

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 219.

Palm Oil Industry (New Britain Agreement) Act.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), while the administration of this Chapter was not vested specifically in any Minister, it appears from the determination of functions of Departments that it came within the responsibility of the Minister for Primary Industry.

The Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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CHAPTER NO. 219.

Palm Oil Industry (New Britain Agreement) Act.

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2. Approval of Agreement.
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4. Purposes of the Agreement a public purpose.
5. Appropriation.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 219.

Palm Oil Industry (New Britain Agreement) Act.

Being an Act to provide for the approval of an agreement between the Administration of the former Territory of Papua and New Guinea and Harrison's & Crosfield (A.N.Z.) Limited concerning the development of a Palm Oil Industry in the Cape Hoskins area of New Britain, and for other purposes.

1. Interpretations.

In this Act—

"the Agreement" means the agreement a copy of which is set out in the Schedule, and where that agreement is varied under Section 3 includes that agreement as so varied;

"the Company" means Harrison's & Crosfield (A.N.Z.) Limited, a company incorporated under the laws of the State of Victoria, and its successors and assigns, and, where other companies to be formed under the Agreement have joined in the Agreement and have bound themselves thereby in accordance with Clause 5 of the Agreement, includes those other companies.

2. Approval of Agreement.

The Agreement is approved, and takes effect according to its tenor.

3. Variation of Agreement.

(1) The Agreement may be varied by a further agreement or agreements between the Head of State, acting on advice, on behalf of the State, and the Company.

(2) A further agreement under Subsection (1) is of no force or effect until notice of its approval is published in the National Gazette, by the Head of State, acting on advice.

(3) A notice under Subsection (2) shall be laid before the Parliament within 15 sitting days after the date of publication of the notice.

(4) The Parliament may, by resolution passed at the meeting at which a notice under Subsection (2) is laid before it, or at the meeting next following that meeting, disallow the notice.

(5) If the Parliament passes a resolution disallowing a notice under Subsection (2), the notice ceases to have effect, but without prejudice to the validity of anything done or suffered in the meantime.

(6) Any purported variation to the Agreement otherwise than in accordance with this section is void.

4. Purposes of the Agreement a public purpose.

The purposes of the Agreement are a public purpose within the meaning of any law of the State.

5. Appropriation.

All amounts from time to time due and payable by the State under Clause 4 of the Agreement shall be paid out of the Consolidated Revenue Fund which, to the necessary extent, is appropriated accordingly.

SCHEDULE.

AGREEMENT made this twenty-fifth day of February, One thousand nine hundred and sixty-seven

between

THE ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA (hereinafter called "the Administration") of the one part, and HARRISONS & CROSFIELD (A.N.Z.) LIMITED a Company incorporated under the laws of the State of Victoria and having its registered office at 4 Bank Place, Melbourne in the said State (hereinafter called "H&C") of the other part.

WHEREBY it is agreed as follows :—

1. UNLESS the context otherwise requires the following words shall have the following meanings :—

- (a) "The Harrisons & Crosfield Group" means Harrisons & Crosfield Limited a company incorporated under the laws of the United Kingdom and its subsidiaries including H&C.
- (b) "Know-how" means all the technical information, processes, formulae, and the like now and hereafter possessed by the Harrisons & Crosfield Group and used in the business of any members of the Group in relation to the Product.
- (c) "Product" means palm oil and all allied and incidental products.
- (d) "Planting material" means tenera planting material obtained from the crossing of dura and pisifera palm planting materials or such other planting material considered by H&C appropriate for the production of the Product from time to time.
- (e) "The Date of Commencement" shall be the date upon which the Ordinance of the House of Assembly of the Territory approving this Agreement comes into effect.
- (f) "The Territory" means the Territory of Papua and New Guinea.
- (g) The singular includes the plural and vice versa.

2. (a) The Administration shall as soon as reasonably practicable arrange for a Bill for an Ordinance to approve this Agreement to be introduced and sponsored in the House of Assembly of the Territory.
- (b) Apart from the last preceding paragraph which shall come into effect on the execution hereof this Agreement shall have no force or effect and shall not be binding on either party unless it is approved by the House of Assembly of the Territory.
- (c) This Agreement shall commence and come into effect on the Date of Commencement.

