

Ombudsman Commission
of Papua New Guinea

AN INVESTIGATION INTO THE ALLEGED IMPROPER
BORROWING OF AU\$1.239 BILLION LOAN FROM THE UNION
BANK OF SWITZERLAND, AKTIENGESELLSCHAFT (AUSTRALIA
BRANCH) TO PURCHASE 149,390,244 SHARES IN OIL SEARCH
LIMITED AND IMPROPER TENDER AND PROCUREMENT OF
CONSULTANTS IN RELATION TO THE BORROWING.

FINAL REPORT
DECEMBER 2018

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ABBREVIATION

Act	-	The Act of Parliament
APC	-	Authority to Pre – Commit
BPNG	-	Bank of Papua New Guinea
CoI	-	Certificate of Inexpediency
Constitution	-	Constitution of the Independent State of Papua New Guinea
CSTB	-	Central Supply & Tenders Board
DJAG	-	Department of Justice & Attorney-General
DoF	-	Department of Finance
DoPE	-	Department of Public Enterprise
DoT	-	Department of Treasury
FAI	-	Foreign Affairs & Immigration
FMM	-	Finance Management Manual
GGPNG	-	Governor-General of Papua New Guinea
GloCo	-	PNG Liquefied Natural Gas Global Company LDC
GoPNG	-	Government of Papua New Guinea
Hon	-	Honourable
IPBC	-	Independent Public Business Corporation

IPIC	-	International Petroleum Investment Company
IRC	-	Internal Revenue Commission
KPMG	-	Klynveld Peat Marwick Main Goerdeler
LNG	-	Liquefied Natural Gas
Ltd	-	Limited
MD	-	Managing Director

Abbreviation

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MP	-	Member of Parliament
NEC	-	National Executive Council
NPCP	-	National Petroleum Company of PNG (Kroton) Ltd
Commission	-	Ombudsman Commission of Papua New Guinea
OLOC	-	Organic Law on the Ombudsman Commission
PFMA	-	Public Finance (Management) Act 1995
PNGLS	-	Papua New Guinea Law Society
PRL	-	Petroleum Resource Licence
Pty	-	Propriety
State	-	The Independent State of Papua New Guinea
SE&SI	-	State Enterprise & State Investments
State Sol	-	State Solicitor
UBS AG	-	Union Bank of Switzerland, Aktiengesellschaft (Australia Branch)

Abbreviation

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GLOSSARY OF TERMS

Introduction

The terminologies listed and defined in this Glossary were taken from the UBS AG Loan documents, the Internet and Oxford Dictionary.

Authority to Pre-Commit

The purpose of the APC process is to ensure proper accounting, management and reporting on the Pre-Commitment of Expenditure is maintained in all levels of the National, Provincial and Local-Level Governments. The validity of contracts with the

government for those authorised by the Secretary for Finance is evidenced by his signature on an Authority to Pre Commit Form.

Authorisation

An authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken, including any renewal or amendment.

BPNG

The Bank of Papua New Guinea is the Central Bank of the Sovereign Independent State of Papua New Guinea.

Bond

It is a written and signed promise to pay a certain sum of money on a certain date, or on fulfilment of a specified condition. All documented contracts and loan agreements are bonds.

Bridge Loan

A type of short term loan used to finance an enterprise, investment or government pending the receipt of other funds.

Bridge Takeout Letter

A written promise by a lender to provide a long term loan (Bridge Loan).

Central Supply & Tender Board

This is the GoPNG major procurement and tender authority that was empowered by the GoPNG to screen and further endorse contractors to be engaged by the State.

Certificate of Inexpediency

A certificate issued by the Central Supply & Tenders Board only when in situations where a declared natural disaster or defence emergency or health emergency occurs or there is a situation of civil unrest. A Certificate of Inexpediency cannot be applied retrospectively.

Collar Loan

The purchase of an out-of-the money put option is what protects the underlying shares from a large downward move and locks in the profit. The price paid to buy the puts (shares first placed on the stock market) is lowered by amount of

by selling the out of the money call (the time which the share was placed). The ultimate goal of this position is that the underlying stock continues to rise until the written strike (agreed market value price of shares) is reached.

Distribution

Any payment or distribution of money or other property (including by management or other fee, interest on shareholder loans, dividend, return of capital, repayment or redemption) to or for the benefit of any holder (in that capacity) of securities issued.

CHESS

The Clearing House Electronic Sub-register System operated by the ASX Settlement and Transfer Corporation Pty Ltd (ASTC).

Exchangeable Bond (XB)

A security consisting of a straight bond and option to exchange the bond for the stock of the company other than the Issuer (usually a subsidiary or company in which the Issuer owns a stake) at some future date and under prescribed conditions.

Facility Agent

The UBS AG, Australia Branch ABN 47 088 129 613.

Facility Agreement

The Bridge Facility Agreement that was dated on or about the date of the Payment Direction Deed between, among others, the Borrower and the Facility Agent.

Fee Letter

The letter or letters dated on or about the date of the Bridge Agreement between the parties to the agreement.

GloCo

The Papua New Guinea Liquefied Natural Gas Global Company LDC.

IPBC

The Independent Public Business Corporation is the major shareholder in NPCP

IPIC Loan

Loan obtained by the State from International Petroleum Investment Company based in

Abu Dhabi in 2009 to finance the PNG LNG Project.

NPCP

The National Petroleum Company of Papua New Guinea (Kroton) Ltd was created as the receivership of proceeds from the PNG LNG project.

Payment Direction Deed

This is the document that contains the directions that NPCP agreed to instruct and direct GloCo to pay, in immediately available funds, all Distributions which are to be paid to NPCP in relation to the Share Holding from time to time, to a bank account in the name of NPCP with the Facility Agent or an affiliate of the Facility Agent with such account to be located in Singapore.

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Rollover Collar

A rollover Collar loan is essentially a loan that gets renewed at a defined point, as stipulated in a loan contract. There are several types of rollovers, each different from the others except for this principal idea of renewal.

Share Holding

All shares or other securities held by NPCP in GloCo from time to time.

Specific Security Deed

Specific security deed dated on or about the date of this document granted by the Borrower in favour of the Security Trustee over certain OSH Shares held by the Borrower.

Security Trust Deed

The security trust deed dated on or about the date of this UBS AG Contract Agreement document between the borrower and the Security Trustee.

Share

A unit at a value for various investments.

Share placement

This is one way a company can raise additional share capital – particularly if funds are needed relatively quickly – is to do a –share placement, ie., by way of –placing some shares with an investor/s at a share price that might typically be a say 15 – 25% discount to

the most recent share issue or (particularly where stock exchange listed) market price of the company's shares.

Side Letter

This is a letter to confirm certain of the terms and conditions on agreement of the UBS AG Loan Contract Agreement.

Sovereign Bond

A debt security issued by a national government within a given country and denominated in a foreign currency. The foreign currency used will most likely be a hard currency, and may represent significantly more risk to the bondholder.

Subscription Agreement

It is an agreement signed on 27 February 2014 between the Equity Derivative Financier (UBS AG) and Oil Shares Limited.

Substantial shareholders notice

Notice of change of interests of substantial holder of shares (completed and filed by Oil Search Ltd on Australian Stock Exchange).

Term Loan

It is a monetary loan that is repaid in regular payments over a set period of time. Term loans usually last between one and ten years, but may last as long as 30 years in some cases. A term loan usually involves an unfixed interest rate that will add additional balance to be repaid.

UBS AG

Union Bank of Switzerland in which the loan was obtained.

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GLOSSARY OF PERSONS REFERRED TO IN THE REPORT

Sir Michael Ogio, GCL, GCMG, KStJ
Governor-General of PNG

Hon Peter O'Neill, CMG, MP
Prime Minister of Papua New Guinea

Hon James Marape, MP
Minister for Finance

Hon Ben Micah, MP
Minister for State Enterprise & State Investments

s

Hon Kerenga Kua, MP
Former Attorney-General and Minister for Justice

Dr Ken Ngangan, PhD, CMA, CPA
Acting Secretary, Department of Finance

Hon Rimbink Pato, LLB, OL
Minister for Foreign Affairs & Immigrations

Hon Don Pomb Polye, MP
Former Minister for Treasury

Ambassador Isaac B. Lupari, CBE
Chief of Staff to the Prime Minister

Dr Lawrence Kalinoe, LLB, LLM, PhD
Secretary for Department of Justice

Mr Loi Bakani, CMG, CBE
Governor of Bank of Papua New Guinea

Ms Betty Palaso
Commissioner-General, Internal Revenue Commission

n

Mr Dairi Vele,
Acting Secretary for Department of Treasury

Mr Daniel Rolpagarea,
State Solicitor

Mr Ilagi Veali, MPS
Secretary, National Executive Council

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Mr Philip Eludeme,
Chairman, Central Supply & Tenders Board

Mr Anthony Yauieb
Deputy Secretary, Policy for Department of Treasury

Mr Babaga R. Naime
Acting Board Secretary for Central Supply & Tenders Board

Dr Clement Waine, PhD
Secretary, Department of Public Enterprise & State Investments

Mr Wasantha Kumarasiri,
MD for Independent Public Business Corporation

Mr Erastus Kamburi,

Chief Legal Officer for Independent Public Business Corporation

Mr Wapu R Sonk,
MD for National Petroleum Company of PNG (Kroton) Ltd

Mr Rogen Wato,
Company Secretary, National Petroleum Company of PNG (Kroton) Ltd

Mr Frank Kramer,
Chairman for National Petroleum Company of PNG (Kroton) Ltd

Mr Guy Fowler,
MD for UBS AG

Ms Celle Raguine
Representatives of UBS AG

Mr Luke Goldsworthy
Representative of UBS AG

Mr Peter Botten,
MD for Oil Search Ltd

Mr Peter Graham,
MD for PNG Liquefied Natural Gas Global Company LDC (GloCo)

Ms Tessa Hoser
Norton Rose Fulbright of Australia

Mr Carl Okuk
Lawyer and Consultant

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CHRONOLOGY

1995

1. On 5 December, the Investment Promotion Authority (IPA) registered Pacific Capital Ltd whose Shareholders also include Mr Frank Michael Kramer.

2009

2. On 5 March, the Government of PNG (GoPNG) mortgaged its shares in Oil Search Ltd with International Petroleum Investment Company (IPIC), Abu Dhabi and acquired the needed funding and it financed the State's share of the capital

expenditure for the PNG
LNG project.

3. On 1 July, the IPA registered Pertusio Capital Partners Ltd whose Shareholders also include Mr Dairi Vele.

2013

4. On 25 June, Prime Minister Hon Peter O'Neill, CMG, MP (Prime Minister) advised Hon Kerenga Kua, MP, the then Attorney-General that a Brief-Out on legal services should be publicly tendered.

5. On 6 August, the National Executive Council (NEC) appointed Mr Dairi Vele, as the Acting Secretary for the Department of Treasury (DoT).

6. On 12 August, the DoT officials met with Union Bank of Switzerland, Aktiengesellschaft, Australia Branch (UBS AG) officials at Sydney, Australia.

7. On 13 August, the DoT officials met with Morgan Stanley officials in Sydney, Australia.

8. On 14 August, the DoT officials met with JP Morgan officials at Sydney, Australia.

9. On 15 August, the DoT officials held a second meeting with UBS AG officials at Sydney, Australia.

10. On 16 August, the DoT officials met with Credit Suisse officials at Sydney, Australia.

11. On 19 December, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the International Petroleum Investment Company (IPIC) Exchangeable Bond.

12. On 20 December, Hon Ben Micah, MP, Minister for State Enterprises and State Investment (SE&SI) wrote to Mr Loi Bakani, CMG, CBE, the Governor of Bank of Papua New Guinea (BPNG) and requested the BPNG to evaluate the potential financiers' proposals to re-finance the IPIC Exchangeable Bond.

13. On 22 December, Mr Bakani advised Minister Micah that the four financiers should have been provided all the information and requested to bid for the Exchangeable Bond re-financing facility.

14. On 27 December, Minister Micah requested Mr Bakani for clarification on the BPNG's advice on the four proposals by Hemsley Capital, ANZ/Barclay, CitiBank and UBS AG in regard to the refinancing of the IPIC Exchangeable Bond.

2014

15. On 7 January, Mr Bakani advised Minister Micah that the State re-negotiate the funding structure of the proposals with the two Financiers, the UBS AG and Citi Bank in the event that the negotiations do not meet the State objectives, the State should consider other Financiers.

16. On 9 January, Mr Bakani forwarded the BPNG's recommendations to Minister Micah as requested that included the invitation of other potential Financiers apart from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.

17. On even date, Mr Bakani requested the Prime Minister to allow the BPNG the mandate to assist the State in meeting the basic re-financing requirements in the negotiation process.

18. On 14 January, Mr Wasantha Kumarasiri of Independent Public Business Corporation (IPBC), requested Mr Bakani to correct his advice to Minister Micah as it was incorrect and misleading when the actual amount should be AU\$1.681 Billion and not AU\$1.8 Billion.

19. On 15 January, Minister Micah wrote to Mr Bakani and requested that the BPNG provide its final recommendations on the two Banks, UBS AG and Citi Bank.

20. On 16 January, Mr Bakani requested all parties including the BPNG, Minister Micah, IPBC, and the DoT to draft the Terms of Reference to be used during negotiations with potential Financiers.

21. On 17 January, Mr Bakani wrote to and advised Mr Kumarasiri that the BPNG's evaluations and recommendations were based on information provided in accordance with the NEC Decision No: 479/2013 in its Special Meeting No: 37/2013 that approved for BPNG to provide final evaluations on the proposals from Citi and UBS AG to refinance the IPIC Exchangeable Bonds; that Minister Micah advise the Government of United Arab Emirates the GoPNG's decision to redeem the IPIC Exchangeable Bonds and directed Minister Micah to report back to NEC by end of January 2014 with the final evaluation report provided by BPNG.

22. On even date, Mr Bakani requested Ms Natalie Yacoubian of Banque Nationale de Paris Paribas (BNP Paribas) to resubmit PNP Paribas proposal incorporating the refined terms.

23. On even date, Mr Bakani requested Mr Mitchell Turner of UBS AG to resubmit UBS AG proposal incorporating the refined terms.

24. On even date, Mr Bakani requested Mr Philip Graham to resubmit Citi Bank's proposal incorporating the refined terms.

Chronology of Events

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25. On even date, Minister Micah advised Mr Bakani that he expected a recommendation by Wednesday 22 January 2014.

26. On 23 January, Mr Bakani recommended to the NEC to request the Abu Dhabi Government for an extension of six months, to allow time to improve on the proposal by BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays.

27. On 27 January, Hon Don Polye, Minister for Treasury wrote to Mr Bakani and requested for a full brief on the implementation of the NEC's Decision No. 479/2013 regarding the re-financing of IPIC Exchangeable Bond.

28. On even date, after its inconclusive assessment of the proposals from BNP Paribas, UBS AG, Citi Bank and ANZ/Barclays, Mr Bakani, recommended the UBS AG to Minister Micah, for the refinancing of the IPIC Exchangeable Bond.

29. On 30 January, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd by way of letter.
30. Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion and that UBS AG to confirm in writing its commitment to fund the AU\$1.7 Billion IPIC Exchangeable Bond.
31. On even date, Minister Micah noted Mr Bakani's recommendations but he advised that the six months extension recommended would incur costs and was not possible.
32. On 3 February, Minister Micah informed Mr Frank Kramer, Chairman for National Petroleum Company of PNG Ltd (NPCP) Board regarding the Exchangeable Bond and the appointment of UBS AG. At that material time, the Speaker of Parliament was yet to certify Kroton Act.
33. On even date, Hon Minister Micah accepted the BPNG's recommendations and the NPCP's lead to re-finance IPIC Exchangeable Bond process on behalf of the Independent State of Papua New Guinea (State), even though NPCP had no legal basis to conduct business for and on behalf of the country and the government of PNG.
34. On 4 February, the Prime Minister advised HH Sheik Mansour bin Zayed Al Nahyan that the State wanted to retain its shares in Oil Search Ltd.
35. On 7 February, Mr Bakani re-assured Minister Micah on its recommendation to use UBS AG to re-finance IPIC Exchangeable Bond.
36. On 13 February, a Mandatory Exchange Notice to Deutsche Bank AG, London Branch (Exchange Agent) indicated that the IPIC did not want to sell its shares to Government of Papua New Guinea (GoPNG).
37. On even date, Mr John Leahy, Head of Business Assurance & Asset Serving, National Nominees Limited, consented and became a member of Oil Search Ltd

and undertook
trading of Shares on the Australian Stock Exchange.

38. On 23 February, the Prime Minister, Mr Peter Botten, MD of Oil Search Ltd, Mr Gereia

Aopi, Board Chairman for Oil Search Ltd and Mr Vele met at Grand Papua Hotel and

decided over a cup of coffee for the State to buy 149, 390, 244 shares which translated to 10.01

% shareholding in Oil Search Ltd.

39. On 24 February, Hon Rimbink Pato, MP, Minister for Foreign Affairs and Immigration

(FAI) advised HH Sheikh Abdullah bin Zayed Al Nahyan, the Minister for FAI, Abu

Dhabi, United Arab Emirates, that the GoPNG wanted to retain ownership of the Oil

Search Ltd shares.

40. On 25 February, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS

AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January

2014, in relation to the management of the investment of the State in Oil Search Ltd and

associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of

the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi. This is done

with a conflict of interest.

41. On even date, trading in Oil Search Ltd shares halted ahead of its announcement issuing

shares to existing shareholders and interested buyers.

42. On even date, His Excellency Grand Chief Sir Michael Ogio, G.C.L, G.C.MG, K.St.J the

Governor-General of Papua New Guinea (GGPNG) signed the document agreements

which were witnessed by Mr Carl Okuk as a Commissioner for Oath witnessing the

agreement on the terms and conditions of engagement of UBS AG.

The action of the

GGPNG was improper and unconstitutional as per Section 2(1) and 3(1) of the Loans

(Overseas Borrowing) Act (Chapter 133).

43. On 26 February, Prime Minister wrote to Mr Botten regarding the State's willingness to

buy shares in Oil Search Ltd.

44. On 27 February, four days after the meeting, the Prime Minister wrote to Mr Guy Fowler,
the MD for UBS AG regarding UBS AG proposal to provide funding facilities to the State
in connection with the subscription by the State for approximately 149.39 million shares
in Oil Search Ltd at AU\$8.20 per share. (Refer to said dated letter). Facts relevant to this query are set out in page 38
45. On even date, the Subscription Agreement was signed between UBS AG (the Equity
Derivative Financier) and Oil Shares Limited.
46. On even date, Oil Search Ltd shares trading were suspended ahead of its announcement.
47. On even date, Oil Search Ltd announced that it had agreed to acquire a 22.835% gross
interest in PRL 15 (Elk Antelope) from the Pac LNG Group Companies for US\$900 million
to be funded through a placement of new shares to the State.
48. On even date, the UBS AG forwarded a Commitment Letter that was signed by the
GGPNG which was witnessed by Mr Okuk.
49. On 4 March, Ashurst Lawyers forwarded draft documents for its client UBS AG to the
State that outlined the financial package that UBS AG was offering the State.

50. On even date, Mr David Heathcote of KPMG presented KPMG's analysis on the monetised
collars relating to financing the purchase of Oil Search Ltd shares.
51. On 5 March, Mr Fowler requested the Prime Minister to intervene in resolving the IPIC
Exchangeable Bond, PNG LNG direction-to-pay and Sovereign Bond take-out of the
Bridge Loan.
52. On even date, Mr Vele requested Mr Daniel Rolpagarea, the State Solicitor to give legal
clearance on the documents relating to the transaction for the State to acquire 149,390,244
shares in Oil Search Ltd.

53. On even date, Mr Rolpagarea requested Mr Vele to provide to him details of confirmation and clear instructions on the engagement of Pacific Legal Group Lawyers and the breach of Section 209 of (Parliament Responsibility) of the Constitution by the NEC.
54. On even date, NPCP Board Chairman submitted a proposal to the IPBC Board advising of the State's acquisition of 149,390,244 shares in Oil Search Ltd and that UBS AG required NPCP to enter into a payment direction between NPCP, PNG LNG Global Company LDC (GloCo).
55. On even date, Mr Rolpagarea advised Mr Vele that the NEC Submission needed approvals from the relevant Agencies' Boards and the Parliament for the Bridge and Collar loans totalling AU\$1.239 Billion.
56. On 6 March, the UBS AG issued a Bridge Takeout Letter to Mr Vele that outlined the terms of the fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.
57. On even date the UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.
58. On even date, the UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.
59. On even date, the Prime Minister submitted an NEC Policy paper No: 67/2014 to the NEC.
60. On even date, the NEC in its Decision No: 79/2014 appointed Petromin as the State's subscriber and nominee for the transaction, confirmed the authority of the Treasurer, execute the Payment Direction Deed by NPCP, approved the payment direction by IPBC, Central Supply Tender Board (CSTB) to issue a Certificate of Inexpediency (COI) and Authority to Pre-Commit (APC) to be executed by the Department of Finance (DoF).
61. On even date, Mr Vele advised Minister Polye that the loan would

not affect the State's debt program and that Petromin was the subscriber and nominee.

62. On even date, Mr Vele requested Mr Philip Eludeme, the Chairman for CSTB to approve the request for COI at the earliest to cover the advisory costs.

63. On even date, the Prime Minister advised the GGPNG, that the NEC approved the borrowing of a loan for the purpose of purchasing shares in Oil Search Ltd and for the purpose of meeting the expenses of the borrowing itself.

64. On even date, Mr Okuk representing Mr Vele delivered 28 documents pertaining to the UBS AG loan to Mr Rolpagarea for his legal clearance.

65. On 7 March, Mr Vele explained to Mr Eludeme that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd.

66. On even date, Mr Vele requested Mr Rolpagarea to issue legal clearance on the submission regarding the State's borrowing of loan arrangements.

67. On even date, the Prime Minister informed IPBC of the government's decision to enter into the agreement.

68. On even date, Ambassador (Amb) Isaac Lupari, the Chief of Staff to the Prime Minister, advised Mr Kumarasiri that the NEC approved the State's intent to borrow from UBS AG to fund its acquisition of shares in Oil Search Ltd.

69. On even date, Minister Micah directed the Board of IPBC to approve the Payment Direction Deed and to sign the Payment Direction Deed on or before 09 March 2014.

70. On 8 March, Mr Vele emailed to and requested Dr Thomas Webster, the then Chairman for IPBC Board, to progress the documents to the IPBC Board for its consideration and approval. The electronic mail included electronic copies of documents that Mr Vele had prepared for the IPBC Board and NPCP Board to endorse and approve. The attachments are as follows:

Memo with explanation of Transaction and the Payment Direction
Draft Payment Direction Deed
Draft IPBC Shareholder Resolution regarding Payment Direction
Draft IPBC Director Resolution regarding Payment Direction
Draft NPCP Board resolution regarding Payment Direction
Draft Power of Attorney regarding Payment Direction.

