



**OFFICE OF THE STATE SOLICITOR  
DEPARTMENT OF JUSTICE & ATTORNEY GENERAL  
(COMMERCIAL LAW)**

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**LEGAL-IN-CONFIDENCE**

17 September 2019

Mr. Lucas Alkan  
Head of National Secretariat  
National Secretariat  
PNG Extractive Industries Transparency Initiative  
P.O. Box 1907  
**Port Moresby**  
National Capital District

Dear Mr. Alkan

**Seeking Legal Clearance from State Solicitor for Disclosure of Project Contracts and Memorandum of Agreements for PNG EITI Reports**

1. I refer to your Letter dated 3 September 2019 (**Letter of Instructions**) regarding the above.
2. It is noted from your Letter of Instructions that the PNG Extractive Industries Transparency Initiative (**PNG EITI**) enquiries on the possibility of having my Office give legal clearance to the Mineral Resources Authority (**MRA**) to provide all mining project MOAs, agreements, contracts and such other legal arrangements to be publicly available for EITI reporting purposes.
3. Before progressing further, I must first clarify at the outset that this letter serves as a Legal Advice on the issues raised in your Letter of Instructions and the National Executive Council Decision No. 91/2017 (**NEC Decision**), in particular, item no.7 and is not a letter giving legal clearance.
4. I have reviewed the NEC Decision and note that Item 7 of the NEC Decision directed the Minister responsible for MRA and the Attorney General to ensure that memorandum of agreements are made publicly available for EITI reporting purposes. Further note in your letter referencing the EITI report 2016/2013 requirements to also disclose other Contracts as a Global Standard Requirement under sub-clause 2.4.

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**COMMERCIAL LAW**

*Mining  
Petroleum  
Forestry  
Commercial Contracts  
Commercial Advising*

**COMMON LAW**

*Property Advising  
General Advising  
Employment Contracts  
Property Conveyance*

**INTERNATIONAL**

*Treaties  
Conventions  
Human Rights  
Fisheries  
Intellectual Property*

**PROCUREMENT LAW**

*Procurement Contracts  
Procurement Advising  
Procurement Arbitration  
Public Private Partnership*

5. The EITI Report 2013 proposed the following recommendations with respect to disclosure of confidential information that the PNG Government:
  - a. amends legislation to enable information required for EITI reporting to be disclosed to the Independent Administrator, for the purpose of reporting in the EITI report.
  - b. considers removing confidentiality clauses from contracts with the resources industry, where information is required for EITI reporting. This could be limited to certain elements of the contracts such as:
  - c. amends legislation to enable information required for EITI reporting to be disclosed to the Independent Administrator, for the purpose of reporting in the EITI report.
  - d. considers removing confidentiality clauses from contracts with the resources industry, where information is required for EITI reporting. This could be limited to certain aspects of the contracts such as, social payments, Special tax rates and state interest in the project
6. Noting the above, it is clear that at this juncture, recommendations are subject to legislative changes. Documents such as contracts and licences are protected by confidentiality provisions in Section 163 of the *Mining Act 1992 (MA)*<sup>1</sup>.
7. Under section 163(1) of the MA, the disclosure of confidential information is subject to consultations and approval from relevant licensees or the person(s) disclosing the information, prior to any confidential information being released as required under the MA.
8. There is no legal framework in place that would regulate the usage or disclosure of confidential information and more importantly, the reports recognise the protections and do not seek to breach them. It is clear under paragraph 5 herein.
9. Furthermore, Item 7 of the NEC Decision directed the Ministers responsible for MRA and the Attorney General to make publicly available, MOAs for EITI reporting purposes.
10. Hence, given paragraphs 6, 7, 8 and 9 above, I advise that the MRA can only provide details of project documents such as contracts and licences subject to the provisions of section 163 of the MA.
11. Going forward, we advise that, in accordance with NEC Decision No. 7, MRA is able to provide copies of:
  - a. MOAs; and
  - b. Other contracts and other information will be subject to section 163 of the MA.


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<sup>1</sup> Section 163(1) of Mining Act - Information disclosed under this Act to the Minister, to an officer of the Department, or to a member of the Board shall not be disclosed to any person who is not an officer or employee of the Department without the prior written approval of the person who provided that information, except-

- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State; or
- (d) to the extent necessary for the Director to give advice to the National Executive Council, other Departments and the Central Bank on a confidential basis.

12. Should you require further clarification, you can contact me on 301 2882.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'DANIEL ROLPAGAREA', with a small 'u' written below the first few letters. The signature is somewhat scribbled and overlaps the printed name below it.

**DANIEL ROLPAGAREA**  
Acting State Solicitor

Copy: Managing Director  
Mineral Resources Authority

Copy: The Secretary  
Department of Mineral Policy & Geohazards Management

*This letter is confidential and subject to legal professional privilege. Unauthorized disclosure of the existence or content of this letter is strictly prohibited.*

