



# **PROJECT AREA LANDOWNER BENEFITS MANAGEMENT & TRUST SYSTEMS**

*STRENGTHENING BENEFICIARY PARTICIPATION IN  
PAPUA NEW GUINEA*

**PNG CLE Disputes & Commercial Law  
Tuesday 3rd September, 2024  
Crown Hotel**

# OBJECTIVE

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## Have

**Have a clear understanding of the context of the benefits trust framework**

## Appreciate

**Appreciate some of the key challenges around benefits management and distribution**

## Provide

**Provide a clear context around the key features around the benefit management agreement framework**

# PRESENTATION OUTLINE

- ▶ Mandate of Trust Management
- ▶ Operating Context
- ▶ Legislative Framework
- ▶ Benefits – Key Proponents in Benefit Management
- ▶ Management of Benefits Under Trust Arrangements
- ▶ PNG LNG Case Study
- ▶ Key Challenges
- ▶ Summary



# THE MANDATE-TRUSTS MANAGEMENT SYSTEM

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- ▶ The mandate for the creation of trusts to manage project benefits stems from National Goal & Directive Principle No. 4 of the Constitution:
  - ▶ We declare our fourth goal to be for Papua New Guinea's natural resources and environment to
  - ▶ be conserved and used for the collective benefit of us all, and be replenished for the benefit of
  - ▶ future generations.

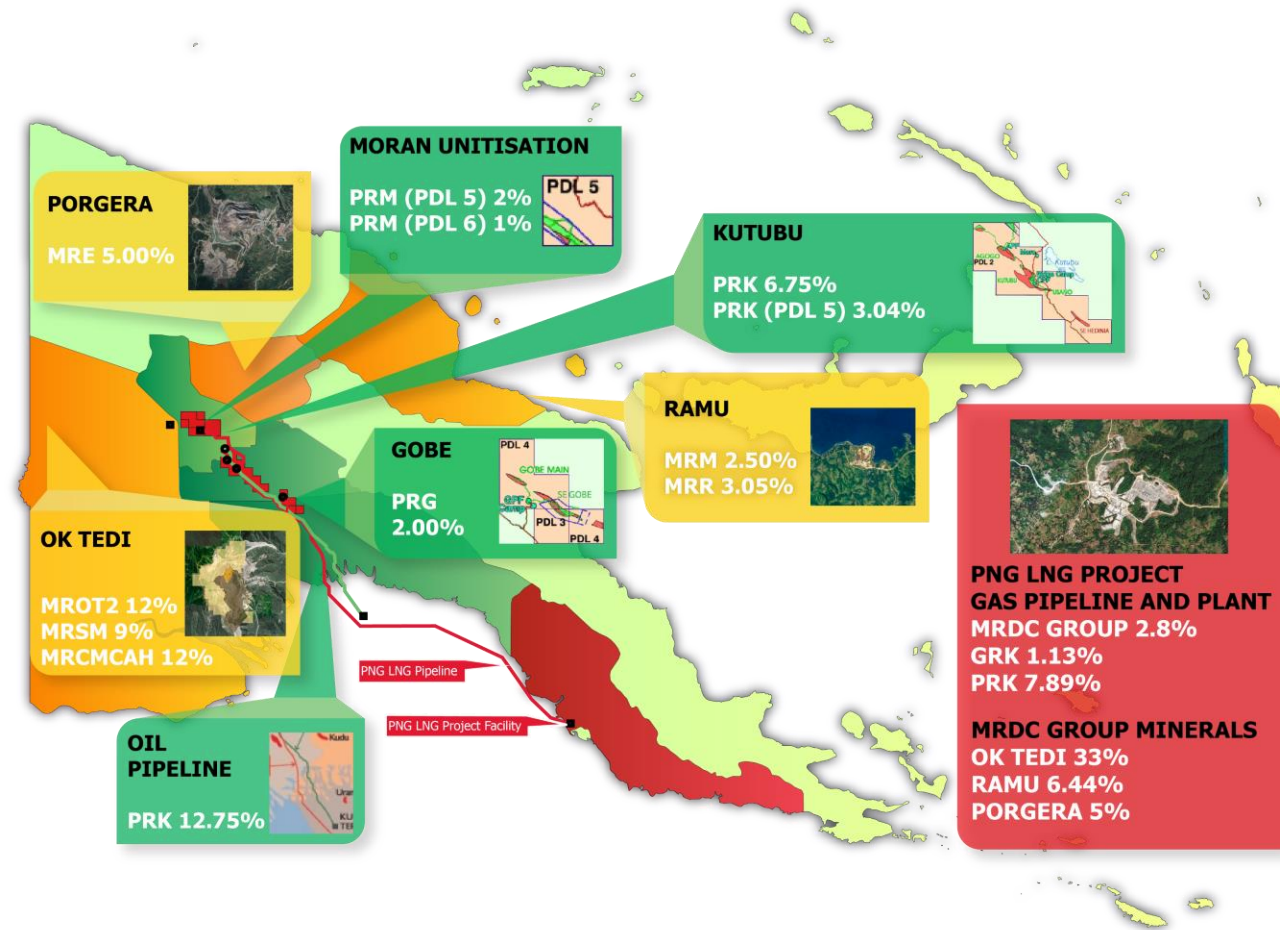
## **WE ACCORDINGLY CALL FOR—**

- ▶ (1) wise use to be made of our natural resources and the environment in and on the land or
- ▶ seabed, in the sea, under the land, and in the air, in the interests of our development and in
- ▶ trust for future generations;

# OPERATING CONTEXT

The extractive industry continues to play a critical and dominant role in the Country's economy, since Independence. According to the Extractive Industry Transparency Initiative (EITI) 2020, since 2020—the industry accounted for more 86% of the total exports.

