or annulled.

"(3) The amount of any stamp duty, other than ad valorem duty, to which the agreement is liable, together with 5% of the ad valorem duty or K2.00, whichever is the lesser, shall be deducted from the amount of a refund under Subsection (1)."

4. REPEAL AND REPLACEMENT OF DIVISION 10A.

The Principal Act is amended by repealing *Division 10A* and inserting the following new Division:-

"Division 10A. - Acquisitions of interests in private Corporations.

"78B. INTERPRETATION.

"In this Division, unless the contrary intention appears -

"associated person" means a person who is associated with another person in accordance with any of the following provisions:

- (a) persons are associated persons if they are related persons; or
- (b) individuals are associated persons if they are partners in a partnership to which the *Partnership Act* (Chapter 148) applies; or
- (c) private companies are associated persons if common shareholders have a majority interest in each private company; or

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- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees; or
- (e) a private company and a trustee are associated persons if a "related company" or "related corporation" within the meaning set out in Section 2(3) of the *Companies Act 1997* of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee; and in this Division, a public company and a subsidiary of a public company are taken to be associated persons;

"discretionary trust" means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both -

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest taken, or both; or
- (b) will occur if a discretion conferred under the trust is not exercised; or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised;

"majority shareholder" in relation to a private company, means -

- (a) for a company the voting shares in which are not divided into classes - a person entitled to not less than 50% of those shares, and
- (b) for a company the voting shares in which are divided into classes - a person entitled to not less than 50% of the shares in one of those classes;

"private company" means a company that is not limited by shares, or whose shares are not quoted on a stock exchange;

"private corporation" means a private company or a private unit trust scheme;

"private unit trust scheme" means a unit trust scheme that is not a public unit trust scheme;

"related person" means a person who is related to another person in accordance with any of the following provisions:

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- (a) individuals are related persons if -
 - (i) they are partners, or they have been partners and the partnership has ended (whether the partnership ended in Papua New Guinea or elsewhere); or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister; or
 - (b) private companies are related persons where they are "related company" or "related corporation" within the meaning set out in Section 2(3) of the *Companies Act 1997*; or
 - (c) an individual and a private company are related persons if the individual is a majority shareholder or director of the company or of another private company that is a related company or related corporation under the *Companies Act 1997* of the company; or
 - (d) an individual and a trustee are related persons if the individual is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee; or
 - (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee;
- "stock exchange" means the Port Moresby Stock Exchange or in a stock exchange that is a member of the Federation International des Bourses de Valuers;

"78C. LANDHOLDING PRIVATE CORPORATION.

"In this Division, unless the contrary intention appears, a private corporation is a landholder if it holds land in Papua New Guinea.

"78D. LANDHOLDINGS OF PRIVATE CORPORATIONS.

"(1) A reference in this division to a landholding is a reference to any interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor but shall not be read as including -

- (a) such an interest in land of a private company unless the interest of the company in the land is a beneficial interest; or
- (b) such an interest in land of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.

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"(2) This section is in addition to, but does not limit, the operation of any provision of this part providing for constructive ownership of interests.

"(3) For the purposes of this division, the vendor and the purchaser under an uncompleted agreement for the sale of land shall be taken to be separately entitled to the whole of the land.

"78E. CONSTRUCTIVE OWNERSHIP OF LANDHOLDINGS AND OTHER PROPERTY-SUBSIDIARIES.

"(1) In addition to any interest in land or other property that it may hold in its own right, a private corporation shall be taken, for the purposes of this Division, to hold an interest in land or other property held by a subsidiary of the private corporation.

"(2) The value, for duty purposes, of the interest in land or other property that a private corporation is taken, in accordance with Subsection (1), to hold by virtue of a holding of a subsidiary who is the actual landholder, is that portion of the interest's unencumbered value to which the private corporation would be entitled on a winding-up of -

- (a) the actual landholder; and
- (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.

"(3) For the purposes of this Division, a private company is a subsidiary of another private company if it is a subsidiary of the other private company within the meaning of Section 5(1) of the *Companies Act 1997*.

