

REPORT OF THE AUDITOR-GENERAL

ON

THE AUDIT OF

PROCUREMENT OF CONSULTANCY SERVICES

BY

MINERAL RESOURCES DEVELOPMENT

COMPANY PTY LIMITED

(MRDC)

JANUARY 1992 TO JULY 1994

REPORT OF THE AUDITOR-GENERAL

ON

THE AUDIT OF

PROCUREMENT OF CONSULTANCY SERVICES

BY

MINERAL RESOURCES DEVELOPMENT

COMPANY PTY LIMITED

(MROC)

JANUARY 1992 TO JULY 1994

AUDITOR-GENERAL OF PAPUA NEW GUINEA

TELEPHONE: 27 6203

FAX: 25 2872

25 8395

P.O. BOX 423
WAIGANI
PAPUA NEW GUINEA

**The Honourable Rabble Namaliu, CMG, MP
Speaker of the National Parliament
Parliament House
WAIGANI
National Capital District**

Date: **27 September 1994**

Our Reference:

Action Officer:

Designation:

Your Reference:

Date:

Dear Mr. Speaker,

In accordance with the provisions of Section 214 of the Constitution of the Independent State of Papua New Guinea, I transmit to the National Parliament my Report, signed on 27 September 1994, on the audit of procurement of consultancy services by Mineral Resources Development Company Pty Limited (MRDC) during the period 1 January 1992 to 31 July 1994.

Yours faithfully,

**V. GENO, CBE
General**

**BY
REPORT OF THE AUDITOR-GENERAL**

**ON
THE AUDIT OF
PROCUREMENT OF CONSULTANCY SERVICES**

**MINERAL RESOURCES DEVELOPMENT
COMPANY PTY LIMITED
(MRDC)**

JANUARY 1992 TO JULY 1994

TABLE OF CONTENTS

SUBJECT	PAGE NOS.
EXECUTIVE SUMMARY	(iii)
1.0 INTRODUCTION.....	1
2.0 CONTRACT ENTERED INTO WITH MR. ROBERT NEEDHAM.....	1
2.1 Background.....	1
2.2 Draft Agreements	3
2.2.1 Consultancy Agreement.....	4
2.2.2 Employment Agreement.....	6
2.2.3 Management Agreement	9
2.3 Events leading to Mr. Needham's Revised Agreement.....	13
2.3.1 Revised Agreement.....	14
2.3.2 Terms of Revised Agreement	18
2.3.3 Audit comparison of the Revised Agreement with the Original 3 Draft Agreements	24
2.4 Continuing Controversy.....	25
2.5 Termination of Mr. Needham.....	26
2.6 Payments made to Mr. Needham.....	28
2.7 Work Permit and Immigration matters.....	29
2.8 Anomalies in the Engagement of Mr. Needham.....	29
3.0 AGREEMENT WITH PATO LAWYERS AND ENGAGEMENT OF MR.D.E. COYLE (COMPANY SECRETARY)	30
3.1 Background.....	30
3.2 Terms of the New Agreement	33
3.3 Payments made to Pato Lawyers	35
3.4 Audit observations.....	37
4.0 CONCLUSIONS	38

APPENDICES

A	Confidential Brief on Mr. Robert Needham's Draft Agreements	42
B	Revised (Final) Consultancy Agreement in Relation to Mr. Needham.....	50
C	Agreement for Provision of Legal and Secretarial Services.....	58
D	Lawyers' letter to the then Deputy Prime Minister ...	63
•	Letter From the Chief of Staff of the then Deputy Prime Minister to Lawyers.....	65
F	Lawyers' Letter to the Chief of Staff of the then Deputy Prime Minister.....	66
G	Lawyers' Letter to the Director-General of the National Intelligence Organisation	68

AUDIT ON PROCUREMENT OF CONSULTANCY SERVICES BY
MINERAL RESOURCES DEVELOPMENT COMPANY PTY LIMITED (MRDC)
JANUARY 1992 TO JULY 1994
EXECUTIVE SUMMARY

I have conducted an audit on procurement of consultancy services by Mineral Resources Development Company Pty Ltd (MRDC) during the period 1 January 1992 to 31 July 1994 with a view to determining whether the company had followed proper procedures in the engagement of consultancy services and obtained real benefits for the amounts paid for such services.

My observations in relation to the following consultancy engagements are detailed elsewhere in this Report:

- (i) Contracts entered into in relation to Mr. Robert Needham, former Managing Director, MRDC; and
- (ii) Agreement with Pato Lawyers for provision of legal services and provision of Mr. D. E. Coyle's services as Company Secretary.

However, major observations arising from my audit are summarised below.

- (a) Correct procedures were not observed in the engagement of Mr. Robert Needham as Chief Executive, whose services were obtained through a consultancy arrangement. His engagement did not appear to have followed regulations stipulated by Immigration and Labour Departments.
- (b) Negotiations of Mr. Needham's terms and conditions continued even after he commenced work in September 1992 and the final terms and conditions of his engagement were approved only in July 1993.

- (c) The revised terms and conditions of Mr. Needham's engagement, although intended to alleviate certain concerns, tended to provide him with a quicker cash benefit of K260,000 per year in lieu of a reduction in the percentage of additional fee (commission) to be earned based on performance.
- (d) The basis provided for in the agreement for the determination of additional fee for Mr. Needham's services appeared to be open to adjustment or manipulation.
- (e) The circumstances surrounding the approval of the revised agreement of Mr. Needham's engagement by the Board of Directors indicate that the Board would not have been in a position to give a fair consideration of the agreement.
- (f) The employment of Mr. Needham was terminated on 11 April 1994. Payments made by MRDC in connection with his services were noted to be K639,200 for a period of about one year and seven months. These payments are considered exorbitant, particularly when no tangible contributions by Mr. Needham to MRDC or the State are apparent.
- (g) Arising out of his termination, Mr. Needham is believed to have claimed an amount of K14 million from MRDC, and it appeared that negotiations have commenced to settle Mr. Needham's claim.
- (h) Non-observance of correct procedures in the engagement of Mr. Needham has resulted in protracted negotiations of his terms and conditions, loss of time and resources, and substantial cost to MRDC and the State including potential claims and litigation.

- (i) Sound judgement did not appear to have been exercised in the selection of Mr. Needham for the position of Chief Executive of MRDC.
- (j) The arrangements with Pato Lawyers to provide legal services to MRDC were not well conceived nor clearly defined. In my opinion, these arrangements have permitted a conflict of interest situation, which MRDC could have avoided.
- (k) Mr. D. H. Coyle of Pato Lawyers was engaged by MRDC as Company Secretary on a retainer basis at a cost of well over K200,000 per annum. A full time company Secretary could have been employed by MRDC at much lesser cost.

1.0 INTRODUCTION

I have carried out an audit on procurement of consultancy services by Mineral Resources Development Company Pty Limited (MRDC) with a view to determining whether the Company had followed proper procedures in the engagement of consultants and obtained real benefits for the amounts paid for such services.

My examination covered consultancy agreements entered into by the Company during the period 1 January 1992 to 31 July 1994. The examination revealed significant deficiencies and absence of proper procedures in respect of the following consultancy engagements:

- (i) Contracts entered into in relation to Mr. Robert Needham, former Managing Director, MRDC; and
- (ii) Agreement with Pato Lawyers for provision of legal services and provision of Mr. D. E. Coyle's services as Company Secretary.

I now report my findings on these matters.

2.0 CONTRACT ENTERED INTO WITH MR. ROBERT NEEDHAM

2.1 Background

Mineral Resources Development Company Pty Limited (MRDC) was incorporated originally in the name of Ok Tedi Development Company Pty Limited, under the Companies Act (Chapter 146), to manage the land matters in regard to the Ok Tedi project. The change of name to Mineral Resources Development Company Pty Limited was effected on 23 July 1981.

The activities of MRDC were expanded by National Executive Council (NEC) Decision 64/88 of 23 June 1988 to undertake and act as the Holding Corporation for the State's shares in joint venture mining projects in Papua New Guinea.

According to a proposed NEC Policy Submission dated 14 September 1993, to be made jointly by Sir Julius Chan (the then Deputy Prime Minister and the then Minister for Finance and Planning) and Mr. Masket Iangalio (the then Minister for Mining and Petroleum), it appears that at the request of Mr. Paias Wingti (the then Prime Minister), Mr. Iangalio had prepared an Information Paper on 9 September 1992 to NEC to advise it of "their decision to terminate the appointment of Mr. Mel Togolo as General Manger of MRDC, and in his place to appoint Mr. Robert Needham as full time Deputy Chairman, on terms and conditions which were not then made known to Council (NEC) or approved by it". In fact, the Information Paper was said to have merely stated that "the cost of employing the full time Deputy Chairman of MRDC is still to be worked out; the Information Paper was Noted by Council; (and) no Decision was needed or taken".

The proposed NEC Policy Submission of 14 September 1993 further revealed that, at a meeting of the Board of MRDC held on 24 September 1992, Mr. Needham moved a Resolution which claimed that his terms and conditions had been determined by the Members of the Company i.e the Shareholders (who were the Minister and Secretary for Finance and Planning) but the Resolution was amended to read that terms and conditions were to be determined by the Members of the Company and was passed in that form without dissent.

However, I note that the Resolution (Item No.2 of Board Meeting held on 24 September 1992) confirming Mr. Needham's appointment was recorded as follows:

"RESOLVED that Robert Needham be appointed Managing Director of the Company on terms and conditions which have been determined by the members of the Company in consultation with the Board of Directors and which are to be stipulated in an agreement to be drawn by the Company's lawyers and until execution of that agreement by the Company the said Robert Needham is to exercise such powers as may from time to time be delegated to him by the board.

FURTHER RESOLVED that instructions be given to Pato Lawyers to prepare a draft form of agreement in respect of the appointment of the Managing Director for consideration by the Board."

The directors present at this meeting were Mr. L. Palaso (Chairman), Mr. Needham, Mr. W. Searson and Mr. J.F. Kaupa.

I note that there is an inconsistency between the contention of the proposed NEC Policy Submission of 14 September 1993 (to be made jointly by the then Deputy Prime Minister, Sir Julius Chan, and the then Minister for Mining and Petroleum, Mr. M. Iangalio) that Mr. Needham's terms and conditions were to be determined by the Members of the Company and what is actually recorded in the Minutes of the above meeting as terms and conditions which have been determined by the Members. Also refer further comments in paragraph 2.3.1 below.