71. On even date, Mr Kumarasiri advised Dr Webster to issue instructions to the management of IPBC Management to prepare documents in anticipation to receive requests from the Board of NPCP with their resolutions.

72. On 9 March, Mr Erastus Kamburi, the Chief Legal Officer for IPBC, requested the IPBC Directors to meet and discuss on the directives from the Minister Micah and Amb Isaac Lupari and the NEC Decision No: 79/2014.

73. On even date, an Explanatory Note was prepared with the Board Circular Resolution outlining the purpose of the Special Board Meeting.

74. On even date, the NPCP Special Board of Directors Meeting No: 02/2014 resolved that the Company enter into any Transaction Document to give effect to the Payment Direction Deed and authorised Mr Sonk and Mr Wato with the Power of Attorney.

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75. On even date, the NPCP Board empowered Mr Sonk and Mr Rogen Wato, the Company Secretary for NPCP with the Power of Attorney.

76. On even date, Mr Sonk verified copies of the Shareholder resolutions of the NPCP dated 09 March 2014, Minutes of a Meeting of the Board of Directors and Power of Attorney of the NPCP.

77. On even date, Mr Wapu R Sonk, Managing Director for NPCP forwarded to Mr Kumarasiri an Extract of the Board Meeting Minutes.

78. On even date, Mr Rolpagarea advised Mr Vele that the Treasurer was the authorised person to execute loan agreements on behalf of the State strictly in accordance with

Section 209 (Parliament Responsibility) of the Constitution.

79. On even date, Norton Rose Fulbright wrote to the GGPNG and the Minister for Treasury regarding financing of the acquisition of the shares and possible options to re-finance following completion.

80. On even date, Norton Rose Fulbright wrote to the GGPNG outlining what documents needed to be signed in order for the State to borrow AU\$1.239 billion to purchase Oil Search Ltd shares.

81. On even date, the GGPNG signed the document enabling the State to borrow AU\$335 million from UBS AG for the purpose of the purchase of shares in Oil Search Ltd and for the purpose of meeting the expenses of the Borrowing and for the services of the State.

82. On even date, Mr Kumarasiri wrote to Hon James Marape MP, Minister for Finance and requested him to approve the Memorandum of Approval to enable NPCP to enter into the Transaction Documents.

83. On even date, Minister Polye advised Mr Vele that he will not sign the documents that enabled the State to borrow the said UBS AG loan.

84. On even date, Minister Marape approved the Memorandum of Approval that enabled NPCP to enter into the Transaction Documents.

85. On 10 March, IPBC Board resolved that NPCP Directors enter into the Transaction Documents and recommend to the Minister for Finance to approve a proposal by NPCP to enter into Agreement to execute all documents that gave effect to the Payment Direction Deed.

86. On even date, the NPCP Board deliberated and resolved and authorised Board to enter into Agreement to execute the Transaction Documents.

87. On even date, Mr Eludeme advised Mr Vele that the CSTB resolved and approved the issuance of the COI for the awarding of contracts to both local and international Consulting Firms.

88. On even date, Mr Vele confirmed with Mr Rolpagarea that the

GGPNG and Minister for

Treasury were to execute the transaction documents to purchase Oil Search Ltd shares on behalf of the State.

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89. On even date, Mr Kumarasiri certified the Circular Resolution of the Board of Directors of

IPBC that authorised the execution of the Payment Direction Deed by NPCP.

90. On even date Mr Kumarasiri wrote a Memorandum of Recommendation recommending

Minister Marape to approve the NPCP to enter into the Transaction Documents.

91. On even date, the Prime Minister decommissioned Hon Polye as the Minister for Treasury.

92. On even date, Hon Polye accepted his decommissioning as Minister for Treasury by the

Prime Minister.

93. On even date, the National Gazette No: G83 and G89 of 10 March 2014 confirmed the

decommissioning and replacement of Hon Polye as the Minister for Treasury by the Prime Minister.

94. On even date, the Determination of titles and responsibilities of the Prime Minister Hon

Peter O'Neill, MP also changed to allow him to act as the Minister for Treasury that

enabled him to sign the loan contract agreements on the same date.

95. On even date, Mr Vele requested Dr Ken Ngangan, Acting Secretary for DoF to approve

the payment to UBS AG in relation to the acquisition of the shares.

96. On even date, Mr Rolpagarea advised the GGPNG that all documentations relating to the

borrowing were in order and that Mr Vele was satisfied with the Terms of the Transaction

Documents.

97. On even date, the State and Oil Search Ltd signed and exerted the subscription

Agreement.

98. On even date, Mr Vele advised Mr Eludeme that the local and

international financial and
legal Advisors should be paid for services rendered.

99. On even date, the DoT deposited K1,250,000.00 into Pacific
Capital Ltd Managed Account
with ANZ bank (PNG) Ltd.

100. On even date, Hon Don Polye, then Minister for Treasury was
interviewed at the
Ombudsman Commission Office at Deloitte Tower, Port Moresby
during which he stated
that it was during his term as Treasurer that the 2014 budget was
compiled and tabled in
Parliament

101. On 11 March, Mr Kamburi advised Mr Kumarasiri that the
Certificate did not include the
Shareholder Resolution which was signed and hence he sent an
amended and verified
Certificate for Mr Kumarasiri's signature.

102. On even date, Minister Marape gave his approval for the NPCP to
enter into Payment
Direction Deed.

103. On even date, Dr Ngangan and Mr Vele signed and approved the
APC form to release
AU\$14,555,759.00 to be paid to the Consultants relating to the
purchasing of Oil Search
Ltd shares.

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104. On 12 March, Mr Babaga R. Naime, Acting Board Secretary for
CSTB, advised Mr
Rolpagarea that the CSTB awarded the Contract to both local and
International
Consulting Firms.

105. On even date, Mr Eludeme certified that the inviting of tenders
for the provision of
financial, legal and technical advisory services was impractical
or inexpedient.

106. On even date, Dr Ngangan approved the application for the
Department to complete and
issue the APC for the above Procurement.

107. On even date, the State, NPCP and UBS AG agreed to the terms
and conditions upon
signing the Payment Direction Deed that directed PNG Liquefied
Gas Global Company

(GloCo) to pay immediately available funds due to NPCP to UBS AG as per the NEC

Decision No: 79/2014, even though at that material time the Kroton Act was yet to be certified by the Speaker of Parliament.

108. On even date, UBS AG confirmed with Mr Vele the terms and conditions of the financing transaction that were entered into between the State and UBS AG in respect of Oil Search Ltd shares.

109. On even date, the Prime Minister, Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Bridge Facility Agreement.

110. On even date, the GGPNG witnessed by Mr Okuk signed the Specific Security Deed (CHESS Securities – Collar) with UBS AG that provided security to the loan acquisition.

111. On even date, the GGPNG, witnessed by Mr Okuk signed the Security Trust Deed with UBS Nominees Pty Ltd that provided security to the loan acquisition.

112. On even date, the GGPNG, witnessed by Mr Okuk signed the Participant Sponsorship Agreement with UBS Nominees Pty Ltd.

113. On even date, the Prime Minister, Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Confirmation Side Letter.

114. On even date, the GGPNG witnessed by Mr Okuk signed the Nominee Deed with UBS AG, UBS Nominees Pty Ltd and UBS Securities Australia for the Nominee (UBS Nominees Pty Ltd).

115. On even date, the Substantial shareholders notice prepared and lodged with Port Moresby Stock Exchange (POMSox) and ASX lodged on 17 March 2014.

116. On even date, the State (Subscriber) represented by the GGPNG witnessed by Mr Okuk signed the Subscription Agreement with Oil Search Limited (Issuer).

117. On even date, Mr Stephen Gardiner, the Chief Financial Officer for Oil Search Ltd, advised that Goldman Sachs Financial Markets Pty Ltd with a Bank Account

number 011-112034-

041 was the recipient of the Subscription.

118. On even date, Oil Search Ltd announced completion of share placement and file appendix 3B, Cleansing Notice and Completion Letter.

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119. On 14 March, the Substantial shareholder notice prepared and lodged with POMSoX and ASX (lodged on 17 March 2014).

120. On even date, the Commission issued directives under Section 27(4) of the Constitution determined that it was necessary to issue a direction under Section 27(4) of the Constitution to freeze all further progress on the PGK3 Billion loan and requested for collective cooperation from the Prime Minister; and the members of the NEC; the Chief Secretary; the Minister for Treasury and the Minister for Finance; the Secretary, DoF; and the Secretary, DoT; the Attorney-General; and the Secretary, DJAG; the Governor of BPNG; Petromin; and IPBC; and Port Moresby Stock Exchange Limited; and Oil Search (PNG) Limited; and UBS Nominees Pty Ltd.

121. On 15 March, the Commission wrote to Mr Vele acknowledging receipt of his letter dated 14 May 2014 and advised that he will be advised on the Commission's independence and proceedings under Section 217(5) and (6) of the Constitution.

122. On 20 March, Mr Rolpagarea advised Mr Naime on his legal opinion on the request for the issuance of Legal Clearance – CSTB COI 02/04 stating that the CoI shall only be issued during Natural Disaster; or Defence Emergency; or Health Emergency; or Civil Unrest and that the CoI cannot be applied retrospectively.

123. On 26 March, during his interview with the Ombudsman Commission, Mr Rolpagarea stated that he was not given enough time to thoroughly go through the documents and that he was not present at the CSTB meeting that approved the issuance of the COI.

124. On 28 March, Mr Eludeme advised Mr Vele that the State Solicitor declined the issuance of legal clearance.

125. On even date, Mr Kumarasiri advised the Commission that the IPBC gave its approval for NPCP to go ahead with the transaction and referred the matter to the Minister for Finance to execute.

126. On 31 March, Hon Kua, then Attorney-General was interviewed at the Commission Office at Deloitte Tower, Port Moresby during which he stated that he was never present at the NEC meeting that made the decision to approve the borrowing, nor was he consulted on the matter.

127. On 3 April, Mr Bakani was interviewed at the Commission Office at Deloitte Tower, Port Moresby during which he stated that the BPNG was not involved in the second part of the UBS AG loan in which the loan was obtained to purchase shares in Oil Search Ltd.

128. On 10 April, Mr Eludeme advised Mr Vele that the Board effectively nullified the issuance of the COI for the engagement of private Consultants.

129. On 11 April, Mr Sonk directed Mr Peter Graham, MD for GloCo to divert all distributions of payments payable to NPCP to be paid to UBS AG (Singapore Branch).

130. On even date, Mr Sonk and Mr Wato of NPCP directed Mr Graham of Esso Highlands who was also the MD for GloCo to immediately pay all available funds to UBS AG.

131. On 22 April, Ashurst Lawyers advised Norton Rose Fulbright of Australia that non-compliance with payment obligations would constitute an Event of Default and UBS AG can commence enforcement processes without further reference to the State.

132. On 28 April, Hon Polye reiterated to Hon Theodore Zurenuoc, the Speaker of Parliament, his position that the government's borrowing UBS AG loan was bad.

133. On 30 April, Hon Polye stated to the Commission that the loan was an unplanned activity

and it was not a prudent thing to do and it breached the 2014 Budget Appropriation Bill and the Fiscal Responsibilities Act.

134. On even date, Ms Tessa Hoser of Norton Rose Fulbright of Australia advised Mr Vele that in the event of a default UBS AG would charge default interest on any unpaid interest.

135. On 2 May, Hon Don Polye instituted proceedings in OS 142 of 2014 against the Hon Peter O'Neill, Prime Minister, Hon Patrick Pruaitch and the State.

136. On even date, during his interview with the Ombudsman Commission, Mr Vele stated that the State engaged UBS AG together with the other financial and legal firms as they were already providing the services.

137. On 8 May, the National Court (Salika, DCJ) OS 142 of 2014 ruled that Hon Polye's application be dismissed on the grounds of abuse of process of the National Court rules.

138. On 9 May, Mr Anthony Yauieb, Deputy Secretary for DoT, stated to the Commission that the NEC Policy Submission on the UBS AG Loan to purchase Oil Search Ltd shares was prepared outside by Mr Vele.

139. On 14 May, Mr Vele advised the Commission that the State is required to make periodic interest payments to UBS AG.

140. On even date, Finance Forms number 3 & 4 (FF3& FF4) indicated AU\$2,261,938.36 which is about K5,543,966.57 was paid to UBS AG.

141. On 15 May, Mr Luke Goldsworthy and Ms Celle Raguine, Representatives of UBS AG pointed out to Mr Vele that failure to pay interest breached clause 5.1(b) of the Agreement which states that all payments to be made under the Commitment Documents shall be paid in the currency of the invoice and immediately available, freely transferable cleared funds and shall be paid without set-off or counterclaim or any deduction or withholding for or on account of tax (a –Tax Deduction) unless a Tax Deduction is required by law. If a Tax Deduction is required by law to be made, the amount of the payment due shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal

to the payment which would have been due if no Tax Deduction has been required;||

142. On even date, Mr Vele requested clearance from Commission on the interest payment to UBS AG.

143. On 16 May, Mr Vele instructed Mr Bakani to immediately process and remit funds to the UBS AG.

144. On even date, Mr Vele advised Mr Bakani that interest payment must be paid to UBS AG.

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145. On even date, Ms Betty Palaso, Commissioner-General for Internal Revenue Commission (IRC) issued a Tax Clearance Certificate to the DoT to transfer or remit moneys for the purpose of payment of interest on UBS AG Loan.

146. On even date, a copy of the Notification (transmission) of Original indicated that the BPNG transferred AU\$2,261,938.36 to the Reserved Bank of Australia.

147. On 19 May, Hon Don Polye filed an application under to Section 18(1) of the Constitution that in SCCOS No. 1 of 2014 to be part of the Supreme Court proceedings relating to the borrowing of the UBS AG loan.

148. On 23 May, the Commission responded to Mr Vele's letter dated 15 May 2014 and advised that the Commission's investigation into the UBS AG Loan was continuing and that Section 27(4) of the Constitution was still in force and that it also applied to the interest payments to UBS AG.

149. On 27 May, Dr Clement Waine, Acting Secretary, Department of Public Enterprise (DoPE) explained that neither he nor his Department were involved in the matter been investigated.

150. On 3 June, Mr Kramer stated that NPCP was involved in the execution of the Payment Direction Deed as per the IPBC Board request and direction.

151. On 5 June, Mr Vele wrote to the Commission and stated that the Commission does not

have the power to issue directives to stop such interest payments. To fail to make the interest payments would simply not be in the best interest of Papua New Guinea or its people.

152. On even date, Mr Eludeme confirmed that CSTB approved a request for application for COI by Mr Vele.

153. On 6 June, Mr Vele as second Plaintiff and the Hon Peter O'Neill, Prime Minister as First Plaintiff filed proceedings in OS (JR) 383 of 2014 the National Court against the Commission and the State seeking Courts powers under Section 18(2) of the Constitution to refer questions to the Supreme Court on the Commission's power to issue Directions under Section 27(4) of the Constitution and Section 23 and 27(5) of OLDRL.

154. On 12 June, Dr Lawrence Kalinoe, Secretary for DJAG, advised the Commission that neither he nor his Department was involved in the UBS AG Loan transaction.

155. On 13 June, Hon Kua categorically denied the allegations that he was personally involved in giving clearance for the UBS AG loan and that he was not present in the NEC Special Meeting No 37/2013 that approved the UBS AG loan.

156. On 4 July, Mr Vele advised the Commission that the UBS AG loan transaction was constitutional and had been lawfully undertaken by the State and its related parties in every aspect including the decision made over a cup of coffee at the Grand Papua Hotel by the Prime Minister, Mr Botten, Mr Aopi and Mr Vele.

157. On 7 July, Mr Ilagi Veali, MPS, Secretary to the NEC forwarded copies of the NEC Special Meeting No: 08/2014 together with the list of Cabinet Ministers who were present or absent at the Special Meeting.

158. On 27 October, Pacific Legal Group Lawyers representing the Hon Peter O'Neill, Prime Minister and Mr Vele, mared the proceedings in OS (JR) No. 383 of

2014 for the Court to refer certain questions to the Supreme Court for interpretation.

159. On 3 December, the National Court granted the application by the Hon Peter O'Neill, Prime Minister and Mr Vele and referred various questions to the Supreme Court for interpretation pursuant to Section 18(2) of the Constitution. The Court also ordered that the proceedings in OS (JR) No. 383 of 2014 be stayed.

160. On 8 December, the Ombudsman Commission issued the Provisional Report to those implicated.

161. On 11 December, copies of Provisional Reports were delivered to Hon James Marape, Minister for Finance, Dr. Ken Ngangan, Acting Secretary for DoF, Mr Dairi Vele, Acting Secretary DoT and Mr Loi Bakani, Governor for Central Bank.

162. On 12 December, copies of the Provisional Report were delivered to Hon Peter O'Neill, Prime Minister, Hon Ben Micah, Minister for State Enterprise and State Investments, Mr Philip Eludeme, Chairman of CSTB and Amb Isaac Lupari, Prime Minister's Chief of Staff.

163. On 16 December, a copy of the Provisional Report was delivered to Mr Carl Okuk, legal consultant.

164. On 22 December, Young & Williams Lawyers representing the Prime Minister Hon Peter O'Neill, MP responded to the Provisional Report, refuting any wrong doing and that the Commission's investigations were fatally flawed. The Prime Minister's Lawyers did not request for an extension of time as required.

2015

165. On 8 January, the National Court ruled pertaining to OS No. 810 of 2014 that the Constitutional question be referred to the Supreme Court and interim injunctions and a stay of proceedings on the leadership tribunal.

166. On 22 January, Dr Ken Ngangan responded to the Provisional Report.

167. On 23 January, Mr Vele, Acting Secretary, DoT responded to the Provisional Report.

168. On even date, Hon Peter O'Neill, Prime Minister made an

application to the National Court seeking referral of several questions for interpretation by the Supreme Court under Section 18(2) of the Constitution.

169. On 16 February, Mr Frank Kramer, Chairman, KPHL responded to the Provisional Report.

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170. On 18 February, Mr Vele submitted his affidavit in the matter SCR No.7 of 2014 relating to the Special Reference by Hon Ano Pala, Minister for Justice & Attorney-General, MP before the Supreme Court.

171. On 24 February, Mr Loi Bakani, Governor for Central Bank responded to the Provisional Report.

172. On 25 September, Young & Williams Lawyers responded on behalf of Prime Minister Hon Peter O'Neill, MP filed a schedule of questions and proposed answers to questions in consolidated references pursuant to Order made 11 August by the Bernard Sakora, J.

173. On even date, Young & Williams Lawyers representing the Prime Minister Hon Peter O'Neill, MP filed a Special Reference 7 of 2014 and SC References No. 1 and 2 of 2015 referring 13 Constitutional questions to the Supreme Court to answer.

2016

174. On 19 July, Justice Catherine Davani of the National Court made reference to the Supreme Court under SCR No. 5 of 2016, eleven (11) questions pertaining to whether the OC had the jurisdiction to investigate the PM and whether or not the issuing of the OLOC Provisional Report ultra vires the power of the Ombudsman Commission.

175. On 28 July, Justice Catherine Davani submitted Facts pertaining to the Supreme Court Reference SCR No. 5 of 2016.

176. On 19 August, the Ombudsman Commission submitted an Intervention to be part of the

Supreme Court Reference SRC No. 5 of 2016.

177. On even date, the Prime Minister Hon Peter O'Neill, MP submitted an Intervention to be part of the Supreme Court Reference SRC No. 5 of 2016.

178. On 20 September, Hon Ano Pala, Attorney-General submitted an Intervention to be part of the Supreme Court Reference SRC No. 5 of 2016.

179. On 26 September, Hon Ano Pala, Attorney-General amended his statement of response and submitted it as part of his Intervention to be part of the Supreme Court Reference SRC No. 5 of 2016.

180. On even date, the Prime Minister Hon Peter O'Neill, MP through his lawyers filed an injunction on the matter OS No. 15 of 2015 in the National Court.

2017

181. On 6 October, the Supreme Court dismissed the Supreme Court Reference SCR No. 5 of 2016 made by Justice Catherine Davani and returned the matter to the National Court.

182. On 15 November, the Supreme Court conclusively determined that the Office of the Prime Minister does fall within the OLOC functions of the Commission. There was therefore no utility in the current proceedings. Therefore, the court dismissed the entire proceedings

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with costs and discharged any injunction that may have been issued against the Commission on this matter.

RESPONSE FROM THE ACTING SECRETARY FOR TREASURY, MR DAIRI VELE

On 23 January 2015, Mr Dairi Vele responded to the Provisional Report, in particular to the Chronology of Events section and stated the following:

Comments

As an initial comment on the Chronology as set out by the Ombudsman Commission, I say that it has been drafted in a way that is biased towards a finding of improper conduct. Many essential steps in the process have been completely omitted, beginning with omitting all

Cabinet decisions in 2013

concerning, the sourcing of advice on the IPIC Bond, including the creation of a Committee of which I was Chair to advise both IPBC and NEC on the options available for refinancing of the IPIC Bond and the retention of Oil Search shares – to omitting that the Ombudsman Commission refused to allow the State to pay interest to UBS AG pursuant to the binding obligations on the loan exposing the State to serious adverse financial consequences, and also fails to include that such decision of the Ombudsman Commission was stayed by the National Court.

It fails to set out that at all times I sought legal advice on every step of the process.

It also does not include that the initial proceedings commenced by Don Polye to challenge the validity

of the loan that were dismissed, but more importantly does not include the commencement by Mr

Polye of SCCOS 4 of 2014 on 15 May 2015 that seeks constitutional opinions of the Supreme Court on

the application of Section 209 in these circumstances and which seeks to have the loan declared void

and unenforceable against the State. These Supreme Court proceeding make the subject matter of this

report subjudice the Ombudsman Commission ought to cease work on this investigation pending the

outcome of SCCOS 4/14 otherwise, it is acting in content of the Supreme Court.

In order to respond to this Chronology, I have reproduced the Chronology but have in addition

inserted the factual events that have been omitted – these are highlighted and in different font for your ease of reference.

1995

1. 5 December, the Investment Promotion Authority (IPA) registered Pacific Capital Ltd whose

Shareholders also include Mr Frank Michael Kramer.

2009

2. 5 March, the GoPNG through IPBC mortgaged its shares in Oil Search Ltd with International

Petroleum Investment Company (IPIC), Abu Dhabi and acquired the needed funding and it financed

the State's share of the capital expenditure for the PNG LNG project. In addition to GoPNG through

IPBC mortgaging the Oil Search Shares, all SOEs were also mortgaged to secure the IPIC loan.

