



National Gazette

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Commissions of Inquiry Act (Chapter 31)

APPOINTMENT OF COUNSEL TO ASSIST A COMMISSION OF INQUIRY

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Molean Kilepak as Counsel to assist the Commission of Inquiry into the management generally of the Investment Corporation of Papua New Guinea and the Investment Corporation Fund of Papua New Guinea and all matters relating to the conversion of the Investment Corporation Fund of Papua New Guinea to Pacific Balanced Fund.

Dated this 2nd day of June, 2006.

M. T. SOMARE,
Prime Minister.

Commissions of Inquiry Act (Chapter 31)

APPOINTMENT OF PERSONS TO BE EMPLOYED IN CONNECTION WITH THE PROCEEDINGS OF A COMMISSION OF INQUIRY

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint the following persons to be employed in the proceedings of the Commission of Inquiry into the management generally of the Investment Corporation of Papua New Guinea and the Investment Corporation Fund of Papua New Guinea and all matters relating to the conversion of the Investment Corporation Fund of Papua New Guinea to Pacific Balanced Fund:—

- (a) Daniel Kapi, Special Investigator.

Dated this 2nd day of June, 2006.

M. T. SOMARE,
Prime Minister.

Commissions of Inquiry Act (Chapter 31)

APPOINTMENT OF COUNSEL TO ASSIST A COMMISSION OF INQUIRY

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Annette Kora-Aisa as Counsel to assist the of the Commission of Inquiry into the management generally of the Investment Corporation of Papua New Guinea and the Investment Corporation Fund of Papua New Guinea and all matters relating to the conversion of the Investment Corporation Fund of Papua New Guinea to Pacific Balanced Fund.

Dated this 25th day of July, 2006.

M. T. SOMARE,
Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF SECRETARY TO COMMISSION OF INQUIRY**

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Gerard Ilonggam Dogimab as Secretary to the Commission of Inquiry into the management generally of the Investment Corporation of Papua New Guinea and the Investment Corporation Fund of Papua New Guinea and all matters relating to the conversion of the Investment Corporation Fund of Papua New Guinea to Pacific Balanced Fund.

Dated this 2nd day of June, 2006.

M. T. SOMARE,
Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF CHIEF COMMISSIONER**

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Don Sawong to be the Chief Commissioner and sole Commissioner of the Commission of Inquiry into the management generally of the Investment Corporation of Papua New Guinea and the Investment Corporation Fund of Papua New Guinea and all matters relating to the conversion of the Investment Corporation Fund of Papua New Guinea to Pacific Balanced Fund.

Dated this 2nd day of June, 2006.

M. T. SOMARE,
Prime Minister.

Commissions of Inquiry Act (Chapter 31)**COMMISSION OF INQUIRY**

into

THE MANAGEMENT GENERALLY OF THE INVESTMENT CORPORATION OF PAPUA NEW GUINEA AND THE INVESTMENT CORPORATION FUND OF PAPUA NEW GUINEA AND ALL MATTERS RELATING TO THE CONVERSION OF THE INVESTMENT CORPORATION FUND OF PAPUA NEW GUINEA TO PACIFIC BALANCED FUND.

TO: DON SAWONG

STATEMENT OF CASE

STATEMENT OF CASE ON WHICH THE COMMISSION OF INQUIRY WAS ORDERED INTO THE MANAGEMENT GENERALLY OF THE INVESTMENT CORPORATION OF PAPUA NEW GUINEA AND THE INVESTMENT CORPORATION FUND OF PAPUA NEW GUINEA AND ALL MATTERS RELATING TO THE CONVERSION OF THE INVESTMENT CORPORATION FUND OF PAPUA NEW GUINEA TO PACIFIC BALANCED FUND.

- A. On the 26th January, 2006, the National Executive Council considered an Information Paper from the Minister for Trade and Industry on concerns affecting Pacific Balanced Fund. The National Executive Council then directed the Chief Secretary to Government and the Secretary for Treasury to consider the issues highlighted in the Information Paper and to propose options for the consideration of the National Executive Council.
- B. The Investment Corporation of Papua New Guinea was established by the *Investment Corporation Act* (Chapter 140) in 1971. Its objects, briefly, was to enable eligible persons to obtain equity interests in major enterprises in Papua New Guinea which were financed or largely financed by capital from outside Papua New Guinea or financed or largely financed or controlled or largely controlled by persons other than eligible persons.

