Property Tenure/Ownership

Overview
The Land Act is the main legislation that regulates dealings in land in Papua New Guinea (PNG). It provides that all land in PNG, other than customary land, is the property of the state subject to any estates, rights, titles or interests in force under any law. The Land Act provides for the mechanisms by which the state may:

- acquire land (including customary land); and
- grant leases in respect of any land.

97% of land in PNG is held under customary ownership for which there is no recorded title. Only the state may acquire customary land from customary owners.

All other land is alienated land held by the state (i.e. land that has at some time in the past been acquired by the state) and is administered under the Land Act.

Non-citizens are not allowed to own freehold land in PNG.

Most dealings in land are by way of leasehold from the state via state leases. The usual practice is for a long-term (typically 50 to 99 years) leasehold title to be conferred. Although there are exceptions, the shorter 50-year term is common for land recently acquired or leased by the state. On expiration, the state may, but is not obliged, to grant a renewed lease. If the state does not grant a renewed lease upon expiration, it must pay the compensation for any improvements made to the land.

State Land in PNG

State Leases

Indefeasible title
State leases are registered under the Land Registration Act (‘LRA’). Upon registration, the registered proprietor is granted indefeasibility of title, similar to the ‘Torrens’ registration of title systems adopted in Australia under which a land title serves as a certificate of full, indefeasible and valid ownership of the land.

Exceptions to indefeasibility of title
There are some exceptions to indefeasibility of title. These exceptions are listed in Section 33 of the LRA and include such things as fraud or an incorrect description of the land or of its boundaries.

However, the PNG courts have made rulings that have broadened the exceptions to indefeasibility. In Emas Estate Development Pty Limited v Mea [1993] PNGLR 215, the Supreme Court ruled that the ‘fraud’ exception to indefeasibility can be applied to situations where there is evidence of administrative error affecting the land.

Encumbrances
It is also possible to register encumbrances, such as a mortgage, on title which, by virtue of registration (and except in limited circumstances), take priority over unregistered dealings.

Subleases of State Leases
A sublease of a state lease is permissible and provisions for the registration of subleases exist. Registration is required if the term of the sublease is for a period greater than three years.

Licenses, customary land and compensation payments
The LRA also deals with:

- granting of licenses;
- disposal and acquisition of customary land; and
- regulation of compensation payments.

Ministerial approval
The LRA specifies the dealings in land that require ministerial approval.

Any dealing involving land being granted, or transferred to, a foreign person or a corporate entity, requires approval by the Minister of Lands and Physical Planning prior to registration.

Lease-Leaseback Scheme
PNG has a lease-leaseback scheme which is designed for the owners of any customary land to develop their land for special agricultural or other business projects.

Owners of customary land will be able to participate in the scheme where the Minister for Lands and Physical Planning is satisfied that the owners of the customary land have:

- been identified; and
- expressed their intention to develop the customary land.

Operation of lease-leaseback scheme
Under the Land Act, customary landowners (either in their own name, or through a special purpose corporation or incorporated land groups (‘ILG’), which acts as an agent for the customary land owners) may only dispose of their land to the state.

Under the lease-leaseback scheme, the state (represented by the Minister for Lands and Physical Planning) grants a special agricultural or business ‘leaseback’ to one or more ILGs in their capacity as agent for the customary landowners.

Land Act provisions
The lease-leaseback scheme is specifically recognized by the Land Act.

The Land Act provides that the relevant minister may lease customary land for the purpose of granting a special agricultural
and business lease of the land. Where the relevant minister leases customary land, there must be ‘conclusive evidence’ that the state has good title to the lease. An instrument of lease, in the approved form, executed by or on behalf of the customary landowners, is such conclusive evidence.

If it is determined that the customary landowners did not sign or authorise signing the lease, then title cannot pass. In these circumstances the leaseback is also ineffective, as is any other dealing in the land.

Term of leasebacks
The term of the leaseback under the lease-leaseback scheme is determined by the customary landowners. Typically it is for a period of 50 years however it can be granted for a period of up to 99 years. The Land Act does not permit an extension to the term of the original leaseback.

Right to deal with the land
The holder of the head lease may deal with the land by way of sublease, transfer or other dealing to a third party and on commercial terms.

