



A Guide to the Establishment and Support of Landowner Businesses Associated with Resource Projects in Papua New Guinea

RICHARD T. JACKSON



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PAPUA NEW GUINEA CHAMBER OF MINES AND PETROLEUM

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Abbreviations and Acronyms Used

AGM	Annual General Meeting	Lanco	Landowner Company
BDAP	Business Development Assistance Program	LBD	Local Business Development
BDO	Business Development Office	LNG	Liquefied Natural Gas
CA	Community Affairs	ML	Mining Lease
CEO	Chief Executive Officer	MOA	Memorandum of Agreement
CSR	Corporate Social Responsibility	MRA	Mineral Resources Authority
ESIA	Environmental and Social Impact Assessment	MRDC	Mineral Resources Development Company
GM	General Manager	NCP	National Content Plan
IFC	International Finance Corporation	OTML	Ok Tedi Mining Limited
ILG	Incorporated Land Group	PDL	Petroleum Development Licence
IPA	Investment Promotion Authority	PNG	Papua New Guinea
IRC	Internal Revenue Commission	Repco	Representative Company
JV	Joint Venture	SML	Special Mining Lease
		ZILG	Zonal Incorporated Land Group

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The responsibility for the opinions expressed in the Guide remains with the compiler.

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Summary of Recommended and Required Actions

The table below summarises the actions required of resource companies by the State as of late 2015 and the actions recommended in the main body of this Guide. Because local business development (LBD) is only one component of the community investment required of and entered into by resource projects in

Papua New Guinea, the table shows both the steps that need to be directly taken to advance LBD and those taken in other areas of community investment that are indirectly necessary in order to facilitate LBD progress.

Key:

	Steps recommended by this Guide directly related to LBD
	Steps recommended by this Guide indirectly related to LBD
Bold	Steps required by State

STAGE	STEP#	OIL/GAS	MINING
PRE-EXPLORATION	1	a) <i>Embrace local business development</i>	<i>Embrace local business development</i>
		b) Preliminary social mapping and preliminary landowner identification study	
EARLY EXPLORATION	2	<i>Initial social risk assessment</i>	<i>Initial social risk assessment</i>
	3	a) <i>Impacted population communication strategy including expectation management</i> b) <i>(Should oil/gas equivalent of MRA be formed: liaison)</i>	a) <i>Impacted population communication strategy including expectation management</i> b) <i>MRA liaison</i>
	4	<i>Develop conceptual LBD plan</i>	<i>Develop conceptual LBD plan</i>
ADVANCED EXPLORATION	5	<i>Full social mapping study</i>	<i>Full social baseline study</i>
	6	<i>Full landowner identification study/ benefits sharing study</i> NOTE: Steps 5 and 6 are required by State prior to the Development Forum	<i>Full landowner identification study/ benefits sharing study</i> NOTE: Steps 5 and 6 are required by State prior to the Development Forum
	7	a) <i>Register of national and local suppliers</i> b) <i>Match project supply needs to local suppliers</i> c) i) <i>LBD part of community investment program</i> ii) <i>Initiate LBD training</i>	a) <i>Register of national and local suppliers</i> b) <i>Match project supply needs to local suppliers</i> c) i) <i>LBD part of community investment program</i> ii) <i>Initiate LBD training</i>

STAGE	STEP#	OIL/GAS	MINING
ADVANCED EXPLORATION (continued)	8	a) Establish Repco b) Consider establishing women's Repco	a) Establish Repco b) Consider establishing women's Repco
	9	Commence negotiations on Repco constitution and community support	Commence negotiations on Repco constitution and community support
FINAL (BANKABLE) FEASIBILITY	10	Integrate LBD into physical project planning progress	
	11	Finalise Business Development Plan, including National Content Plan and budgets, required by State by the time Development Forum is concluded	
	12	Finalise agreements re. Repco constitution/membership	
	13	Finalise conditions for company support of Repco	
	14	Finalise nature of Repco support	
	15	Determine condition and nature of support for Lancos	
	16	Explore co-operation in LBD with government agencies	
DEVELOPMENT FORUM and CONSTRUCTION	17	Formalise all LBD agreements reached earlier	
	18	Use, if possible, Development Forum to bring government agencies into LBD support	
	19	Prepare for and implement liaison procedures between project contractors and local businesses	
	20	Implement monitoring of LBD	
	21	Plan for downturn in contracts when construction ends	
OPERATIONS	22	Reduce risk of failure (especially of Lancos) by: a) Help local businesses plan prudent business plans b) Ensure project pays local businesses invoices promptly c) Seek ways of diversifying local business d) Provide feedback on local business performance e) Assure well-coordinated contract award system	
	23	Monitor and act on results of LBD monitoring	
	24	If failure occurs, assess overall impact and (usually): a) Rescue Repco and re-impose controls b) Unless assessed as having critical impact, allow Lanco to fail	
	25	Guard against Repco fragmentation	
	26	Enhance sustainability through a mix of sectoral specialisation and geographic diversification	

CHAPTER 1

BACKGROUND

1.1 THE PURPOSE OF THIS GUIDE

This Guide aims at:

- a) Providing resource developers, especially those who are investing in Papua New Guinea (PNG) for the first time, with both a recommended pathway by which they may properly fulfil their current (as of late 2015) regulatory obligations in the area of local business development (LBD) and a discussion of the pros and cons of adopting particular courses of action in pursuit of that goal;
- b) Drawing on experience accumulated to date of LBD at a variety of resource projects to provide a model of processes which have been shown to work in terms of LBD so that resource companies can do better in this area than simply fulfil regulatory requirements;
- c) Highlighting areas where challenges remain to be overcome in the area of LBD, where experts are not yet sure (or are not in agreement) what the best practices are, and where, occasionally, contradictory aims exist; and
- d) Providing people in the areas impacted by resource projects, and especially to potential entrepreneurs in those areas, with information relating to good practice in business development (although the Guide primarily focusses on how resource companies should fulfil their obligations and meet regulatory requirements).

The Guide has drawn on the experience of a wide variety of resource companies that have operated in PNG for many years. It owes much of its value from having been guided by a range of 'resource persons' with extensive experience of PNG business development, drawn not only from resource companies but also from landowner companies and government. Their input has been vital and the individuals involved and the organisations they represent are acknowledged as co-authors of the Guide.

1.2 DEFINITIONAL NOTE

In this document the word 'sustainable' as applied to local business is used in the limited economic sense that:

- a 'sustainable business' is one which has the potential to outlive the project that gave rise to it or, alternatively, to last until such time as its owners voluntarily close its operations; and
- the benefits it generates can be invested in activities which continue to generate further benefits.

The definition does not adopt the wider meaning of the word implying environmental impacts. However, it does imply that a successful local business is one that leads to an increase in choices in life for those involved in local business development.

1.3 HOW THE GUIDE WAS COMPILED

In 2014, a survey of LBD practice and outcomes at all operating resource project sites in PNG was commissioned by the PNG Chamber of Mines and Petroleum (Jackson 2015). It was the view of the Chamber that this study indicated the need to draw up a set of guidelines of best practice for local business developments associated with resource projects. To try to ensure that the best possible advice could be included in this Guide, a panel of resource persons who are leaders in resource project-related businesses was set up. It included people from resource companies with many years' experience in developing landowner companies, public servants from State agencies with a direct role in business regulation in the resources sector, and the CEOs (past or present) of some of the leading Lancos. This group was:

1. Consulted for their views on the proposed content of the Guide and subjects to be covered.
2. Asked to complete a questionnaire containing 32 items that was circulated among them for their

responses. 10 of these items were for general comments while 22 simply asked for the person's agreement or disagreement on a scale of 1 to 5; 1 being completely agree, 3 being neutral and 5 being completely disagree. The answers to this revealed that there were many areas of agreement between the group members but also that there were some major divisions of opinion (refer Appendix 1 for the details).

3. Asked to review the first draft of this Guide.

While the whole Guide reflects the views of the panel, whether these are unanimous or varied, a summary of responses to some questionnaire items has been included throughout the document in the form of inserted yellow boxes.

1.4 LAY-OUT OF THE GUIDE

It is almost certain that the existing requirements of the State in relation to the mining sector will change in the near future since a draft of a replacement Mining Act is at an advanced stage of preparation. Most of the likely changes this replacement might introduce have been incorporated in the Guide.

The six chapters in this Guide, following the present chapter dealing with the background, are aligned with six stages of project development:

- pre-exploration;
- early exploration;
- advanced exploration;
- final (bankable) feasibility;
- the Development Forum and construction; and
- operations (including closure planning).

It may seem strange that all but one of the chapters relates to the period before any resource production actually occurs. The reasons for this emphasis will become clear as the Guide proceeds, but it can be stated at the outset that a fundamental reason for this emphasis is **the need to plan and prepare very carefully**. To start off on the wrong foot is to court disaster.

Each chapter contains two parts: Part A of each chapter is a **summary of recommended steps** to be taken at each stage. Some of these steps are directly concerned with local business development (e.g. 'ensure registration with the tax authorities') while others are indirect steps which have implications for LBD (e.g. 'initiate landowner identification study to identify landowners'). It is hoped that these summary sections will provide practical guidance on a day to day basis for business development staff members.

Part B of each chapter provides the **background and justification behind the recommended steps**. These second parts of each chapter go into considerable detail about the experiences of resource companies and landowner businesses in PNG in the past and try to explain why certain steps should be taken. This format is adopted so that the first part of each chapter can be used for rapid reference whereas the set of second parts can be consulted in a more leisurely way. Occasionally a point is raised which, although not dealing with day to day problems of managing LBD, nevertheless is worth more general consideration by LBD practitioners. These asides are presented in boxes.

1.5 THE KEY TO SUCCESS

There is NO one key to success in any business anywhere in the world, let alone business in remote areas of Papua New Guinea. There ARE, however, several key factors in reducing the risk of failure:

- Planning in advance of need so as to achieve...
-clearly understood courses of action agreed to by key stakeholders.
- Following tried and tested principles of good business.
- Hard work.

In consequence, the bulk of this document is concerned with careful **preparation**. Once all the careful planning starts being put into practice it is important to **maintain the relationship** between the resource company and local businesses, especially the Representative Company (see Chapter 2). This can be achieved by holding regular meetings (e.g. quarterly) at which any developments relating to the resource project can be discussed, as well as the progress of local business.

1.6 DISTORTIONS OF COMPETITION

Making special provision for particular sections of the wider PNG community (by way of giving preference to local people in employment or in business development) can lead to unfair competition with other sectors of national society and to in-built inefficiencies in the operations of the groups given such preferences. Provision of economic preferences leads to market distortions. It is critical that all such distortions be: a) minimised; b) clearly specified, where considered to be of critical importance; and c) fully justified.

Local preferences given in the area of business development clearly could lead to such distortions and inefficiencies. However, without such an intervention,

it is improbable that any community in any of PNG's resource sites could have any chance of establishing businesses capable of servicing the projects. This would be seen as inequitable and would create major problems for the operation of the projects. Consequently, throughout this Guide, this particular distortion of competition is seen as justified **but only provided that the benefits of such a distortion can be shown to be received in an equitable fashion by all the original residents of the project impact area.**

The distortion is not supported by this Guide where it might be used to benefit only certain individuals and/or sections of the impacted community and makes such benefits unavailable to all other individuals or sections of the community.

However, the difficulty of preference-generated market distortions goes beyond this. It seems to be universally agreed by all interested parties that it is necessary to allow the distortion of market forces by introducing a set of preferences in respect of a number of resource project benefits in PNG. But the presence of such a distortion – even when justified – raises some difficult points. If regular market forces do not operate fully in the context of LBD, then: a) a set of agreed rules governing the extent of the distortions away from 'normal market forces' must be made clear to all participants in it; and b) someone or some organisation should act as arbiter as to whether practice is within the agreed bounds of such distortions. Neither of these controls over this particular distortion are in existence; instead 'preference for landowners' is left as a simple but open-ended axiom.

This distortion causes difficulties for everyone. It misleads landowners – many of whom might reasonably imagine that the axiom entitles them to not only be granted contracts but to be fully assisted by the resource company in fulfilling those contracts. It has led several resource companies to become so frustrated at the demands for support that, as one member of the panel put it, "For many commercial managers and general managers, and corporate offices, it appears easier to leave it (the distribution of project benefits including those from LBD) to market orthodoxy – until, that is, the issues and protests arise around the site operations from disgruntled landowners." The confusion this open-endedness creates at site in turn then means that State agencies, most notably the Mineral Resource Authority (MRA) has to try and solve a situation that is already problematic.

The issues raised by the lack of recognition that preferences – though agreed by all parties to be entirely justified in the initial stages of project development – can lead to distortions in economic activities will appear at several different points in this Guide: in terms of benefit distribution; in terms of

whether support should focus on Repcos rather than Lancos; and in terms of whether or not LBD support should only apply over a limited time or geographic area. **All parties have an interest in minimising such confusion through incorporating within a project memorandum of agreement (MOA), for example, or in national regulations;** a set of LBD guidelines relating to levels of support, recipients entitled to it and any limitations to it in terms of time or space.

1.7 FACTS WORTH BEARING IN MIND IN DIFFICULT MOMENTS

Much of the literature and commentaries on resource industries, and especially that of their critics, seems to take it as a self-evident truth that mining and hydrocarbon operations and their benefits are unsustainable. This view is worth challenging and certainly so when it takes on axiomatic status. It is true resource revenues can, and often are, wasted and resource benefits can, and sometimes are, converted into excuses for short-term consumption rather than investment. However:

- Even at the most basic level, mining and hydrocarbon projects in PNG last a rather long time compared to many other economic activities. While there are short-lived mines, like the Kainantu gold project, others are long-lived, like Ok Tedi which has been in production for well in excess of 30 years (or over 40 if the exploration period is included); Porgera for over 23 years (and much longer if exploration is included); Oil Search has been in PNG spending money and employing people for in excess of 80 years; and several others will probably last well in excess of two decades. This is at a time when the world-wide average life-span of companies is now a mere 15 years.
- What industry, other than mining and oil/gas, has the potential to enormously expand the opportunities available to people in remote areas of PNG, whose choices in life are otherwise minimal, not just in terms of immediate incomes but in terms of life-long acquisition of skills? These include, in terms of LBD specifically, those of running a business long after mining or hydrocarbon extraction ceases. A well-run LBD program as part of a commitment to a well thought-out community investment program is one way of realising that potential.
- The oldest, continuously operating and still active (it employs 27,000 people) limited liability company in the world is a paper/pulp maker based in Finland. Astonishingly, it was first established more than 700 years ago in 1288. And how did it start? As a copper mine!

BOX 1: *BISNIS* AND BUSINESS: DIFFERENT RULES NOT DIFFERENT GOALS

Bisnis is a word in common use in Tok Pisin. It is often remarked that it does not mean 'business' as that latter word is used in English; that *bisnis* is not merely a word describing commercial activities but one involving social and political activities too. But a moment's reflection will reveal that exactly the same is true of 'business'; English usage of that word too includes commerce (as in Business Development), political activity ('the next item of business...'), Parliamentary business) and social matters ('mind your own business'). There isn't really much difference between the usage of the two words.

Nor, despite what an outsider might imagine beforehand, is there much difference in the *motivation* of those (usually, but not exclusively, male) who involve themselves in business whether they are Dobu Islanders in Milne Bay negotiating to become possessors of a Kula shell armband (*mwaii*), an ambitious Melpa making contacts with people all around the Mount Hagen area so as to amass pigs or the general manager of an Australian mining company trying to develop a new gold mine; to paraphrase the anthropologist Malinowski writing about the people of the Trobriands in 1922: "Why would any of them risk life and limb to obtain what many would say were worthless trinkets?" For all of them the answer is: fame, prestige and self-esteem. **It would be a serious error to imagine that Papua New Guineans, even in the remotest of the country's villages, are any less interested in business (no matter how it is spelled) than others are, or to suppose that the rules, networking and conventions governing the accumulation of pigs and arm-shells are any less rigorous than are those to be found in, say, the Companies Act. The rules are different, yes, but not less complex.** What are different are the geographical scales, social circumstances and quantum of resources involved in the ways these three people seek prestige and the consequences that follow.

Whereas in a pre-project community the quantum of resources was small and grew, if at all, at a very slow rate, in a resource project community there has been a huge and sudden increase in the resources available for accumulation. Further, the nature of accumulation in pre-project community was, had to be, deeply embedded in every aspect of society involving the accumulator in the 'courting' of trade partners in the Kula system or of providers of wives (as the labour source whereby more pigs could be produced on surplus sweet potato production and then used to gain influence) among the Melpa. In contrast, in a resource project community the 'courting' for an ambitious villager is of external agents (the company, the government, JV partners, etc) and is disarticulated from the original community networks. So, there is a huge increase in resources available for accumulation plus an entirely different set of partners outside the community whose participation is necessary in order for accumulation to take place.

Once accumulated, what is done with those resources in these two sets of circumstances? In pre-project communities they were/are re-distributed as part of the process of winning fame, prestige, authority amongst a small community. But in and around resource projects, they leak out of the small community – indeed a whole new pattern of resource expenditure is made available to those who have accumulated them – more or less world-wide. There is a very high probability that the Big Redistributing Man of 'traditional' Melanesia becomes just another rich individual to whom the bulk of the project benefits flow.

But this is certainly not the aim of Local Business Development as stated by the State or the resource companies – and they are not being hypocritical in this regard; their aim is that the project shall benefit the whole impacted community. This aim is interesting because it implies that the resource companies and the government are far from interested in some sort of 'pure capitalism' – they aim to try and constrain LBD within pre-existing communal norms and circumstances even when the circumstances in which the resources generated are so different from the pre-existing ones. So, for example, shares in Lancos, some argue, must be held by clans and, even more argue, certainly cannot be traded because that would mean a loss of local control. The landowner argument that outsiders must not be allowed to compete with them on their own patch is also a component/symptom of this constrained form of 'communal capitalism'. This, of course, is just a localised version of the barriers to outsiders doing business put up by many countries in the name of nationalism, but which in fact only benefit national elites.

At resource sites in PNG, the nature and quantum of the resources available has dramatically changed; the possibilities for accumulation have likewise grown out of all recognition. The old rules of accumulation and redistribution previously embedded in all aspects of local society are no longer valid, even if many ordinary folk think they are and even if this raises the probability of their abuse. **New rules are needed – and they exist in the form of well-tested, more or less universal codes for the good and transparent management of companies.** The real task for LBD at resource sites in PNG is to embed these rules as thoroughly in impacted communities as were the rules of Kula exchange in Milne Bay or those of the Mount Hagen *moka*.

CHAPTER 2

PRE-EXPLORATION

PART 2A: SUMMARY

PRELIMINARY DEFINITIONS

In this Guide, for any given project:

A **local business** is one owned by people formally defined as being those who were residents of the project impact area prior to the commencement of the project and who are, therefore, impacted people. Local businesses can be of two main sub-types:

A **representative company (Repco)** is a local business owned by the whole of the community within a resource project's formally recognised impact area or, in the cases where the project impact area is especially large, by the whole community within specified portions of that area.

A **landowner company (Lanco)** is a locally based ('locally' meaning within the project impact area) business with a majority interest by individual project-impacted landowners or groups of landowners smaller than the whole community.

Either sub-type can be a joint venture incorporating an external, non-local partner (whether national or foreign) or a sole operator of a business.

The term 'umbrella company' is not used in this Guide. What many refer to as an 'umbrella company' is referred to here as a Repco. Instead, the phrase 'umbrella functions' is used to indicate the sorts of management assistance services that are, or can be, provided to local businesses established at and around resource projects.

A **national business** is a business, the majority of whose shares are owned by PNG citizens, registered and operating in PNG which is not a local business as defined above.

LEGISLATION

Mining legislation is in process of change. It should be expected to come more into line with the Oil and Gas

Act, especially in relation to all aspects of community investment including LBD. In the meantime, the fact that the current Mining Act does not refer to LBD is irrelevant to companies' obligations – a Business Development Plan (BDP) is required as part of the Proposals for Development that are submitted as part of the application for a Special Mining Lease (SML) or a Mining Lease (ML) and the proposed BDP will itself become a core area for negotiation in most project Development Forums. However, it is strongly advisable to have LBD plans well-advanced and agreed to before the Development Forum is to be held.

STEP 1: Embrace local business development

Senior resource company management should not merely accept, but embrace, the idea of local business development, not only because it is required, not only because it is the right thing to do, but because it can benefit the project. But they should also recognise some of the implications of providing preferential priority. An agreed LBD program should be firmly established in advance of the convening of the Development Forum.

PART 2B: JUSTIFICATION FOR RECOMMENDED STEPS

2B.1 EMBRACING LOCAL BUSINESS DEVELOPMENT

The first key step to take in addressing LBD is one that needs to be taken by resource project top management from the very start of a project: acknowledge that not only does a project have to undertake LBD, but also that, if it is done well, it can have significant benefits for all involved including the project itself. But if it is done badly it can generate its own set of social risks for the project.

All resource project developments in Papua New Guinea are required to support local business development. While this is rather unusual, almost all projects, according to a recent survey, seem to accept

this responsibility and, more importantly, seem to benefit from the investment; having a competent set of skills and services directly accessible at sites is an advantage, even if resource companies also recognise that they have to devote rather a lot of time into assisting the development of such companies.

Why should a project 'embrace' LBD?

2B.2 WHY? IT HAS TO BE DONE....

The Government of PNG is keen to maximise the 'national content' of all resource project development. By this it is referring to two largely separate types of activity:

- (a) Projects should maximise their **purchases of goods and services** from or through PNG businesses located anywhere in the country. This includes not merely the purchase of PNG-made products or PNG services, but, where such services have to come from other countries, their being channelled through PNG-owned or PNG-based agencies. In the remainder of this Guide we shall refer to these as 'national businesses'. In 2014, mining and oil/gas companies (excluding the new gas project – the PNG LNG¹) obtained at least two billion kina-worth of supplies from national businesses.
- (b) Projects are required to help **develop and support new businesses owned and operated by landowners in the impact areas of resource projects**. These are usually groups which, at least initially, supply some of the immediate project needs. Here we shall refer to these as 'local businesses'. In 2014, resource companies (again excluding PNG LNG) gave out contracts worth at least one-and-a-half billion kina to local businesses.

This Guide is concerned principally with local businesses. However, some attention will be paid to national businesses in a section which examines the establishment of a supply and procurement plan; to the possible links between the project's supply and procurement plan and its business development plan; and also to the role of national businesses in the establishment of joint ventures with local businesses.

Over the 35 years in which the State has encouraged (or required) resource projects to develop local businesses, two broad sub-types of local businesses have emerged: Repcos (or 'umbrella companies') and

BOX 2: UMBRELLA OR REPRESENTATIVE?

The term **umbrella company** originated at Ok Tedi in the early 1970s. The project's employees had the idea of setting up an organisation which would encourage local people to go into business by offering to protect them from some of the more difficult aspects of infant businesses by initially providing help with management, accounts, obtaining licences and the like, with a view to helping them eventually to stand on their own feet. At virtually all PNG resource sites the term is widely used to refer to the largest Lancos. However, when the PNG LNG project started up, the term **representative companies** came into use. This was partly a reflection of the project developer's (ExxonMobil) vision for local business which wished to minimise the dependency of the local businesses on the project.

Which term is the more appropriate in practice? Research* has shown that, in most cases, if the protective umbrella functions are devolved from the resource company to a representative company, then this both impedes the operations of that company *and* it does not result in the provision of as much assistance to small, infant Lancos as might reasonably be expected. **The conclusion appears to be that those umbrella functions need to be separated out from active trading companies.** In turn, that implies that the really large Lancos, like iPi or Trans Wonderland, etc, would be better referred to as representative companies.

In this Guide I shall not refer to 'umbrella functions' but to 'representative companies'.

* Jackson, RT 2015, *The Development and Current State of Landowner Businesses Associated with Resource Projects in Papua New Guinea*, PNG Chamber of Mines and Petroleum.

smaller Lancos (refer BOX 2 for a discussion of the reasons for and implications of such names and why 'representative' is used here). Examples of Repcos include: iPi (of Porgera), Anitua (of Lihir), NKW Holdings (of Hidden Valley) and Trans Wonderland (of PNG LNG). Whereas not all projects have Repcos, all have Lancos.

¹ PNG LNG figures are excluded because 2014 marked the time the project's construction period – during which more than several billions of kina were expended – was in transition to its operation period when much lower expenditure began. In round numbers, the exclusion means that the figures quoted are perhaps only two-thirds of total actual expenditure.

Ideally, the State would like to see such local businesses (of either sub-type) achieve a level of activity and diversity which will enable them to increasingly become independent of the resource project that gives rise to them. In other words, ideally such companies should eventually become sustainable. This is a challenge given that the businesses developed around a mine or oil/gas-field – even if they have the support of the resource company – have a large number of obstacles to overcome if they are to achieve a degree of independence and sustainability. The remote location of most resource sites is the most obvious of these obstacles. But it is a challenge that can be overcome, especially when one examines the different possible pathways that can lead towards sustainability. Later we will discuss some of these pathways.

This point is raised here, at the start of the Guide, because it is intended that this document will not simply list the rules, regulations and requirements (the ‘three Rs’) that projects need to comply with, but the pros and cons of adopting particular approaches along the way. Not all projects have lives to be measured in decades and not all have gross annual production measured in billions of dollars, so the LBD programs adopted at different types of projects in different sets of local circumstances will not all be identical. While the ‘three Rs’ need to be complied with, there are different paths to compliance.

The object of the State with regard to LBD has slowly become more and more focussed over time. When Ok Tedi was being planned in 1980, the State, although requiring the company involved (Dampier Mining, a wholly owned subsidiary of BHP) to initiate an extensive LBD program, it did not provide any support for that program. By the time the Stanley Gas Project (just south of the Ok Tedi mine) was being given the go ahead in 2014, the State provided K30 million to the few hundred landowners there for business development. Further, at the 2014 PNG Mining and Petroleum Investment Conference in Sydney, the Prime Minister himself laid special stress in calling on the resource sector to increase even further their efforts in this regard; established projects should redouble their efforts and new projects should engage in them as early on in the development process as was feasible. The development of nationally owned and operated businesses has increasingly moved to the centre of the PNG development stage – and the resources sector is increasingly seen as the one most capable of facilitating its success.

2B.3 WHY? MINING LEGISLATION AND PRACTICE

There are significant differences in the laws that govern LBD development in the mining industry, on the one hand, and the oil and gas industry on the other. However, these differences in legislative provisions are, to a large degree, cancelled out by other forms of rule-making. Specifically, in the mining sector the MOA drawn up for each project almost without exception make detailed provisions for LBD. MOAs are as binding as, if not more so in practice than, laws². Further, the Mining Development Contracts (MDC) for Special Mining Leases (SML) also contain such provisions. So what at first sight appear to be major differences in the regulatory environment of the two sectors are minimised.

In 1976, PNG and BHP negotiated the first Ok Tedi Agreement. This laid out, under Section 32, what the State expected of the developer of the project in terms of both business development (which was to give priority to persons resident in Kiunga and Telefomin Districts) and in the procurement of goods and services from Papua New Guinean businesses. Indeed, few of the many resource projects that have been developed since the Agreement was drawn up have gone significantly further than the provisions in this document (which for the sake of reference is shown as Appendix 2 of this Guide.) It is of note that this earliest document relating to LBD in the country specifically absolves the developer of Ok Tedi from having to provide cash funds as part of its required assistance to local businesses.

Ok Tedi has operated since then under successive additions and expansions of that original agreement. All other mining projects operate under the provisions of the 1992 Mining Act (as well as the relevant MOA and – for projects with SMLs – also their MDC). In view of the detailed provisions of the various Ok Tedi Agreements it is a little surprising to find that the Mining Act contains no references to business development. However, do not be misled by this into thinking that LBD is not considered an essential component of resource project development in the industry. This is for two reasons:

- a) Just before the Mining Act was adopted in 1992, the State had introduced the idea of all projects having to convene a Development Forum at which the benefits the project developer would commit to bringing to the host community were

² A company which does not fulfil the requirements of an MOA agreed to with the community in which it operates will almost certainly be ‘fined’ by that community in ways that can be far more damaging to a project than the penalties it would receive if it breaks the laws of the State.

negotiated. It may well be that this is why the Mining Act includes no provisions relating to LBD (and many other aspects of community investment); the responsibility for negotiating those provisions seems to have been left deliberately to the Forum. Certainly, at every Forum to the present day and for every mining project, business development has been one of the foci of discussions. That portion of the agreement reached for LBD at the Development Forum for the small Tolukuma Mine is shown at Appendix 3.

b) A revised Mining Act is currently being prepared. Until such time as any new legislation is passed in Parliament, one cannot be certain precisely what the legal requirements of it will be; though it is likely that specific provisions relating to LBD will either be included in it or will be required under related regulations. In any case the MOA for any project already requires the details of an agreed LBD program to be finalised. Likely inclusions are:

- A business development assistance plan (BDAP) will be required as part of the documentation supplied when applying for a mining lease – this is already practice;
- Such a BDAP will be required to be updated at regular, probably five year, intervals or whenever the State requires such an update;
- Such a BDAP will show how the project proposes to upgrade business capacity (including that of women) in the mining lease area – this too is already in current practice;
- A section on BDAP progress will probably be required as part of any mining project's annual report to the State.

Similarly, specific provisions will apply also to project supply and procurement. In short, the fact that the Mining Act of 1992 contains no provisions for LBD is irrelevant; the State requires detailed attention to such activities.

2B.4 WHY? THE OIL/GAS SECTOR LEGISLATION

The Oil and Gas Act 1998, Section 129 (refer Appendix 4), contains specific provisions requiring project developers, among other things, to:

- Use/purchase goods and services supplied or produced or manufactured in PNG;
- Encourage/assist PNG citizens to establish businesses which might supply goods/services for the project³;
- Maximise use of PNG contractors.

As in the Ok Tedi Agreement, developers are NOT required, under the Act (Section 129(4)), to provide cash funds to local businesses. However, Sections 171 and 173(5) allow the State to 'make grants to project area landowners or customary owners of land in a petroleum project area'. While such grants are not specifically related to LBD in the Act, in fact it is under these Sections of the Act that the State, in practice, has made significant cash assistance available to aspiring local business groups located in developing hydrocarbon areas of the country.

Section 129 does not specifically talk of 'local businesses' (as distinct from businesses owned by PNG citizens as a whole). In this respect, however, practice in the petroleum sector is like that in the mining sector – memoranda of agreement at relevant Development Forums specify how local business shall be supported.

In short, although the principal legislation governing petroleum sector activities does include details on LBD while that for the mining industry (for the present) does not, in fact the Development Forums required in both sectors have led to the requirements in the area to be very similar. These requirements can be summarised in a single sentence: **local business development is required at all mineral and petroleum resource sites in PNG.**

2B.5 WHY? IMPACTED PEOPLE NOW EXPECT RESOURCE COMPANIES TO SUPPORT LOCAL BUSINESS

After almost forty years (since the signing of the Ok Tedi Agreement) of LBD as a feature of resource project development in PNG, it is not surprising that whenever a new project is mooted landowners in the area concerned automatically expect that it will be one of the principal benefits of accepting project proposals. Indeed, it has generated and popularised two phrases which have become central to resource landowner vocabulary:

³ The exact wording in the Act seems to need tidying up since it states that this is for 'the operation of the project'. Given, as we shall see, the critical importance of business opportunities in the construction phase of oil/gas projects, the use of the word 'operation' here is not entirely satisfactory.

- ‘spin off’ (meaning business opportunities arising out of the presence of the project); and
- ‘umbrella company’ (meaning, originally, an overarching company that would provide support services, such as assistance with tax returns, accounting and management training, to aspiring landowner businesses).

Even if government did not require companies to have LBD programs, resource landowners now demand them. This creates a major issue right at the start of developing an LBD program: because LBD is expected of resource companies, it is important that this expectation is met. But, right from the start of a project, the possibilities of LBD at the project site need to be realistically addressed. Not every project will be big enough or long-lived enough to support a business as big and successful as that of the Lihir Islanders (Anitua). In other words, the expectations of the host community need to be informed by what is, and what is not, possible in the way of LBD. This point will recur in Chapter 3 below.