In addition to GoPNG through IPBC mortgaging the Oil Search Shares, all SOEs were also mortgaged

to secure the IPIC loan.
3. 1 July, the IPA registered Pertusio Capital Partners Ltd whose Shareholders also include Mr Dairi Vele.

2012

In March, Mr. Dairi Vele ceases to be a Director and Shareholder of Pertusio Capital Partners Ltd.

5 December Norton Roase Fulbright was retained by IPBC to provide legal advice on the IPIC Bond Project. The work expressly included Reviewing the terms and conditions of the IPIC Bond,

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Reviewing and advising options available to IPBC for refinancing of the loan and or restructure of the terms of the existing loan.

Specifically it was recognised in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search shares.

2013

(Omitted) 5 April 2013,
Cabinet Decision No. 117/2013.
On 5th April 2013, Council:
Noted the strategic investment positive and negative implications of not retaining the Oil Search Shares currently pledged in the IPIC Bond Transactions;
Approved for the Minister for Public Enterprise and the State Investments to direct the Board and Management of IPBC and its successive organisations to explore the following;
To raise funds in the capital market (estimated to be AUD1.8 billion) to repurchase Oil Search shares through the Redemption of IPIC Bonds and negotiate the best interest rates with favourable conditions to PNG to the term of the loan/bond not to exceed 10 years but preferably at 7 years;
IPBC should minimize cost associated with raising funds through direct negotiations with potential financier and use of IPBC Management;
Provide appropriate security options to meet financiers security requirements;
To raise funds needed for Train 3 of the PNG LNG Project expansion estimated to be AUD 1.2 billion;
and

Consider USD (United State Dollar) as a form of currency during the fund raising preferred by the financiers.

Directed the Minister for Public Enterprise and State Investments and the Acting Managing Director for IPBC to report back to the NEC of potential financiers and their team sheets immediately for NEC approval.

2013

(Omitted 5th April 2013

Cabinet Decision No. 119/2013

On 5th April 2013, Council:

Appointed Mr. Wasantha Kumarasiri, OBE as the Managing Director of IPBC and its successive organisation for period of four (4) years effective from the date of this Decision in accordance with Section 23 of the IPBC Act (as amended).

Note that until the establishment of –Kumul Petroleum Holding Limitedll in line with the NEC decision and the appointment of its Managing Director, during the interim period, the Managing

Director of IPBC shall manage all affairs necessary on Abu Dhabi based IPIC Transaction and any

refinance requirements and negotiations and also oversee NPCP as part of the General Business Trust.

4. 25 June, the Prime Minister Hon Peter O’Neill, MP advised Hon Kerenga Kua, MP, the then Attorney–

General that a brief –out legal services should be publicly tendered, which Mr. Kua failed to do for

ANY legal brief out whatsoever during his time as Attorney–General.

(Omitted) 9 July 2013

Cabinet Decision No. 241/2013

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On 09th July 2013, Council:

noted the content of Policy Submission No. 176/2013;

noted the refinancing options presented in the submission to redeem the International Petroleum

Investment Company (IPIC) Exchangeable Bonds;

Appointed the following as members of the IPIC Exchangeable Bond Review Committee:

Director, Gas Project Coordination Office	– Chairman; (Mr Vele)
Secretary, Public Enterprise	– Deputy Chairman;
Secretary, Treasury or his nominee	– Member;
State Solicitor or his nominee	– Member;
Managing Director, IPBC	– Member.

Include the following in Terms of the Reference for the Review Committee to look at:

–Bidding internationally for the engagement of international experts to provide up market and up to date advice to the Government on petroleum and gas issues.

approved the Terms of Reference for Committee;

approved to repeal clause 3 of the NEC Decision No. 119/2013 in its entirety;

Directed the Minister for Public Enterprise and State Investments to take carriage of all matters pertaining to the redemption of IPIC Exchangeable Bond and the retention of Oil Search Shares and that this NEC Decision supersedes all previous NEC Decisions, namely NEC Decision 117/2013 or such other decisions pertaining to the IPIC Bond issue; and

Directed that the IPIC Exchangeable Bond Review Committee reports its findings back to the Minister for Public Enterprise and State Investments before 31st August 2013 with a clear path towards completing IPIC Exchangeable Bond transaction.

The Terms of Reference for the IPIC Exchangeable Bond Review Committee were as follows:

–Under the Direction of the Minister of Public Enterprise and State Investments, Hon Ben Micah, MP, and the Chairman of Dr. Thomas Webster, Chairman IPBC, the Committee is directed to:

Meet as required by the Chairman to consider and review proposals for the State to refinance the IPIC Exchangeable Bond.

The chairman is to report the final recommendation of the Committee to the Minister by 31 August 2013.

All information you require with regard to the original IPIC funding, other related matters and the current position and negotiations with IPIC are to provide to the Chairman of the Committee immediately on request of any relevant party.

Proposals must meet the following requirements:

4.1 The amount to be raised is estimated to be AU\$1.681B plus interest of approximately another AU\$84M.

4.2 If the Oil Search shares are to be used as collateral for new

funding, those shares are to be secured
as a stand-alone asset and are not be conditional on any
other asset.

4.3 As stand-alone security, Oil Search equity must be the only
security available for any proposal
which includes the Oil Search equity on a basis which has no
recourse to any other asset.

4.4 For any cash flow security component in any proposal,
security recourse is to be the cash flow
above. No security other than the potential cash receipt is
available. Where cash flow is monetised
or securitised by a lender, the control or de facto ownership
of the underlying asset is not available
to the lender.

4.5 The underlying control interest of Oil Search shares must be
vested with IPBC and all dividends
during the term of the refinance transaction must be paid to
IPBC.

4.6 Neither the whole of nor any part of NPCP's equity is
available to support the refinancing. NPCP's
equity is not available as security or for sale nor will any
dilution of its current equity to any party

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to be accepted except the 4.20% mandatory acquisition by
landowner company as provided under
the benefit-sharing arrangements.

4.7 First interest payment should not be earlier than December
2015 to align and prepare with cash
inflows from PNG LNG Project.

4.8 No State guarantee should be a condition requirement.

4.9 Transaction fees on success must be kept at minimal or zero
if possible.

4.10 Meet Regulatory Transaction Certification requirements
through Certified Agent in the
appropriate Financial Markets complying post Global
Financial Crisis (GFC) Financial Transaction
Regulatory Requirements.

5. Timing of finalising this refinancing is critical. A
successful proposal must demonstrate funding to
be complete after the 31 August, which absolute certainty.

As Chairman of the IPIC Exchangeable Bond Review Committee,

under the direction of IPBC, Mr. Vele utilised the services of Norton Rose Fulbright in accordance with their retainer by IPBC for the purposes of the achievement of the Committee's Terms of Reference.

5. 6 August, the National Executive Council appointed Mr. Dairi Vele, as the Acting Secretary for Department of Treasury (DoT).

8 August, a recommendation by Gas Office and Chairman of the IPIC Exchangeable Bond Review Committee that Financial Advisers be appointed and position/discussion paper drafted by Mr. Vele.

6. 12 August, the DoT officials Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury and met with Union Bank of Switzerland, Aktiengesellschaft, Australia Branch (UBS AG) officials at Sydney, Australia.

15. 13 August, the DoT officials Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with Morgan Stanley officials in Sydney, Australia.

16. 14 August, the DoT officials Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with JP Morgan officials at Sydney, Australia.

17. 15 August, the DoT officials Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury held a second meeting with UBS AG officials at Sydney, Australia.

7. 16 August, the DoT officials Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with Credit Suisse officials at Sydney, Australia.

8. 19 December 2013, the National Executive Council (NEC) during a Special Meeting No: 37/2013 in its Decision No: 479/2013 noted the submission that UBS AG was the preferred financial adviser and arranger by IPBC and the IPIC Committee but approved and directed that the BPNG provide final evaluations on the proposals to be obtained from Citi Bank and UBS AG to re-finance the International Petroleum Investment Company (IPIC) Exchangeable Bond and to retain the interest of the State in Oil Search.

12. 20 December, Hon Ben Micah, MP, Minister for State Enterprises and State Investment (SE&SI) wrote to Mr Loi Bakani, the Governor of Bank of Papua New Guinea (BPNG) and requested the BPNG to evaluate the potential financiers' proposals to re-finance the IPIC Exchangeable Bond.

13. 22 December, Mr Bakani advised Minister Micah that the four financiers should have been provided all the information and requested to bid for the Exchangeable Bond re-financing facility.

14. 27 December, Minister Micah requested Mr Bakani for clarification on the BPNG's advice.

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15. 7 January, Mr Bakani advised Minister Micah that the State re-negotiate the funding structure of the proposals with the two Financiers the UBS AG and Citi Bank.

16. 9 January, Mr Bakani forwarded the BPNG's recommendations to Minister Micah as requested.

Mr Bakani requested the Prime Minister to allow the BPNG the mandate to assist the State in meeting the basic re-financing requirements in the negotiation process.

17. 14 January, Mr Wasantha Kumarasiri for Independent Public Business Corporation (IPBC), requested Mr Bakani to correct his advice to Minister Micah as it was incorrect and misleading.

18. 15 January, Minister Micah wrote to Mr Bakani and requested that the BPNG provide its final recommendations on the two Banks, UBS AG and Citi Bank.

19. 16 January, Mr Bakani requested all parties including the BPNG, Minister Micah, IPBC, and the DoT to draft the Terms of Reference to be used during negotiations with potential Financiers.

20. 17 January, Mr Bakani wrote to and advised Mr Kumarasiri that the BPNG's evaluations and recommendations were based on information provided in accordance with the NEC Decision No: 479/2013 in its Special Meeting No: 37/2013.

Mr Bakani requested Ms Natalie Yacoubian of PNP Paribas to resubmit PNP Paribas proposal incorporating the refined terms.

Mr Bakani requested Mr Mitchell Turner of UBS AG to resubmit UBS AG proposal incorporating the refined terms.

Mr Bakani requested Mr Philip Graham to resubmit Citi Bank's proposal incorporating the refined terms.

Minister Micah advised Mr Bakani that he expected a recommendation by Wednesday 22 January 2014.

21. 23 January, Mr Bakani recommended to the NEC to request the Abu Dhabi Government for an extension of six months, to allow time to improve on the proposal by BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays.

22. 27 January, Hon Don Polye, Minister for Treasury wrote to Mr Bakani and requested for a full brief on the implementation of the NEC's Decision No. 479/2013 regarding the re-financing of IPIC Exchangeable Bond.

23. Even though the BPNG's assessment on the four proposals was inconclusive, Mr Bakani, however, recommended the UBS AG over BNP Paribas to Minister Micah to refinance the IPIC Exchangeable Bond.

24. 30 January, Mr Bakani wrote to the Director of Investment banking UBS AG regarding the re-financing of the IPIC Loan and advised that the State accepted its proposal to re-finance the IPIC Loan and advised that the State accepted its proposal to re-finance the IPIC Exchangeable Bond by a combined structure of a Rollover Collar and term Loan. Mr Bakani also requested the UBS AG to confirm in writing its commitment to fund the AUD\$1.7 Billion IPIC Exchangeable Bond.

30 January, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd. This is completely incorrect. Mr Vele did not engage UBS AG on 30 January 2014 or any other time prior to 6 March 2014.

UBS AG were only actually engaged by the State following Cabinet Decision no 79/2014. Following the advice from BPNG that the State had accepted UBS AG proposal, as

essentially project manager of the IPIC Bond matter, Mr Vele commenced negotiations and dealing with UBS AG, but their retainer was contingent on the Cabinet Decision of 6 March 2014.

Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

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Minister Micah noted Mr Bakani's recommendations but he advised that the six months extension recommended would incur costs and was not possible.

25. 3 February, Minister Micah informed Mr Frank Kramer, Chairman for National Petroleum Company of PNG Ltd (NPCP) Board regarding the Exchangeable Bond and the appointment of UBS AG.

Hon Minister Micah accepted the BPNG's recommendations and the NPCP's lead to re-finance IPIC Exchangeable Bond process on behalf of the Independent State of Papua New Guinea (State).

26. 4 February, the Prime Minister advised HH Sheik Mansour bin Zayed Al Nahyan that the State wanted to retain its shares in Oil Search Ltd.

27. 7 February, Mr Bakani re-assured Minister Micah on its recommendation to use UBS AG to re-finance IPIC Exchangeable Bond.

28. 13 February 2014, team of Foreign Affairs Minister, Governor of BPNG, Acting Secretary for Treasury, representatives of UBS, Peter Botten of Oil Search and Anthony Latimer of Norton Rose Fulbright prepared to travel to Abu Dhabi commencing 15 February to return on 20 February to meet with IPIC leaders in relation to the Bond and Shares as no indication had been given as to the method of re-payment preferred to retain the Oil Search Shares.

13 February, a Mandatory Exchange Notice to Deutsche Bank AG, London Branch (Exchange Agent) indicated that the IPIC did not want to sell its shares to Government of Papua New Guinea (GoPNG).

Mr John Leahy, Head of Business Assurance & Asset Servicing, National Nominees Limited, consented and became a member of Oil Search Ltd and undertook trading of Shares on the Australian Stock Exchange.

Consideration was given by the State team that other methods of acquiring shares in Oil Search needed to be explored, to replace the shares to be retained by IPIC.

Market rumours were of a placement of Shares by Oil Search to raise capital to purchase an interest in the Elk Antelope Project and if this happened post purchase the share price would rise significantly and it would be much more expensive for the State to buy shares from the market. The Oil Search share price was very closely linked to projects they had under development. If a share purchase was to be done by the State it therefore needed to be done from the share placement or before the share placement – it was a commercial reality that time was of the essence.

20 February 2014, Mr Vele and Mr Latimer meet with UBS AG in Sydney to discuss whether UBS AG could give an indication whether they would agree to provide funding to purchase part of a share placement by Oil Search, as any submission to NEC would need to have some Certainty that funding would be available to purchase the Oil Search shares.

20 February 2014, Mr Vele seeks instructions from Prime Minister Hon Peter O'Neill, MP as to whether the State would consider buying a placement of shares from Oil Search given IPIC was to retain the State's shares in Oil Search and the Prime Minister Hon Peter O'Neill, MP instructed that it was a NEC decision to retain shares in Oil Search so Mr Vele should proceed to put together a draft deal to be considered by NEC.

21 February 2014, Mr Vele met with Mr Botten in Sydney and advised that the State may be interested in buying shares in Oil Search and asked for the State to be informed of any plans to issue additional shares and informs Botten that the State would be able to obtain funding from UBS AG.

21 February 2014, Mr Vele in constant communication with Prime Minister Hon Peter O'Neill, MP for instructions.

21 February, Oil Search share price was AU \$8.46.

22 February 2014, Mr Botten flies to Papua New Guinea and seeks to meet with Prime Minister Hon Peter O'Neill, MP and does meet with the Prime Minister and has preliminary discussions about price but the Prime Minister informs Mr Botten that any specific negotiations must be done with Mr Vele as he was preparing the draft deal.

23 February 2014, Mr Vele returns to Papua New Guinea.

29. 23 February, the Prime Minister, Hon Peter O'Neill, MP, Mr Peter Botten, MD of Oil Search Ltd, Mr

Gerea Aopi, Board Chairman for Oil Search Ltd and Mr Vele met at Grand Papua Hotel and decided for

the State to buy 149, 390, 244 shares which translated to 10.01 % shareholding in Oil Search Ltd. and

discussed the availability of a placement of Oil Search shares.

There was a discussion on price but the

Prime Minister advised Mr Botten to speak to Mr Vele about price in further negotiations to take

place. The Prime Minister and Mr Vele expressed to Oil that the State had an interest in buying Oil

Search Shares. No agreement or commitment was made on behalf of the State, the share price was not

settled on and it was the position negotiations would be ongoing before a submission would be put to

NEC.

30. 24 February, Hon Rimbink Pato, MP, Minister for Foreign Affairs and Immigration (FAI) advised HH

Sheikh Abdullah bin Zayed Al Nahyan, the Minister for FAI, Abu Dhabi, United Arab Emirates, that

the GoPNG wanted to retain ownership of the Oil Search Ltd shares.

24 February 2014, Mr Botten and Mr Vele have numerous discussions on a possible price that the State

could pay. Mr Botten informed that Oil Search wanted \$8.50 per share and that although they could

discuss a price, any proposed price would have to be put to the Board of Oil Search. Mr Vele advised

Mr Botten that he would need to speak to the Prime Minister about the price and then any proposed

deal would need to be put to and approved by cabinet.

24 February 2014, Mr Vele met with the Prime Minister Hon Peter O'Neill, MP and the Prime Minister

instructed that the State would only be prepared to pay AUD\$8.20 per share as that was the price Mr

Botten had indicated on 22 February 2014.

24 February 2014, Mr Vele advises Mr Botten that he had been instructed that the State would only

consider a price of \$8.20.

24 February 2014, UBS AG advised that \$8.20 was an unrealistic price and that the State would need

to pay \$8.50 a share but Mr Vele stated he had a clear instruction that \$8.20 was the price the State

would consider paying.

31. 25 February 2014, UBS AG write to Mr Vele and outlined the proposed terms of engagement including

fees charged in relation to the role as financial advisor and lead arranger as well as financial modelling.

25 February, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi. These terms were agreed to when the GGPNG signed the document that was witnessed by Mr Okuk.

Trading in Oil Search Ltd shares halted ahead of its announcement issuing shares to existing shareholders and interested buyers.

His Excellency Grand Chief Sir Michael Ogio, G.C.L, G.C.MG, K.St.J the Governor-General of Papua

New Guinea (GGPNG) signed the document agreements which were witnessed by Mr Carl Okuk as a

Commissioner for Oath witnessing the agreement on the terms and conditions of engagement of UBS AG.

32. 26 February, Prime Minister wrote to Mr Botten regarding the State's willingness to buy shares in Oil Search Ltd.

26 February 2014, KPMG was brought in to review the terms offered by UBS AG to make sure that the offer was on proper commercial terms. No retainer agreement was given to KPMG as they were aware

their advice was only relevant as part of the draft deal if approved by NEC, but it was essential that figures were checked prior to a NEC submission.

26 February 2014, advice was being provided on legal matters from Norton Rose Fulbright as a result

of their retainer by IPBC. As Acting Secretary for Treasury Mr Vele was still a member of the IPIC

Bond Committee and that was under the direction of IPBC.

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Mr Vele was not receiving advice from the State Solicitor as Mr Vele was informed he was busy and a derivative transaction of this type was complicated not something that the State Solicitor had any

experience in or expertise and therefore the State required specialist advice. Norton Rose Fulbright

retained Pacific Legal Group as their local counsel to assist in Papua New Guinea. The State did not

retain Pacific Legal Group.

26 February 2014, as Ashurts were the local Counsel of UBS AG they drafted documents relevant to the

proposed deal, but on the basis that Cabinet was still to approve the transaction. They were retained

by UBS AG and not the State.

26 February 2014, UBS AG and Oil Search enter into separate underwriting agreement whereby if the

State through Cabinet did not approve and go through with the deal to buy Oil Search Shares, then

UBS AG could buy the Oil Search Shares for their own investment purposes.

33. 27 February, four days after the meeting, the Prime Minister wrote to Mr Guy Fowler, the MD for UBS

AG proposal to provide funding facilities to the State in connection with the subscription by the State

for approximately 149.39 million shares Ltd at AU\$8.20 per share.

27 February 2014, Mr Vele receives a commitment letter from UBS AG regarding the Oil Search shares

loan.

Subscription Agreement was signed between UBS AG (the Equity Derivative Financier) and Oil Shares

Limited.

Oil Search Ltd shares trading were suspended ahead of its announcement.

Oil Search Ltd announced that it had agreed to acquire a 22.835% gross interest in PRL 15 (Elk

Antelope) from the Pac LNG Group Companies for US\$900 million to be funded through a placement

of new shares to the State.

UBS AG forwarded a Commitment Letter that was signed by the GGPNG which was witnessed by Mr

Okuk.

28 February 2014, Consolation between Mr Vele as Secretary for Treasury and in his capacity as

member of IPIC Exchangeable Bond Review Committee and BPNG being the Governor and Dr Jakob

Weiss on the terms and conditions of the UBS AG proposal. Paddy Jike of UBS AG was available at the

meet to assist. The proposal for the loan to purchase Oil Search shares on market that UBS was making

was not substantially different to what had previously been proposed in their previous advice

regarding refinancing the IPIC loan. The terms and conditions therefore cannot in any way be said to

be prejudicial to the State.

28 February 2014, both Treasurer and Prime Minister were updated regularly by Mr Vele as to the

meetings and negotiations.

34. 4 March, Ashurst Lawyers forwarded draft documents for its client UBS AG to the State that outlined

the financial package that UBS AG was offering the State.

Mr David Heathcote of KPMG presented KPMG's analysis on the monetised collars relating to

financing the purchase of Oil Search Ltd shares.

35. 5 March, Mr Fowler requested the Prime Minister to intervene in resolving the IPIC Exchangeable

Bond, PNG LNG direction-to-pay and Sovereign Bond take-out of the Bridge Loan.

5 March 2014, which was as soon as the documents were provided to Mr Vele from the Counsel to UBS

AG being Ashursts, Mr Vele requested Mr Daniel Rolpagarea, the State Solicitor to give legal clearance

on the documents relating to the transaction for the State to acquire 149,390,244 shares in Oil Search

Ltd.

Mr Rolpagarea requested Mr Vele to provide to him details of confirmation and clear instructions on

the engagement of Pacific Legal Group and the breach of Section 209 of (Parliament Responsibility) of

the Constitution by the NEC. This is incorrect. Mr Rolpagarea actually noted

Correctly that the documents were delivered to his office by Pacific Legal Group

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Incorrectly that Norton Rose Fulbright and Pacific Legal Group had been retained by Mr Vele or by Treasury

(NRF had been retained by IPBC and PLG had been retained by NRF)

Correctly that the documents required his urgent consideration and issuance of the legal clearance to NEC's consideration if appropriate

Correctly the NEC's decision and background information and the State's intention to acquire a 10.1% interest in Oil Search

And advised Mr Vele that

The documents are a reflection of the State's negotiated position and as such are acceptable to the State.

That the documents which were Minutes and Certificates that were not as yet signed by representative

individuals or Company Boards were in order for Mr Vele to facilitate such signatures and/or Board meetings.

(This includes IPBC Board meeting minutes, the IPBC shareholders resolution and the NPCP minutes and POA –

Mr Vele forwarded these documents to IPBC on the express advice and clearance of the State Solicitor contrary to

OC assertions of wrongdoing)

And Commented

That his advice was that many recommendations for NEC approvals

require approvals/authorisations specifically from the State agencies acting independently but taking into account the NEC decision and advised further that the relevant approvals should be sought by Mr Vele from the State's relevant agencies after NEC consideration and approval of the financing transactions, including recommendation of the COI from CSTB

That Section 209 of the Constitution required parliament's approval for the Bridge and Collar loans and advised that Mr Vele take the appropriate steps to facilitate the process

That Mr Vele may proceed to NEC taking into account his advice

That after NEC approval, Mr Rolpagarea would then prepare an advice to the Head of State to execute the transaction documents.

