



**BOUGAINVILLE**  
**REGULATORY FRAMEWORK IN THE**  
**MINING SECTOR**

**BOUGAINVILLE REVENUE AND TAX SUMMIT**  
**27-29<sup>th</sup> September 2017**

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**Department of Minerals and Energy Resource**

# OUTLINE OF PRESENTATION

## 1.0 BACKGROUND

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1.2 Development of the Bougainville Mining Policy, Legislative and Regulatory Framework

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# 1.0 BACKGROUND

- **Development of Mineral Policy, Legislative and Regulatory framework for Bougainville and the transfer of Powers and functions in Mining, Oil and Gas to ABG is in line with the Autonomy arrangements agreed to under the Peace Agreement between ABG and the National Government**
- **Amendments were made to the National Constitution to allow for the transfer of certain powers and functions to Bougainville under those Autonomy Arrangements agreed under the Peace Agreement which identified almost 90% of all powers currently exercised by GoPNG for transfer to the ABG.**
- **Mining Oil and gas were identified as an important fiscal self reliance power and function that needed to be transferred quickly to assist ABG with its political roadmap**
- **This was than made possible by the initial Creation of a Separate Department under the ABG administration responsible for Mining, oil and gas matters which was tasked to develop and transfer the Mining oil and gas powers and functions under an agreed strategic framework between ABG and the Nat Govt..**

# **Bougainville Mining Policy, Mining Legislative and Regulatory Framework Development**

## **PROGRAMS**

- 1. Transitional Act (passed and certified on 08<sup>th</sup> August 2014 and gazetted Commencement of the Act on 08<sup>th</sup> September 2014)**
- 2. Permanent Bougainville Mining Policy, Mining Act and Regulations.**
  - I. Bougainville Mining Act 2015, passed March 2015**
  - II. Bougainville Mining Regulations Approved March 2016**

**These two programs are within Steps 4 of the 15 steps strategic framework as agreed under the Alotau MOU of 31<sup>st</sup> March 2008**

# **1.1 - Department Of Minerals and Energy Resources (DOMER)**

- 1. Created as a Division of the ABG with a CEO and a Minister in 2006 with an initial structure of 28 positions for the delegation, development and transfer of Mining Oil and Gas powers from the Nat Govt to ABG**
- 2. Established in 2009 as Department of Mining after various approvals at NEC and BEC**
- 3. Absorbed into the ABG Public Service structure during the 2014 ABG restructuring process with a new structure for 92 positions approved under the 2014 restructure process.**

# 1.1 Department Of Minerals and Energy Resources (DOMER)

SECRETARY

DEPUTY SECRETARY

DIRECTOR  
GEOLOGICAL  
SURVEY

DIRECTOR  
DEVELOPMENT  
COORDINATION

DIRECTOR  
REGULATORY  
OPERATIONS

DIRECTOR  
GEOHAZARDS  
MANAGEMENT

DIRECTOR  
CORPORATE  
SERVICES

# DOMER's vision for a world-class minerals sector is achievable through collaboration

## VISION:

*By 2022, Bougainville will have a Sustainable and Equitable Mineral and Energy Sector and an effective Geohazards Management System.*

## MISSION:

To improve quality of life and safety of our people in close collaboration with global and local partners through the development of our mineral and energy sector and the reduction of geological risks.

## 2.0 MINERAL POLICY INITIATIVES

### Background

- Part XIV of the National Constitution of Papua New Guinea provides the basis for the distribution of powers between the National Government and the ABG. Section 290 defines the functions and powers that are available to the ABG and these include the regulation of land, natural resources and mining. In accordance with Part XIV, the Constitution of the Autonomous Region of Bougainville provides the following guidance for the ABG in its regulation of the mineral sector:

*Section "23. THE LAND AND NATURAL RESOURCES.*

*(1) The laws and policies of Bougainville shall be directed towards the recognition of customary rights of the People of Bougainville in relation to the land and the sea and natural, mineral and oil resources of Bougainville and any law relating to the development of such resources shall take that into account.*

*(2) The utilization of the land and the sea and natural resources of Bougainville shall be managed in such a way as to meet the development and environmental needs of present and future generations of the People of Bougainville and the Autonomous Bougainville Government shall take all possible measures to prevent or minimize damage and destruction to land, seas, air and water resources from pollution or other causes."*



# 2.0 ABG MINERAL POLICY INITIATIVES

The mining of minerals resources in the Autonomous Region of Bougainville has the potential to accelerate the development of the Region and to provide a basis to achieve sustainable growth & development. To achieve its vision, the ABG has identified the following class of Objectives.