Under the Act, an "eligible person" is defined as:—

- (a) a citizen; or
- (b) the State or a Statutory authority of the Government approved for the purpose by the Head of State, acting on advice; or
- (c) the Rural Development Bank; or
- (d) a Local-level Government or a Local-level Government Special Purposes Authority; or
- (e) a co-operative society; or
- (f) any other group or body (corporate or unincorporate), recommended by the Board of Directors and approved by the Minister.

Provision is made in the Act for a Board of Directors, a Managing Director, a Deputy Managing Director and other staff of the Corporation

Commission of Inquiry:—continued

Statement of Case:—continued

- C. On 1st July, 1973, the Investment Corporation executed a Management Declaration under which the Corporation acknowledge, as statutory Trustee and Manager of the Investment Corporation Fund of Papua New Guinea, to act as Manager of the Fund in the manner set out in the Declaration for the benefit of the shareholders in the Fund. The Corporation managed the Fund in accordance with the Management Agreement until it expired in 31st December, 2001.
- D. In September, 2001, the Government issued a policy directive which required the Investment Corporation to retire as statutory trustee and fund Manager of the Investment Corporation Fund. The Directive required the conversion of the Investment Corporation Fund into a fully commercial unit trust under the *Securities Commission Act 1997* to eliminate political influences in the management of the unit holder's funds and investments. The directive further required that the Investment Corporation nominate or otherwise facilitate a successor trustee entity to succeed it.
- E. In November, 2001, the Investment Corporation Fund of Papua New Guinea was converted to a fully commercial Unit Trust now known as the Pacific Balanced Fund and Melanesian Trustee Services Limited was approved by the Securities Commission as Trustee of Pacific Balanced Fund under Section 72 the *Securities Commission Act 1997*.

As required under the *Securities Commission Act 1997*, Melanesian Trustee Services Limited was required to appoint another entity as Manager and, for this purpose, Melanesian Trustee Services Limited appointed Pacific Equities and Investment Limited as Manager of Pacific Balanced Fund. On 23rd November, 2001, Melanesian Trustee Services Limited and Pacific Equities and Investment Limited registered a Deed of Trust with the Registrar of Companies for the management of Pacific Balanced Fund to take effect from 1st January, 2002.

Under the terms of the Deed of Trust, the Investment Corporation was to continue to manage the Investment Corporation Fund until it was converted into a fully commercial Unit Trust. Pacific Balanced Fund became fully operational as a fully commercial unit trust on 1st January, 2002 but the Investment Corporation however continued to manage Pacific Balanced Fund until April, 2002 when it was retired and Pacific Equities and Investment Limited took over the management of Pacific Balanced Fund.

- F. On 18th January, 2002, a Corporate Management Agreement was signed between the Investment Corporation and Pacific Equities and Investments Limited for an initial period of one year with an option to renew. Under this agreement, Pacific Equities and Investments Limited was appointed as Corporate Manager of the Investment Corporation to oversee the Board and the management functions of the Corporation until all remaining assets were sold and debts extinguished before the *Investment Corporation Act* (Chapter 140) was to be repealed. On the expiry of the agreement, Pacific Equities and Investments Limited continued to perform management functions including the sale of assets and the redeeming of shares for a monthly fee of K35,000.00 which was not approved by the Board of the Investment Corporation.
- G. For purposes of privatization, under a vesting notice dated 2nd April, 2004 and published in *National Gazette* No. G33 of 6th April, 2004, the then Minister for State Enterprises and Communication vested in the Independent Public Business Corporation of Papua New Guinea "all the assets and liabilities and other ownership interests held by the Investment Corporation of Papua New Guinea" in accordance with Sections 31(3), 50(1) and 50(4) of the *Independent Public Business Corporation of Papua New Guinea Act 2002* with the following terms and conditions:

