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**PORT MORESBY, FRIDAY, 21st APRIL**

**[2017**

CONSTITUTION

Section 27(4)

**DIRECTION BY THE OMBUDSMAN COMMISSION**

- TO:**
- (1) ALL PROVINCIAL GOVERNORS AND THEIR RESPECTIVE JOINT PROVINCIAL PLANNING AND BUDGET PRIORITIES COMMITTEE; AND
  - (2) ALL MEMBERS OF OPEN ELECTORATES AND THEIR RESPECTIVE DISTRICT DEVELOPMENT AUTHORITY (DDA) AND DDA BOARD MEMBERS (PREVIOUSLY KNOWN AS JOINT DISTRICT PLANNING AND BUDGET PRIORITIES COMMITTEE); AND
  - (3) MINISTER FOR TREASURY; AND
  - (4) MINISTER FOR FINANCE; AND
  - (5) MINISTER FOR NATIONAL PLANNING AND MONITORING; AND
  - (6) MINISTER FOR RURAL DEVELOPMENT AND IMPLEMENTATION; AND
  - (7) SECRETARY, DEPARTMENT OF FINANCE; AND
  - (8) SECRETARY, DEPARTMENT OF TREASURY; AND
  - (9) SECRETARY, DEPARTMENT OF NATIONAL PLANNING AND DISTRICT DEVELOPMENT; AND
  - (10) SECRETARY, RURAL DEVELOPMENT AND IMPLEMENTATION; AND
  - (11) ALL PROVINCIAL ADMINISTRATORS; AND
  - (12) ALL DISTRICT ADMINISTRATORS; AND
  - (13) GOVERNOR, BANK OF PNG; AND

**Direction by the Ombudsman Commission—continued****(14) ALL HEADS OF COMMERCIAL BANKS;**

**WHEREAS** the period for 2017 National General election to the Parliament is commencing and the Ombudsman Commission has obtained information giving rise to serious concerns as to the release, disbursement, transfer and receipt of public money purporting to be in the form of electoral and discretionary funds and various development funds under Provincial Support Grants and District Support Grants, but not limited to:

- (1) District Education Service Improvement Program; and
- (2) District Health Service Improvement Program; and
- (3) District Law and Order Improvement Program; and
- (4) District Water Supply & Sanitation Improvement Program; and
- (5) District Agriculture and Community Based Improvement Programs; and
- (6) District Rural Communication and Electrification Improvement Programs; and
- (7) District Transport and Community Infrastructure Improvement Programs; inclusive of
- (8) Provincial and District Social and Administration Infrastructure; and
- (9) Provincial and District Land and other Physical infrastructure Development; and
- (10) Provincial and District Development of Village and Social Services;

inclusive for the fiscal years 2015 and 2016 and 2017; and

**WHEREAS** the distribution of substantial public funds to the District Treasuries and the Provincial Treasuries in such a time when the 2017 general election is commencing and that there is insufficient time for the funds to be properly applied to development purposes as intended and therefore these substantial public funds may be misapplied or misused contrary to law and the relevant guidelines; and

**WHEREAS** each of you holding leadership positions named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13) above is a person to whom the National Goals and Directive Principles, in particular the second National Goal which is for all citizens to have an equal opportunity to participate in and benefit from the development of our country, the Basic Social Obligations, in particular the duty to respect and act in the spirit of the Constitution and to protect Papua New Guinea and to safeguard the national wealth, and Division III.2 (*leadership code*) of the *Constitution* apply; and

**WHEREAS** as each of you holding the offices named in (12) and (14) above is a person to whom the National Goals and Directive Principles and the Basic Social Obligations, in particular the duty to act in the spirit of the *Constitution*, apply; and

**WHEREAS** it is the duty of all governmental bodies to apply and give effect to the National Goals and Directive Principles and to encourage compliance with the Basic Social Obligations as far as lies within their respective powers; and

**WHEREAS** each of you holding leadership positions named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13) above is subject to Section 27 of the *Constitution* and accordingly:

- (1) you have a duty to conduct yourself in such a way, both in your public or official life and your private life, and in your associations with other persons, as not —
  - (a) to place yourself in a position in which you have or could have a conflict of interests or might be compromised when discharging your public or official duties; or
  - (b) to demean your office or position; or
  - (c) to allow your public or official integrity, or your personal integrity of government in Papua New Guinea; and
  - (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea; and
- (2) you have a duty, in particular, not to enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether you are carrying out or have carried out the duties imposed by Section 27(1) of the *Constitution*; and

**Direction by the Ombudsman Commission—continued**

- (3) you have a further duty if necessary to publicly disassociate yourself from any activity or enterprise of any of your associates that might be expected to give rise to such a doubt; and

**WHEREAS** each of you holding leadership positions named (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13) above has a duty under Section 23 of the *Organic Law on the Duties and Responsibilities of Leadership* to not obstruct the Ombudsman Commission and to cooperate to the best of your ability with the Ombudsman Commission in any investigation or other proceedings for the purpose of that Law; and

**WHEREAS** the Ombudsman Commission is conducting investigations under the Leadership Code and the *Organic Law on the Duties and Responsibilities of Leadership* relating to suspected misconduct in office by persons to whom that Law applies in relation to the circumstances surrounding the release, disbursement, transfer and receipt of public money purporting to be in the form of electoral and discretionary funds and various development funds under Provincial Support Grant and District Support Grant, but not limited to those various funds referred to above in respect of the fiscal years 2015 and 2016 and 2017; and

**WHEREAS** the Ombudsman Commission has determined that it is necessary to do so in this particular case, for the purpose of ensuring the attainment of the objects of Section 27 of the Constitution and in particular protecting the integrity of leaders who are involved in these matters.