1. Those Policy initiatives that go with Mineral Ownership that empowers Landowners take full ownership responsibility and full benefits through participation, equity and Royalties from any mineral development in Bougainville.
2. Policies that strengthens the ABG regulatory process to achieve an healthy, environment friendly sustainable mining industry considering the future generation as stated in the vision and mission statements

## 2.1 Major Policy shift - Mineral Ownership

Elsewhere in Papua New Guinea, pursuant to the National Government Mining Act, minerals are owned by the State. The signing of the Bougainville Peace Agreement in 2001 provided the initial step to implement a different ownership system in Bougainville. Article 117 of the Agreement provided for a transfer of State assets to ABG. This concept was formalised in Section 298 of the National Constitution which states:

*“...the National Government shall transfer to the Bougainville Government, at the same time as the transfer of a function or power, such assets and land as are associated with the functions or power.”*

**With the coming into force of the Bougainville Mining Act, all minerals existing on, in or below the surface of land in Bougainville ceased to be the property of the State of Papua New Guinea. Instead, mineral ownership is established depending on who owns the land. All minerals existing on, in or below the surface of any customary or alienated land in Bougainville are the property of the owners of the land. All minerals existing on, in or below the surface of any land in Bougainville that is not customary or privately held alienated land are the property of the ABG.**

The role of the ABG is to govern the exploration and mining of minerals regardless of who owns the minerals. It is for this reason that the prior informed consent of landowners is necessary before the ABG may grant a mining lease. The Bougainville Mining Act provides that mineral ownership passes from the landowner, be it a customary landowner or the ABG, to the miner at the time the mineral is severed from the land.

## 2.1 Major Policy shift -RIGHTS AND RESPONSIBILITIES due to Mineral ownership

### AUTONOMOUS BOUGAINVILLE GOVT.

- Exclusive Power to grant Tenements
- Distribute Mining Revenues
- Exercise of Exclusive Powers
- Protect landowners and their Resources
- Protect Investment

### LANDOWNERS

- Free Equity and Royalty
- Right to refuse entry to Exploration license area
- Right to refuse the grant of a Development license (ML,QL LMP)
- Preferential Participation in employment, training, business and other opportunities arising from LSML

## 2.2 OTHER POLICY INITIATIVES

- To establish an internationally competitive, stable and conducive business climate to attract and sustain foreign and local mining sector investment within the context of the Bougainville's vision of its future development.
- Obtain and maintain social acceptance through consultative and inclusive processes
- Community Mining Licensing (alluvial Mining) by Community governments
- Two Mine limit
- Gold dealing
- To encourage the development of Bougainville's undersea mineral resources in an environmentally sound and socially acceptable way
- To encourage the commercial mining of building materials, whether obtained from the on-shore or off-shore, subject to compliance with regulatory requirements and obtaining a quarry lease.
- Emphasis on Mine closure planning during ML application stage
- To ensure that women are involved in all aspects of the mineral sector – Bougainville being a 90% Matrilineal society

## 2.3 Uniquely Bougainvillean

- Mineral Ownership - Minerals owned by traditional landowners as apposed to the state, as in the National Mining Act
- Community Mining Licensing (alluvial Mining) by Community governments – CML granted, managed and regulated by community governments (COEs/Village Assemblies)
- Obtain and maintain social acceptance through consultative and inclusive processes – Partners recognised after relationships are built with Landowner approval
- Two Mine limit – Any two large project at any one time

## 2.4 EXPECTED OUTCOMES

The overall goals of this Mining Policy can be expressed in terms of broad-based development, growth and poverty reduction and the assumption of mineral sector governance by the ABG. In the end, the performance of the ABG needs to be measured by reference to its contribution to these broad goals.