- ▶ **Mining:** Pogera, Ok Tedi, Lihir, Simberi, Ramu, Kainaintu , Tolukuma (Frieda (East Sepik), Wafi-Golpu Morobe in the pipeline).
- ▶ **Petroleum:** Kutubu, Moran, Gobe and NW Moran:
- ▶ **Gas:** Hides GTE (Pogera), PNG LNG, (Stanley, P'nyang, Papua LNG—in the pipeline)



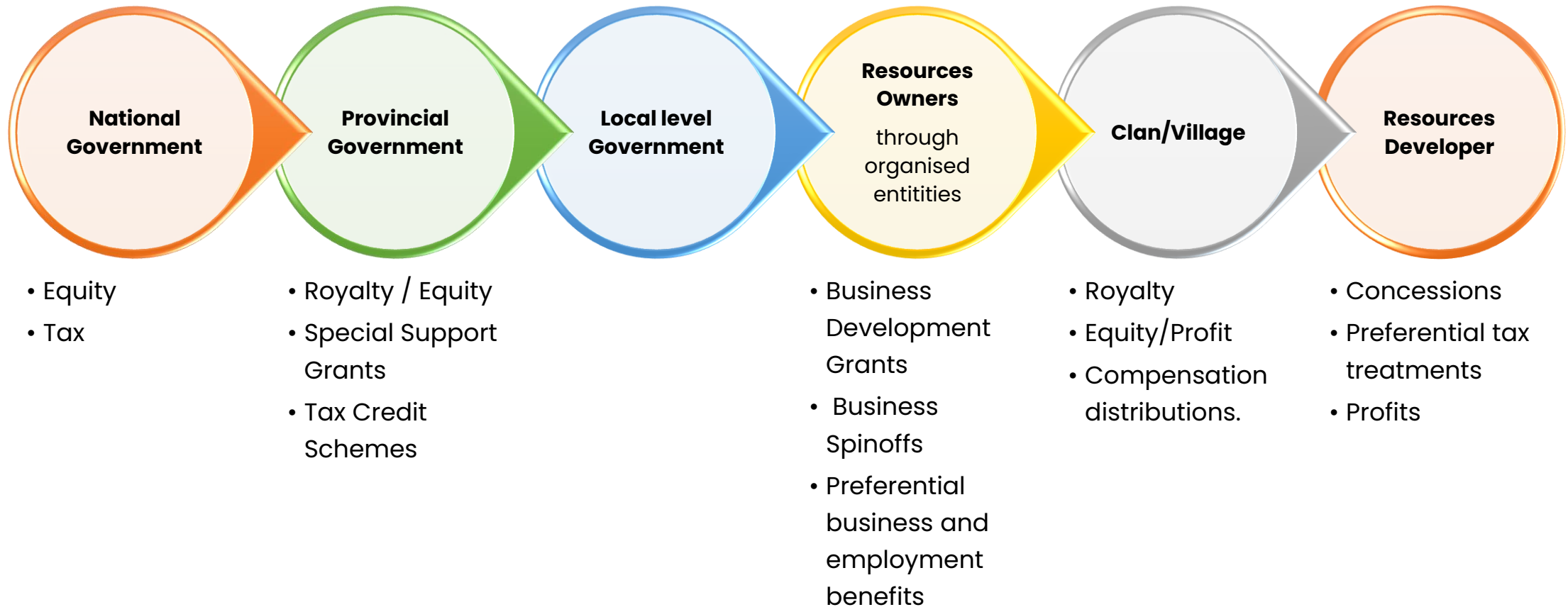
# LEGISLATIVE FRAMEWORK

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## What is a 'Benefit', from the mining and petroleum context:

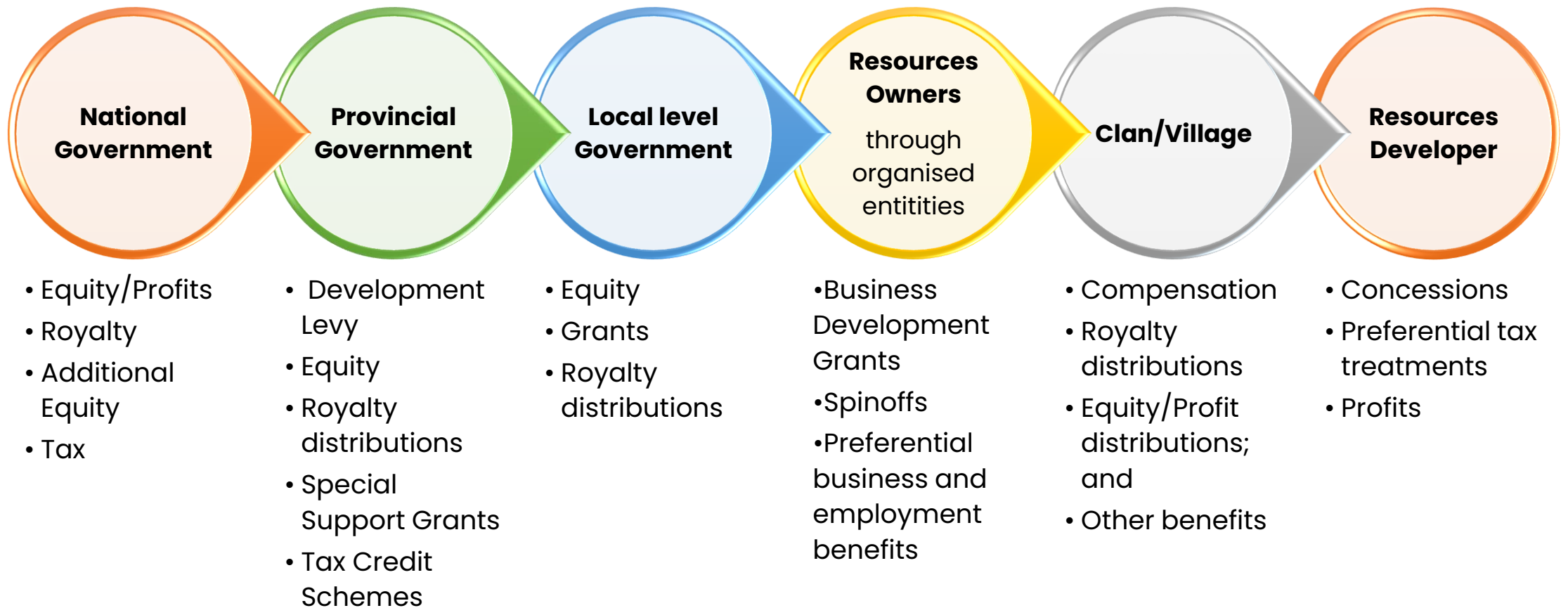
- ▶ This definition is provided based on the premise that minerals in PNG are the property of the State, thus a benefit is any benefits derived from the extraction or development of a natural resource within Papua New Guinea.
- ▶ Tangible benefits include:
  - ▶ Roads, Infrastructure development, Royalty and compensation (cash),
- ▶ Intangible benefits include:
  - ▶ Grants (business development, social infrastructure), preference in training, employment and business spin-offs.
- ▶ *Section 5 of the Mining Act and section 6 of the Oil & Gas Act declares that all minerals, petroleum or helium existing on, in or below the surface of any land in PNG, including any minerals, contained in any water lying on any land in PNG, are the property of the State. The Mining Act further declares under s6 that all land in PNG, including all water lying over that land, is available for exploration and mining and the grant of tenements over it.*
- ▶ In a similar manner, the State does not require the prior consent of affected provincial governments, affected local-level governments or customary landowners (**beneficiaries**) before it issues a mining or petroleum tenement over an area of the country.