NPCP Board Chairman submitted a proposal to the IPBC Board advising of the State's acquisition of 149,390,244 shares in Oil Search Ltd and that UBS AG required NPCP to enter into a payment direction between NPCP, PNG LNG Global Company LDC (GloCo).

Mr Rolpagarea advised Mr Vele that the NEC Submission needed approvals from the relevant Agencies' Boards and the Parliament for the Bridge and Collar loans totalling AU\$1.239 Billion and that Mr Vele was to facilitate the said approvals after the NEC decision.

36. 6 March, the UBS AG issued a Bridge Takeout Letter to Mr Vele that outlined the terms of the fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

The UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

The Prime Minister submitted an NEC Policy paper No: 67/2014 to the NEC.

The NEC in its Decision No: 79/2014 Noted the transaction documents, approved Petromin as the

eventual subscriber but that the State would be the initial subscriber, noted the certificate of correctness from the State Solicitor and confirmed the authority of the Minister for Treasury to finalise any documents that were not included in the cabinet submission prior to submission of the transaction documents to the Head of State for Execution,

approved to advise the Head of State to approve the borrowing for the purchase of shares and to execute the transaction documents for the State.

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approved to advise the Minister for Treasury to sign such documents, instruments and certificates as the transaction required. He was not given the discretion to refuse to sign by Cabinet. It was a Cabinet decision to go ahead with the transaction and he was to implement parts of that decision.

noted other approvals were required from other State Agencies and endorsed all of them including but not limited to a Certificate of Inexpediency be issued by CSTB, an authority to pre-commit by the Secretary for Finance and a certificate by the Secretary for Treasury certifying the extent of overseas commercial debt, execution of a payment deed by NPCP, and the payment direction by IPBC.

noted that the approval by Cabinet was specifically to cover any processes that had to occur either before or after the decision by Cabinet so that the transaction could proceed in a commercial time frame.

This distribution list of the Cabinet Decision included the Minister for Justice and Attorney-General, the Minister for Treasury, the Minister for Public Enterprises, the Minister for Finance, the Departments of Finance, Treasury, Justice & Attorney-General, IPBC, the State Solicitor, BPNG, NPCP and Petromin.

Mr Polye was present throughout the NEC Meeting and during the making of NEC Decision 79/2014

On 5 March 2014 (and not on 6 March 2014) Mr Vele advised Minister Polye that the loan would not affect the State's debt program and that Petromin would be the eventual subscriber and nominee and Mr Vele explained why it was considered it to be in the best

interests of the State. Mr Vele explained that usually there is an equity cushion which is needed in order to secure borrowings. As the State was the only equity that could get an equity cushion, it was the only entity that could secure the \$300 million bridging loan. Therefore Mr Vele advised him that it was not possible in the first instance for a State owned entity like Petromin or ICPC to secure the loan but that it could be transferred to them at a later time, but within the financial year. The Treasurer said to Mr Vele that, he was concerned that the loan would be in breach of debt to GDP ratios. Mr Vele explained to Mr Polye that this could only be determined at the end of the 2014 financial year and that there were provisions to correct any such issues in the 12 month period after the end of the financial year. Nonetheless the Treasurer was explicit that he wanted the transaction off the balance sheets. This was simply not possible, however. Petromin however would have been unable to secure funding in its own right but rather would need the State to secure the loan and then transfer it to Petromin. UBS had made it quite clear to Mr Vele that they would not loan directly to Petromin in relation to the bridging loan.

Mr Vele requested Mr Philip Eludeme, the Chairman for CSTB to approve the request for COI at the earliest to cover the advisory costs, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Prime Minister advised the GGPNG, that the NEC approved the borrowing of a loan for the purpose of purchasing shares in Oil Search Ltd and for the purpose of meeting the expenses of the borrowing itself.

Mr Okuk representing Mr Vele delivered 28 documents pertaining to the UBS AG loan to Mr Rolpagarea for his legal clearance.

37. 7 March, Mr Vele explained to Mr Eludeme that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Vele requested Mr Rolpagarea to issue legal clearance on the submission regarding the State's borrowing of loan arrangements, in accordance with Mr Rolpagarea's advice of 5 March 2014 and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

The Prime Minister Hon Peter O'Neill, MP informed IPBC of the government's decision to enter into the agreement, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Isaac Lupari, the Chief of Staff to the Prime Minister, advised Mr Kumarasiri that the NEC approved the State's intent to borrow from UBS AG to fund its acquisition of shares in Oil Search Ltd, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Minister Micah directed the Board of IPBC to approve the Payment Direction Deed and to sign the Payment Direction Deed on or before 09 March 2014, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

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38. 8 March, Mr Vele requested Dr Thomas Webster, the then Chairman for IPBC Board, to progress the documents to the IPBC Board for its consideration and approval in accordance with Mr Rolpagarea's advice of 5 March 2014 and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Kumarasiri advised Dr Webster to issue instructions to the management of IPBC Management to prepare documents in anticipation to receive requests from the Board of NPCP with their resolutions, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

39. 9 March, Mr Erastus Kamburi, the Chief Legal Officer for IPBC, requested the IPBC Directors to meet and discuss on the directives from the Minister Micah and Mr Lupari and the NEC Decision No: 79/2014, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

An Explanatory Note was prepared with the Board Circular Resolution outlining the purpose of the Special Board Meeting.

The NPCP Special Board of Directors Meeting No: 02/2014 resolved that the Company enter into any Transaction Document to give effect to the Payment Direction Deed and authorised Mr Sonk and Mr Wato with the Power of Attorney in accordance with Mr Rolpagarea's advice of 5 March 2014 and in

accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

The NPCP Board empowered Mr Sonk and Mr Rogen Wato, the Company Secretary for NPCP with

the Power of Attorney in accordance with Mr Rolpagarea's advice of 5 March 2014 and in accordance

with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Sonk verified copies of the Shareholder resolutions of the NPCP dated 09 March 2014, Minutes of a

Meeting of the Board of Directors and Power of Attorney of the NPCP in accordance with Mr

Rolpagarea's advice of 5 March 2014 and in accordance with and for the purposes of implementing

Cabinet Decision No 79/2014.

Mr Wapu Sonk, Managing Director for NPCP forwarded to Mr Kumarasiri an Extract of the Board

Meeting Minutes.

Mr Rolpagarea advised Mr Vele that the Treasurer was the authorised person to execute loan

agreements on behalf of the State strictly in accordance with Section 2(7) of the Loans (Overseas

Borrowing) (No.2) Act 1976. Section 209 (Parliament Responsibility) of the Constitution [VERY

IMPORTANT Mr Rolpagarea did not mention Section 209 (Parliament Responsibility) of the

Constitution in that sentence or context – this is wrong].

Norton Rose Fulbright wrote to the GGPNG and the Minister for Treasury regarding financing of the

acquisition of the shares and possible options to re-finance following completion.

Mr Kumarasiri wrote to Hon James Marape MP, Minister for Finance and requested him to approve

the Memorandum of Approval to enable NPCP to enter into the Transaction Documents in accordance

with Mr Rolpagarea's advice of 5 March 2014 and in accordance with and for the purposes of

implementing Cabinet Decision No 79/2014.

Minister Polye advised Mr Vele that he will not sign the documents that enabled the State to borrow

the said UBS AG loan contrary to the NEC Decision No 79/2014 of which he was a part.

Minister Marape approved the Memorandum of Approval that enabled NPCP to enter into the

Transaction Documents in accordance with Mr Rolpagarea's advice of 5 March 2014 and in accordance

with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Rolpagarea advises GGPNG to sign transaction documents.

The GGPNG signed the document enabling the State to borrow AU\$335 million from UBS AG for the

purpose of the purchase of shares in Oil Search Ltd and for the purpose of meeting the expenses of the

Borrowing and for the services of the State, in accordance with

Mr Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

40. 10 March, IPBC Board resolved that NPCP Directors enter into the Transaction Documents and recommend to the Minister for Finance to approve a proposal by NPCP to enter into Agreement to execute all documents that gave effect to the Payment Direction Deed.

The NPCP Board deliberated and resolved and authorised Board to enter into Agreement to execute the Transaction Documents.

Mr Eludeme advised Mr Vele that the CSTB resolved and approved the issuance of the COI for the awarding of contracts to both local and international Consulting Firms, in accordance with the PFMA 1995 and in accordance with Cabinet Decision No79/2014.

Mr Rolpagarea advises Mr Vele that the GGPNG and Minister for Treasury were to execute the transaction documents to purchase Oil Search Ltd shares on behalf of the State.

Mr Vele confirmed with Mr Rolpagarea that the GGPNG and Minister for Treasury were to execute the transaction documents to purchase Oil Search Ltd shares on behalf of the State.

Mr Kumarasiri certified the Circular Resolution of the Board of Directors of IPBC that authorised the execution of the Payment Direction Deed by NPCP.

Mr Kumarasiri wrote a Memorandum of Recommendation recommending Minister Marape to approve the NPCP to enter into the Transaction Documents.

Following discussion between the Prime Minister and Mr Polye, the Prime Minister decommissioned

Hon Polye as the Minister for Treasury.

Hon Polye accepted his decommissioning as Minister for Treasury by the Prime Minister Hon Peter

O'Neill, MP. This is incorrect. Mr. Polye challenged his decommissioning in the National Court – in proceedings as OS No. 142 of 2014 filed 25 March 2014. They were dismissed however on 8 May 2014.

The National Gazette No: G83 and G89 of 10 March 2014 confirmed the decommissioning and

replacement of Hon Polye as the Minister for Treasury by the

Prime Minister.

The Determination of titles and responsibilities of the Prime Minister also changed to allow him to act as the Minister for Treasury.

Mr Vele requested Dr Ken Ngangan, Acting Secretary for DoF to approve the payment to UBS AG in relation to the acquisition of the shares, in accordance with Mr Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No 7/2014.

Mr Rolpagarea advised the GGPNG that all documentations relating to the borrowing were in order and that Mr Vele was satisfied with the Terms of the Transaction Documents.

The State and Oil Search Ltd signed and exerted the subscription Agreement.

Mr Vele advised Mr Eludeme that the local and international financial and legal Advisors should be paid for services rendered in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

DoT deposited K1,250,000.00 into Pacific Capital Ltd Managed Account with ANZ bank (PNG) Ltd.

41. 11 March, Mr Kamburi advised Mr Kumarasiri that the Certificate did not include the Shareholder

Resolution which was signed and hence he sent an amended and verified Certificate for Mr Kumarasiri's signature.

Minister Marape gave his approval for the NPCP to enter into Payment Direction Deed in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Dr Ngangan and Mr Vele signed and approved the APC form to release AU\$14,555,759.00 to be paid to the Consultants relating to the purchasing of Oil Search Ltd shares, in accordance with Mr Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No 7/2014.

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42. 12 March, Mr Babaga R. Naime, Acting Board Secretary for CSTB, advised Mr Rolpagarea that the CSTB awarded the Contract to both local and International Consulting Firms, in accordance with the PFMA 1995 and the powers of the CSTB under such Act and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Mr Eludeme certified that the inviting of tenders for the provision of financial, legal and technical advisory services was impractical or inexpedient, in accordance with the PFMA 1995 and the powers of the CSTB under such Section 40 of such Act and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

Dr Ngangan approved the application for the Department to complete and issue the APC for the above Procurement, in accordance with the provision by CSTB of the COI and in accordance with Mr

Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with

and for the purposes of implementing Cabinet Decision No 79/2014. The State, NPCP and UBS AG agreed to the terms and conditions upon signing the Payment Direction

Deed that directed PNG Liquefied Gas Global Company (GloCo) to pay immediately available funds due to NPCP to UBS AG.

UBS AG confirmed with Mr Vele the terms and conditions of the financing transaction that were entered into between the State and UBS AG in respect of Oil Search Ltd shares.

The Prime Minister, Hon Peter O'Neill, MP as Treasurer and Mr Vele in accordance with Mr

Rolpagarea's advice of 5 and 10 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet

Decision No 79/2014, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Bridge Facility Agreement.

The GGPNG witnessed by Mr Okuk signed the Specific Security Deed (CHESS Securities – Collar) with

UBS AG that provided security to the loan acquisition.

The GGPNG, witnessed by Mr Okuk signed the Security Trust Deed with UBS Nominees Pty Ltd that provided security to the loan acquisition.

The GGPNG, witnessed by Mr Okuk signed the Participant Sponsorship Agreement with UBS Nominees Pty Ltd.

The Prime Minister, Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Confirmation Side Letter.

The GGPNG witnessed by Mr Okuk signed the Nominee Deed with UBS AG, UBS Nominees Pty Ltd and

UBS Securities Australia for the Nominee (UBS Nominees Pty Ltd).

The Substantial shareholders notice prepared and lodged with Port Moresby Stock Exchange (POMSox) and ASX lodged on 17 March 2014.

The State (Subscriber) represented by the GGPNG witnessed by Mr Okuk signed the Subscription

Agreement with Oil Search Limited (Issuer).

Mr Stephen Gardiner, the Chief Financial Officer for Oil Search

Ltd, advised that Goldman Sachs Financial Markets Pty Ltd with a Bank Account number 011-112034-041 was the recipient of the Subscription.

Oil Search Ltd announced completion of share placement and file appendix 3B, Cleansing Notice and Completion Letter.

43. 14 March, the Substantial shareholder notice prepared and lodged with POMSx and ASX (lodged on 17 March 2014).

44. The Commission issued directives under Section 27(4) of the Constitution determined that it was necessary to issue a direction under Section 27(4) of the Constitution to freeze all further progress on the PGK3 Billion loan and requested for collective cooperation from the Prime Minister; and the members of the NEC; the Chief Secretary; the Minister for Treasury and the Minister for Finance; the Secretary,

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DoF; and the Secretary, DoT; the Attorney-General; and the Secretary, DJAG; the Governor of BPNG; Petromin; and IPBC; and Port Moresby Stock Exchange Limited; and Oil Search (PNG) Limited; and UBS Nominees Pty Ltd, despite the fact that the Transaction was complete and the purchase settled.

45. 20 March, Mr Rolpagarea advised Mr Naime on his legal opinion on the request for the issuance of Legal Clearance – CSTB COI 02/04, which is that he states that the COI was issued in accordance with PFMA Section 40, not issued in accordance with Financial Instructions and was improper. He stated that all the Consultants of they had provided work should be paid on a Quantum Merit basis on the basis of their work actually performed and the person who would be in the best position to decide what the quantum for payment would be was Mr Vele. His legal opinion on the COI is incorrect – the COI was correctly issued as the COI was issued in accordance with the discretion and powers given to CSTB by S40 PFMA. The Finance Manual restriction on that discretion and those powers is inconsistent and therefore void pursuant to S117 PFMA.

25 March 2014, Mr Polye commences OS142 against the State seeking to have the loan transaction declared void on the basis of a breach of S209 of the Constitution and for himself to be re-instated as Treasurer.

Mr. Vele responded to the Ombudsman Commission's Summons in which

he forwarded a copy of the

KPMG's analysis of the proposed monetised collars in relation to financing the purchase Oil Search

Limited shares. He also stated that the Parliamentary Approval of the Bridge and Collar loans totalling

A\$1.225 Billion through the Budgetary process had not been obtained on the basis of the advice from

the State Solicitor. The Department was advised by the State Solicitor that this Transaction must now

be tabled at the next sitting of Parliament in May 2014, and for which the Treasurer will do. In specific

reference to Point 6, the structure of the Sovereign Wealth Fund (SWF) has not yet been finalised and

Treasury as the Lead Agency in consultation with the State Technical Working Group (comprising the

Department of Justice and Attorney-General, the Central Bank, the Department of National Planning

& Monitoring and Treasury) and the Secretaries Committee (comprising myself as the Chairman and

the Governor Loi Bakani, Secretary Dr. Lawrence Kalinoe and Acting Secretary Juliana Kubak) have

made several adjustments which will be tabled for Parliament in the May session.

46. 26 March, Mr Rolpagarea stated that he was not given enough time to thoroughly go through the

documents and that he was not present at the CSTB meeting that approved the issuance of the COI.

For the State Solicitor to give out legal advice and then claim 2 weeks later that he not had enough

time and that there is an issue with the advice is negligence on his part. It is proper and reasonable for

all persons who relied upon Mr Rolpagarea's advice, to have relied upon his advice given. It is

professional negligence for a senior lawyer to advise his clients and then claim his advice was faulty as

he did not have enough time, after his clients have relied upon his advice. This may be misconduct on

behalf of the State Solicitor but no on behalf of those that relied upon his advice such as Mr Vele.

47. 28 March, Mr Eludeme advised Mr Vele that the State Solicitor declined the issuance of legal clearance

of the COI but the Consultants could be paid on a Quantum Meruit basis and such quantum was to be

determined by Mr Vele.

Mr Kumarasiri advised the Commission that the IPBC gave its approval for NPCP to go ahead with the

transaction and referred the matter to the Minister for Finance to execute.

48. 10 April, Mr Eludeme advised Mr Vele that the Board effectively nullified the issuance of the COI for

the engagement of private Consultants.

49. 11 April, Mr Sonk directed Mr Peter Graham, MD for GloCo to divert all distributions of payments payable to NPCP to be paid to UBS AG (Singapore Branch).

Mr Sonk and Mr Wato of NPCP directed Mr Graham of Esso Highlands to immediately pay all available funds to UBS AG.

50. 22 April, Ashurst Lawyers advised Norton Rose Fulbright of Australia that non-compliance with payment obligations would constitute in an Event of Default and UBS AG can commence enforcement processes without further reference to the State.

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51. 28 April, Mr Polye reiterated to Hon Theodore Zurenuoc, the Speaker of Parliament, his position that the government's borrowing UBS AG loan was bad. This is irrelevant to a chronology – Mr Polye's opinion.

52. 30 April, Mr Polye stated that the loan was an unplanned activity and it was not a prudent thing to do and it breached the 2014 Budget Appropriation Bill and the Fiscal Responsibilities Act.

Ms Tessa Hoser of Norton Rose Fulbright of Australia advised Mr Vele that in the event of a default UBS AG would charge default interest on any unpaid interest.

53. 2 May, Mr Vele stated that the State engaged UBS AG together with the other financial and legal firms as they were already providing the services.

8 May, National Court dismissed Application by Don Polye, MP to declare loan void of breaching Section 209 of the Constitution and to be re-instated as Minister for Treasury, as an abuse of process.

The National Court made the following findings of Fact on 8 May 2014;

i. In 2009 the State through IPBC and from IPIC had obtained a loan to purchase the State's interest in the PNG LNG project by virtue of the issue of an Exchangeable Bond. The loan had been secured by the State's shares in the Oil Search Limited and mortgaged over all the State owned Enterprises. The maturity date of the Bond was 5 March 2014. Under the terms IPIC could take on the maturity date in

repayment of the loan either the shares, cash and shares or just cash. IPIC had to make an irrevocable election 2 weeks prior to maturity dates as to what it wanted in repayment.

ii. At the same time, the government, advised by the (Central Bank) BPNG and Department of Treasury, organized with UBS – after seven months of searching for the right financing institute, to re-finance the IPIC loan – that is, to repay the loan with cash. The Arabs however on the date for notice advised they would take the shares in Oil Search in repayment of the loan. The government policy has been always to retain shares in Oil Search. So instead of paying the Arabs back with cash – a lesser amount was borrowed to purchase 10.1% shareholding in Oil Search. A 10.1% share in Oil Search prevents any foreign takeover of Oil Search. Oil Search is the biggest company in PNG and in the top 25 on the Australian Stock Exchange. To lose Oil Search to overseas interest and have then Oil Search leave would be devastating to the PNG economy due to the tax it pays and the jobs it creates.

iii. Further all international analysts predict an increase in value of Oil Search given the investments and directions the company is entering into. Government policy was for Papua New Guinea not just received royalties and taxes but also participate in the extraction of resources for the betterment of the people of PNG.

iv. On 5 March 2014, IPIC took possession and ownership of the Oil Search shares previously owned by government – being 13.17%.

v. On 6 March 2014, NEC approved the borrowing of USD\$1.249 Billion to purchase 14.39 million shares, with such borrowing to be secured solely by the shares themselves. Initially the State itself would be the subscriber but within three months of the transaction Petromin is to take over as subscriber and the debt would be off balance sheet and refinanced. The shares were to be purchased for a price of \$8.20 instead of the market value on the day of \$8.55 since this time the share price has risen. No state owned enterprises have been mortgaged and the State's debt exposure has not been reduced.

vi. Despite Cabinet's approval and the fact the plaintiff was a Cabinet member when the decision was made, Minister Polye refused to sign the requisite documents. Unfortunately for the plaintiff, he failed to understand the trading deadlines on the Australian Stock Exchange (ASX) and the approvals for the

State had already been given by UBS – and to start the whole process off with Petromin, the window for purchase would have been closed. Oil Search had announced a halt in trading on 4 March 2014 and the Rules allow only 48 hours of cessation of trading (to prevent insider trading) as it had to notify the Stock Exchange of a major purchase – so the deadline was 5pm on 6 March 2014 for Oil Search to have determined to purchase into Elk Antelope on the basis of the funds coming in from the sale of shares to the State.

vii. Minister Polye was de-commissioned as a Minister on 10 March 2014 by the Head of State (and duly gazetted) and the treasury portfolio reverted to the Prime Minister.

viii. The transaction of the purchase of the Oil Search shares and the UBS loan was completed on 12 March 2014 and announcements were made by Oil Search to the Australian Stock Exchange (ASX) in this regard. The deal was done and all documents completed and registered.

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ix. On 14 March 2014 the Ombudsman Commission determined to investigate into the loan and the transaction. It issued a directive to stop work on the USB loan. The Ombudsman Commission had not realized that the deal had already been finalized. All documentation has been provided to the Ombudsman Commission on the loan and transaction and now there is a current investigation into the deal that has been done. There was therefore nothing left for the Ombudsman Commission direct to stop.

54. 9 May, Mr Anthony Yauieb, Deputy Secretary for DoT, stated that the NEC Policy Submission on the UBS AG Loan to purchase Oil Search Ltd shares was prepared outside by Mr Vele. This statement is incorrect. Mr Vele as Acting Secretary for Treasury and as essentially the Project manager for the matter prepared the submission with the assistance and advice of the Consultants, as would be expected given legal and financial positions were required in the submissions. Mr Yauieb was the only other person who had applied for the substantive Secretary of Treasury's position. His statement tainted is with personal interest.