LBD is now so deeply engrained in popular PNG thinking about project development that, irrespective of any formal State requirements regarding it, the people who will be a project’s nearest neighbours (and hopefully partners) over its life of the project expect it.

2B.6 WHY? DEVELOPING AN EFFICIENT LOCAL BUSINESS SECTOR CAN BE BENEFICIAL TO PROJECT ECONOMICS

All the above reasons for adopting LBD are external requirements. However, there is a strong case for arguing that in fact a well thought out LBD program can create benefits for the project itself. Not just indirect ones (such as helping to allow the project to proceed uninterrupted) but ones with a direct and positive impact on project finances. No study has ever been undertaken (and made public) to provide evidence for this assertion⁴ but both theory and one piece of important practical evidence suggest that this is the case.

In theory, and providing the project has a lifespan long enough to profit from the investment of effort to establish an efficient local business sector (that is, at least five or six years), then savings might well be made in using local businesses in preference to: (a) paying the wages of permanent project employees to do the work (project wages being usually significantly higher than those in the rest of the PNG economy);

(b) dealing with service providers located in major PNG urban centres distant from the projects (though the project can benefit from their experience by bringing them as partners with local businesses); or (c) relying on services from overseas.

It should be noted that (after 40 years of mining experience) Papua New Guinea now has a wide range of national companies as well as an even wider range of individuals with experience in the supply of services to the industry whose standards of service are increasingly comparable to those of suppliers internationally. Not only are individual Papua New Guineans now extensively and internationally recruited as mine workers in both Australia, the rest of the Pacific and in Southeast Asia, but there are companies in Port Moresby, Lae and other centres which, through years of servicing the industry, can offer mining services on a par with international standards. Some landowner companies from older established sites, for example, have proven that they can offer such basic but difficult services as camp catering and management, heavy transport and even drilling services which can do better than simply compete with international companies. At least two representative landowner companies (Anitua and iPi) now have international subsidiaries.

In more concrete terms, the resource persons consulted in the course of the development of this Guide provided reasonably conclusive proof that LBD can be good for a project.

The unanimity and strength of feeling of our panel of experts on the issue is a clear indication that, no matter what the challenges are that have to be met when establishing and supporting LBD, the effort is worthwhile. Exactly whether the value of this effort is related to improved relations with the host community or to the project’s immediate financial outlay (or some other factors), is not clear from this set of statements, but the bottom line is: **LBD is good for a project.**

WHAT THE EXPERTS SAY

The resource persons’ panel was asked to comment on the following statement:

“LBD is required by the State; but even if it were not required, it would be worthwhile for a project to support it.”

Excluding responses from the government participants, all private sector respondents, whether from companies or local businesses expressed UNANIMOUS AND VERY STRONG AGREEMENT with the statement.

⁴ The point here is an untested one – investigation of its validity or otherwise is strongly recommended.

CONCLUSIONS:

- (a) **Not only are projects required by the State to undertake an LBD program and while the project's host community expects such a program to be developed, experience leads to a firm belief amongst practitioners of LBD that there can be direct advantages to the resource company itself to be derived from a successful LBD program.**
- (b) **Indeed, project developers should not wait (indeed cannot wait, refer (c) below) for the Development Forum to plan their LBD programs.** The Forum is convened rather late in the project development cycle. Providing it is successfully concluded, then immediately following it project construction will begin. The construction period, in both mining and in the hydrocarbon sector, offers a host of opportunities for local businesses. Unless these have been established well in advance of the Forum, it is unlikely that they will be able to compete realistically for such opportunities. The establishment of local companies cannot be done overnight. Consequently, this Guide takes the view that the processes of planning for, consultation concerning, and establishment of, local businesses at any project must take place well in advance of the Forum.
- (c) **When applying for an SML/ML/PDL you are required to present a BDP as part of the wider proposals for training/recruitment and project supply, which are increasingly referred to as a 'national content plan'.**

It is advisable to talk to the MRA quite early in the exploration program about all aspects of any community investment component you may be considering, and this should include LBD. The MRA is taking an increasing interest in LBD, and indeed of all aspects of social planning, since it has realised that to assess any final proposal for project development it too needs to properly understand the social circumstances of the project and that understanding must begin early on in the exploration process⁵. The Forum as far as LBD is concerned should be the venue for the formal recognition of clearly understood and previously negotiated agreements between the resource company and impacted people – not for the initiation of plans for such agreements.

2B.7 A VERY IMPORTANT QUALIFICATION

Preferential treatment clauses, such as those relating to LBD, are potentially open to abuse and can interfere with free competition. Are the provisions relating to LBD at PNG resource sites open to such abuse? In respect of the requirement of the Oil and Gas Act for projects to maximise the 'national content of projects' the answer to this question is that the wording of the relevant clause minimises, to some extent, the risk of abuse, because that wording specifies that preference shall be given only where national companies can offer services and goods 'of a (internationally) comparable standard.....at equivalent prices'.

In terms of LBD preferences for locally impacted people the potential for abuse is somewhat greater for at least two reasons:

- (a) Individuals who were not originally resident in the impact area can (and do) find ways of claiming to have such a status especially if the resource company is lax in establishing such status early on in the project's progress. This risk can be minimised in four ways:
- establish a list of original residents early on;
 - use the recently introduced National Identity system (or help government in the project area, if it does not already exist, to introduce it);
 - regularly update that list in co-ordination with community leaders; and
 - ensure that as far as possible LBD benefits are not channelled towards individuals but rather to the impacted community as a whole.
- (b) Individuals, claiming to represent the whole community but not in practice doing so, can (and do) divert the LBD benefits intended for the whole community for their individual use. This is not to say that individuals whose efforts and acumen create business wealth should not receive a proportionate reward for their skill and work but it is to say that controls must be in place to ensure that the intended beneficiaries of LBD do receive benefits. The best known controls available for this purpose are well-governed local companies run according to widely accepted criteria of business management.

⁵ The MRA has participated in audits of LBD at Hidden Valley (2014) and Lihir (2015). In 2015 it seconded staff members to work with company staff and Provincial and Local Level Government staff members on a socio-economic baseline survey for the Tifalmin project, north of Ok Tedi, which, in its current incarnation (exploration started there in the late 1960s), is still in its infant stages.

The concept of local preferences is based on, and justified by, the assumptions that:

- the people identified as local and qualified to receive preference are indeed the original local residents whose lives have been disturbed by the project; and
- the benefits derived from the application of local preference are indeed received by all such original local residents and their immediate descendants.

The justification for preferences is to overcome the initial distortion that local people would, without intervention, have no chance of vying with external competitors and thus might receive no share in the benefits derivable from LBD. The more non-locals who manage to be counted as original residents, and the more individuals within the real original residents who accumulate benefits for their individual profit, the weaker the justification for preference becomes. This will be a guiding principle of the advice provided in this Guide.

However, abuse of commitments to local preference is not restricted to landowners; companies can also be accused of erring in this

respect. As one resource person put it, "The company's commitments to sustainability seem to get lost over time, especially when there is external market pressure." The resources industry is renowned for being subject to significant changes in the prices the world is willing to pay for its products. It is almost certain that, during the lifetime of any substantial resources project, low commodity prices will cause major challenges and it is not unreasonable to expect contractors to the industry – including Repcos – to share in the consequences of such an event. However, it could be said to be unreasonable that blanket commitments made to support Repcos when a project is about to commence (and a rosy glow of expectancy envelops all stakeholders) should be unilaterally withdrawn when times turn tough. Given the high level of probability that downturns will occur during the life of any resource project, it seems reasonable that any qualification relating to the resource company's commitments to LBD, such as what level of support can be expected in the event of such a downturn, are specified and agreed to upfront. In other words, the LBD program needs to plan in advance for such a probable event – just as most mine plans undertake very careful risk assessment in all other areas of project development.

CHAPTER 3

EARLY EXPLORATION

PART 3A: SUMMARY

STEP 2: Undertake preliminary social risk assessment/ social mapping

- (a) In hydrocarbon projects: fulfil the requirements of the State which are that you must complete a 'preliminary' landowner identification study (which identifies general aspects of landownership) and a 'preliminary' social mapping exercise (which outlines the more prominent social, cultural and economic aspects of the lives of the people in the project area) as part of the documentation needed prior to undertaking any exploration work.
- (b) For mining projects: The existing Mining Act does not have any similar requirement however it is very much to a potential developer's own advantage to ensure that, at a relatively early stage of exploration, the social circumstances of the project area and the risks these may pose for the project are known. At the very least project developers should undertake what is best termed an Initial Social Risk Assessment taking into account:
- The nature of the project (as far as it is known at this stage);
 - The project location and its level of accessibility;
 - The nature of the host community (as per a 'preliminary' social mapping exercise); and
 - The broad outlines of land ownership in the project area as per a 'preliminary' landowner identification study.

STEP 3: Initiate a program of communication and consultation

Establish a program of regular communication and consultation with the local community and both local

politicians (and, in the case of mining projects, the Mineral Resources Authority) to ensure that mutual trust is developed and that the community can base its judgements of the project on the basis of realistic and accurate information.

STEP 4: Develop a conceptual LBD plan

Steps 2 and 3 are not specific to LBD but are general measures intended to develop an overall community liaison program. Step 4 is specific to LBD: **develop a conceptual LBD plan on the basis of information gathered in Steps 2 and 3.**

PART 3B: JUSTIFICATION FOR RECOMMENDED STEPS

3B.1 HOW SOON SHOULD A PROJECT START PLANNING LBD?

From the first moment exploration geologists enter a new prospecting area anywhere in a country like PNG where even the most distant of communities has heard of resource projects elsewhere, community expectations are raised and liaison with local people and landowners is necessary. Once exploration camps of a permanent nature are set up (anything beyond a fly camp), it is also usual that some local labour is hired, some local supplies are required and a way of handling local people's questions and complaints has to be developed. It makes sense therefore that resource companies should have a clear idea of how such matters should be handled and should monitor them.

Any mistake made or misunderstanding arising in the earliest stages of a project can have repercussions for many years afterwards. What is more, anything said by company exploration staff (especially any promise) will be remembered by villagers long after the company individuals have moved on and, often, have not left any formal record of their remarks on

BOX 3: ONGOING REPERCUSSIONS OF EARLY CONTACTS WITH COMMUNITIES: SEPON (LAO PDR) AND OK TEDI

When CRA first investigated a gold/copper prospect in central Laos in 1992, they based their exploration near the village of Kengkeuk. Kengkeuk people were Bru people, a minority Mon Khmer speaking people who are somewhat looked down upon by the Lao-speaking majority. The company invested in a school in the village, but by 1999 exploration work showed that the company's operations would be better centred at Nongkadeng, which happened to be a Lao-speaking community. The mine went ahead and Nongkadeng people received priority treatment. Kengkeuk people did not – and to this day are resentful of the fact, putting it down to their ethnic status. The fact that the school closed did not help.

When Kennecott began exploration for the Ok Tedi project, their first supply base – from which jet-boats took teams of exploration geologists up river – was in the lower Ok Tedi at Atkamba whose people are Yonggom. Atkamba had not experienced much development at the time but, because it was on the river and because river transport was by far the most important in the region in the 1960s, it did have a mission station (staffed by foreigners) and one of the first stands of rubber in the area – planted by District staff from Kiunga. It was thought likely that Atkamba might become the lowland base for any project that might eventuate (there was no road from Kiunga to the mountains at that time). Instead, when the mine went ahead, Kiunga was chosen as the base, while the Min people in the mountains hosted the mine, and Atkamba took no role in the project – even if it, like all the other Yonggom villages soon began to feel the effects of river sedimentation resulting from mine operations. Atkamba people were amongst the most aggrieved, not only from actual damage caused by sedimentation, but possibly also from disappointed expectations.

company files. Even if the exchange is recorded, later staff members may well not read (or know the existence of) the relevant files. The informal, orally-based memory of individual, unlettered villagers is almost always more accessible⁶ than the files and computerised databases of companies with any significant staff turnover. If the exploration phase leads nowhere in terms of an operation then, of course, the repercussions can be avoided – at least by that particular company. But resource sites across PNG are full of people who remember Mr X (and the name is usually supplied) who, twenty years ago (an accurate time will be supplied) told the informant that if the project went ahead that such and such a thing (new village houses, power supplies, a new school will be amongst the items specifically identified) would come to pass.

In fact, most exploration geologists, simply in order to do their technical work, have to be able to get along with villagers and to understand local sensitivities; indeed they often do so much better than anyone else in the company. The prime work of exploration geologists is not, however, formal community relations and it is not the intention of this Guide to pile more work than is necessary on them. However, significant effort and funds are expended by any company applying for an exploration licence, whether that licence is for metallic minerals or hydrocarbons. In the PNG circumstances it is strongly advisable that **a community affairs (CA) component be built into exploration activities from the very start of exploration work.** In fact, already in the hydrocarbon sector it has to begin even earlier than that since, under the Oil and Gas Act (Section 47), prior to entering a licence area to explore, companies must submit a preliminary social mapping report and a preliminary land investigation report. There will be relatively few on-site CA activities that are specifically or uniquely related to LBD in the initial period of exploration. But there are some both on-site and off-site which are both specific to LBD and which more generally concern community contact as a whole. One such on-site activity which needs to be undertaken during early exploration concerns the initial assessment of project social risks and the accumulation of some basic data concerning the site's non-technical characteristics; this assessment may pay relatively little attention to LBD but it will provide information for some other early activities directly associated with LBD, as will be seen below.

⁶ It may not be any more accurate given that the memory of what was said will have been sifted through the villagers' perceptions of what the company representative said or is thought to have implied. However, that does not do a great deal of good if the company itself has no record at all of what was said. With this in mind, project landowners, especially landowner associations, would be well advised to keep a written record of what promises they believe have been made to them.

WHAT THE EXPERTS SAY

The resource persons' panel was asked, "At what stage of a resource project (whether gas/oil or mining) should an LBD program be developed – irrespective of government requirements?"

Their answers were very close to being unanimous: "well in advance on project construction", "as soon as possible", "at the time of the development of the MOA", "immediately after landowners were identified" and "at project inception" were the most common answers. In fact, the question itself was slightly ambiguous since it asks about the timing of LBD *development* rather than planning for LBD. Allowing for this, the experts were clear: **as soon as possible.**

3B.2 MANAGING EXPECTATIONS

The most important task in community relations in the early exploration phase is communication with local people – letting them know what exploration is all about and earning their trust. Since most exploration never leads to any sort of project development, a critical component of such communication is playing down people's expectations, whether such expectations are positive ("we're all going to be millionaires") or negative ("our land will be destroyed"). As mentioned earlier, there is virtually no-one in PNG who is not aware of what has happened at resource sites across the country – and a great majority are hopeful that, eventually, exploration will show that their land too will contain gas, oil, gold or copper. The mere appearance of exploration geologists in their area will generally greatly excite people and their excitement needs to be tempered by accurate information from the resource company.

Local business development is a component of this excitement, even if, at this stage, a relatively minor one; but some people will certainly start thinking of 'spin-off' the moment the first stream samples are taken. The communication program developed during the early exploration period needs to at least include some reference to the challenges of spin-off business development. But the communication program companies direct towards landowners should not only be as accurate as possible⁷ but that any commitment it makes is scrupulously followed.

3B.3 INITIAL SOCIAL ASSESSMENT

Irrespective of what the State requires in the way of community information, it is strongly advisable for companies to include, for their own purposes, a social/community component within the overall project risk assessment. No resource project is exactly like any other and each will have a different social risk profile. Community investments overall (and also LBD programs) similarly will differ from one site to another depending on both the means of mitigating perceived social risk and also in a variety of project characteristics. Four such characteristics of resource projects – amongst the many which distinguish them – are of special importance when considering how best to develop a LBD program:

- a) Resource type and project cycles;
- b) Location;
- c) Project size and life span; and
- d) The nature of the community in which it is located.

Various combinations of these factors help to determine the potential advantages and challenges involved in choosing the best mix of the various components of community investment, including LBD, for a given site as a means of mitigating social risk. Even so, a few broad, potential site and project characteristics will be known early on in the exploration process, and these are now briefly examined.

3B.3.1 RESOURCE TYPE AND PROJECT CYCLES

Depending on the nature of the resource and the manner of its extraction and processing on site, each project will tend to have a profile of investment and production which will offer different potential for business opportunities over time. However, the differences between projects will be one of degree rather than type; for example, all projects will have a construction period of relatively intense activity and a high level of demand for service inputs, all projects will have an operations phase requiring an ongoing, if lower, level of demand for service and supplies and in all projects the transition between construction and operations, involving a fall-off in demand for contractors, will be difficult and will need to be planned for in advance.

⁷ This is a challenge because at this stage of exploration no-one is sure what its outcome might be and therefore there is always a risk that the information given to the people of the area will turn out to be wrong – not through any malevolent intent but because the forecasts on which the information was based turned out to be incorrect. There is never any harm for such an information program to admit that the company itself is not sure what will happen in future.

From this it can be concluded that:

- a) The timing of the different levels of potential for business opportunities associated with projects will vary and it makes sense when planning an LBD program (and a community investment program overall) to take this into account; and
- b) Even though some projects will have most potential for business opportunities during construction while others have them spread out more evenly, every project will have opportunities for LBD at the time of construction and even before then. The sooner a community investment program, including one relating to LBD, for any sort of extractive project is developed, the better. Local people's trust in the project will not be enhanced if, when construction begins, all business opportunities are handed to outside contractors on the grounds that local companies 'are not ready yet to play a part'.

3B.3.2 PROJECT LOCATION

Location of a potential project is a critical factor. At the earliest phases of mineral exploration in a remote, mountainous location with no road access, one can reasonably assume that only a very large and/or fairly rich deposit is likely to be feasible – and in turn this means that, if a project should eventuate, business opportunities are going to be very significant. Or again, would the business development plan for a project on Misima 300km from the nearest mainland town be the same as that for villages around the Port Moresby terminal of the PNG LNG project? Tolukuma and Hidden Valley projects have similar locations in the Owen Stanley Range, but the first has no road access to anywhere, while the latter is connected (if at times with difficulty) to Lae. What differences would we expect to see in business development plans for these two sites? These questions become more pointed when one considers the sustainability of businesses created under the sites' respective LBD programs. Misima's isolation was very useful in minimising migration to the island during operations, but after mine closure Misima remained so remote that almost no economic product of the island could be marketed profitably. With the benefit of hindsight, perhaps the best business plan for Misima would have been a very simple one – control local retail trade, messing and a few basic businesses and then invest the profits (along with royalties and any other direct payments to the community) in a mainland business. By contrast, a plan for business development for the villagers around the Basamuk refinery, with links to Madang Town, could be much more varied and sophisticated.

Importantly, one thing that is known with certainty even in the earliest stages of exploration is its general

location – and that single fact alone tells the resource company a lot about what sort of LBD programs might be suited to the project should a discovery be made. In general, all sites tend to be awkwardly located in terms of doing business, although some are less inconveniently located than others. It can be argued that two models have emerged in the PNG resources sector which, in different ways, have attempted to overcome the difficulties remote site locations present to local companies (especially Repcos):

- a) The 'Lihir model', where the Repco develops real expertise in one or two core aspects of resource projects and then is able to sell that expertise to newer and emergent resource sites or even to customers in the non-resource sectors of the economy (Anitua has been very successful to date at offering catering/messing services not only to other resource sites, usually in joint venture with another local Lanco, but also in supplying such services to urban institutions across the country).
- b) The 'get to town model' adopted by iPi at Porgera, by Hidden Valley and by Trans Wonderland (all of which have major operations in Lae). Here the difficulties of doing business in a remote site are minimised by building up trade in the general economy at the more accessible end of the supply line between the project and the coast.

3B.3.3 PROJECT SIZE AND LIFE-SPAN

By definition, not a great deal can be known about this characteristic in early exploration for the simple reason that exploration is supposed to determine whether a project is possible at all. However, in very general terms the answer to one question will become increasingly clear as exploration progresses: what area, roughly, will the project cover and what will be its impact if it does proceed? This answer will have implications for the type of LBD program you will need to develop.

For example, a project on a small island (like Misima or Simberi) will have three characteristics of direct importance to LBD: (a) it will not be able to cover a large area; (b) it will be set in a more or less unified community; and (c) as noted in the previous subsection, opportunities for economic development will be (and after closure will continue to be) limited. Under such circumstances, it then seems imperative that a single Repco ideally covering the whole island community be established. Lihir operates in a similarly small island setting but its scale of operations is very much larger – even so, it too is set in a unified community and the LBD program (as with other community investment) needed to pay attention to minimising the creation of divisions within that community; it, however, could afford to have a more

diversified LBD program than its smaller cousins on Misima and Simberi.

By contrast, at a project which is going to have a very large impact area including many different sorts of communities – such as Ok Tedi (because of supply issues) or the PNG LNG project (because of its pipelines) – then the likelihood of a need to have several different Repcos will be increased.

It may be thought that it is a little premature, even impossible, to consider such matters at this stage of project evaluation. Experience suggests otherwise. Take two examples:

- Any project in the Telefomin District of West Sepik - Mineral exploration has been going on in the Telefomin area since the late 1960s in several different locations, at Frieda River, Tifalmin, Nong River, but as yet no operational mine has yet emerged (Frieda is approaching that status). It has been evident for many years that in such a location any operational project would need to be large and, ideally, quite high grade, to be feasible. But that in turn would mean that supply and logistics would become a critical component of the project. Given the geography of the district, any supply route to a project within it would be difficult; the most likely supply route would be along the Sepik River. This draws into the 'impacted population' all the people living along that river. Just as OTML has tried (though not as yet very successfully) to initiate a series of Repcos down the Fly and just as ExxonMobil have established Repcos along its pipeline and in Port Moresby around its refinery, so it seems likely that any successful development of a mine within Telefomin District would involve its developer in thinking early on about LBD programs for a series of down-river regional groupings.
- Woodlark Island (Murua) - a small project has been planned there by Kula Gold (KG) for some years now, and it has the permission of the State to proceed. As exploration progressed, KG drew up a conceptual LBD program based on the following assumptions (and drawing on experience at Misima):
 - i) Everyone on the island should be involved in business development (as shareholders) as a means of spreading the project benefits;
 - ii) A single Repco was the favoured option; and
 - iii) Because the island is remote it was doubtful if any local business would outlive the project (which would have a relatively short life of no more than 10 years), consequently the

favoured general strategy would be to invest Repco profits in assets better located on the mainland so as to help ensure a continuing flow of benefits to the islanders after closure.

In other words, not only was it possible to at least think about the outlines of a LBD program early on, but it was considered essential to do so.

3B.3.4 THE NATURE OF THE HOST COMMUNITY

It does not make sense to undertake a full base-line social survey in the first stages of exploration given the likelihood of exploration failing to lead to any further activities in most cases. But it is sensible, even at the outset of exploration – as the Oil and Gas Act requires – to establish a few basic social facts about the community in and around the area being explored. Roughly how many people are in the area? Are there clusters of population downstream of the exploration area? How close is the exploration site to towns? What is the access to the exploration area? Are education and basic health facilities available? Are there existing and significant sources of income? Does the area generate significant numbers of migrants to other parts of the country? Who are the local people? Who in general terms are the landowners? These are some of the basic questions that can be answered quickly and easily at (or even before) the start of exploration.

Although many factors also contributed to them, there are sometimes surprising differences in the levels of success achieved in LBD at different projects in PNG to date, and to some extent community divisions may have contributed to these differences. For example, disputes over the ownership of the land covered by the Misima mining lease (and therefore of access to royalty payments) bedevilled all community investment programs there including retailing activities which eventually fell under the control of foreign interests. Internal divisions within the mixed community at Kurumbukari (Ramu Nickel), which were in place long before mining occurred, created major problems for the development of LBD in that part of the project site – whereas more homogeneous coastal communities associated with the project have done much better at business. Social differences do not always hamstring LBD; the Watut and Biangai have always been enemies at the Hidden Valley site – the Watut invaded one Biangai village within the last decade, for example - but that has not prevented their jointly held NKW Holdings from being rather successful (it is based in Lae well away from the villages).

Above all, a project developer needs to have an understanding of how the community on whose land it operates see the world, how they behave, what they see as 'fair' or 'unfair', what their kastom is. Such an

understanding, to be anything other than superficial, takes time to learn – its acquisition cannot be rushed. This is one of the key objectives of what is referred to as community engagement and is the key role, at this stage, of community affairs staff members. Ideally, whilst the company is increasing its understanding of the people amongst whom it hopes to operate, the community itself is given the opportunity to increase its understanding of how the company operates, what constraints it works under and the limits to its frequently supposed wealth and omniscience.

In other words, LBD planning needs to take careful note of the detailed nature of local relationships and adjust its plans accordingly. This, taken together with the earlier conclusion that it is never too early to start planning LBD, means that **it is also never too early to start developing a social data gathering program and a plan, even a skeletal one, for overall community investment including LBD.**

3B.4 WHAT IS THE LBD PROGRAM FOR? TO TRAIN BUSINESS PEOPLE? OR TO PROVIDE SHORT-TERM INCOME FLOWS (THROUGH DIVIDENDS) OR TO ACCUMULATE LONG-TERM, POST-CLOSURE FUNDS (THROUGH ASSET ACQUISITION) FOR IMPACTED PEOPLE?

The PNG Government is anxious for the resource sector to help develop a broad base of business skills around the country. That is already happening but, it should be added, many of the biggest and most successful Repcos (and some of the smaller Lancos) at resource sites have filled key managerial positions with expatriates. So there is room for further progress on this front. Even when managers are PNG citizens, they generally come from areas outside those directly impacted by the resource project; this is not unexpected given that the people in such areas usually have had little previous experience of business.

Because the people at resource sites are, in general, poor in cash terms it is not surprising that they are anxious to see immediate cash benefits from the projects sitting on their land. So, the provision of LBD programs (as part of an overall community investment effort by resource companies) is expected to generate funds quickly. This means that LBD programs and especially Repcos will have to hire external managers – no matter how much pre-construction training is provided⁸.

Ideally, an LBD program would both create cash flows, both short-term and long-term and, eventually, lead to the emergence of (as it is already doing) a significant number of PNG citizens with a full range of business skills. Certainly, without the latter group no sustainable business success is possible in the longer term. However, at least initially (and in most but not all cases), it is probable that for some time yet external and even expatriate managers will be needed.

At the very least therefore, once early exploration starts to phase into advanced exploration, project planners **should have thought out their broad strategy for prioritising the goals of LBD as they apply to the particular circumstances of the project area, its people and its location.**

3B.5 DEVELOPING LINKS TO THE MRA (AND ANY EQUIVALENT IN THE HYDROCARBON SECTOR)

For any mining company operating or intending to operate in PNG, the Mineral Resources Authority is the key agency within the national government (although approved by the government, there is no equivalent of MRA for the oil/gas industry as yet). Companies should ensure that the MRA is kept informed of, and wherever possible involved in, all site activities. While in the past the MRA has had a very low profile in the area of LBD – leaving such activities on behalf of the State to the department with nominal authority over it, the Department of Trade, Commerce and Industry (DTCI) - its involvement has been growing in recent years as it has become the agency through which government infrastructure investment to mining project areas is channelled. This brings it into contact with local businesses and gives it a direct interest in their progress and management. Additionally, it is the State agency charged with supervising the implementation of commitments made in the MOAs which are agreed upon just before a mining project begins construction, and these MOAs contain the outlines of the agreed LBD program.

DTCI, it should be noted, issued in early 2016 a major policy paper on the development of small and medium-sized business enterprises in PNG. While it will take considerable effort over many years to achieve the goals of this ambitious document, the policy paper's importance lies in the direction it indicates national development policy may well take over the next decade or so. **Project developers are strongly advised to be aware of the paper's contents.**

⁸ It also raises the question of whether early profits should be paid out as dividends or used for the purchase of assets for future cash flow generation.

The MRA has to operate in such a way as to achieve a balance of its roles as both a promoter of the mining industry and also as its supervisor. It can readily be seen by landowners as 'being on the side of the companies'; it can as easily be perceived by companies as an obstacle to project development; and it runs the risk of being seen by both developers and landowners as simply maximising the State's share of project benefits. So, while mining companies need to have a close and constructive relationship with the MRA they should understand that its decisions will not always be in line with those of the project developers but will be based on what MRA perceives to be in the national interest of PNG.

3B.6 DEVISING A CONCEPTUAL LBD PLAN

From the above, it is clear during the early exploration period some general features of an LBD program have to be thought through but that specific steps towards the implementation of such a program are rather limited. Instead most of them are embedded in a general community approach that emphasises the gathering of basic information about the host community, earning the community's trust and openly informing the community about project plans and challenges. The scope for LBD implementation at this stage is limited and may well be restricted to the purchase of quite small quantities of local produce (for example vegetables and timber). However, the basic information gathered regarding local circumstances should enable a conceptual LBD plan to be outlined:

- Access to the outside world;
- Population numbers in the community;
- The efficiency (or otherwise) of existing businesses (if any) or the existence of economic activities (e.g. fishing) can provide key indicators of either likely constraints or opportunities for LBD at a later stage;

- A project with existing road access to a significant coastal port might immediately indicate the potential for future Lancos operating in transport;
- Similarly, even basic observations about the nature and organisation of the host community will give pointers to the types of business organisation that might, if required, work best; and
- The nature of the project, irrespective of local conditions, will set out some basic parameters for any future LBD.

As soon as exploration results for any type of project show any promise, it is recommended that resource companies unilaterally develop a conceptual or skeletal LBD plan usually as part of an overall and similarly conceptual community investment plan. This is not a complicated document and could, in most cases be created with a day's work. It would:

1. Set out the main local characteristics:
 - a) accessibility;
 - b) population size;
 - c) community cohesion;
 - d) type of project;
 - e) existing economic activity; etc.
2. Undertake some analysis – e.g. a SWOT analysis (refer Box 4).
3. Lay down an overall best likely future strategy.

Box 4 illustrates the simple concept and is not meant as a model to be followed.

BOX 4: EXAMPLE OF TWO CONCEPTUAL LBD PLANS

CHARACTERISTIC	PROJECT A	PROJECT B
POPULATION IMPACTED	1500	10,000
PROJECT TYPE	Medium-sized gold mine, short life?	Major gas project, 30-year life?
ACCESS	Nil by road, air only	Limited road access
EXISTING ECONOMY	Minor vegetable sales	Nil at site but some residents own a construction Lanco at a nearby resource site
SOCIAL COHESION	Population in eight villages all of one cultural group	Population in three large, different and traditionally hostile language groups
SWOT ANALYSIS		
STRENGTHS	<ul style="list-style-type: none"> • Unlikely to attract many migrants • Excellent agricultural potential near site 	<ul style="list-style-type: none"> • Some existing business expertise
WEAKNESSES	<ul style="list-style-type: none"> • Very limited commercial experience • Inaccessibility limits economic options 	<ul style="list-style-type: none"> • Fragile inter-group relations
OPPORTUNITIES	<ul style="list-style-type: none"> • Monopoly of supply for most project food needs 	<ul style="list-style-type: none"> • Major service opportunities during construction
THREATS	<ul style="list-style-type: none"> • Short mine-life • Operational businesses unlikely to be sustainable post-closure 	<ul style="list-style-type: none"> • Inter-group jealousy
CONCEPTUAL STRATEGY	<p>Monopoly Repco for non-agricultural local contracts; JV partner selection; family supply of vegetables, poultry, eggs and pork; encourage high value export crop?</p> <p>ROLE WITHIN OVERALL COMMUNITY INVESTMENT: Once local, basic educational and health infrastructure in place and future partially ensured, invest community cash receipts (including those from Repco) in assets elsewhere</p>	<p>One Repco if three groups can agree on share classes; if not, maybe three.</p> <p>Allow for individual clan Lancos.</p> <p>Quickly establish presence (with JV partners?) in nearest large urban area.</p> <p>URGENT: Training</p>

CHAPTER 4

ADVANCED EXPLORATION – PREPARING FOR LBD

PART 4A: SUMMARY

The focus for LBD during advanced exploration should be on its increasingly detailed planning which will entail, amongst other matters, close consultation with the impacted community.

