

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 364.

Palm Oil Industry (Biala Project Re-organization).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Primary Industry with the exception of Sections 20, 22 and 27(1) which were vested in the Minister for Finance and Section 24 which was vested in the Minister for Lands at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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CHAPTER NO. 364.

Palm Oil Industry (Biala Project Re-organization) Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 364.

Palm Oil Industry (Biala Project Re-organization) Act.

Being an Act to provide for the re-organization, in the interests of the people of Papua New Guinea, of the palm oil project commenced in the Biala area, East Nakanai, New Britain, in accordance with the *Palm Oil Industry (South Pacific Oil Palm Development Pty Ltd Agreement) Act 1972*, and for that purpose—

- (a) to terminate the agreement approved by that Act; and
 - (b) to transfer the property connected with the project to a new Project Company; and
 - (c) to repeal that Act,
- and for related purposes.

PREAMBLE.

The *Palm Oil Industry (South Pacific Oil Palm Development Pty Ltd Agreement) Act 1972* made provision concerning the further development of the palm oil industry in the Biala (or Biälla) area, East Nakanai, New Britain :

The Agreement approved by the 1972 Act required the erection of an oil mill to service an extensive area including land owned by smallholders :

The State was obliged by the Agreement to endeavour to settle indigenous farmers around the project area and to encourage them and other village farmers to plant areas to oil palm to be serviced by the oil mill :

The oil mill proposed would not, in the opinion of the State arrived at on the advice of acknowledged international experts in the field, be suitable for the purposes for which it was intended under the Agreement :

The parties have not been able to agree concerning revised proposals for the necessary oil mill :

It is accordingly desirable, in the interests of the people of Papua New Guinea and particularly for the protection of smallholders presently involved or to be involved in the project, for the project to be re-organized so as to provide suitable and adequate facilities, involving the termination of the Agreement.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“the Biala project” means the project for the development of the palm oil industry in the Biala area, East Nakanai, New Britain, to which the 1972 Agreement and the 1972 Act relate, together with any further such development (including the planting, harvesting, processing and marketing of oil palm and palm oil products, and generally the development, use and exploitation of an oil palm estate, palm oil factory and associated facilities);

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"the commencement date" means 26 August 1976, being the date on which the Palm Oil Industry (Biala Project Re-organization) Act 1976 came into force;

"the companies formerly involved in the Biala project" means—

- (a) S.P.O.P.D.; and
- (b) the former Project Company; and
- (c) Tokai Leveller;

"the former Project Company" means Trans Pacific Palm Oil Pty. Limited, being the Project Company formed in accordance with Clause 3 of the 1972 Agreement;

"the mill site" means Portion 631, Milinch Ulawan, Fourmil Talasea, West New Britain Province;

"the new Project Company" means the company appointed under Section 23;

"the 1972 Act" means the *Palm Oil Industry (South Pacific Oil Palm Development Pty Ltd Agreement) Act 1972*;

"the 1972 Agreement" means the agreement between the Administration of Papua New Guinea and S.P.O.P.D., a copy of which is set out in the Schedule to the 1972 Act and that was approved by that Act;

"the plantation property" means Portion 9, Milinch Ulawan, Fourmil Talasea, West New Britain Province;

"the project planting material" means the *Tenera* seedlings on the plantation property or the mill site, and their containers and packing;

"the project property" means, subject to Section 6(3)—

- (a) the plantation property; and
- (b) the mill site; and
- (c) all fixtures and improvements (including trade fixtures, trees and crops, whether standing or cut) on the plantation property or the mill site immediately before the commencement date; and
- (d) the project planting material; and
- (e) all other goods, chattels and things on the plantation property or the mill site immediately before the commencement date, that were at that time the property of any of the companies formerly involved in the Biala project;

"the returnable project property" means the project property referred to in Paragraph (e) of the definition "the project property" in this section;

"S.P.O.P.D." means South Pacific Oil Palm Development Pty. Limited, being the company of that name that was a party to the 1972 Agreement;

"the statutory valuer" means the person appointed under Section 7 to value the project property;

"this Act" includes the regulations;

"Tokai Leveller" means a company incorporated in Japan and known as Tokai Leveller Co., Ltd. (which was a shareholder in S.P.O.P.D. before the commencement date).

