

GOLD BILL KILLS PNG!



How does the National Gold Corporation Bill affect PNG Customs, IRC & ICCC?

Essential functions of Papua New Guinea (PNG) Customs, Internal Revenue Commission (IRC), and Independent Consumer and Competition Commission (ICCC) will be impacted by the National Gold Corporation Bill (the Bill).

The following are the impacts that the bill will have on those key state institutions:

- a.** Undermines PNG Customs functions in regulating imports and exports from PNG (**Section 935, Section 936, and Section 966**).

Subdivision D. – Export of certain gold permitted etc.

935. PERMITTED, PROHIBITED OR CONDITIONAL GOLD EXPORTS.

(1) For the purposes of the *Customs Act*, including the *Customs (Prohibited Exports) Regulation*, the export of the following is -

- (a) prohibited, except by an Exempt Person -
 - (i) foreign gold, comprising concentrate and doré bars (where “gold” means Extended Gold); and
- (b) prohibited, except by an Exempt Person, or in accordance with Part V, Division 4, or as may be authorised or prescribed under this Act -
 - (i) gold (within the meaning of “gold” as defined in Subsection 212(1)), other than value-added bullion, gold coins or other product comprised of gold produced by or for the National Mint; and
- (c) prohibited, unless permitted by the Chief Commissioner of Customs when authorised by the Director-National Gold Corporation -
 - (i) gold bullion comprised of foreign gold (where “gold” means Extended Gold), not produced by or for the National Mint, and owned by, or in the possession or control of, a person other than an Exempt Person; and
 - (ii) foreign currency coins comprised in whole or part of gold (where “gold” means Extended Gold), not produced by or for the National Mint, and owned by, or in the possession or control of, a person other than an Exempt Person, other than any such foreign currency which is counterfeit or been tampered with; and
- (d) prohibited absolutely, counterfeit or tampered with -
 - (i) gold coins; and
 - (ii) gold bullion, including value-added bullion, manufactured or produced by or for the National Mint; and
 - (iii) NGC Gold Securities.

(2) Without limiting Subsection (1), Excluded Gold is not a prohibited or conditional export.

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- b. Breaches PNG Customs-controlled borders (**Section 208 Subsection A**).
- c. Hinders PNG Customs' authorization powers, including the issuance of authorizations without charging any fees (**Section 210**).

210. CUSTOMS AUTHORISATIONS.

The Chief Commissioner of Customs shall, upon application by the National Mint, promptly grant and issue any licence or other authorisation required under the *Customs Act*, and without fee, permit the National Mint or National Gold, as the case may be, to -

- (a) establish, operate and maintain -
 - (i) the storage facilities, warehouse and delivery and facilities; and
 - (ii) retail shops, including outward duty free shops and inwards duty free shops; and
- (b) provide the facilities and services, prescribed in Sections 205, 207, 208 and 209 at airports, or any other Customs controlled location or order, port of entry or exit in Papua New Guinea.

- d. The National Gold Corporation and its subsidiaries will be exempted from paying taxes, as outlined in the undisclosed shareholders' agreement between the state and the project partner. The shareholders agreement and bill take precedence over the Income Tax Act hindering IRC's function in generating state revenue through taxation (**Section 949 and 950**).

Subdivision L. – Income Tax Act.

950. APPLICATION OF INCOME TAX ACT.

(1) The Shareholders Agreement has effect for the purposes of this Act, notwithstanding any contrary provision, authorisation, ruling, direction, discretion, administrative practice or otherwise under any law, including the *Income Tax Act*, or any Regulation under that Act or any other revenue law.

(2) Without limiting Subsection (1), in the event of any inconsistency between the Shareholders Agreement and this Act, and the *Income Tax Act*, the Shareholders Agreement, and this Act, prevails in that order.

(3) This section does not limit or preclude the operation or effect of any other amendment to, or exemption from, the *Income Tax Act* provided for in this Act.

- e. Undermines and bypasses the role of ICCC in ensuring market competition, fair trading, and regulating business joint venture or business acquisitions (**Section 951**).

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