STEP 5: Full population baseline survey

Undertake a full social baseline survey including details of demography (including local absentees and 'expatriate locals' living elsewhere), economic activity, education, health and agriculture.

STEP 6: Full landowner identification study

Undertake a full landowner identification study and work towards the resolution of conflicting land claims. Note that most land disputes arise because groups are focussed on project benefits and believe that landowner identification is the only way of gaining those benefits. It may be possible to reach a 'benefits sharing agreement' (as has been the case at Frieda River) even between hostile claimants without necessarily resolving the details of land ownership issues.

STEP 7: Develop business development strategy

Expand the Conceptual Business Development Plan by:

- 7a. Developing a register of potential national and local suppliers of goods and services

Consider following the PNG LNG Project model of company assessment if it is appropriate to your project; begin to identify suppliers and potential Joint Venture partners for local infant companies.

- 7b. Identifying broad areas of project supply, goods and services needs and match to potential suppliers

Undertake a potential apportionment of project needs in terms of services, goods and

supplies to different levels of business: internal (i.e. services to be supplied within resources company); local (whether Repco or Lanco); national and foreign (in each of the last two, pencil in ways in which local companies might participate).

- 7c. Considering LBD's role as an integral part of the overall community investment strategy of the project

Attempt to match the roles of employment, training, LBD, investment in community infrastructure to the nature of the project and the society in which it is to occur. In particular:

- 7c.1 Consider the best balance, given project circumstances, between representative companies and smaller, more individually owned landowner companies; and

- 7c.2 Initiate training for potential local leaders in business including consideration of training for existing leaders, women, individuals who have already shown promise in business and any sponsored students.

STEP 8: Establishing a Repco

- 8a. Take initial, preparatory steps to establish a Repco for the impact area (or Repcos in the case of projects that cover large areas)

- 8b. Consider the desirability of establishing an additional Repco to be owned and, if possible, managed by women's groups in the impact area.

However, only take either of these steps once all interested parties clearly understand the manner in which such Repcos shall be governed, the degree and extent of the support they will receive from the resource company, the extent (if any) to which the resource company is entitled to exert some control over the Repco's operations and the activities they

will be initially involved in. It is critical that these matters are properly clarified, understood and agreed to before such steps are taken.

STEP 9: Commence negotiations on the Constitution of, and conditions of resource company support for, a project Repco

Getting the right Constitution in place that suits the circumstances of your project's Repco is of absolutely critical importance. Learn from others by consulting (via the IPA website) the Constitutions of Repcos in similar circumstances to those that apply in your project area. Recommendations for components of a Constitution are discussed in the next section. At this stage hold general discussions.

PART 4B: JUSTIFICATION FOR RECOMMENDED STEPS

4B.1 INTRODUCTION

It is not possible to be precise about the timing of any switch from conceptualising LBD and moving to a more intensive preparation for its introduction. This requires a value judgement by project management as to whether or not exploration has revealed a potentially viable deposit or hydrocarbon resource; whether it looks as if a project has a good chance of proceeding. Certainly, such preparations must be well in hand by the time any mine or project planning commences. Equally, the State requires that a fully-fledged local business development program be presented to it as part of the process of obtaining the necessary approvals for the project to proceed. Such a program will need to have been extensively discussed (if not mutually agreed upon) by the project developer and the host community – ideally well in advance of the project's Development Forum and this will require several months, if not longer, to prepare. In short, while one cannot be precise, the sooner the final preparation for implementation of LBD starts the better, since delays in preparation will almost certainly increase the probability that key base-line information essential to maintaining the trust of the host community will become less and less reliable.

If one wishes to be more definite, then a rule of thumb might be: preparation for LBD implementation (and all other aspects of the development of a formal program of community inputs) should begin once a permanent materials exploration camp is established.

A further generalised rule is: advanced exploration is the period during which the resource company should think out in some detail its approach to LBD. In this section the key questions that need to be thought about and resolved for any particular project will be discussed.

The State prefers (and often requires) resource companies to hire experienced Business Development specialists so as to assure it that the companies will fulfil future LBD requirements. Almost by definition, such specialists are not easily found; that is, they are likely to be expensive to hire. Given that, at this stage of a project, progress to operations is not assured by any means, it may be sensible to hire such expertise on a purely temporary basis. However the task is staffed and whatever the reporting relationships of the person appointed to undertake the task, it is regarded as critical that a 'business development component' be specifically created once exploration enters an advanced stage.

4B.2 KNOWING WHO THE LANDOWNERS ARE, IN GENERAL

All aspects of community engagement and community investment depend on a single, basic piece of information: who are the local people, the landowners who will be impacted by project activities? Establishing the answer to this question in Papua New Guinea is often challenging for at least two major reasons:

- (a) Most local communities wish to share in project benefits, so almost everyone in the general vicinity of a project wishes to assert their right to be considered as genuine owners/users/holders of land within the project area. This situation is intensified by the laws of the country which specify that landowners within project tenement areas (whether exploration or operational tenements) are to be the nominated and preferred benefit recipients. Persons outside the boundaries of tenements will receive far fewer benefits; not unnaturally everyone wants to stake their claim to be on the right side of this official dividing line. Matters are further complicated by three other factors:
 - Over time and with population movement, any given area may have been occupied in the past by groups who no longer live there – but who will claim the land as theirs;
 - As many resource projects are in remote locations, they often fall within areas where boundaries between different village or language groups were either never demarcated or have long been contested and/or where, even if such areas were uncontested, many different groups had some genuine sort of relatively minor claim to some sort of use of them – but NOT exclusive use; and
 - People with land use rights within a tenement area may be resident outside it.

(b) At this stage of project development it is not clear – not least to the resource developer – what the area of project impact might be, or what the dimensions are of the operational tenements that will be eventually applied for. This is because, especially in the mining industry, the extent of the resource is very difficult to state precisely – not only does it take many years to explore before enough is known to enable a decision to be taken to proceed to operations, but exploration continues throughout the period of operations. In other words the resource companies cannot be sure either:

- Whether or not the project will proceed to an operational phase, or if it does....
- What the operational tenement areas will ultimately be – and therefore it cannot be sure who will be affected or the area over which landownership or land use interests need to be established and who it should engage with.

It is common for communities around potential resource projects to mistakenly believe that the companies know far more about the extent of the resource than is in fact the case. It is understandable why they make this mistake: the company has so much equipment, so many well-educated people working for it, and spends so much money that it is difficult to believe anything other than that they know far more about the resource than they are telling the community.

The IFC (part of the World Bank) is the leader world-wide in providing guidelines as to best practice in the extractive industries. In cases where a project might generate resettlement and/or inward migration (which effectively is all projects), the IFC recommends the undertaking of a census of impacted people.

Usually such surveys are carried out rather late in the project development process – often when the original, pre-exploration conditions have already been altered by exploration impacts. Experience strongly suggests that they are best done earlier – indeed the very first steps to be taken in preparing all aspects of community investment (including LBD) other than conceptual plans are:

- Undertake a full population base-line survey; and
- Simultaneously begin a full landowner identification study.

This is a discussion that applies to all aspects of project development relating to the host community and not just to Local Business Development, so having mentioned the matter, it is now put to one side with the conclusion that:

Establishing different groups of peoples' rights to use land in potential project areas is a major challenge and a lengthy process in all resource projects in PNG. It is a process that needs to start early on. Without some clarification of such rights, no thorough engagement process can begin and community investment, in its absence, runs some risk of being directed at people who, at a later stage, might turn out not to be impacted people and the concurrent risk of NOT being directed at people who, at a later stage, turn out to be genuinely impacted people.

There is a possible compromise alternative that has been (so far) successfully tried at the Frieda River project. At that project which occupies land claimed by the Telefomin and Mianten peoples who have long been fierce enemies, it was recognised that reaching any agreement on precise land boundaries would be a tortuous, if not impossible, task and would create endless arguments as well as possibly deepening pre-existing enmities. But it was also recognised by all parties that the two groups both had some claim to the *benefits* the project might generate. Consequently, whilst land studies were undertaken, the focus was switched to whether or not an agreement on how the benefits from the project might be shared. This approach paid off when, in February 2015, the Provincial Land Court signed off on a deal between the parties which specified the proportions of the benefits of the project to be received by each group – an agreement which did not require the precise details of land ownership to be specified.

4B.2.1 WHO IS 'LOCAL' IN LOCAL BUSINESS DEVELOPMENT? BASE-LINE POPULATION SURVEYS

This Guide does not apologise for repeatedly emphasising the following point for it is an absolutely critical one: **you cannot have local business development without knowing who is local.** A project expected to provide preferential treatment for 'businesses owned by PNG citizens' should not find it too difficult to identify qualifying company owners. If it is expected to support and given preferential treatment to 'locally owned businesses', this can be more problematic – if one does not know in advance who is, and who is not, a 'local'. This problem, of course, applies equally to preferences in recruitment and other aspects of project impact. One way to minimise the problem is to undertake a baseline population survey as soon as possible in the project's development. Note that **such an early baseline survey is not the same as the baseline survey recommended by the IFC.** The latter is recommended when resettlement/relocation is anticipated and cannot be avoided and generally occurs quite

late in the mine planning phase of the project. It is recommended, justifiably, by the IFC that such a survey be undertaken by independent consultants at arms' length from (but paid by) the company and should be a public document. **The baseline survey recommended here is intended to allow the resource company to assess the social risks of its project.** It should be undertaken much earlier than the sort of baseline recommended by the IFC and should be an internal document prepared by project staff and their consultants (if any). Further, the completed baseline survey needs, through monitoring, to be regularly updated and always maintained. From now on in this Guide, unless otherwise specified, when a 'baseline survey' is mentioned, the phrase refers to this form of non-IFC, internal documentation.

For the purposes of other aspects of a project's community investment such as possible investment in education, health and roads and from the point of view of cultural development and people's opinions regarding the project, the survey can cover a large range of topics. From the LBD viewpoint, whilst all data collected in the course of the baseline can be useful, the most important sections of it will be those relating to:

- The identification of normally resident people in the area (which may include some temporary absentees), which tells the project who is, or is not, now and in future, 'local'.
- Existing businesses, business experience and skills, which might assist in developing LBD training plans as well as indicating any possible, existing suppliers to the project. Note, however, that just because a business already exists does not necessarily mean that it should be granted a monopoly over a project-generated business; its capacity to fulfil a potentially much larger role needs to be assessed.
- Education levels of impacted people – also useful for the development of LBD (and other) training.
- To a lesser degree, existing agricultural production – which might suggest possible future agricultural businesses that could have potential for longer-term sustainability.

Survey coverage: In PNG petroleum prospecting licence areas are laid out in grid blocks (5 minutes by 5 minutes); in mining exploration licences use smaller grid blocks (1 minute by 1 minute) and are therefore specified rather more precisely. However, in both types of projects there is the challenge of deciding which communities to include in base-line surveys when it is far from clear: (a) whether a project will prove feasible and therefore proceed; and/or (b) what

the eventual impact area will be. There is no easy solution to this problem.

One specific aspect of this problem, and a lesson learned the hard way on the Misima project, was that where the project is on a small island, even if the eventual operating lease covers only a part of the island and includes only a portion of the community, it is important to seek ways of ensuring that all members of the community share in the benefits package rather than developing a benefits package that divides the community. So a baseline study should cover the whole population if possible. This inclusive approach was, and is, applied on Lihir and on Simberi; in these island communities, even if operationally the approach is not without its problems (because people resettled by the projects are viewed by other islanders – rightly or wrongly – as having 'done better' than others), it is certainly an improvement on what happened on Misima.

But where does one draw the line for survey coverage on a large island or the mainland? Anyone included in the survey is likely to assume that such inclusion means they are going to be beneficiaries – when such might not turn out to be the case. However, there is a partial solution to this problem: people who may have been included in an original baseline study but who, it transpires, do not fall within a project operational tenement (especially in the case of mining projects) will have one big advantage in that they will still have their land. Consequently, it may be possible to focus agricultural investment by the project on such people, thus providing them with project benefits and mitigating any dissatisfaction they may otherwise harbour. But this implies careful planning by the project.

Conversely anyone not included is likely to resent their apparent exclusion from future benefits. This will apply not only to villages outside the assumed impact area but, importantly, to people originally from the community who have moved elsewhere (for education or work).

4B.2.2 'EXPATRIATE' LOCAL PEOPLE

Long-term absentees from the impact area (referred to here as 'expatriate' local people) represent a particular challenge in all aspects of project development. While in this document we shall only refer to the issues their existence may create in terms of LBD, in general it must be stated that: **projects must pay particular attention to engaging with long-term absentees from the impacted area – every attempt should be made to identify them in any social surveys undertaken and in the landowner identification study.** They are often better educated and much more familiar with how projects develop than are the residents they have

left behind. In terms of LBD, with luck some of such returning residents may have developed business skills, in such areas as management, accounting or logistics, areas of expertise otherwise not available in the impacted area. They can often be identified by ensuring that the baseline survey asks every household which of their members are absent. But, especially in project areas where outward migration has been a long-term feature of life, it may be necessary to contact such 'expatriates' through newspaper advertisements (not just in terms of LBD but also in terms of possible recruitment).

There are some risks in making such contacts. Some individuals with no or very tenuous links to the impacted area will claim to be fully entitled to residence. Some will make these claims solely to enrich themselves. Some will attempt to assert themselves as new leaders of the impacted community – and some will make very good leaders it must be said. But, there are risks at all turns in the development of an LBD program; in the appointment of self-serving company LBD staff; in the appointment of corruptible company staff in logistics and supply; in the assignment of greedy JV partners to local enterprises. These 'expatriates' can often play a key role in getting LBD off the ground and running local companies successfully. Whether or not a project makes an effort to engage with them, it is almost certain that they will engage with the project. **The risks to the project that will arise by ignoring them, by being wholly suspicious of their motives, or by refusing to engage with them are far greater than in engaging with them.** Further, the risks of engagement with them, especially in terms of LBD, can be significantly reduced if:

- 'Expatriate' claims to being residents are validated by the community which has not moved away from the project site; and
- If the rules for LBD, including in particular the attention paid to creating the Constitution for the Repco (and any other Lancos), are laid down with care and precision right from the start.

4B.3 BUILD A REGISTER OF POTENTIAL PNG SUPPLIERS OF GOODS AND SERVICES

If a project proceeds to an operational phase, the State will expect it to not only build up local business, but also to maximise its use of national businesses. It is very likely that the existing base for the former will be weak or completely absent but one should **not underestimate the skills base that has been built up nationally in PNG over the last 35 years of experience in the servicing of extractive industries.** Just as individual, highly experienced Papua New Guinean mine workers can now be found working at

sites around the world, so too domestically there is a wide range of service and supply companies with many years of experience in supplying the goods and services a project might need. The country's businesses may not cover all a project's needs but they do cover a good part of that range of requirements and have the additional advantage of being far more aware of local conditions than companies based overseas.

In 2010, as part of its National Content Plan, the ExxonMobil-led consortium developing the country's first major gas project established the IBBM Enterprise Centre – based on the pre-existing PNG Bankers' College – in Port Moresby. This Centre provided a wide range of services to both local businesses and pre-existing national companies desiring to service the PNG LNG project needs, including assessment of their capabilities and training. Their publicly available reports will provide any new resources company with a host of leads as to the availability and capacity of national companies. Of course, in addition, networking with existing companies will also provide more informal opinions as to the expertise and efficiency of particular suppliers of goods and services.

Once such a register is developed, the companies on it should then be kept informed of the project's progress from time to time and, as the probability of its entering an operational phase increases, so they might be invited to apply for pre-qualification with the project.

An important by-product of the development of such a register will be that it will assist projects to identify potential joint venture partners for local companies. Most Repcos and Lancos will need a joint venture partner to help them get started in at least a part (and sometimes the whole) of their businesses. Additionally, if this Register is linked to the data obtained from the social mapping exercise, it will be possible to assess an answer to the often raised question: exactly how local is a 'local company' or group of individuals wishing to start such a company?

4B.4 START THINKING ABOUT THE APPORTIONING OF SERVICES FOR THE PROJECT

What sort of, and how many, services will a project require if it proceeds to operations? This will depend on a host of variables such as project type, project size, whether the labour force will be on a FIFO-style roster or resident (with their families) at site, number of employees, logistics involved in the supply of the project, etc. Even at this stage an approximate list of required services can be drawn up.

Once that is done, then the project should start to consider: which of these activities must be kept

strictly within the direct control of the company and which might be apportioned to non-company service providers (such as Repcos and Lancos)? The services that are considered to be critical to the day-to-day working of the project will presumably be retained for internal control. For example, the safety issues relating to the maintenance and servicing of company vehicles will probably mean that the resource company will wish to retain total internal control of this activity. Indeed, even if a decision is made to place the provision of transport for staff to and from work on a tentative list of 'activities for Repcos/Lancos', the company might also insist that the maintenance of contractor-owned vehicles will nevertheless be undertaken within the company's own maintenance workshops.

A whole range of other services might be immediately seen as potentially suitable for allocation to Repcos/Lancos operating either on their own or in joint venture with outside organisations: retailing, camp maintenance and management, messing, gardening, land rehabilitation, minor works, transportation of supplies, local transport of workforce, waste collection, toilet maintenance, etc. The making of such an early identification of such activities, will in turn enable you to identify what sort of training and preparation of local people will be required to ensure that they will be able to provide such services efficiently.

Some activities will need to be contracted out to national or even international companies – how many will depend on the working philosophy of your company; some resource companies will maximise out-sourcing, others prefer to do most things for themselves. But whichever option is selected, bear in mind the need to seek ways of including local partners in even the most sophisticated of services, whether that partnership takes the form of simple employment of local people or involvement of a local company.

The model used by the PNG LNG project is one that deserves consideration in relation to the apportionment of contract work. That is, assess companies' capabilities whilst simultaneously assessing the capacity required to successfully undertake particular types of contracts – and then match them. However, bear in mind the longer-term goal of directing as much business as possible to local Repcos and Lancos.

4B.5 EVOLVING THE CONCEPTUAL PLAN: PROJECT SIZE AND LIFE SPAN

As exploration advances and the probability of a project moving into an operational phase increases, so more and more thought needs to be given to how community investment will occur and how LBD plays a role in such investment. This will become clearer as exploration begins to demarcate the extent of the resource. It will become increasingly possible to add

some idea of the project's likely size and life-span to the elements considered earlier when developing the conceptual LBD plan.

Obviously, a large project offers far more scope for local business than a small one and a project with a long life makes any investment by a resource company in local business more likely to pay off than a similar investment in a short-lived project. Indeed, given the time (and funding of support) it takes to get most Lancos on a stable footing at existing resource sites, one can argue that:

- Any project with a life span of fewer than seven or eight years might consider (if the laws allowed it to do so) not to invest much at all in LBD but rather put the funds it would have spent on LBD establishment and support into a trust fund for infrastructural maintenance; and
- A small mining project (say one employing fewer than 400 people) might find that an investment in training its staff would result in more sustainable outcomes for the community which hosts it than anything other than a very basic LBD program. Alternatively, at such a mine, support for a single representative company might be seen as the limit of any LBD program.

Any approach that minimises LBD is theoretically possible. However, it is by no means clear if it is practicable. Firstly, because both the State and local impacted communities expect all projects to have an LBD element. Secondly, because our panel of resource persons disagree amongst themselves on the matter.

WHAT THE EXPERTS SAY

When the resource persons were asked whether a small and/or short-lived resource project should consider minimising LBD effort it became clear that there was no consensus on this matter. Some strongly supported the idea, while others equally strongly opposed it. **Therefore, NO guidance can be given.**

A more rewarding way of progressing LBD planning beyond the conceptual stage reached so far is to consider it as part and parcel of the overall community investment program for an operational stage.

4B.6 EVOLVING THE CONCEPTUAL PLAN: CONSIDERING LBD AS ONE COMPONENT OF COMMUNITY INVESTMENT OVERALL

Local business development is only one component contributing to the development of good relations

between any project and the community that is impacted by the project. The landowners or community will:

- a) Receive royalties from the operations (landowners);
- b) Usually be a shareholder in the project because the State will devolve part of its shareholding to the local community (landowners);
- c) Be given preference in terms of employment with the project (community);
- d) Be given training by the project (community);
- e) Receive investment, as a result of the project, in its social and economic infrastructure (community); and
- f) Participate in business development - popularly called 'spin off' activities (landowners).

It should be noted that 'compensation' in any of its forms (e.g. compensation for damage, compensation for loss of use of land, compensation for relocation, etc.) is not on this list. There is a very good reason for this: **compensation is not a benefit**, it is meant simply to ensure that losses of pre-existing assets are paid for. Business development (or any other item on the list above) is a benefit intended to improve the assets of the community and needs to be kept distinctly different from compensation⁹.

While each of the items listed will be separately subject either to rules laid down in State legislation or to commitments contained in project Memorandum of Agreement (MOA), it is advisable that projects try to plan for community benefits as a whole, so that individual components all contribute to the achievement of the project's (and the community's) overall socio-economic goals both in the short-term and in the long-term. So, even though a project needs to plan LBD within the constraints laid down by the laws and regulations of PNG, it should try to develop its LBD program as an integral part of an overall development package involving several components.

In order to do this, it will need to consider the characteristics of each component (listed above) and the degree to which each might contribute to the project's community investment plan given the circumstances in which the project operates. Some

of the components tend to have impacts only as long as the project operates, others have the potential for providing communities with benefits after project closure; likewise some components tend to concentrate benefits on only part of the community whereas others have the potential to benefit everyone. Further, some components are more under the direct control of the resource company than are others. Figure 1 shows this last characteristic diagrammatically.

(a) **ROYALTIES:** The rules governing royalties in PNG may alter from time to time but essentially, whilst the value of production of the project will determine the quantity of royalties paid, the project itself will have no say in the uses to which they are put. Mining royalties are paid to the State which will determine how they are used. For many years now, in practice, a minimum of 20% of a project's mining royalties in PNG have been guaranteed to project landowners of the mining lease area; the sharing of the remaining 80% is negotiated between the relevant Province and those landowners. The sharing of oil/gas royalties between landowners of the project area and the relevant Provincial Government is (under Section 168(2) of the Oil and Gas Act) to be determined by negotiation between them. Some mining royalties are invested in educational, future generation or other long-term trusts but some others are also distributed directly to individuals and used for short-term consumption. All royalties (and dividends arising from equity holdings) from oil and gas projects are held in a trust managed by the MRDC.

(b) **DIVIDENDS DERIVED FROM EQUITY:** In the mining industry of PNG, a portion of royalties has tended to be distributed to individuals and used for short-term consumption; dividends derived from equity holdings have been seen as benefits for project communities as a whole and set aside to provide long-term benefits. All mining project dividends (Lihir being the major exception¹⁰) payable to impacted communities and the provincial government shareholders are managed on their behalf in trusts run by the MRDC. Hydrocarbon project dividends accruing to landowners and sub-national governments are also managed by the MRDC in trusts. As such, the accumulated funds, plus any profits made from their investment by MRDC, will be made

⁹ The distinction is not often observed by every stakeholder in PNG projects. There are grounds for arguing that: (a) landowners view most of the benefits as just a different form of compensation; and (b) the existence of such a view is good evidence for the argument that the compensation paid for lost assets, when compounded over the life of many projects, is actually not adequate in the first instance. However, this Guide is not the place for a fuller discussion of the issue.

¹⁰ The Lihir landowners sold their equity in the Lihir project in 2008 and the funds so derived are managed by MRL Capital.

available for the long-term benefit of everyone in the landowner community; in short, they are potentially sustainable. However, given that the project (while it should make sure that the public is aware of the royalties and dividends that it pays) has no say in the uses to which they are put, its planning of the 'overall sustainability package' rests on the remaining components.

- (c) EMPLOYMENT WITH THE PROJECT: The precise impact of employment on the local community will depend:
- to some extent on the exact wording of the terms under which a project is allowed to proceed (which will only be finalised in the course of the Development Forum) or other contract agreement governing the project;
 - to some extent on the size and nature of the project; and
 - to some degree on the nature of the host community.

But in general terms and in relation to the MOA or other contracts, all resource projects in PNG are expected to give first preference in employment where possible to people who were resident in the project's impact area prior to development occurring, second preference to people in the province in which the project is located and third preference to other Papua New Guineans. Also in general, mining projects of a given size (capital investment) will employ more people, during operations, than oil/gas projects of a similar size.

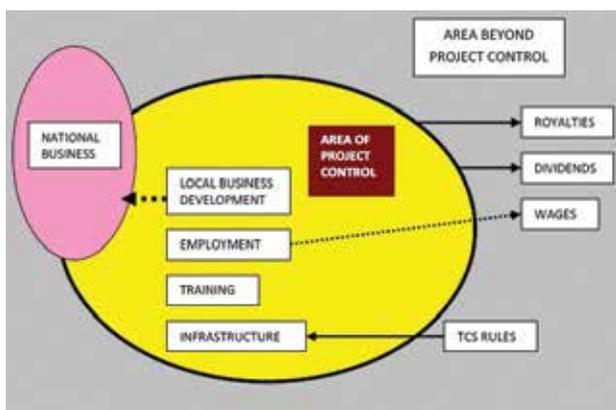


Figure 1: Components of a benefits package.

Consequently, if the community is a small one, employment by a large mine project might have a very large impact indeed and occupy the bulk of those local people seeking to participate in the cash economy. Conversely, an oil/gas project or a smaller mine, especially if they are located in an area with a large population, will not be able to provide sufficient employment (once construction is completed) to satisfy more than a small minority of the population who wish to enter the cash economy. Other sources of benefits will have to satisfy the aspirations of the bulk of the population.

Within the constraints laid down by the project MOA or other contractual arrangements, the project developer does have full control over who it employs. So, the strategies it uses with regard to employment can play a major role in **bringing development opportunities to individuals and their families** in the host community, rather than to the community as a whole. However, projects have no direct control over how the main benefit derived from employment – wages – are spent, and very few efforts have been made by anyone or any organisation in PNG to influence the ways in which they are spent; this has generally been left to the employees themselves¹¹. While it is not the purpose of this Guide to discuss the pros and cons of attempting to exercise such influence, it is worth mentioning that projects concerned with the impact of their employment policies might consider offering employees the opportunity to learn of the various uses to which their wages might be put¹², other than that of immediate consumption, for the simple reason of self-interest. Projects will find labour matters at closure easier to address if their employees have, over the years of their employment, been able to make at least some worthwhile investments from part of their earnings. The encouragement of employees to top-up their superannuation payments might be a way forward.

- (d) TRAINING: Of all the components of a project benefit package the only one which is almost certain to be sustainable and, simultaneously, is wholly dependent upon (and under the control of) the resource developer is training. Employees (and other local residents) provided with new skills will retain those skills for a lifetime. Moreover, no third

¹¹ Misima did have a housing scheme whereby the company shared in the cost of building any local employee's new house.

¹² Superannuation, which the State has made compulsory, is one use. Porgera has run programs with this intent in mind, whilst OTML have an assisted housing program with the same intent. Though aimed at landowners receiving project benefits rather than employees, the Mining and Petroleum Investment Fund - also originally established at Porgera by Barrick but run independently of that company – may also offer investment possibilities for workers from projects across the country.

party is automatically involved in this component (as it is in every other). As several members of the resource persons' panel observed: it is almost impossible to overstate the importance of training as a device for ensuring sustainability – in LBD as in any other area. However, training of employees must, of necessity, be of individuals rather than of the community as a whole; and the resource company cannot be assured that, once trained, an employee will remain with the company.

(e) LOCAL BUSINESS DEVELOPMENT

(i) Representative companies: The following projects have all developed, or are in the process of developing, what promise to be successful Repcos: Porgera (iPi), Lihir (Anitua), Hidden Valley (NKW Holdings) and PNG LNG (Laba Holdings, Trans Wonderand and Hides Gas Development Company). Only Ok Tedi, of the larger mining projects, can be said not to have a large, representative company – but, on the other hand, it has many more smaller or medium sized local businesses than any other site. The bigger a representative company becomes, then the less it is dependent on the resource project and the more it enters the overall national business environment (hence

the arrow in figure 1). As it expands to serve customers well beyond the resource project impact area, so the proportion of its workforce drawn from that area declines. By building up assets (as well as by paying dividends) the most successful representative companies provide both ongoing, short-term income and have potential to continue to provide long-term income to their shareholders – the local community – after project closure, providing they continue to be prudently governed.

(ii) Landowner companies: all sites, big or small, have a number of small or medium sized Lancos but the sites with the best developed representative companies tend to have relatively few of them. These 'small/medium sized enterprise' (SME) Lancos tend to have more restricted shareholdings (only a section of the impact area community or even only one or two local people), tend to be heavily dependent on the resource project and in many cases they draw their workers from areas at some distance from the resource site. Most have accumulated very limited assets and many are only barely profitable. Nevertheless, they employ several more times as many people as do the projects themselves.

Table 1: Characteristics of the more common benefits derived from extractive projects.

Component	Benefits				Notes
	Short term	Long term	To community** overall	To only a section	
<u>Project Royalties</u>	LOM*	Mining : some only Oil/gas: yes	Ideally - Yes	No	
<u>Project Dividends</u>	Some	Yes	Ideally - Yes	No	Sustainable potentially
Employment	LOM	Only if savings	No	Yes	Sustainability increased if wages invested
Training	No	Yes	No	Yes	Highly sustainable and transferable to other areas
<u>Infrastructure</u>	Yes	Yes - if maintained	Yes	No	Key to sustainability: maintenance provisions
<u>LBD Repcos</u>	Yes	Yes, potentially	Yes	No	Key: Good governance
LBD SME Lancos	Yes	Usually minimal, but possible	Yes	Yes	Stimulates migration? Sustainability could be improved

* Life of mine/project ** Original residents, ideally. Note: underlined items tend to be communal, others individual benefits.

The chief characteristics of the above items and the nature of the benefits they can potentially provide for the community are shown in Table 1. In very broad terms, experience to date suggests that the following benefits tend to be short-term (in the sense of not lasting beyond the closure of the project): royalties, employment and SME Lancos. All three could be made more sustainable if attractive savings/investment opportunities were available to royalty recipients, wage earners and Lanco owners; though even then their benefits would still tend to be greatest in the short term. Whilst all dividend payments, training, infrastructural investments and profits from representative companies have some short term benefits, if organised effectively and prudently their benefits tend to be longer-term.

4B.7 REPCOS OR LANCOS?

Profits from Repcos are (at least theoretically) oriented towards the community as a whole, while those from Lancos benefit the individuals who own them. If, within the LBD program, priorities have to be accorded in terms of resource company support, it would be reasonable on this ground alone to give Repcos preference in the allocation of company funding, personnel and other resources, especially in the initial stages of LBD development. But preferential support for Repcos is justified by other criteria:

- Repcos both theoretically and in practice are more likely than Lancos to both build up assets and pay dividends; Lancos pay dividends (to that limited proportion of the impacted population who are their shareholders) but experience

shows they are not good at accumulating assets. It can be seen from Figure 2 that while not all Repcos outperform all Lancos, most Repcos do outperform most Lancos in terms of asset accumulation.

- When a project is starting up the total company resources available for LBD are far from being limitless. Those that are available should be directed at the company that will benefit most people in the impacted area (most likely a Repco).
- A less positive but powerful reason for such a prioritisation relates to the tendency for all Repcos – at least when starting up – to be not very stable because different forces in the local community lead to a tendency for them to fragment. All but one of the members of the resource persons’ panel saw such tendency to fragment as a likely risk and half of them thought it a major risk that needed to be minimised. Minimising this risk is best accomplished by careful and continuous oversight in the early years of a Repco – and therefore the preferential allocation of company resources to this task.

Prioritising Repcos does have two significant disadvantages:

- Whereas a resource company really has no reason to keep on supporting a poorly managed Lanco, it will have little choice but to support a Repco since a failure of a body representing the interests of the whole community would damage the resource company’s reputation.