"(4) For the purposes of this Division, a private company is the subsidiary of a unit trust scheme if the trustees of the scheme, in their capacities as trustees of the scheme, have a majority interest in the private company.

"(5) For the purposes of this Division, a unit trust scheme is the subsidiary of a private corporation if the corporation has a majority interest in the scheme.

"78F. CONSTRUCTIVE OWNERSHIP OF LANDHOLDINGS AND OTHER PROPERTY-DISCRETIONARY TRUSTS.

"(1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied -

- (a) in the event of the exercise of a power or discretion in favour of the person or class; or"

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(b) in the event that a discretion conferred under the trust is not exercised,
is, for the purposes of this section, a beneficiary of the trust.

"(2) A beneficiary of a discretionary trust shall be taken to own or to be otherwise entitled to the property the subject of the trust.

"(3) For the purposes of this Division, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust-

(a) that is; or

(b) any trustee of which (in the capacity of trustee) is a beneficiary of it.

"(4) Subsection (3) applies to property that is the subject of a discretionary trust only by the operation of that subsection.

"(5) In this section a person includes a private corporation.

"78G. INTERESTS AND MAJORITY INTERESTS IN PRIVATE CORPORATIONS.

"(1) For the purposes of this Division, a person shall be taken to have an interest in a private corporation if the person has an entitlement other than as a creditor or other person to whom the corporation is liable, to a distribution of property from the corporation on a winding up or otherwise of the corporation.

"(2) A person who, under subsection (1), is taken to have an interest in a private corporation shall be taken to have a majority interest in the corporation if the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to 50% or more of the property distributed.

"(3) In this section a person includes a private corporation.

"78H. ACQUIRING OF AN INTEREST IN A LANDHOLDING PRIVATE CORPORATION.

"For the purposes of this Division, an interest in a landholding private corporation may be acquired by means of -

(a) the purchase, gift, allotment or transfer of any share or unit in a private corporation; or"

(b) the variation, abrogation or alteration of a right attaching to any such share or unit; or

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- (c) the redemption, surrender or cancellation of any such share or unit; or
- (d) the variation or alteration of a right of a holder of any such share or unit; or
- (e) payment of a call on any such share that is partially paid-up; or
- (f) by any combination of the means mentioned in Paragraphs (a), (b), (c), (d) and (e).

"78I. LIABILITY FOR DUTY.

"A liability for duty charged by this Division arises when a relevant acquisition is made under Section 78J.

"78J. RELEVANT ACQUISITION.

"For the purposes this Division, a person who -

- (a) acquires an interest in a landholding private corporation:-
 - (i) that is of itself a majority interest in the corporation; or
 - (ii) when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation; or
- (b) having a majority interest, or an interest described in Paragraph (a) (ii), in a landholding private corporation, acquires a further interest in the corporation, shall be taken to have made a relevant acquisition.

"78K. ACQUISITION STATEMENTS.

"(1) A person who has made a relevant acquisition shall prepare an acquisition statement and lodge it with the Collector of Stamp Duties before the expiry of 60 working days after the date of the relevant acquisition.

"(2) The acquisition statement must contain the following information -

- (a) the name and address of the person who has acquired the interest; and
- (b) the date of the relevant acquisition; and
- (c) particulars of the interest acquired; and
- (d) particulars of the total interest of the person and any associated person in the private corporation at that date; and

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- (e) the unencumbered value of all landholdings in Papua New Guinea of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the three years before the date of the relevant acquisition; and
- (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition; and
- (g) the amount of duty paid under this Act in respect of each earlier acquisition of an interest mentioned in Paragraph (e); and
- (h) any other information that the Collector of Stamp Duties may require.

"78L. TIME OF PAYMENT OF DUTY.

"The duty payable under this Division shall be paid within 60 working days after the liability to pay it arises.

"78M. LIABILITY TO DUTY.

"(1) Subject to Subsection (2), duty chargeable under this part is payable by the person who makes the relevant acquisition.

"(2) Where a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person are jointly and severally liable for payment of the duty.

"78N. COMPUTATION OF DUTY PAYABLE.