# BENEFITS IN MINING – KEY PROPONENTS



**Project-specific fiscal arrangements are an outcome of separate negotiations (top-tier) between the State and Resource Developer**

# BENEFITS IN PETROLEUM – KEY PROPONENTS



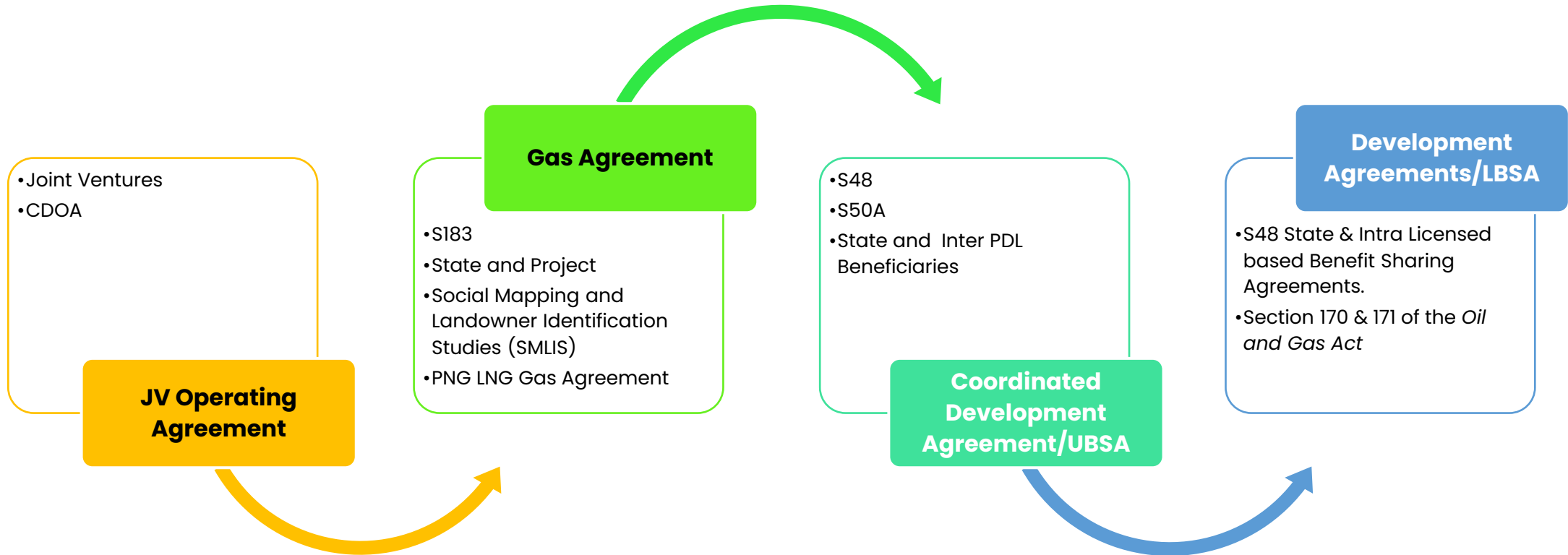
**Project-specific fiscal arrangements are an outcome of separate negotiations (top-tier) between the State and Resource Developer**



# CORRESPONDING – AGREEMENT FRAMEWORKS

Tiers of Relations	OGA	Provisions	Agreements
<b>License</b>	S 65	<i>Coordinated Petroleum Development</i>	
<b>State &amp; Project</b>	S183	<i>Gas Agreements</i>	PNGLNG Gas Agreement <b>(CoVs and the State Agreement)</b>
<b>State</b>	S185	<i>Agreements by the State</i>	
<b>CoVs</b>	S123A	<i>Designation of Operator and Operating Agreement</i>	Coordinated Development Operating Agreement
<b>State &amp; Landowners</b>	S50A	<i>Coordination of Benefits –for Gas Projects</i>	Coordinated Development Agreement =Umbrella Benefit Sharing Agreement
	S50	<i>Development Agreements</i>	Development Agreements =Licensed Based Benefit Sharing Agreements
	S48	<i>Development Forums</i>	
<b>Grantees/Beneficiaries and Trustees</b>	<b>S176</b>	<b><i>Trust Deeds between Corporate Trustee and beneficiaries.</i></b>	<b>Project Benefits Trust</b>
<b>State &amp; LLG +PG</b>	S178	<i>Expenditure Implementation Committee</i>	

