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PORT MORESBY, WEDNESDAY, 14th MAY

[2008

*Commissions of Inquiry Act* (Chapter 31)

**REVOCATION OF APPOINTMENT AND DETERMINATION OF OTHER STAFF TO ASSIST A COMMISSION OF INQUIRY**

I, Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(2) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby—

- (a) revoke all previous appointments of staff to assist the Commission of Inquiry; and
- (b) appoint the following staff to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance, namely:
  1. Douglas Anawabare—Accountant
  2. Monica Kaiah—Executive Secretary to the Commissioner
  3. Kaupa Aiwa—Investigator
  4. Richard Pangiweyin—Investigator
  5. Joan Arni—Lawyer
  6. Margaret Leva—Transcriber
  7. Julie Gwaibo—Transcriber
  8. Siritoi Magaga—Receptionist
  9. Grace Ravu—Accounts Clerk
  10. Luke Damu—Summons Officer
  12. Philip Kautete—Driver

commencing on and from the date of the signature of this instrument.

Dated this 2nd day of May, 2008.

M.T. SOMARE,  
Prime Minister.

*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF COMMISSIONERS TO ASSIST THE COMMISSION OF INQUIRY**

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 Cathy Davani and Don Manoa as Commissioners to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance, with effect on and from the date of signature of this instrument.

Dated this 12th day of May, 2008.

M.T. SOMARE,  
Prime Minister.

*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF TECHNICAL COUNSEL TO ASSIST THE 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—

- (a) revoke all previous appointment of a Technical Counsel assisting the Commission of Inquiry into the management generally of public monies by the Department of Finance; and
  - (b) appoint Nolan Kom as Technical Counsel to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance,
- with effect on and from the date of signature of this instrument.

Dated this 12th day of May, 2008.

M.T. SOMARE,  
Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF COUNSEL ASSISTING THE 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—

- (a) revoke all previous appointment of Counsel assisting the Commission of Inquiry into the management generally of public monies by the Department of Finance; and
  - (b) appoint Stephen Kassman as Counsel to assisting the Commission of Inquiry into the management generally of public monies by the Department of Finance,
- with effect on and from the date of signature of this instrument.

Dated this 12th day of May, 2008.

M.T. SOMARE,  
Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**APPOINTMENT OF SECRETARY OF THE 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—

- (a) revoke all previous appointments of the Secretary assisting the Commission of Inquiry into the management generally of public monies by the Department of Finance; and
  - (b) appoint Paul Boyama as Secretary of the Commission of Inquiry into the management generally of public monies by the Department of Finance,
- with effect on and from the date of signature of this instrument.

Dated this 12th day of May, 2008.

M.T. SOMARE,  
Prime Minister.

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*Commissions of Inquiry Act* (Chapter 31)

**COMMISSION OF INQUIRY**

Into

**THE MANAGEMENT GENERALLY OF PUBLIC MONIES BY THE DEPARTMENT OF FINANCE**

To: MAURICE SHEEHAN (Chief Commissioner),  
CATHY DAVANI (Commissioner), and  
DON MANOA (Commissioner).

**The Management Generally of Public Monies by the Department of Finance—*continued***

STATEMENT OF CASE

STATEMENT OF CASE ON WHICH THE COMMISSION OF INQUIRY IS ORDERED INTO THE  
MANAGEMENT OF PUBLIC MONIES BY THE DEPARTMENT OF FINANCE

- A. The management of the Department of Finance, in particular in relation to the disbursement of public monies, has received considerable publicity in recent months with the arrest and prosecution by the police of senior officers of the Department for various offences under the *Criminal Code Act* (Chapter 262). During this time, the expenditure of public monies has given rise to considerable public disquiet and debate. Disquiet has principally been in the manner in which claims for payment of public funds have been made to the Department, the method used to quantify such claims and the authorization for such payments to be made particularly in relation to consent and default judgments and out-of-court settlements entered against the State.
- B. The Department of Finance (the Department) was established under the *Public Services (Management) Act 1995*. By notice published in *National Gazette* No. G65 of 26th August, 1997, the Head of State, acting on advice of the National Executive Council, determined in accordance with Section 21 of the *Public Services (Management) Act 1995* that the Department shall have the following functions:—
- (a) To be responsible for the management of policies, regulations and laws pertaining to the collection and disbursement of public monies;
  - (b) To administer and provide advice on debt management and foreign aid;
  - (c) To formulate and administer the annual estimates of revenue and expenditure;
  - (d) To control and administer Government revenues.
- C. In the exercise of its functions, the Department manages and disburses public funds in accordance with the *Public Finances (Management) Act 1995* and the Regulations and Financial Instructions made thereunder.
- D. The offices of Attorney-General and Solicitor-General are established under the *Attorney-General Act 1989*. Under Section 7 of the *Act*, the Attorney-General is the principal legal adviser to the National Executive Council and, as principal legal adviser, is required to tender legal advice and opinion to the National Executive Council in accordance with Section 8. Under Section 9 of the *Act*, the Attorney-General appoints the Solicitor-General whose primary function is to appear as an advocate for the State in matters coming before the courts in Papua New Guinea. As part of his function, the Solicitor-General recommends to the Department matters before the courts that are to be settled out of court or by consent judgment.
- E. The controversies surrounding the Department, in particular in relation to payments made in satisfaction of out-of-court settlements, default or consent judgments or other claims against the State, have given rise to concerns that the management of the Department particularly since 2000 was not done transparently and in accordance with good management and accounting practices, and that public monies have been made falsely, fraudulent, improperly or in a manner not authorized by law.
- F. The Commission of Inquiry into the Management of Public Monies by the Department of Finance is hereby established pursuant to Section 2(1) of the *Commissions of Inquiry Act* (Chapter 31).