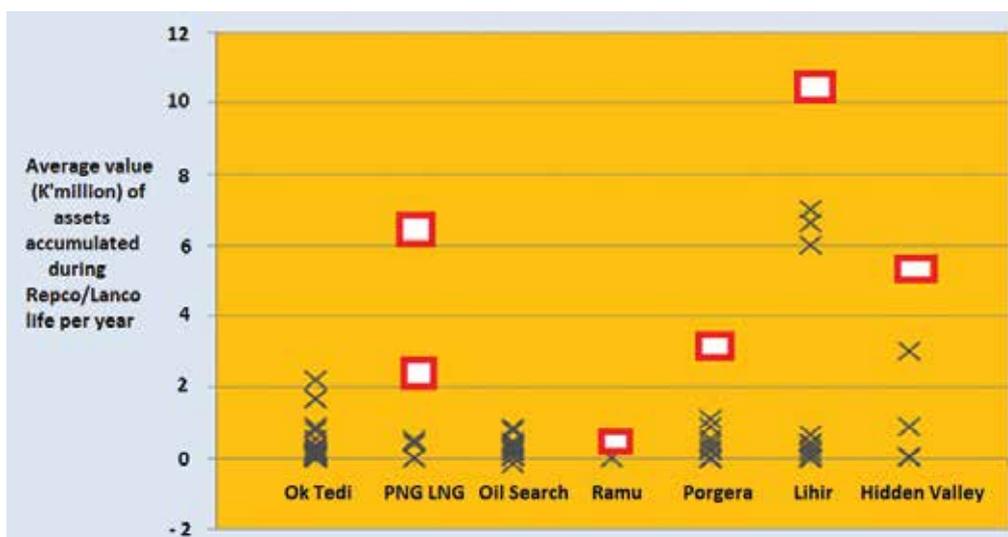


Figure 2: Annual rate of asset accumulation by Repcos (red squares) and Lancos (black crosses) in kina millions (Source: Jackson 2015).

- b) Lancos offer a vehicle for an enterprising landowner who has commercial ambitions and good business sense to realise the first and exercise the second. Giving preference in the allocation of resources to Repcos should not rule out entirely the provision by a resource company of support to enterprising individuals.

In short: **Priority must be given at the advanced stage of exploration, in terms of LBD, to planning all aspects of the establishment of a Representative Company, but this does not mean that no support be made available for enterprising individuals.**

WHAT THE EXPERTS SAY

Faced with the statement, "The development of representative companies should be given priority over that of Lancos", the majority of the resource persons' panel expressed strong agreement, no-one disagreed with the statement and only one expressed doubt. In other words, the experts were close to being unanimous: **It is highly desirable that projects help set up large scale representative companies owned by the impacted community as a whole** (as opposed to smaller, less widely held companies or Lancos). This is the case even though, as will be seen, the panel members had different ideas of how such representative companies might be supported and managed.

It may therefore be worth considering helping to establish a Repco either in the course of advanced exploration, or if not then certainly in the next stage – feasibility. Despite the fact that it eventually failed to achieve what was hoped of it as a vehicle for Ok Tedi landowners, Cloudlands Investment was established in 1975, seven years ahead of the mine's first production; the eventually very successful Anitua was first established (as Lakaka) two years before Lihir was constructed and Ipili Porgera Investments was established (as Kora Investments) in 1983, seven years before PJV started production. So precedents (some having been eventually very successful) do exist for such consideration being made at this stage. **However, it is strongly recommended that such assistance only be provided once it is very clear and agreed between the impacted community and the resource company exactly what the Repco will do, what assistance it can expect from the resource company and how it is to be governed as expressed in an agreed Constitution.**

4B.8 WHAT SORT OF REPCO...OR REPCOS?

Which, if any, model of Repco is best suited to a particular resource site? A rather wide range of existing

types are available to select from, and possibly add to, since none of them would claim to be perfect or foolproof.

4B.8.1 A SINGLE REPCO

- (a) Repco owned by a single cultural/ethnic group: At most resource sites (Porgera, Lihir, Ramu, Hidden Valley) a single Repco has been supported by resource companies. When one examines the ownership of these single Repcos, there emerge distinctions between them. Anitua (the Lihir Repco) is owned by clans representing all the inhabitants of the Lihir Islands group including those well outside the mining lease boundaries. Whilst Anitua is by far the most dominant local Lihir business, it not the only one. Literally hundreds of other businesses are registered in the islands as what are referred to here as Lancos. Individual clans run their own Lancos as do individual families. Some of the clan businesses are substantial in size.

iPi (at Porgera) is more narrowly owned than is Anitua, by members of those clans of the Ipili people which are landowners within the mining project's leases. Thus some Ipili groups are not included in iPi ownership. Furthermore, other than iPi and its sister companies, there are very few registered Lancos. Of those that are registered many are owned by non-Ipili people. There are many family business groups, however, with tiny turnovers, usually set up to manage a single small contract with the PJV (for example, a bus contract). Despite these contrasts between them, both Anitua and iPi can be said to be owned by a single cultural homogeneous group.

- (b) Repco owned by two or more cultural/ethnic groups: In contrast, Raibus (the Repco for the Ramu nickel/cobalt project) is owned by the very different ethnic groups that occupy different portions of the project's impact area ranging from the mine area itself down along the pipeline to the Basamuk coastal refinery. Although intended to be the flagship Repco, Raibus, which is owned by the various clans of the area, so far has not prospered very well. Some of the more local clan or sub-clan businesses (the Lancos) - in the different parts of the nickel project's impact area - have done significantly better than Raibus, although others, especially in the mixed cultural area of Kurumbukari (the mine site) continue to struggle.

Quite the reverse is true for the Hidden Valley mine. NKW Holdings, the Repco of the Hidden Valley mine, is owned jointly by Watut people associated with Nauti village, and Biangai

people from Kwembu and Winima villages. The Watut and Biangai are age-old enemies and remain, at best, mutually suspicious even today. Nevertheless, in terms of LBD they have joined forces under a single Repco. Note that not all the Biangai people are included in NKW Holdings – several of their villages are excluded – and most Watut, other than Nauti and associated groups, are also excluded. NKW Holdings has located itself in Lae and, probably because of this astute move (as well as good management), to date has done very well indeed (see Figure 2). By comparison the clan companies have done poorly, partly because individuals within the clans have set up their own individually owned Lancos (some of which have fared well). Raibus and NKW Holdings are thus rather different examples of single Repcos owned by distinctly separate ethnic groups.

The developers of the Hidden Valley mine are now also in the process of bringing the Wafi-Golpu project into production. Here too, at least three traditionally and mutually antagonistic cultural groups (Hengabu, Yanta and Babwaf) are involved. This project has completed a feasibility study and its business development staff, using their knowledge and experience of how the LBD program at Hidden Valley has developed, have gone to considerable trouble to reach agreement with these different communities – as to how any future LBD at the proposed mine might be structured. It is proposed to adopt an individual ethnic group/clan businesses (Lancos) supplemented by a joint, overarching Repco.

Both Wafi-Golpu and several of the larger local businesses established on the oil and gas fields which cover different ethnic groups (see next section) have found it useful to introduce a system of share classes into their ownership structures. Each particular social grouping is equated with a specified class of shares, elects its own representative(s) on the unified Repco board (according to the social group's size) and has its own criteria for membership (usually based on residence).

4B.8.2 MULTIPLE REPCOS

At some projects, such as Ok Tedi or Simberi, no Repco (or at least no successful Repco) has emerged despite the best efforts of the resource companies involved. Although they did not succeed, OTML'S

efforts to establish four of what might be called 'regional' Repcos around the mine site, in the North Fly, the Middle Fly and the South Fly after 2005 were innovative. OTML recognised that no single Repco could cover the varied interests of groups in such a vast area (the size of Belgium and the Netherlands combined) and thus tried to establish a series of Repcos. Unfortunately, the attempt has, as yet, not succeeded. (It might be noted in passing that in some ways the Raibus example mentioned above might better be run as a set of multiple Repcos, given that the project covers such a wide area.)

This pattern of multiple regional Repcos is repeated, much more successfully, in the PNG LNG project. But although the use of multiple Repcos does, as at Ok Tedi, reflect the very large area covered by the LNG project, it really has its origins in the system of Incorporated Land Groups (ILGs) which have an importance in the oil and gas industry that they do not possess in the mining sector. This is not the place for a full history of how it came about that the oil/gas industry has utilised ILGs and the mining industry has not, but a simplified explanation can be given:

- The framers of the PNG Constitution included in it the aim that economic and social structures in the Independent State would reflect the country's Melanesian heritage and not merely be imported wholesale from abroad;
- Very few researchers and fewer implementers of economic plans took this aim any further than being one of wishful thinking¹³, but one, Tony Power, who might best be described as a grass roots planner with one foot in academic life, did try to develop a series of small scale development projects in the East Sepik based on incorporated groups of landowners and land users or ILGs. He met with some success but the East Sepik itself had few major opportunities for development.
- When Oil Search, after decades of work, did eventually find oil in what was then the Southern Highlands in the mid-1980s, Power's ideas were seen as being an attractive alternative to the models in place at other resource projects (which at that time added up only to the dismal examples of Bougainville and Ok Tedi) by the team of social planners trying to plan that company's community investment program, as did the company's most senior management who were strongly committed to ensuring PNG participation. Power himself was hired and

¹³ The politicians who led the way in framing the Constitution, notably Father John Momis and John Kaputin have always been honourable exceptions to this statement in their attitude towards business.

ILGs were widely established in the Oil Search operational areas, principally and originally as a means of settling and simplifying questions of land ownership and land use rights but also as a basis for LBD.

- No resource company in PNG has a better record of effort at LBD than Oil Search. Their early success in the use of ILGs in their LBD programs was noted in government and when the Oil and Gas Act was being drafted, the State was persuaded that ILGs should be formalised as an essential component of the social planning incorporated in that Act which became law in 1996.
- It might have been noted that in Figure 2 above, no real Repco has emerged in the oilfields. This was mainly because of the way the industry developed, spreading from one find to another which made it very difficult to create unitary Repcos. In addition, as time went on, many practitioners at resource projects concluded that ILGs did not work in the way it had hoped they would work. Placing a pattern of mutually exclusive, clearly delimited 'traditional' units on what was effectively a mosaic of multi-layered, overlapping relationships was asking too much of the idea – particularly in a situation where so much money and prestige was at stake. Difficulties were created because the larger ILGs rapidly fragmented as individuals within them attempted to maximise project benefits for themselves¹⁴. Further it was widely alleged that many persons outside the project areas were being recruited into ILGs by genuine residents in a misguided attempt to obtain greater project benefits (such attempts merely diluted them). One reason that this could occur was that no proper baseline survey of (the admittedly tens of thousands of) residents in the project areas had been carried out in the first place. ILGs were to a large extent seen by impacted populations as vehicles for benefit sharing – rather than a reflection of Melanesian values – and in this case the benefits were of an altogether much larger quantum than those to be derived from small rural projects in the East Sepik. However, ILGs were, by the time these abuses became plain to see, already enshrined in the law.

- One potential solution suggested originally by advisors to Oil Search was to group ILGs into Zones (Zonal ILGs or ZILGs) with the intention of passing on at least part of the responsibility for the resolution of inter-ILG disputes to semi-traditional dispute settlement processes operated by the impacted people themselves – a continuation of the idea of letting Melanesian values prevail (which happened to be convenient for resource companies).
- By the time the Chevron-led gas project had morphed into the PNG LNG project ZILGs had achieved some degree of (but far from total) success. ExxonMobil, which put an enormous amount of effort into its National Content programs focussing on LBD, took on ZILGs, consciously or not, as the form for their regional Repcos.

Several PNG staff members of Oil Search had, by the time ExxonMobil came on the scene, moved into positions managing Repcos and had been intimately involved in overcoming the difficulties faced in getting ILGs to operate. Because the LNG project area and Oil Search oilfields areas overlap to a large degree (and also because Oil Search is a partner in the LNG project), at least some local businesses set up in the Oil Search then became businesses under the LNG Project or were transformed under it into Repcos – many run by these ex-Oil Search staff members. That is, many of the LNG Repcos are run by highly experienced people who have been able to combine their knowledge of business development with their considerable political skills and so hold together otherwise fissiparous groups of different ethnicities. **One of the keys to LNG Repcos having in general, and to date, avoided fragmentation of the sort that affected the earlier ILG business groups has been their Constitutions devised and run by experienced managers.** Any resource company considering its options in relation to the type of Repco it should establish (as it should be doing at this advanced exploration stage of their project) should consult one or more of the Constitutions of the LNG Repcos¹⁵. They are invaluable pointers to what works and what does not.

It is worth noting in passing: the mining industry has never warmed to the concept of the ILG and even

¹⁴ There is available very extensive literature on the fragmentation of ILGs of which works by Lawrence Kalinoe and James Weiner are particularly recommended.

¹⁵ Such Constitutions may be found as follows: Enter the IPA website (www.ipa.gov.pg). Press 'Do It Online'; select 'Find a Company'; enter company name e.g. Trans Wonderland, Gigira Development Corporation, etc.; select 'Filings'. This will provide a list of all the documents the selected company has filed with the IPA. Look for 'Const.' and a copy of the company's Constitution will appear. It should be noted that a far higher proportion of oil/gas Repcos/Lancos have a Constitution than is the case with their counterparts in the mining industry.

after the Oil and Gas Act was passed nearly 20 years ago no mining project has ventured into that area, whether as a means of dealing with landownership and land use, as a device for LBD, or as a vehicle for the distribution of project benefits.

4B.8.3 WHERE DOES THIS LEAVE LANCOS?

Given that it is strongly recommended that, at this stage of project assessment, priority should be given to planning for Repcos, what attention, if any, should be paid to preparing for the creation of Lancos? For the moment, Lancos take a back seat as the nature of the Repco is being considered. Once issues of the types of activities the Repco will take on, how shareholdings in the Repco will be managed, what the role of clans or other groups in the community will be in the ownership of the Repco, how the constitution of the Repco will be developed, etc. – then the role of Lancos will become clearer.

4B.9 TRAINING FOR LBD

Throughout the exploration period a delicate balance needs to be maintained between:

- a) Preparing local communities so that they are in a position to participate in project benefits once they start to be available; and
- b) Ensuring that they are aware of the uncertainties surrounding the likelihood of the project moving on to operations and do not build up unrealistic expectations (whether positive or negative) regarding the project.

This balance is difficult to achieve and especially so in the area of local business development. In the oil and gas sector it is even more critical than in mining (although it is important in this sector too) because so many of the business opportunities in the hydrocarbon sector occur during the construction of any project. So in oil and gas, the LBD program must be ready to swing into action to take advantage of the opportunities during construction; it is slightly less urgent in mining. And thus the switch from restraining over-enthusiastic expectations to full-scale endeavour is somewhat trickier in the oil/gas sector.

Two opposing risks are involved. On the one hand, educating villagers from remote areas on the details of running a business that is capable of providing services to a major extractive project takes time – and ultimately, if the project does not proceed, may be a waste of effort. Conversely, if the project does proceed and people have not been prepared, opportunities for benefit sharing will be missed, particularly in oil/gas projects.

There are some ways of reducing the risks (joint venturing, appointment of experienced, outside and independent directors to locally owned company boards) and these will be discussed later (see Section 6). However, experience suggests that the risks generated by a project not proceeding after training has been given are less significant than those generated when people see business opportunities going to outsiders. In short, training for business development is worth the risk as exploration advances. The more important questions perhaps are: a) What sort of training? and b) Who should be trained?

4B.9.1 TRAINING FOR LBD IN GENERAL

It is easy to simultaneously both exaggerate and underestimate the challenge posed by these questions. In terms of exaggeration, outsiders in particular should not imagine that rural Papua New Guineans – even those in what nowadays are very remote places – have no sense of commerce or no ambitions to enter business. One need not cite the extensive pre-colonial trading networks that ferried valuables around the country to come to this conclusion (though it helps). Instead, a glance at the number of applications made to the Investment Promotion Authority (IPA) for the registration of PNG-owned businesses is sufficient (see Figure 3).

As has been pointed out elsewhere (Jackson 2015), on Lihir the number of company directors per head of population almost certainly exceeds that recorded in far more famous financial centres. Papua New Guineans, on the whole, are far more likely to wish to take the risk of entering trade and commerce than people from most other countries – where the main ambition is to get employment.

As for underestimation of the challenges, one issue is really important: the rules governing business are of significance. Several writers (for example, Glenn Banks and Nick Bainton) have observed that the traditional commerce of PNG communities always had strong

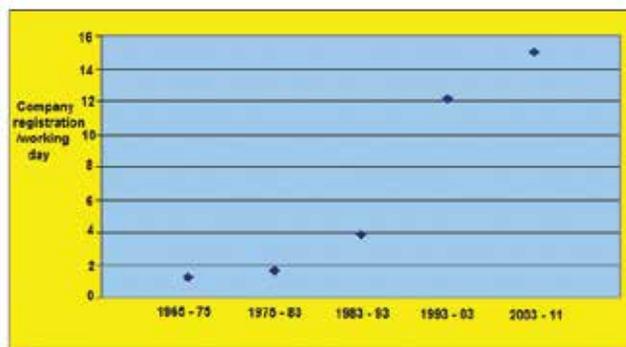


Figure 3: Registrations per working day of new PNG-owned companies

cultural overtones and rules concerning business. These rules are foreign (and sometimes antithetical) to what is taught in Business Schools around the world. In simplified terms, such *bisnis* is not about maximising profits to, and the accumulation of physical assets by, individuals. It is instead locked into a local cultural context in such a way that the (successful) individual practicing *bisnis* gains fame and accumulates credit while benefitting the community. (Refer Box 1 above for a discussion on *Bisnis* and Business.)

A second issue is that traditionally across PNG trade went hand in hand with political power and leadership. There was some 'separation of powers' insofar as fight leaders might be distinguished from leaders in traditional knowledge or those in trade. But in general terms a 'big man' or, in those areas where chieftainship was more common, a 'chief' was a predominant figure in all activities. One of the key functions of training needs to be the instillation of the rather different set of values needed in directors of representative companies – working as a team and suppressing their individual ambitions.

4B.9.2 WHO SHOULD BE TRAINED FOR LBD? AND FOR WHAT?

(a) Traditional Leaders

One of the theoretically (and sometimes actually) important social impacts of major resource projects is that they may turn pre-existing society upside-down. Most leaders in rural PNG are older men; they have achieved leadership slowly over the years through the application of their social, trading or political skills (and often through their careful selection of marriage partners). Such traditional leaders will generally demand to be prominent in all aspects of project development. Nevertheless, many of the opportunities created by the development of a resource project are in areas for which they have no skills and no experience. They are generally, for example, too old to benefit from the employment created by projects; younger men are much better positioned to earn wages (and thereby accumulate the new markers of prestige) than they are. Returned and educated 'expatriate' locals are almost always better equipped to negotiate with project developers on all matters relating to the conditions under which the community might allow the project to proceed. If royalties are distributed to individuals or households then such leaders will simply become just another household member. They are therefore at risk of being marginalised and personally humiliated by the whole process of project development.

To ignore traditional leaders would be unwise for they did reach their positions because of their personal leadership qualities. There is no point in their being

WHAT THE EXPERTS SAY

When our resource persons were asked to react to the statement, "Traditional leaders don't make good board members of local companies" two-thirds of them gave the answer, "It depends" while the remaining third were slightly in agreement with the statement. Although apparently unenthusiastic about traditional leaders taking up positions of directors, the key factor was whether or not proper training was provided to them for these new leadership roles – not that they were constitutionally unable to take them on.

alienated from the project. How can they be included? Perhaps as directors of a community-wide Repco? Or perhaps being given the right to nominate a director?

Given that Repcos are intended to provide both short- and long-term benefits to the whole community, then it seems reasonable that 'traditional' leaders should play key roles in the way they are run; not necessarily in management but rather as directors on the Repco board. This will, however, mean that they will need to learn a different set of rules (as to how a company operates and what the role of Board members is) than those they have been used to previously. One key difference between the two sets of rules is that a company (and its employees, managers and board members) have to operate as a team rather than as individuals. Another, more threateningly, is that directors can be held personally liable if they do not exercise propriety in the carrying out of their fiduciary duties. The role of a provincial or national politician fits rather comfortably with most 'traditional' forms of leadership in PNG; politicians fight to obtain funds from the public purse and then distribute some (or in some cases, most) of these funds to all or part of their electorates as if the funds were their own and thus bolster their own support and personal prestige. This process is very much in line with traditional leadership practice being focussed on individual leaders.

But running a company is not about individuals; it is about teams. A company's funds and assets belong to the shareholders, not to the company's managers or board members; the latter's importance is reflected not in allowing them to dip into company funds whenever they need to, but in the salaries and allowances they are paid which are considerably greater than the benefits ordinary shareholders receive. But the nature and extent of those salaries and allowances are only valid once approved by the team as a whole – the shareholders at regular meetings. There are very significant differences between being a traditional leader and being a director of a company representing

one's community. The actual practice to date in at least some (if not many) Repcos and Lancos in PNG does suggest that these differences have not been appreciated (or have been ignored) by some board members more familiar with traditional community leadership. This is why the members of the resource panel expressed broad reservations about the suitability of traditional leaders as directors of Repcos.

(b) *Women*

It is a fact that very few of the existing Repcos/Lancos are owned or managed by women even though approximately one-quarter of all their employees are women; it is also a fact there are, at around 5%, fewer female directors in Repcos/Lancos combined than there are on the boards of the major resource companies operative in the country (around 13%).

However, project planners should not overlook the potential involvement of women in LBD. This is not simply some sort of window dressing or, worse, the imposition on PNG society of some external feminist ideology – it is because (i) not only are there some businesses associated with resource projects which almost always employ predominantly women (camp services being the main one); but also (ii) there are already examples in PNG where companies run primarily by women have shown themselves to be as well run as any managed solely by males. Of course, such a strategy needs to be carefully thought through – would such an organisation undermine the operations of the 'principal' Repco? Would it be better to ensure female participation on the board of the 'principal' Repco? Regardless, it should be considered.

The leading Repco/Lanco employers of women at present are NCS, the camp catering arm of Anitua which employs over 900 (of a total of 1900 employees), while other local companies involved in catering similarly employ significant numbers. The clothing manufacturing company at Ok Tedi, originally established as part of Cloudlands, is three quarters staffed by females. Employees in the area of camp management are also predominantly female (laundry, cleaning services). There is certainly scope to involve women in LBD. This is especially so since not only do resource projects – by taking so many males out of the subsistence workforce – tend to create more work for women than was the case under subsistence conditions, but tend to channel their benefits through men (royalty, compensation and dividend payments as well as employment).

The simplest way (and least disruptive of pre-existing social norms) of incorporating women into LBD

appears to be through the more general strategy of establishing women's associations as part of the overall community assistance programs. Such associations can help provide social stability in tempestuous times but in some cases have generated economic self-help programs. Perhaps the best example of such a grassroots, independent, self-supporting organisation is that of the Porgera District Women's Association (PDWA), which could be said to be the most stable and unifying social grouping organisation at the Porgera project. It has also been the most innovative – in the introduction of various breeds of chickens and other domestic animals as well as new cropping methods, in seeking ways to diminish violence (not just against women, but in the community at large), and in developing ways of becoming financially self-supporting. The PDWA was awarded, perhaps somewhat belatedly, the camp management contracts for one of the mine's residential sites in late 2014. If it manages that contract well, then the PDWA model will certainly be one worth careful study by other resource developers as a way of bringing women into LBD programs. PDWA may be an exception, as no comparably successful organisation has emerged at, for example, Lihir.

It is one of the professed principles of this Guide that economic distortions be minimised in LBD unless they can be thoroughly justified. Women play a key role in all traditional economic activities across PNG, but, in general, their profile in traditional political matters is low. It is noteworthy that in the 'modern' society not only is their traditional marginalisation in political matters as strong as it used to be, but they play only a limited role in economic matters too – a very different situation from their traditional role as being marginalised politically but the crucial creators of economic wealth. There is, therefore, no fundamental distortion in encouraging females to develop their business skills with non-traditional wealth creation activities in mind; quite the reverse, such encouragement will remove one of the distortions that has arisen in the transition from subsistence to commercial activities – the relative exclusion of women from the economic sector in which traditionally they played such a vital role.

There is adequate theoretical and practical evidence available to suggest that there is potential, especially at large projects, for the establishment of a second Repco – one representing females across the project impact area, managed and owned by women. However, such a body is not required by any existing law so there is no compulsion whatever for resource companies to put any effort into such a body. But there is no doubt in the mind of the Compiler of this Guide (who did not consult the resource persons' panel on this

matter) that it would stand as good, if not a better, chance of success as the existing, overwhelmingly male Repcos¹⁶.

(c) *Prospective local managers*

By this stage, project staff will have had the opportunity to assess the performance of local suppliers and contractors to the project in supplying exploration program services and other needs. It should be possible therefore to identify individuals in the local community who have the potential (if not the existing capacity) to take on management roles in the Repco and provide them with training to that end.

¹⁶ **WARNING NOTE:** When this passage was shown to one of the most experienced and senior of Repco managers, the response was: **'I cannot agree with this. It destroys the principal purpose of a Repco. Instead, devise policies and rules of governance within the Repco to ensure women get a better go; have policies in the workplace to protect women against discrimination and violence; train more female managers. At out site there is still a great deal of expectation at the village level as to the role of women, whether it is looking after the pigs, behaving according to custom or constantly being pregnant; this can, and does, have a detrimental impact. All but one of our trained female chefs (and they were very good) are now back in the village. Their training has been a tremendously expensive failure.'**

CHAPTER 5

FINAL FEASIBILITY – CREATING LOCAL BUSINESSES

PART 5A: SUMMARY

The final or bankable feasibility stage of a project is the most critical stage of all for LBD. During this stage all preparations for LBD implementation must have been finalised and agreed upon.

STEP 10: Integrate LBD into physical planning for operations

Ensure that the physical plan for operations includes provisions of land for local businesses.

STEP 11: Prepare overall Business Development Plan (including National Content Plan), establish budget for LBD and appoint staff to implement it

Set aside funds for LBD support; take great care with appointment of permanent staff; determine the location within the resource company of the responsibility for implementation of BDP; specify training to be provided; set targets for local (Repco and, if applicable, Lanco) and national participation; identify Joint Venture partners for local companies; determine levels of support to be offered and negotiated (see below) for local businesses.

STEP 12: Finalise agreements of Repco Constitution

Ideally every Repco should have its own bespoke Constitution, which will include:

- Wherever possible a provision whereby each shareholder shall be provided with share certificates. Where it is simply not possible for this to occur and trustees have to be appointed, strict rules on conditions of trusteeship shall be provided for.
- Irrespective of what provisions are allowed for in the Companies Act for exemptions in this regard, the Constitution shall provide that the fees paid to and expenses allowed to directors and senior management staff shall be reported to shareholders on an annual basis.

- Regardless of any provisions to the contrary in the Companies Act, Repcos shall present audited accounts annually to shareholders.
- The Constitution shall contain strict provisions for the holding of an Annual General Meeting in a location convenient of access for all shareholders.
- The broad aims of the Repco in regard to the balance between asset accumulation and dividend payments shall be set out so as to ensure that the Repco creates both short-term payments to shareholders (in the form of dividends) and long-term sustainable benefits (in the form of income-generating assets). The Constitution might include a specific formula to this effect.
- It shall also contain directions for the length of office to be held by any director and the provisions for the election of directors in the course of the Annual General Meeting, or at other times during the year in cases where directors resign from office or vacate it through imprisonment, death, personal bankruptcy or gross impropriety. Any director who announces a formal intention to stand for election to either the National Parliament or the Provincial Assembly shall be automatically considered to have resigned his or her directorship.

STEP 13: Finalise negotiations on the conditions associated with company support for Repcos

Items to be finalised will include:

- Whether or not the Repco shall initially include directors appointed by the resource company and/or the State, and/or independent directors and, if so, for what period;
- The details of a monitoring program over and above any required by laws of PNG;
- Agreement that all State requirements with regard to taxation, NASFUND, workers' compensation insurance, and reporting to IPA shall be met and proven to be met;

- Exemptions provided for in the Companies Act in respect of directors' and senior management staff members' emoluments and allowances will not apply to Repcos;
- Conditions of support shall be reviewed every [specify period] years; and
- All directors shall a) undergo a fit and proper person's test; and b) sign off on the board charter.

STEP 14: Finalise negotiations over the nature of company support for Repcos

Items to be covered will include but not be limited to:

- Extent and nature of any financial support (excluding other costs of support);
- Extent and nature of resource company staff support;
- Activities to be reserved for the Repco and over what period; and
- Extent of any financial guarantees to the Repco.

STEP 15: Determine conditions and nature of support (if any) for Lancos

How much support is to be given? For how long? What criteria are to be used in determining support?

STEP 16: Explore possibilities of co-operation with government agencies with responsibility for business development.

Determine potential for co-operation.

PART 5B: JUSTIFICATION FOR RECOMMENDED STEPS

The period of final feasibility will be an absolutely critical one, the most critical in the whole project as far as LBD is concerned. It is one of preparation, consultation and patience. During this period all preparations for LBD must be finalised so that all aspects of the program can be fully implemented the moment permission to proceed with project construction is provided. If a project skips on preparation or opts to take shortcuts, then once construction and operations begin it will be found out. There will be problems even when preparations have been made, but the likelihood of complete failure will be greatly reduced if preparations have been made in full. Patience, from both resource companies and local communities/entrepreneurs, is required at this stage because the returns on the investment in terms of care and preparation during this stage will be small – often in contrast to the expectations which will have developed in the minds of most members of the local community.

5B.1 TIMING

The State requires of oil/gas companies (and this Guide recommends to mining companies) that they prepare a preliminary set of concepts relating to social planning (including LBD) before physically commencing exploration. It further requires a fully developed business development plan in the mining sector (or National Content Plan in the oil/gas sector) before construction can commence. This still leaves open the question of exactly when significant investments of time, personnel and finance should be devoted to putting into place an operating LBD program (among all the other aspects of community investment). Given that, once permits for operations have been issued, it is usual for construction to start immediately and given that major business opportunities are created from the moment construction starts, it is evident that operational LBD and community investment programs need to be in place at some stage prior to the granting of operational permits. Exactly when this process should commence is a critical decision that will need to be taken by the project itself, before the acquisition of permits to proceed has been guaranteed. This decision will involve such matters as:

- When to commit to move from temporary, external advice on LBD to the installation of permanent LBD staff; and
- When to set aside funds (if any) for financial assistance to local companies.

It is strongly recommended that both in-company LBD staff and at least some funding for the establishment of a project Repco be committed during the Final (Bankable) Feasibility stage of any project. To wait for the outcome of the negotiations that will take place during the project Development Forum will be to forego many business opportunities, especially in the oil/gas sector.

5B.2 PHYSICAL PROJECT PLANNING AND LBD

There is a tendency, notably in the mining sector, for the planning of the layout of any project to take place: a) predominantly off-site, with occasional site visits to check plans on the ground; and b) to focus very much on technical facilities. There is also a contrasting tendency for government regulators and especially for impacted communities to focus, once provided with project proposals, on the non-technical, social, economic and environmental aspects of project plans. Projects may prepare multiple volume proposals (and take especial pride in the ingenuity shown in those volumes dealing with the technical and engineering volumes), while regulators and communities pore

over the one or two volumes concerned with potential benefits and the project's environmental and social impact assessment (ESIA). Even though there should really be no need to say so, it is still necessary to point out that details in or changes to the physical and technical aspects of any project can often have significant social implications – and that therefore **physical planning needs to be properly informed by the project's community affairs staff members and to integrate hard engineering designs with 'soft' social concerns.**

In the specific case of LBD, links between physical and social aspects of project planning are not only helpful, they are essential because **areas of secure title have to be considered, planned and acquired for the Repcos/Lancos that will cater to the project's needs.** It should not be assumed that because Lancos, by definition, belong to landowners, then they will be able to find their own land on which to operate their business. Most will not be able to do so and will find it hard to set up shop on the land of another clan or group unless the mine plan provides for them¹⁷. In the case of a representative company which will likely need a significant area of land for its operations this will be especially true, since it will be individuals or sub-clans that will be asked to hand over their land for the benefit of the community as a whole. As one member of the resource persons' panel commented, "This too cannot be overstated – we have lost many opportunities for [Repco] development over land issues that were not properly dealt with originally."