55. 14 May, Mr Vele advised the Commission that the State is required to make periodic interest payments to UBS AG.

Finance Forms number 3 & 4 (FF3& FF4) indicated AU\$2,261,938.36 which is about K5,543,966.57 was paid to UBS AG.

56. 15 May, Mr Luke Goldsworthy and Ms Celle Raguine, Representatives of UBS AG pointed out to Mr Vele that failure to pay interest breached clause 5.1(b) of the Agreement, that is all payments to be made under the Commitment Documents that stipulated that all payments shall be made in full and without deductions.

15 May OC advises Mr Vele, that it has received Mr Vele's letter on the interest payment and advised its position in a few days.

15 May, Mr Vele urgently requested clearance from Commission on the interest payment to UBS AG and informs the OC of the risks to the State and its economy if interest is not paid and default provisions are triggered in the UBS loan and other loans to the State such as the World Bank and advises the OC interest must be remitted by 4pm 16 May 2014.

57. 16 May, Mr Vele instructed Mr Bakani to immediately process and remit funds to the UBS AG.

Mr Vele advised Mr Bakani that interest payment must be paid to UBS AG.

Ms Betty Palaso, Commissioner-General for Internal Revenue Commission (IRC) issued a Tax Clearance Certificate to the DoT to transfer or remit moneys for the purpose of payment of interest on UBS AG Loan.

A copy of the Notification (transmission) of Original indicated that the BPNG transferred AU\$2,261,938.36 to the Reserved Bank of Australia.

19 May 2014, Mr Polye commences SCCOS 4 of 2014, an application in the Supreme Court to question compliance of the loan procedure against Section 209 of the Constitution and to have the loan declared invalid and unenforceable.

23 May 2014, OC write to Mr Vele informing him that it is investigating into the loan, that it is concerning to ensure no breaches of the Leadership Code, and states that Mr Vele's request for the

State to pay interest was irregular and inappropriate and refused to allow payment of interest. The OC paid no attention to and made no comment about the seriously adverse financial consequences to the State if interest was not paid.

58. 27 May, Dr Clement Waine, Acting Secretary, Department of Public Enterprise (DoPE) explained that neither he nor his Department were involved in the matter been investigated.

59. 3 June, Mr Kramer stated that NPCP was involved in the execution of the Payment Direction Deed as per the IPBC Board request and direction.

60. 5 June, Mr Eludeme confirmed that CSTB approved a request for application for COI from Mr Vele.

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5 June 2014, Mr Vele writes to OC setting out 12 page response to legal issues raised in OC letter of 23 May 2014 setting out that the issues raised had no basis and that the OC did not have jurisdiction to essentially injunct the State from paying interest.

61. 6 June 2014, the Prime Minister and Mr Vele commence proceedings in the National Court for Judicial Review of the decision of the OC to issue directions on 12 March 2014 and to refuse to allow interest to be paid.

6 June, Mr Vele filed his affidavit in the National Court proceedings OS (JR) 383 of 2014 against the Commission and the State.

62. 12 June, Dr Lawrence Kalinoe, Secretary for DJAG, advised the Commission that neither he nor his Department were involved in the UBS AG Loan transaction. This is incorrect. Dr Kalinoe is a Member of the IPBC Board – he was present at the IPBC Board meetings and participated in the decisions and gave the Board advice on the position.

63. 13 June, Hon Kua categorically denied the allegations that he was personally involved in giving clearance for the UBS AG loan and that he was not present in the NEC Special Meeting No 37/2013 that approved the UBS AG loan. This is mischievous. Mr Kua had not raised any issue about legal clearance or engagement of Consultants even though at all

material times he was aware of the transaction. He was on the Distribution List of NEC Decision 79/2014 of 6 March 2014 and it was incumbent upon him to implement the decision. If he had an issue with any matter, he ought to have raised it with the Chairman of NEC. Mr Kua is a very senior lawyer and would know the procedure he should take if he had an issue. Mr Kua had been removed in June 2014 as Attorney-General for reasons unrelated to the UBS/Oil Search Matter. His statement and position is tainted by personal interest.

64. 4 July, Mr Vele advised the Commission that the UBS AG loan transaction was constitutional and had been lawfully undertaken by the State and its related parties in every aspect.

65. 7 July, Mr Ilagi Veali, MPS, Secretary to the NEC forwarded copies of the NEC Special Meeting No: 08/2014 together with the list of Cabinet Ministers who were present or absent at the Special Meeting.

EXECUTIVE SUMMARY

This is the Final Report by the Ombudsman Commission of an Own Initiative investigation under Section 219(1)(a) (Functions of the Commission) of the Constitution and Section 13 (Functions of the Commission) of Organic Law on the Ombudsman Commission conducted into the alleged improper borrowing of AU\$1.239 billion loan from the UBS AG by the Government to purchase 149,390,244 shares in Oil Search Limited (Ltd) and improper tender and procurement of consultants in relation to the borrowing.

On 6 March 2014, Mr Vele with the assistance of financial and legal firms both local and international based prepared an National Executive Council (NEC) Policy Submission No: 67/2014 for the Minister for Treasury in regard to the borrowing of AU\$1.239 Billion loan from UBS AG.

Serious allegations were raised against Prime Minister Hon Peter O'Neill, CMG, MP and Minister Micah, Minister Marape and Mr Vele, Mr Eludeme and Dr Ngangan as a result of what transpired prior to and after the NEC Decision had been made.

The Ombudsman Commission investigated the following issues:

(a) The entire decision making process by NEC Special Meeting No: 8/2014 and subsequent NEC Decision No: 79/2014 that led to the borrowing of AU\$1.239 Billion loan from UBS AG was in breach of Section 209 (Parliamentary Responsibility) and Section 255 (Consultation) of the Constitution.

(b) The whole action of Prime Minister in misleading the NEC Special Meeting No: 8/2014 and the subsequent NEC Decision No: 79/2014 to approve the UBS AG Loan of AU\$1.239 Billion which NEC does not have the power except the Parliament under Section 209 (Parliamentary Responsibility) of the Constitution may be wrong and improper.

(c) The action of Minister Micah in collaborating with the Prime Minister in misleading

the NEC Special Meeting No: 479/2013 and the subsequent NEC Special Meeting 8/2014 and directing Mr Kumarasiri, Mr Sonk, Mr Kramer and Mr Bakani to effect the AU\$1.239 Billion loan from UBS AG may be wrong and improper and contrary to Section 209 (Parliamentary Responsibility) of the Constitution.

(d) The conduct of Minister Marape in collaborating with Prime Minister and Minister Micah in misleading the NEC relating to the approval of UBS AG Loan of AU\$1.239 Billion contrary to Section 209 (Parliamentary Responsibility) of the Constitution.

(e) Mr Vele improperly engaged the UBS AG to be the arranger, advisor and the lender of AU\$1.239 Billion to the State to purchase 149,390,244 shares in Oil Search Ltd, without the then Minister for Treasury's knowledge and approval.

(f) Mr Eludeme's conduct in issuing the Certificate of Inexpediency (COI) and improperly awarded the contract to Pacific Legal Group Lawyers, Pacific Capital

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Ltd, UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia and KPMG to provide financial and legal services relating to the State's borrowing of AU\$1.239 Billion to the DoT without the legal clearance from Mr Rolpagarea.

(g) Dr Ngangan's conduct in approving the APC Form to release K9 million to Pacific Legal Group Lawyers and Pacific Capital Ltd and AU\$14,555,759.00 to the UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia and KPMG, was excessive and wrong in the circumstances.

(h) Amb Isaac Lupari's conduct in collaboration with Minister Micah when they issued specific political directives and instructions to Independent Public Business Corporation (IPBC) Board and Management and also to National Petroleum Company of Papua New Guinea (NPCP) Board and Management to approve and facilitate the interest payment to UBS AG.

(i) The conduct and misrepresentation of Mr Okuk in signing and witnessing all documents pertaining to UBS AG loan of AU\$1.239 Billion with GGPNG, as a Commissioner of Oaths, when he was not a registered lawyer with PNGLS, or a Commissioner of Oaths under Oaths and Affirmation Act, rendering entire contract documents questionable, wrong and improper.

The Ombudsman Commission conducted its investigation into the above allegations and outlined below are its findings.

Principal Findings

The main findings of the Report are:

1. In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he committed the State to purchase 149,390,244 shares in Oil Search Ltd without prior approval from the National Executive Council.
2. In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper in that he failed to present the Government's proposal on the borrowing of a loan from UBS AG (Australia Branch) on the floor of Parliament for debate and approval as required by Sections 209(1), 211 and 212 of the Constitution.
3. In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he personally sponsored and submitted NEC Policy Submission No: 67/2014 and misled the National Executive Council to approve the borrowing of AU\$1.239 Billion from UBS AG to buy shares in Oil Search Ltd.
4. In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he failed to consult Petromin Holdings Ltd to be the State's subscriber and nominee to acquire shares in Oil Search Ltd.
5. In the opinion of the Ombudsman Commission, the existence of the National

Petroleum Company of Papua New Guinea is questionable as it is not legally

established as the proposed Papua New Guinea Petroleum Company (Kroton) Act has not been certified by the Governor-General in order to be fully in force.

6. In the opinion of the Ombudsman Commission, there was a conflict of interest

situation in regard to Mr Frank Kramer, the Chairman for the National Petroleum Company of Papua New Guinea Board, when he is a Director and Shareholder of Pacific Capital Ltd, a company that was engaged by Mr Dairi Vele to provide financial consultancy services to the State for the borrowing of A\$1.239 Billion UBS AG Loan to purchase shares in Oil Search Ltd.

7. In the opinion of the Ombudsman Commission, the conduct of Minister Micah was

wrong and improper when he issued directives and instructions to the Independent Public Business Corporation Board and Management to approve the payment Direction Deed to facilitate the interest payment to UBS AG.

8. In the opinion of the Ombudsman Commission, the conduct of Ambassador Isaac

Lupari was wrong and improper when he advised the Independent Public Business Corporation Managing Director of the NEC Decision No: 79/2014 for the State to acquire shares in Oil Search Ltd.

9. In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was

wrong and improper when he engaged UBS AG as the Sole Financial Advisor and Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd without the National Executive Council approval.

10. In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was

wrong and improper when he misinformed and misled the National Executive Council regarding the NEC Policy Paper No: 67/2014 that it was in order.

11. In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he issued directions and instructions to the Independent Public Business Corporation Chairman and Management.

12. In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he requested the Central Supply & Tenders Board for a Certificate of Inexpediency to be issued for the engagement of Consultants and that it should be applied retrospectively which was contrary to the Public Finance (Management) Act 1995 and the Finance Management Manual.

13. In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he failed to formally request the Attorney-General for a Brief-Out of legal services to engage private law firms as required under Section 8(4) of the Attorney-General Act 1986.

14. In the opinion of the Ombudsman Commission, the conduct of Mr Philip Eludeme, Chairman of Central Supply & Tenders Board was wrong and improper when he approved the issuance of the Certificate of Inexpediency for the engagement of the Consultants.

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15. In the opinion of the Ombudsman Commission, the conduct of Mr Loi Bakani was wrong and improper when he failed to independently provide due diligence check in the process of selecting financiers for the IPIC Exchangeable Bond buy back and advice against the UBS AG appointment as the Lender of the loan.

16. In the opinion of the Ombudsman Commission, the conduct of Mr Loi Bakani was wrong and improper when he informed UBS AG that the State had engaged UBS AG as the Lender of the Loan to refinance the IPIC Exchangeable Bond, without NEC's approval.

17. In the opinion of the Ombudsman Commission, the conduct of Dr

Ken Ngangan was wrong and improper when he signed and approved the APC Forms committing funds that were not appropriated in the 2014 Budget for the payment of Financial, Legal and Technical Consultants.

18. In the opinion of the Ombudsman Commission, the conduct of Mr Carl Okuk was wrong and improper when he commissioned the documents on the borrowing of the UBS AG Loan by the Governor-General of Papua New Guinea.

19. In the opinion of the Ombudsman Commission, the conduct of Hon James Marape, MP, Minister for Finance was wrong and improper when he approved the Payment Direction Deed for NPCP when it was not properly established by law.

20. In the opinion of the Ombudsman Commission, the establishment of National Petroleum Company of Papua New Guinea (Kroton) Ltd and its engagement by the NEC was wrong and improper.

Irregularities

This investigation revealed that there were many irregularities and wrong and improper conducts committed by the Prime Minister, Minister Micah, Minister Marape, Mr Bakani, Mr Vele, Mr Eludeme, Dr Ngangan, Amb Isaac Lupari and Mr Okuk in facilitating the engagement of the UBS AG to lend AU\$1.239 Billion as well as the engagement of private Financial and Legal Consultants on the borrowing.

The irregularities and improprieties that were identified included the following:

1. The lack of proper and wide consultation with State Agencies and by-passing of the National Parliament's approval of the borrowing as required by Sections 209, 212 and 255 of the Constitution.
2. The loan exceeded the State's Gross Domestic Product (GDP) to Debt ratio threshold of 35%. Hence, the PNG Fiscal Responsibilities Act 2006 being an Act to promote economic and financial transparency and accountability in the interests of a

stable macroeconomic environment may not have been complied with.

3. The borrowing exceeded the 125% of the total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 thereby breaching Sections 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

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4. The engagement of Private Law Firms without the approval of the Attorney-General as required under Section 8(4) of the Attorney-General Act 1989.
5. The public tendering of contracts pursuant to Sections 39 and 40 of the Public Finance (Management) Act 1995 were breached in relation to the engagement of Financial and Legal Consultants.
6. The improper engagement of the Petromin Holdings Ltd to be the subscriber and nominee for the transaction.
7. The improper engagement of NPCP to execute the Payment Direction Deed for the transaction.
8. The issuance of a COI by CSTB to engage and pay the Financial, Legal and Technical Consultants was done without clearance of the State Solicitor.
9. The engagement of Financial, Legal and Technical Consultants by Mr Vele was wrong.
10. The Governor-General signed all UBS AG loan documents without the presence of other Parties to the Agreement (Counterpart Clause).
11. The execution of all documents by the Governor-General and witnessed by Mr Okuk, Lawyer, is not proper as Mr Okuk was not a registered lawyer as required under Section 35 of the Lawyers 1986 Act and improperly acted as a Commissioner of Oath which was contrary to Section 12A of the Oaths, Affirmations and Statutory Declarations Act (Chapter 317).
12. The inclusion of counterpart provisions in the contract agreements and governing laws and jurisdictions should be tailored to bring all parties

together and formalised
under parties' jurisdictions.

13. The State's sovereignty was compromised when the Prime Minister and Mr Vele entered into the Loan Agreement with UBS AG to be the Lender, Facilitator and Arranger of the borrowing.

14. The formalisation of the loan was done by State Institutions while the transactions were actually processed outside of PNG.

Findings of Wrong Conduct

The collective actions and conducts of the following leaders and persons implicated in this Final Report were wrong and erroneous because of the above mentioned irregularities and breach of the Constitution and the applicable laws.

1. Hon Peter O'Neill, CMG, MP Prime Minister
2. Hon Ben Micah, MP, Minister for State Enterprises & State Investments
3. Hon James Marape, MP, Minister for Finance
4. Dr Ken Ngangan, PhD, CMA, CPA, Secretary for Department of Finance

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5. Mr Dairi Vele, Secretary for Department of Treasury
6. Mr Philip Eludeme, the then Chairman of CSTB
7. Amb Isaac Lupari, CBE, Chief of Staff
8. Mr Loi Bakani, CMG, CBE – Governor of Central Bank
9. Mr Carl Okuk, Laywer and Consultant.

The following legislation may have been breached by persons, government bodies and agencies implicated in relation to the borrowing of the UBS AG loan;

1. Sections 26, 27, 209, 211, 212, 255 of the Constitution of the Independent State of Papua New Guinea
2. Section 219 of the Organic Law on the Ombudsman Commission
3. The Organic Law on the Duties and Responsibilities of Leadership
4. Section 8 of the Attorney-General Act 1986
5. Section 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A)
6. The Loans (Overseas Borrowings) Act (Chapter 133)

7. Section 2 of the Official Personnel Staff Act 1986
8. Section 4 of the Papua New Guinea Fiscal Responsibility Act 2006
9. Sections 46 and 59 of the Independent Public Business Corporation of Papua New Guinea Act
2002
10. Section 4 of the Petroleum Holdings Limited Authorisation Act
2007
11. Sections 35 and 108 of the Lawyers Act 1986
12. Section 12A of the Oaths, Affirmations and Statutory Declarations Act (Chapter 317)
13. Sections 5, 29, 39, 40, 42, 47B, 47C, 47D, Public Finance (Management) Act 1995
14. Parts 11 and 13 (Procurement–Framework and Principle) of the Finance Management
Manual
15. Section 110 of the Companies Act 1997.

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Recommendations

1. The Ombudsman Commission recommends that Hon Peter O'Neill, CMG, MP,
Prime Minister be referred to the Leadership Division of the Ombudsman
Commission to be investigated under the Leadership Code.
2. The Ombudsman Commission recommends that Hon James Marape, MP,
Minister
for Finance be referred to the Leadership Division of the Ombudsman Commission
to be investigated under the Leadership Code.
3. The Ombudsman Commission recommends that Amb Isaac Lupari, Chief
of Staff be
referred to the Leadership Division of Ombudsman Commission to be
investigated
under the Leadership Code.

4. The Ombudsman Commission recommends that Dr. Ken Ngangan, PhD, Acting Secretary for Department of Finance to strictly comply with the Public Finance (Management) Act 1995 when approving funds that had not been appropriated in the Budget to be released.
5. The Ombudsman Commission recommends that Mr Dairi Vele, Acting Secretary for Department of Treasury to strictly comply with the relevant laws governing the borrowing a Loan of such magnitude and advice the Government appropriately.
6. The Ombudsman Commission recommends that Mr Dairi Vele, Acting Secretary for Department of Treasury be referred to the Ombudsman Commission to be investigated under the Leadership Code.
7. The Ombudsman Commission recommends that Mr Philip Eludeme, the then Chairman for the Central Supply & Tenders Board to strictly comply with the relevant laws governing the issuance of a Certificate of Inexpediency and its application.
8. The Ombudsman Commission recommends that Mr Philip Eludeme, Chairman for the Central Supply & Tenders Board be referred to the Leadership Division to be investigated under the Leadership Code.
9. The Ombudsman Commission recommends that Mr Wapu Sonk, the Managing Director for the then National Petroleum Company of Papua New Guinea (Kroton) Ltd and now Kumul Petroleum Holdings Ltd be referred to the Leadership Division to be investigated under the Leadership Code.
10. The Ombudsman Commission recommends that Mr Carl Okuk be referred to the Papua New Guinea Law Society to be investigated.
11. The Ombudsman Commission recommends that all government borrowings and related documentations including memorandums of agreements and or memorandums of understanding are to be signed by all concerned parties in Papua New Guinea.

12. The Ombudsman Commission recommends that the Secretary for the Department of

Finance ensures that all Government Bodies and Agencies shall strictly comply with the Public Finance (Management) Act 1995 and Finance Management Manual when requesting and applying the Certificate of Inexpediency for the engagement of Contractors to implement Government sanctioned projects.

13. The Ombudsman Commission recommends that all Government Bodies and

Agencies strictly comply with the Attorney-General Act 1986 and Lawyers Act 1986 when engaging private lawyers and or firms.

Conclusion

The Ombudsman Commission observed that the above mentioned leaders and persons failed to comply with the proper processes and procedures outlined in the above relevant laws relating to the borrowing of AU\$1.239 Billion loan from the UBS AG by the Government to purchase 149,390,244 shares in Oil Search Ltd.

1. JURISDICTION AND PURPOSE OF INVESTIGATION

[1.1] INTRODUCTION

This is the Final Report by the Commission of an Own Initiative investigation under Section 219(1)(a) (Functions of the Commission) of the Constitution and Section 13 (Functions of the Commission) of the Organic Law on the Ombudsman Commission conducted into the alleged improper borrowing of AU\$1.239 billion loan from the UBS AG by the Government to purchase 149,390,244 shares in Oil Search Ltd and improper tender and procurement of Consultants in relation to the borrowing.

BACKGROUND

The GoPNG was embarking on the LNG project with Exxon Mobil in or around the year 2000. The project matured and the GoPNG needed to acquire 22.5% mandatory shareholding in the PNG LNG project.

As a result the GoPNG's needed to secure funding to finance the acquisition of the mandatory 22.5% shares in the PNG LNG project. In the quest in looking for funding the GoPNG decided to mortgage or sell one or some of its State assets. At the end GoPNG decided to mortgage the State's 14.7% share in Oil Search Ltd.

In 2009, the GoPNG mortgaged its shares in Oil Search Ltd with IPIC, Abu Dhabi and acquired the needed funding and financed the State's share of project capital expenditure for PNG LNG Project.

An extract of the terms and condition of the IPIC Loan Agreement with GoPNG and IPIC are as follows:

10.4 Restriction on assignment

The Issuer may only transfer, assign or otherwise deal with of its right, powers and remedies under this deed poll with the consent of the Holders given by way of Extraordinary Resolution.

10.5 Waiver of immunity

The Issuer irrevocably waives, to the fullest extent permitted by applicable laws, with respect to itself in its capacity as trustee for and on behalf of the General Business Trust and with respect to the revenues and assets (irrespective of their use or intended use) of itself and the General Business Trust, all immunity on the grounds of sovereignty or other similar grounds from:

- (a) Suit;
- (b) Jurisdiction of any court;
- (c) Relief by the way of injunction, order for specific performance or for recovery of property;
- (d) Attachment of its assets (whether before or after judgment); and

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(e) Execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction, and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

The GoPNG initiated the processes to buy back the 14.7% shares by setting up a Committee chaired by Mr Wasantha Kumarasiri of Independent Public Business Corporation (IPBC), who wrote to potential bidders such as ANZ Barclay Consortium, UBS AG, Citi Bank, Hermsley to express their interest to finance the GoPNG's intention

to buy back 14.7% shares.

When the GoPNG sent a Team over to Abu Dhabi to negotiate with IPIC to buyback the 14.7% shares that was mortgaged, it appeared that IPIC did not take any position on the issue. This made Oil Search Ltd future vulnerable to takeover by IPIC.

The above scenario forced the Prime Minister, Mr Vele and Mr Botten to convene and thwarted IPIC's imminent takeover of Oil Search Ltd.

Without going through the normal GoPNG procurement and tendering processes, the Prime Minister and Mr Vele used the process that had been done for the purpose of financing the buyback shares from IPIC Exchangeable Bond and eventually went into a loan arrangement with UBS AG and secured the AU\$1.239 Billion to buy new shares in Oil Search Ltd.