The impact of the minerals sector on the ABG goals will be assessed in terms of its contribution to:

- 1) social stability,
- 2) self-sufficiency,
- 3) capable and efficient regulation,
- 4) the creation of sustainable employment,
- 5) the improvement in social and physical infrastructure,
- 6) the development of ancillary businesses and the stimulation of new economic activities,
- 7) positive managed impacts on the environment,
- 8) positive impact on local communities,
- 9) positive impact on landowners,
- 10) the improvement in human capital, and
- 11) revenue earnings.

## **2.5 What is in the Bougainville Mining Act**

- Tenement types
- Officers and their roles
- Concepts Captured
- Agreements and Plans

# Tenement types

Tenement	Term	Purpose	Granting Authority
1. Reconnaissance	1 year	Preliminary Exploration	Minister
2. Exploration	5 years	Exploration	BEC
3 Mining Lease	20 years	Development- Small Scale	BEC
4. Mining Lease	20 years	Development- Large Scale	BEC
5. Quarry Lease	10 years	Mining of Quarry minerals	BEC
6. Artisanal Mining lease	5 years	Alluvial Mining	Minister
7. Community Mining Licence	1 year (Reserve area 5 years)	Non mechanized alluvial mining	COEs and VAs
7. Lease for Mining Purpose	As per the associated Development lease	Leases associated with Development leases	BEC
8. Mining Easements	As per the associated Development lease	Corridor to allow services to mine development	BEC
9. Channel and Dredging Permit	To be determined by Minister	Excavation of Channels using dredging	Minister



# Officers of the Act and their responsibilities

<b>Officer/Office</b>	<b>Responsibility</b>	
<b>BEC</b>	<b>Approve and Grant</b>	<b>Political</b>
<b>MINISTER</b>	<b>Grant</b>	<b>Political Head</b>
<b>MAC</b>	<b>Approve and endorse</b>	<b>Advisory</b>
<b>SECRETARY</b>	<b>Director of the Act</b>	<b>Administrative</b>
<b>REGISTRAR</b>	<b>Point of contact</b>	<b>Administrative</b>
<b>CHIEF WARDEN/WARDENS</b>	<b>Warden Courts/Hearings</b>	<b>Administrative</b>
<b>Officers</b>	<b>Duties to implement/enforce</b>	<b>Administrative</b>
<b>Police/Courts</b>	<b>Assist to enforce implementation</b>	<b>Administrative</b>

# Summary of Concepts

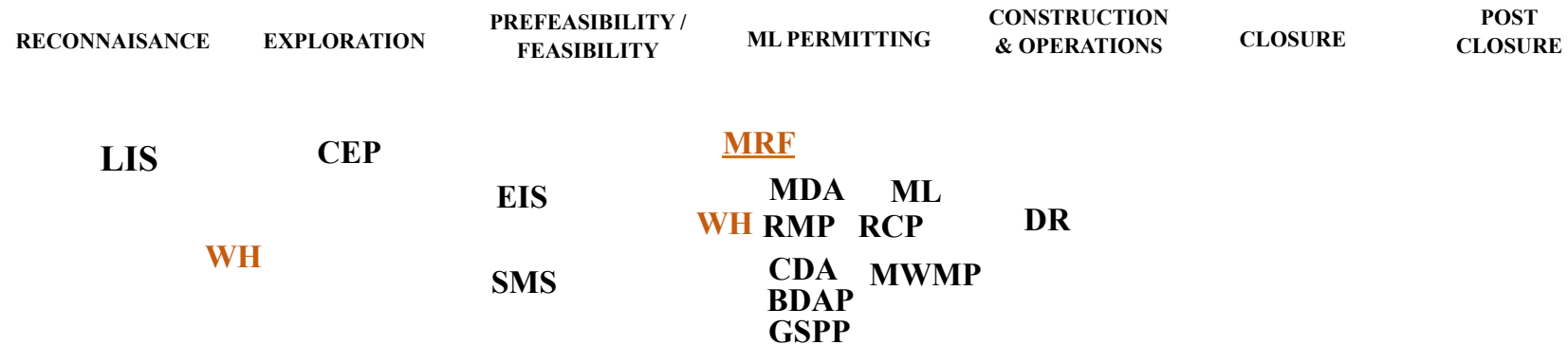
New Concepts	transitional	Permanent
❖ Mineral Ownership by Customary Landowners	✓ Yes (new)	✓ Yes (new)
❖ Customary Landowner have right of Veto in Grant of Exploration License Applications	✓ Yes EL applic,stg	✓ Yes area specific
❖ Landowner have rights to withhold consent in Grant of Development Tenements (All Mining Leases types)	No	✓ yes
❖ Competitive Tendering	✓ yes	✓ yes
❖ Reconnaissance license	✓ yes	✓ yes
❖ community Small Scale Mining License (Issued by COEs at VA level)	No	✓ Yes (new)
❖ Gold Dealing	✓ yes	✓ yes
❖ Regulatory control with the Mining Safety Act giving ABG the Authority to inspect and control gold refining	✓ yes	✓ yes
❖ Does not recognize MRA ACT, Mining ACT 1992, BCA and Tenement Provisions, NO SML	✓ yes	✓ yes
❖ Controls number of major mining projects on Bougainville (only 2)	✓ yes	✓ yes
❖ Equity Participation and Royalty and benefit sharing provisions	No	✓ Yes ✓ yes