It is important that the project planners ensure that they allow for the impact their plans have on the general community. **More specifically, they need to ensure the provision of any land needs arising from all forms of community investment, especially those associated with the need for the land and utilities which will be required to establish both Repcos and Lancos.**

5B.3 RESPONSIBILITY FOR THE PROVISION OF UMBRELLA FUNCTIONS

There is no doubt that the resource companies are responsible for ensuring that umbrella services are provided for infant representative companies and Lancos. However, that is not quite the same thing as saying that the umbrella functions are *performed* by a component section of the resource companies. There are considerable variations in actual practice. At Lihir, the resource company handed over the functions

to a wholly owned subsidiary of the landowners' company, Anitua. At Ok Tedi, where the concept of the 'umbrella company' originated, the initial concept envisaged something similar to the Lihir practice – there would be an 'umbrella company', Cloudlands (what we are calling here a representative company), which would trade on its own account but also provide a range of basic business services for smaller Lancos. The failure of such 'umbrella companies' at Ok Tedi has meant that either contractor companies have had to find their own support services or OTML has had to provide them. At other sites, the resource companies have attempted to set up 'management services' departments within their organisational structure whilst simultaneously helping establish 'umbrella companies' (that is, representative companies) that are supposed to pass on smaller contracts to smaller clan-based or other group-based companies.

It is probably fair to say that none of the varieties of umbrella function provision work very well – all have some weaknesses. At some sites, the repeated failures of the representative companies has disrupted the provision of umbrella functions; at others, the undoubted success of the representative company is alleged by smaller Lancos to have meant that the former do not provide umbrella functions as efficiently as they should. At one major hydrocarbon site, the subcontracting of capacity building services from the lead resource company to its major construction contractors has attracted criticism from at least some of the representative companies requiring such services. This is one explanation of the fact that the resource persons' panel was sharply divided on the issue.

WHAT THE EXPERTS SAY

Who should provide the 'umbrella functions' for infant representative companies and Lancos? **No question caused as much disagreement among the resource persons' panel as this.** Half the panel felt strongly that the resource company should provide these functions, and nearly half felt strongly that they should be provided by a third, independent party. Since the experts cannot agree, there is obviously scope for individual projects to come up with their own answers to this question.

¹⁷ In addition, if the Repco/Lanco is located on a company operational tenement this will aid supervision by the resource company of any practice that may be inimical to the project's formal commitments to regulatory authorities (such as 'control' of immigration, safety procedures or health and environmental conditions), as well as such basic matters as best practice in safety being implemented.

So, what is the best advice for a new project? It is clear that providing umbrella functions is not an easy task. It is probably a thankless one as well since the owners of the business receiving such support have a ready-made scapegoat for any failures the business may experience. However, the resource company should be familiar with such a role – ultimately any failure of any aspect of the project will be sheeted, by many, back to the resource company. In other words, since the resource company will receive (and often deserve) most of the blame for any failure, it is in its own self-interest to ensure that business support services for infant representative companies and Lancos are firmly under its control, especially at first. It may be desirable to transfer the implementation of management assistance to a third party at a later stage, but even then the responsibility for it, and particularly that related to the Repco, will rest with the project developer.

In any case, who or what organisation will constitute this ‘third party’? There are only two examples known to the compiler of this Guide at present in the PNG resources industry where the resource company has devolved umbrella functions to another party: at Lihir it has been taken on by the wholly-owned subsidiary of Anitua (the Repco) while, during the stage one construction period of the LNG project, responsibility was devolved to major project contractors (it has now reverted to the main operating company).

It is concluded that the company will always have the responsibility for the provision of umbrella functions as part of its commitment to LBD and it must therefore provide the appropriate resources to this function.

5B.4 WHERE DO THE FUNDS FOR LBD START UP COME FROM?

Although resource companies are required to plan for and support LBD, the Oil and Gas Act (Section 129(4)) specifically states that:

Nothing contained in (the Act) obliges a licensee to grant or lend money to any person or any local enterprise.

However, as development agreements for PDL 1 through 4 were negotiated from 1990 onwards, the State agreed to provide grants to the landowners so that they might participate in local business. The Oil and Gas Act (Section 171(1)) followed this up by making the provision that the State might make grants out of consolidated revenue to landowners for any purpose it felt fit (i.e. not specifically for LBD). When the PNG LNG project commenced, the example set at Gobe 3 and 4 was used as a precedent and ‘seed money’ grants of K1 million were made to scores of landowner groups

to enable them to participate in ‘spin-off’ activities; a total of K120m was made available. Gaining a grant was, in other words, a rather profitable business in itself. In early 2014, when the MOA for the relatively small Stanley gasfield was agreed to, the State was even more generous by handing out one quarter of a K120m package to landowners and the Provincial Government for use in local business development. Although the State has provided rather generous funding for LBD development (in the oil/gas sector), the resource companies themselves have not been formally expected to do this.

The same, at first sight, is true for the mining sector. In the original Ok Tedi Agreement nothing in it obliged the company to provide money to would-be entrepreneurs. Further, the Mining Act has nothing to say on the matter. The important provisions here (as in most matters relating to community investment in the sector) are to be found in the individual MOAs. At Lihir, LMC in 1996 would ‘under no circumstances offer to subsidise the operations of any business venture’ whilst at other projects, MOAs absolve companies of any responsibility to provide funds. As in the oil and gas sector, it has usually been the State that has done this, for example:

- At Tolukuma (revised MOA, 2007) – the State was to provide a one-off grant of K225,000 to the landowner business arm Yulai as well as providing K25,000 to each of three clans so that they could buy shares in Yulai;
- At Ramu the State agreed (in 2000) to provide a one-off grant of K1 million to the landowners’ ‘umbrella companies’ – and provided another K10 million to this level of LBD in 2012. However, in addition the resource company in this case also provided loans (some of it in the form of office equipment) for seed funding; and
- At Hidden Valley under the terms of the 2006 MOA the State was to make a one-off grant of K500,000 to NKW Holdings Ltd (the business arm of Nauti, Kwembu and Winima landowners), a grant which was to be matched by the Morobe Provincial government.

One other form of funding is worth mentioning: joint venture partnerships. In terms of initial funding, joint venture partners have frequently provided the initial finance for Lancos but not for the start-up of representative companies. However, the contribution of some JV partners – notably Anitua, itself a representative company – has occasionally been central to the establishment of other representative companies’ core business (catering or camp management).

So, for the most part, the answer to the question (how are start-up funds provided in practice?) appears to be: by the State. This, however, is very far from being either the whole picture or a very sensible one.

“Not very sensible” because if, as has been repeatedly emphasised in this Guide, LBD needs to be started early, then funding (by Government or anyone else) at the time of the Development Forum is not ideal – the money will always be welcome but would have been more useful much earlier. “Not the whole picture” because whilst ‘starting’ a representative company is one thing (and it will be noted the State’s grants mentioned are all aimed at representative companies), keeping it afloat is another. If a project’s main representative landowner company runs into difficulties at a later stage of operations (as many have done) the costs to the resource company can be significant both financially and in terms of local political relationships.

Of immediate significance for the resource company are the establishment and running costs of a section in-house to run the LBD program. These costs are significant and, for smaller resource projects, may be problematic. In the example of Tolukuma cited above, the company involved at the time of the 2007 MOA revision did not have to provide monies to Yulai but it did have to:

- establish a ‘professionally staffed business development office’;
- develop and implement a mentoring and monitoring (business) program; and
- provide a freight subsidy for small business.

The key cost here is that of hiring professional business development staff. While costs may be falling, due to the growth in numbers of Papua New Guinean professionals with expertise in this area, they are still high and may, even without the hiring of expatriates in this area, be estimated to be in the vicinity of K1m annually for a very modest operation. A more informed estimate of costs, provided by a member of the resource persons’ panel, which assumes a business development staff of one expatriate manager, two PNG accountants and three support staff, suggests a capital outlay of around K300,000 (for office space and basic assets) plus annual costs of K2.2m (of which around 60% is for salaries). When grants and the possibility of future bail-outs are added to these recurrent costs, then the sums involved are of some significance and outweigh the more widely publicised government grants¹⁸.

WHAT THE EXPERTS SAY

Given a choice of government grants, company loans, shareholder funds or commercial loans as the initial source of funding for local companies, 58% of the panel selected resource company loans, with the remainder opting for government grants. No-one opted for normal commercial loans from financial institutions.

So despite first appearances which suggest that it is the State that is the prime provider of seed funds for representative companies, the majority opinion of the panel experts suggests resource company loans are the preferred source of initial funding.

The great disadvantage to the resource company of this option is that funding LBD is yet another up-front cost. The advantage is that resource company support is more timely and directly ties the local company to the project in terms of oversight and control.

The logic of the experts goes as follows:

- a) If the State is willing to hand out seed money, then perhaps those funds should be provided much earlier in the development of the project (not at the Development Forum); however
- b) Since, ultimately, it is in the interests of the resource companies that LBD succeed, especially representative companies, and since the resource companies will have significant investments in such Repcos, then it is important that LBD is primarily funded by the projects themselves.

5B.5 AN ABSOLUTELY CRITICAL ELEMENT FOR REPCO SUCCESS: THE COMPANY CONSTITUTION

5B.5.1 WHY IS IT SO CRITICAL?

Under the Companies Act (Section 27), a company may have its own Constitution, but if it opts not to do so then, by default, the rights of its stakeholders will be as determined by the Companies Act (Section 29). Local companies associated with resource projects, whether representative companies or Lancos, are, in several ways, very different forms of business entities from those for which the Companies Act was designed. These differences include:

¹⁸ Once the Repcos and Lancos are up and running, observed a senior Repco manager, “there is no reason why these operations could not approach cost neutrality through the charging out of services.”

- Only rarely have the shareholders paid for the shares they hold in the company – funds have been provided for as grants from the State or loans (and sometimes grants) from the resource company.
- In many cases, shares are held by groups of people (clans/sub-clans).
- Shares are not traded on an open market, can usually only be held by specific groups, cannot readily be given an exchange value and shareholding limits are often imposed.
- Shares are sometimes held in trust for the community by the directors.
- The social importance of most representative companies is such that if they are threatened with failure, measures are often taken by the resource companies or the State or both that would not be taken in the event of a more ‘normal’ company faced with the same problem.
- Representative companies, virtually by definition, belong to a whole community.
- Representative companies in particular are viewed as one way of providing ongoing benefits for a community impacted by a resource project after that project has ended.
- Both representative companies and Lancos are provided with preferential treatment that, in other circumstances, would be regarded as unfair trade practice.
- Representative companies may sometimes cover a single, unified set of clans but more usually, and especially for projects with an extensive footprint, they are ‘representative’ of a large number of different and sometimes traditionally and mutually hostile groups of people.
- Within any given project area, a variety of groups of residents with varying strengths of claim to ownership of the area’s resources (usually land) will often exist – in which case it may be desirable to designate a number of classes of shareholders.

The list could be significantly longer, but even this list indicates that the provisions of the Companies Act could not possibly be ideally suited to the proper and appropriate management and governance of either representative companies or Lancos.

As a result, each local company – and especially each Repco – should have a Constitution that is tailored to

WHAT THE EXPERTS SAY

Of the more than 20 issues put to the resource persons’ panel, there was only a single one on which all members of the panel absolutely agreed. It was the statement that “Every local company should have its own Constitution”. Of the five possible answers available to members of the panel, all selected ‘strongly agree’. If only a single recommendation in this Guide is to be followed, it is this one.

its specific and often unique circumstances, purposes and structures.

5B.5.2 THE ROLE OF THE RESOURCE COMPANY IN THE DEVELOPMENT OF A REPCO CONSTITUTION

Mention has been made several times in this Guide of the need to keep a balance between people’s expectations and the probability of a project proceeding. At this stage, Final Feasibility, this remains significant: there is still a chance that the project may not proceed – or if it does, its success may not match expectations. However, at this stage another balancing act also becomes of crucial importance: to what extent does the resource company exert control over local businesses as opposed to letting them go their own way? Naturally enough, local business leaders will wish to run their businesses independently of the resource companies as quickly as possible. In the case of Lancos set up by individuals or small groups of local residents, there is a strong case for resource companies to stand back and adopt a hands-off approach. But in the case of Repcos whose function is to provide benefits for the whole of the impacted community and into which the resource company has already invested considerable resources, the case for control is stronger, especially since:

- a) Experience to date indicates that even the most impressive of the existing Repcos have fallen into very difficult times several years after their establishment and have had to be rescued by the resource companies. Both Anitua (as Lakaka) and iPi came perilously close to complete failure several years after mine production had commenced, while a succession of Repcos have failed at Ok Tedi; and
- b) The failure of a Repco will always reflect badly on the relevant resource company and in many instances will be blamed for it, regardless of the real cause.

Resource companies should therefore have no qualms about working with the impacted community in planning all aspects of any Repco associated with their project. Even if such an action is criticised by some as exerting too much influence, to do anything else would draw criticism from many more as being irresponsible.

5B.5.3 A MODEL CONSTITUTION?

Given what has just been stated about fitting the Constitution to the particular circumstances of every project, it follows that it is not possible to provide a ready-made Constitution that is guaranteed to suit every Repco. Each Repco will need its own. Appendix 5 presents a proposed model Constitution – not actually implemented as yet – which covers, through its different headings, the key items.

Furthermore, the IPA website is valuable as a place where a fairly wide variety of Constitutions of different local companies associated with resource projects can be examined. Unfortunately, a great majority of Lancos and some of the Repcos took the easy (but mistaken) option and simply adopted the standard constitution provided in the Companies Act. However, several of those associated with the PNGLNG project have developed their own tailored Constitutions which are definitely worth looking at.

These remarks apply specifically to Repcos; private individuals and small groups establishing their own Lanco are obviously at liberty to choose any Constitution they wish.

5B.5.4 ELEMENTS OF A MODEL CONSTITUTION

While therefore this Guide cannot lay down the model Constitution, it can suggest some key points that need to be covered. Most of these points relate to the need to minimise the temptation of individuals within the Repco (whether the resource company's secondees to it, managers or board members) to appropriate its assets for their own individual benefit at the expense of the shareholders.

- (a) **As a general rule ensure that the share register contains the names and details of all shareholders and that they have documentation to show that they are indeed shareholders.** Be wary of any provision, or conversely remove any loophole in the Constitution, that would allow individuals to hold shares 'in trust' on behalf of ordinary shareholders. There are certainly circumstances where it might be necessary for such arrangements to be made and in these circumstances the rules governing the trust conditions should be very carefully established and implemented.

It might appear obvious that shareholders in a

company should be provided with proof of their part ownership in the form of a share certificate. This, however, is not always the case in practice in existing Repcos and Lancos. Such a situation has arisen, in some instances, because no-one is sure who is entitled to be a shareholder – that is, the basic work of establishing who is or who is not eligible, as a member of the impacted community, to be considered a beneficiary of the project has not been undertaken. In some cases, company directors hold, in their own names, the shares allocated to a section (usually a clan) of the community. In others third parties hold the shares in trust (but with inadequate documentation of the conditions of the trust) on behalf of whole communities. Such stop-gap measures are open to abuse, even if one understands the reasons why they have had to be taken.

The rules on the provision of share certificates should be clearly spelled out in every local company's constitution.

WHAT THE EXPERTS SAY

Over 80% of the members of the resource persons' panel agreed strongly with the statement that 'all shareholders should be provided with a share certificate'. The remainder agreed, but not strongly on the grounds that they felt that in some cases it was reasonable for clan leaders to hold the shares allocated to their clan.

- (b) **Make sure that directors' and senior staff salaries and expenses are reported on a regular (annual) basis to shareholders.** It is currently rare for the reports (to IPA) of Lancos/Repcos to include the fees paid to and expenses claimed by members of their boards of directors. A recent survey (Jackson 2015) was only able to identify 11 local companies, out of a sample of 130 of the largest, which revealed directors' fees and a mere 5 which publicly stated directors' expenses. In the majority of cases there is absolutely nothing irregular about this finding because Section 171 of the Companies Act allows any company which has fewer than K5m worth of assets, and/or fewer than 25 shareholders and/or fewer than 100 employees to be exempt from submitting independently audited reports to IPA; this provision meant that 81% of the sample were classed as exempt. Further, for the remainder, many invoked Section 212 of the same Act which states (Sub-section 1(f)) that an annual report

shall state the amount of remuneration and value of any benefits received by each director, but in sub-section 3 then allows exemption from this provision 'where all shareholders agree that the report' need not include these details. *There does appear to be some irregularities in the use of this last provision.*

However, the key factor here is this: where a company is supposed to be representative of an entire impacted community and is run for that community's benefit, then the manner in which its income is distributed – including the fees and remuneration of its board members and senior staff members – ought to be made public to that community. It was one of Jackson's (2015) conclusions that this would not apply to Lancos owned by individuals or by small sections of the impacted community but it should in the case of Repcos.

WHAT THE EXPERTS SAY

All panel members agreed that Sub-section 212(3) of the Companies Act in relation to Repcos needed revision – two-thirds agreed strongly, the other third simply agreed. No-one dissented from this view.

In view of the difficulty of changing major PNG laws, such as the Companies Act, especially when the Sub-section 212(3) would remain entirely appropriate for most companies in the country and is only problematic in relation to this special class of resource site Repcos, a better alternative means of achieving the desired degree of transparency might be to ensure that the Constitution of each Repco includes a provision that such fees and salaries must be reported on an annual basis. This can only be done if each Repco has its own Constitution.

- (c) **Achieve a balance between asset accumulation and dividend payments in Repcos.** All businesses world-wide are faced with the challenge of deciding what balance to aim for in terms of either paying out any profit they make to shareholders or accumulating assets by investing those profits. This is a particular and leading challenge for Repcos at PNG resource sites because such businesses are normally regarded by the community as one of the means whereby project benefits will flow to them. Since the communities at almost all such resource sites were poor in terms of cash incomes prior to the arrival of the project, it is understandable that they would wish to see immediate cash benefits arising out of their participation in businesses. Boards of directors

will be under very considerable pressure to: (i) make the business profitable; then (ii) provide large dividends especially early on. Failure to do so may exacerbate the natural tendency for sections of the community or individuals (especially those not on the Board of Directors) to argue that individual, smaller Lancos would be better than a unifying Repco and to try and undermine the Repco's performance. There are certainly examples of quite large Repcos currently operating which have paid out almost all their significant annual profits as dividends and retained virtually none for investment in assets.

However, if the sustainability of the Repco is to be achieved, indeed if the infant local business is to survive at all, prudence might suggest that in the early years of any such company (when the pressure on the company to prove its worth by paying out big dividends is at its height), dividend payments should be minimised and priority should be given to the accumulation of assets. Given the nature and timing of local business opportunities in the two sectors, this might seem even more important in the petroleum industry than in mining; that is, that petroleum Repcos and Lancos in particular might be best advised to invest as much as possible of their profits during the 'fat years' of construction so as to be able to diversify during the 'lean years' of operations.

WHAT THE EXPERTS SAY

The panel was in close agreement when asked if asset accumulation should get priority - they were close to being unanimous that they were neutral on the matter; dividends need to be paid but assets need to be accumulated. Not a great deal of help at first sight but effectively saying: at each Repco the circumstances relating to achieving a balance will be different.

The significance of achieving a balance between dividends and assets will vary considerably between local companies. A Lanco owned by a single landowner will have a different viewpoint from a Repco. As importantly, the strategies adopted to achieve a pre-determined balance will need to take account of the nature of the project and that of other forms of benefit flows.

This is clearly a case where close monitoring of LBD performance – especially of Repco performance by the resource company – is desirable especially in the early stages of the

program. But perhaps before each Repco or Lanco seeking support from the project is established, its promoters and the resource company need to confer as to the preferred balance to be aimed at. It might then be possible to insert clauses in the Constitution of the local company which provide guidelines relating to what proportions of any profits (and under what circumstances) should ideally be directed to the two forms of benefit flow. The disadvantage of this is obvious: it prevents a really competent board from being flexible in reacting to changing circumstances; its advantage is that it could stop an incompetent one from being foolish (or corrupt). On the whole, **the monitoring approach is probably the more preferable one.**

- (d) **Assure regularity of company meetings.** A review of the records publicly available on the IPA website will show that one of the more common entries under 'Filings' (documents filed by companies as required by the Companies Act) is the form that needs to be filled in if the company wishes to defer holding its Annual General Meeting. While there are frequently quite valid reasons why such delays might be necessary, it is not a healthy sign that such filings are so common. The company Constitution needs to do its utmost to ensure that Annual General Meetings are held annually in a location and at a venue convenient for shareholders and to minimise the opportunities for company senior management and directors to avoid reporting to the shareholders.
- (e) **Ensure there is provision in the Constitution for the establishment of solid financial controls within the Repco structure, including expenditure limits for Repco employees.** The sums of money that will flow through the LBD program once a project commences construction are considerable, and at some projects, enormous. It is of critical importance that structures be built which allow for both the separation of control of finances from individual managers and the creation of clear guidelines on the limits of allowable expenditure of company funds by individuals. A Board Charter to which all directors should sign up and a Code of Conduct for all directors and employees are recommended. The details of such structures need not be spelled out in the Constitution itself but their legitimacy must be established therein. (Note: similar Codes should be signed by relevant employees of the resource company engaged in LBD.)

It should be noted that once the Constitution of the Repco (or Lanco) has been agreed upon by the resource company and landowners, it will need

to be forwarded to the Registrar of Companies for approval.

5B.6 FILLING COMPANY BDO AND REPCO MANAGEMENT POSITIONS

The preceding sub-sections dealing with provisions within a Repco Constitution might be thought to betray an undue suspicion of the integrity of Repco company directors and managers. If that is the case, then the same amount of 'undue' suspicion needs to be exercised when appointing resource company staff in the LBD area. Whilst directors of local businesses associated with resource projects in PNG have, in some cases, certainly paid themselves excessively, some business development staff (employees of the resource companies) have been known to abscond with the whole of a local businesses' funds. Great care needs to be exercised both in the selection of Business Development Office (BDO) staff and the manner in which they operate.

It has become somewhat easier over recent years to find qualified personnel to fill both the positions of company staff with responsibility for the support of the LBD program and those of managing Repcos. Every additional resource project over the years has seen an increasing number of experienced Papua New Guineans emerge in these areas. In parallel, as the number of qualified people in this field has grown, so the incidence of fraud appears to have declined – but it still occurs and needs to be guarded against as LBD and the sums of money involved in it represent an area where there is wide scope for malpractice (as well as incompetence). That scope has regularly, over the years, been seized upon by some individuals – often those appointed directly by a resource company – in efforts to enrich themselves. Just as the provisions in 5B.5 above might be summarised as 'ways of keeping unlimited access to the company's cheque-book out of the hands of its directors and top managers', so within the resource company checks and balances will be required so as to reduce the scope for malfeasance by its own employees in LBD.

Essentially, these checks and balances and the procedures to be put into place to minimise the risks are those of any good modern business: regular internal audits and administrative structures that separate decision-making from the money.

5B.7 LOCATING THE LBD PROGRAM/ POLICY WITHIN THE RESOURCE COMPANY STRUCTURE

Which department of the resource project should take ultimate responsibility for the oversight of and provision of services to local business?

It has already been noted that the panel of resource persons was divided on the issue as to what the main function of LBD is and that the conclusion reached was that LBD tries to fulfil several functions simultaneously:

- to win local support for the project;
- to create long-term assets as well as short-term incomes for the benefit of the community; and
- to provide on-site, cost-efficient services for the project.

Given this mix of functions, it follows that there are a number of candidate sections within any project for the location of LBD implementation – in addition to the possible farming out of that function to a third party. Before discussing the best option, it is important to state that **even if multiple sections of the resource company are involved in implementation of LBD, there should be one, and only one, point of contact between the company (or, if applicable, any third party supplier of LBD services) and the local companies themselves.**

Note that even if the provision of umbrella functions is farmed out to a third party, the resource company will still need to have ultimate responsibility for the oversight of that third party's work and therefore requires a staff member to undertake such oversight.

The candidates, and the advantages and disadvantages of each as the single point of contact, are:

5B.7.1 THE COMPANY'S COMMUNITY AFFAIRS DEPARTMENT

Advantages: LBD is part of the overall community investment program, CA staff (providing they are undertaking their task of building and maintaining trust in the community) are likely to have a far greater knowledge of local characters and events and will therefore be able to foresee the possible consequences of decisions made in relation to the award of contracts, the way in which Repcos in particular are established, and the appointment of board members to Repcos.

Disadvantages: CA has many other functions and any spillover of disputes over LBD might impede progress being made in these other areas (this is similar to the matter of who should have the main say in the recruitment of employees, CA or Human Resources). CA already has to deal with large (and sometimes overwhelming) numbers of community members seeking advice, lodging grievances and generally socialising. Anything that keeps the core CA staff (those winning and maintaining trust with the community) in the office, and lobbying on LBD matters will do this, is to be avoided.

5B.7.2 THE COMPANY'S SUPPLY AND PROCUREMENT DEPARTMENT

Advantages: This is the central point for assessing supply and service needs of all sections of a project and the starting point for assessing what components of those needs could be supplied locally (and by PNG companies).

Disadvantages: Lack of knowledge concerning LBD's role in project's community investment program and of local conditions and politics.

WHAT THE EXPERTS SAY

When asked if Supply and Procurements should control LBD, two-thirds of the resource persons' panel strongly disagreed with the idea (although one member strongly agreed). So although the idea is not entirely without support, the experts as a whole are rather strongly opposed to it. This is not, however, to say that S&P should not be involved in the process and particularly that part of it which identifies the range of service needs.

5B.7.3 PROJECT CONSTRUCTION TEAM

Advantages: Especially in the case of hydrocarbon projects (but also in the mining sector) where construction offers many more business opportunities than are available during operations, the groups organising construction, which may be contractors, are best placed to identify opportunities for local (and national) businesses.

Disadvantages: Contracts during construction usually place a premium on completion to strict timelines; construction is not the time for training; and lack of knowledge of local circumstances. In any case, this would only be a solution during construction and the question of where responsibility would lie when construction is completed would remain to be answered.

5B.7.4 THE COMPANY'S CONTRACTS DEPARTMENT, IF IT EXISTS AS A SEPARATE UNIT

Advantages: Contract lawyers concentrated at this location; not available in other sections. Similarly, contractor performance is often monitored by this group and monitoring performance, if anything, is even more important for Lancos and Repcos than other (more experienced) contractors. In addition, it was the rather strong view of the resource persons' panel that in most respects LBD contractors need to follow the same guidelines as any other contractor, especially in relation to safety and environmental matters.

Disadvantages: Typically specialise in legal matters only.

5B.7.5 CONCLUSION

It is not possible to give a particularly firm recommendation on this matter – the best administrative location will depend on the nature of the individual resource project. However, the nearest thing to a recommendation that can be given here is that:

- a) In a large project which retains umbrella functions in house, LBD will best be served by having its own department but reporting either, if the company structures allow this, to a manager at head office rather than on site, or to a senior manager with responsibility for oversight of all community investment. The former would both give added prominence within the resource company to the importance of LBD (much as having an HQ safety supervisor does in that field) and create a certain distance between everyday site affairs and the commitment to LBD. In a smaller project it is preferable to locate dedicated LBD staff in a semi-autonomous sub-section of Community Affairs.
- b) Whatever the size of the project, whilst the LBD department or sub-section is the focal point and ultimate decision maker on support for local business, its staff must be required to formally liaise with and Supply and Logistics department, must refer all contracts to any Contracts department for approval and must not control the process of monitoring of LBD progress but instead hand this function over to a monitoring unit in the company's finance department.
- c) During construction, the LBD team (along with the Community Affairs section as a whole) needs to have very close liaison with major contractors on a daily basis so as to ensure that opportunities for local businesses, not already identified in the pre-construction period, may be identified and taken up.

5B.8 CONTROL OVER REPCOS AND LANCOS BY THE RESOURCE COMPANY

5B.8.1 GENERAL APPROACH

The question of balance between control and independence of operations by local businesses has already been raised in connection with the businesses' Constitutions. However, it applies more generally and

needs to be thoroughly discussed especially with local leaders and those individuals who aspire to become directors of the project's Repco(s). The basic question is: **What level, if any, of control should the resource company exercise over a Repco whose success is critical to project operations and which derives most, if not all, of its revenue, at least initially, from the resource company under preferential provisions?** This is an issue that needs to be determined and then agreed to and made clear from the start of operations of an LBD program – it cannot wait until the advent of the Development Forum (and if it does it will greatly extend the time taken to come to agreement in the Forum).

There was little agreement among the members of the resource persons' panel as to the extent or duration of any resource company control of local businesses, save for one area – all agreed that the resource company should insist that LBD operators, whether in Repcos or Lancos, should be regarded as normal contractors in respect of working practices, health and safety procedures and that any business not conforming to the resource company's own rules on these matters should be ineligible to tender for contract work.

In other areas there was disagreement among the experts. Some stated that the biggest mistake a resource company could make in handling local businesses was "to do everything for them". Others (including one of the landowner resource persons) argued that given the amount of resource company monies that was being channelled into local businesses, given the loans or other start-up funds being provided and given the importance to the resource company's own operation for the local businesses to be efficiently run, then the resource company should have at least one director on local companies' boards to protect their own investment and interests. This, however, would seem to be appropriate initially but not so much so once the Repco achieved some stability given that frequent conflicts of interest could arise between the resource company and the Repco.

5B.8.2 EARLY MONITORING OF REPCO PERFORMANCE

Repcos have frequently failed in the past: Anitua¹⁹ and iPi both had to be rescued (iPi twice), several attempts at OTML to establish Repcos have failed, and, although this cannot be called a failure, no Repco emerged on the oilfields. Landowners will naturally wish to run their businesses in their way but this is one occasion where what critics will call 'paternalism' is fully justified by past experience. Whether or not intervention is

¹⁹ See section 5B.5.2 however.

direct (by insisting on the resource company having its staff members as directors or managers initially or by having the Repco's accounts managed by regular staff within the resource company), local businesses will need to be monitored so that key functions are performed on time and according to State regulations. As an example, here is a list of functions that every local business associated with one particular resource company has to show that it has fulfilled each month and/or annually:

- held an Annual General Meeting – provide minutes;
- held Board of Directors Meeting – provide minutes;
- been audited independently (if required under the Companies Act) otherwise internally by the resource company;
- has a Certificate of Compliance – Internal Revenue Commission (IRC);
- IRC Company Tax return;
- IRC Group Employee Tax payments;
- Goods and Services Tax returns;
- made required returns to Investment Promotion Authority (IPA);
- has made NASFUND employer and employee contributions (superannuation);
- has paid Workers' Compensation Insurance dues; and
- produces monthly financial reports covering weekly bank account statements, cash book listings, cash flow statements, profit and loss statements, bank reconciliation, trial balance and balance sheet.

All these requirements are those of State agencies and are applied to all businesses operating in PNG. **It would not be unreasonable for any resource company to insist that any contracting business, local or otherwise, with which it does business should be able to prove that it fulfils these requirements or for the resource company to monitor performance in these areas by any Repco or Lanco associated with it, especially in the early years of their operations.**

For how long should such monitoring last? Monitoring by the resource company creates work and expense for it and is seen by most local businesses as undue interference in their operations. Yet when one remembers that Repcos have been known to fail and directors and shareholders then demanded that

the resource company rescue it, then the resource companies have every right to insist on some measure of supervision. A more subtle aspect of this issue is that the more successful a local business is (in terms of sustainability and independence), the more likely it is to have an increasingly large proportion of its revenues derived from sources other than the resource company that originally gave birth to it. The resource company then will have no right to fully monitor the local business' performance since that would involve it breaching business confidence arising out of a Lanco/Repco business with a third party. It could however insist that the company was compliant with the items listed above if the company was to retain its preferential status.

5B.8.3. POLICY REVIEWS AND SUNSET CLAUSES FOR SUPPORT?