# TRANSLATING PROPONENTS LEGAL ARRANGEMENTS UNDER THE ACT INTO AGREEMENTS

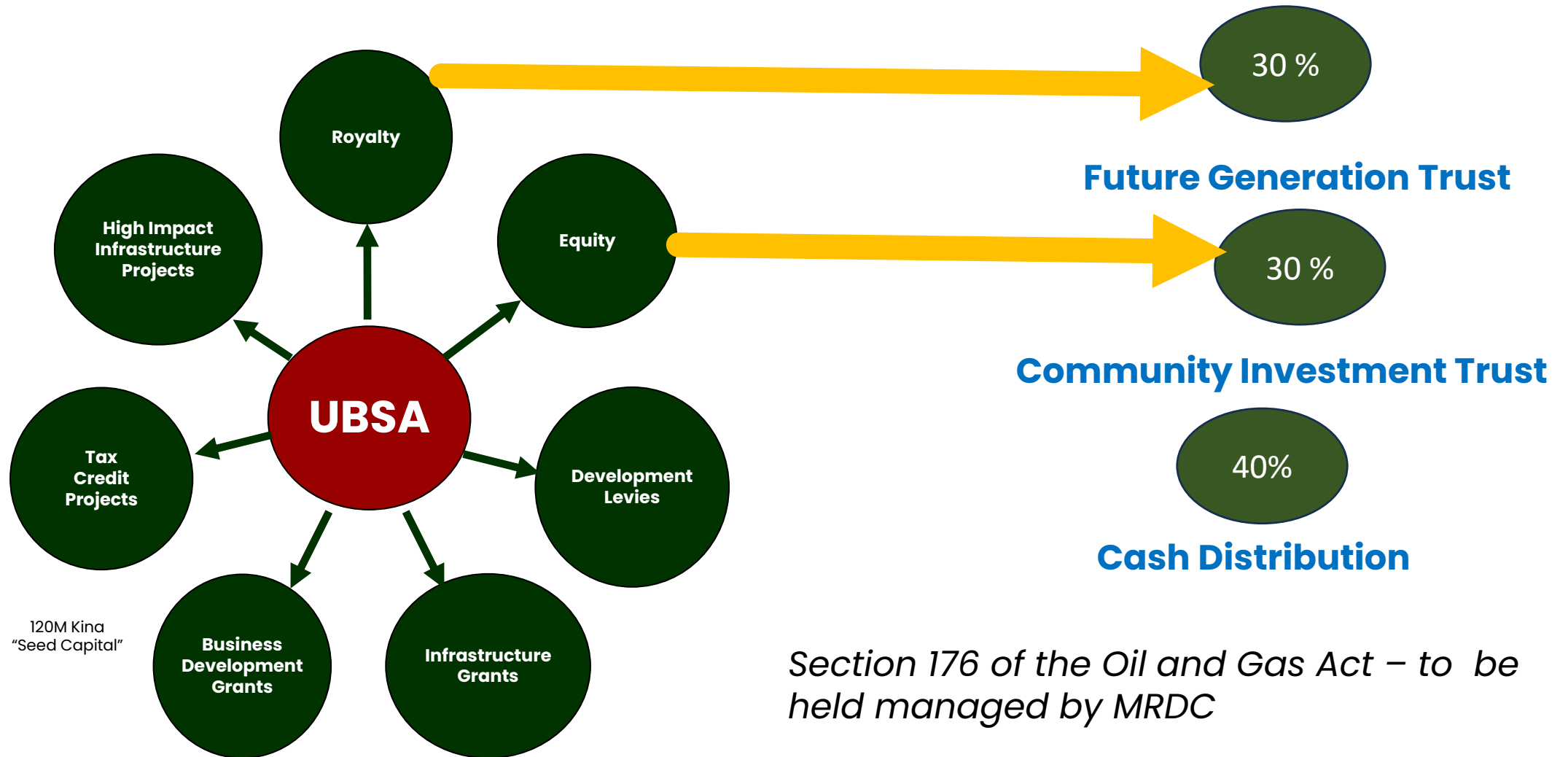


## THE TRUST ARRANGEMENT IN THE CONTEXT OF BENEFIT SHARING A PNG LNG CASE STUDY

- ▶ 6 Provinces (Central, Gulf, Southern Highlands, Hela, Western), 9 PDLs, 1 Pipeline and 1 PPFL (Plant Site).
- ▶ A coordinated development –one equity, one royalty benefit to be shared between –landowners and 5 provincial Governments.
- ▶ The Benefit Sharing Framework under PNG LNG is unprecedented and has set a new standard of *benefit management systems*.