"IPBC shall in relation to the Investment Corporation of Papua New Guinea:—

- (a) dispose of the remaining ICPNG assets and extinguish liabilities from the sale of these assets. No other assets of the General Business Trust shall be used to meet any ICPNG liabilities.
 - (b) Ensure completion of all outstanding annual financial statements with copies to be submitted to the Auditor General and the Minister for State Enterprises and Information.
 - (c) Provide a report to the Minister for State Enterprises and Information on any outstanding issues prior to the recommendation to repeal the Act."
- H. A significant number of issues and concerns have been raised regarding the management of Pacific Balanced Fund by both Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager. These issues have been registered with the Securities Commission and are still awaiting determination by the Securities Commission.
- I. The circumstances surrounding the management of the Investment Corporation and the Investment Corporation Fund, and the conversion of the Investment Corporation Fund from a Statutory unit trust to a fully commercial trust in Pacific Balanced Fund have given rise to concerns that the management of the Investment Corporation and the Investment Corporation Fund since 1998 was not done transparently and in accordance with good management practices, that the conversion of the Investment Corporation Fund to Pacific Balanced Fund was not done transparently and in a manner authorized by law, and that the management of Pacific Balanced Fund since 2001 has been carried out in a manner not beneficial to and prejudicial to the interests of the until holders of Pacific Balanced Fund, particularly in the absence to adhere to public tender procedures, failure to declare conflicts of interest and failure to obtain professional management advice.

TERMS OF REFERENCE

Know you that I, Grand Chief Sir Michael Thomas Somare, Prime Minister of Papua New Guinea, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Don Sawong to be Chief Commissioner and sole Commissioner to enquire into and report on the following matters:—

1. Whether, in the performance of its functions and the exercise of its powers, particularly in the management of the Investment Corporation Fund, the Investment Corporation failed to comply with the provisions of the *Investment Corporation Act* (Chapter 140), the *Public Finances (Management) Act 1995* or any other Act and with relevant policies and directions from the National Executive Council between the years 1998 and 2002 concerning but not limited to the following:—
 - (a) whether established administrative and financial management procedures were followed generally in the management of the Investment Corporation Fund, the sale of institution assets and investment properties of both the Investment Corporation and the Investment Corporation Fund and the receipt of sale proceeds;
 - (b) whether the Investment Corporation failed to adhere to prescribed investment guidelines;
 - (c) whether there was any inappropriate intervention, imprudent, illegal or improper conduct by any person company, business, legal entity or other agency in relation to the expenditures or illegal or unsuitable investments or other improper or unauthorized action;
 - (d) whether there was any irregularity or illegality on the part of the Directors or the management of the Investment Corporation in respect of the following:—
 - (i) the signing of contract of employments in or about November, 1999 for the Managing Director and the Corporate Services Manager with terms and conditions outside the guidelines set by the Salaries and Conditions Monitoring Committee;
 - (ii) the double termination payout for one Chris Gideon firstly in 1998 of an amount of about K75,000 and secondly, in or around December, 1999 for a further amount of over K180,000;
 - (iii) the recruitment of terminated and retrenched staff;
 - (e) whether there was any failure to comply with prescribed tender procedures in connection with:—
 - (i) the Y2K upgrade at the cost of about K700,000 paid to the Bank of Papua New Guinea in or around September, 1999;
 - (ii) the engagement of Fiocco Possman and Kua as lawyers for the Investment Corporation;
 - (iii) the acquisition in 1999 of a VX Toyota Station Wagon registration number BBE 585 for the Managing Director and his purchase and disposal of the vehicle less than a year later;
 - (iv) the acquisition in or around June, 1999 of a VX Toyota Station Wagon registration number BBF 717 for the Managing Director and 3 units of Toyota Hilux for K80,000. each for the Corporate Services Manager, the Investment Manager and the Fund Manager respectively;
 - (v) the sale and disposal of properties including those commonly known as Sea Park Apartments, Credit House, Monian House and Ilimo Farm.
 - (f) whether the Board of Directors and management acted improperly or negligently in implementing the findings and recommendations of the Subendranathan/Mawa Investigation Report on the Investment Corporation dated 14th December, 1999;
 - (g) whether the key recommendations of the Price WaterHouseCoopers scoping study of August, 2001 and other government directives had been addressed by the Investment Corporation prior to the separation of the trustee and management functions of the Investment Corporation from the Investment Corporation Fund and the establishment of Pacific Balanced Fund.
2. Whether, in the performance of its functions and the exercise of its powers, particularly in the conversion of the Investment Corporation Fund as a statutory unit trust into Pacific Balanced Fund, a fully commercial unit trust, the Investment Corporation failed to comply with the provisions of the *Investment Corporation Act* (Chapter 140), the *Public Finances (Management) Act 1995*, the *Securities Commission Act 1997*, the *Companies Act 1997* or any other Act, and with relevant policies and directions from the National Executive Council concerning but not limited to the following:—
 - (a) whether there was any corporate need or justification for the Investment Corporation Fund to be converted from a statutory unit trust to a commercial unit trust in Pacific Balanced Fund;
 - (b) whether proper procedures were followed by the Investment Corporation leading to the conversion of the Investment Corporation Fund to Pacific Balanced Fund;
 - (c) whether proper procedures were followed on the appointment of Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager of Pacific Balanced Fund;