(2) In this Act, a reference to any of the companies formerly involved in the Biala project shall, as appropriate, be read as including a reference to its successors and assigns, and to any person claiming through or under it.

PART II.—THE 1972 AGREEMENT.

2. Termination of Agreement.

(1) The 1972 Agreement is terminated.

(2) Notwithstanding anything in any other law, no damages, compensation or other sum is payable by the State or the new Project Company as a consequence of or arising out of the termination of the 1972 Agreement, except as provided by this Act.

3. Abrogation of rights under Agreement.

(1) Subject to Subsection (2), all rights under or arising out of the 1972 Agreement—

- (a) of the State against any of the companies formerly involved in the Biala project; and
- (b) of any of those companies against the State,

are abrogated.

(2) Subsection (1) does not affect—

- (a) rights and obligations as between any of the companies formerly involved in the Biala project; or
- (b) rights and obligations of any of those companies against or to any person other than the State or the new Project Company; or
- (c) rights and obligations of any person other than any of those companies against the State or the new Project Company.

PART III.—ACQUISITION OF PROJECT PROPERTY.

Division 1.—Acquisition and Return in Certain Cases.

4. Acquisition.

Subject to Section 6 and to Division IV.2, on the commencement of this Act the project property is, by force of this Act—

- (a) vested absolutely in the State; and
- (b) freed and discharged from all interests, trusts, restrictions, declarations, reservations, obligations, contracts, licences, charges and rates.

5. Conversion of former interests.

Subject to Section 6, on the commencement of this Act, all rights of any of the companies formerly involved in the Biala project in or in respect of the project property are converted into rights to payment under this Part.

6. Return of certain property.

(1) At any time—

- (a) after the appointment of the new Project Company under Section 23 and before the appointment of the statutory valuer; or
- (b) after the statutory valuer makes his report under Section 14 and before a payment is made under Section 21 in respect of the item,

the company formerly involved in the Biala project to which any item of returnable project property belonged immediately before the commencement date may, by written notice to the new Project Company, elect to receive the return of the item, in its condition at the time when the notice is given, in place of any payment under this Part in respect of the item.

(2) On receipt of a notice under Subsection (1), the new Project Company shall return the item to the company concerned, and then—

- (a) the item becomes the property of the company to which it is returned; and
- (b) the new Project Company is discharged from any liability to make any payment under Section 21 in respect of the item,

but without prejudice to any claim in respect of the item that any other company formerly involved in the Biala project may have against the company to which it was returned.

(3) Any property that has, by virtue of an election in accordance with Subsection (1)(a), been returned under this section to a company that was formerly involved in the Biala project shall be deemed not to be part of the project property.

Division 2.—Valuation of Project Property.

7. Appointment of valuer.

(1) Subject to Subsection (2), within three months after the commencement date the Minister shall, by notice in the National Gazette, appoint an independent person who possesses the qualifications prescribed by Section 8 to value the project property for the purposes of this Act.

(2) A person who is a citizen of, or is ordinarily resident or is domiciled in, Papua New Guinea or Japan is not eligible for appointment under Subsection (1).

8. Professional qualifications.

To be qualified for appointment under Section 7, a person must—

- (a) be a registered surveyor under the Registration of Surveyors Act of Malaysia and be a member of the Malaysian Institute of Surveyors; and
- (b) have had experience in the valuation of palm oil plantations in Malaysia, and in surveying and valuing outside Malaysia.

9. Independence of valuer.

In the exercise of his powers and the performance of his functions under this Act, the statutory valuer is not subject to direction or control by any person or authority.

10. Application of Valuation Act.

Subject to this Act, the statutory valuer—

- (a) shall, for the purposes of the *Valuation Act* be deemed to be authorized by the Valuer General under Section 5 of that Act to act as an Official Valuer under that Act in relation only to the making of the valuations required by this Act; and
- (b) has, for the purposes of this Act, all the powers, privileges and protections of an Official Valuer to whom all the powers of the Valuer General have been delegated, for the purposes only of this Act, under Section 6 of the *Valuation Act*.