# PNG LNG BENEFIT SHARING STRUCTURE



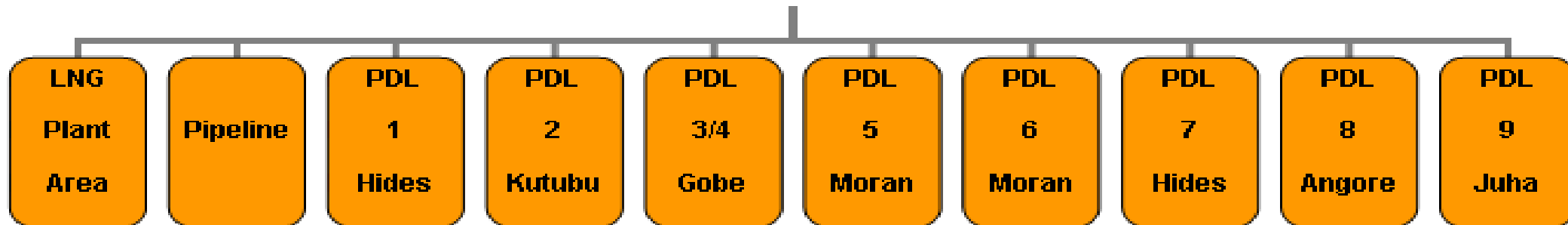
# UMBRELLA BENEFIT SHARING AGREEMENT AND LICENSE BASED SHARING AGREEMENT

## UMBRELLA BENEFIT SHARING AGREEMENT 2009 (UBSA)



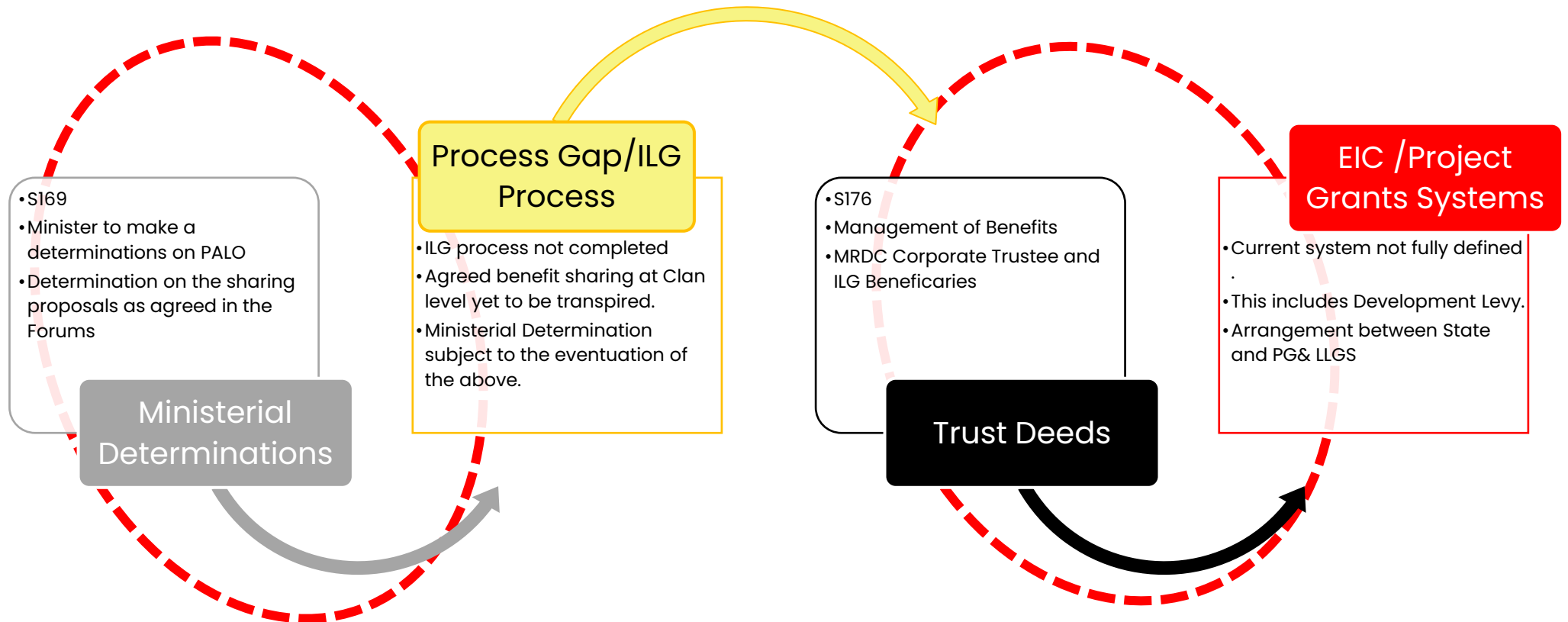
Each License area has a Corporate Trustee set up to manage the respective landowner and provincial Governments equity and royalty. – **Brown Fields:** Petroleum Resources Kutubu, Petroleum Resources Gobe and Petroleum Resources Moran.

**Green Fields:** GR Gigira, GR Hides 4, GR Angore, GR Juha, GR Plant, and GR Pipeline.



## LICENSED BASED SHARING AGREEMENTS (LBBSA)

# RECOGNISED TRUST ARRANGEMENTS



- The process under legislations validates and secures beneficiaries of the equity and royalty benefits. *Oil and Gas Act*, Section 176 gives MRDC the mandate to be trustee, to manage these benefits specifically.
- This mandate is further confirmed and recognised by parties in their respective benefit sharing agreements.

# TRUSTS IN BENEFITS MANAGEMENT



- This model is specified under Section 176 of the *Oil & Gas Act*.
- Under the Mining Regime, this model is based on Memorandum of Agreements (MoA) entered between the State and project beneficiaries.
- Where there is a dispute, the *Oil and Gas Act* and the respective Trust Deeds are quite specific. Benefits are held in abeyance until the dispute is resolved. Governance framework around the trust is quite tight.

# MRDC PERSPECTIVE

- MRDC's unique role as a trust management company expands beyond managing the equity and royalty benefits for our beneficiaries and our Corporate Trustees.
- Wealth Creation through the Resources Industry for Project Beneficiaries is possible when there is Project Security to ensure sustainable flow of revenue to build wealth.
- Consistent, active and meaningful and committed engagement outside the fence with the beneficiaries is critical to mitigate potential project tensions and misunderstanding by all key actors





# BENEFIT MANAGEMENT STRUCTURE

## MRDC's Main Functions

- Manages all the subsidiaries (Corporate Trustees)
- Holds most of the shares in trust for the beneficiaries

## MRDC's Operational Funding

- MRDC does not receive any funding support from the National Government
- MRDC's revenue sources:
  - management fees
  - MRDC's own investments