The final Agreement with Mr. Needham was approved at a Board Meeting held on 15 July 1993 (although the Agreement was signed on 14 July 1993). Prior to signing the final Agreement there had been a set of 3 draft agreements (Consultancy, Employment and Management). According to a Confidential Brief (Appendix A) dated 25 March 1993 from the Office of the Secretary to the Department of the Prime Minister and NEC, a summary of these Agreements appeared to have been submitted to Mr. Pias Wingti, Sir Julius Chan and Mr. Masket Iangalio.

2.2. Draft Agreements

Details of draft agreements on consultancy, employment, and management are given in paragraphs 2.2.1, 2.2.2 and 2.2.3 below.

2.2.1 Consultancy Agreement

(i) Parties to the Agreement:

Mineral Resources Development Company Pty Ltd (MRDC) Post Office Box 1076, Port Moresby; and

Needham & Associates Pty Ltd or Nominee of Post Office Box Sydney, New South Wales, ("the consultant").

(ii) Services to be provided

The Consultant to provide the following consultancy services to MRDC in relation to various mining and petroleum projects in Papua New Guinea:

1. Advice to Board of MRDC on the overall operation of MRDC and its subsidiaries.
2. The establishment of appropriate consultancy and internal control system in relation to the objectives and activities of MRDC.
3. Recommendation to the Board of MRDC regarding all loans by MRDC.
4. Investigation into all aspects of any existing or proposed MRDC projects.
5. Negotiation with relevant Joint Venture parties or other parties in respect of the capital expenditure or operational costs of any MRDC projects.
6. Recommendation and reporting to the Board of MRDC in relation to all aspects of any MRDC projects.

7. Appointment by MRDC at the cost of MRDC on reasonable terms. of all Consultants who may be required in the best interest of MRDC in relation to MRDC projects or other activities by MRDC.
8. Attendance at all meetings of the Board of MRDC and where appropriate the preparation of Board reports and other material relevant to the matters under discussion at the said meetings.
9. Comprehensive review of all reports, feasibility studies and associated material in relation to any MRDC projects, and where appropriate reporting to the Board of MRDC on relevant matters.
10. Consultancy and control of all financial aspects of MRDC and the preparation of all financial reports in accordance with good managerial practices.
11. Prepare cash flow projections and budgets as may be appropriate.
12. Provide advice to the Board of MRDC on all matters affecting the activities of MRDC.

I note that the services to be provided under this Consultancy Agreement are almost the same as those listed in the Draft Management Agreement listed in paragraph 2.2.3 below.

(iii) **Fees Payable**

- (a) A fee calculated as being 1% of any Project Capital Reduction as defined below:

"For the purpose of this clause, the expression "Project Capital Reduction" shall mean that amount of reduction in capital expenditure in excess of K500,000 of the capital expenditure budget of any MRDC Project which the Minister in his reasonable opinion determines as having been achieved by the performance of the Consultancy Services by the Consultant."

- (b) A fee calculated as being 1% of any Operating Savings or Profit Improvement over original conditions as defined below:

"For the purpose of this sub-clause, the expression "Operating Savings or Profit Improvement" shall mean the amount of the savings in operating expenses or improvement in profit for a specified financial year which the Minister in his reasonable opinion determines as having been achieved by the performance of the consultancy services by the consultant."

2.2.2 Employment Agreement

(i) **Parties to the Agreement:**

Mineral Resources Development Company Pty Ltd of Post Office Box 1076, Port Moresby ("the Corporation"); and

Robert Needham of Post Office Box 1076, Port Moresby ("the Employee").

(ii) The employee shall be employed to the position of the Managing Director of the Company for a term of 3 years commencing from . . . September 1992 ("the commencement date").

(iii) Services to be provided:

(i) Mr. Robert Needham shall be employed to the position of the Managing Director of the Corporation for the term of this Agreement which shall be three years commencing from September 1992 ("the commencement date")

(ii) Terms and Pay Determination

Salary

K40,000 per annum.

Superannuation

At the expiration of the term of employment Mr. Needham will be entitled to Superannuation payment of K48,000. This entitlement shall accrue on each anniversary of the commencement date (the accrued date) and may with the consent of the Board be paid on or about accrued date.

Special Allowance K2,000 per annum

Domestic Servant Allowance of up to K3,100 per annum shall be paid for purposes of employment of a domestic servant and such allowance be paid fortnightly or monthly in arrears.

Settling-In Allowance shall be paid tax free at the rate of K8,000 per annum and the same shall be paid in lump sum or fortnightly.

Utilities Allowance - the Employer shall pay all the employees costs of electricity, gas, sewerage and local council charges.

Telephone Allowance - the Employee may claim all receipted telephone expenses and alternatively the employer shall pay for the costs of installation and subsequent costs of telephone calls made by the employee at the residence of the employee.

Entertainment Allowance - K8,000 per annum.

Vehicle Allowance - K10,000 (per annum), in lieu of a 24 hour vehicle. Should the employee elect not to accept the Vehicle Allowance, then a 24 hour vehicle with unrestricted use will be made available to the employee.

Travel Allowance -and other allowances and benefits not referred to above shall be provided as determined by the Board from time to time.

Medical Insurance Cover The company shall provide or maintain adequate medical insurance cover including costs of repatriation for the employee and his dependents.

2.2.3 Management Agreement

(i) Parties to the Agreement

Mineral Resources Development Company Pty Ltd (MRDC), Post Office Box 1076, Port Moresby and

Needham & Associates Pty Ltd of Post Office Box 1076, Port Moresby ("the Manager").

(ii) Appointment

MRDC hereby appoints the Manager to manage the day-to-day affairs of MRDC and the Manager hereby accepts such appointment subject to the provisions of this Agreement.

(iii) Term

The term of this agreement shall be the period of five (5) years from the appointment date.

Either party may at any time after the second anniversary of the appointment date terminate this Agreement by twelve (12) months notice in writing to the other party.

(iv) Objectives

In conformity with the policy and objectives as determined by the Board, the Manager shall assume full responsibility for the day-to-day management of MRDC with the object of enabling MRDC to hold by itself or its subsidiaries, interests in MRDC Projects in the most beneficial and cost effective manner. For this purpose the Manager shall arrange for the provision of suitably qualified and experienced personnel as set out therein.

(v) Services to be provided.

The Manager shall manage the affairs of MRDC in accordance with generally recognised principles of sound management and subject to the directors of the Board and without limiting the generality thereof shall provide the following Management Services:

1. Advice to the Board of MRDC on the overall operation of MRDC and its Subsidiaries.
2. The establishment of appropriate management and internal control systems in relation to the objectives and activities of MRDC.
3. Recommendation to the Board of MRDC regarding all loans by MRDC.
4. Investigation into all aspects of any existing or proposed MRDC projects.
5. Negotiation with relevant Joint Venture parties or other parties in respect of the capital expenditure or operational costs for any MRDC Projects.

6. Recommendation and reporting to the Board of MRDC in relation to all aspects of any MRDC Projects.
7. Appointment by MRDC at the cost of MRDC on reasonable terms, of all Consultants who may be required to the best interest of MRDC in relation to MRDC Projects or other activities by MRDC.
8. Attendance at all meetings of the Board of MRDC and where appropriate the preparation of Board Reports and other material relevant to the matters under discussion at the said meetings.
9. Comprehensive review of all reports, feasibility studies and associated material in relation to any MRDC Projects, and where appropriate reporting to the Board of MRDC on relevant matters.
10. Management and control of all financial aspects of MRDC and the preparation of all financial reports in accordance with good managerial practices.
11. Prepare cash flow projections and budgets as may be appropriate.
12. Provide advice to the Board of MRDC on all matters affecting the activities of MRDC.

(vi) **Personnel**

The Manager shall provide to MRDC during normal business hours the following personnel:

A suitably experienced and qualified financial adviser;

A suitably experienced and qualified engineering project analyst; and

Robert Needham.

The cost of the provision of personnel (except Robert Needham) by the Manager pursuant to this Clause shall be borne as follows:

the provision and maintenance of suitable vehicles and any accommodation costs based on fully furnished secure premises including electricity shall be borne by MRDC;

all other costs including without limitation, salary, superannuation, non reimbursable travel expense, and entertainment allowances, shall be borne by the Manager.

(vii) Covenants by MRDC

One of the covenants by MRDC was:

"MRDC shall cause Robert Needham to be appointed to the Board of MRDC and its associated and subsidiary companies and as its representative to committees of management of joint ventures in which MRDC is a party and to be further appointed as Managing Director of MRDC. Such appointment shall subsist during the currency of this Agreement. MRDC shall ensure that all necessary resolutions are passed in relation to such appointment."

(viii) Fees Payable

Appointment Fee

A fee of K40,000 shall be paid to the Manager on the Appointment Date.

Management Fee

A fee of K5,000 shall be paid monthly in advance to the Manager on or before the first day of each month. This first such payment (which shall be pro rata amount for an incomplete month) shall be made on the Appointment Date.

Personnel Fee

A fee of K10,000 for each person provided by the Manager (as referred to in paragraph (vi) above) shall be paid monthly in advance to the Manager on or before the first day of each month. The first such payment (which shall be a pro rata payment for an incomplete month) shall be paid on the date upon which the relevant person commences his duties with MRDC.

2.3 Events Leading to Mr. Needham's Revised Agreement

At a Board meeting held on 28 May 1993, the Chairman - Mr. G. Aopi who represented the Department of Finance and Planning (as the Shareholder representing the State's interest) advised that the Board had been waiting for confirmation of Mr. Needham's contract from Mr. Pias Wingti, the then Prime Minister, Sir Julius Chan, the then Deputy Prime Minister and Mr. Masket Iangalio, the then Minister for Mining and Petroleum, since last year and the Board had not yet seen the contract.

Mr. Needham however stated that he had been appointed by Mr. Pias Wingti and at that stage one of the Board members (Mr. F. Kaupa) expressed a desire for the Board to be given the contract at the draft stage.

Mr. Needham expressed his reluctance to circulate his draft contract to the board on the grounds that if confidential information were to leave the MRDC offices, such information seemed to get into the press.

At the commencement of this meeting, the Chairman had suggested that Mr. Needham leaves the meeting on the basis that there was a conflict of interest. Mr. Needham had, however, declined to leave stating that he should be present to contribute to the discussion and to determine for himself as to whether any matter arose which required him to absent himself from the meeting

2.3.1 Revised Agreement

On 14 July 1993, the Company Secretary of MRDC (Mr. D.E. Coyle) advised by facsimile of a Board Meeting to be convened on the following day (15 July 1993), the purpose of the meeting being to consider Mr. Needham's revised terms of engagement.