# Agreements and Plans for Participation

PROPONENT	ABG	LANDOWNERS
Mine Excess Agreement	Landowner Identification Study	Landowner Identification Study
Compensation Agreement	Social Mapping Study	Social Mapping Study
Landowner Identification Study	Compensation Agreements	Compensation Agreements
Social Mapping Study	Employment and Training Preference Plan	Employment and Training Preference Plan
Prefeasibility or Feasibility Study (Bankable)	Good and Services Procurement Plan	Good and Services Procurement Plan
	Business development Assistance Plan	Business development Assistance Plan
	Prefeasibility or Feasibility Study	Mine Waste Management Plan
	Mine Site Plan	Resettlement Management Plan
	Mine Waste Management Plan	Community Development Agreements
	Resettlement Management Plan	Mineral Resources Forum
	Community Development Agreements	Rehabilitation and Mine Closure Plan
	Mineral Resources Forum	
	Rehabilitation and Mine Closure Plan	

# MINING CYCLE, Agreements and Plans

Project cycle starting from exploration - development - Mine closure



## LEGEND

**LIS – Landowner Identification Study**  
 -to establish relations with LO’s.  
 -enter into “Access Agreement”  
 -Registration of LO permission Agreement with Registrar

**CEP – Community Engagement Plan**  
**EIS – Environmental Impact Statement**  
**SMS – Social Mapping Study**  
**MDA – Mine Development Agreement**  
**ML – Mining Lease**  
**WH – Warden Hearing**

## **MRF – Mineral Resource Forums**

-stakeholder consultations regarding terms and conditions of proposed operations  
 -to achieve agreement on mine related socio-economic and environmental issues including grievance mechanisms, compensation, resettlement, waste management, employment and training, business opportunities, benefits and equitable sharing, etc...

**CDA – Community Development Agreement**  
**RMP – Resettlement Plan**  
**RCP – Rehabilitation & Closure Plan**  
**MWMP – Mine Waste Management Plan**  
**GSPP – Goods and Services Procurement Plan**  
**BDAS – Business Development Assistance Plan**  
**DR – Development Royalties**

# 3.0 UPDATE ON WHERE WE ARE

Dates	Events	Outcomes
June 2010	First Workshop on Mining held in Kuri Lodge	Initiation of the power transfer process and Panguna Negotiations roadmap
August 2014	Enactment of Transitional Mining Act	Transfer of Mining Powers from National Govt to ABG
March 2015	Enactment of Bougainville Mining act	Additional Issues captured, Benefit sharing, participation, Mine closure
March 2016	Approval of Bougainville Mining Regulations	Allow Implementation of the BMA
December 2016	Partial Lifting Decision on Moratorium on three areas in Bougainville, Tore, Isina java Tailings corridor	Tenement applications for those areas within Bougainville. Lifting of the 1971 Moratorium on exploration and Mining in Bougainville
March 2017	Opening of the Mining industry in Bougainville with first tenement licence applications lodged	Bougainville Mining Industry opens
August 2017	First Warden Hearing at Tinputz	First Warden hearing in Bougainville over land untouched since 1971