Every project needs to have an overarching statement of its own internal goals in relation to community investment policy. If the company operates at many sites in different countries, then it is assumed that such a statement applies across all sites but allows for a degree of site-specific flexibility within set overall parameters. This statement needs to be developed at the highest level of company management (as per Section 2.B1). At the site level, these internally specified goals will need to be eventually integrated into goals agreed with the local community before going to the project's Development Forum. It is very strongly recommended that **all aspects of LBD policy be clearly set out and understood by all parties prior to its implementation.** One key element of that policy will be, as already stated, that a program of monitoring of all community investments (including LBD) be instituted and, on the basis of that program's findings, the LBD program will be revisited at regular (say five-yearly) intervals. It is considered that any shorter period between reviews (unless urgently required) would not allow sufficient time for LBD to evolve and bear fruit, but that any longer period between reviews might result in poor practices becoming entrenched.

Linked to the question of monitoring and periodic review of LBD programs is that of a possible 'sunset clause' in resource company commitments to local business. That is, at almost every resource project at present the commitment of support is open-ended and the question is: should it be so or should commitment be phased out after a certain period? The only example, apparently, where a resource company has withdrawn support from a Repco to date is that of Cloudlands at Ok Tedi – and even that was largely because the shareholding in Cloudlands changed to such an extent that it effectively became a Lanco owned by a single family rather than because OTML abandoned a company providing benefits

for the whole community; indeed since Cloudlands became 'privatised' OTML has attempted on at least two occasions (without much success) to create new Repcos.

There are arguments both for and against some sort of tapering off of resource company support for Repcos:

Against: From the landowners' viewpoint it is obviously advantageous to retain preferential treatment, administrative support, privileged access and the possibility of rescue in difficult times for as long as possible, that is, for the life of the project. After all, some argue, local business helps replace lost livelihoods. This is close to arguing that LBD is a form of compensation – rather than part of a package of project benefits – which it is not intended to be. If support is slowly withdrawn then – if the prime purpose of LBD is as means of maintaining local social licence for the project – does this mean such licence will be withdrawn too?

For: (i) The knowledge that resource company support will always be provided is not conducive to encouraging best business practice; and (ii) Is it good for business across PNG if some companies (Repcos) are competing in the national market-place with the advantage of having ongoing preferential treatment (effectively a subsidy)?

WHAT THE EXPERTS SAY

All but one of the resource persons' panel supported the idea that commitments to support LBD need to have some form of sunset clause incorporated within them. Half the panel strongly supported this idea.

The compiler of this Guide largely disagrees with the panel, invoking the principle (if it can be so described) that as long as a resource company is operating on a people's land, then preferential treatment must continue to be provided to the community in terms of any economic opportunity on that land, providing, as stated elsewhere in this Guide, that the benefits arising out of those opportunities do actually go to the impacted community²⁰ as a whole. Adopting this approach has the advantage that it implies that preferential treatment of the relevant Repco

only applies when it is operating on the land of its owners; the preference goes elsewhere when the Repco operates elsewhere. In any practical sense, it is highly unlikely that landowners would ever accept, when a project is being planned, a proposal that would involve withdrawal of project support for their business activities, especially support for a Repco. **However, it is important that the conditions attached to project support are clearly specified and agreed to before LBD programs are fully implemented.** Moreover it should certainly be possible to negotiate that items such as:

- Adherence to project safety, employee conditions and health;
- Compliance with national reporting requirements;
- Provision of audited accounts; and
- Proof that Repcos do indeed pass on benefits to their purported shareholders

will be required for any company, local or otherwise, seeking to fulfil contracts awarded by the project. These negotiations need to be completed before going to the Development Forum.

5B.9 WHAT SORT OF BUSINESSES SHOULD REPCOS BE INVOLVED IN AT START-UP?

The range of services a project will require will depend heavily on its size and nature. All projects will require a basic package of transportation and supply services (road transportation and, in some cases, barging), logistics (including freight forwarding and customs services), messing facilities, camp management, waste handling, major and minor construction and maintenance, security services, food supply, fuel and office supplies, equipment hire, and labour hire. In most projects, by far the most attractive contracts available will be in transport services (especially for fuel), messing, camp management, mining services and security.

The size of the workforce, its composition, and accommodation arrangements will create significant variations in both the number and range of services needed. A large project with a significant residential workforce (such as Ok Tedi until 2015) will generate a market for a wide range of normal urban facilities including vehicle dealerships, a hotel or guest house, bakeries and extensive retail services²¹; of these, the

²⁰ Whilst individuals owning land within the community on which a business development occurs should receive fair compensation, the benefits (note the earlier distinction made between compensation and benefits) arising from the venture should be spread amongst the impacted community.

²¹ No project appears to have seen the emergence of privately owned high end restaurants and bars; the company facilities usually preclude their development.

most attractive for a Repco (because it ties in with both transport services and messing) could be retailing. At a smaller project, such as Misima was, if the bulk of its workforce is recruited and trained locally and with a very small community of outsiders, then there will be only a small (if any) need for high end urban services but, simultaneously, such an arrangement will offer good opportunities in the basic retail sector (given that most workers are local and therefore wages flow into the local economy) and in transporting workers to and from site²².

In theory at least, strong participation by local companies in retailing would seem to offer a major opportunity to any Repco insofar as one of the most steady and larger flows of cash the project will bring into the local economy will be in the form of wages which, in turn, will largely be spent on retail goods – often of a fairly basic kind. For a Repco *not* to take a major interest in this sector will be akin to allowing an immediate leakage out of the local economy of one of the project's most significant cash benefits. In practice, the resource persons' panel was only weakly of this view:

WHAT THE EXPERTS SAY

In response to the statement that, "Local business should give priority to controlling retail trade stimulated by the project", half agreed (but not strongly) whereas half were either neutral, non-committal or (in one case) opposed to the idea. The result was a score of 2.33 (almost neutral) with a high degree of variance (indicating disagreement between them).

One reason for some experts recommending against retail as an activity for Repcos (or Lancos) is that it is a business with constant flows of cash – as opposed to monthly payments to contractors – which means that it is very much open to abuse. However, having observed what happened on Misima, where retail trade fell into foreign hands; seeing what is in process of happening at Kiunga (where similar events are unfolding); and being informed that on Lihir there is a surge in retail joint ventures involving individual landowners and foreign retailers, the compiler of this Guide would argue that it is of critical importance for the Repco – particularly at smaller projects – to dominate retail trade. Not only because this recirculates local wages in the local economy and thus creates a multiplier effect, but also because at closure foreign retailers will depart altogether.

In general one can conclude that, in theory, for a small project the Repco should attempt to take on every commercial opportunity available, whereas for a larger one it is unlikely that the whole range of activities could be handled in one go and that many might need to be farmed out to smaller, more specialised Lancos.

5B.10 LINE UP JOINT VENTURE PARTNERS FOR REPCOS

Many of the more attractive business opportunities that will present themselves across both oil/gas and mining projects at start up and which will last throughout the life of the project (messing, camp management, transportation, security and retailing) will require, in most cases, local Repcos to enter joint ventures with experienced practitioners in these fields if they are to provide a satisfactory service. It is becoming easier to arrange such joint ventures as each new project develops with reputable national businesses (as opposed to foreign ones), since the older-established projects have themselves generated successful local businesses with expertise in these fields. Further, the competition between well-established rival Repcos (e.g. iPi and Anitua are both keen to enter into JV arrangements in messing/camp management at new projects; Trans Wonderland, iPi and NKW Holdings all have established transport fleets and would be interested in JVs) means that better deals can be negotiated.

This is fortunate since past JVs have not always worked as well as they were expected to – not in the sense that they were not profitable but that the local partners seem to have done significantly worse than the outside (and often foreign) partner. Several members of the resource persons' panel expressed dissatisfaction at some past arrangements as well as indicating some ways in which future ones might be improved. The common threads in these improvements were:

- Avoid joint ventures if possible (as one resource person observed, "We have had some terrible experiences with external JV partners").
- If avoidance is impossible then make a much more careful selection of partners for Repcos by the resource company when it is the resource company initiating the JV.
- Exercise very much more diligence in **vetting of JVs initiated between an individual landowner and an outside individual or company**. This is an area in which the State, in particular the

²² Unfortunately at Misima disputes within the Misima community as to who was and was not 'real' landowners helped lead to a situation where control of the local retail trade fell under outside (indeed foreign) control.

IPA, could play a significant role in assisting both the landowner and the resource company by examining the status and bona fides of the proposed external JV partner.

- Exercise greater care in establishing the nature of the partnerships even when these involve an outside partner that is reputable and does a good job, in the sense of ensuring that the outsider's share in the partnership can be reviewed periodically. ***The use of redeemable shares is recommended to allow the local partner to buy out the JV outside partner.***
- Ensuring that JV arrangements for Repcos (which represent the local community overall) do not allow all profits to be dispersed in dividend payments and that JVs operate wherever possible, where there is conflict between the Constitutions of the two partners, along the lines of the local company's Constitution.

5B.11 PREPARE POLICIES RELATING TO THE ROLE OF LOCAL AND OTHER NATIONAL BUSINESSES DURING CONSTRUCTION: A NATIONAL CONTENT PLAN

The costs to the project that will accrue during construction activities are income for the contractors who undertake them and the sums involved are many millions, if not billions, of dollars. Even if local business cannot be expected (or realistically expect) to take on such roles, neither is it realistic to expect them to simply accept that every aspect of such work will need to be undertaken by 'specialist' outsiders. Similarly, it would be a mistake to imagine that after forty years of experience of extractive industry construction, there are not skills available nationally, particularly in the field of construction engineering, which can be utilised in the project planning process itself as well as in actual construction. Building upon the register of local and national companies, develop a full National Content Plan (see Sections 4B.3 and 4B.4).

As mentioned earlier, this type of plan was an innovation developed by ExxonMobil for the PNG LNG Project. Obviously very few projects, if any, are going to rival that Project in size or scope for business but there is no reason why even a small mining company should not develop a similar plan, at a scale appropriate to its project size. Such a plan will incorporate in it most of the aspects of LBD discussed so far, including:

- How training for LBD is to be conducted;
- What structures have been agreed to (with local communities) in relation to LBD (e.g. a single Repco, or a single Repco with a significant number of smaller Lancos, or multiple Repcos, etc.) and the relationships between the layers (if there are layers) of business involved;
- The type, strength and conditions attached to support for LBD;
- Decisions on the apportionment of activities to be undertaken by different forms of local businesses;
- Policies on the arrangement of JV partnerships placing particular emphasis on partnerships with national businesses;
- And, on one matter not previously discussed in any detail, how major contractors hired for project construction will be managed in relation to the participation in construction of local businesses. For example, it might (or should) be stated in invitations to major contractors to tender for project work that "you will be required to show in your tender how your bid will incorporate local participation".

Two general approaches have been used in the incorporation of local businesses into construction:

- a) The PNG LNG approach whereby major (largely international) contractors were given the responsibility for the hiring of local businesses to undertake sub-contracts to them – the local businesses being the particular Repco established in the contractors' specific geographic area of operations. It should be added that this was only one strand of the broader ExxonMobil approach, which also enabled all potential local contractors both to receive an assessment of their capacity from the Business Enterprise Centre (which would indicate what type of sub-contract might be suited to them), and training to enable them to upgrade that assessment. There has been criticism of this approach: One prominent Repco leader has commented that his and other Repcos' roles seemed to have been "to clean toilets²³ and open gates" whilst another has questioned the willingness of the major contractor to which his Repco was assigned to undertake training for his workforce. But, on the other hand, according to ExxonMobil, the program led to the spending by

²³ Contracts for cleaning toilets are obviously not prestigious, but they are in fact profitable and, as importantly, guarantee a regular cash flow.

the project of US\$1.09 billion on services and supplies provided by local businesses.

- b) Virtually all other projects to date have attempted, to a greater or lesser extent, to make the arrangements whereby local businesses took on particular tasks for major contractors. It is fair to say that in most instances these arrangements were rather hit or miss affairs and, even allowing for the size of the PNG LNG project, did not result in flows of revenues to local businesses that could match those achieved in the gas project.

It was noted earlier that it would be advantageous if the project planning team, during final feasibility, liaised closely (and more closely than has often been the case in the past) with project community affairs planners, including those charged with planning LBD programs. In terms of increasing local participation during construction, this is of even greater importance. Unless such plans for local business participation are well in hand during final feasibility it is unlikely that local content during construction will significantly improve from its existing rather low levels.

5B.12 PLANNING FOR LANCOS

5B.12.1 OPPORTUNITIES FOR LANCOS BY DESIGN

Very little specific attention to this point has been paid to Lancos as distinct from Repcos. The conclusion was reached in Section 4B.7 above that in most cases projects should give priority to the establishment of Repcos. However, it is reasonable to follow the general rule: **Any large project should be prepared to encourage the development of both Repcos and Lancos, with the latter offering an opportunity for individuals with entrepreneurial flair to exercise their talents.** By this stage of Final Feasibility, LBD planning should have:

- Determined the structure of the Repco(s) to be created; and
- Decided what areas of business the Repco is to take part in.

It may be that in determining the structure of the Repco, it has been decided that clans (or some other local forms of grouping) are so strong that, whilst an overarching Repco must retain priority, there is a need for some more individualised forms of local business, that is, Lancos. The arrangements at Ramu Nickel take on this form – a supposedly overarching Repco has a series of ‘area unifying companies’ beneath it. It may also be that the areas of business the Repco is to take up do not cover all the identified business opportunities, that these are available for smaller,

more specialised Lancos such as those dealing in pest control, surveying, soil testing, electrical matters or welding.

If a project has decided to foster female participation in business and invested in training of some local women in business management, then it will also need to work with these trainees to build up a business with them. However, this Guide believes that it is better to deal with such an organisation as a Repco than as a Lanco and for it to be structured as such.

5B.12.2 OPPORTUNITIES FOR LANCOS BY ACCIDENT

Further, it is very likely that, especially early in its operations and despite the extensive preparations made, the Repco is unable to take on some business opportunities which are essential to the progress of the project. This will also create some opportunities for Lancos. In extreme (but far from unknown) circumstances, it may be that the Repco collapses and raises the possibility that unless Lancos can fill the gap, substantial local benefits will pass to outsiders. A contingency plan is required. In fact, Ok Tedi is already onto its third contingency plan (but, as will be seen, this is not without its advantages).

5B.12.3 OPPORTUNITIES FOR LANCOS BY DEMAND

Landowners may refuse to allow a Repco to be established and simply try and set up family controlled businesses – which is the case at Simberi. This can be unfortunate since small projects on remote islands in theory ought to be ideal candidates for a unified Repco that builds up assets for post-closure incomes.

Further, as matters stand at present, any formally recognised landowner in the project area can apply to the resource company for support in establishing a business. Unless the Repco has been formed with great political skill and is truly inclusive, it is very likely that individuals will apply to the project, from the moment of its creation or even beforehand, for assistance to operate their own, reasonably substantial businesses independently of it. The question of the need for inclusiveness in Repco design will be especially important if the project operates a single Repco which is aimed solely at landowners within the project operational tenements, but simultaneously has vulnerable supply lines and routes in areas where the population is not covered by the Repco. Porgera has a very strong Repco, but the communities down the road towards Laiagam and Wabag are not included as stakeholders. It is perhaps not a surprise, therefore, that whilst the Repco (iPi) is successful, and while there are virtually no other Porgera-owned Lancos of any significance, there are several substantial Lancos

owned by non-Porgera Engans heavily dependent on the mine.

Individuals will always assert themselves and, citing the general policy that all landowners are entitled to receive support in business ventures, demand that they receive company resources. Fragmentation of Repcos and of company efforts to create local businesses is a real risk.

WHAT THE EXPERTS SAY

The statement "Repcos will readily fragment" was put to the members of the panel. Apart from one member who was neutral on the matter all other members agreed with the statement, half of them strongly. Thus an overall score of 1.67 was arrived at (meaning agreement with the statement which was rather strong).

Fragmentation can occur for a variety of reasons: political rivals refuse to co-operate or are left out (or feel that they have been left out) of positions of authority on the Repco. The Repco benefits might not meet people's expectations, leading to ambitious individuals setting up their own business. Directors may hang on to their positions for too long, and so create frustrations among younger, would-be business people. A common experience at all sites is that external entrepreneurs can establish a close relationship with a landowner (or marry into the area) and persuade the landowner (or in the case of marrying-in, the wife) to invoke the project agreement under which the resource company will assist landowners to set up businesses. Individuals with complaints about the compensation paid them will often demand their own business.

In short, whether by design, accident or demand for individual businesses, rules pertaining to the extent of support for Lancos, or even unincorporated businesses, need to be considered carefully. Further, this consideration can be internal to the resource company since such Lancos are typically not representative of the community as a whole. There are some very valid reasons for supporting specific Lancos, but there are even more powerful ones for the resource company examining every proposed Lanco with care. **Under no circumstances should a resource company give support to a proposed Lanco which will undermine a well-run Repco that is accumulating sustainable assets for the community as a whole.**

5B.12.4 SOME ADVANTAGES OF LANCOS OVER REPCOS

Repcos do have many significant advantages over Lancos (which is why this Guide gives priority to them) notably because they represent the whole community and because, if run well, they can both create short-term income and income post-closure derived from accumulated assets. Companies like Anitua or iPi are undoubtedly worth emulating. However, Lancos have some advantages. For the resource company there is the arguable advantage that failing Lancos can be allowed to disappear, whereas failing Repcos will almost always need to be rescued. A more clearly positive advantage of Lancos is shown by the experience of OTML. Despite the absence of a successful Repco at Ok Tedi, that project deserves positive comment in one special respect: it has several dozen Lancos operating either at site or close to it, almost all of which are majority owned (and many of which are managed) by local people. As a training ground for small and medium sized business, OTML actually has the edge over sites with a single Repco but few significant Lancos. The Ok Tedi Lanco owners and managers are developing sustainable business skills, even if they have not, so far, been very successful at asset accumulation. Moreover, they certainly serve OTML well. In other words, it can be argued that the Ok Tedi model – which was arrived at by accident consequent upon the failure to develop the desired 'umbrella company' structure – serves the stated interest of the State, that the resource sector help develop cadres of entrepreneurs, better than does the 'dominant Repco' model which is favoured in this Guide.

Taking this argument one step further: many successful businesses are generated by individuals with vision – few are designed by policy. Even though this Guide gives preference to Repcos, the fact is that it will be the initiative of individuals which will power business development in PNG, just as it does everywhere else. The emphasis on Repcos must not be allowed to stifle such initiatives but at the same time the emphasis must be on well-run Repcos to create sustainable assets for the whole of resource project impacted communities.

5B.12.5 BASIC RULES FOR ASSISTANCE TO LANCOS

The basic rules best adopted are:

- a) That Repcos, representing the interests of the community as a whole, will receive the bulk of company resources and effort in terms of business support in the early stages of project development and operations; once they can operate on their own, then the resources and support can be shifted towards Lancos.

- b) That the 'priority' provided to local people in State policy is restricted to initial preference in selection for specified (and mutually agreed) contract awards, all other things being equal. It does not signify that local companies that are incompetent, badly managed and incapable of providing the goods or services they were purportedly set up to provide, are entitled to receive permanent support from the resource company. Support and assistance will be provided for a specified limited period only (say two years).
- c) A Lanco must be able to prove, before and during the period during which it receives preferential assistance and support, that it is indeed 'local' in ownership and more specifically in terms of benefits flows. There is, however, no objection to external management or, indeed, partly external ownership.
- d) Support may include: the assignment of one BDO staff member as liaison between the Lanco and the resource company; a one-for-one start up loan; initial training for directors and local managers; and assistance for a limited period (e.g. two years) in fulfilling all national requirements of companies.
- e) A Lanco seeking contracts with the project must comply, and be able to demonstrate that it does so, with all resource company safety, health and workforce service conditions and be fully compliant with national laws relating to employment, company management and taxes.

CHAPTER 6

THE DEVELOPMENT FORUM AND CONSTRUCTION

PART 6A: SUMMARY

If planning has been thorough and if all stakeholders have a common idea of what they are jointly trying to accomplish, then the Development Forum (as far as LBD is concerned) will primarily be a formal way of signing on to what is already happening in daily practice. The construction period will not be a time for new initiatives but will be one of implementing agreed procedures; an extremely busy time of constant liaison and monitoring, trouble-shooting and pragmatic compromise.

STEP 17: Formalise LBD agreements reached earlier with landowners

The Development Forum is not the place to start negotiations concerning LBD programs – it is the place to formalise agreements on programs already arrived at earlier.

STEP 18: Seek ways of co-ordinating with State agencies on matters relating to monitoring of LBD and, where possible, encourage the active involvement of provincial BDOs in establishment of Lancos

Steadily increased monitoring by the State of projects' LBD programs is to be expected. Increased State monitoring of Repco and Lanco activity is to be welcomed. Active and co-ordinated support for LBD is limited at present but should be encouraged wherever possible.

STEP 19: Prepare for and implement daily liaison between construction contractors, Repcos and Lancos

Construction is a period when there is great potential for mistakes, disappointments and misunderstandings. Minimise the impact of these events by daily liaison between the construction contractors and local businesses.

STEP 20: Intensify previously agreed monitoring

program of local businesses including those in joint ventures

STEP 21: Prepare for the often abrupt transition between construction and operations when business opportunities fall away rapidly

PART 6B: JUSTIFICATION FOR RECOMMENDED STEPS

6B.1 THE DEVELOPMENT FORUM

The requirement for all parties to a project to meet and make binding commitments to one another in the course of a Development Forum has been in place for more than two decades in PNG. It remains a critically valuable stage in the process of project development. However, all the steps recommended in previous sections of this Guide have pointed to one conclusion in relation to the role of LBD planning: if the details and actual manner in which the LBD program is to operate have not been clarified and agreed to by all parties, but especially between the resource company and local communities, before the Development Forum is convened, it is unlikely to succeed as well as it could. In particular, many opportunities during the ensuing construction period will be lost to local and national businesses, and such losses will generate disappointment among the impacted people and add to their frustrations at a difficult period in the life of the project.

The State requires of project developers that it present to the government for approval a Compensation Agreement, mutually agreed to by the resource company and project landowners, in advance of permission to proceed being granted. It is acknowledged that for this to occur, negotiations regarding such a Compensation Agreement must begin well in advance of the Development Forum. It is the position of this Guide that the same logic applies to the development of an LBD program, which is also required by the State. The Forum may sort out specific details of an LBD program, but that program

must be substantially complete prior to the opening of the Forum and should be submitted to the State as part of the Feasibility Study. To date, the Forum has served the prime purpose of being the point at which landowners negotiate their demands of government and the resource companies for support and benefit provision. If a project has followed the steps advised in this Guide, then ideally LBD as an item of negotiation between the resource company and the impacted people will not be on the agenda other than for formal recognition. It will, of course, remain a hectic time for almost all other aspects of project negotiation.

6B.2 NEGOTIATE FOR GOVERNMENT INPUTS?

Government input into LBD at resource sites was for many years negligible outside of its establishment of committees to which projects had to provide reports on the extent of project purchases from PNG companies. Then, mainly in the oil/gas sector, it began to provide seed money for LBD. This was welcome, though without advice on how best to use funds the danger of improvidence in fund expenditure was very great indeed.

It would not be unreasonable for someone unfamiliar with the history of resource development in PNG to ask, "Why is the role of government in LBD so limited? Why is the responsibility for it passed onto the resource companies?" In the past, the answer to such questions has always been that the State does not have the resources (particularly the human resources) to staff Business Development Offices even at provincial level, let alone at individual resource sites. But after so many years of experience of resource development, and as increasing numbers of Papua New Guineans have gained experience in business management, such an answer is becoming increasingly unsatisfactory.

Even though government business development advice and assistance remains limited, to some extent the State is increasing its role in LBD. The MRA has recently become an important player in LBD since it increasingly provides contracts to local companies to undertake infrastructural projects on its behalf. Consequently, it is becoming increasingly interested in how local companies should be best managed. Furthermore, officers from the IPA, seconded to the Department of Trade, Commerce and Industry, recently undertook positively received audits of LBD associated with the Hidden Valley and Lihir mines.

At present, and as far as an outsider can judge, the main agency of the State which might be expected to have most interest in LBD is the Department of

Trade, Commerce and Industry – but its active role so far has been limited. It is normally tasked with chairing three-monthly meetings (for large mining projects, six-monthly for small ones) to review project progress; the details of such meetings are generally laid out in the project MOAs. The IPA's current remit does not provide it with much room to expand its support or monitoring of LBD even though it might be willing, in principle, to do this. The MRA, like the IPA, certainly now has an active interest in LBD. At least one provincial government (Madang) has attempted to establish its own resource-project LBD arm. In short, the possibility now exists, for the first time in the history of resource development on PNG, that the State could be persuaded to participate more actively and in a co-ordinated fashion in LBD in some areas of the country. The Development Forum (if not at some earlier stage) might be the place at which to negotiate such co-ordination.

WHAT THE EXPERTS SAY

Two propositions relating to government involvement in LBD were put to the panel:

"LBD at resource sites could be improved if a special government agency to help develop and supervise it were created" and "Increased government monitoring of LBD is needed."

Both received very similar responses: rather mixed. In both cases half the panel agreed but the other half expressed doubts, and in one case very strong opposition. Note that the panel included representatives from government agencies.

Whether or not greater State involvement in LBD is desirable from the point of view of the resource persons' panel is not entirely clear. Given the divided opinion of the experts, the view of the compiler of this Guide is that:

- a) Increased supervision of all aspects of the resources industry in PNG is inevitable. Monitoring of company's LBD programs by the State is not something companies might wish for, but is likely to be extended in the foreseeable future;
- b) For the mining industry, co-operation with the MRA (and through that agency to other arms of government) is always desirable. For the oil and gas industry, once a government arm for the industry similar to MRA is set up, liaison with it will be similarly desirable;

- c) Any increase in genuine assistance to the monitoring of the performance of LBD programs and of participating Repcos and Lancos provided by the government agencies is to be welcomed;
- d) Increased *monitoring by the State of the governance of Repcos and Lancos would certainly be helpful* since monitoring of PNG-owned enterprises is not something that a foreign investor should be expected to do (even though that is, to a large extent, the situation at present); and
- e) Active and effective government BDOs in areas of resource projects would be especially useful in helping set up Lancos (as opposed to Repcos), given the current situation whereby virtually any landowner in an impact area can more or less demand resource company assistance (and preference) in establishing their company. Ideally, from a resource company's perspective at least, the open-ended responsibility of project developers to satisfy such demands ought to be narrowed down; perhaps to the extent that developers should take responsibility for Repco assistance only, while Lancos support should fall into the remit of government BDOs. It is unlikely that such an improvement will occur any time soon but in the meantime any assistance from the government in sharing the load of establishing local companies would be welcome.

In more realistic terms, arrangements with the State in relation to co-ordination of efforts in LBD will at least have been discussed. Hopefully, these discussions may lead to a greater degree of government participation in the development of LBD programs. If such discussions have not been finalised beforehand, then the Development Forum will be the place to ensure that this happens.

6B.3 CONSTRUCTION

The project construction period is always hectic. Further, no matter what level of understanding and mutual trust has been established between the impacted community and the resources company beforehand, external contractors who are tied to the completion of tasks within strict deadlines and budgets (but not to the longer term relationships between community and company) can, unless carefully supervised, sour the community's views of the project. Unless plans are already in place for all aspects of community relations during this period, misunderstandings or failure to follow through with

commitments will have consequences that can plague any project throughout its operating lifetime. Although true of all sectors of the resources industry in PNG, this applies to the hydrocarbon sector with especial force.

6B.3.1 LIAISON WITH MAJOR CONTRACTORS

In signing on construction contractors, it is assumed that the resource company's expectations of those bidding for contracts which require the participation of local businesses in construction are clearly explained. If (as should be the case by this stage) a Repco has already been established and is operative, then ideally that **Repco should have a role in the selection** of the contractor(s) for specified sub-contracts and certainly should be consulted on the matter. However this should not be interpreted as meaning that the project developer's choice of major contractors would be subject to Repco approval; it is intended to apply to individual contracts or sub-contracts, in which Repco potential for participation has been identified. This should especially be the case if the model followed at the PNG LNG project – whereby the contractor/sub-contractor is held responsible for capacity building of the Repco – is followed.

Once construction begins, it is normal practice to hold daily briefings between construction contractors and the resource company to monitor progress and discuss emerging issues. It would be good practice to ensure that community affairs have a presence at all such daily briefings and that LBD issues are included on the agenda of such meetings.

Liaison between the contractors and the Repco (and any other local businesses established) will be the resource company BDO's main (and full-time) task at this stage. However, liaison within the resource company will also be important; in one area, indeed, liaison within the community affairs section will be critical. While BDO staff will have the promotion of LBD as their main target, other individuals within the Community Affairs section will be charged with implementing a Project Induced In-migration Management Strategy (if IFC recommendations on best practice have been followed). Contractors with whom BDO staff will have day-to-day contact will have brought in large numbers of outside workers, irrespective of how strictly any policy of local preference in recruitment for locals might be implemented. Such workers are a potential source of ongoing in-migration towards the project. LBD staff will therefore need to work together with other sub-sections of Community Affairs to monitor trends in this regard.

6B.3.2 REPCO MONITORING AND SUPPORT

In most circumstances, it is advisable for resource company BDO staff to overdo supervisory monitoring of Repco activities during construction rather than to adopt a hands-off approach. Instil regular, good practice right from the start as opposed to having to come in at a later stage and rescue the Repco from its own bad habits. Initiate the monitoring system previously outlined and review its effectiveness.

6B.3.3 PREPARE FOR A DOWNTURN IN BUSINESS OPPORTUNITIES AS CONSTRUCTION MOVES TO OPERATIONS

For a landowner company, being prepared for the end of construction is just as important as being prepared for its start. While missing the start means missing many contracts and having a delayed start-up, not preparing for the inevitable downturn in business opportunities as construction winds down can be fatal. Repcos should make Genesis 41:20 their motto for, if they were prepared for construction, that period will be potentially very prosperous while, by contrast, the first years of operation can be considerably less so. They need to avoid excessive commitments, they must resist the temptation if possible to pay out their earnings as dividends or over-invest in rapidly depreciating and expensive equipment and, if they are in a joint venture, should make sure that their external partner, especially if that partners acts as the JV manager, is also being prudent.

But it is very difficult to remain disciplined in this way, not only because Repco shareholders will want to see immediate benefits from the project, but because

governments all around the world often do not show such prudence when a resource boom comes their way. Reference has been made previously to the fact that Anitua's forerunner, Lakaka, and iPi both had to be rescued from bankruptcy in their early years. A case can be made for arguing that Lakaka's problems at least stemmed from its inability to adjust to the change from construction to operations. There is evidence that some of the largest PNG LNG Repcos have found it far from easy to make the change between construction and operations. But so too have the governments of other resource-rich countries found it difficult to balance the national budget at the end of a mining boom.

Resource companies of any longevity have all been through such cyclical price changes and experienced what happens when construction gives way to operations; its executives and staff know about these things – even if governments and landowners may not be very receptive of their forewarnings on such matters. However, whereas resource companies are not in any position to advise governments on how to spend their new resource revenues, they are in a position in PNG to work with Repcos, especially if the Repco board in its early years has directors appointed by the company, to prepare for the transition. Once again, this is where the need for strong and careful planning within the LBD section of the resource company becomes critical. Repcos may well have to adjust to 'market forces' but there is little point in resource companies investing effort into establishing Repcos only to allow them to fail when the first bump (and it is a big one) occurs at the end of construction.

CHAPTER 7

OPERATIONS – AIMING FOR LBD SUSTAINABILITY

PART 7A: SUMMARY

STEP 22: Reduce risk of failure (especially of Lancos) as a result of cash flow problems by:

- 22a. Helping local businesses to prepare carefully thought-out business plans that are especially prudent in terms of commitments to fixed costs;
- 22b. Ensuring co-ordination within the resource company's financial system to facilitate prompt payment of local businesses' invoices;
- 22c. Seeking ways of diversifying local businesses;
- 22d. Regular flow of feedback on performance of local business; and
- 22e. Carefully co-ordinated system of contract awards.

STEP 23: Reduce impact of failure by constant monitoring of local business performance and taking prompt action, where required, on the results of monitoring

STEP 24: In the event of failure, assess impact and (usually):

- 24a. Rescue Repco and re-impose any controls over it that have previously been relaxed; and
- 24b. Unless of vital significance for the Project, allow Lanco to fail. If of vital significance then rescue as for 24a.