## Petroleum & Mining Project Benefits (equity & royalty)

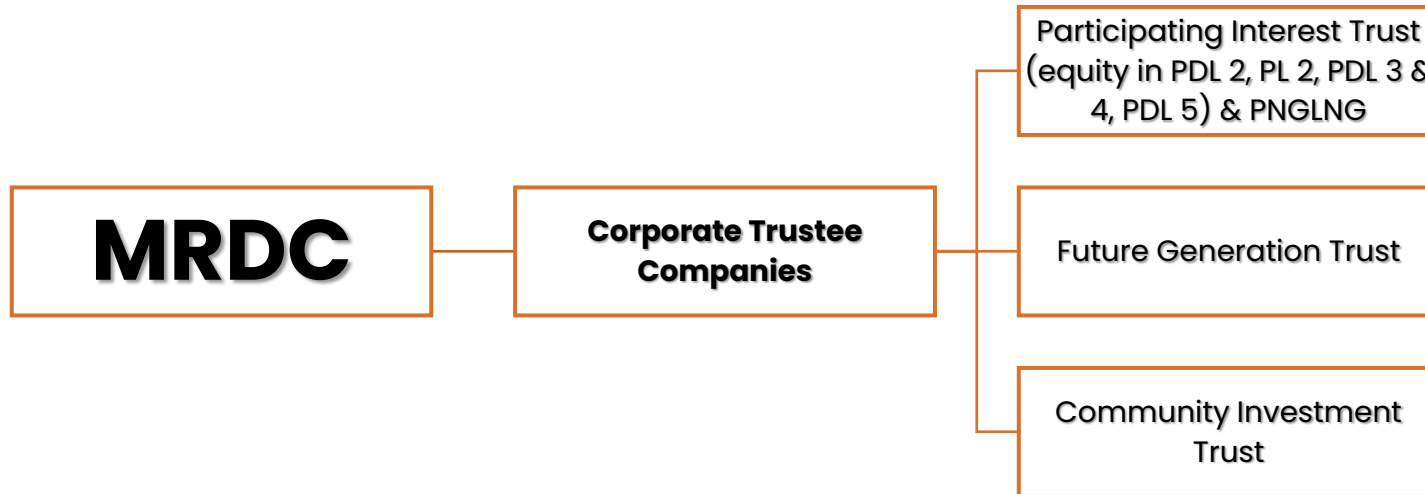
- By law or agreements, the project benefits and the interest in the respective project licenses are received and held by the Corporate Trustees.
- The Boards of the Corporate Trustees have exclusive control and management of the Trustee company and its assets. **MRDC has no power to spend those funds without the respective board's approval.**
- The funds held in trust by the Corporate Trustees are not PUBLIC FUNDS; they belong to the project area landowners and provincial governments identified in accordance with the law.



- Since its incorporation in 1975, May 27. The role of MRDC has evolved with time to be largest management company for resource impacted Provincial Governments and landowners.

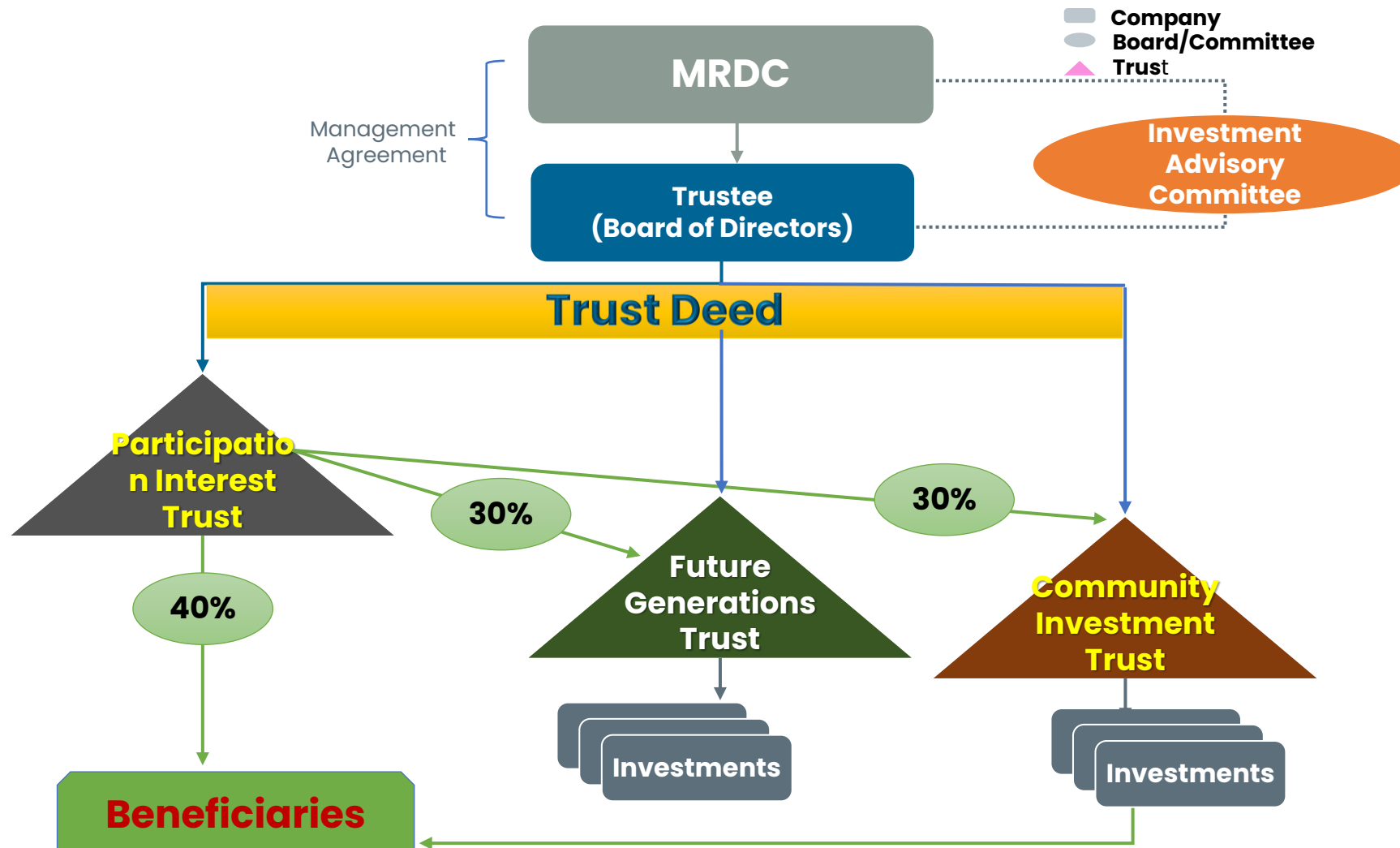
# BENEFITS IN PETROLEUM – KEY PROPONENTS