# 3.1 Alluvial Small Scale Mining Sector

- **In absence of Regulatory Control in the Mining Sector in Bougainville, Operations within the Small Scale Mining Sector in Bougainville Started after the Bougainville Crisis as a means of alternative cash generation activity for locals or indigenous Bougainvilleans**
- **The SSM industry has grown from strength to strength with a current estimate of K80m to K100m worth of alluvial gold taken out of Bougainville per annum**
- **There are six to eight major alluvial mining sites or districts within Bougainville with an estimate of not more than 5000 participating either fulltime or on a seasonal basis**

# 3.1 Alluvial Small Scale Mining Sector

**Development through:**

- I. Community Mining License – Non mechanised**
- II. Artisanal Mining Lease – Semi to Mechanised to full Mechanization**
- III. Small Scale Mining Lease (Mining Lease)**

## 3.2 Large Scale

- **Panguna is the only Exploration license currently held by BCL over the Former Panguna Special Mining Lease area which was granted under Bougainville's Mining Law**
- **All other areas under Moratorium until March 2017 where three areas namely, Tore on the North, Isina on the Central and south region and Jaba covering the Panguna Tailings Corridor, are now under tenement applications**



# 3.3 Current Potential Projects

1. Panguna – Under negotiation, Exploration License BCL
2. Tore, Isina, Jaba – Tenement applications 4 EL applications 4 AML applications
3. Manetai Limestone
4. Small Scale Mining Sector

# 4.0 Mining Benefits

4.1 ABGs Role

4.2 Benefits in the Bougainville Mining law

4.3 Royalties

4.4 Equity participation

4.5 Equity participation – Panguna Project under BCL

4.6 Participation under various Agreements and Plans

4.7 Tax initiatives

# 4.1 Major Policy shift - ABGs ROLE

Autonomous Bougainville Governments Role through the Bougainville Mining Law is to:

1. Protect its People and be a custodian/ and or Guardian of their rights and encourage the development of their resource through environmentally friendly, and sustainable management manner considering the future generations of Bougainville in consideration of the Policy objectives captured in the vision statement thus, *“The mineral resources of the Autonomous Region of Bougainville will be developed in a regulated, equitable manner that respects cultural, environmental and landowner values and that will result in broad-based sustainable growth and socio-economic development”*
2. Make the AROB a conducive environment for investment including the protection of its investors and partners and other stakeholder in the Mineral sector

# 4.1 ABGs ROLE

## EXCLUSIVE POWER OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT

1. Grant and Manage Tenements
2. Distribute Mining Revenues – has the exclusive power to determine the amount and the distribution of revenue from mining development

# **ABG - Initial Questions Asked**

**Should the ABG have a working equity ownership option and risk its money?**

**(option to buy shares)**

- **Not provided for in the mining policy**
- **Investors will view this negatively**
- **Will delay or complicate the financing of projects**
- **Mining is high risk**
- **Can Bougainville realistically expect to raise the funds to buy an interest**
- **Which types of tenements (artisanal, quarry, small-scale mining license, large scale mining license?)**
- **Up to what percent of ownership?**
- **Valuation method?**

**History in PNG:**

**OK Tedi, yes; Panguna, yes; Lihir, no; Porgera, no; Ramu, no; Tolukuma, yes; Simberi, no; Hidden Valley, no; Wild Dog, no)**