At this meeting, Mr. Needham disclosed his interest in the proposed Consultancy Company provided for in the latest (revised) draft of the proposed terms of engagement which he tabled at the meeting. The following papers were also tabled at this meeting.

- (i) Confidential Brief (Appendix A) to Mr. Pias Wingti, the then Prime Minister, dated 25 March 1993 submitted by the Office of Secretary, Department of the Prime Minister and National Executive Council, summarising the draft agreements previously prepared in relation to the employment of Mr. Needham. (also referred to in paragraphs 2.2.1, 2.2.2 and 2.2.3 above.).
- (ii) Letter from Sir Julius Chan, the then Deputy Prime Minister, to the Chairman, Mr. G. Aopi, dated 24 May 1993 outlining matters of concern in relation to the agreement as negotiated between Mr. Needham, the Managing Director and Mr. Masket Iangalio, the then Minister for Mining and Petroleum.
- (iii) Letter from Pato Lawyers dated 9 July 1993 outlining the amendments to be incorporated in the Proposals; and

(iv) The .MRDC Company Secretary's paper dated 12 July 1993 outlining the Managing Director's position and his new proposals to meet the matters of concern raised by the then Deputy Prime Minister.

The Chairman of MRDC, Mr. G. Aopi, suggested that the Proposals be referred back to the Ministers. However, Mr. Needham pointed out that Mr. Paias Wingti and Mr. Masket Iangalio had approved the Proposals in their latest form and that the Proposals contained certain adjustments in the light of Sir Julius Chan's expressed concerns. Mr. Needham also indicated that he was not prepared to see the matter delayed yet further and that he was entitled to enforce the terms of his agreements with the State but that he remained willing to make the concessions contained in the Proposals as he wished to ensure that good relations were maintained.

It is noted that, at this meeting, MRDC Company Secretary (Mr. D. E. Coyle) had advised that the Board had by previous resolution dated 24 September 1992 appointed Mr. Needham as Managing Director on terms and conditions "stated to have been determined by the State as shareholder" in consultation with the Directors. Mr. Coyle had also indicated that the Resolution required those terms to be stipulated in an agreement to be prepared by the Company's Lawyers.

In my view this confirms the inconsistency between the recording of the Minutes of the Board meeting of 24 September 1992 (Item No.2 of Board Minutes) and the contention of the proposed NEC Policy Submission of 14 September 1993 (to be made jointly by Sir Julius Chan and Mr. Masket Iangalio) in regard to the determination of the terms and conditions of Mr. Needham - also refer comments in paragraph 2.1 above.

At the same meeting (i.e. the Board meeting held on 15 July 1993), Mr. Rimbink Pato of Pato Lawyers was invited by the Chairman to attend the meeting, and Mr. Pato remained for the balance of the proceedings. Mr. Pato referred to the various papers submitted at the meeting and advised that the Board was now being asked to consider those arrangements with certain amendments proposed in the light of Sir Julius Chan's expressed concerns.

One of the Board Members (Mr. L. Palaso) then moved that the Proposals be approved.

Mr. Coyle confirmed that two Directors, namely, Mr'. Kaupa and Mr. Searson, had instructed their alternates to advise the meeting that they supported the acceptance by the Company of the Managing Director's terms of engagement. The alternate directors were Mr. Coyle and Mr. T. Tanasu (Commercial Manager of MRDC).

Mr. Needham abstained from voting on the issue.

The Chairman, Mr. Gereia Aopi, observed that a majority was prepared to support the motion, and said that in the circumstances he would abstain from voting.

The following resolution was thereafter passed at this meeting:

"That the proposal contained in the tabled draft agreement between the Company and the consultant (the proposed consultancy company) to be nominated by Mr. Needham be approved AND that management be at liberty to execute documents to be prepared by the lawyers to that effect."

According to the Board minutes, a consultancy company was "to be involved due to Mr. Needham's personal, family, business and tax structures."

The following are of audit concern in relation to the matters that transpired at this meeting:

- (i) The persons present at the meeting were the Chairman, Mr. G. Aopi, Mr. Needham, Mr. Palaso, Mr. Coyle (Company Secretary) and Mr. Tanasu (Commercial Manager). The Chairman had not taken part in the voting while Mr. W. Boas (the other member from Department of Finance and Planning representing the State) was absent.
- (ii) The very short notice (1 day) given to the members of the Board, by facsimile;
- (iii) The presence and participation of Mr. Needham at this important meeting, whose terms and conditions were the subject matter of the Board's proceedings of the day;
- (iv) The coercion held out at the meeting by Mr. Needham, apparently to push through the Resolution of the Proposals.
- (v) The veracity of some of the statements or representations made by the Company Secretary (Mr. Coyle) in his Board Paper dated 12 July 1993 as pointed out by the then Deputy Prime Minister (Sir Julius Chan) in the Confidential Draft Policy Submission by him and the then Minister for Mining and Petroleum. Sir Julius Chan in this submission took exception to the representation in the Board Paper of 12 July 1993 that the contract with Mr. Needham had been approved by the NEC at its meeting on 9 September 1992 which had only noted the appointment of Mr. Needham and that there was no record in the Council's Noting of the "approval" of the terms of Mr. Needham's contract;

- (vi) Sir Julius Chan was of the view that the Board of MRDC was not in a position to give the contract fair consideration when it was wrongly advised that the National Executive Council had already deliberated on and approved its contents.

I am inclined to agree with Sir Julius Chan's contention that the Board would not have been in a position to give a fair consideration if the Board was wrongly advised that the terms and conditions had already been approved by NEC.

- (vii) The majority of the Board's votes in favour of the contract were cast by staff members of MRDC who were apparently supportive of Mr. Needham.

2.3.2 Terms of Revised Agreement

The terms and conditions of the Revised Agreement (Appendix B) approved by MRDC Board on 15 July 1993 are as follows:

(i) Parties to the Agreement

MINERAL RESOURCES DEVELOPMENT COMPANY PTY LIMITED ("MRDC")

of 8th Floor, Invesmen Haus, Douglas Street, Port Moresby;
and

MARKSCAL LTD of care of Masons, One Pacific Place Causeway,
Hong Kong ("The Consultant").

- (ii)** The Consultant is stated as a company entitled to the exclusive services of Robert Needham.

(iii) "The Consultant has agreed to provide to MRDC and its associated and related companies (hereinafter collectively called "the MRDC Group") consultancy services including the service of Needham to act as Chief Executive Officer of the MRDC Group ("the Services") on the terms and conditions set out herein."

(iv) Provision of Needham as Chief Executive Officer

"The Consultant shall provide the Services to the MRDC Group and MRDC shall appoint Needham as Chief Executive Officer of the MRDC Group. The Consultant covenants on its own behalf and on behalf of Needham that Needham shall serve the MRDC Group as Chief Executive Officer and shall render such service faithfully and with all reasonable skill, care and diligence."

(v) Term

"This Agreement shall be deemed to have commenced on the 12th Day of September 1992 ("the commencement date") and shall continue for a period of five (5) years from the commencement date and thereafter from year to year unless and until terminated by either party hereto giving not less than twelve (12) months written notice."

(vi) Duties

The duties of Mr. Needham as Chief Executive Officer of the MRDC Group shall be as follows:

to undertake the functions of the Chief Executive Officer and such other duties, and exercise such powers in relation to the MRDC Group, as the Board of MRDC shall reasonably delegate to him from time to time;

in the discharge of the duties and in the exercise of the powers referred to in the preceding paragraph to conform to, observe and comply with all reasonable resolutions, regulations and directions from time to time made or given by the Board;

to devote so much of his time and attention as is necessary to ensure that all aspects of the duties are duly and faithfully carried out in the best interests of the MRDC Group;

in pursuance of the duties, to perform such services for, and accept such offices in, companies in which MRDC holds a substantial shareholding as the Board shall from time to time require; and

to generally promote and enhance the business carried on by, and the interests of the MRDC Group.

(vii) **Consultant's Fee**

MRDC shall pay to the Consultant:-

an upfront appointment fee of K40,000 payable on the day (date not indicated) of September 1992 so as to compensate the Consultant for the loss of previous income and business;

an annual amount of K360,000 payable by equal monthly instalments on the 19th day of each month which amount may be allocated in part to an annual salary to be paid direct to Needham.

(viii) Benefits

- In addition to the Consultant's fee, MRDC shall at its cost and expense provide direct to Needham the following benefits:-
- the exclusive use of a suitable motor vehicle in respect of which MRDC shall pay for all usual expenses (including fuel) in relation thereto. At the option of MRDC an allowance of K... (amount not indicated) shall be paid to the Consultant in lieu of the use of the said motor vehicle;
- housing for Needham and his immediate family of a standard appropriate for the Chief Executive Officer of a substantial mining corporation
- two (2) annual first class return airfares from Port Moresby to Sydney for Needham and his immediate family. At the option of MRDC an allowance of K8,000 per annum may be paid to the Consultant in lieu of such travel benefits;
- reimbursement of premiums for world wide health and accident insurance for Needham and his immediate family;

Special Allowance - K 2,000 per annum;

Domestic Servants
Allowance - K 3,100 per annum;

Settling Allowance - K 8,000 per annum;

Entertainment
Allowance - K 8,000 per annum;

Telephone Allowance - K 4,000 per annum;

Superannuation - K16,000 per annum;

MRDC shall reimburse the Consultant for all reasonable travel, accommodation and incidental expenses incurred in connection with the performance of the duties.

(ix) Additional Fees

The Revised Agreement provided for additional fees as follows:

"9.1 It is acknowledged by MRDC that the Consultant **is** to have a major role in enhancing the business and assets of the MRDC Group and it is agreed that MRDC shall, in addition to any payments or benefits paid hereunder, pay to the Consultant an additional fee calculated as being one-half percent (0.5%) of the sum of the following:

- (a) the amount by which the MRDC Group's budgeted project capital expenditure exceeds actual project capital expenditure and which the Minister for Mining and Petroleum ("the Minister") reasonably determines as having been achieved as a result of the Consultant's performance of the Services, less an amount K500,000; and
- (b) any savings in operating costs or improvements in profits of the MRDC Group which the Minister reasonably determines as having been achieved as a result of the Consultant's performance of the Services.

The first period in respect of which the said calculation and payment, if any, is to be made is the financial year ending on 31 December 1993.

9.2 It is acknowledged that the Consultant upon being notified by MRDC as to the amount of the additional fee applicable to any financial year may, at its discretion, (and subject to the Articles of MRDC) request that the amount of the said additional fee be converted into options (on conditions to be negotiated with MRDC) or fully paid shares (capitalised at market value) in which case the Consultant shall be entitled to such options or fully paid shares to the value of twice the amount of the additional fee applicable to any financial year under Sub Clause 9.1."