11. Functions of valuer.

The statutory valuer shall, as soon as practicable after his appointment, value the project property in accordance with Section 12.

12. Basis of valuation.

Each item of the project property shall, to the extent required by Section 14(2), be valued, as at immediately before the commencement date, at—

- (a) its value as part of the Biala project; or
- (b) its market value in its situation immediately before the commencement date,

whichever gives the higher figure.

13. Assistance by Minister to valuer.

For the proper performance and exercise of the functions and powers of the statutory valuer under this Act, the Minister shall—

- (a) make available to the statutory valuer all information in the possession or under the control of the State or of the new Project Company; and
- (b) give him all other assistance and facilities that he reasonably requires.

14. Valuer's report.

(1) Within three months after his appointment, the statutory valuer shall forward to the Minister, and at the same time to each of the companies formerly involved in the Biala project, a written report on the valuation of the project property—

- (a) itemizing the value of the property, and the basis, as set out in Section 12(a) or (b), on which the value of each item was arrived at; and
- (b) certifying that the respective values are fair and reasonable values assessed in accordance with Section 12.

(2) Subject to Subsection (3), the report shall itemize separately the value of—

- (a) the plantation property and each fixture or improvement (including trade fixtures, trees and crops, whether standing or cut) on it immediately before the commencement date; and
- (b) each fixture or improvement (including trade fixtures) on the mill site immediately before the commencement date; and
- (c) the project planting material; and
- (d) each item of the returnable plantation property.

(3) A separate value need not be shown in respect of any item the value of which does not exceed K200.00.

15. Appeals, Etc.

Subdivision IV. 1 D. of the *Valuation Act* does not apply in relation to a valuation under this Division.

16. Effect of valuation.

Except for the purposes of this Act and of any matter arising under it, a valuation made under this Division does not have effect as a valuation made under the *Valuation Act*.

17. Remuneration, etc., of Valuer.

The State shall pay to the statutory valuer such remuneration, including reasonable costs and expenses, as are agreed on between the Minister and him.

Division 3.—Settlement Payments.

18. Entitlements to settlement payment.

Settlement payments, in accordance with this Division, shall be made to the companies formerly involved in the Biala project in respect of their former interests in the project property.

19. Amount of settlement payment.

For the purposes of this Division, the amount of the settlement payment in respect of any part of the project property is its value as determined under Division 2, plus interest at the rate of 6½% per annum from the commencement date to the date of payment under Section 21.

20. Payment to the new Project Company.

(1) Within one month after the receipt by the Minister under Section 14, of the report of the statutory valuer, the Minister for Finance shall, on behalf of the State, apply to the new Project Company for an allotment of shares, in addition to any shares already allotted or to be allotted to the State, to a face value equal to the amount of the settlement payment under this Division in respect of the project property.

(2) At the time of making application in accordance with Subsection (1), the Minister for Finance shall pay to the new Project Company the amount payable on the shares.

(3) The shares shall be fully paid-up shares, issued at par.

(4) On receipt of an application under Subsection (1) and the money payable under Subsection (2), the new Project Company shall immediately allot to and issue to the State the number of shares applied for.

(5) Payment of an amount under Subsection (2) to the new Project Company is, *pro tanto*, a full discharge to the State of any liability to make a settlement payment under this Division.

21. Payment to companies formerly involved.

(1) Within one month after payment is made to the new Project Company in accordance with Section 20(2), it shall pay to each company formerly involved in the Biala project an amount equal to the amount of the settlement payment in respect of such part of the project property as, immediately before the commencement date, was the property of the last-mentioned company.

(2) The payment shall be made—

(a) in the case of any part of the project property that belonged to S.P.O.P.D. or Tokai Leveller—to S.P.O.P.D.; and

(b) in the case of any part of the project property that belonged to the former Project Company—to it.

(3) If the new Project Company is in any doubt as to which of the companies formerly involved in the Biala project is entitled to a payment in respect of any part of the project property, the payment may be made to the former Project Company.