## 4.2 Benefits in the Bougainville Mining Act

Payment	Who's entitled	Purpose
1. Fees	Landowners, ABG	Fees other than described below (Land Access fee, tenement application fees, etc..)
2. Annual Rents	Landowners,	For MLs, QL, MEs, or LMPs
3. Royalties	Landowners, ABG, Domer (production levy)	% of Mineral Sales Revenue L/O 1.5%, L/O CDA 1.25%, ABG 1.25%, Levy 0.5% Health & Educ 0.5%
4. Security	ABG	Bond fee by tenement recipient to be refunded
5. Equity	Landowners, ABG	Landowner and ABG equity Participation L/O 5% free+ additional 5% option, ABG 20% optional
6. Fines	ABG	Breaches of any provisions under the Act

# ABG Fees under the Mining Act Schedule 2 of the Regulations

Tenement	Application Fee
Reconnaissance License	K10,000
Exploration License	K20,000 , K40,000 incl.os
Artisanal Mining Lease	K 10,000
Mining Lease ( Large scale)	K1,000,000
Mining Lease (small Scale)	Up to 2 square km K25000 Up to 3 square km K50,000
Quarry Lease	K10,000
Dredging Permit	K20,000.

# Landowner Fees under the Mining Act Schedule 5 of the regulations

Activity	Fee	Activity	Fee
Campsite Temp.	10man K500/mnth >10 man K1200	Access road	K500/km
Campsite Perm	10man K1200/mnth >10 man K2500	Sand/Gravel	K5/cubic meter
Weather Station site	K100/mnth	Hand Auger soil samle	K100/sample
Sanitation Holes	K100/hole	Gridding	200/km
Econ trees/Timber	As per Valuer Generals rates	Pits and Trenches hand dug	K100/m3
Helicopter Pads	As per Valuer Generals rates	Trenches mech. excavator	K500/m3
Drill Sites	With Conc base 10000/ hole Wthout Conc.base 15000/ h	Trench Buldozed	KK1000/m3



## 4.3 Royalties

### **Landowner:**

Rent (Kina per square hectare)

Compensation for actual damages

Landowner's royalty (1.50 % of sales revenue)

Community development agreement direct expenditure (1.25 % of sales revenues)

### **ABG:**

Regional development royalty (1.25 % of mineral sales revenue); can be expended by ABG on infrastructure agreed with Councils of Elders, allocated in an equitable manner throughout Bougainville)

Production levy for operations budget for Mineral sector development (0.5% of mineral sales revenue)

Health and Education Services 0.5%

**(If the combined Bougainville take exceeds around 5% of sales revenue, it is less probable that mines will be developed. No mines equals no revenue for anyone)**

## 4. Equity Participation

### **LANDOWNERS**

5% free equity share (5% of declared dividends. In early years no dividends)  
+5% additional available for acquisition + 17.4 % with recent CRA offloading.  
Currently 17.4% - 5% free in law equals to 12.4% the land owners can fund or dilute to attract a strategic JV partner

**AUTONOMOUS BOUGAINVILLE GOVT** 20% right to elect to exercise the right to acquire a working equity ownership interest in large scale mining project within 60 days of registration of ML application.

If ABG is not able to obtain the necessary finances to acquire the 20% within 180 days from the date of registration of the ML application, the applicant company is no longer obliged to make available equity ownership interest for ABG

Currently 36.4% with recent CRA share offloading – 20% commercial option equals to 16.4% could be used by ABG to dilute and attract a strategic JV partner

# 4.5 TOTAL BENEFIT SHARING IN THE PANGUNA MINE UNDER BCL

## LANDOWNERS

5% free equity share (5% of declared dividends, in early years no dividends)

+5% additional available for acquisition

Rent (Kina per square hectare)

Compensation for actual damages

Landowner's royalty (1.5 % of sales revenue)

Affected Communities:

Community development agreement (CDA) direct expenditure (1.25 % of sales revenues)

## AUTONOMOUS BOUGAINVILLE GOVERNMENT:

20% right to acquire a working equity ownership interest in large scale mining project

Regional development royalty (1.25 % of mineral sales revenue); can be expended by ABG on infrastructure agreed with Councils of Elders, allocated in an equitable manner throughout Bougainville)

0.5% of mineral sales Revenue intended for Department of Mineral and Energy Resource (DOMER) to Consolidated revenue