(*) Termination

The Agreement provided that it may be terminated forthwith by MRDC without prior notice if the Consultant or Mr. Needham (as the case may be) shall at any time during the term hereof:-

- commit any material or persistent breach of the provisions of this Agreement;
- be guilty of any grave misconduct or wilful negligence in the discharge of the duties;
- become of unsound mind;
- be convicted in Papua New Guinea of any criminal offence; or
- become permanently incapacitated to the extent that Mr. Needham is unable to carry out the duties.

2.3.3 Audit Comparison of the Revised Agreement with the original 3 Draft Agreements

- (i) There is no reference in the Revised Agreement for provision of personnel for financial adviser and engineering project analyst whereas the draft Management Agreement provided for such personnel.
- (ii) The provision for miscellaneous allowances and benefits are virtually the same in the original Draft Agreements and the Revised Agreement.
- (iii) The upfront fee of K40,000 is the same in both cases;
- (iv) The original Draft Consultancy Agreement provided for Consultancy Fee of:
 - One (1) percent of any project capital expenditure reduction; and
 - One (1) percent of any operating savings or profit improvement.

whereas the percentage was reduced from one (1) percent to half (0.5) percent in respect of the above items in the Revised Agreement.

- (v) The Revised Agreement provides for an annual fee of **K360,000** whereas the draft Management Agreement provided for a fee of K5,000 per month (ie., K60,000 per annum) and the draft Employment Agreement provided for a salary of K40,000 per annum, thus making a total of **K100,000** per annum. The annual fees in the Revised Agreement therefore exceeds the fees in the draft Management and Employment Agreements by **K260,000**. This increase was intended presumably to compensate for the reduction in the fee percentage for Capital Expenditure Savings and Operating Savings/Profit Improvement as detailed above.

If this presumption is correct, it would mean that Mr. Needham would get quicker cash benefit in the form of annual fee rather than having to wait for proof of savings/profit improvement, and also he would avoid the uncertainty of future results.

2.4 Continuing Controversy

The controversy surrounding Mr. Needham's appointment continued after the signing of the Revised Contract, and the then Deputy Prime Minister, Sir Julius Chan, had found it necessary to take some form of remedial measures. In order to do so, in September 1993 he took up the matter with the then Minister for Mining and Petroleum, Mr. Masket Iangalio, and proposed a Joint Cabinet Submission by him and the Minister. The draft submission contained the following recommendations:

1. Mr. Needham's contract as Managing Director of MRDC should be approved subject to amendment in regard to (1) remuneration level not to exceed Two Hundred Thousand Kina per annum (K200,000) plus allowances; (2) six months termination notice; and (3) bonus provisions limited to option to take up stock in any MRDC share flotations;
2. Mr. Needham should be removed from MRDC as Managing Director and offered alternative appointment in a non-executive consultancy role as a Special Mining Adviser in the Prime Minister's Department on the conditions in 1 above.

In requesting for the Joint Cabinet Submission, Sir Julius Chan reminded Mr. Masket Iangalio of their shared view that:

"Mr. Needham's appointment has not proved to be the success we had hoped for in terms of stimulating new investment in mining and petroleum exploration and development. Instead of concentrating on that Mr. Needham has seen his role as

redefining the country's policy for taking equity in mineral projects, which is a role that belongs to Ministers especially our two selves."

Sir Julius Chan also reminded Mr. Iangalio that:

"at the time we agreed to appoint Mr. Needham to MRDC we were also not aware that he had litigation pending against him by Bank of New Zealand and the liquidator of Giant Resources; this litigation has yet to be concluded but creates an immensely embarrassing situation for the Government in regard to any international loans it requires, whether for the Budget or for MRDC's stake in Lihir; Banks do not lend to actual or potential bankrupts or to a company whose Managing Director led his previous company into liquidation."

Sir Julius Chan then proposed:

"that Mr. Needham should be given a non-executive role in the Prime Minister's Department whereby he can continue to give advice on mining matters, but is clearly seen not to be involved in any way in financing."

2.5 Termination of Mr. Robert Needham

According to unsigned minutes of meeting sighted in audit, the Board of MRDC, at its meeting held on 11 April 1994, resolved unanimously that the Contract between the Company and Mr. Needham's Company, Markscal Ltd, be terminated under the terms of the agreement, and that the Secretary (Mr. Coyle) be instructed to notify Mr. Needham of the termination.

The Board at this meeting also discussed the need for steps to be taken by the group's subsidiaries to remove Mr. Needham from his positions in those Companies, in the light of the events which had occurred and the decisions which the Board had taken. It was also

agreed that the Secretary convenes and holds meetings and undertakes all procedures in relation to all group subsidiary companies for the removal of Mr. Needham from all positions held by him in those companies, as necessary and appropriate in the light of the events which had occurred and the decisions which the Board had taken.

Matters arising from the termination of Mr. Needham were discussed at a Board Meeting held on 13 May 1994.

At this meeting Mr. Pato, the Company Lawyer, addressed the Board on the issue. He informed that he was advising a committee of senior government officials on the claims made by Mr. Needham arising from the termination of his retainer through his company Markscal Limited. That committee had been advised and had acted as follows:

- "1. The Contract is void and unenforceable. This advice is consistent with advice from the Secretaries of Justice and Finance and Planning and from the Governor of the Bank of Papua New Guinea. In fact, Markscal could be sued for breach of contract for failure to deliver the contracted services.
2. Accordingly, a letter had been written to Mr. Needham's lawyer advising him of the position. Although there is no legal basis for Mr. Needham's claim for k14 million, it was concluded that "without prejudice" negotiations should be commenced.
3. A letter had therefore been written to Mr. Needham's lawyer proposing that he be compensated for a short but reasonable period. For legal tactical reasons, not all of the matters on which the Committee has based its views had been canvassed to in the correspondence with Mr. Needham's lawyer."

As at the time of audit, I am not aware of any further development, including any other claims, since the termination of Mr. Needham's employment.

2.6 Payments made to Mr. Needham

The total payments made to Mr. Needham during the periods specified below were noted to be K639,200, comprising the following:

Period 8.9.92 to 7.9.93	Amount (K)
Salary Payments as extracted from salary records.	- K182,046
Direct Payments made to a company based in Singapore on invoices stated to be from Markscal Ltd, Hongkong.	- K231,154
Superannuation Payment made to Markscal Ltd.	- K16,000
Total for first year of Contract	- K429 200

Period 8.9.93 to date of termination (11.4.94)

Salary Payments per salary records	- K99,169
Direct payments made to a company based in Singapore on invoices stated to be from Markscal Ltd, Hongkong	K110,831
	K210,000

It will be seen that the total payments made in the first year, as noted in audit, approximate to the total quantifiable package (excluding commission) of about K440,000 provided for in the revised agreement.

However, the consultancy firm providing Mr. Needham's services, as per the consultancy agreement, is stated as Markscal Ltd of Hong Kong although payments other than those described as salaries were remitted to a company based in Singapore. It is, therefore, not clear as to how this practice accords with the terms of the agreement.

2.7 Work Permit and Immigration matters

According to documents sighted in audit, it would appear that the appointment of Mr. Needham had not followed proper Immigration and Labour Department regulations. Mr. Needham arrived in Papua New Guinea on a Business Visa issued on 18 September 1992. For Labour Department purposes, MRDC had submitted an application for Non-citizen personnel for the position of Managing Director, on 8 March 1993. The Department of Labour and Employment approval was given on 16 March 1993. Mr. Needham submitted his application for Work Permit on 17 March 1993, and the Permit was granted on 1 April 1993, with the expiry date 28 July 1993. MRDC submitted the Employment Visa application for Mr. Needham to the Secretary Immigration and Foreign Affairs Division on 2 April 1993. However it appeared that Mr. Needham was required under Immigration Regulations to leave the country and re-enter on proper Employment Visa as Immigration policy did not allow change of status to be effected while in the country.

2.8 Anomalies in the engagement of Mr. Needham

It is my view that the entire procedure and steps taken to recruit a Chief Executive Officer for MRDC in this particular instance have not been properly conceived or administered.

There are laid down procedures and immigration regulations for recruitment of overseas personnel and consultants. These appear to have been either by-passed or ignored. All relevant formalities are expected to be complied with before any person could enter the country for employment.

In the case of *Mr. Needham*, he entered the country on a Business Visa and subsequently applied for a Work Permit and Employment Visa, and apparently negotiated his terms and conditions after assuming duties in MRDC.

In this process it would appear that the negotiations have contemplated structural adjustments in the Agreements to gain various financial and tax benefits by introduction of features such as Management Company or Consultancy Company associated with *Mr. Needham*.

My view is that if the services of overseas personnel were required, the terms and conditions should have been negotiated and agreed upon conclusively prior to the person entering the country instead of these being negotiated after his arrival in the country. The non-observance of proper procedures has resulted in protracted deliberations, loss of time and resources, and substantial cost to the Government including potential financial loss through claims and litigation.

3.0 AGREEMENT WITH PATO LAWYERS AND ENGAGEMENT OF MR. D. E. COYLE (COMPANY SECRETARY)

3.1 Background

At the Board meeting held on 24 September 1992, the Chairman tabled the consent of *Mr. Rimbink Pato* to act as Secretary of the Company. It was resolved that *Mr. Pato* be appointed Secretary of the Company, and that the Company retain the services of Pato Lawyers of 1st Floor, ANG House, Hunter Street, Port Moresby for the purpose of providing such legal services as the Company may require from time to time.

It appears that as a result of discussions between MRDC and Pato Lawyers, Mr. David E. Coyle's services were provided to MRDC by Pato Lawyers on a retainer basis. In a letter dated 14 October 1992 from Pato Lawyers to the Company, the terms of the retainer were set out as follows:

"Mr. Coyle is employed by this firm (Pato Lawyers), but he will be at your company's disposal during normal business hours. He will provide firstly the services of Company Secretary, which we estimate can be routinely done within your target amount of K360060.00 per annum. This basic amount will include preparing Board papers and agendas, and attending and writing up minutes for quarterly Board Meetings, plus maintaining normal corporate and statutory records.

Some "catch up" work will be required initially, which will incur fees in excess of the basic amount, as will work associated with special meetings. Legal and/or commercial consultancy work will be additional to this basic amount, and the costs generated will obviously vary with the nature and volume of the work involved.