The Commission investigated the following issues:

(a) The entire decision making process by NEC Special Meeting No 8/2014 and subsequent NEC Decision No: 79/2014 that led to the borrowing of AU\$1.239 Billion loan from UBS AG in breach of Section 209 (Parliamentary Responsibility) and Section 255 (Consultation) of the Constitution.

(b) The whole action of Prime Minister misleading the NEC Special Meeting No: 8/2014 and the subsequent NEC Decision No: 79/2014 may be wrong and improper to approve the UBS AG Loan of AU\$1.239 Billion which NEC does not have the power except the Parliament under Section 209 (Parliamentary Responsibility) of the Constitution.

(c) The whole action of Minister Micah in collaborating with the Prime Minister in misleading the NEC Special Meeting No: 479/2013 and the subsequent NEC Special Meeting 8/2014 and directing Mr Kumarasiri, Mr Sonk, Mr Kramer and Mr Bakani to effect the AU\$1.239 Billion loan from UBS AG may be wrong and improper and contrary to Section 209 (Parliamentary Responsibility) of the Constitution.

(d) The conduct of Minister Marape in collaborating with Prime Minister and Minister Micah in misleading the NEC relating to the approval of UBS AG Loan of AU\$1.239 Billion contrary to Section 209 (Parliamentary Responsibility) of the Constitution.

(e) Mr Vele improperly engaged the UBS AG to be the arranger, advisor and the lender of AU\$1.239 Billion to the State to purchase 149,390,244 shares in Oil Search Ltd, without then Minister for Treasury's knowledge and approval.

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(f) Mr Eludeme's conduct in issuing the Certificate of Inexpediency and improperly awarded the contract to Pacific Legal Group Lawyers, Pacific Capital Ltd, UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia and KPMG to provide financial and legal services relating to the State's borrowing of AU \$1.239 Billion to the DoT without the legal clearance from Mr Rolpagarea.

(g) Dr Ngangan's conduct in improperly approving the APC Form to release K9 million to Pacific Legal Group Lawyers and Pacific Capital Ltd and AU \$14,555,759.00 to the UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia and KPMG, which is excessive and wrong in the circumstances.

(h) Amb Isaac Lupari's conduct in collaboration with Minister Micah and issued specific political directives and instructions to IPBC Board and Management and also to NCPCP Board and Management to approve and facilitate the interest payment to UBS AG.

(i) The conduct and misrepresentation of Mr Carl Okuk in signing and witnessing all documents on the UBS AG loan of AU\$1.239 Billion with GGPNG, as a Commissioner of Oaths, when he was not a registered lawyer with PNGLS, or a Commissioner of Oaths under Oaths, Affirmation and Statutory Declarations Act (Chapter 317), rendering

entire contract documents questionable, wrong and improper.

The purpose of this investigation was to determine whether there were any wrong conduct and administrative failures and to make appropriate recommendations.

On 22 May 2014, the Commission issued Notice of its intention to investigate the borrowing of AU\$1.239 Billion UBS AG loan to the following individuals:

Table 1: List of individuals issued Section 17(1) of the OLOC.

No	NAME	POSITION	
	DEPARTMENT/AGENCY		
1	Mr Dairi Vele	Acting Secretary	
	Department of Treasury		
2	Dr. Ken Ngangan, PhD CMA	Acting Secretary	
	Department of Finance		
	CPA		
3	Dr. Lawrence Kalinoe, PhD	Secretary	
	Department of Justice &		Attorney-
	General		
4	Dr. Clement Waine, PhD	Secretary	
	Department of State Enterprises		& State
	Investments		
5	Mr Daniel Rolpagarea	State Solicitor	Office of
	the State Solicitor		
6	Mr Paul Nerau	Board Chairman	
	Independent Public Business		
	Corporation		
7	Mr Frank Kramer	Board Chairman	National
	Petroleum Company of		PNG
	(Kroton) Ltd		
9	Sir Brown Bai Kt	Board Chairman	Petromin
	Holdings Ltd		
10	Mr Loi Bakani, CMG, CBE	Governor	Bank of
	PNG		
11	Sir ManasupeZurenuoc, Kt,	Chief Secretary	
	Department of Prime Minister		
	MPS	to the	&
	National Executive Council		
		Government	
12	Mr Ilagi Veali, MPS	Secretary	National
	Executive Council		

[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

The Constitution empowers the Commission to investigate on its own initiative or on complaint by a person affected by any conduct on the part of any governmental body or an officer or employee of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Section 217(1) (the Ombudsman Commission) of the Constitution establishes the Commission. Section 217(1) of the Constitution states:

There shall be an Ombudsman Commission, consisting of a Chief Ombudsman and two Ombudsmen.

Section 217(5) of the Constitution states that in the performance of the Commission's functions, under Section 219 of the Constitution the Commission is not subject to direction or control by any person or authority.

Section 217(6) of the Constitution states that the proceedings of the Commission are not subject to review in any way, except by the Supreme Court or the National Court on the ground that it has exceeded its jurisdiction.

Section 217(8) of the Constitution defines conduct. Section 217(8) states:

(a) any action or inaction relating to a matter of administration; and

(b) any alleged action or inaction relating to a matter of administration.

Section 218(a)(b) and (c) of the Constitution specifies the traditional role of establishing the Commission. Section 218(a)(b) and (c) of the Constitution states:

The purposes of the establishment of the Ombudsman Commission are

- (a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People; and
- (b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and
- (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the Constitution states the functions of the Commission. Section 219(1)(a)(ii) of the Constitution states:

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(1) Subject to this section and to any Organic Law made for the purposes of Subsection (7), the functions of the Ombudsman Commission are—

- (a) to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of—
 - (i) any State Service or provincial service, or a member of any such service;
or
 - (ii) any other governmental body, or an officer or employee of a governmental body.

Section 13 of the Organic Law on the Ombudsman Commission (OLOC) also specifies the purpose of establishing the Commission. Section 13 of OLOC states:

For the purposes of Section 219 (1) (a) (functions of the Commission) of the Constitution the functions of the Commission, in addition to the functions specified in Section 219 (1) (b) (c), (d) and (e) (functions of the Commission) of the

Constitution, are to investigate,
on its own initiative or on complaint by a person affected, any
conduct on the part of –

- (a) any State Service or a member of any State Service; or
- (b) any governmental body, or an officer or employee of a
governmental body; or
- (c) any other service or body referred to in Section 219 (a)
(functions of the
Commission) of the Constitution that the Head of State, acting
with, and in
accordance with, the advice of the Executive Council, by
notice in the National
Gazette, declares to be a service or body for the purpose of
this section.

For the purposes of Section 219 of the Constitution and Section 13
of the OLOC, DJAG, Office
of the State Solicitor, NEC, CSTB, DoT, DoF, DoSE&SI, IPBC, NPCP,
BPNG and
DPM&NEC are governmental bodies created by Acts of Parliament.

The Commission therefore has jurisdiction to investigate into the
actions of the above
mentioned governmental bodies or its officers.

[1.3] PURPOSE OF THE INVESTIGATION

Pursuant to Section 219(1) of the Constitution the purpose of this
investigation is to identify
wrong conduct and defective administrative practices affecting the
procurement and tender
procedures in particular the awarding of major contracts by the
State for the financing and
engagement of Financial, Legal and Technical Consultants and
borrowing of loan from UBS
AG to buy shares in Oil Search Ltd.

The Commission's purpose of investigation is drawn around the
following terms of
references:

- (a) Whether the contract was publicly tendered.
- (b) Whether the Minimum requirements of the tender procedures and
processes were
complied with or not.

(c) Whether the tender requirements under the Public Finance (Management) Act 1995 and the Finance Management Manual were complied with.

(d) Whether requirements of other Laws were complied with.

The Commission's objective(s) are:

(a) To identify the wrong conduct and defective administrative practices by relevant government agencies or its employees.

(b) To make appropriate recommendations to help alleviate the defective administrative practices affecting or administered by government bodies and to help in the improvement of their work.

[1.4] METHOD OF INQUIRY

1.4.1 Use of OLOC Provisions

The Commission invoked the provision of Section 17(1) of the OLOC to conduct its inquiries. Section 17(1) states:

Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.

1.4.2 Obtain documents

The Commission obtained documents from relevant government bodies and persons pursuant to Section 18(1) of the OLOC.

Section 18 (1) states:

Subject to the provisions of this section and of Section 20, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.

1.4.3 Summoning of key witnesses

The Commission summoned key witnesses to appear before it pursuant to Section 18(3) of the OLOC.

Section 18(3) states:

The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation.

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1.4.4 Conducted Interviews

The Commission conducted interviews with key witnesses pursuant to Section 18(1) and 18(3) of the OLOC.

[1.5] WITNESSES WHO GAVE EVIDENCE BEFORE THE COMMISSION

The following witnesses were interviewed and gave evidence before the Commission after they were issued letters under Section 18(1) of the OLOC:

Table 2: List of Witnesses interviewed

No.	Witnesses	Position/Department
1	Mr Dairi Vele	Acting Secretary for DoT
2	Mr Philip Eludeme	Chairman of CSTB
3	Mr Loi Bakani, CMG, CBE	Governor for BPNG
4	Hon Kerenga Kua, MP	Then Minister for Justice & Attorney- General
5	Hon Don Polye, MP	The then Minister for Treasury
6	Mr Anthony Yauieb	Deputy Secretary for DoT
7	Mr Daniel Rolpagarea	State Solicitor
8	Mr Wasantha Kumarasiri, OBE	CEO for IPBC

[1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON LEGALITY OF ADMINISTRATIVE CONDUCT

When the Commission conducts an investigation, it is not confined to reporting on whether or not there have been breaches of the law. The Commission's constitutional mandate is broader than this. It is authorised to report on what, in its opinion, is -wrong conduct, irrespective of whether that conduct has been in accordance with the law.

Section 219(2) (Functions of the Commission) of the Constitution specifies that a conduct is wrong if it is-

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or

(c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or

(d) based wholly or partly on a mistake of law or of fact; or

(e) conduct for which reasons should be given but were not,

whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (Decisions in "deliberate judgement") of the Constitution.

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[1.7] WHAT IS -WRONG CONDUCTII?

The Constitution gives some guidance to the Ombudsman Commission, when it is deciding whether administrative conduct is -wrongll.

Section 219(2) of the Constitution states:

Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is -

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or

(c) based wholly or partly on improper motives, irrelevant grounds or irrelevant

considerations; or

(d) based wholly or partly on a mistake of law or of facts; or

(e) conduct for which reasons should be given but were not,

whether or not the act was supposed to be done in the exercise of deliberate judgment

within the meaning of Section 62 (decisions in –deliberate judgmentII).

The above list is not exhaustive. The phrase –and without otherwise limiting the generality of the expressionII indicates that conduct which does not fit into any of the descriptions in paragraphs (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the Constitution.

[1.8] THE PROVISIONAL REPORT

Whenever the Ombudsman Commission prepares a report of this nature, it has a duty to observe procedural fairness.

The duty is imposed by Section 17(4)(b) of the Organic Law on the Ombudsman Commission.

Section 17(4)(b) states:

Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that ...

(a) the Commission shall not make any comment in its report that is adverse to or

derogatory of any person without –

(i) providing him with reasonable opportunity to be heard; and

(ii) fairly setting out his defence in its report.

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a Provisional Report of this investigation into the 8 December 2014.

A Provisional Report allows persons who may be affected by the Commission's Final Report to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of a Provisional Report is to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the matter under consideration and to seek comments and submissions from those affected.

All the findings in the Provisional Report are qualified. That is, they are made subject to submissions received in response to the Preliminary Report.

Accompanying the Provisional Report was a direction, pursuant to Section 21(1) of the Organic Law on the Ombudsman Commission, that all evidence, documents, papers and things referred to including all findings and opinions, shall not be published without the consent in writing of the Ombudsman Commission. Breach of this direction is a criminal offence.

Copies of the Provisional Report were given the following persons:

Table 3: List of Recipients of the Provisional Report.

No	Recipient	Position/
Department	Date Received	
1	Hon James Marape, MP	Minister for Finance
11/12/2014		
2	Dr Ken Ngangan PhD, CMA, CPA	Acting Secretary,
Department of Finance	11/12/2014	
3	Mr Dairi Vele	Acting Secretary,
Department of Treasury	11/12/2014	
4	Mr Loi Bakani, CMG, CBE	Governor of Central
Bank	11/12/2014	
5	Hon Peter O'Neill, CMG, MP	Prime Minister
12/12/2014		
6	Hon Ben Micah, MP	Minister for State
Enterprises and State	12/12/2014	
		Investments
7	Mr Philip Eludeme	Chairman of CSTB
12/12/2014		
8	Amb Isaac Lupari, CBE	Prime Minister's Chief
of Staff	12/12/2014	
9	Mr Carl Okuk	Lawyer and Consultant.
16/12/2014		

Copies were delivered to their offices on 11, 12 and 16 December 2014 and they were invited to respond to the Ombudsman Commission within 21 days period. The letter stated that if they did not respond, the Ombudsman Commission would consider they

have accepted the report's findings.

The following persons responded;

1. Hon Peter O'Neill, CMG, MP, Prime Minister
2. Mr Dairi Vele, Acting Secretary for Department of Treasury
3. Mr Loi Bakani, CMG, CBE, Governor of Central Bank
4. Mr Frank Kramer, Chairman of NPCP and former Chairman and non-Executive Director of Pacific Capital Ltd
5. Dr Ken Ngangan, PhD, CMA, CPA, Acting Secretary for Department of Finance.

Note

Mr Frank Kramer was the Chairman of NPCP at that material time and he responded to the Commission's Provisional Report. Mr Kramer's response is included in subsection [2iii] of this Report.

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[1.9] RESPONSE FROM THE PRIME MINISTER HON PETER O'NEILL, CMG, MP,

On 22 December 2014, the Prime Minister through his lawyers, Young & Williams Lawyers responded to the Ombudsman Commission's Provisional Report. Below is an extract of the letter from the Prime Minister:

Dear Sir & Madam,

Re: The Hon Peter O'Neill CMG, MP – Investigations into the Prime Minister and Provisional Report.

1. As you are aware, we act for and are instructed by the Prime Minister, the Hon Peter O'Neill CMG, MP.

Letter of 8 December 2014 enclosing Provisional Report

2. We have been provided your letter dated 8 December 2014 (received by our client's office on 12 December 2014) for reply.
3. Your abovementioned letter:

a. encloses what is described as a –Provisional Reportll (–the Reportll) which purports to
comprise a report of your investigation under the provisions
of section 219 (1)(a) of the
(–Constitutionll) and section 13 of the Organic law on the
Ombudsman Commission (–the
OLOCl) –into the alleged improper borrowing of AU\$1.239
billion loan from the Union
Bank of Switzerland, Aktiengesellschaft (Australian Branch)
to purchase 149,390,244 shares
in Oil Search Limited and improper tender and procurement of
consultants in relation to
the borrowingll; and

b. requires our client to respond to the Report within 21 days
from the receipt of your
abovementioned letter (failing which the Ombudsman
Commission advises, unfairly, that it
will be –deemedll that our client has accepted the findings).

4. Paragraph 1.1 of the Provisional Report states:

–[1.1] INTRODUCTION

This is the Provisional Report by the Commission of an Own
Initiative investigation under Section
219(1)(a) (Functions of the Commission) of the Constitution and
Section 13 (Functions of the
Commission) of an Organic Law on the Ombudsman Commission
conducted into the alleged improper
borrowing of AU\$1.239 billion loan from UBS AG by the Government
to purchase 149,390,244 shares in
Oil Search Limited and improper tender and procurement of
Consultants in relation to the borrowing.

Jurisdiction of the Ombudsman Commission to conduct investigations
under section 219(1)(a) of the
Constitution and Section 13 OLOC

5. The jurisdiction of the Ombudsman Commission to conduct
investigations of this nature is prescribed
under the provisions of the Constitution Section 219 (1) and
Section 13 of the OLOC, and is limited and
restricted to investigations of any conduct on the part of:

- a. Any State Service, or member of any State Service; or
- b. Any governmental body, or an officer or employee of a
governmental body; or
- c. Any other service or body referred to in Section 219(a)
(functions of the Commission) of the
Constitution that the Head of State, acting with, and in

accordance with, the advice of the
National Executive Council, by notice in the National
Gazette, declares to be a service or body
for the purposes of this Section.

6. It is not clear from your Report the conduct of which (if any)
of the above services or bodies you are
investigating. Could you please specify with particularity the
conduct of which services, bodies,
officers or employees referred to in Section 13 of the OLOC you
are investigating. This, as you will
appreciate, is a fundamental threshold issue in terms of your
jurisdiction to make this investigation and
publish any Report.

The Prime Minister does not fall under any of the investigatory
powers or jurisdiction of the Ombudsman
Commission under Section 219(1)(a) of the Constitution and Section
13 OLOC

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7. It is clear, we contend, on the proper interpretation, that the
Prime Minister is not included in the set
of bodies and services specified in Section 13 of the OLOC. The
Prime Minister is therefore NOT
susceptible to a competent or constitutionally invalid
investigation or Report under the OLOC.

8. The conduct of the Prime Minister has been at the centre of
your investigation in this matter. See your
example:

a. In your –Executive Summary|| at paragraph (b), where you
specifically state you investigated,
–The whole action of the Prime Minister misleading the NEC
Special Meeting No: 8/2014 and
the subsequent NEC AG Loan of AU\$1.239 billion which NEC does
not have the power except
the Parliament under Section 209 (Parliamentary
Responsibility) of the Constitution...||,

b. In your Provisional Findings paragraph 1, where you find,
–In the opinion of the Ombudsman
Commission, the conduct of the Prime Minister was wrong and
improper when he committed
the State to purchase 149,390,244 shares in Oil Search
Limited...;

c. Paragraphs 2, 3 and 4 of your findings make similar comments
on the Prime Minister's conduct;

d. Under the heading –Irregularities|| you make further findings

of wrong conduct against the
Prime Minister;

e. Further statements of wrong conduct against the Prime
Minister are made under the heading of
-Findings of Wrong Conduct||;

f. Similar statements of investigating the Prime Minister's
conduct are made throughout the
-provisional report||.

9. The investigation in this matter and the Report on this basis
are unconstitutional, at least insofar as
they relate to the conduct of the Prime Minister. Given the
extent of the Report into his conduct, it is
not possible to sever the part of the Report which relates to
the Prime Minister from the rest of the
Report, and consequently the whole investigation is flawed from
the outset.

Failure of the Ombudsman Commission to satisfy the mandatory
requirement of informing persons who
will be the subject of the investigation

10. In addition to the foregoing, we note that under the
provisions of Section 17(1) of the OLOC, before
commencing any investigation within its jurisdiction, (in this
case the jurisdiction under Section 13 of
the OLOC), the Ombudsman Commission is obliged to -inform the
responsible person of its intention
to make such an investigation.|| In this case, the _responsible
person' is our client, the Prime Minister.

This we contend is a fundamental requirement, compliance with
which is necessary to ground the
jurisdiction of the Ombudsman Commission to conduct such an
investigation in relation to the
conduct of a responsible person.

11. In the present case, the Ombudsman Commission has published a
list of the person in a Table (at page
9 of the Report) to whom it gave such notice and we note that
our client is not a person to whom such
a notice was given.

12. Failure to provide our client with a notice under Section
17(1) renders your investigation, at least so far
as he is concerned, invalid and unconstitutional because you
have failed to ground your jurisdiction to
undertake such an investigation into the conduct of our client
and prepare any report. If the
investigation has no constitutional mandate, any report
published as a result of such investigation must
also be in excess of jurisdiction, at least insofar as it makes
any comments adverse to or derogatory of

our client. Accordingly, you have acted in excess of your jurisdiction, and the provisional report is invalid and unconstitutional (as would any subsequent, final or otherwise).

The Ombudsman Commission may not make any comment in its report which is adverse to or derogatory of any person

13. We also respectfully contend without prejudice to the matter raised above and our client's rights generally, as set out below.

14. As you are aware, under Section 17(4) of the OLOC, the Ombudsman Commission may not make any comment in its report which is adverse to or derogatory of any person without:

- Providing that person with a reasonable opportunity to be heard; and
- Fairly setting out the defence of that person in its report. (our underlining)

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15. We submit that Section 17(4)(b) of the OLOC, on proper interpretation and application, applies to any comment of the Ombudsman Commission, whether final or not, in any report of the Ombudsman Commission, including what the Ombudsman Commission labels a provisional report.

16. This we submit is to ensure that people the subject of investigations by the Ombudsman Commission are afforded natural justice at all stages of the investigation, including the state of –provisional reports.¶

The Supreme Court of Papua New Guinea has held this to the case in Nilkare v. Ombudsman Commission [1999] PNGLR 333 (–Nilkare's Casell).

17. In the present case, the Ombudsman Commission cannot be seen to be operating with any sense of fairness and impartiality because the report contains statements which are adverse to and derogatory of our client. They are expressed in the form of concluded findings and couched in final, unequivocal and condemnatory terms. For example, the whole of Section 4 of the report contains such language.

18. A further and aggravated example can be seen in paragraph (b) of the Executive Summary of the

Provisional Report, where the matter said to be investigated has as its premise that the Prime Minister misled the NEC (which is incorrect). Other examples are found at paragraph (c) and (d) in the Executive Summary.

19. Having made such findings which are now committed to print and signed by the Ombudsman

Commission (at page 153) in the form of a provisional report, the Ombudsman Commission cannot be

seen to be impartial or independent because they have expressed a preconceived position in which they

have already adversely prejudged our client and from which they cannot be expected to reply however

compelling the evidence may be to do so. A reasonable observer could have no confidence that you will

provide our client with any reasonable or meaningful opportunity to be heard.

20. A reasonable observer would conclude that you have made your final decision which you have

published under the heading of a –Provisional Report, and are merely executing a formality in

purporting to give our client a belated right to be heard.

21. In these circumstances, our client cannot be expected to be able to afford him any fair, independent, impartial or

meaningful right to be heard.

The right to be heard – denial of Natural Justice

22. Further, our client is entitled to certain Constitutional rights at all stages of any investigation,

including at the stage of the provisional report by the Ombudsman Commission. Section 59(2) of the

Constitution specifies that –the minimum requirement of natural justice is the duty to act fairly and, in

principle, to be seen to act fairly.

23. Generally speaking, the Ombudsman Commission has a duty –to be seen to be impartial and

independent without prejudice and preconception in its investigation decision and preliminary decision

making process. See Nilkare Case at p 335 (our underlining).

24. It follows that any report, preliminary or otherwise, made by the Ombudsman Commission which is in

breach of this duty, or does not comply with these mandatory requirements of OLOC and the

Constitution, is made in excess of its jurisdiction, is unconstitutional and is otherwise unlawful.