MRDC currently is both the shareholder and Manager of these Corporate Trustees



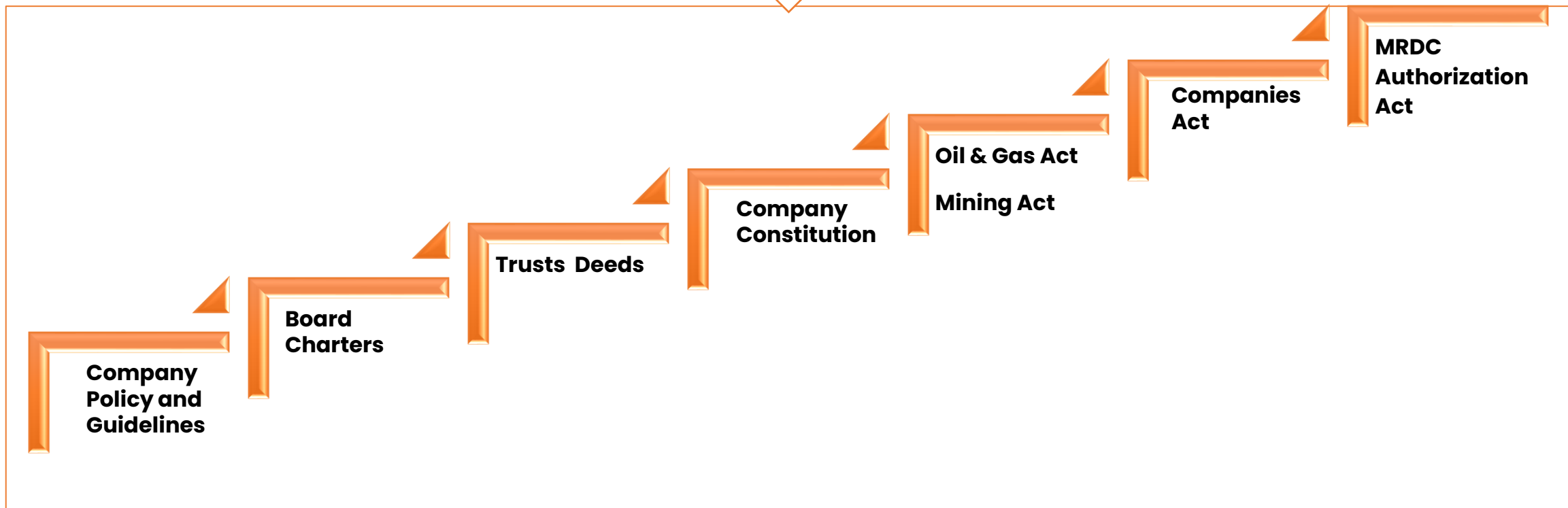
- ✓ **Participation Interest** -2% Equity granted by the State
- ✓ **30% Future Generation Trust**-investment per the Investment Guidelines and the Trust Deed
- ✓ **30% Community Investment Trust** – Investment per the Investment Guidelines and the Trust Deed
- ✓ **40% Cash Distributions** to beneficiaries as identified by the Ministerial Determination S169 and 169A of the Oil and Gas Act
- ✓ **This includes also the 2% royalty for all Gas and Petroleum.** MRDC only manages the equity element of the Mining Benefit and NOT royalty..

# TRUST FRAMEWORK



# GOVERNANCE FRAMEWORK

Internal Company Register has a duty to ensure that all records are recorded, updated and kept and reported. Ensuring Compliance is paramount. MRDC Group is subject to a robust Governance Framework.



**Income Tax Act, Capital Markets Act, Trustee & Executors Act, Bank of Papua New Guinea Act, and other statutory legislative requirements also applies to the MRDC Group.**

# MRDC GROUP OF COMPANIES MINING

No	Company	Related Project	Beneficiaries
1	Mineral Resources Ok Tedi No.2	Ok Tedi (OTML)	Fly River Provincial Government
2	Mineral Resources CMCA Holdings	Ok Tedi (OTML)	158 villages from the 8 CMCA Trust Regions along the Fly River in Western Province
3	Mineral Resources Star Mountains	Ok Tedi (OTML)	6 SML villages (Mt Fubilan) & 4 LMP villages in Star Mountain LLG area
4	Mineral Resources Ramu	Ramu Nickel	MRDC
5	Mineral Resources Madang	Ramu Nickel	Villages from KBK, Pipeline, Coastal And Plant areas which host the project. Inaugural Board established.
6	Mineral Resources Enga	Porgera Joint Venture	Enga Province & Porgera Landowners (25 Clan Agents) Holds 5% equity in New Porgera Limited

# MRDC GROUP OF COMPANIES PETROLEUM AND GAS

No	Company	Related Project	Beneficiaries
1	Petroleum & Gas Resources Kutubu	PDL 2, PL 2, PNG LNG	Fasu ILGs, Foe ILGs, Kikori ILG, SHPG, Hela PG & Gulf PG
2	Petroleum & Gas Resources Gobe	PDL3/4 PNG LNG (PDL 4)	Gobe ILGs yet to be determined by Ministerial Determination
3	Petroleum & Gas Resources Moran	PDL5 PNG LNG PDL(5/6)	ILGs under associations: Homa Paua (Huli), Aporo'uri (Moran Fasu), Nanowebo (Huli)
4	Gas Resources Gigira	PNG LNG Project (PDL1)	Ministerial Determination done. Bank account opening 75% complete
5	Gas Resources Angore	PNG LNG Project (PDL8)	Ministerial Determination completed. Clan Bank Account to be opened and Election of Directors to be completed.
6	Gas Resources Hides 4	PNG LNG Project (PDL7)	LOBID completed and Ministerial Determination issued. Clan accounts opened; Directors elections held, formal appointment to Board done. First royalty and equity payments done.
7	Gas Resources Juha	PNG LNG Project (PDL9)	LOBID completed. Ministerial Determination pending.
8	Gas Resources PNG LNG Pipeline	PNG LNG Project-Pipeline (8) Segments	LOBID completed and Ministerial Determination issued for all Segments. Segment 8 – clan accounts opened. Segments 1,2, 3,4,5, 7– clan accounts opened and representatives elected to the Board; Segment 6 – in dispute.
9	Gas Resources PNG LNG Plant	PNG LNG Project – PPFL2	Clans in villages at: <ul style="list-style-type: none"> <li>• Lealea,</li> <li>• Papa,</li> <li>• Boera and</li> <li>• Porebada</li> </ul>