Normally, fees of over K300.00 per hour would be payable for a lawyer of Mr. Coyle's standing and experience. Mr. Coyle has practised law for over 25 years, and is highly experienced as both commercial lawyer and as Manager - Commercial Services. He was Company Secretary for Bougainville Copper Limited and Highlands Gold Limited, both major listed mining companies.

We recognise that normal consultants' fees would not be appropriate if MRDC work occupies Mr. Coyle on a full time basis. We also recognise that under the proposed arrangements very little of Mr. Coyle's time would be spent on non-chargeable internal administration for this firm, and that MRDC will be providing office facilities and services (Secretary, rent etc).

In view of these factors, we confirm the following agreement relating to fees payable in respect of work done by Mr. Coyle under the above arrangements:

1. The basic charge-out for Mr. Coyle's time will be reduced to K200.00 per hour for so long as he is engaged for at least 24 hours per week.
2. These fees will be capped at K4.935.37 per week on a 47 week per year basis, inclusive of NCDC sales tax, for so long as Mr. Coyle is engaged working for MRDC for 24 hours or more per week. Assuming that a normal forty hours plus week is likely, this will bring the fee in real terms nearer to K120.00 per hour;
3. Business expenses (entertainment, travel, etc.) incurred specially and solely for MRDC's purposes will be claimed by Mr. Coyle directly from MRDC;
4. All usual expenses of a salary/allowance nature incurred in employing Mr. Coyle, i.e, accommodation, car, school bursaries, power, domestic staff, leave travel and children's school holiday and repatriation travel, will be met by this firm"

On 15 October 1992 Mr. Needham, in his capacity as Managing Director, confirmed to Pato Lawyers the above terms of the retainer, stating that these terms appeared beneficial to the MRDC group of companies. The Board, at the meeting held on 8 January

1993 noted the consent of Mr. Coyle to be a Secretary, tabled by Mr. Needham, who spoke in support of the proposal. The Board resolved that Mr. Coyle be appointed Company Secretary. Mr. Coyle appeared to have commenced work with MRDC on 8 February 1993.

Subsequently a new Agreement was entered into on 11 July 1994 with Pato Lawyers, setting out the terms of the retainer with them. A copy of the new Agreement is given in Appendix C.

3.2 Terms of the New Agreement

The significant terms of the new Agreement are given below:

(i) Term:

3 years commencing retrospectively from 1 January 1993 providing for any extension, renewal or holding over thereof.

(Note - It will be noted from the Agreement that the ending date is stated as 31 December 1996. This date is evidently incorrect as the 3 year period will end on 31 December 1995).

(i) Services:

Provision of a qualified lawyer to provide secretarial services acting as Group Company Secretary;

Services of skilled and experienced lawyers to provide professional services in connection with legal and associated matters

(iii) Commencement and Duration:

This Agreement shall not be subject to review until after the expiration of the Term, when (without commitment by either party) it shall be reviewed with a view to its being formally extended. Unless and until the parties expressly to so agree or the Retainer and/or this agreement is terminated on notice as herein provided, this agreement shall, after the expiration of the Term, continue and Patos shall continue to provide the Professional Services subject to termination, which either party can effect at any time provided it shall have given to the other party twelve months prior written notice thereof.

(iv) Fees and Expenses:

- (a) the Retainer will be paid fortnightly in arrears, at the rate of K9,836.95 per fortnight for a 46 week year;
- (b) the Retainer is allocated as to an annual amount of K45,000 to the provision of the secretarial services; the balance thereof is allocated to the provision of the professional services calculated at professional rates;
- (c) To the extent that fees payable to Patos in respect of professional work, calculated at professional rates, shall from time to time exceed the provision made therefor in the Retainer, the same shall be separately charged and billed, giving credit for the portion of the Retainer which has accrued at the date of invoice, and the nett amount due shall be paid within fourteen (14) days of invoice.

- (d) Patos will otherwise be entitled to charge MRDC for all disbursements and travel and other out-of-pocket expenses incurred by them in providing the professional services, in accordance with normal professional practice.

3.3 Payments made to Pato Lawyers

The following payments were noted to have been made to Pato Lawyers:

1.1.93 to 31.12.93	<u>Amount Paid</u> (K)
1. Employment Agreement for Mr. Robert Needham	17,461
2. Defamation - Post Courier	3,210
3. MRDC Pty Ltd vs Auditor-General Case No.178 of 1993	3,642
4. Weekly payments made for Mr. Coyle's services at K963 per day plus 2% sales tax	217,157
5. Porgera Sale Agreement	24,561
6. Various Legal Services	97,081
TOTAL:	K363 112 almsines.

1.1.94 to 11.7.94

Amount

Paid
(K)

1. Charges for services on Sixteenth Annual General Meeting. - **K3,301**

2. MRDC Pty Ltd vs Auditor-General
Case No.178 of 1993. - **K5,205**

3. Charges of Markscal Ltd Defence - **K4,365**

4. Charges on the work done on Appointment of Managing Director, Share Register and Allotment of shares of MRDC. - **K9,185**

5. Contract of Employment for
Managing Director. - **K3,715**

6. Charges on Porgera Equity Advice - **K10,243**

7. Charges on legal advice for Mineral
Resources Porgera Pty Limited -
Sale of MRDC shares - **K8,509**

8. Payment made for the services rendered by
Mr. Coyle.
(at K963 per day plus 2% sales tax) - **K142,428**

9. Charges for legal work done on
behalf of Mr. Needham on security
assessment given by National
Intelligence Organization. - **K1,888**

TOTAL: K188, 839

These are the actual payments noted up to 11 July 1994. At the time of audit, I am not aware of any further payments which are likely to be made or claimed by the firm for the period under review.

3.4 Audit Observations

(a) Apparent Conflict of Interest

Mr. Needham, as an employee of MRDC or representing his Consultancy Company, is in effect a separate and identifiable person from MRDC or the State.

Pato Lawyers in some instances represented Mr. Needham on matters relating to him. Examples of such instances were Pato Lawyers' letter dated 15 October 1993 to Sir Julius Chan, the then Deputy Prime Minister (Appendix D), letter dated 19 October 1993 from Mr. F. Joku, the Chief of Staff of the Office of the then Deputy Prime Minister and Minister for Finance and Planning, to Pato Lawyers (Appendix E), letter of the same date from Pato Lawyers to the Chief of Staff (Appendix F), and Pato Lawyers' letter dated 22 November 1993 to the Director General, National Intelligence Organisation (Appendix G). These correspondences related to alleged defamatory statements against Mr. Needham (reportedly broadcast by National Broadcasting Commission) and to a security assessment on Mr. Needham.

At a later date, a dispute arose between Mr. Needham and MRDC in connection with the termination of Mr. Needham's employment. In respect of this dispute, MRDC engaged Pato Lawyers to represent the company and the State. This dispute apparently involved a claim of K14 million made by Mr. Needham against MRDC - refer details in paragraph 2.5 above.

These arrangements with Pato Lawyers made by MRDC were not well conceived nor clearly defined and, in my opinion, have permitted a conflict of interest situation.

MRDC could and should have avoided the situation arising out of such arrangements in order to protect the company's interest.

(b) Exorbitant Payment for Mr. Coyle's Services

As referred to in paragraph 3.3 above, Mr. Coyle's services were paid for at the rate of K963 per day plus sales tax (i.e. K4,815 per week plus sales tax) for a 46 weeks period in a year. The services qualifying for this payment included a Company Secretary's routine functions such as preparing Board Papers and Agendas and Board Minutes and maintaining normal corporate and statutory records. In my opinion, these services could have been performed by a qualified Company Secretary at lesser cost to MRDC.

.0 CONCLUSIONS

y conclusions are summarised below:

a) Correct procedures were not observed in the appointment of Mr. Needham. Mr. Needham's appointment did not appear to have followed regulations stipulated by Immigration and Labour Departments. Negotiations of his terms and conditions continued even after he commenced work in September 1992 and the final terms and conditions were approved only in July 1993.

A set of three draft agreements in relation to the engagement of Mr. Needham were submitted to the then Prime Minister (Mr. Pias Wingti), the then Deputy Prime Minister (Sir Julius Chan) and the then Minister for Mining and

Petroleum (Mr. Masket Iangalio). Because of concerns expressed by the then Deputy Prime Minister, a revised agreement was prepared. Although the revised agreement was intended to alleviate the concerns of the then Deputy Prime Minister, it tended to provide Mr. Needham with a quicker cash benefit of K260,000 in lieu of a reduction in the percentage of additional fee (commission) to be earned based on performance.

- (c) The additional fee provided for in the agreement was based as percentage of savings on MRDC budget. It should be noted that a budget may not be considered a proper yardstick for determination of savings as the budget of MRDC, where all conceivable operations were under the control of the beneficiary (namely, Mr. Needham), appeared to be open to adjustment or manipulation.
- (d) The Board of MRDC approved the revised agreement in its meeting held on 15 July 1993. The majority of the Board's votes in favour of the revised agreement were cast by staff members of MRDC (as alternate directors) who were apparently supportive of Mr. Needham. The Chairman, Mr. G. Aopi, had abstained from voting while a member (Mr.W.Boas) from the Department of Finance and Planning did not attend the meeting.
- (e) Mr. Needham took part in the above board meeting. Although he abstained in the voting, there is evidence that he had exercised coercion in pushing through the approval of his agreement. In my opinion, it would have been proper for Mr. Needham to have disclosed his interest and excused himself from attending the meeting.
- (f) The then Deputy Prime Minister, Sir Julius Chan, was of the view that the Board was wrongly advised that terms and conditions of Mr. Needham's employment had already been approved by the National Executive Council. If this was so,

I am inclined to agree with Sir Julius Chan's contention that the Board would not have been in a position to give a fair consideration of the agreement.

- (g) The employment of Mr. Needham was terminated on 11 April 1994. Payments made to him by MRDC were noted to be as follows:

8.9.92 to 7.9.93 - K429,200
8.9.93 to 11.4.94 - K210,000
- K 6 39,200

These payments are considered exorbitant, particularly when no tangible contributions by Mr. Needham to MRDC or the State are apparent. Considerable amount of his time appeared to have been spent on protracted negotiations of his terms and conditions of employment.

- (h) The non-observance of correct procedures in the appointment of Mr. Needham as referred to in (a) above has resulted in protracted negotiations, loss of time and resources, and substantial cost to MRDC and the State including potential financial loss through an alleged claim of K14 million by Mr. Needham.