Terms of Reference:—continued

- (d) whether the Investment Corporation obtained a fully audited financial statement on the corporate financial position of the Investment Corporation Fund for the purpose of its conversion to Pacific Balanced Fund;
 - (e) whether the Board of Directors and staff of the Investment Corporation properly exercised their fiduciary duties in relation to the management of the Investment Corporation Fund both prior to and after conversion in particular in relation to maintaining proper annual audited accounts.
3. Whether the consultants and advisers appointed by the Investment Corporation in relation to the conversion of Investment Corporation Fund to Pacific Balanced Fund had sufficient relevant expertise in the field.
4. Whether, in the conversion process of Investment Corporation Fund to Pacific Balanced Fund, and in the appointment of Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager of Pacific Balanced Fund, there has been illegal or improper conduct by any person, company, business, legal entity or agency, particularly but not limited to the following:—
 - (a) whether there were any conflicts of interest on the part of directors, managers or staff of the Investment Corporation and Melanesian Trustee Services Limited and Pacific Equities and Investment Limited;
 - (b) whether the methodology and process of conversion was appropriate;
 - (c) whether any person exerted undue pressure on the conversion process and on the appointment of Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager;
 - (d) whether any director, manager or staff of the Investment Corporation conspired or colluded with any person to obstruct any other bid or expression of interest for appointment as Trustee or Manager of Pacific Balanced Fund;
5. Whether there were any imprudent, improper or illegal actions taken by any person in relation to the management of Pacific Balanced Fund, particularly but not limited to the following:
 - (a) whether the loan of K12 million obtained by Melanesian Trustee Services Limited from Westpac PNG Limited in August, 2005 and the placement of K5 million in unit holders' funds from Pacific Balanced Fund as collateral for the loan was proper and in accordance with prudent business practices;
 - (b) whether the redemption and divestment of one million units from Pacific Balanced Fund by Melanesian Trustee Services Limited to repay the bank loan was proper and in accordance with prudent business practices;
 - (c) whether the payment of K800,000.00 from the loan to a John Sanday for consultancy fees was proper;
 - (d) whether the attempted removal of Pacific Equities and Investment Limited as Manager of Pacific Balanced Fund by the Trustee, Melanesian Trustee Services Limited was proper and in the interest of Pacific Balanced Fund;
 - (e) whether there was any irregularity and illegality in the anomaly of K37 million of unit holder funds reported in the first audit opinion report for the year 2002 and the failure by Pacific Equities and Investment Limited to justify its recommendation to write-off the anomaly;
 - (f) whether there was any irregularity and any breach of fiduciary duty by any person or entity in the failure to produce audit reports for 2001, 2002, 2003 and 2004 in relation to the operation and management of Pacific Balanced Fund;
 - (g) whether, in relation to the management of Pacific Balanced Fund, there was generally any irregularity and any breach by Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager, of any provision of the *Securities Commission Act 1997*, the *Companies Act 1997*, the relevant trust deeds, the constitutions of those companies, the common law or any other relevant instrument, agreement or legislation;
6. Whether, in relation to the appointment of Pacific Equities and Investment Limited as Corporate Manager of the Investment Corporation, there has been illegal or improper conduct by any person, company, business, legal entity or agency, particularly but not limited to the following:—
 - (a) whether there were any conflicts of interest on the part of directors, managers or staff of the Investment Corporation and Pacific Equities and Investment Limited;
 - (b) whether any person exerted undue pressure on the appointment of Pacific Equities and Investment Limited as Corporate Manager;
 - (c) whether any director, manager or staff of the Investment Corporation conspired or colluded with any person to obstruct any other bid or expression of interest for appointment as Corporate Manager;