(4) A payment made in accordance with Subsection (2) or (3) is, *pro tanto*, a full discharge to the new Project Company of its liability to make a payment under this section.

22. Final accounting as to interest.

If after payment under Section 21 is completed the amount paid by the new Project Company is in excess of the amount paid to it under Section 20—

- (a) the Minister for Finance shall pay to the new Project Company the amount of the difference; and
- (b) the new Project Company shall immediately allot to and issue to the State, at par, a number of fully paid-up shares to a face value equal to the amount so paid to it.

PART IV.—CONTINUANCE OF THE BIALA PROJECT.

Division 1.—The Project Company.

23. Appointment of new Project Company.

(1) The Head of State, acting on advice, may, by notice in the National Gazette, appoint a company—

- (a) that is incorporated under the *Companies Act*; and
- (b) the beneficial ownership of all the shares in which is, at the time of the appointment, held by the State,

to be the new Project Company.

(2) An appointment shall not be made under Subsection (1) without the consent of the company concerned.

Division 2.—Transfer of the Project Property.

24. Grant of agricultural lease.

(1) As soon as practicable after the appointment of the new Project Company under Section 23, the Minister for Lands shall, by virtue of this Act and without reference to the procedures prescribed by or under the *Land Act*, grant to the new Project Company an agricultural lease under that Act over the area of the plantation property.

(2) The lease—

- (a) shall be for a term of 95 years; and
- (b) shall, in addition to such reservations, covenants and improvement and other conditions as are prescribed by or under the *Land Act*, contain such other reservations, covenants and conditions as to the Minister for Lands seem proper.

(3) For the purposes of the *Land Act*, the date on which notice of the grant of a lease under Subsection (1) is given to the new Project Company shall be deemed to be the date on which notice under Section 34 of that Act was published, and otherwise that section does not apply.

25. Vesting of other project property.

All of the project property, other than the plantation property, is by virtue of this Act vested, immediately after the appointment of the new Project Company, in that company.

PART V.—MISCELLANEOUS.

26. Appropriation of revenue.

All amounts payable by the State under this Act shall be paid out of the Consolidated Revenue Fund which is, to the necessary extent, appropriated accordingly.

27. Execution of instruments, etc.

(1) The Minister for Finance may, on behalf of the State, enter into any agreements, execute any documents and do any other things that are necessary or convenient for the purposes of the application for and the allotment of shares in, and the making of payments to, the new Project Company under Sections 20 and 22.

(2) The Minister for Primary Industry may, on behalf of the State, enter into any agreements, execute any documents and do any other things that are necessary or convenient for the purposes of this Act.

28. Registration of titles.

(1) In this section, "the Registrar of Titles" means the Registrar of Titles appointed under the *Lands Registration Act 1924* of the former Territory of New Guinea (adopted).

(2) As soon as practicable after the commencement of this Act, the Registrar of Titles shall register the acquisition of the plantation property in the same manner as acquisitions under the *Lands Acquisition (Development Purposes) Act*.

29. Stamp duty, etc.

A transaction to which the State, a Minister or the new Project Company is a party, and that is necessary or desirable for the purposes of this Act, is not liable to stamp duty or any similar duty.

30. Repeal.

(1) The 1972 Act is repealed.

(2) In its application to the repeal effected by Subsection (1), Section 63 of the *Interpretation Act* shall be read subject to this Act.

31. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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APPENDIX.

SOURCE OF THE PALM OIL INDUSTRY (BIALA PROJECT RE-ORGANIZATION)
ACT.

Part A.—Previous Legislation.

Palm Oil Industry (Biala Project Re-organization Act 1976 (No. 52 of 1976).

Part B.—Cross References.

Section, etc., in Revised Edition	Previous Reference ¹ .	Section, etc., in Revised Edition	Previous Reference ¹ .
1	1	17	17
2	2	18	18
3	3	19	19
4	4	20	20
5	5	21	21
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15	15	31	31
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¹Unless otherwise indicated, references are to the Act set out in Part A.