Sound judgement did not appear to have been exercised in the selection of Mr. Needham for the position of Chief Executive of MRDC. Mr. Needham was reportedly a person with questionable financial background', allegedly facing litigations from a bank and the liquidator of the company in which he was previously the Managing Director. Having such a person as the Chief Executive of the State owned largest mining company could jeopardize the State's opportunity to avail international loan facilities, or create embarrassing situations for the Government.

- (j) The arrangements with Pato Lawyers to provide legal services to MRDC were not well conceived nor clearly defined. Pato Lawyers had acted on behalf of MR. Needham in some instances, and at a later date, they were representing MRDC in its dispute with Mr. Needham who had apparently claimed K14 million from MRDC. In my opinion, these arrangements had permitted a conflict of interest situation which MRDC could have avoided.
- (k) Mr. D.E. Coyle of Pato Lawyers was appointed as the Company Secretary of MRDC on a retainer basis, for which MRDC was charged a fee of K4,815 per week plus sales tax amounting to well over of K200,000 per year. These charges are considered as exorbitant. In my opinion, a full time Company Secretary could have been employed by MRDC at a much lesser cost.

CONFIDENTIAL BRIEF

FOR PRIME MINISTER
DEPUTY PRIME MINISTER
MINISTER FOR MINING AND PETROLEUM

RE: CONSULTANCY AGREEMENT - MRDC AND NEEDHAM AND
ASSOCIATES PTY LTD (the Consultant") &
EMPLOYMENT CONTRACT - MRDC AND ROBERT NEEDHAM (the
Employee") &
MANAGEMENT AGREEMENT - MRDC AND NEEDHAM &
ASSOCIATES PTY LTD (the Manager")

1. BACKGROUND TO AGREEMENTS

Central to the three proposed agreements is the recruitment of Mr Robert Needham. In fixing the level of remuneration to be paid to Mr Needham (as managing director of MRDC) and to the company in which Mr Needham has a controlling interest (which will serve as Consultant to and Manager of MRDC), MRDC, has taken the following factors into consideration:-

1. Mr Needham has, because of his involvement with MRDC, ceased to operate his consultancy business in Australia- To secure the services of a person as experienced as Mr Needham it is necessary to compensate him to some extent in respect of the inactivity of his Australian business and the consequent loss of goodwill that will flow from that;
2. The management arrangements have been structured in such a way that Mr Needham's management company will be responsible for the provision of a financial adviser and engineering project analyst. These experts will be located in MRDC's offices throughout the duration of the Management Agreement. There are substantial financial advantages to MRDC in having these experts readily available. MRDC will not be

placed in a position where it is forced to engage experts on an ad hoc basis which usually results in the payment of exorbitant fees. A ceiling of fees for which MRDC is responsible in respect of these experts is set in the Management Agreement and this will greatly assist MRDC in containing costs for consultants and experts;

3. It is important to remember that under the Consultancy Agreement the payment of fees will depend upon the results achieved by the Consultant for MRDC. An incentive based fee arrangement is designed to secure the maximum benefit to MRDC by encouraging the achievement of MRDC's objectives without delay. Only by securing the achievement of these goals will the Consultant reap any financial reward under the Consultancy Agreement;
4. Finally, the arrangements proposed in the three agreements are not inconsistent with the wages policy of MRDC nor are they inconsistent with the general government wages policy in relation to the provision of management and consultancy services for its statutory bodies such as Air Niugini (for example KLM Management) and in relation to international consultants engaged by the government for various purposes for its statutory corporations.

We set out below a summary of each of the three draft agreements which MRDC proposes to enter into.

CONSULTANCY AGREEMENT

1. Engagement

Under the terms of the proposed Consultancy agreement, MRDC is to engage the Consultant for a period of five years to provide various consultancy services to MRDC which are specified in a schedule to the agreement.

2. Fees

In consideration of the Consultant providing these services, MRDC is to pay consultancy fees to the Consultant as follows:-

1. 1% of any project capital reduction which means the amount of reduction in capital expenditure in excess of K500,000.00 of the capital expenditure budget of any MRDC projects which the Minister for Minerals and Petroleum ("the Minister"), in his reasonable opinion, determines as having been achieved by the Consultant's performance of the consultancy services; and
2. 1% of any operating savings or profit improvements which means the amount of savings in operating expenses or improvement in profit for a specified financial year which the Minister, in his reasonable opinion, determines as having been achieved by the Consultant's performance of the consultancy services.

No such fees are payable until after the expiry of 12 months from the date of the agreement and then are payable within 30 days of any determination by the Minister as specified above.

3. Services

The Consultant is to perform the consultancy services with due skill and care and is to manage the affairs of MRDC in accordance with generally recognised principles of sound management. The Consultant is to ensure that any persons provided by the Consultant under the agreement will perform the services with due skill and care and in the best interests of MRDC.

4. Termination

The agreement will be terminated:-

- (a) if the parties mutually agree;
- (b) on the winding up, dissolution or receivership of the Consultant;

- (c) if either party ceases to carry on business; or
- (d) if the Consultant has, in the reasonable opinion of MRDC, committed a substantial breach of the terms of the agreement and has failed to show sufficient cause, within 30 days of notice by MRDC, why the agreement should not be terminated.

5 Other Provisions

The agreement contains provisions:-

- (a) prohibiting assignment by a party except with written consent of the other party;
- (b) ensuring that the confidentiality of information that the Consultant may have access to in the course of its engagement is preserved;
- (c) ensuring that intellectual property created pursuant to all MRDC projects remains with MRDC; and
- (d) prohibiting the Consultant from engaging in any projects or business which may give rise to a conflict of interest with the terms of the agreement or the provision of the consultancy services.

EMPLOYMENT CONTRACT

1. Engagement

Under the terms of the proposed Employment Contract, MRDC is to employ the Employee in the position of its managing director for a period of three years.

2. Salary and Benefits

The contract provides for the following:-

- (a) the Employee is to be paid a base salary of K40,000.00 per annum;
- (b) at the expiration of the three year term, the Employee is to receive a superannuation payment of K48,000.00. The superannuation entitlement shall accrue annually and may be paid annually;
- (c) the Employee is to accrue recreation leave at the rate of 30 days for each 12 months of continuous service under the contract which may be taken at any time with the consent of the MRDC board;
- (d) the Employee and authorised dependants are entitled to travel entitlements for recruitment (from Sydney to Port Moresby) and repatriation (from Port Moresby to Sydney) on a least cost basis and for recreation leave (2 return fares to Sydney on a first class basis). At the Employee's option, a payment of K8,000.00 per annum may be made to the Employee in lieu of travel entitlements;
- (e) the Employee is entitled to 15 sick leave days each year;
- (f) the Employee is to be provided with executive housing appropriate to his position;
- (g) the Employee is to be paid a special allowance of K2,000.00 (net of tax) per annum;
- (h) the Employee is to receive a benefit of up to K3,100.00 per annum for domestic servants;
- (i) the Employee is to receive a settling allowance of K8,000.00 per annum;
- (j) the Employee will receive an entertainment allowance of up to K8,000.00 per annum;
- (k) the Employee will receive a vehicle allowance of K10,000.00 per annum or alternatively a motor vehicle will be at his disposal;

- (l) the Employee's accounts for utilities and telephone charges will be paid by MRDC.

3 Duties

The Employee is to perform skillfully and diligently all duties and work considered by MRDC to be within the scope of or incidental to his employment.

4 Termination

The contract may be terminated:-

- (a) by the Employee giving at least three months written notice to MRDC;
- (b) by MRDC on the grounds of the Employee's ill health as advised by a medical officer appointed by MRDC;
- (c) by MRDC by notice with immediate effect on the basis of the Employee's misconduct.

5 Other Provisions

The contract contains provisions:-

- (a) prohibiting the Employee from engaging in any activity which may conflict directly or indirectly with his duties under the contract;
- (b) requiring the Employee to give active support to MRDC's policy and plans for the training of PNG officers and for the replacement of foreign contract officers; and
- (c) ensuring that intellectual property in papers, programs etc made or discovered by the Employee during his employment remains with MRDC.

MANAGEMENT AGREEMENT

1. Engagement

Under the terms of the proposed Management Agreement, MRDC is to appoint the Manager for a period of five years to manage the day-to-day affairs of MRDC.

2. Fees

In consideration of the Manager providing management services, MRDC is to pay management fees to the Manager as follows:-

1. a fee of K40,000.00 is to be paid on the Appointment Date;
2. a fee of K5,000.00 is to be paid monthly in advance to the Manager on the first day of each month;
3. a fee of K10,000.00 for each of the three persons provided by the Manager under the agreement is to be paid monthly in advance to the Manager on the first day of each month.

3. Services

The Manager is to manage the affairs of MRDC in accordance with generally recognised principles of sound management and subject to the directors of the MRDC board and is to provide the various management services specified in a schedule to the agreement. In addition, the Manager is to provide to MRDC the services of Robert Needham (whom MRDC covenants to cause to be appointed managing director of MRDC) as well as a suitably experienced and qualified financial adviser and a suitably experienced and qualified engineering project analyst. In respect of these personnel (except for Robert Needham), MRDC is to bear accommodation and electricity costs\

4 Termination

The agreement will be terminated:-

- (i) if the parties mutually agree;
- (b) on the winding up, dissolution or receivership of the Manager;
- (c) if either party ceases to carry on business; or
- (d) if the Manager has, in the reasonable opinion of MRDC, committed a substantial breach of the terms of the agreement and has failed to show sufficient cause, within 30 days of notice by MRDC, why the agreement should not be terminated.

5 Other provisions

The agreement contains provisions:-

- (a) prohibiting assignment by a party except with written consent of the other party;
- (b) ensuring that the confidentiality of information that the Manager may have access to in the course of its engagement is preserved;
- (c) ensuring that intellectual property created pursuant to MRDC projects remains with MRDC; and
- (d) prohibiting the Manager from engaging in any projects or businesses which may give rise to a conflict of interest with the terms of the agreement or the provision of the management services.

APPENDIX B

AGREEMENT

BETWEEN:

MINERAL RESOURCES DEVELOPMENT COMPAA Y PTY LIMITED

("MRDC")

AND:

MARKSCAL LTD

("the Consultant")

**PATO
Lawyers
Fifth Floor
ANG House
Hunter Street
PORT MORESBY**

**P 0 Box 662
PORT MORESBY**

**Telephone: 21 3244
Facslmle:21 3261
Ref: RP:nd (MRDC3.AGT)**

AGREEMENT

THIS AGREEMENT is made on the 14th day of July 1993.