3. H&C shall as soon as practicable after the Date of Commencement take all necessary steps to register and incorporate in and in accordance with this Agreement and the laws of the Territory the following companies:

- (a) a Company (in this Agreement called "the Project Company") under the name of "NEW BRITAIN PALM OIL DEVELOPMENT LIMITED" with Limited Liability.
- (b) a Company (in this Agreement called "the Plantation Company") under the name of "MOSA PLANTATION PTY. LIMITED" which shall be a wholly owned subsidiary of the Project Company.
- (c) a Company (in this Agreement called "the Factory Company") under the name of "MOSA OIL MILL PTY. LIMITED" which shall be a wholly owned subsidiary of the Project Company.

4. (1) The Memorandum and Articles of Association of the Project Company and the Plantation Company and the Factory Company (hereinafter collectively referred to as "the Companies") shall be submitted to and approved by the Administration prior to registration thereof, and shall provide (inter alia)—

- (a) that the objects of the Companies shall include—
 - (i) the acquisition of land in the Territory,
 - (ii) the planting, harvesting, processing and marketing of oil palm and the Product;
- (b) that the nominal capital of the Companies shall be as follows :—
 - (i) the nominal capital of the Project Company shall be Two million five hundred thousand dollars (\$2,500,000) in shares of One dollar (\$1) each,
 - (ii) the nominal capital of the Plantation Company shall be Ten thousand dollars (\$10,000) in shares of One dollar (\$1) each,
 - (iii) the nominal capital of the Factory Company shall be Ten thousand dollars (\$10,000) in shares of One dollar (\$1) each.
- (c) The shares in the Project Company shall be allotted as follows :—
 - (i) One million two hundred and forty-nine thousand nine hundred and seventy (1,249,970) shares each to the Administration and to H&C.
 - (ii) Ten (10) shares to each of three (3) nominees of the Administration and three (3) nominees of H&C.
- (d) The shares in each of the Plantation Company and Factory Company shall be allotted as follows :—
 - (i) Nine thousand nine hundred and ninety-nine (9,999) shares to the Project Company.
 - (ii) One (1) share to a nominee of the Project Company.
- (e) —
 - (i) The first call upon the shareholders in the Project Company shall be an amount of Ten cents (10c) in the dollar and shall be payable to the Project Company within six (6) months of the Date of Commencement.
 - (ii) The balance of the money unpaid on the shares in the Project Company may be called up from time to time by the Directors provided that not less than twelve (12) months' notice of each call, or such lesser period as may be agreed upon by and between the Administration and H&C shall be given.
- (f) That either the Administration or H&C may demand a poll on any question submitted to a General Meeting of the Project Company and that upon a poll the Administration and H&C shall each be entitled to one (1) vote in respect of each share held by them, but the nominees of the Administration and H&C appointed for the purpose of paragraph (e) of this sub-clause shall not be entitled to vote in respect of the shares held by them.
- (g) That there shall be a Board not exceeding six (6) Directors of the Project Company, of whom three (3) may be nominated by and represent the Administration and three (3) may be nominated by and represent H&C.
- (h) That subject to paragraph (j) of this sub-clause the Board of Directors of the Project Company shall elect one of the Directors representing H&C to be Chairman of the Board.
 - (i) That the Chairman of the Board shall have a deliberative but not a casting vote.
- (j) That one of the first Directors nominated by and representing H&C on the Board of the Project Company shall be David Champion Esquire, a Director of H&C, who shall be the first Chairman of the Board but shall cease to be Chairman if he shall cease to be a Director representing H&C.
- (k) That a Chairman shall be eligible for re-election.
- (l) That the Companies shall not dispose of any of their major assets without the joint approval of the Administration and H&C.
- (m) That of the shares in the Project Company which shall be allotted to the Administration and its three (3) nominees, six hundred and twenty-five thousand (625,000) such shares

shall be transferable only to a transferee who is a bona fide resident of the Territory, which term, for the purposes of this paragraph means—

- (i) a person other than a company, who is domiciled in the Territory,
- (ii) a company which is incorporated in the Territory, and has its central management and control in the Territory, or its voting power controlled by shareholders who are bona fide residents of the Territory,
- (iii) a co-operative society registered under the *Co-operative Societies Ordinance 1965* and a Local Government Council constituted under the *Local Government Ordinance 1963-1965*.
- (iv) a transferee referred to in paragraph (b) of sub-clause (3) of Clause 14 hereof.