COMMISSION OF INQUIRY

TERMS OF REFERENCE

KNOW you that I, Grand Chief Sir Michael 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 *Commission of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby:—

- (a) Require you as Commissioners and the Commission to enquire into and report on the following matters;—
  - 1. to inquire into the existence and extent of illegal, false or improper claims for payment made to the State and approved or paid by the Department of Finance in the period 2000 - 1st July, 2006 and to establish:—
    - (i) the extent of illegal and improper claims; Judgments or out-of-court settlements against the State; and
    - (ii) the identity(s) of those persons who have made or been paid such claims; an

**The Management Generally of Public Monies by the Department of Finance—*continued*****Terms Of Reference—*continued***

- (iii) the value of such claims for each year in the period 2000 - 1st July, 2006; and
- (iv) the number of illegal, false or improper, claims, Judgments or out-of-court settlements approved for payment by the Department of Finance in the period 2000 - 1st July, 2006; and
- (v) the number of illegal claims that have been paid by or from the Department of Finance in the period 2000 - 1st July, 2006; and
- (vi) the amount so paid in each year during the period 2000 - 1st July, 2006; and
- (vii) whether, in the opinion of the Commission, the Department of Finance failed to detect and disallow illegal, false or improper claims and if so, how and why those failures occurred; and
- (viii) the degree to which the *bona fides* of each illegal, false or improper claim was investigated by the Department of Finance before approval and/or payment; and
- (ix) the involvement (if any) of officers of the State in the making approval and payment of illegal, false or improper claims against the State; and
- (x) how and by whom such illegal, false or improper claims were approved; and
- (xi) the degree and extent of involvement of legal firms in the making and payment of illegal claims against the State; and
- (xii) whether all tax or other imposts arising from the payment of illegal, false or improper claims, Judgments or out-of-court settlements by the State during the period 2000 - 1st July, 2006, were paid either by the State or payees from the State; and

in compliance with these Terms of Reference the Commission is to consider all payments by the Department of Finance in excess of K300,000.00 during the period 2000 - 1st July, 2006 and identify those payments that are illegal, fraudulent or otherwise improper; and

2. The Commission is to inquire into all Consent and Default Judgments entered against the State in the period 2000 - 1st July, 2006 and conclude as to the number and value of these Judgments and the circumstances in which they came to be entered against the State; and
3. The Commission is to inquire and conclude whether the entry of any Default Judgment was the result of negligence or failure by any Officer of the State and to make recommendations for action against those Officers; and
4. The Commission is to made recommendations for action by the State in respect of Consent and Default Judgments made against it and the liabilities therefrom; and
5. the Commission is to examine each out-of-court settlement made against or entered into by the State in the period 2000 - 1st July, 2006 and conclude as to:—
  - (i) The facts and circumstances in and by which each out-of-court settlement made; and
  - (ii) The legality of each out-of-court settlement; and
  - (iii) Whether liability should have been admitted by the State; and
  - (iv) The involvement of the Offices of the Attorney-General and the Solicitor-General in each out-of-court settlement; and
  - (v) The quantum accepted and agreed by the State and the propriety and legality of that agreement; and
  - (vi) Whether the interests of the State have been prejudiced in respect of any out-of-court settlement entered into by the State; and
  - (vii) What changes should be made to protect the State and public monies from the making or payment of improper out-of-court settlements; and

**The Management Generally of Public Monies by the Department of Finance—*continued*****Terms Of Reference—*continued***

6. To inquire into the systems that protect public monies from illegal claims, to identify the core failures that have exposed the State to improper liability and allowed public monies to be applied to payment of illegal, false or improper claims Judgments and out-of-court settlements and make recommendations to secure or further protect public monies from such misapplication; and
7. To inquire into the role of the Department of Finance in screening all claims for payment by the State and detecting and rejecting illegal, false or improper claims, to establish the extent of Department responsibility in this regard and conclude whether the Department of Finance has complied with these obligations; and
8. To inquire into the involvement of the Office of the Attorney-General, the Solicitor-General, the Department of Finance and the Registry of the National Court of Justice in the making and payment of illegal, false or improper claims or Judgments against the State in the period 2000 - 1st July, 2006; and
9. To inquire into and identify the source of monies used to pay all identified illegal, false and improper claims and conclude as to the legality of the use of those sources; and
10. To inquire into and conclude as to the involvement of legal firms in the making and paying of illegal, false or improper claims, Judgments or out-of-court settlements against the State; and
11. Inquire into and identify any improper or illegal involvements in or benefit or payment to any State Officer made for or in any way arising from false, illegal or improper claims, Judgments or out-of-court settlements against the State in the period 2000 - 1st July, 2006; and
12. To inquire and conclude as to whether the relevant Attorneys-General and Solicitors-General in the period 2000 - 1st July, 2006 have advised and protected the State to an acceptable and competent standard in negotiating, entering and processing for payment Consent Judgments and out-of-court settlements; and
13. Make any further recommendations arising from the inquiry; and
14. Make such referrals for prosecution as the Commission deems appropriate; and

AND I FURTHER 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 and proceed therein with all dispatch and render to me your final reports within nine (9) months from the date of commencement of hearing.

AND I FURTHER direct that this Instrument relating to the Terms of Reference of Commission of Inquiry into Department of Finance supersedes any previous Instrument issued under my hand.

Dated this 12th day of May, 2008.

M.T. SOMARE,  
Prime Minister.