BETWEEN: MINERAL RESOURCES DEVELOPMENT COMPANY PTY LTD ("MRDC") of 8th Floor, Invesmen Haus, Douglas Street, Port Moresby of the first part

AND: MARKSCAL LTD of care of Masons, One Pacific Place; Causeway, Hong Kong ("the Consultant") of the second part

WHEREAS:

A. MRDC is the holder of various interests in mining ventures throughout Papua New Guinea either directly or through its associated and related companies.

B. The Consultant is a company entitled to the exclusive services of Robert Needham ("Needham").

C. The Consultant has agreed to provide to MRDC and its associated and related companies (hereinafter collectively called the MRDC Group") consultancy services including the service of Needham to act as Chief Executive Officer of the MRDC Group ("the Services") on the terms and conditions set out herein.

NOW THIS AGREEMENT WITNESSES and is it hereby agreed and declared as follows:-

1. PROVISION OF NEEDHAM AS CHIEF EXECUTIVE OFFICER

In consideration of the covenants contained herein, the Consultant shall provide the Services to the MRDC Group an.1 MRDC shall appoint Needham as Chief Executive Officer of the MRDC Group. The Consultant covenants on its own behalf and on behalf of Needham that Needham shall serve the MRDC Group as Chief Executive Officer and shall render such service faithfully and with all reasonable skill, care and diligence.

2. TERM

This Agreement shall be deemed to have commenced on the 12th day of September 1992 ("the commencement date") and shall continue for a period of five (5) years from the commencement date and thereafter from year to year unless and until terminated by either party hereto giving not less than twelve (12) months' written notice.

3. DUTIES

The duties of Needham as Chief Executive Officer of the MRDC Group (hereinafter called "the duties") shall be as follows:-

- 3.1 to undertake the functions of Chief Executive Officer and such other duties, and exercise such powers in relation to the MRDC Group, as the Board of Directors of MRDC (hereinafter called "the Board") shall reasonably delegate to Needham from time to time;
- 3.2 in the discharge of the duties and in the exercise of the powers referred to in sub-clause 3.1, to conform to, observe and comply with all reasonable resolutions, regulation. and directions from time to time made or given by the Board;
- 3.3 to devote so much of his time and attention as is necessary to ensure that all aspects of the duties are duly and faithfully carried out in the best interests of the MRDC Group;
- 3.4 in pursuance of the duties, to perform such services for, and accept such offices in, companies in which MRDC holds a substantial shareholding as the Board shall from time to time require; and
- 3.5 to generally promote and enhance the business carried on by, and the interests of the MRDC Group.

4. CONSULTANT'S FEE

In consideration of the covenants contained herein, MRDC shall pay to the Consultant:-

- 4.1 up-front appointment fee of K40,000 payable on the day of September 1992 so as to compensate the Consultant for the loss of previous income and business;

4.2 an annual amount of K360,000 payable by equal monthly instalments on the 1st day of each month which amount may be allocated in part to an annual salary to be paid direct Needham.

5 MRDC TO PROVIDE ACCOMMODATION ETC

In addition to the Consultant's fee, MRDC shall at its cost and expense provide direct to Needham the following benefit:3:-

5.1 the exclusive use of a suitable motor vehicle in respect of which MRDC shall pay for all usual expenses (including fuel) in relation thereto. At the option of MRDC an allowance of K shall be paid to the Consultant in lieu of the use of the said motor vehicle;

5.2 housing for Needham and his immediate family of a standard appropriate for the Chief Executive Officer of a substantial mining corporation;

5.3 two (2) annual first class return airfares from Port Moresby to Sydney for Needham and his immediate family. At the option of MRDC an allowance of K8 000 per annum may be paid to the Consultant in lieu of such travel benefits;

5.4. reimbursement of premiums for worldwide health and accident insurance for Needham and his immediate family;

5.5 a special allowance of - K2,002. per annum;

5.6 a domestic servants allowance of - K3,100 per annum;

5.7 a settling allowance of - K8.000 per annum;

5.8 an entertainment allowance of - K8.000 per annum;
and

5.9 a telephone allowance of - K4.000 per annum.

6 PAYMENT OF FEE EQUIVALENT TO SUPERANNUATION

MRDC shall on each anniversary of the commencement date pay to the Consultant an amount of **K16.000**.

7. LEAVE ENTITLEMENTS

Needham shall be entitled to:-

7.1 annual leave of 6 weeks per annum; and

7.2 sick leave of 31 days per annum.

8. EXPENSES

MRDC shall reimburse the Consultant for all reasonable travel, accommodation and incidental expenses incurred in connection with the performance of the duties.

9. ADDITIONAL FEES

9.1 It is acknowledged by MRDC that the Consultant is to have a major role in enhancing the business and assets of the MRDC Group and it is agreed that MRDC shall, in addition to any payments or benefits paid hereunder, pay to the Consultant an additional fee calculated as being one-half of one percent (0.5%) of the sum of the following:-

- (a) the amount by which the MRDC Group's budgeted project capital expenditure exceeds actual project capital expenditure and which the Minister for Mining and Petroleum ("the Minister") reasonably determines as having been achieved as a result of the Consultant's performance of the Services, less an amount of K500,000.00; and
- (b) any savings in operating costs or improvements in profits of the MRDC Group which the Minister reasonably determines as having been achieved as a result of the Consultant's performance of the Services.

The first period in respect of which the said calculation and payment, if any, is to be made is the financial year ending on 31 December 1993 (or the next financial year after that date if the financial year end for MRDC is not 31 December).

9.2 It is acknowledged that the Consultant upon being notified by MRDC as to the amount of the additional fee applicable to any financial year may, at its discretion, (and subject to the Articles of

MRDC) request that the amount of the said additional fee be converted into options (on conditions to be negotiated with MRDC) or fully paid shares (capitalised at market value) in which case the Consultant shall be entitled to such options or fully paid shares to the value of twice the amount of the additional fee applicable to any financial year under sub-clause 9.1

10. CONFIDENTIALITY

The Consultant covenants and agrees not at any time and whether on its own behalf or on behalf of any other person and in any capacity whatsoever except in the discharge of the duties to use, divulge or otherwise disseminate to any person whatsoever or fail to secure the secrecy and confidentiality of any trade secrets, confidential information or any information concerning any intellectual property or any aspects of the business carried on by the MRDC Group (or any part thereof) without the prior written consent of MRDC.

11. TERMINATION

This Agreement may be terminated forthwith by MRDC without prior notice if the Consultant or Needham (as the case may be) shall at any time during the term hereof:-

12.1 commit any material or persistent breach of the provisions of this Agreement;

12.2 be guilty of any grave misconduct or wilful negligence in the discharge of the duties;

12.3 become of unsound mind;

12.4 be convicted in Papua New Guinea of and criminal offence; or

12.5 become permanently incapacitated to the extent that Needham is unable to carry out the duties.

12. NOTICES

A notice given under this Agreement shall be in writing and shall be treated as having been received:-

12.1 when delivered (in the case of its being left at a party's address):

12.2 on the third business day after posting (in the case of it being sent by pre-paid mail); or

12.3 on the day of transmission if a business day otherwise on the next following business day (in the case of it being transmitted by facsimile transmission and a correct and complete transmission report for that transmission being received by the sender).

13. GOVERNING LAW

This agreement shall be governed by the laws of Papua New Guinea.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date set out at the commencement of it.

SIGNED for and on behalf of the **MINERAL RESOURCES DEVELOPMENT COMPANY PTY LTD** in the presence of:

DAVID COYLE **COMPANY SECRETARY**

AGREEMENT FOR PROVISION OF
LEGAL AND SECRETARIAL SERVICES

PATO LAWYERS

["Patos"]

AND

MINERAL RESOURCES DEVELOPMENT COMPANY
PTY LIMITED

["MRDC"]

PATO
Lawyers
Fifth Floor
ANG House
Hunter Street
(P O Box 662)
PORT MORESBY

Telephone: 213244
Facsimile: 21 3261

PROFESSIONAL SERVICES AGREEMENT - PATOS & MRDC

"Professional Rates" means rates of professional fees charged by Patos from time to time, which shall be comparable with fees customarily charged by skilled and experienced Port Moresby lawyers for work of the nature herein provided for:

"Professional Services" means the services of skilled and experienced lawyers to advise MRDC on and conduct its legal and associated commercial business, particularly in the mining and petroleum sectors, and includes the services of a lawyer to provide Secretarial Services as hereinafter defined:

"Retainer" means the basic retainer referred to in clause 5. hereof:

"MRDC Group" means MRDC and/or (as the context requires or permits) any and all companies which are subsidiaries of MRDC:

"Secretary" means the qualified National lawyer to be placed in MRDC's offices to act as Company Secretary as hereinafter provided:

"Secretarial Services" means Professional Services in the specialised area of acting as MRDC group Company Secretary, maintaining its corporate registers, taking minutes of Board meetings, ensuring statutory compliance and Generally carrying out and discharging the MRDC Group's corporate secretarial and share registry work and functions, with the backing and resources of Patos: and

"Term" means the period of three years which commenced on 1 January 1993 and ends on 31 December 1996 and any extension, renewal or holding over thereof.

2. Interpretation

In this Agreement:

- (a) References to Clauses are to clauses of this Agreement.
- (b) References to the singular shall (except where the context otherwise requires) include the plural and vice versa.
- (c) The clause headings are for convenience only and shall not affect the interpretation hereof

3. Provision of the Professional Services

- 3.1 The parties agree and confirm as follows:

**AGREEMENT FOR PROVISION OF
LEGAL AND SECRETARIAL SERVICES**

AN AGREEMENT made as of the 11th day of July 1994

MADE BETWEEN:

1. RIMBINK PATO, principal of and for and on behalf of PATO. LAWYERS of 5th Floor ANG House, Hunter Street (P.O. Box 662) on Moresby ("Patos"); and
2. MINERAL RESOURCES DEVELOPMENT COMPANY PTY LIMITED. on behalf of the MRDC Group (as hereinafter defined), of 8th Floor Invesmen House. Douglas Street (P.O. Box 1076), Port Moresby ("MRDC").

WHEREAS -

- A. In addition to their general retainer to act as lawyers for MRDC. Patos act under a special Retainer to provide MRDC with Professional Services as those expressions are hereinafter defined);
- B. During a period of growth and dynamic change in MRDC the arrangement between the parties has been that Pates have placed a lawyer on full time secondment in the offices of MRDC to provide the Professional Services and also act as MRDC's in-house group Corporate Secretary;
- C. In pursuance of their notices of promoting localisation and the transfer of skills to citizens the parties now intend to place a qualified National lawyer from Patos on full time secondment in MRDC's offices to act as the MRDC Group Company Secretary for the balance of the Term (the "Secretary ");
- D. The Secretary will act under the supervision of and with the backing and resources of Patos on the basis that the Professional Services will otherwise be provided from Patos' professional offices;
- E. The parties wish to document the revised arrangements agreed between them as recited above.