"(1) Where an acquisition statement does not disclose any acquisitions during the three years before the relevant acquisition, duty is chargeable, at the rate specified under this Act, on the amount calculated by multiplying the unencumbered value of all land holdings of the private corporation in Papua New Guinea (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

"(2) Where an acquisition statement discloses one or more acquisitions during the three years before the relevant acquisition, duty is chargeable, at the rate specified in the Schedule, on the aggregate of amounts severally calculated, in the way provided by Subsection (1), in respect of each interest required to be disclosed in the statement.

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"(3) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the three years before the relevant acquisition, by the person or any associated person of an interest in the same private corporation, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.

"(4) Duty payable under this section is to be reduced by an amount, if any, calculated in accordance with the following formula:

$$(A/B) \times C$$

Where -

- A** means the unencumbered value of the landholdings in Papua New Guinea of the private corporation at the time the dutiable acquisition was made; and
- B** means the unencumbered value of all property of the private corporation at that time; and
- C** means the duty under this Act paid in respect of a dutiable instrument in relation to the shares or units.

"780. MAXIMISATION OF ENTITLEMENTS ON DISTRIBUTION OF PROPERTY.

"(1) This section applies to any calculation, for this Division, of the entitlement of a person (the interested person) to participate in a distribution of the property of a private corporation, whether on a winding-up of the private corporation or otherwise.

"(2) A calculation is to be made based on a distribution carried out in accordance with the constitution of the private corporation, and with any law relevant to the distribution in-force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.

"(3) Following the calculation under Subsection (2), a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them because of having acquired an interest in the private corporation concerned:-

- (a) to effect or compel an alteration to the constitution of the private corporation; and

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- (b) to vary the rights conferred by shares or units in the private corporation; and
- (c) to effect or compel the substitution or replacement of shares or units in the private corporation with other shares or units in it; and
- (d) in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.

"(4) The results obtained by an evaluation of the interested person's entitlement in accordance with Subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, of the entitlement.

"78P. VALUATION OF PROPERTY BY THE COLLECTOR.

"(1) The provisions of this Act that apply to the ascertainment of the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Division and the value of land holdings mentioned in it.

"(2) Where any arrangement affecting the dutiable value of land holdings that was entered into within 12 months before a relevant acquisition was brought about by any person with the intention of reducing the dutiable value of the land holdings, the Collector of Stamp Duties may -

- (a) cause a valuation of the landholding to be made; and
- (b) direct the valuer to disregard the arrangement for the purposes of the valuation; and
- (c) assess duty on the basis of the valuation carried out in accordance with the direction.

"78Q. AGREEMENTS FOR SALE OR CONVEYANCE OF LAND.

"(1) Where -

- (a) at the time of acquisition of an interest by any person in a landholding private corporation that necessitates the lodgement of an acquisition statement under this Division, the corporation was the vendor under an uncompleted agreement for the sale or conveyance of land; and

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(b) the agreement is subsequently completed, the Collector of Stamp Duties shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.

"(2) Where -

- (a) at the time of acquisition of an interest by any person in a landholding private corporation that requires the lodgement by any person of an acquisition statement under this Division, the private corporation was the purchaser under an uncompleted agreement for the sale or conveyance of land; and
- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion the Collector of Stamp Duties shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.

"(3) In this section, a reference to a landholding private corporation includes a reference to a subsidiary of the corporation.

5. SCHEDULE 1 (AMENDMENT TO SCHEDULE 1).

Schedule 1 of the Principal Act is amended -

- (a) by repealing the following:-
- (i) Item 1 exemption (4);
 - (ii) Item 1A exemption (3);
 - (iii) Item 16 exemptions (6) and (10); and
- (b) by inserting the following in Item 16A:-

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"(6) Transfers of marketable securities that the Minister is satisfied are made by way of security or by way of re-transfer to persons who transferred them by way of security."

I hereby certify that the above is a fair print of the ***Stamp Duties (2007 Budget Amendment) Act 2006*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Stamp Duties (2007 Budget Amendment) Act 2006*** was made by the National Parliament on 28 November 2006.

Speaker of the National Parliament.