(n) That the shares in the Factory Company and Plantation Company shall not be transferable except with the prior consent in writing of the Administration and H&C.

(2) The Administration and H&C and their nominees shall apply for and take up the number of shares in the Project Company which it is provided in paragraph (c) of sub-clause (1) of this clause will be allotted to them respectively, and will pay for such shares in accordance with paragraph (e) of sub-clause (1) of this clause.

(3) The Directors of the Project Company will approach and discharge the duties of their office upon the understanding that disagreements within the Board shall be resolved by the Board.

5. (1) As soon as practicable after the incorporation of the Companies, the parties hereto agree that they will procure that each of the Companies shall join in this Agreement and bind itself thereby.

(2) When each of the Companies has joined in this Agreement and bound itself as aforesaid this Agreement shall be construed as if it were originally executed by the Administration and H&C and each of the Companies to the intent that each of them shall be bound by all the provisions of this Agreement applicable thereto.

6. SUBJECT to the legislation in force in and relating to the Territory—

(1) H&C will take all necessary steps as soon as practicable after the Date of Commencement to ensure that the Agricultural Lease over the land described in the Schedule hereto (hereinafter called "the said land") the application for which by H&C was granted on 1st September, 1966 is transferred or granted to the Project Company.

(2) The Project Company will subject to appropriate approvals sub-divide the said land and transfer appropriate portions thereof to the Factory Company and the Plantation Company.

7. H&C will supply to the Companies on terms to be agreed upon by and between the Companies and H&C—

(1) all necessary know-how and planting material required by the Companies to produce the Product.

(2) agency, secretarial, management and marketing services.

8. THE Plantation Company will plant out such part of the land transferred to it by the Project Company, as is suitable for cultivation in a good and husbandlike manner with oil palms as to one-half thereof within a period of five (5) years from the Date of Commencement of the lease thereof and as to four-fifths thereof within a period of ten (10) years from the Date of Commencement of the Lease and will harvest the same in accordance with sound commercial practice.

9. THE Factory Company will erect on such part of the said land as is transferred to it by the Project Company and within a period of five (5) years from the Date of Commencement of the Lease thereof an oil mill with a minimum capacity to service six thousand (6,000) acres of high yielding oil palms.

10. THE Administration will use its best endeavours to settle as soon as practicable five hundred (500) native farmers (hereinafter called "the settlers") upon Administration land adjacent to the said land with the object of their producing a quantity of oil palm fresh fruit bunches equal to the quantity produced by the Plantation Company. The time-table for such settlement shall be as mutually agreed between the Administration and the Project Company.

11. H&C will supply to the said settlers upon terms to be agreed upon between H&C and the Administration such planting material as is necessary to enable the settlers to plant out their holdings in a good and husbandlike manner with oil palms and ultimately harvest the quantity of oil palm fresh fruit bunches referred to in Clause 10 hereof.

12. THE Project Company and the Factory Company will process the oil palm fresh fruit bunches of the settlers upon terms to be agreed upon with the Administration, which shall, inter alia, provide that the price to be paid, the time of payment, and the quantity to be purchased will be subject to monthly review and agreement between the Project Company, the Factory Company and the Administration.

13. (1) The Administration will with all convenient speed make and maintain a road (including as necessary a bridge across the Dagi River) in a reasonably trafficable condition between the said land and such all-weather port as may be chosen by the Administration.

(2) At such port the Administration will supply such wharf and development facilities as the Administration considers necessary to enable the Product to be exported and the Companies shall be entitled to make reasonable use of such road and facilities.

14. (1) Subject to this Clause, during a development period of seven (7) years calculated from the Date of Commencement neither party hereto shall sell or transfer its holding of shares in the Project Company or any part of such holding, without the consent in writing of the other.