# THE INVESTMENTS STORY SO FAR ....



# MRDC GROUP INVESTMENT PORTFOLIO 2007 - 2023

## 7 Subsidiary Companies under MRDC management

- 3 brown field oil companies
- 4 mining companies

Governance Framework

Investment Framework

Trust Arrangements

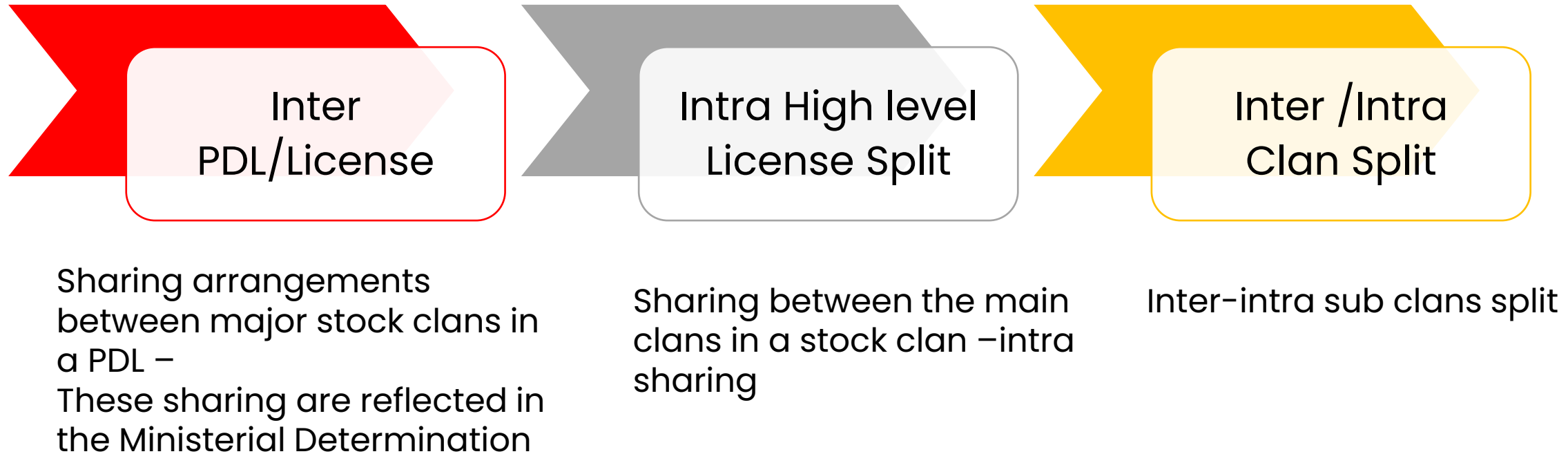
## 21 Subsidiary Companies under MRDC Management

- 3 brown field oil companies
- 6 green field gas companies
- 5 mining companies
- **7 group-owned investment companies**

*Long Term Investments guided by Robust Frameworks with Prudent Management equals Sustained Growth*



# SHARING BETWEEN THE CLANS / BENEFICIARY



*Dispute resolution around benefit sharing between can be tricky. Often lawyers take out a blanket injunction restraining the distribution to an entire PDL when the issue is between two clans or within a clan. This does add to further delays and cause frustrations on the ground-creating a Project Security threat.*

# DIFFERENT CHALLENGES

- Most issues surface at one of these three stages. It is important to understand this from a dispute resolution perspective.
- *Any individual who purports to represent the Clan should have necessary credentials to do so.*
- *-Clan Resolutions and Minutes –to demonstrate that she or he has authorization to represent the beneficiary clan.*

Pre and Post Ministerial Determination	Clan Account Opening	Post Clan Account Opening
✓ -Ministerial Determination Judicial Review challenges:	✓ Leadership rivalry /standing	✓ Leadership rivalry
✓ -Land Disputes / ownership and beneficial interests challenge	✓ Intra Clan disruptions issues	✓ Intra Clan disruptions issues
✓ Inter Clan benefit sharing disputes	✓ Land issues	✓ Land issues
	✓ Challenge on the process	✓ Governance – around disruptions
	✓ Contest on Directors election /Standing	✓ Directors Election

# IN SUMMARY

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- ▶ Having a good understanding on the different arrangements, and who the key proponents are under the Benefit Management Trust systems, will enhance and crystalize the options around dispute resolution approaches.
- ▶ There are some issues –that can be resolved –via mediation, via judicial determinations, arbitration or independent subject matter expert determination.
- ▶ Benefit Management and Distribution System is complex. –the management of Royalty and Equity, under Section 176 of the *Oil and Gas Act*, by MRDC is of the key aspects of the Benefit Management and Distribution System (**BMDS**).
- ▶ Different arrangements apply to the different benefit stream and beneficiaries. [Landowners, Provincial Governments and Local Level Government]

## RECOMMENDATION AND WAY FORWARD

- ▶ The jurisprudence in this area is under-developed. It is highly recommended that Law Society to work closely with PNG CORE and key actors in the industry, to develop this area of law.

# REFERENCES

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- ▶ Dr. EL Kwa, S. Soulei, Dr. A Gelu & ors of the Review Team, **Access and Benefit Sharing: Policy & Legal Implication for Papua New Guinea**, *Report for the Papua New Guinea Institute of Biodiversity* (October 2006),
- ▶ C. Filer and B. Imbun, **A short History on Mineral Development Policy in Papua New Guinea 1972- 2002**, Chapter 6 (Journal source unknown)



**THANK YOU**