**EACH OF YOU IS HEREBY DIRECTED PURSUANT TO SECTION 27(4) OF THE CONSTITUTION TO:**

1. **STOP THE RELEASE, DISBURSEMENT, TRANSFER, AND/OR RECEIPT OF PUBLIC MONEY PURPORTING TO BE IN THE FORM OF PROVINCIAL SUPPORT GRANT & DISTRICT SUPPORT GRANT FOR THE FISCAL YEARS 2015 AND 2016 AND 2017; AND IN PARTICULAR**
2. **UPON RECEIPT OF THIS DIRECTION STOP PAYMENT OF ALL CHEQUES OR WARRANTS AND ALL MONIES CARRIED FORTH FROM 2015 DRAWN ON ANY BANK IN PAPUA NEW GUINEA INCLUDING THE BANK OF PAPUA NEW GUINEA BY OR ON BEHALF OF THE GOVERNMENT OF PAPUA NEW GUINEA IN RESPECT OF PUBLIC MONIES PURPORTING TO BE IN THE FORM OR PROVINCIAL SUPPORT GRANT AND DISTRICT SUPPORT GRANT AND VARIOUS DEVELOPMENT FUNDS; AND**
3. **FURTHER UPON RECEIPT OF THIS DIRECTION STOP OPERATING ANY TRUST ACCOUNTS WHERE SUCH FUNDS ARE STORED; BUT NOT LIMITED TO:**
  - (A) **DISTRICT EDUCATION SERVICE IMPROVEMENT PROGRAM FUNDS; AND**
  - (B) **DISTRICT HEALTH SERVICE IMPROVEMENT PROGRAM FUNDS; AND**
  - (C) **DISTRICT LAW AND ORDER IMPROVEMENT PROGRAM FUNDS; AND**
  - (D) **DISTRICT WATER SUPPLY & SANITATION IMPROVEMENT PROGRAM FUNDS; AND**
  - (E) **DISTRICT AGRICULTURE AND COMMUNITY BASED IMPROVEMENT PROGRAM FUNDS; AND**
  - (F) **DISTRICT RURAL COMMUNICATION AND ELECTRIFICATION IMPROVEMENT PROGRAM FUNDS; AND**
  - (G) **DISTRICT TRANSPORT AND COMMUNITY INFRASTRUCTURE IMPROVEMENT PROGRAM FUNDS; AND**
  - (H) **PROVINCIAL AND DISTRICT SOCIAL AND ADMINISTRATION INFRASTRUCTURE FUNDS; AND**
  - (I) **PROVINCIAL AND DISTRICT LAND AND OTHER PHYSICAL INFRASTRUCTURE DEVELOPMENT FUNDS AND**
  - (J) **PROVINCIAL AND DISTRICT DEVELOPMENT OF VILLAGE AND SOCIAL SERVICES FUNDS; AND**

**FOR THE FISCAL YEARS 2015 AND 2016 AND 2017; AND**

**Direction by the Ombudsman Commission—continued****4. TRANSFER TO THE CONSOLIDATED REVENUE FUND AT THE END OF THE 2016 FISCAL YEAR, ALL PUBLIC FUNDS IN RESPECT OF THE VARIOUS PROGRAMS REFERRED TO ABOVE THAT ARE NOT COMMITTED TO THE RELEVANT PROJECTS;****UNLESS AND UNTIL:**

- (a) clearance has been sought from the Ombudsman Commission for the release, disbursement, transfer and/or receipt or the payment of such public monies, cheques or warrants; and
- (b) the Ombudsman Commission upon receipt of requests for such clearance chair a working committee from time to time comprising inclusive of Department of Rural Development and Implementation and the Department of Finance; and
- (c) grant written clearance on such terms and conditions determined by the Ombudsman Commission in consultation with the working committee, and in compliance with the *Public Finances (Management) Act*, or any relevant financial Instruction and the relevant guidelines that relate to each of the respective programs referred to above in particular, but not limited, to —
  - (i) the duty to acquit funds previously allocated to the member of parliament and/or each Joint Provincial Planning and Budget Priority Committees or District Development Authority and DDA Board (previously known as Joint District Planning and Budget Priority Committee) whichever is the case under the respective programs referred to above are duly acquitted; and
  - (ii) the duty imposed on Joint Provincial Planning and Budget Priority Committees and/or District Development Authority and DDA Board (previously known as Joint District Planning and Budget Priority Committee) to properly meet and resolve to apply those funds to projects eligible under each of the respective program is duly satisfied; and
  - (iii) where necessary the duty to formulate and present proper tender documentation, project design, scope of works, bill of quantities, project inspection reports, project completion reports, and other relevant documentation for each project as required by the respective guidelines is furnished.

**AND TAKE NOTICE:**

- (a) that this Direction takes effect immediately and will be in operation up to and inclusive of 30th September 2017; and
- (b) that if any of the person named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13) above fails to comply with this direction he or she will be guilty of misconduct in office under Section 27(5)(b) of the *Constitution* and liable to prosecution before a leadership tribunal and subject to penalties under Section 28(1)(g)(ii) of the *Constitution*, Section 27(5) of the *Organic Law on the Duties and Responsibilities of Leadership* and Section 2 of the *Leadership Code (Alternative Penalties) Act*, including dismissal from office; and
- (c) proceeding under the Leadership Code doesn't bar them from other proceedings against them; and
- (d) if any of the persons named in (12) and (14) above fails to comply with this direction, they may be subject to enforcement proceedings in the National Court under Section 23 of the *Constitution*; and
- (e) that this Direction will cease to take effect on and from 1st October, 2017.

Dated this 20th day of April, 2017

M. DICK,  
Chief Ombudsman.

R. PAGEN,  
Ombudsman.