

Land Tenure & Tenure Conversion in PNG

Acquisition of customary land
using the Lease-Lease Back
(SABL) process

Legal Implications



Land Tenure in PNG:

CUSTOMARY LAND HOLDING : (97%)

- Custom is law by virtue of our Constitutional structure
- Est. @ 46 million ha* (**Lakau*, '91)
- Ownership rights protected by Constitution (s53)
- Law for dealing with customary land disputes



Land Tenure in PNG:

ALIENTATED LAND HOLDING: (3%)

- State land
- Est @ 1.3 million ha (*Lakau, '91*)
- Land Act 1996 administers all State Land
- Provides for methods of customary tenure conversion



Land Tenure Conversion

- Prohibition of the right to deal with customary land to foreigners (section 132 of Land Act 1996). Dealings between citizens only.
- Customary to freehold title driven by market demands
- Land Act provides methods of tenure conversion: 1) by agreement 2) compulsory process
- Customary land can also be acquired through Lease-lease back process (section 11 of Land Act)



Lease/lease back Process

- Section S 11 (1) states that, “*The Minister may lease customary land for the purpose of granting a special agricultural and business lease of the land*”.
- Section 102 (2) states that, ‘*A special agricultural and business lease shall be granted:*
 - (a) *to a person or persons; or*
 - (b) *to a land group, business group or other incorporated body, to whom the customary landowners have agreed that such a lease should be granted*’.

Features “Lease-lease back process”

- Only automatic citizens (LO) or ILG can deal in customary land.
- LO/ILG lease to the State and State lease to those that ILG/LO choose.
- the land reverts back to customary tenure after expiry (99 years)

Legal implication SABLs..

- Land with LLB titles is exempt from annual land rental payments to the State & LB
- Customary land holding and usage is suspended for the duration of the lease-period (no customary rights apply).
- Customary land is alienated through the registration of a State Lease..
- Once issued cannot be forfeited
- Normal process for tendering, advertising, granting and execution of a Lease does not apply for SABLs



Main Problem:

Conversion of 5.2 million hectares of customary land to SABLs

- The Lease of customary land to the State not signed by individual landowners or ILGs
- Leases signed by Landowner Companies
- Landowner companies are registered under the Companies Act, and thus incapable of being owners of customary land.
- Only automatic citizens and groups of automatic citizens (ILG) can own & thus deal in customary land

Problems with the conversion of 5.2 million hectares of customary land to SABLs

Example: KAMULA DOSO – Western Province.

Tumu Timbers Ltd is the landowner company that has signed the lease to the State. Tumu Timbers isn't a landowner. It is a company registered under the Companies Act. Tumu Timbers is owned by 52 ILGs each with one share. Just because the owners (52 ILGs) own the customary land doesn't mean that Tumu Timbers can deal in it !!! Company property is different from Shareholder's property.