The sublease may be granted without the need for public tender.

Any such dealing (unless to a citizen) requires the approval of the Minister for Lands and Physical Planning. The efficacy of this process is dependent upon the:

- customary landowners being identified; and
- persons who execute the documents being established as the authorized representative of the customary landowners.

The identification process referred to above can lead to disputes. Where the Land Act and the LRA have been complied with, such disputes do not affect the validity of the title.

Indefeasibility of title
Title conferred by a leaseback (being a registered title) is subject to the exceptions to indefeasibility, such as the fraud exception as established by case law.

The Department of Lands and Physical Planning administers both freehold and leasehold land. It also facilitates the registration of ILGs in relation to customary-owned land and holds a database registry for the ILGs.

Horizontal subdivisions
There is no strata title scheme in PNG.

Instead, the company title scheme is practiced wherein the land is owned by a company and the ownership and ‘purchase’ of a unit is by way of purchasing shares in the company. As such, the interests of each individual unit owners are registered by the Registrar of Titles as subleases to the head lease.

Major Property Legislation
The principal land laws in PNG are:

- Land Act 1996;
- Land Regulation 1999;
- Land Registration Act; and
- Land Registration Regulation.

Operational Requirements for Foreign Corporations
All foreign investors carrying on business in PNG must be registered with the Investment Promotion Authority (‘IPA’).

Foreign companies can be registered in PNG as either a:

- branch of an overseas company; or
- PNG incorporated company.

There are differences between the administrative requirements pertaining to the incorporation of a local company in PNG and the registration of an overseas company in PNG.

There are no substantial differences in terms of the administrative complexity and the initial set up and ongoing costs.

Foreign investment in PNG is regulated by the Investment Promotion Act 1992 (‘Investment Promotion Act’). Under the Investment Promotion Act, foreign enterprises are prohibited from carrying on business in PNG unless they have been certified by the IPA. A ‘foreign enterprise’ refers to an enterprise which is more than 50% owned or controlled by non-citizens of PNG.

Whether an investor is carrying on business in PNG (and is thereby required to be certified by the IPA) is a question of fact. The carrying out of certain isolated transactions in PNG do not by themselves result in an investor being regarded as carrying on business in PNG.

If a foreign investor carries on business in PNG without being certified, it commits an offence. In addition, in these circumstances, a court may declare the contracts entered into by the foreign investor with other enterprises in PNG to be void.

Foreign Investment Incentives
The PNG government generally encourages foreign investment. Apart from certain ‘cottage industries’ reserved for citizens, foreign investors generally may invest in any type of business in PNG.

The IPA provides assistance for foreign investors. It is established to promote investment in PNG. The IPA offers a business investment guideline that includes advice on such areas as the business
environment, investment opportunities, priority areas for investment and advice on applicable government approvals. There are a range of similar private sector publications such as ‘business advantage’.

Restrictions on Foreign Property Ownership
Foreign companies and individuals are not permitted to acquire customary land or freehold land. Foreign companies and individuals must obtain ministerial approval from the Minister for Lands, when they are a party involved in the disposing of, or a contract or agreement to dispose of, a leasehold estate. Under the Land Act 1996, this type of dealing is defined as a ‘controlled dealing’. A controlled dealing is void and of no effect unless it has been approved by the minister.

Foreign Exchange Controls
PNG has a system of foreign exchange controls regulating the inflow and outflow of foreign exchange.

However, the system has been progressively liberalized in recent years, and only certain activities still require approval—for example, a resident establishing an offshore bank account and providing a guarantee to a non-resident.

Foreign exchange transactions no longer require prior approval provided those transactions are reported to the regulator, the Bank of Papua New Guinea.

Taxation
The principal taxation laws in PNG are:

- Income Tax Act 1959;
- Goods and Services Tax Act 2003;
- Customs Tariff Act;
- Stamp Duties Act;
- Land tax laws; and
- Land rates.

Taxes on Possession of Real Estate
Land tax is payable on an annual basis on the unimproved value of alienated land. Land tax rates vary.

If the vendor of land is liable to pay land tax, the general practice is for the land tax to be adjusted between the vendor and the purchaser upon completion.