STEP 25: Guard at all times against fragmentation of Repcos

This step will only have impact if the Repco structure was adequately designed in the first place back in the period of advanced exploration.

STEP 26: Enhance sustainability through a balance of sectoral specialisation and geographical diversification

PART 7B: JUSTIFICATION FOR RECOMMENDED STEPS

7B.1 REDUCING THE LIKELIHOOD OF FAILURE

The first essential step towards sustainability of any LBD program is to avoid failure wherever possible. This is of particular political importance with regard to Repcos and typically less so with regard to Lancos. Hopefully the steps taken earlier will have minimised the chances of failure for Repcos, whilst, if resource company commitments in the event of failure have been properly communicated and agreed to, everyone should know what the next steps relating to failure will be. The basic principle recommended is: **to reduce the risk of failure, local businesses need to be run on business principles.** That is, they need to be managed with the goal of making a profit. In an age where demands for corporate social responsibility (CSR) have expanded rapidly, the principal CSR goal of Repcos is to accumulate assets for the sustainable long-term benefit of the project area's communities.

For smaller Lancos, dependence upon the project for its income creates a number of risks and the project can help to minimise these. One commonly reported cause of failure (other than mismanagement) arises out of fluctuating cash flow, both in the short and in the longer term. Repcos are usually in the fortunate position of having secured contracts with the project that generate a steady cash flow – such as running messing facilities, providing transport supply services or managing project camp sites – but Lancos that capture such regular, cash-generating activities are rather rare. There are exceptions to this, such as one company at Ok Tedi which has taken on the rather unpleasant task – but nevertheless a stable source of cash – of toilet maintenance and waste collection.

This is one area (of many) where sound advice from either a well-informed BDO of the resource company or a friendly (and equally well-run) Repco can assist small Lancos.

Resource company LBD staff can assist Lancos in relation to short-term cash flow problems by ensuring that invoices are properly constructed, submitted in time and by following through on payment. A small Lanco cannot afford to wait ninety days (or sometimes even for thirty days) for payment to be received; a single vegetable supplier cannot wait at all, and should be paid on the spot. An outside company with a wider range of customers and a mature system of cash flow management may well be able to do so, but part of the support provided to local business should consist of provision for a faster turn-around in the payment of invoices.

Lancos also face the problem of continuity of cash flow in the longer term if they are only awarded short-term contracts. This issue can be partly addressed when the Lanco is being formed and its business plan is being developed in terms of taking into account the lumpiness and discontinuities in incomes likely to be met. In particular, its initial investment in set-up costs and the level of its fixed costs need to be planned conservatively. However, here too the resource company can assist (within the terms originally agreed to as to the level of assistance provided) in terms of providing – through monitoring – reports to Lanco management on its performance and providing information as to the likelihood of further contract awards. In other words, if lumpiness in the award of contracts by the resource company itself can be minimised and if information on the flow of contracts is readily available, then this source of risk to Lancos can also be reduced. In short, **co-ordination between LBD staff, accounts staff and those staff responsible for the management of the contracts system has to be thorough.**

Another way of minimising cash flow lumpiness is for Lancos to try and develop a commercial activity which supplements the income derived from contracts awarded by the resource company. This is simpler if the project is located in a populated area where other commercial activities, such as retailing, are available, but even at remoter sites possibilities sometimes present themselves. Camp Administration Ltd at Ok Tedi has reduced its exposure to cash flow problems by running a large hardware and household equipment/furnishings store at site, though admittedly it operates at a site where not only is there no overarching Repco but also where there is a significant urban population.

While all the above factors are important, one very obvious one overshadows them all: although business

failure occurs in all sorts of businesses all around the world, failure is infinitely enhanced if the owners of the business lack business knowledge and acumen (which latter might best be defined as having had the experience to apply one's knowledge successfully). Even if first class training for business development has been undertaken, the actual experience of applying that training will be difficult. Training before practice must be followed up with assistance and advice during the first few months or years of its operations.

7B.2 MINIMISING THE IMPACT OF FAILURE

Companies of any sort do not usually collapse suddenly – the signs of potential failure appear gradually. What appears to be sudden collapse often only occur because nobody has noticed the signs or management ignored them. Monitoring company performance is not merely a burden imposed by the State for its own purposes but an essential component of good business. But monitoring is of no value unless the results it provides are not acted upon.

So far, monitoring has been presented in this Guide as an essential but simple enough task. It is always essential, that much is true, but in practice it is far from problem-free. Most Lancos want to run themselves and be independent operators – even if, in fact, they are heavily or totally dependent on the resource project. Thus, some project operators have found that Lancos they helped establish and whose existence depends on project contracts decline to provide the project with details of their operations. This, of course, may be because the Lanco itself has no idea what the details of its operations are, as much as an unwillingness to reveal them (although there is some logic in the latter too: a Lanco opening its books to the resource company runs the risk of having its margins slashed). Further, Lancos with significant involvement by prominent local leaders can, especially if the project's reputation is itself not in pristine condition, manipulate public opinion by portraying monitoring as unnecessarily paternalistic interference by the resource company.

It would be helpful if the State's agencies charged with business-related activities could play a more prominent role in this regard; a resource company should not really be expected to insist that local businesses file IPA returns, make regular NASFUND payments for its employees, or provide safe and healthy working conditions for them. But since such agencies are often not in a position to monitor the behaviour of Lancos or in a position to enforce breaches of their rules, this task usually devolves to the resource companies. This is why it is imperative that the principle of 'support in exchange for graduated levels of control' enunciated

in Section 5B.8 above, not only be clearly understood, mutually agreed to formally at the Development Forum and widely publicised, but also enforced firmly and consistently implemented irrespective of the personalities involved.

7B.3 DEALING WITH FAILURE

However, whatever measures have been put in place and if the historic pattern of current local businesses is anything to go by, the failure of Repcos will remain a distinct possibility and the failure of Lancos will be even more likely. Businesses fail all over the world; it would be astonishing if this was not the case at resource sites in PNG. Hopefully, the risk level of failure will have been reduced by the steps taken in preparing the LBD program. Furthermore, if a policy on failure has already been put into place –and agreed to in advance with landowners – then that policy will minimise the shock and social and political repercussions of failure.

In terms of representative companies in particular, whatever plans have been put in place originally may have to be revised if failure actually occurs. If those plans involved a basically hands-off policy towards LBD, then a resources company runs the risk of being blamed for not having done enough to support the infant Repco; if the company insisted on a significant level of control over its operations initially (through financial oversight or placing company staff on the Board for example), then it runs the risk of being blamed for not having exercised that level of control adequately.

The “reputation of the project” is not the only reason why a failure of a Repco might best be addressed by rescue²⁴. For one thing, the State’s requirement for the project to support and encourage local business would still need to be fulfilled. For another, just as when the original choice to go for a large Repco rather than many smaller Lancos was made, the need to provide benefits to all the impacted community and the relative costs to the resource company of running a Repco as opposed to supporting many smaller businesses would still point in favour of a Repco (and, therefore, rescue). In addition, the social impacts and political rivalries that might be engendered if a failing Repco were abandoned in favour of several smaller Lancos would require handling. This would be a particular problem in a small, well-defined community – the contrast in LBD between Lihir on the one hand and Misima (and Simberi to some degree) on the other, especially when one ignores the difference in the sizes of these projects, is lesson enough. In short, in most

WHAT THE EXPERTS SAY

When asked what a resource company should do if a Lanco fails, the resource persons’ panel in general felt that if planning for LBD had been careful, failure should be less likely to occur; one or two suggested that if the government and company had had a director on the Board in the first place, failure was unlikely. Others addressed the question directly and argued that the company would need to be rescued and controlled whilst some said “failure is part of the landowners’ education” and others argued that whatever course of action was taken it must be consistently applied across all failing local companies.

On reflection, this question was not as well phrased as it might have been. It would have been better phrased had it been in two parts: a) what to do if a Repco fails; and b) what to do if a Lanco fails? Then it seems probable that the careful answer of one panel member would have become the key qualification: “It depends on the significance of the landowner company to the project.” A Repco would have to be saved if the reputation of the project as a whole was to be protected; a Lanco need not, unless it performed a vital function for the project.

circumstances **the collapse of a Repco will best be addressed by rescuing it and imposing controls upon its management; the collapse of a Lanco may require rescue if that company provides a vital service to the project but if it does not, then it might well be best left to disappear.**

It is earnestly to be hoped that the planning for LBD and the agreements reached in advance with landowners during advanced exploration and/or final feasibility, had already incorporated these basic principles.

Assuming that either failure does not occur or that when it does a successful rescue is carried out, then planning for sustainability can re-emerge to take pride of place.

7B.4 WHAT IS A SUSTAINABLE BUSINESS?

Assuming that the initial challenges to a local business are overcome, that where rescues were needed they were carried out successfully, that a steady state of growth is achieved, and that Repcos and Lancos alike mature so as to run themselves with little or no support/intervention by the resource company, then the next challenge they will face is their sustainability. In

²⁴ One of the resource persons’ panel skepticism was expressed as follows: “Consideration for reputation seems to fly out of the window when a company runs into serious economic pressures.”

considering this challenge, it is worth bearing in mind that not only is the task given to resource companies of establishing businesses in remote areas of PNG difficult, but also that business, even in much more congenial circumstances, is not always successful and is certainly not often very long-lived. Arie de Geus²⁵ observed in 2002 that:

“most commercial corporations are dramatic failures or, at best, underachievers”

He further calculated that the average life-span of large multinationals did not appear to be much more than 40 years whilst the average lifespan of all companies appeared to be less than 15 years. These facts are worth remembering amidst all the challenges facing local business development at resource sites in PNG. For example, the average age of landowner companies at Ok Tedi was recently estimated to be at least 15 years – on a par with, or better (since most companies were still operating) than, international experience.

The introduction to this Guide defined a sustainable business (for the purposes only of this Guide) as follows:

- a ‘sustainable business’ is one which has the potential to outlive the project that gave rise to it or, alternatively, to last until such time as its owners voluntarily close its operations; and/or
- the benefits it generates can be (and are) invested in activities which continue to generate further benefits.

The different stakeholders in resource projects do not have identical expectations of LBD programs. The resource companies (and this Guide) see LBD as only one strand of a wider program of community investment which will – hopefully and simultaneously – provide present and future employment and benefit flows to impacted people (and win local support for the project), and efficiently provide a range of services needed by the project. The State sees it as a major means of providing a large cadre of its citizens with business skills, as well as being a source of taxation revenues and a means of the direct participation, by its citizens, in the exploitation of the opportunities a resource project can create. Impacted populations will have a wide variety of expectations of it, but essentially these might boil down to LBD programs giving them incomes and more choices in life.

Not all forms of LBD will match these expectations; in particular *Lancos* (as that term is used here) will benefit only a few directly. Equally *Repcos*, as defined here, may not create a particularly large cadre of PNG citizens with business skills but should, if managed properly, fulfil most of the other expectations the various stakeholders have by creating present and future income for most people in the impacted community, providing services to the project and taxes for the State, as well as training some entrepreneurs and stimulating an increased level of acceptance in the community for the project. This is why *Repcos* are given priority throughout this Guide. This is also why the above definitions of a ‘sustainable business’ have been adopted – they do not match all the various stakeholders’ expectations of LBD but they generally cover most of them.

7B.5 ARE LOCAL COMPANIES SUSTAINABLE?

This question “Are local companies sustainable?” is commonly asked and, at first sight, it is a reasonable one. However, when the panel was asked this question their answers were divided.

WHAT THE EXPERTS SAY

Opinions were divided, but weakly so – half roughly agreed that local companies are ultimately unsustainable, the other half thought they could be sustainable. However, despite this, **every member of the panel agreed with the statement that “even if local businesses are ultimately unsustainable, LBD should be supported.”**

In other words, the question needs some fine tuning and needs to be expressed in a different way if more definitive answers are to be arrived at:

- a) Can *Repcos* provide a stream of benefits that outlives a project?
- b) Can *Lancos* provide a stream of benefits that outlives a project?

What is the evidence available for addressing these questions from project closures of the recent past? The nature of the closure of Bougainville Copper operations means that this is not a particularly good example, since the war that caused (and followed) closure destroyed the limited local businesses that

²⁵ Arie de Geus, 2002, *The Living Company*, Harvard Business School Press.

had been developed, although the project did leave behind a legacy of well-trained Papua New Guinean mine workers who to this day are still making a positive contribution over a wide area. On Misima (and at Tolukuma - if that project can be considered closed²⁶) no local business survived closure – but even during operations at Misima LBD was only weakly developed. So the evidence from actual closures is strong: the answers to both questions are “no”. Are the prospects for a different answer at existing projects any better?

Considering Repcos first, there must be some optimism that the representative companies on Lihir (Anitua), at Porgera (iPi) and at Hidden Valley (NKW Holdings) would have some chance of survival as companies, if in a reduced form, even if the projects that created them closed right now, because all these entities have already established a degree of independence from being reliant solely on project contracts. Secondly, these same companies (and especially Anitua) have already built up a suite of assets that promise to generate future financial returns for their owners for many years to come. So, the prospective answer to question a) above for these three cases is “yes” in varying degrees of strength. Since there is no equivalent representative company at either Ok Tedi or on the oilfields, the question for them does not arise, while at other sites (such as Ramu or the LNG project) where projects are only in their infancy it is probably too early to pass judgement – even though, as will be seen shortly, these projects provide valuable clues as to how prospects of sustainability might be improved.

As far as the existing Lancos are concerned, the prospects are rather different. There are a few Lancos, especially at Ok Tedi and in association with Oil Search, which have developed a degree of independence from the projects that support them by opening up operations elsewhere, but the great majority still remain very heavily dependent on resource company contracts²⁷. If Porgera, for example, stopped operating tomorrow, almost all the small Lancos associated with that mine would cease operations immediately. The peculiar circumstances in the North Fly and Telefomin Districts (where oil/gas prospects in the former and new mining prospects in the latter are excellent) might enable Lancos that grew up with Ok Tedi to survive beyond any sudden closure of that operation (even though there is every chance of Ok Tedi operating for many years to come). But in general, the answer to the question, “Would Lancos survive project closure?”

is more likely to be “no” than “yes”. A few have managed to establish offshoots of their business in areas outside the immediate project impact area, and this is more readily done if the project location has decent access to urban areas, but most rely solely on project work.

Does this mean that the answer to question, “Can the benefits generated by Lancos be sustainable?” must also be “no”? Not necessarily. At the very least landowners and others who participate in the running of Lancos all gain some experience in how to run a business, which they can apply (even if the experience is one of failure) to future ventures. It is certainly true that the great majority of Lancos at present operate on small profit margins, have cash flow problems (because of the patchiness of the work they pick up from projects) and have a very low rate of asset accumulation. It is also true that if the advice of experts is followed, then priority will have been given to the needs of representative companies and these Lancos will have taken a lower priority. Consequently, if the benefits they generate are to be made more sustainable, this will require additional input from whatever agency is providing them with management assistance. So, in the absence of such additional inputs, it is probable that the sustainability of benefits from Lancos will remain low.

This seems to be an area where additional inputs would be justifiable. For example:

- a) Resource companies working with such agencies as the Business Enterprise Centre and banks might run programs incorporating ways in which Lancos might diversify their businesses, open investment accounts or at least take out term deposits with banks.
- b) Resource companies might help reduce Lancos cash flow problems if ways of mitigating the general stop-and-go nature of contract awards could be established.
- c) Quite small improvements in the way in which the top priority investments (representative companies) are managed could release funds and personnel for the better support of this lower priority portion of LBD.

Point c) might especially be the case if resource companies genuinely followed Step 1 as recommended in this Guide (embrace LBD rather than just accepting that it is something needed

²⁶ Tolukuma and Kainantu are being recommissioned.

²⁷ The mid-2015 to April 2016 temporary closure of OTML operations will provide rather a lot of evidence as to whether or not the Lancos associated with that company could survive permanent closure.

only to get approvals to move to operations), and if the level of support both Repcos and Lancos could realistically expect to receive from a project were more specifically introduced as part of the MOA.

BOX 5: A PERSONAL NOTE

The compiler of this Guide grew up in a mixed textile/mining community in England. During my teenage years the mines closed down (and the textile industry also collapsed). Fifty years later the communities of the area still remain in a depressed condition. This is despite the investment of considerable State funds into development schemes and major infrastructure (such as high speed road and rail links). This personal experience prejudices me to believe that resource project closure is NOT easily managed and sustainability is difficult to achieve.

7B.6 GO TO TOWN FOR SUCCESS AND SUSTAINABILITY?

The relatively remote location of most resource projects and the fact that at such locations the project is mostly the only form of economic activity other than semi-subsistence agriculture, automatically means that local businesses (whether Repcos or Lancos) based at project sites must initially be almost entirely dependent on the project for their activities. While the prudent use by local businesses of their profits (in education or in financial investments for example) is one way of trying to ensure that long term benefits from their activities can be ensured, it is highly improbable that the business entity itself will have a life beyond that of the project if its activities are restricted solely, fixed in place, at the project site. It is certainly the case that even in quite remote locations, one or two economic activities might be identified that would have a life after the project, but it is even more true that there are many more opportunities to invest the profits made on site at more central locations. Further, by being fixed in location, a local business has all its 'eggs in one basket'; consequently, its prosperity will rise and fall with the periodic fluctuations in the fortunes of the project itself.

What strategies have been adopted by existing Repcos and Lancos? Most Lancos are not large enough to

consider operating at more than one site. Some, such as several of those associated with the Ramu Nickel project or the PNG LNG project, are in the fortunate position of already having access to an urban market (Madang and Port Moresby respectively). At a more remote site like Ok Tedi, a few ambitious Lancos have attempted to set up sister businesses in urban centres – in Lae, Madang, Port Moresby or Mount Hagen. These attempts often seem to be associated with Lancos whose manager has been recruited from such an urban centre and who, therefore, already has contacts there. Note that local companies operating at the project site as partners in a joint venture with an external company are very unlikely to establish external branches – it would rarely be in the interests of the external partner to do this. This is one of the several disadvantages of LBD being tied to joint ventures with outsiders.

Of the Repcos, the pattern is, in general, much clearer. NKW Holdings (Hidden Valley) from the outset headquartered itself in the middle of Lae (with success) while the take-off to sustainability for iPi (Porgera) occurred once it established its trucking (and later, other) operations just outside Lae. Although it is a little early to say that they have done so successfully or not, several Repcos, associated first with Oil Search and later with PNG LNG, have established a major part of their operations in Port Moresby and Lae. Anitua (Lihir) has acted rather differently – it has succeeded in establishing parts of its business in urban centres across the whole country, often in the form of joint ventures with landowners at other resource projects, whilst retaining its main operations and headquarters on Lihir.

So perhaps it is not surprising to find that in this case, theory, practice and the opinions of the experts all coincide:

WHAT THE EXPERTS SAY

When panel members were asked to comment on the statement, *“The key to improving the sustainability potential for a landowner company is to move at least part of its operations to a major urban centre”* all agreed with it – two-thirds did so strongly.

Moving at least part of a landowner business to a sizeable urban centre (or more than one) is a good idea (and, as one resource person put it, this is not ‘rocket science’).

CHAPTER 8

STEP 27?

The emphasis in this Guide has been on the difficulties of initiating new businesses in remote areas where, previously, no business (but often lots of *bisnis*) was carried out. The Guide does not take any brave leap into the immediate future. But perhaps, as a tail piece, it should.

The resource companies operating in Papua New Guinea may be described as working in rather old-fashioned extractive industries but the methods and technologies they use in doing so are often as advanced as any to be found anywhere on Earth. These are being put to use in exactly the same remote areas as those which the Guide deals with (and sees as extremely difficult to do business in). In taking this approach the Guide may well be criticised as being too cautious and insufficiently forward-looking.

It may be regarded as far-fetched to suggest that rapidly improving technology will enable remote communities in Papua New Guinea, in the near future, to manage businesses based in their home locations. But when one considers the rapidity of change in places such as Tabubil in only four decades perhaps it is not such an impossible future. Moreover, although ancient symbols such as gorgons are a feature (perhaps too prominent a feature) of modern life on Lihir, the most successful landowner owned company in all of

PNG is based there. True, its investment arm has been hived off and relocated but all the other activities of Anitua, which are spread across the whole of the country, remain firmly located on this very remote island. Anitua can do this through maximising use of modern technology (and because it is blessed with visionary and, to date, successful management). So perhaps 'far-fetched' is not the most appropriate adjective to use.

There is another quite different way in which Step 26 – enhance sustainability – might come closer to being distinctly possible. Because of the policy of local preference in recruitment, in place since Ok Tedi was first declared financially feasible, significant numbers of Papua New Guineans, local or otherwise, are being brought in the course of their work into direct contact with the advanced technology in use at resource sites around the country. Scores of Papua New Guineans working at resource sites use, on a daily basis, advanced graphic displays and geographic information systems applications as advanced as any other in the world. Knowledge of and familiarity with this technology is growing and it will be unsurprising if some individual Papua New Guineans see ways of developing their own businesses based on such exposure.

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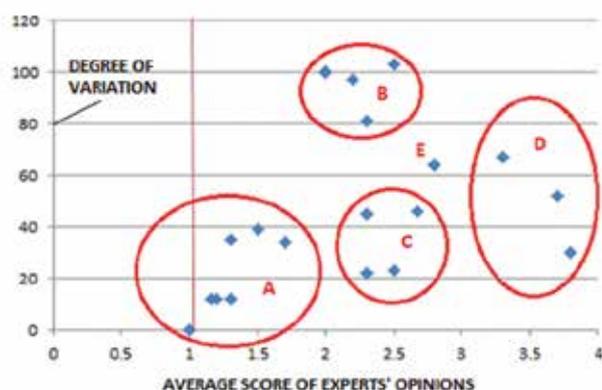
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APPENDIX 1:

The opinions of the expert resource panel



The diagram shows the answers given by the experts on the resource persons' panel.

Along the horizontal axis is shown the average score of the answers to specific statements; the score could be anywhere between 1 (strongly agree) to 5 (strongly disagree). This means that the average could not be smaller than 1 – and hence the pink vertical line on the diagram.

The vertical axis shows the degree of variation in the opinions – the lower the score, the more agreement there was between the experts, the higher the score then the more they disagreed with one another. (The degree of variation was measured by expressing the average standard deviation as a percentage of the mean score, as shown on the horizontal axis.)

Meaning of the groupings: Group A – any item in Group A is a statement with which the panel very much agreed with a high degree of unanimity. The items include:

- LBD would be worthwhile even if the State did not require it of resource companies.
- Local business sustainability is greatly enhanced by expanding activities into a nearby urban area.
- All shareholders in Repcos should possess share certificates (or some other token of ownership).

- Representative companies should be given priority in resource companies' efforts at local business development (as opposed to smaller companies owned by individuals or only small groups within the overall impacted community).
- Representative companies are liable to fragment unless considerable care is taken to prevent this.
- Every Repco must have its own specifically designed Constitution.
- Repcos should publicly report each year the fees and expenses paid to their directors and top managers irrespective of the more general rules laid down in the Companies Act.

Group C shows answers where the panel generally agreed with one another but had no strong feelings concerning the issue being addressed. In other words, either the issue was unimportant to them or they could not quite make up their minds about it (possibly because the question was not adequately phrased). This Group included:

- Most local businesses are unsustainable.
- Traditional leaders do not make good company directors.
- Repcos should ensure they control local retail trade.
- Repcos should favour asset accumulation over dividend payments.

Group D contains statements with which the panel disagreed (though with some variation in their opinions). Effectively therefore the answers here are important because when we turn the question around, the panel was agreeing with it – for example the panel rather strongly disagreed with the statement that labour hire by Lancos should be discouraged, which is the same as their saying it should be encouraged. This small group included:

- Discourage local businesses entering labour hire.
- Supply and Procurement Departments within resource companies should supervise LBD.
- (Marginally) A smaller, shorter life project should minimise its involvement in LBD.

Group B contains the items over which the panel showed least agreement among themselves – that is some strongly agreed with the issue raised in the statement presented, while others strongly disagreed with it. This then is the area where the panelists can give us no good guidance. The issues were:

- Umbrella functions should be carried out by the resource company.
- There should be sunset clauses in support commitments made by resource companies for local companies.
- The main purpose of LBD is to win local support for a project.
- There is a need for a dedicated government agency to supervise LBD programs.
- There is a need for increased government participation in monitoring of local businesses' performance.

E is not a group as such – it contains the two questions relating to the relevance of Melanesian values to Repco/Lanco governance on the one hand and to the distribution of local businesses' profits on the other. In these two areas the experts can provide no guidance.

APPENDIX 2:

Local Business Development provisions of the 1976 Ok Tedi Agreement

Section 32 of the Ok Tedi Agreement of 1976 was the first formal document in the PNG resources industry to lay out the State's requirements of a resource project in terms of local business development as well as in respect of local procurement.

32.1 The Company shall promote, support, encourage and lend assistance to Papua New Guineans desirous of establishing enterprises and businesses providing goods and services for the Project and for the town constructed by the Company and the residents thereof, and shall generally promote, support, encourage and assist the establishment and operation of local enterprises in the Mining Area, provided that nothing in this Clause shall oblige the Company to lend money to any Papua New Guinea or local enterprise.

32.2 The Company shall make maximum use of Papua New Guinean sub-contractors where services are available from them at competitive prices and of comparable standards with those obtainable from elsewhere, whether inside or outside Papua New Guinea.

32.3 Insofar as it is practicable the Company shall give first preference in its assistance hereunder to landowners in and other people originating from the Kiunga and Telefomin sub-provinces of the Western Province.

32.4 The Company shall appoint for such period as is reasonably necessary, a member of its staff who has had experience within Papua New Guinea of the establishment, control and day-to-day running of enterprises controlled and run by Papua New Guineans and who shall, in consultation with the Department of Business Development -

- (a) identify activities related to the Project including the provision of goods and services as described above which can be

carried on by Papua New Guineans or local enterprises;

- (b) advise and assist Papua New Guineans desirous of carrying on those activities or of establishing enterprises to do the same; and
- (c) implement, or assist in the implementation of the business development programme as hereinafter described on behalf of the Company.

The staff member appointed for this purpose shall be a full time employee of the Company.

32.5 Damco shall, in consultation with the State, prepare a business development programme for the development of Papua New Guinean businesses and enterprises associated with or incidental to the Project which shall be submitted as part of Damco's proposals under Clause 8.

32.6 The business development programme will make provision as far as is practicable for the following -

- (a) enterprises involved in the supply and maintenance of mining equipment (other than that carried out by the Company) and provision of consumable supplies;
- (b) subcontracting to self-employed equipment operators of road construction and maintenance;
- (c) subcontracting of site preparation, construction and maintenance of houses, government buildings, industrial facilities and other works and buildings and facilitates to be established, including concreting, welding, tank construction, steel fabrication, plumbing, electrical work and timberwork;

- (d) enterprises involved in town services such as sewerage and garbage collection, treatment and disposal, passenger transport, freight carriage of consumer items and stevedoring (except in relation to the shipping of the produce of the mine);
- (e) enterprises involved in trade stores, supermarkets, other retail outlets, canteens, restaurants, taverns, cinemas, social clubs, cleaning and laundry, and vehicle maintenance and repair facilities;
- (f) enterprises involved in the supply of fresh fruits, vegetables, meat and fish;

and may include provision for other activities agreed to by the Company and the State.

32.7 The business development programme shall also include details of -

- (a) the time schedule for its implementation;
- (b) those additional activities which could be established by Papua New Guineans;
- (c) those activities in which the Company intends to commence operating but which will be transferred to Papua New Guineans at a later date, on a commercial basis; and
- (d) any facilities by way of training, technical or financial assistance which can be made available to facilitate the smooth transition of ownership and operation to Papua New Guineans.

32.8 The business development programme shall be reviewed annually by the Company, in consultation with the State, and may be altered by mutual consent between the Company and the State with the view to securing the maximum benefit to Papua New Guineans and local enterprises from the operations of the Company and the carrying out of the Project.

APPENDIX 3:

Business Development Commitments for Tolukuma Mine (revised 2007)

31.0 BUSINESS DEVELOPMENT PLAN (SPIN-OFF)

31.1 The Company shall encourage Spin-off businesses and will give preference on terms generally available and those who have expressed businesses interests subject to expression of interests in business owned and operated by the immediate landowners and those within ML 104 who have expression of interest and secondly, to the people of Goilala District and thirdly to the people of Central Province.

31.2 The Company will establish and ensure as from this MOA review that;

(a) There shall be a professionally staffed local Business Development Office (BDO) located in Waigani responsible for the implementation of the local Business Development Plan in consultation with directors of the Yulai Holdings as the umbrella company, various Landowner corporate entities, the Woitape District Business Development office and the Provincial Advisor as per Annexure (C).

(b) The BDO will:

(i) liaise with the project management for the provision of contracts for the Umbrella Company and other Landowner corporate entities, and

(ii) ensure that, where feasible, contracts for the provision of goods and/or services to project during the operation period as to enable locally owned business ventures to be positioned to bid for and undertake those contracts; and

(iii) identify prospective Landowner corporate entities to establish joint venture with successful external contractors or suppliers to the Project.

(c) The Business Development will provide independent auditing services annually for other Landowner corporate entities and for the Umbrella Company to ensure that the financial accounts of Landowners are transparent and fully compliant with their constitution and the Companies Act 1997.

31.3 The Company shall produce a Spin-off Business plan to operate during the operation phases of the project in consultation with the Landowners.

32.0 SUPPLY AND PROCUREMENT

32.1 The Company (TGM) undertakes to use its best endeavours to ensure that the Company identify and invite registration of businesses in Papua New Guinea, particularly in the Goilala and Central Province and the surrounding areas of the project, which are capable of supplying material, equipment and services to the project in liaison with Yulai Holding Inc or its nominee company but pre-qualification and registration does not provide assurance to business that they will be invited to tender or to be awarded any contracts.

32.2 TGM will ensure that where goods and services are procurable for the project through sources TGM will provide those pre-qualified companies every opportunity to participate in the tending process and if such tender:

(a) meets the specifications of the invitation to tender, and

(b) is competitive in cost with international services, taking full account of all landed costs, and

(c) meets delivery requirements of the Project, then the successful tenderer will be directed where appropriate to enter into a joint venture arrangement with Yulai Holdings Limited to provide the contracted goods and services.

APPENDIX 4:

Section 129 of the Oil and Gas Act

129. LOCAL PURCHASE OBLIGATION.

- (1) Subject to the provisions of this section, a licensee shall, in its operations in Papua New Guinea and in the construction and development of a project—
 - (a) use and purchase goods and services supplied, produced or manufactured in Papua New Guinea whenever the same can be obtained at equivalent terms, including prices, conditions and delivery or performance dates and are in all respects of a quality comparable with those available from outside Papua New Guinea; and
 - (b) encourage and assist citizens of Papua New Guinea who are desirous of establishing businesses providing goods and services for the operations or the project and for any town constructed primarily for the purposes of the project and the residents thereof; and
 - (c) make maximum use of Papua New Guinea contractors and subcontractors where services of a standard comparable with those which the licensee would obtain but for the operation of this section are available from such Papua New Guinea contractors or subcontractors at equivalent prices, and on equivalent terms, conditions and delivery or performance dates.
- (2) A licensee which, for the purpose of its operations in Papua New Guinea or the construction and development of its project, requires imported vehicles, machinery, plant or equipment, and does not purchase such items direct from the manufacturer, shall effect the purchase of such items through traders based in Papua New Guinea or the Papua New Guinea operations of traders based elsewhere but having operations in Papua New Guinea.
- (3) Subsection (2) does not apply to a licensee in respect of a particular purchase if—
 - (a) such items are not available through such traders or trading operations at an equivalent price, and on equivalent terms, conditions and delivery dates; or
 - (b) compliance would adversely affect the financing of the licensee's operations or the development of the licensee's project.
- (4) Nothing contained in this section obliges a licensee to grant or lend money to any person or any local enterprise.
- (5) Where a licensee seeks to grant to persons who are landowners in the area of the licensee's operations a contract for the supply of labour or services and a dispute which delays the grant of such a contract arises amongst persons claiming to be such landowners, the licensee may refer the dispute to the Director who may determine the dispute.