Health&Educ. 0.5%

### GoPNG

19% in BCL

### ABG

20% option

2.25 Royalty

36.4% recent offload

(36.4% -20% = 16.4%)

### LANDOWNERS

5% free+5% option

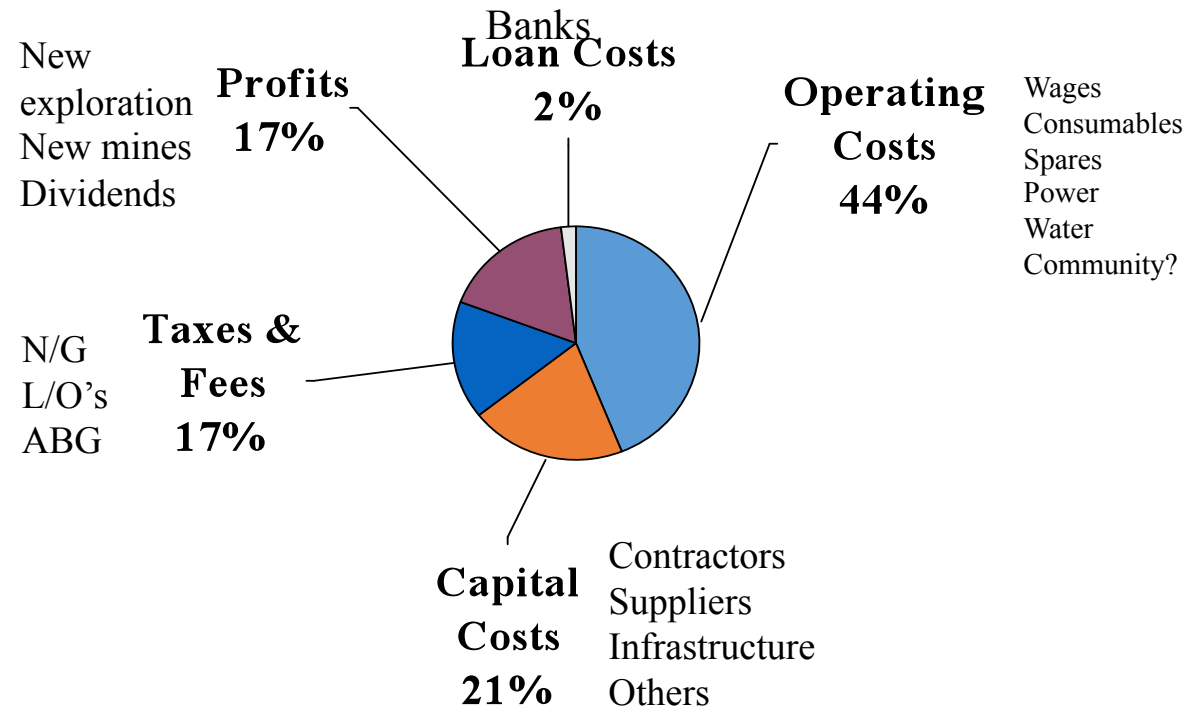
2.75 Royalty

17.4% recent (17.4%-5% = 12.4% )

# 4.6 Participation as per agreements and Plans

## Benefit Distribution

- a fair share for both Bougainville, landowners and the investor
- distribution of fiscal benefits



# 4.7 Tax Initiatives

## 1.0 Small Scale Mining Sector

- I. Taxing the Export of Mineral products out of Bougainville
- II. Smelting and refining provisions

## 2.0 Bougainville Mineral Taxation Law

## 6.0 CONCLUSION

- ❖ Concepts and Policy Initiatives of the *Bougainville Mineral Policy, legislative and Regulatory framework* are derived mainly from Bougainvillean experiences and aspirations, identified weaknesses in the national regulatory framework and the desire to adopt and compliment world best practices
- ❖ Policy issues identified are addressing the past biased benefit sharing and non participation experienced by Bougainvillean's from the panguna mine up to its closure coupled with the negative environmental impacts on communities along the mine waste corridors.

**END**  
**QUESTIONS?**