25. It is part of the content of the Rules of Natural Justice that any right to be heard must be:

a. Undertaken by an Ombudsman Commission which can be seen to be operate with a sense of fairness and impartiality;

b. One where all relevant particulars and material documents have been disclosed to the person the subject of the investigation; and

c. One which affords a hearing that enables it to be exercised fully and in a meaningful way.

26. It is a breach of the Rules of Natural Justice to issue a provisional report in such biased and final language. Any reasonable observer could not help but come to the conclusion that you have prejudged the issues in circumstances where our client has not been afforded the procedural safeguards set out in the OLOC and the Constitution to which he is entitled, including:

a. A reasonable opportunity to be heard in relation to the matters contained in the preliminary report, and

b. Fairly setting out any defence of our client.

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The Provisional Report is invalid and unconstitutional as it infringes upon, breaches or contravenes Constitutional Laws

27. Unfortunately, for the reasons set out in this letter, the Provisional Report:

a. Is in breach of the Ombudsman Commission's duties referred to in paragraph 14 above;

b. Has been made without compliance with Section 17(4)(b) of the OLOC because it contains comments which are adverse to or derogatory of our client in circumstances where:

o He has not been provided with a reasonable opportunity to be heard; and

o It does not fairly set out the defence of our client in its report;

c. Is in breach of Section 59(2) of the Constitution in that it

does not satisfy the minimum requirements of natural justice because the Ombudsman Commission has not acted fairly and has not been seen in principle to act fairly in this matter.

Very recent proceedings involving the Ombudsman Commission exceeding its jurisdiction

28. The issue of the Ombudsman Commission acting in excess of its jurisdiction and contrary to the Rules of Natural Justice is already before the Court in relation to the Ombudsman Commission issuing a –Directionsll concerning the UBS AG loan. The Ombudsman Commission will be well aware of this as it is a Defendant in OS (JR) 383 of 2014. We enclose for your convenience a copy of the Constitutional questions referred by Makail J on 3 December 2014.

Request by Ombudsman Commission to respond within 21 days

29. We note your comment in the penultimate paragraph of your abovementioned letter that –if a response is not received from you within the stated (21 day) time frame, it will be deemed that you have accepted the findings under any circumstances. Your advice that in the absence of our client’s response you will deem them as having been accepted and publish the final report under Section 22 of the OLOC demonstrates the Ombudsman Commission is not acting impartially, independently, fairly or without a prejudicial or preconceived attitude in this matter. Furthermore, the time given by the Ombudsman Commission to respond is wholly unreasonable in all the circumstances, and the Ombudsman Commission is obliged to provide a reasonable time from the outset.

30. Consequently, it is our contention for the abovementioned reasons that the Ombudsman Commission lacks jurisdiction to further proceed in this matter. It has no jurisdiction to publish any further report relating to –alleged improper borrowing of AU\$1.239 billion loan from UBS AG by the Government to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of Consultantsll, making any comments which are adverse to or derogatory of our client.

Constitutional questions arise in the interpretation and application of Constitutional Laws.

31. If you do not agree with what we have set out above, then questions of interpretation or application of the OLOC (particularly Section 13) and the Constitution arise.

Questions of interpretation or application of any provision of a Constitutional Law (such as the OLOC) are not within the jurisdiction is relevant exclusively limited to the Supreme Court of Papua New Guinea under the provisions of Section 18 of the Constitution.

32. We are concerned that the Ombudsman Commission has sought to make comments adverse to or derogatory of the Prime Minister, which are dependent and conditional upon the interpretation or application of provisions of Constitutional Laws by the Ombudsman Commission itself. The Ombudsman Commission has no jurisdiction to interpret or apply provisions of any Constitutional Laws. Notwithstanding this, the Ombudsman Commission has made comments adverse to or derogatory of the Prime Minister on the premise that there have been breaches of various provisions of the Constitution, such as Section 209, 211, 212 and 255. As the Ombudsman Commission will be aware, there are currently proceedings before the Supreme Court, in which Sections 209 and 255 are to be interpreted and applied [OS (JR) 383 of 2014 and SCCOS No 4 of 2014]. Insofar as the Ombudsman Commission has sought to interpret and apply Constitutional provisions, to make any comments that are adverse to or derogatory of our client, such comments exceed the jurisdiction of the Ombudsman Commission.

33. There are questions which arise that are serious, with far-reaching consequences for the Ombudsman Commission and our client. They are not vexatious, trivial or irrelevant.

34. In these circumstances, we respectfully submit that the appropriate course is that you make an application pursuant to Section 19 of the Constitution to refer questions to the Supreme Court for

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hearing and determination. We note in this regard that you are expressly named as an authority under Section 19(3)(e) of the Constitution entitled to make such an application.

35. Appropriate Constitutional questions warranting an authoritative determination by the Supreme Court, in our respectful contention, could include as follows:

i. Whether the Ombudsman Commission, having regard to the

provisions of the Organic Law on the Ombudsman Commission (–OLOCII) (particularly Section 13), lacks the jurisdiction to investigate, under Section 13 of the OLOC, on its own initiative or on complaint by a person affected, any conduct on the part of the Prime Minister of the Independent State of Papua New Guinea.

ii. Whether the Ombudsman Commission, having regard to the provisions of Section 219(1)(a) and (b) of the Constitution, on its own initiative or on complaint by a person affected, any conduct on the part of the Prime Minister of the Independent State of Papua New Guinea.

iii. Whether the Ombudsman Commission, having regard to the provisions of the Constitution, (including Section 219), the Organic Law on the Duties and Responsibilities of Leadership (–OLDRLII) and the OLOC, has lawful authority, power and jurisdiction to have issued or published a document titled –Provisional ReportII – –Investigation into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowingII, making comments that were adverse to or derogatory of the Prime Minister.

iv. Whether the Ombudsman Commission, having regard to the provisions of the Constitution (including Section 21`9), the OLDRL and the OLOC, has lawful authority, power and jurisdiction to issue or publish any further or other report –into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowingII, making comments adverse to or derogatory of the Prime Minister.

v. Whether the Ombudsman Commission is and was required to comply with Section 59(2) of the Constitution by providing the minimum requirement of natural justice to act fairly and, in principle, to be seen to act fairly before:

(a) Issuing or publishing a document titled –Provisional

Report II – –Investigation into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowing, making comments adverse to or derogatory of the Prime Minister;

(b) Issuing or publishing any further or other report into –the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowing, making comments adverse to or derogatory of the Prime Minister;

vi. Whether the Ombudsman Commission is and was required to comply with Section 17(1) of the OLOC, and in particular, inform the Prime Minister of its intention to make an investigation relating to conduct on the part of the Prime Minister:

(a) Before investigating the Prime Minister into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowing;

(b) Issuing or publishing a document titled –Provisional Report II – –Investigation into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowing, making comments adverse to or derogatory of the Prime Minister;

(c) Issuing or publishing any further or other report –into the alleged improper borrowing of AU\$1.239 billion loan from the Union Bank of Switzerland, Aktiengesellschaft (Australian Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation

to the borrowingll,
making comments adverse to or derogatory of the Prime
Minister;

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vii. Whether the Ombudsman Commission, having regard to the provisions of the Constitution (including Section 219) and Section 13 of the OLOC, has jurisdiction to publish a Report (whether provisional, final or otherwise) making comments adverse to or derogatory of the Prime Minister in relation to conduct on his part.

viii. Whether the Ombudsman Commission, on proper interpretation or application of the Constitution (including Section 219) and the OLOC (including Sections 13, 17 and 23), lacks jurisdiction to make any conclusions, recommendations and suggestions under Section 23 of the OLOC, making comments adverse to or derogatory of the Prime Minister, if such comments require, before they can be properly made, an interpretation or application of provisions of Constitutional Laws by the Ombudsman Commission.

The Ombudsman Commission has no protection

36. We note that Section 35(1) of the OLOC provides:

–35. PRIVILEGE.

(1) A member of the Commission or an officer or employee of the Commission is not liable for any act or omission done or made bona fide and without negligence under or for the purposes of this law.ll

37. There is, for good reason, no protection afforded to a member of the Commission in circumstances where any act or omission is not done or made bona fide and without negligence.

38. We contend that in light of the matters set out above in this letter, the members of the Ombudsman Commission will be liable if it were to:

- a. Further publish and distribute the –Provisional Reportll;
- b. Publish and distribute any further Report making any comments adverse to derogatory of the Prime Minister
- c. Continues to or purports to investigate the Prime Minister

for the purpose of publishing or distributing any report.

39. A reasonable person, in all the circumstances, would form the view, that there is an apprehension of bias, if not actual bias, by the Ombudsman Commission in relation to the Prime Minister.

Advice and Undertaking by the Ombudsman Commission

40. We require written advice by 9am, 5 January 2015:

a. Whether the Ombudsman Commission will file a Section 19 Special Reference referring Constitutional questions to the Supreme Court relating to the authority, power and jurisdiction of the Ombudsman Commission to have issued the –Provisional ReportII and issue any other Report into the allegations the subject of the Provisional Report containing any comments adverse to or derogatory of the Prime Minister in terms suggested or otherwise;

b. Whether the Ombudsman Commission will undertake to refrain from further publishing or distributing the –Provisional ReportII;

c. Whether the Ombudsman Commission will refrain from publishing or distributing any further report concerning an investigation relating to conduct of the Prime Minister into alleged improper borrowing of AU\$1.239 billion loan from UBS AG by the Government to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of Consultants in relation to the borrowing containing any comments which are adverse to or derogatory of the Prime Minister.

d. Whether the Ombudsman Commission accepts that it is not entitled to investigate any conduct on the part of the Prime Minister under Section 13 of the OLOC;

e. Whether the Ombudsman Commission accepts that it is not entitled to investigate any conduct on the part of the Prime Minister under Section 219(1)(a) of the Constitution;

f. How many people received a copy of the Provisional Report or any parts of it that contains comments adverse to or derogatory of our client;

g. Whether our client will be provided with all of the documents you have obtained in connection with this investigation referred to in the report, particularly insofar as they are relied upon to make any comments adverse to or derogatory of the Prime Minister. We have previously asked you for copies of documents which you have failed to provide, and went ahead and referred that matter together with Statement of Reasons to the Public Prosecutor under Section 27 of the OLDRL;

h. Whether the Ombudsman Commission accepts that it did not inform our client of its intention to make the investigation, before investigating any matter under Section 13 of the OLOC or Section 219 of the Constitution, as required by Section 17(1) of the OLOC. If it does not so accept, please provide forthwith evidence that our client was so informed (including a copy of any written document so informing our client);

i. Whether the Ombudsman Commission accepted that:

(i) The Provisional Report contains comments that are adverse to or derogatory of our client;

(ii) The Provisional Report was provided without providing our client a reasonable opportunity to be heard (and if the Ombudsman Commission does not so accept please provide forthwith evidence that our client was provided a reasonable opportunity to be heard);

(iii) The Provisional Report does not set out any defence from our client.

Conclusion

41. For the record, our client refutes any improper or wrong conduct as asserted by you or otherwise in relation to the subject matter of the investigation.

42. This is an open letter and we reserve the right to bring it to the attention of the Court should the need arise. We also reserve the right to draw to the attention of the Court the failure of the Ombudsman Commission to provide the written advice and undertaking

requested in his letter.

43. In short, the purported investigation of our client by the Ombudsman Commission and issuance of the Report is fatally flawed. The investigation was conducted, and the Report issued, in circumstances where the Ombudsman Commission has failed to comply with its Constitutional obligations and duties. In fact, the investigation has been conducted unconstitutionally, as has the issuance of the Report.

44. If the Ombudsman Commission contends otherwise, it should, given the serious matters raised in this letter, seek an authoritative determination from the Supreme Court on questions relating to the interpretation or application of provisions of Constitutional Laws.

45. We await your reply by, at the latest, 9am, 5 January 2015, and reserve all our client's rights.

On 23 January 2015, the Prime Minister filed an application in the National Court seeking referral of several questions for interpretation by the Supreme Court, under Section 18(2) of the Constitution.

Comments

The Ombudsman Commission has discharged its duty of procedural fairness and natural justice by giving the above named persons the opportunity to respond to the Provisional Report within 21 days from the date of our letter. However, rather than responding to the Provisional Report, the Prime Minister instructed his Lawyers, Young & Williams Lawyers, to file National Court proceedings against the Ombudsman Commission to prevent the Provisional Report and eventually the Final Report on the matter to be published.

NO: 15 OF 2015

[1.10.1] NATIONAL COURT OS NO: 15 OF 2015

On 12 December 2014, the Prime Minister was served the Provisional Report and given 21 days to respond to the findings. However, on 22 December 2014 the Prime Minister responded through his Lawyers, Young & Williams Lawyers refuting any wrong doings on the part of their client and that the investigations by the Ombudsman Commission were fatally flawed. The Prime Minister's Lawyers requested the Commission for undertakings that it has failed to comply with the constitutional obligations and duties and that the investigation was conducted unconstitutionally. The Commission was asked to reply before or by 0900 am on 5 January 2015.

On 23 January 2015, the Prime Minister's Lawyers filed proceedings in the National Court, OS No: 15 of 2015 Peter O'Neill vs Ombudsman Commission Of Papua New Guinea and Rigo A. Lua, Chief Ombudsman and Phoebe Sangetari, Ombudsman (2015) N5857, questioning its jurisdiction over the office of the Prime Minister. At the same time as filing proceedings in the National Court, a motion was filed to invoke Section 18(2) of the Constitution to have the matter referred to the Supreme Court to deal with the constitutional question of whether the OC has jurisdiction over the office of the Prime Minister.

In those proceedings the Prime Minister challenged the jurisdiction of the Ombudsman Commission regarding an investigation conducted under the Organic Law on the Ombudsman Commission in so far as the investigation related to his conduct. The subject of the investigation was the alleged improper borrowing of AU\$1.239 Billion from the Union Bank of Switzerland (UBS) by the National Government to purchase 149,390,244 shares in Oil Search Ltd and improper tender and procurement of consultants in relation to the borrowing.

On 19 July 2016, the National Court (Davani J) referred 11 questions, which arose in proceedings before her Honour, in OS No: 15 of 2015. When the National Court (Davani J) referred the matter to the Supreme Court, interim orders were issued preventing the

Commission from conducting any further investigations into the Prime Minister, specifically on the UBS case and generally on any other investigations under the Organic Law on the Ombudsman Commission.

[1.10.2] SUPREME COURT SC REF NO 5 OF 2016

In March 2017, the Supreme Court (SC Ref No: 5 of 2016; Reference Pursuant to Constitution, Section 18(2), Re alleged improper borrowing of AU \$1.239 Billion Loan; Ombudsman Commission, Rigo A. Lua, Phoebe Sangetari, Hon Peter O'Neill MP, Prime Minister and Hon Ano Pala MP, Attorney-General (2017) SC1580) handed down its decision upholding the Ombudsman's contention that it has jurisdiction over the Prime Minister in so far as its functions under the Organic Law on the Ombudsman Commission were concerned.

The Supreme Court also ordered that the Registrar list the matter before a judge immediately for directions hearing. The Ombudsman Commission's attempts to have the Registrar list the matter in OS No: 15 of 2015 for determination was unsuccessful until the Friday 11 August 2017 when the Commission discovered that the matter was listed for hearing.

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The Ombudsman Commission considered the relief that the Prime Minister was claiming again in the National Court and compared that to the questions referred to the Supreme Court and concluded that the questions are same, if not similar.

The Ombudsman Commission filed proceedings to dismiss the entire proceedings in OC No: 15 of 2015 for disclosing no cause of action and or an abuse of process and further, to uplift the injunctions preventing the Commission from further dealing with the Prime Minister under the UBS investigation or any other OLOC investigations.

The Ombudsman Commission argued that the first order the Prime Minister was seeking in the Originating Summons is a declaration that on the proper interpretation of s 219(1)(a) of the Constitution, the Prime Minister of PNG does not come within the

description of any
-memberll, -officerll, -employeeell or -personll under s 219(1)(a) of the
Constitution.

In the Supreme Court, the question was asked whether on the proper
interpretation of s
219(1)(a) of the Constitution, the Prime Minister of PNG does not
come within the
description of any -memberll, -officerll, -employeeell or -personll under
s 219(1)(a) of the
Constitution.

The Commission also argued whether there is any utility in the
proceedings in the National
Court, as the Supreme Court has conclusively decided that the
Ombudsman Commission
has jurisdiction over the Prime Minister. This application comes
after the Supreme Court in
an unanimous decision in March 2017 decided that the Prime Minister
was an officer of a
governmental body and therefore subject to the Ombudsman
Commission's jurisdiction.

The Supreme Court has decided that the office of the Prime Minister
comes within the
meaning of an officer of a governmental body hence there is no
purpose in continuing with
the case in the National Court except for the interim orders that
were issued when the
National Court (Davani J) referred the matter to the Supreme Court
preventing the
Commission from conducting any further investigations into the Prime
Minister,
specifically on the UBS case and generally on any other
investigations under the Organic Law
on the Ombudsman Commission to be lifted.

On 21 November 2017 the Prime Minister's Lawyer Greg Sheppard did
not contest the
Commission's application, and after a short submission by the
Commission through its
Counsel Dr Vergil Los Narokobi, the National Court (Justice Hitelai-
Polume) dismissed the
entire proceedings with costs and discharged any injunction that may
have been issued
against the Ombudsman Commission.

The decision by the National Court paved the way for the progression
of the Report after
the injunction was issued stopping the progress of the
investigations on 19 July 2016.

[1.11] RESPONSE FROM THE ACTING SECRETARY FOR TREASURY, MR DAIRI
VELE

On 23 January 2015, Mr Dairi Vele, Acting Secretary for Treasury responded to the Ombudsman Commission's Provisional Report. Below is his response.
RESPONSE TO EXECUTIVE SUMMARY

Provisional Findings

I deny without reservation the findings listed at Findings 9 to 13.
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Irregularities

I deny that I was involved in any irregularities or wrong or improper conduct with regards to UBS AG Loan and the engagement of private financial and legal Consultants in relation to the borrowing.

Findings of Wrong Conduct

I deny that my conduct was wrong and erroneous in any way and there are no such irregularities or breach of the Constitution and the applicable laws as alleged or at all, and say as follows;

- That there was no lack of proper and wide consultation with State agencies and no by-passing on the National Parliament's approval of the borrowing pursuant to Section 209, 212 and 255 of the Constitution.
- That the loan has not exceeded the State's Gross Domestic Product (GDP) to Debt ratio threshold of 35%. Hence, the PNG Fiscal Responsibilities Act 2006 being an Act to promote economic and financial transparency and accountability in the interest of a stable macroeconomics environment has been complied with.
- That the borrowing did not exceed the 125% of the total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 and Sections 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A) are not breached.
- That the engagement of Private Law Firms was lawful.
- That the requirements of public tendering of contracts pursuant to Sections 39 and 40 of the Public Finance (Management) Act 1995 were not breached in relation to the engagement of financial and legal consultants.
- That the engagement of financial, legal and technical consultants by was not wrong.
- That the execution of all documents by the Governor-General and witnessed by Mr. Okuk, Lawyer, was

proper.

- That the State's sovereignty was not compromised when the State entered into the Loan Agreement with UBS AG to be the Lender, Facilitator and Arranger of the borrowing.

Comments

The evidences on the conduct of Mr Vele are outlined in the findings of fact in this Report.

From the evidence produced and gathered during the course of the investigation leading up to the issuance of the Provisional Report and writing of the Final Report on the findings of wrong conduct.

Mr Vele's explanations to justify that he did not commit any wrong conduct are contrary to the facts that he provided in his response to the Provisional Report.

2. FINDINGS OF FACTS

INTRODUCTION

This Chapter is divided into three parts and each part will deal separately with the manner

in which this entire loan transaction was carried out. However, before the main issue is outlined and discussed in this Chapter, it is necessary to highlight the events that led to the matter been investigated. That is, whether or not proper procedures and processes were followed by the relevant Government Authorities that led to the borrowing of AU\$1.239 Billion loan from UBS AG (Australia Branch) (UBS AG) to purchase new shares in Oil Search Ltd.

Part 1 of this Chapter addresses the decision making process that led to the NEC approval for the State to borrow AU\$1.239 Billion from UBS AG to purchase new shares in Oil Search Ltd and the manner in which UBS AG was engaged and the implementation of the NEC Decision.

Part 2 of this Chapter addresses the manner in which both Local and International Consultants were engaged by Mr Vele, the Acting Secretary for the Department of Treasury (DoT) with the assistance of Mr Philip Eludeme, the Chairman for Central Supply & Tenders Board (CSTB).

Part 3 of this Chapter addresses the manner in which payments were made to UBS AG and other Consultants by Dr Ken Ngangan, the Acting Secretary for the Department of Finance (DoF) and Mr Vele.

PART 1 THE DECISION OF THE NATIONAL EXECUTIVE COUNCIL TO BORROW UBS AG (AUSTRALIA BRANCH) LOAN AND IT'S IMPLEMENTATION

[1] NEC DECISION NO: 37/2013 ON THE RE-FINANCING OF THE INTERNATIONAL PETROLEUM INVESTMENT COMPANY (IPIC) EXCHANGEABLE BOND

On 19 December 2013, the NEC during its Special Meeting No: 37/2013, made a Decision No: 479/2013 in regard to the re-financing of the IPIC Exchangeable Bond. Below is an extract:

1. noted the content of Statutory Business Paper No. 179/2013 and the attachment provided;
2. noted the submissions from the Citi, UBS, ANZ/Barclays and Hermsley;

3. approved the following recommendations;

v) approved the Bank of Papua New Guinea to provide final evaluations on the proposals from Citi and UBS AG to refinance the IPIC Exchangeable Bond on the specific terms of reference provided (appended herewith) and report back to the Minister for Public Enterprises and State Investments by end of January 2014;

x) approved the Minister for Public Enterprises and State Investments to convey to the government of United Arab Emirates and the Emirates of Abu Dhabi the State's decision to redeem the IPIC exchangeable Bond;
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xiii) approved for a finalization report to be tendered to NEC before 31st January 2014;
and

xiv) approved the dissolving of the IPICEB Review Committee and its powers and responsibility,

4. did not approve recommendations iii, iv, vii, viii, ix, xi and xii; and

5. directed the Minister for Public Enterprises and State Investments to report back to NEC by the end of January 2014 with the final evaluation report provided by the Bank of Papua New Guinea as specified in recommendation 5.

Comments

The NEC's decision to engage the BPNG at the last minute to evaluate two (2) Financiers, Citi Bank and UBS AG proposals out of four (4) proposals received to refinance the IPIC Exchangeable Bond was highly improper.

This was highly improper as there was lack of proper and meaningful consultation with BPNG prior to the shortlisted Financiers proposals being put to the NEC and that the NEC failed to comply with Section 255 (Consultation) of the Constitution, that is, it had not consulted all relevant Agencies and Departments before arriving at its decision.