(2) After the expiration of the said development period, but subject in the case of the Administration or its nominees to the provisions of paragraph (m) of sub-clause (1) of Clause 4 of this Agreement, either party hereto may with the consent in writing of the other sell or transfer its holding of shares in the Project Company, or any part of such holding.

(3) Notwithstanding anything to the contrary herein contained—

(a) H&C may at any time assign to its parent company *Harrisons & Crosfield Limited* or to any wholly owned subsidiary of *Harrisons & Crosfield Limited* or H&C with the prior consent in writing of the Administration all or any of its rights under this Agreement provided that such assignee undertakes to be bound by this Agreement in the same manner in which H&C is bound.

(b) The Administration may at any time transfer its holding of shares in the Project Company to the *Papua and New Guinea Development Bank* constituted under the *Papua and New Guinea Development Bank Ordinance 1965* or other governmental agency; such transferee shall thereupon be bound by the provisions of sub-clauses (1) and (2) of this clause as if it were a party hereto.

15. IN the event of the Project Company not being incorporated within a period of six (6) months from the Date of Commencement either H&C or the Administration shall be at liberty by notice in writing to the other to terminate this Agreement.

16. ANY delay or disability in the carrying out of this Agreement arising directly from the act of God, war, restraints of Princes, strikes or lockouts of workmen or other industrial disturbances, shall not entitle any party to damages or to a cancellation of this Agreement, but this Agreement shall, to the extent of the delay or disability, be deemed to be suspended and shall forthwith come into full force and effect when the delay or disability shall have ceased.

17. IN the event of any dispute arising between the Administration and H&C as to the construction of this Agreement or as to the rights or obligations of the parties to this Agreement under or arising therefrom the dispute shall be settled by arbitration in accordance with the laws relating to arbitration in force in the Territory.

18. EACH of the Companies may apply to the Chief Collector of Taxes for the Chief Collector's declaration that the applicant company shall be treated as a public company for the purposes of Section 139 of the *Income Tax Ordinance 1959* of the Territory.

19. ANY notice, communication, opinion, agreement, approval or other matter or thing to be given, made, expressed or done by the Administration under this Agreement shall be deemed to have been duly given, made, expressed or done if given, made, expressed or done in writing signed by the Administrator for or on behalf of the Administration of the Territory, and delivered at or sent by prepaid post to the registered office of H&C in Victoria.

Palm Oil Industry (New Britain Agreement)

20. ANY notice, communication, agreement, approval or other matter or thing to be given, made, expressed or done by H&C under this Agreement shall be deemed to have been duly given, made, expressed or done if given, made, expressed or done in writing signed on behalf of H&C by any Director or Attorney of H&C in Australia, and delivered or sent by prepaid post to the Administrator of the Territory at Konedobu in the said Territory.

21. THIS agreement shall be interpreted in accordance with the laws of the Territory.

THE SCHEDULE HEREINBEFORE REFERRED TO:

All that piece or parcel of land situate in the Milinch of Megigi, Fourmil of Talasea, District of West New Britain known as "Nahavio" being Portion 178 and comprising an area of approximately 5,400 acres.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above written.

SIGNED SEALED AND DELIVERED for and on behalf of the Administration of the Territory of Papua and New Guinea by DAVID OSBORNE HAY the Administrator of the Territory in the presence of:

D. O. HAY. (Sgd).

P. A. BROMAN. (Sgd).

THE COMMON SEAL OF HARRISONS & CROSFIELD (A.N.Z.) LIMITED was hereunto affixed by authority of the Directors in the presence of:

Harrisons & Crosfield (A.N.Z.) Limited.

[L.S.]
(Duty Stamped.)

D. CHAMPION. (Sgd).
Director.

J. D. N. KIBBLE. (Sgd).
Director.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 219.

Palm Oil Industrial (New Britain Agreement).

APPENDIX.

SOURCE OF THE PALM OIL INDUSTRY (NEW BRITAIN AGREEMENT) ACT.

Part A.—Previous Legislation.

Palm Oil Industry (New Britain Agreement) Act 1967 (No. 23 of 1967).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .
1	3
2	4
3	5
4	6
5	7
Schedule	Schedule

¹ Unless otherwise indicated, references are to the Act set out in Part A.