NOW THE PARTIES HEREBY CONFIRM AND RATIFY their agreement as follows:

1. Definitions

- 1.1 In this Agreement, unless the context or subject matter otherwise requires:-

PROFESSIONAL SERVICES AGREEMENT - PATOS & MRDC

3.1.1 Patos will for the balance of the Term continue to provide MRDC with the following

Professional Services:

- (a) The full time services of a qualified National lawyer to provide the Secretarial Services, acting as Group Company Secretary under the supervision of and with the backing and resources of Pates:
- (b) The services of skilled and experienced lawyers to otherwise provide the Professional Services from Patos' offices, or elsewhere, as MRDC requires:

3.1.2 In respect of the work of the Secretary in MRDC's offices:

- (a) Patos shall pay the Secretary's salary, but he shall work full time in the offices of MRDC and be treated as a member of staff.
- (b) MRDC will provide the Secretary with administrative and secretarial support as well as office facilities and materials and the use of computer equipment.
- (c) The Secretary will involve, train and assist such support officer/assistant as MRDC shall assign to the Secretary, and that person shall act as Assistant Company Secretary on occasions when the Secretary is on leave.

4. Commencement and Duration

It is acknowledged that the Retainer commenced on 1 January 1993 and shall continue in accordance with this agreement throughout the Term and thereafter on a holding over basis until terminated.

- 4.2 This Agreement shall not be subject to review until after the expiration of the Term, when (without commitment by either party) it shall be reviewed with a view to its being formally extended. Unless and until the parties expressly so agree or the Retainer and/or this agreement is terminated on notice as herein provided, this agreement shall, after the expiration of the Term, continue and Pates shall continue to provide the Professional Services subject to termination, which either party can effect at any time provided it shall have given to the other party twelve months prior written notice thereof.

5. Professional Fees and Expenses

- 5.1 MRDC shall continue to pay the Retainer to Pates throughout the Term. It is acknowledged that the Retainer is a basic annual fee payable to Patos in consideration of its maintaining legal resources meeting MRDC's requirements and making the same available to MRDC and that the Retainer and other fees and expenses shall be payable to Pates throughout the Term subject to and upon the following terms and conditions:

- ta) the Retainer will be paid fortnightly in arrears, at the rate of K9.836.95 per fortnight for a 46 week year:
- (b) the Retainer is allocated as to an annual amount of K45.000.00 to the provision of the Secretarial Services: the balance thereof is allocated to the provision of Professional Services calculated at Professional Rates:
- (c) To the extent that fees payable to Patos in respect of Professional work, calculated at Professional Rates, shall from time to time exceed the provision made therefor in the Retainer, the same shall be separately charged and billed. Giving credit for the portion of the Retainer which has accrued at the date of invoice, and the nett amount due shall be paid within fourteen-j14) days of invoice.
- (d) Patos will otherwise be entitled to charge MRDC for all disbursements and travel and other out-of-pocket expenses incurred by them in providing the professional services, in accordance with normal professional practice

IN WITNESS whereof the parties have executed this Agreement on

SIGNED for and on behalf of **PATO
LAWYERS** by its Principal in the
presence of:

SIGNED for and on behalf of **MINERAL
RESOURCES DEVELOPMENT
COMPANY PTY LTD** by its Managing
Director in the presence of:

July 1994

Sir Julius Chan
Minister for Finance and Planning
Vulupindi House
Waigani Drive
WAICAN
National Capital District

Dear Sir.

RE: NEEDHAM V. NATIONAL BROADCASTING COMMISSION

We act for Mr Robert Needham, the Managing Director of Mineral resources Development Pty. Limited and refer to statements made in radio news bulletins today in relation to our client.

The statements made in thus:: reports purport to be based upon, and to quote from, a letter dated 13 September 1993 said to have been written by you to the Hon. Masker langalio, MP, Minister for Mining and Petroleum We will not attempt to set out full details of the broadcast in this preliminary letter, which is written as a matter of priority to ensure that you are informed immediately of these matters.

We have taken the matter up with the broadcaster as a matter of urgency, and a copy of our initial letter written today is attached, for your information. You will see that the broadcaster has been warned against further publishing material of this nature.

The material published in relation to our client includes quotes allegedly from your letter to the effect that Mr. Needham is to be demoted to a non-executive position, based upon the false premise that he has failed to stimulate new investments in mining and petroleum exploration and development. It goes on to make irrelevant, inaccurate, tendentious and selective reference to matters personal to Mr. Needham, raising imputations of the most serious kind.

Action is being instituted against the broadcaster. In the meantime, it is necessary for us to establish whether or not the broadcast is a fair and accurate account of material published by you, as claimed by the reported. For this purpose, would you be good enough to supply to us as a matter of urgency a copy of any letter written by you upon which the radio report might be based?

It goes without saying that, if the statements made are based on a letter written by you, then we are obliged to draw your attention to the defamatory imputations arising from the publishing by you of such material. In that case, we must ask you to immediately review your position in this matter, and to undertake to refrain from making such statements in future and give your full co-operation in an attempt to repair the damage done to our client's reputation as a result of the publication by you of such material.

It would be inappropriate for us to say more on your role in the **matter** until we have your reply, and you have provided details a copy of any correspondence written by you upon the radio report might be based.

If the radio report is based on material published by you, we will naturally be prepared to give you an opportunity to issue an appropriate retraction and apology to our client. Again we must say that would insist on being consulted as to the form and nature of any apology and retraction to be published.

This matter is most urgent and important. Please immediately acknowledge receipt of this letter and send us a copy of the material requested.

Yours faithfully

PATO LAWYERS

Per: Rimbink Pato

OFFICE OF THE MINISTER FOR FINANCE AND PLANNING

19 October 1993

**Mr Rimbink Pato
Paw Lawyers
Fifth Floor
ANG House Hunter Street
P O Box 662 PORT
MORESBY NCD**

Dear Sir

I write to confirm our discussion of Friday last, 15 October 1993.

After your personal telephone dialogue with me and subsequently the Deputy Prime Minister and Minister for Finance and Planning, Sir Julius, himself, it has been established that there exists no basis for the Minister to respond to your various correspondence in connection with the Needham v. National Broadcasting Commission, as requested.

Since we now agree that you have acted prematurely in making serious inferences and placing undue pressure on the Deputy Prime Minister on the basis of mere allegations, a formal apology from you to Sir Julius, I feel, would be in order.

Yours sincerely

**Franzalbert Joku
Chief of Staff**

PATO
Lawyers

Fifth Floor
ANC House
Hunter Street
P. O. Box 662
Port Moresby
Papua New Guinea
Telephone: (675) 21 3244
Facsimile : (675) 21 3261

RIMBINK PATO
PRINCIPAL

Our Ref: 93/4549/RP:nd

19 October 1993

Your Ref :

Mr Franzalbert Joku
Chief of Staff
Office of Minister for Finance & Planning
P O Box 6030
By Facsimile: 28843
And By Hand

BOROKO
National Capital District

Dear Sir.

RE: ROBERT NEEDHAM v. NATIONAL BROADCASTING COMMISSION

Thank you for your letter of 19th October 1993.

The point made in my conversation with you and Sir Julius was that my letter was sent on instructions and that the National Broadcasting Commission had carried a news broadcast making various defamatory allegations of the most serious kind against Mr. Needham, and that these allegations were claimed to be founded upon correspondence published by the Minister for Finance and Planning. My letter was intended to warn that the contents of the broadcast appeared defamatory and that Sir Julius's comments were sought to prevent further damage. It was also indicated in my conversation that the National Broadcasting Commission would be sued, over the Broadcast, and this has now in fact occurred.

In these circumstances, our conduct was based upon instructions and thus perfectly in order. Needless to say, the thrust of our letter was, as aforesaid, to protect our client, including the State and MRDC from publications of further material of the kind referred to in our letter. I should add that it is most unusual that a lawyer would be expected to or should apologise for actions pursued on behalf of a client on the client's specific instructions.

It follows, from what I have stated above, that your request for an apology is based upon a misunderstanding of our role and hence there appears to be no basis for an apology by the writer or our firm.

From your reply of 19th October 1993 we take it that Sir Julius has no Interest in the matter.

Many thanks.

Yours faithfully
PATO
LAWYERS

Per: Rimbink Pato

PATO Lawyers

Fifth Floor
ANG House
limiter Sheet
P. O. Box 662
Port Moresby
Papua New Guinea
Telephone: (675) 21 3244
Facsimile : (675) 21 3261

RIMBINK PATO
PRINCIPAL

Our Ref: 93/4588/RP:td
Your Ref:

22 November 1993

Brigadier General K.K. Noga C.B.E.
Director General
National Intelligence Office
P O Box 333
KONEDOBU

By Hand

Strictly Private & Confidential

Dear Sir

We act for Mineral Resources Development Company and Mr Robert Needham.

We have become aware of a purported assessment of Mr Needham which it is alleged was prepared by you.

Having considered the document it is clear that it could not be an assessment by your office.

It is so poorly prepared, inaccurate and so obviously written for partisan [Political purposes that we can only assume that it is a forgery. Irrespective of who wrote it, it is gravely defamatory of our client, and if in fact it was prepared in your office, the very nature of the document would render its preparation ultra vires to the National Intelligence Organisation Act (Chapter405).

We are of the view that neither the report or its author would be entitled to any of the benefits of protection from actions for defamation. Accordingly, we advise that in tire unlikely event that the report does come from your office, we would anticipate instructions to issue proceedings for damages for defamation against you and all other persons involved in the preparation and dissemination of this document.

However, our clients would be prepared to review this decision if a retraction and apology satisfactory to our client were forthcoming and if our clients were assured that all offending material has been destroyed, and that there will be no repetition of such conduct in future.

We request that you investigate the production of this report and the apparent breach of security that allowed it (if it did come from your office) to be passed to a member of Parliament, and advise us as to whether the report is genuine or not.

Should you determine that the report was in fact prepared in your office we request that you immediately discuss with us the terms of a retraction and apology to our client to be published by you. Our Mr Pato is, available at all times to discuss these urgent matters.

We have been instructed to forward a copy of this correspondence and your response to the Prime Minister.

Yours faithfully

PATO LAWYERS.

cc: The Honourable Pias Wingti M.P.
Prime Minister