APPENDIX 5:

A proposed model Constitution for a Repco

PNG XYZ Development Corporation Limited

1-XXXXX (PNG IPA No.)

Incorporated XX-XXX-XX (date)

Constitution

Adopted -XX-XXX-XXX (date)

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CONSTITUTION OF PNG XYZ DEVELOPMENT CORPORATION LIMITED

1. PRELIMINARY

1.1 Definitions

Unless the context otherwise requires, the following definitions apply in this constitution: -

“Act” means the Companies Act 1997 as it is amended and applies to the Company from time to time.

“Auditor” means the auditor of the Company from time to time.

“Board” means the Directors acting collectively under this constitution.

“Chairman” means the chairman appointed under clause 14.7 from time to time.

“Common Seal” means the common seal of the Company.

“Company” means the company named above whatever its name may be from time to time.

“Deputy Chairman” means the person appointed as deputy chairman of the Board under clause 14.7 from time to time.

“Director” means a person appointed as a director (including any Managing Director) for the time being of the Company.

“Dividend” means any cash distribution to Shareholders.

“Managing Director” means a person (if any) appointed as a managing director of the Company under clause 12.1.

“Member of Parliament” means a member of any national or provincial assembly of government (whether elected or appointed).

“Project” means the conduct of gold and copper exploration and related activities on the Project Area.

“Project Area” means the area of Exploration Licenses XXXX and XXXX in XXXX Province, Papua New Guinea from time to time (including any successor licenses within the area of those licenses). For the avoidance of doubt, where any area is relinquished from these licenses, that area ceases to be part of the Project Area.

“Project Area Local Residents” means automatic citizens recognised by local customary law as a member of a tribal group which holds rights under customary law to land, water, gardens or hunting grounds within the Project Area and who at the date of this constitution are the tribal groups set out in Schedule 1.

“Project Area Local Resident Investment Company” means a company constituted as an Investment Company under a document by which it holds its assets on trust for a defined tribal group of Project Area Local Residents set out in Schedule 1.

“Register” means the register of Shareholders kept pursuant to the Act.

“Secretary” means a person appointed as a secretary of the Company from time to time (including any person appointed to perform the duties of a secretary temporarily).

“Share” means a share in the capital of the Company issued in accordance with this constitution.

“Shareholder” means a Project Area Local Resident Investment Company whose name is entered in the Register as the holder of a Share.

2. PURPOSE

Without limiting its powers, the Company is established to act as a special purpose holding company:

- (a) the Shareholders of which comprise Project Area Local Resident Investment Companies established or to be established for the benefit of Project Area Local Residents; and
- (b) which holds either directly or indirectly one or more business development assets of Project Area Local Residents.

3. POWERS

The Company shall have the capacity and all powers described in section 17 of the Act.

4. SHARES

4.1 Rights conferred by shares

All shares in the Company have the same rights and shares may not be created in any other classes.

4.2 Shareholders

Shareholders in the Company must be a Project Area Local Resident Investment Company. No other person or entity is allowed to hold shares in the Company. If a Shareholder ceases to satisfy the definition of Project Area Local Resident Investment Company, the provisions of clause 4.5 apply.

4.3 Issue and number of shares

The Directors may allow the issue of shares in the Company to a Project Area Local Resident Investment Company (new or already existing Shareholder), and the number of shares must be allocated taking into account the significance to the Project of the new shareholder over the existing Shareholders.

4.4 Restriction on transfer

Shares must not be transferred unless the transfer occurs:

- (a) as a consequence of the appointment of an additional or replacement Investment Company of a Project Area Local Resident Investment Company;
- (b) as a consequence of a court approved reconstruction or reorganisation of a Project Area Local Resident Investment Company; or
- (c) with the approval of the other Shareholders by unanimous resolution passed in a meeting of Shareholders.

4.5 Redemption for breach

If any of the following events occur:

- (a) a Shareholder is not a Project Area Local Resident Investment Company;
- (b) a Shareholder has a liquidator or receiver appointed to it; or
- (c) a Shareholder (or any of its directors or officers) is convicted of any criminal offence relating to the money or affairs of the Shareholder or is held liable by any court to account for any money to which the Shareholder was entitled,

then the Directors may, subject to Section 60 of the Act, authorise redemption of the shares held by that Shareholder for a consideration equal to one Toea.

4.6 Redetermination

The Shareholders may, by resolution passed in a meeting of Shareholders, require that the Company undertake redetermination of the proportion of shares held by all Shareholders where the shareholders are in agreement or additional shareholders are determined.

4.7 Pre-emptive rights

Section 45 shall apply to the issue of Shares by the Company unless the Shareholders agree otherwise.

4.8 Certificates of title

Certificates of title to securities of the Company which are issued by it must be issued in accordance with the Act.

4.9 Replacement of lost certificates

Where a certificate is lost or destroyed, the Company may issue a duplicate certificate in accordance with the Act.

4.10 Replacement of worn out certificates

Where a certificate is defaced or worn out and is produced to the Company and the Company is paid a reasonable fee determined by the Board, the Company may cancel that certificate and issue a new certificate in substitution.

4.11 Pro-rata issues

Notwithstanding any other provision of this constitution, the Board may not, except with the unanimous consent of Shareholders:

- (a) issue any Shares to any entity that is not a Project Area Local Resident Investment Company;
- (b) issue or grant any option over Shares or preference shares otherwise than to Shareholders in the same proportions in which they hold Shares; or
- (c) convert any preference share or any non-voting Share to a Share.

4.12 No loans to Shareholders or Directors

The Company is not a financial institution and will not permit any Shareholder or Director or Related Entity or person that is related to a Shareholder or Director borrow any funds from the Company.

5. MEETINGS OF SHAREHOLDERS

5.1 Methods of holding meetings

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

5.2 Annual meeting

Except as provided by the Act, the Company must, in addition to any other meeting held by it, hold an annual meeting in accordance with the Act.

5.3 Convening of special meeting

The Board may convene a special meeting of the Company at any time. There however must be at least six monthly meetings of shareholders with management or annual accounts presented in accordance with clause 21.5.

5.4 Requisition of special meeting

Shareholders may requisition the holding of a special meeting as provided by section 102(b).

5.5 Notice of meeting of Shareholders

Written notice of the date, time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director and Auditor of the Company not less than 14 days before the meeting.

5.6 Contents of notice

The notice shall:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) include the text of any special resolution to be submitted to the meeting.

5.7 Waiver of irregularity in notice

An irregularity in a notice of a meeting is waived where all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or where all such Shareholders agree to the waiver.

5.8 Omission to give notice

The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

5.9 Cancellation or postponement of special meeting

Where notice of a special meeting of Shareholders has been given, the Board may by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting.

5.10 Adjournment of meeting

The chairman of a meeting of Shareholders at which a quorum is present:

- (a) may with the consent of the meeting by ordinary resolution; and
- (b) must, if so directed by the meeting by ordinary resolution, adjourn the meeting from time to time and from place to place.

5.11 Business at adjourned meeting

The only business which an adjourned meeting of Shareholders may deal with is business which was left unfinished from the meeting which was adjourned.

5.12 Notice of adjourned meeting

Where a meeting of Shareholders is adjourned for less than one month, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

6. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

6.1 Representation of Shareholders

A Shareholder may attend a meeting of Shareholders at which the Shareholder is entitled to be present in any of the following ways (if applicable to the Shareholder):

- (a) by proxy;
- (b) by attorney; or
- (c) by a representative appointed in respect of the meeting under clause 7.10.

6.2 Quorum

Subject to clause 6.3, no business may be transacted at a meeting of Shareholders unless a quorum of three natural persons each of whom represents a Shareholder under clause 6.1, is present for that business.

6.3 Failure of quorum

Where a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called under Section 102(b) and clause 5.4, the meeting is dissolved; and

- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint, and, where, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

6.4 Chairman

The Chairman (if any) is or, if the Chairman is absent or is unwilling or unable to be the chairman of a meeting of Shareholders, the Deputy Chairman (if any) is, if willing and able, to be the chairman of any meeting of Shareholders.

6.5 Chairman absent

Where a meeting of Shareholders is held and either no person specified in clause 6.4 is present within 15 minutes of the time notified for the meeting or that person is present but is unwilling or unable to be the chairman of the meeting:

- (a) the Directors present may elect one of their number to be the chairman of the meeting; and
- (b) if there is no Director present or if no Director present at the meeting is able and willing to be the chairman of the meeting, the Shareholders present must elect one of their number to be the chairman of the meeting.

6.6 Chairman disqualified

If the chairman of a meeting of Shareholders is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) the chairman may withdraw as chairman for that part of the business and may nominate any person who would be entitled under clauses 6.4 or 6.5 to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting and the chairman resumes as the chairman of the meeting.

6.7 Responsibilities of chairman

The chairman of a meeting of Shareholders:

- (a) shall allow a reasonable opportunity for Shareholders of the meeting to question, discuss and comment on the management of the Company as required by section 90(1); and
- (b) subject to paragraph (a) of this clause and Schedule 2(12) of the Act, is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning the business transacted at it and for these purposes may, without limitation:
 - (i) prescribe procedures and make rulings, in each case finally and conclusively;
 - (ii) in addition to other powers to adjourn, adjourn the meeting or any item of business of the meeting without the concurrence of the meeting if the chairman determines it is desirable for the orderly conduct of the meeting; and
 - (iii) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

6.8 Method of voting

In the case of a meeting of Shareholders held under clause 5.1(a), voting at the meeting shall be by whichever of the following methods is determined by the chairman of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands,

and in the case of a meeting of Shareholders held under clause 5.1(b), voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

6.9 Casting vote of chairman

If on a resolution proposed as an ordinary resolution at a meeting of Shareholders there is an equality of votes, the chairman of the meeting may exercise a casting vote in addition to all other votes which

the chairman may have (unless the chairman is not entitled for some other reason to cast a vote, in which case the resolution is not passed).

6.10 Written resolutions

For the purposes of section 103, two or more documents in identical terms, each signed by one or more Shareholders (or such Shareholders' attorneys or representatives, as the case may be) are to be treated as one document provided that:

- (a) each document is delivered to the registered office of the Company or a legible copy of it is received there by facsimile or email transmission; and
 - (b) where more than one Shareholder, representative or attorney signs the document the date of execution of the document by each Shareholder, attorney or representative is set out,
- and the date of the resolution is the last date of execution of any of those documents by a Shareholder or its attorney or representative.

6.11 Minutes to be kept

The Board shall ensure that minutes are kept of all proceedings at meetings of Shareholders.

6.12 Signed minutes

Minutes which have been signed correct by the Chairman of the meeting are prima facie evidence of the proceedings.

7. ENTITLEMENTS TO ATTEND AND VOTE

7.1 Entitlement to attend

Subject to this constitution and any terms of issue of any Share, each Shareholder and each Director is entitled to notice of each meeting and to be present and to speak at that meeting.

7.2 Entitlement to vote

Subject to this constitution and any terms of issue of any Share, on voting by voice or on a show of hands, each natural person present at a meeting of Shareholders as a proxy (other than a person who is present only as one of two proxies appointed by the same Shareholder), representative or attorney appointed by a Shareholder has one vote.

7.3 Entitlement to vote by proxy etc

A Shareholder may exercise the right to vote by proxy, attorney or representative.

7.4 Entitlement of proxy etc

A proxy, attorney or representative for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy, attorney or representative was the Shareholder.

7.5 Appointment of proxy

A proxy shall be appointed by notice in writing signed by the Shareholder, the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding one year and the notice shall be in the form of Schedule 2 or in any other form that the Board may from time to time prescribe or accept.

7.6 Production of proxy etc

Any appointment of a proxy, attorney or representative is effective in respect of a particular meeting of Shareholders if, and only if, the following instruments are actually received (which includes receipt of a copy of those instruments by legible facsimile or email transmission) by the Company at its address for service or registered office (or another place notified by the Board) at least 48 hours before the time notified for that meeting:

- (a) in the case of a proxy, the instrument of proxy and, if it is executed by an attorney, the relevant power of attorney or an office copy or notarial certified copy of the power of attorney;
- (b) in the case of an attorney, the power of attorney or an office copy or notarial certified copy of the power of attorney; and

- (c) in the case of a representative of a body corporate, an instrument of appointment executed under the common seal of the body corporate and, if it is executed by an attorney, the relevant power of attorney or an office copy or notarial certified copy of the power of attorney executed under the common seal of the body corporate, or other evidence satisfactory to the Board.

7.7 Effect of incomplete proxy form

An instrument of proxy is not invalid or ineffective merely if any or all of the following applies:

- (a) it does not contain the address of the Shareholder giving it;
- (b) it does not contain the address of the person appointed by it;
- (c) it is not dated; and
- (d) it does not contain a direction to the appointee as to how to vote on any or all items of business.

7.8 Effect of the appointment

An instrument of proxy which is valid and effective except that it does not specify an appointee in respect of any of the Shares of the relevant Shareholder is to be treated as validly appointing the chairman of the meeting of Shareholders to which it relates in respect of all of the Shares of that Shareholder.

7.9 Proxy must vote as directed

Where a Shareholder in a valid instrument of proxy directs the appointee to vote in a specified way in respect of a particular item of business at the relevant meeting of Shareholders:

- (a) the appointee must cast or abstain from casting (as the case may be) a vote on that item of business; and
- (b) the appointee must cast the votes as to which a direction is given by the instrument of proxy in accordance with that direction,

but, if in respect of any vote in respect of that item of business, the Shareholder does not on the instrument of proxy indicate how the appointee is to cast that vote, the appointee may cast, or abstain from casting, that vote as the appointee determines.

7.10 Corporate bodies may act by representatives

A Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

7.11 Multiple appointments

Where the Company has received an instrument of proxy in respect of a Share from a Shareholder the appointment made by that instrument is and remains valid and effective, except that where the Company subsequently receives:

- (a) a power of attorney or office copy or notarial certified copy of a power of attorney entitling the attorney to attend and vote at the meeting, the appointment is revoked;
- (b) intimation in writing either of the revocation of the appointment under the instrument of proxy or of the death of the Shareholder, the appointment is revoked; and
- (c) another instrument of proxy from the Shareholder in respect of that Share, the instrument of proxy bearing the later date (or if the instruments bear the same date, the instrument later received by the Company) is an intimation in writing of the revocation of the appointment under the other instrument.

7.12 Ruling on entitlements and votes

An objection may be raised with the chairman of a meeting of Shareholders as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but that objection may be made only at the meeting of Shareholders or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objection:

- (a) the decision of the chairman is final and conclusive; and
- (b) a vote not disallowed as a result is valid and effective for all purposes.

8. SHAREHOLDER PROPOSALS

8.1 Notice to the Board

A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

8.2 Notice to Shareholders at Company's expense

The Board shall, to the extent reasonably practicable and at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

9. DIRECTORS

9.1 Continuing Directors

The Directors holding office at the date of adoption of this constitution continue in office subject to this constitution.

9.2 Appointment of Directors

Each Shareholder can appoint one Director by resolution of its members for a term not exceeding three years. Each Director's term of office ends after a period of three years.

9.3 Reappointment

Upon the expiration of the term of a Director, the Shareholder which appointed that Director may appoint a replacement or reappoint the same person.

9.4 Removal

A Director can also be removed from office by resolution at any time of the Shareholder who appointed him or her.

9.5 Qualification of Directors

A Director (other than the Managing Director) must be a Project Area Local Resident member. A Director (including the Managing Director) may not be a Member of Parliament.

9.6 Appointment by Board

The Board may at any time (except during the period from the opening to the closing of a meeting of Shareholders):

- (a) appoint any person as a Director to fill a casual vacancy and any Director so appointed automatically retires at the next meeting of Shareholders of the Company and is eligible for reappointment by that meeting under clause 9.3 (and if not reappointed that retirement takes effect at the conclusion of that meeting); and
- (b) appoint any person from Project Developer Services Limited (Developer) or a related entity to attend the board meetings in a non-voting capacity to observe the meetings and, where appropriate and requested, clarify some discussion matters; and
- (c) appoint up to two independent, suitably qualified and skilled individuals as Directors; and
- (d) accept the appoint of a representative from the Mineral Resources Authority (MRA) and a representative from the XXXX Provincial Government (XPG) as Directors.

9.7 Vacation of office

The office of a Director automatically becomes vacant if the Director:

- (a) dies or is adjudged insolvent;

- (b) is not permitted by the Act (or an order made under the Act) to be a Director;
- (c) becomes of unsound mind;
- (d) is removed as a Director under the Act or this constitution;
- (e) fails to attend three consecutive Board meetings without leave of absence from the Board;
- (f) resigns by notice in writing in accordance with the Act; or
- (g) becomes a Member of Parliament.

10. DIRECTORS' REMUNERATION

10.1 Fees of Directors

Directors are only authorised to receive payment consisting of a daily sitting fee of K200 for each day of Board or Shareholder meetings. Except as set out in this clause 10, Directors are not entitled to any other remuneration.

10.2 Expenses of Directors

The Company must pay a Director (in addition to any fee under clause 10.1) all reasonable, pre-authorised expenses including, without limitation, any travelling and accommodation expenses actually and reasonably incurred by the Director:

- (a) in attending meetings (outside the Project Area) of the Board or a committee of the Board;
- (b) on the authorised business of the Company; or
- (c) in carrying out that Director's duties as a Director.

11. DIRECTORS' MATERIAL INTERESTS AND DUTIES

11.1 Definition of Material Interest

"Material Interest" means for the purposes of this clause 11, in relation to a Director, any interest (other than an interest in relation to which the Act provides that a director is not, or is not to be taken to be, interested including, without limitation, an interest to which section 117(2) applies) which would result in the Director being "interested" for the purposes of section 117(1) of the Act.

11.2 Disclosure of Material Interest

Where a Director has a Material Interest the Director shall comply with section 118 by causing an entry to be made in the interests register.

11.3 Failure to disclose Material Interest

Where a Director with a Material Interest:

- (a) does not comply with section 118; and
 - (b) exercises any of the powers referred to in section 122,
- the Director is in breach of his or her duty to the Company.

11.4 Powers of Directors with Material Interest

A Director with a Material Interest who complies with section 118 may do any of the things and exercise all or any of the powers provided for in section 122.

11.5 Director may hold office of Company

Subject to clause 13.4, the Company may appoint a Director:

- (a) to hold any office in, or place of profit in respect of, the Company (except that of Auditor) on terms determined by the Board; or
- (b) alone or by a firm of which the Director is a member, to act in any professional capacity and the Director or that firm may be remunerated for so acting as if the Director were not a Director.

11.6 Directors may act in interests of Shareholder

The Shareholders acknowledge that the Company has been incorporated for the purpose described in clause 2 and, as such, each Director may, when exercising powers or performing duties as a Director, act in a manner which the Director believes is in the best interests of the Shareholder who appointed him or her even though it may not be in the best interests of the Company.

12. MANAGING DIRECTOR

12.1 Appointment of Managing Director

The Board may from time to time appoint one person to be a Managing Director (who may, but need not necessarily, be a Shareholder) either for a fixed term (but not for life) or without fixing a term and on any terms and conditions that it determines.

12.2 Termination of appointment of Managing Director

The appointment of the Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board revokes the appointment (which this paragraph empowers it to do).

12.3 Remuneration of Managing Director

The Board may fix the remuneration of the Managing Director.

12.4 Powers of Managing Director

Subject to the Act, and in particular section 111, the Board may, by resolution passed with no Directors voting against it, from time to time and upon any terms and conditions and subject to any restrictions that it considers appropriate:

- (a) confer on the Managing Director any or all of the powers of the Board (which powers may be conferred so as to be concurrent with, but not to the exclusion of, the powers of the Board); and
- (b) withdraw or alter any of those powers.

13. POWERS OF THE BOARD

13.1 Powers generally

Except as otherwise required by the Act, in particular section 110, or any other applicable law or another provision of this constitution:

- (a) the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board; and
- (b) the Board has all the necessary powers for managing, and for directing and supervising the management of, the business and affairs of the Company,

to the exclusion of any meeting of Shareholders and the Shareholders.

13.2 Appointment of attorney

Subject to the Act, and in particular section 111, the Board by power of attorney may appoint any person to be an attorney of the Company for the purposes, with the powers (being powers of the Board), for the period and subject to the conditions determined by it.

13.3 Contents of power of attorney

A power of attorney under clause 13.2 may, without limitation:

- (a) contain any provisions for the protection and convenience of persons dealing with the attorney as the Board determines; and
- (b) authorise the attorney to delegate any or all of the powers vested in the attorney.

13.4 Reservation of powers to the Company

The Board may only change the principal business of the Company with the consent of Shareholders.

14. PROCEEDINGS OF THE BOARD

14.1 Mode of meeting

The Board may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) which allows each person present to hear and be heard by each other person present, and adjourn and otherwise regulate its meetings as it determines.

14.2 Quorum

The Board may determine the quorum of Directors present at a meeting of the Board necessary for the transaction of business at the meeting:

- (a) which number until otherwise determined, is three; and
- (b) for the purposes of this clause and clauses 14.4 and 14.10, a Director is treated:
 - (i) as present at the meeting by telephone or other instantaneous means of conferring if the Director is able to hear the entire meeting and be heard by all others attending the meeting; and
 - (ii) as not being present at the meeting if that Director is not permitted to be present at it by the Act or clause 11.

14.3 Notice of meeting

Notice of each meeting of the Board:

- (a) must be given to each Director; and
- (b) may be given by telephone or facsimile message,

but the non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

14.4 Place of meeting

Where the Board holds a meeting solely or partly by telephone or other instantaneous means of conferring, the meeting is to be treated as held at the place at which at least one of the Directors present at the meeting is physically located as is agreed by those Directors present at the meeting.

14.5 Period of notice

The Board may determine the period of notice (unless waived by a majority of the Directors to whom notice of a particular meeting is sent) for each meeting of the Board which, until otherwise determined, is 24 hours.

14.6 Convening of Board meeting

A Director may at any time, and the Secretary must on request from a Director, convene a meeting of the Board within one month of the request.

14.7 Appointment of Chairman

The Board may elect one of the Directors to be Chairman and may elect another to be Deputy Chairman for a period of one year. The Board must rotate the positions of Chairman and Deputy Chairman each year. No one Director may hold the position of Chairman or Deputy Chairman for more than one year in any consecutive three year period.

14.8 Chairman of Board meetings

Where the Board holds a meeting and:

- (a) has not appointed a Chairman under clause 14.7 or the Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act; and
- (b) has not appointed a Deputy Chairman under clause 14.7 or the Deputy Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act,

the Directors present at the meeting may choose one of their number to be chairman of that meeting.

14.9 Majority decisions

Every question and resolution dealt with at a meeting of the Board is to be decided by a majority of votes of the Directors who are entitled to be present and to vote and who vote on the question or resolution.

14.10 Votes of Directors

Subject to this constitution:

- (a) each Director present at a meeting of the Board has one vote on every question or resolution at that meeting; and
- (b) if there is an equality of votes on any question or resolution, the chairman of the meeting, if entitled to vote on the question or resolution, may exercise a casting vote in addition to any other vote the chairman may have.

14.11 Exercise of powers by Board

A power of the Board is exercisable only:

- (a) by resolution at a meeting of the Board at which a quorum is present; or
- (b) by a resolution of the Directors under clause 14.12.

14.12 Written resolution of Directors

If all the Directors entitled to receive notice of a meeting of the Board and to vote on a resolution sign a document to the effect that they support the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes treated

as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the document.

14.13 Several documents suffice

For the purpose of clause 14.12:

- (a) two or more separate documents in identical terms each of which is signed by one or more Directors are treated as one document;
- (b) a telex, telegram or facsimile or email message containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

14.14 Validity of acts of Directors

Each resolution passed or act or thing performed or done by, or with the participation of, a person acting as a Director or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person was disqualified or not entitled to perform, vote on or do, the resolution, act or thing, is as valid and effective as if that Director or member of committee had been validly appointed, had validly continued in office, had not been disqualified and was entitled so to perform, vote or do.

14.15 Alternate directors

A Director may appoint another person to attend or vote at Board meetings in his or her place.

14.16 No delegation to committees

The Board may not create, or delegate any of its powers to, any Board committee.

14.17 Other procedures

Except as provided in this clause 14, the Board may determine its own procedures.

14.18 Fourth Schedule not to apply

Except to the extent that any such provision may be expressly adopted in this constitution, the provisions of the Fourth Schedule to the Act shall not apply to proceedings of the Board.

15. SECRETARY

15.1 Appointment of Secretary

The Board may:

- (a) appoint any person to be a Secretary of the Company;
- (b) determine the term of appointment, powers, duties and remuneration of that person as a Secretary;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as a Secretary.

16. COMPANY ADMINISTRATION

16.1 Minutes to be made

The Board must cause minutes to be made of:

- (a) the names of the Directors present at each Board meeting;
- (b) the proceedings and resolutions of each meeting of Shareholders; and
- (c) the proceedings and resolutions of each Board meeting.

16.2 Minutes to be entered

The Board must cause all minutes made under clause 16.1 to be entered in the relevant minute book of the Company.

16.3 Signature of minutes

The minutes of a meeting made under clause 16.1, if appearing on their face to be signed by the chairman of the meeting or the chairman of the next succeeding meeting of the relevant body, are sufficient but (except where this constitution otherwise provides) not conclusive evidence without proof of any further facts of the matters stated in them.

16.4 Custody of Common Seal

The Board must provide for the safe custody of the Common Seal.

16.5 Use of Common Seal

The Common Seal may only be used with the authority of the Board.

16.6 Mode of execution by Common Seal

An instrument is validly executed under the Common Seal where the Common Seal is affixed to it in the presence of:

- (a) a Director; and
- (b) another person who is either a Director, Secretary or a person appointed by the Board for the purpose,

and each of those persons signs the instrument to attest the affixing of the Common Seal.

16.7 Execution of bills and cheques

All cheques, bills of exchange and other negotiable instruments, all orders for payment and all receipts for money paid to the Company, may only be signed for and on behalf of the Company in the manner (which may include the use of facsimile signatures) determined, and by the persons appointed for the purpose, by the Board from time to time.

17. DIVIDENDS AND OTHER DISTRIBUTIONS

17.1 Declaration of Dividends

Subject to the Act (in particular section 50) and clauses 17.7 and 17.8, the Board may authorise the distribution of a Dividend to be distributed to the Shareholders according to their respective rights and interests, determine the property to constitute the Dividend and fix the time for distribution.

17.2 No interest on Dividends

No Dividend bears interest as against the Company.

17.3 Obligation to distribute

Where the Board declares a Dividend under clause 17.1 the obligation of the Company to make the distribution only arises where the Board fixes the time for distribution and that time has arrived and no debt arises in respect of the Dividend until that time.

17.4 Dividend policy

Subject to clauses 17.7 and 17.8, within one month of the Board receiving duly audited financial statements from the Company's auditors, a unanimous decision of the Board is required to authorise any distribution of a Dividend to Shareholders comprising a percentage of the Company's net profit after tax for that financial year as shown in the audited financial statements.

17.5 Settlement of difficulties

The Board may settle any difficulty that may arise in respect of any distribution under this clause 17 as it considers desirable to adjust the rights of all parties and, in particular, may (without limitation):

- (a) round or disregard any fractional entitlement; and
- (b) set the value of each asset to be distributed as money.

17.6 Unclaimed Dividend

All Dividends declared but unclaimed may be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

17.7 Solvency

Distributions can only be made where:

- (a) the Directors have resolved that the Company satisfies the solvency test in accordance with section 50 of the Act;
- (b) the distribution is made to all Shareholders in proportion to the number of shares they hold; and
- (c) the distribution has been approved by ordinary resolution at a meeting of Shareholders.

17.8 Shareholder distributions

The following are not entitled to receive any distribution or other benefit from the Company:

- (a) any Director, except to the extent that he or she can receive some part of a distribution from and with the approval of a Project Area Local Resident Investment Company of which he or she is a beneficiary; and
- (b) any person or entity other than a Shareholder.

17.9 Social responsibility

The Company has a social responsibility to all the Project Area Local Residents to improve the livelihood of all of its current and future tribal members. A portion of the profits generated each year by the Company can be allocated to socially responsible projects that benefit the people of the region. This percentage and specific projects where the distributions are allocated are to be agreed by the shareholders at the Annual General Meetings or by a committee or trust representing all the tribes of the shareholders specifically established for this purpose.

18. NOTICES

18.1 Service

Subject to clause 18.2, any document required to be served by or on the Company may be served in accordance with the provisions of the Act.

18.2 Notices not to be by e-mail

Notices required or permitted to be given by any person under this constitution may not be given by e-mail.

18.3 Binding on others

Any entity entitled to a Share (whether by transfer, operation of law or otherwise) is to be treated as having duly received every notice in respect of that Share which was duly given to the entity from whom that entity derives that entitlement before the entity entitled is entered in the Register as the holder of the Share.

18.4 Signature of notice

The signature to any notice given by the Company may be written or affixed in any way.

18.5 Certificate of Director or Secretary

If a Director or Secretary signs a certificate that a notice was given in the manner set out in the certificate, that certificate is prima facie evidence of the accuracy of the matters set out in it.

19. INSPECTION AND SECRECY

19.1 No right to inspect

No Shareholder is entitled to require discovery of, inspection of, or any information concerning the affairs of the Company, except as provided by the Act or as permitted by the Board.

19.2 Board may permit inspection

Subject to the Act, the Board may determine whether any of the books, accounts and other information of the Company is to be available for inspection by Shareholders and, if so, the extent, time, place and conditions of inspection so permitted.

19.3 Obligation of secrecy

Every officer of the Company must:

- (a) keep strictly secret all transactions and affairs of, the accounts of and all information concerning the Company; and
- (b) if so required by the Board, sign a declaration accepting the obligation of secrecy and undertaking not to disclose any information within the officer's knowledge the subject of that obligation to any person, except in the proper course and performance of the officer's duties, as required by law or as required by the Board.

20. LIQUIDATION

20.1 Power of Board

The Board may authorise the making of an application by the Company for the appointment by the Court of a liquidator to the Company.

20.2 Distribution

Subject to the terms of issue of a Share and clause 17.8, the surplus assets of the Company remaining after payment of its debts are divisible among the Shareholders in proportion to the number of fully paid Shares held by them and, for this purpose, a partly paid Share is counted as a fraction of a fully paid Share equal to the proportion which the amount paid on it bears to the total issue price of the Share.

21. MISCELLANEOUS

21.1 Indemnity

The Company is authorised to indemnify and shall indemnify to the fullest extent permitted by the Act each Director and employee of the Company or a related company:

- (a) for any costs incurred by that person in any proceeding of the kind described in section 140(3); and

SCHEDULE 1

Project Area Local Resident Investment Companies

INVESTMENT COMPANY	TRIBE
X Development Limited	X Tribe
Y Development Limited	Y Tribe
Z Development Limited	Z Tribe

SCHEDULE 2

Proxy Form

(clause 7.5)

PNG XYZ DEVELOPMENT CORPORATION LIMITED (“COMPANY”)

.....

(Name of shareholder)

Of

(Address of shareholder)

(the “Shareholder”), a shareholder of the Company, appoints

.....

(Name of proxy)

Of

(Address of proxy)

or, failing that person, the chairman of the meeting as the Shareholder’s proxy to vote for the Shareholder and on the Shareholder’s behalf at the [special] meeting of Shareholders of the Company to be held on at am/pm and at any adjournment of that meeting or until being not more than one year from the date of appointment.

The proxy is directed to vote in the following manner:

Resolution #:

For / Against / Abstain

(Circle One)

(A mark should be placed in the appropriate box if the Shareholder wishes to direct the proxy to vote in a specified way in relation to the above resolution[s]. If no direction is given, the proxy may vote or not as the proxy sees fit.)

This form must be signed by the Shareholder (in the case of a body corporate under its common seal) or by an attorney of the Shareholder.

Dated: _____

SIGNED for and behalf of the Shareholder
specified above by its duly appointed
attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

THE COMMON SEAL of the Shareholder
(being a body corporate) specified above,
The fixing of which was witnessed by:

Signature of director

Signature of director

Name of director

Name of director