Local-level governments which function similar to city or municipal councils also levy taxes to fund the provision of services. These are commonly referred to as ‘rates’ and are charged to the proprietors of the land on the basis of land values. Rates vary between the different urban areas.

Taxes on Acquisition and Transfer of Real Estate Stamp Duty on Land Transfers
Stamp Duty
The Stamp Duties Office within the Internal Revenue Commission administers stamp duty at varying rates on transfers or agreements to transfer land, shares and certain other property transferred with the land.

The rate of stamp duty for non-Citizens is charged according to the higher of the consideration paid or the value of the land. The rates vary from a scale of 2% where the value is PGK 35,000 (USD 13,300) or less, to 5% where the value of the land exceeds PGK 140,000 (USD 53,200).

Stamp duty is usually payable by the purchaser by agreement.

Stamp duty is payable within two months after the contract for sale is signed. Penalties can apply for late payment. The land transfer cannot be registered until duty has been paid.

Land-rich/Landholder Duty
Land-rich, or landholder duty, is applied to the acquisition of shares or units in a land holding private corporation. A liability for landholder duty arises when a relevant acquisition is made. A ‘relevant acquisition’ is made when a person acquires an interest in a landholding private corporation that is, of itself, a majority interest in the corporation or, when aggregated with other interests in the corporation held by a person or associated persons, results in an aggregation which amounts to a majority interest in the corporation; or that person or persons having a majority interest then acquires a further interest in the corporation.

Landholder duty is calculated on the value of the land. The rates applicable are the same as those which apply to land acquisition and transfers.

Landholder duty payable must be paid within 60 working days after the liability to pay it arises.

Lease Duty
Stamp duty is chargeable for leases. Usually the tenant pays the stamp duty.

Stamp duty is calculated from the accumulative total of the annual rental and the increases in the Consumer Price Index (‘CPI’) of 5% (if CPI is not provided in the lease) over the term of the lease. The rates of stamp duty for leases are as follows:

- Leases 12 months to less than five years:
  - PGK 5 (USD 1.90) for the first PGK 240 (USD 91) of the rent for the lease period then 0.4% is added for the remainder.
• Leases five years or more:
  - PGK 10 (USD 3.80) for the first PGK 240 (USD 91) of the rent for the lease period then 1% is added for the remainder.

Capital Gains Tax
There is no capital gains tax in PNG. However, the buying and reselling of land for profit-making purposes can be taxable as ordinary income.

Real Estate Investment Trusts
There are no public real estate investment trusts in PNG. Normally, public property investments would be structured by way of public share offer.
## Common Terms of Lease for Tenancy Agreements

<table>
<thead>
<tr>
<th><strong>Unit of Measurement</strong></th>
<th>Square meters</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rental Payments</strong></td>
<td></td>
</tr>
<tr>
<td>Rents</td>
<td>Quoted in PGK/sqm/year (net area)</td>
</tr>
<tr>
<td>Typical lease term</td>
<td>Generally three to five years</td>
</tr>
<tr>
<td>Frequency of rent payable (in advance)</td>
<td>Monthly</td>
</tr>
<tr>
<td>Security of Tenure</td>
<td>For the duration of the tenancy</td>
</tr>
<tr>
<td>Does tenant have statutory rights to renewal?</td>
<td>No</td>
</tr>
<tr>
<td>Basis of rent increases or rent review</td>
<td>Open market rental value at option or midway through term. During the term there is usually an increase linked to the Consumer Price Index.</td>
</tr>
<tr>
<td>Frequency of rent increases or rent review</td>
<td>Annual ‘ratchet’ increases</td>
</tr>
</tbody>
</table>

### Service Charges, Operating Costs, Repairs & Insurance

| Responsibility for service charge/management fee | To be paid monthly in advance; net basis. Tenant will be responsible for their proportion of the total operating costs; gross basis. Tenant will only be liable for any increase in outgoings above the base year |
| Car parking | |
| Office       | Separate monthly lease for an additional rent |
| Industrial   |Included in the lease |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Tenant |
| Responsibility for building insurance | Landlord (charged back via service charge) |

### Disposal of Leases

| Tenant subleasing & assignment rights | Generally full assignment to third parties is accepted, subject to landlord’s approval |
| Tenant early termination rights | Only by break clause |
| Tenant’s building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: Jones Lang LaSalle