Terms of Reference:—continued

- (d) whether, during the period Pacific Equities and Investment Limited was the Corporate Manager, there was any inappropriate intervention, imprudent, illegal or improper conduct by any person, company, business or legal entity in the exercise of management functions by Pacific Equities and Investment Limited as Corporate Manager;
- (e) whether, in the exercise of management functions by Pacific Equities and Investment Limited as Corporate Manager, the Board of Directors and staff of Pacific Equities and Investment Limited properly exercised their fiduciary duties in relation to the management of the Investment Corporation;
- (f) whether, in the exercise of management functions by Pacific Equities and Investment Limited as Corporate Manager, the management of the Investment Corporation was carried out in accordance with the terms of the Corporate Management Agreement;
- (g) whether, in the management of the Investment Corporation by Pacific Equities and Investment Limited, there was any irregularity and any breach of fiduciary duty in failing to complete financial management accounts and audit reports dating back to 1998;
- (h) whether the continued engagement of Pacific Equities and Investment Limited as Corporate Manager after the expiry of the Corporate Management Agreement for an unauthorized monthly fee of K35,000. legal and proper;
7. Whether, in relation to certain concerns registered with the Securities Commission in July, 2005 relating to Melanesian Trustee Services Limited as Trustee and Pacific Equities and Investment Limited as Manager of Pacific Balanced Fund, there was any irregularity on the part of the Securities Commission in addressing these concerns, particularly but not limited to the following:
- (a) whether there was any conflict of interest on the part of the Securities Commission or staff and the Trustee and Manager or any of their staff;
- (b) whether any person exerted undue pressure on the Securities Commission not to address or to improperly address the concerns;
- (c) whether in the circumstances, the Securities Commission acted improperly in not suspending or revoking the appointment of the Trustee and Manager and appointing another Trustee and Manager in their stead;
- (d) whether there was any irregularity or illegality in the manner in which Pacific Equities Limited sought and obtained approval from the Securities Commission on 12th July, 2005 as trustee for a number of other trusts when it was already the Manager of Pacific Balanced Trust.
8. Whether, in the conversion of the Investment Corporation Fund to Pacific Balanced Fund, the National Executive Council, the Investment Corporation, and the Securities Commission acted illegally and in contravention of the *Investment Corporation Act* (Chapter 140).
9. Whether, in relation to the Investment Corporation, the Investment Corporation Fund and Pacific Balance Fund, the responsible Government agencies, including the Department of Finance, the Bank of Papua New Guinea and the Auditor General, failed in their regulatory, supervisory or reporting responsibilities under any applicable Act, and what was the extent of this failure.
10. Whether, in relation to the management of Pacific Balanced Fund, any responsible body or agency, including the Independent Public Business Corporation of Papua New Guinea, exercises or can exercise supervisory and monitoring control and if so, whether the current reporting, monitoring and supervisory regime is adequate or whether reforms are necessary.
11. Whether any person or corporate party should be referred to relevant authorities for investigation with the view of criminal prosecution or other action.

And I direct that the inquiry be held in the National Capital District, or at such other place or places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.

And I further direct that the inquiry shall be held in public, but I approve that you may permit to be given in private, any evidence that in the course of your inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 2(5) of the *Commissions of Inquiry Act*.

And I further direct that you shall commence the inquiry without delay preferably on and from 1st June, 2006 and proceed therein with all dispatch and render to me your final report on or before 31st August, 2006.

Dated this 2nd day of June, 2006.

M. T. SOMARE,
Prime Minister.