Section 255 of the Constitution states:

255. CONSULTATION.

In principle, where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.

The four (4) Financiers that were shortlisted and included in the NEC Policy Submission No. 179/2013 and then submitted on 19 December 2013 to the NEC for deliberation and approval, was done without proper consultation with the relevant agencies, such as the BPNG.

It was not clear whether a proper tender process was conducted that resulted in the four (4) Financiers been shortlisted, apart from the Prime Minister's statement saying that the Chief Secretary called for a tender inviting potential Financiers to put forward their bids to provide a loan to re-finance the IPIC Exchangeable Bond.

Instead of choosing a single Financier as its preferred Financier to fund the exercise, the NEC forwarded a list containing two (2) Financiers; Citi Bank and UBS AG, their proposals to BPNG to evaluate.

Therefore, the NEC's action was improper as it did not give the BPNG the leverage to conduct its own independent assessment of all potential service or loan providers. In addition, this part of the exercise should have been done prior to the NEC deliberating on the potential financier for the loan to refinance the IPIC Exchangeable Bond.

[2] BANK OF PAPUA NEW GUINEA RECOMMENDED UBS AG AS THE LENDER OF THE LOAN TO RE-FINANCE THE IPIC EXCHANGEABLE BOND

On 19 December 2013, in a Special Meeting No: 37/2013, made its Decision No: 479/2013 in relation to the re-financing of the IPIC Exchangeable Bond.

On 20 December 2013, Minister Micah wrote to Mr Bakani, Governor for BPNG and requested him to evaluate the proposals from potential Financiers based on the NEC's Terms of Reference and recommend a Financier to re-finance the IPIC Exchangeable Bond.

On 22 December 2013, Mr Bakani wrote to Minister Micah and advised that the time to conclude the re-financing of the IPIC Exchangeable Bond was short and the Government had to make a decision immediately. The BPNG was of the view that the four (4) Financiers should have been provided all the information and requested to bid for the Exchangeable Bond re-financing facility.

On 27 December 2013, Minister Micah wrote to Mr Bakani and sought clarification on the BPNG's advice regarding the re-financing of the IPIC Exchangeable Bond. Below is an extract of Minister Micah's letter:

I acknowledge receiving your letter dated 24th December 2013 and also confirm that we had a verbal discussion about the letter on the same day. I write to seek further clarification on various issues raised in your letter as well as confirm few of the pointed we agreed through our conversation.

During our conversation we agreed that;

1. IPIC EB Refinancing should be the only financing we should deal with now and postpone the T3, T4 and Kroton Equity option exercise post IPIC EB financing.

2. In the interest of time and consistent with the TOR provided by NEC, the central bank should only evaluate the 4 proposals by Hermsley Capital, ANZ/Barclay, CitiBank and UBS and provide advice to me.

I wish to also seek clarification on following issues;

1. Two other banks, BNP Paribas and Duetsche were mentioned in the letter and as indicated in our conversation it is already late for them to submit any proposal and also the current four proponents would re-submit their bids and this is likely to cause further delays. Can the bank clarify this suggestion so we can

deal with the four proposals as agreed?

2. Given the short notice to the bank it appears there has been no review of the 4 proposals in detail and also proper due diligence conducted, can the bank provide a final advise to me before the 10th of January 2014?

3. If you need to discuss further or wish to seek further directions please do not hesitate to call me.

Yours sincerely,

(signed)
HON BEN MICAH, MP
Minister

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On 7 January 2014, Mr Bakani wrote to Minister Micah and recommended that the State renegotiate the funding structure of the proposals with the two (2) Financiers (UBS AG and Citi Bank) in the event that the negotiations do not meet the States objectives, the State should consider other Financiers.

On 9 January 2014, Mr Bakani wrote to Minister Micah and made several recommendations that included the invitation of other Financiers apart from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond. Below is the extract of the letter:

RE: REFINANCING THE INTERNATIONAL PETROLEUM INVESTMENT COMPANY (IPIC)
EXCHANGEABLE BOND (EB) – NEC DECISION NO: 479/2013

I write in response to the NEC Decision No: 479/2013, Special Meeting No: 37/2013 which the Bank received on 08th January 2014. The NEC directed the Bank of Papua New Guinea (BPNG) to provide a final evaluation on the proposals from Citi and UBS AG to refinance the IPIC Exchangeable Bond. Prior to receiving this Decision, the Bank submitted its evaluation of all four proposed financiers; ANZ/

Barclays, Citi, UBS AG and
Hermesly in a letter to you dated 7th January 2014.

Our evaluation of the four refinancing proposals contained in my
letter dated 07/01/14 is
summarized as follows:

1. All the four proposals fall short of the expected liability
of A\$1.8 billion;

2. The maturity term of the proposals are different and we
recommend that the
financiers be requested to change it to 7 years to enable
comparison of costs, and
give a positive cash flow for NCPC;

3. None of the proposals are free of any risks (exchange rate-
AUD/USD, interest rate
rollover risk and counterparty credit risk) and these are not
disclosed and costs
not known;

4. There is an opportunity cost to the State from all proposals,
except ANZ/Barclays,
in relation to actual transfer of the Oil Search shares;

5. We recommended further negotiations with ANZ/Barclays and
Citi to achieve a
less costly financing structure for the full liability of A\$1.8
billion;

6. The State considers giving a Guarantee for the refinancing,
which should reduce
the costs; and

7. The State considers other competitive financing proposals in
the event the two
recommended financiers do not meet the refinancing requirements
following
further negotiations.

As per the NEC Decision above, the Bank is directed to provide
final evaluation only on
the proposals from Citi and UBS. This evaluation is summarised
below:

a) Both submissions do not provide full funding for the expected
liability of A\$1.8
billion. The minimum repayment should cover the principal
amount on the loan,
the remaining interest and the difference between the strike
and market price on
the Oil Search shares.

b) Maturity structures of the two proposals are too short to allow NPCP to maintain a positive cash flow throughout the term of the loan. This will give rise to refinancing risks in an increasing interest rate environment.

c) Citi's proposal has a weighted maturity of 6.0 years compared to 2.9 years for UBS. This is important in managing the repayment cash flows for the loan against the income flows from the PNG LNG project.

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d) The value at risk (VAR) calculated for Citi is A\$314.6 million compared to A\$322.4 million by UBS AG. The VAR is the expected funding gap between the Strike Price and Collar option price. The risk calculated in both proposals shows a difference of A\$12 million, which is significant and the Bank is concerned that the overall risk pricing is very high.

e) The UBS financing offer requires an additional US\$72 million to be held as security in an Escrow account. This is an addition to be securitized Oil Search shares and presents an opportunity cost. In addition, the transaction cost for Citi is A\$372.5 million compared to A\$312 million for UBS.

Recommendation

1. The State should negotiate with Citi and UBS AG to provide full funding of the estimated liability of A\$1.8 billion;
2. The terms to be negotiated should include the points raised in our evaluations above;
3. This liability is to be fully funded from securitization of Oil Search shares and a combination of loan and State Guarantee'
4. The State should consider giving a Guarantee for refinancing, which will help reduce cost;
5. Other financiers to be invited if negotiations with Citi and UBS AG fail to meet the full refinancing requirement or reduce the cost of borrowing.

My dear Minister, I also advise that the Bank can assist the State to meet the basic refinancing requirements in the negotiation process. The Bank is mindful of the maturity date which is in early March 2014. If given the flexibility with a clear mandate, the bank can assist in negotiating a basic refinancing facility.

On even date, Mr Bakani wrote to the Prime Minister and advised that the two (2) Financiers to lend a loan to re-finance the IPIC Exchangeable Bond fell short of the re-financing requirements and requested that the BPNG be mandated to assist the State in meeting the basic re-financing requirements in the negotiation process.

On 14 January 2014, Mr Kumarasiri requested Mr Bakani to correct his advice to Minister Micah concerning the BPNG's advice on the financing target to be AU \$1.8 Billion which Mr Kumarasiri advised was incorrect and misleading when the actual amount should be AU\$1.681 Billion. Below is the extract of Mr Kumarasiri's letter:

SUBJECT: CORRECTION TO THE PROPOSED FUNDING TARGET OF A\$1.8 BILLION

I refer to the BPNG's analysis contained in your letters (dated 7th January 2014 and 9th January 2014) to the Minister for Public Enterprises and State Investment and our telecom discussions on the same.

I would firstly like to commend the BPNG for its analysis and recommendation of some important areas such as the maturity structure and security arrangements for State's consideration.

There are, however, several incorrect facts in the previous letters to the Minister which I respectfully suggest if you could kindly correct and consider reissuing a new letter with the correct information.

IPBC noted the BPNG's view that the -minimum repayment should cover the principal amount on the loan, the remaining interest and the difference between the strike and

market price on the Oil Search shares and hence proposed the financing target to be A\$1.8 billion.

Principal Amount

The Principal Amount of the exchangeable bonds issued is A\$1,681,000,000 (which is divided into 3362 bonds in the denomination of A\$500,000 each). The Bonds will be exchangeable for a total of 196,604,177 Shares at an exchange price of A\$8.550329 (Strike Price) per share.

The BPNG analysis of Oil Search Proceed of A\$1,680,965,713 is the value of 196,604,177 shares @ A\$8.55 (Strike Price) per share.

Remaining Interest

As advised earlier, the final coupon payment on the IPIC Bond (A\$42,025,000.00) was not factored as part of the refinancing package because funding is already available. The last coupon payment is already in escrow and this has been double counted erroneously. It appears that someone is giving wrong information. There is no need to include the final coupon payment as part of the funding requirement.

Difference between the Strike Price and Market Price (Cash Top)

As indicated above, the Principal Amount of exchangeable bonds issued is A\$1,681,000,000 with a value guarantee of 196,604,177 Oil Search shares at A\$8.550329 (Strike Price) per share.

196,604,177 Oil Search shares at A\$8.550329 (Strike Price) is A\$1,681,030,396.12 while 196,604,177 Oil Search shares at A\$8.16 (market price) is A\$1,604,290,084.32. The value difference between the strike price (A\$8.55) and market price (A\$8.16) is A\$76,740,311.80. The cash top is only required in the event that the Government does not proceed with its intention to buy-back the Oil Search shares.

In this instance, what we are redeeming is the Bonds valued at AUD1,681 billion (i.e. USD500,000 each and 3362 bonds with a value guarantee on OSL Shares AUD8.550329.

Therefore the assumption that PNG Government will require

AUD1.8billion is completely not correct.

Consistent with the BPNG's recommendation for the State/[IPBC] to focus on refinancing the principal amount (A\$1,681,000,000) of the exchangeable bonds, the funding target anticipated is A\$1,681,030,396.12 (196,604,177 Oil Search shares at A\$8.550329) which already covers the cash top up requirements (difference of strike price and market price). IPBC's indication of the repurchase offer to IPIC is based on the position that the exchangeable bonds will be redeemed at 196,604,177 shares x A\$8.550329 and no more than that.

Adequacy of Funding

Based on the above clarification, estimated Total Transaction Cost therefore will be A\$1,681,030,396.12 + interest costs + fees

Adequacy of funding given in Table B comparing with BPNG Analysis is also wrong due to the initial errors in funding requirement analysis as explained above. In IPBC's analysis, all proposals have provided 100% funding to complete this transaction. Further, please see below the funding structures.

Bidder	Financing Structure
ANZ/Barclays	A\$1.25B (US\$1.15B) E/BondA\$500M (US\$470M)
Monetised Collar	
Citi	A\$1.267B Monetised CollarUS\$500M Multi Tranche
Loan (Trance A)	
Hermesley	US1.75B straight loan
UBS	US\$1.3B Prepaid Collar US\$425M Cash
collateral	

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Based on the above, by not converting the USD to AUD, the calculations and incorrect assumptions of funding need analysis, the content in Table B is completely inaccurate.

With regard to the repayment of the loan, IPBC proposed two sources (i) NPCP free cash flow and (ii) proceeds from the landowners call option in NPCP to ensure positive cash

flow for NPCP.

As per the PNG LNG Project Fee Cash Flow Forecast (contained in submission provided to the Bank), NPCP will still have a positive cash flow as it will be only providing A\$810m to service the interest and principal out of the estimated A\$1.8b free cash flow available to NPCP during that period. It is also anticipated that the asset (NPCP) and liability (new borrowing) will be fully transferred to Kumul Petroleum Holdings if established.

Kindly note that the incorrect information used by BPNG to provide its recommendation on the funding target does not justify the need for the State or IPBC to contract a A\$1.8 B debt when it only requires a A\$1.681B debt with the explanation provided above. We will be misinforming the IPBC Board and NEC, as well as the people of PNG with such incorrect information. I am therefore humbly requesting if the Bank can make corrections to its analysis.

Please do not hesitate to contact myself or Mr. Igitu Momo (Chief Policy/Acting C00) on 321 2977 should you require further clarification.

Yours sincerely,

(signed)
Wasantha Kumarasiri, OBE
Managing Director

On 15 January 2014, Minister Micah wrote to Mr Bakani and requested that BPNG provide its final recommendation on the two (2) Financiers, UBS AG and Citi Bank.

On 16 January 2014, Mr Bakani wrote to Minister Micah and requested for all parties including BPNG, Ministry for State Enterprise and State Investments, Independent Public Business Corporate (IPBC) and DoT to meet and draft the Terms of Reference to form the basis of the negotiations with the potential Financiers for the IPIC Exchangeable Bond.

On 17 January 2014, Mr Bakani wrote to Mr Kumarasiri and advised that BPNG's evaluation and recommendations purely formed the advice for the State to consider based on

information provided and that information was communicated to Minister Micah in accordance with the NEC Decision No: 479/2013.

On even date, Minister Micah directed Mr Bakani to furnish BPNG's recommendations by Wednesday 22 January 2014, for the NEC to sanction on Thursday 23 January 2014. Below is an extract.

SUBJECT: REFINANCING THE IPIC EXCHANGEABLE BOND

I refer to your letter of 16th January 2014 and the Prime Minister's letter dated 14 January 2014 regarding the above and your discussions with Secretary of Department of Public Enterprises Dr Clement Waine (PhD). I understand that Bank of PNG requests a clear mandate to negotiate the final structure with either Citi or UBS. Consistent with the NEC Decision (479/2013), BPNG is expected to evaluate the proposals by these two banks only and provide its recommendation to me. Previous NEC Decisions (241/2013) have mandated me to take carriage of all matters pertaining to the redemption of IPIC Exchangeable Bonds. However, in consideration of Prime Minister's letter other options can be considered but only if Citi & UBS fail to deliver the outcomes we are seeking.

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I have mentioned five terms of reference for the BPNG to consider when negotiating with the two banks. These are captured here –

1. Suitable rates of interest in comparison to general borrowing/lending rates in each currency,
2. Less costly in terms of the interest rates and risk assessment of the balance sheet or capital provided,
3. Less stringent security requirements where the certainty of the repayment by the state is covered within the earning stream of the government,
4. Appropriate tenor and repayment targets that closely matching the PNG LNG cash flows as you recommended to ensure NPCP is always cash flow positive during the

transaction period, and

5. No State Guarantee should be available since this may violate the Negative Pledge issue and the PNG LNG project has already been ring-fenced for this reason.

Importantly, as I have mentioned, the bank is willing to pledge its own balance sheet without having to go to the open market for syndication in the interest of time (an effective underwritten transaction) and complied with the above requirements (TOR) should undertake the refinancing.

I expect to receive your final recommendation by Wednesday 22nd January 2014 and for NEC to sanction on Thursday 23rd January 2014.

(signed)

HON BEN MICAH, MP
MINISTER

On even date, Mr Bakani wrote to Ms Natalie Yacoubian of PNP Paribas and requested her to resubmit PNP Paribas proposal incorporating the refined terms.

On even date, Mr Bakani wrote to Mr Mitchell Turner of UBS AG and requested him to resubmit UBS AG proposal incorporating the refined terms.

On even date, Mr Bakani wrote to Mr Philip Graham of Citi Bank and requested him to resubmit Citi Bank proposal incorporating the refined terms.

On 23 January 2014, Mr Bakani wrote to Minister Micah and strongly recommended that the NEC to approach the Abu Dhabi Government and request for an extension of six months in IPIC's right to exercise the Exchangeable Bond option to allow time for BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays to improve on their proposals. Below is an extract of Mr Bakani's recommendation:

RE: REFINANCING THE INTERNATIONAL PETROLEUM INVESTMENT COMPANY
(IPIC) EXCHANGEABLE BOND (EB)

In your letter of the 17th of January 2014, you asked the Bank of Papua New Guinea (Bank) to evaluate the proposals to refinance the IPIC EB by UBS and Citi, and find out if the Bank

can identify other financiers that will proposed superior financing solutions.

The Bank calculated the financing needs of A\$1.7 billion, based on the assumption that

IPIC is accepting an A\$8.55 strike price. The NEC should be informed that to the best of the Bank's information, this is not agreed between IPIC and IPBC.

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In the attached evaluation you will find the Bank's ranking of the proposals by UBS and

Citi, as well as a proposal by BNP Paribas, submitted to the Bank on Tuesday the 21st of

January 2014. As you can see the BNP Paribas is far superior on the pricing (re: all-in cost), compared to the UBS and Citi.

The upside risk in the BNP Paribas proposal is that, at a substantial appreciation of the Oil

Search share price, the share option might be realized by the bond holders. Given that BNP

Paribas has had only four days to prepare and submit their proposal; work on mitigating

that risk might take some time, which we do not have. For the sake of completeness, the

Bank spoke to ANZ/Barclays that submitted the lowest cost proposal. They are not ready

to back the financing by their balance sheet and therefore were excluded in the final

ranking. The ranking in terms of cost between the three remaining financiers is BNP

Paribas, UBS and Citi.

Based on the above, I strongly recommend that the NEC decides to approach the Abu

Dhabi Government (Prime Minister Sheik Mansour Bin Zayed, Government to

Government), and as for an extension of six months in IPIC's right to exercise the EB

option. This will allow time to improve on the proposal by BNP Paribas, the superior

proposals, as well as the UBS, Citi and ANZ/Barclays.

Yours sincerely

(signed)

Loi M. Bakani

On 27 January 2014, Mr Bakani wrote to Minister Micah and

recommended UBS AG to be given the mandate to fund the IPIC Exchangeable Bond re-financing and further advised the State to seek an extension of six months for the re-financing of the IPIC Exchangeable Bond on the NEC's terms.

On even date, Minister Polye wrote to Mr Bakani and requested for a full brief on the implementation of the NEC's Decision No: 479/2013 on the re-financing of IPIC Exchangeable Bond.

On 30 January 2014, Mr Bakani wrote to the Director for Investment Banking UBS AG regarding the re-financing of the IPIC loan and advised that the State accepted its proposal to re-finance the IPIC Exchangeable Bond by a combined structure of a Rollover Collar and Term Loan. Mr Bakani also requested the UBS AG to confirm in writing its commitment to fund the AU\$1.7 Billion IPIC Exchangeable Bond.

On even date, Minister Micah wrote to Mr Bakani and advised that he noted the BPNG's recommendation for UBS AG to be given the mandate for the IPIC Exchangeable Bond and that the State would not seek the six months extension as it will incur additional interest.

On 3 February 2014, Minister Micah wrote to Mr Bakani and advised that he accepted the BPNG's recommendations and that he had requested the National Petroleum Company of Papua New Guinea (NPCP) to lead the re-finance IPIC, Exchangeable Bond process on behalf of the State.

On 7 February 2014, Mr Bakani wrote to Minister Micah and reassured him that the Bank was pleased that he had accepted its recommendation to use UBS AG to re-finance IPIC Exchangeable Bond.

On 23 February 2014, during a meeting in the Grand Papua Hotel, the Prime Minister, Mr Vele and Mr Botten discussed and agreed for the State to buy shares in Oil Search Ltd which was formalised in the Prime Minister's letter dated 26 February 2014 to Mr Botten.

On 24 February 2014, Minister Pato advised His Highness (HH) Sheikh Abdullah bin Zayed Al Nahyan, Minister for Foreign Affairs and Immigration, Abu Dhabi, United Arab Emirates, that the GoPNG wanted to retain ownership of the Oil Search Ltd shares.

On 25 February 2014, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi. These terms were agreed to when the GGPNG signed the document that was witnessed by Mr Okuk.

On 26 February 2014, Prime Minister wrote to Mr Botten and advised that the State desired and was willing to buy shares in Oil Search Ltd. Below is an extra of the Prime Minister's letter:

Dear Mr Botten,

RE: OIL SEARCH LIMITED PLACEMENT

I am writing to you following our discussion in Port Moresby on 23 February 2014 regarding a share placement by Oil Search Limited (–Oil Searchll or –the Companyll) to the State (together, –the Placementll).

This letter is intended to convey the State's willingness to participate in the Placement in order to form a long term investment in Oil Search, with a view to further strengthening our existing relationship.

The State offers to invest an amount of A\$1.225 billion at a subscription price of A\$8.20 per share on the basis that this occurs on or before March 10, 2014.

Given the significance of the transaction, the State wants to ensure that the financing and hedging arrangements that are put in place minimize the cost to the State and also provide for an orderly solution in the market for the Company. Accordingly, the State requests the assistance of Oil Search to help maximize the price achieved

via, hedging arrangements.

The State's commitment to the Placement is subject to the following-

- The PNG Government receiving formal approval from the PNG's National Executive Council, which I intend to secure on or before March 6, 2014, [and signing final binding financing agreements]; and
- Oil Search entering into a contingent placement agreement with UBS, as the State's Strategic Advisor, under which Oil Search will gain the benefit of hedging arrangements that UBS will have undertaken on its behalf.

Please find attached a draft announcement to the market. Please liaise with Mr Dairi Vele, Secretary of the Treasury, who will be co-ordinating the Placement on behalf of the PNG Government.

(signed)
Yours sincerely,
HON PETER O'NEILL, CMG, MP
Prime Minister

On 27 February 2014, four days after the meeting, the Prime Minister wrote to Mr Guy Fowler, MD for UBS AG regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Shares in Oil Search Ltd for AU\$8.20 per share.

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On even date, UBS AG forwarded a Commitment Letter that outlined the terms and conditions on which it was willing to arrange and participate in the Facility and this was agreed to by the State when the GGPNG signed the documents effectively engaging UBS AG as Sole Advisor and Arranger of a loan which documents were witnessed by Mr Carl Okuk.

Comments

Then Minister Polye wrote to BPNG Governor Mr Bakani and requested for a brief on the implementation of the NEC Decision No 479/2013 regarding re-

financing of the IPIC Exchangeable Bond, however Mr Bakani did not respond to then Minister Polye's request.

The engagement of BPNG by the NEC to evaluate the two (2) potential Financiers, UBS AG and Citi Bank, together with ANZ/Barclays consortium and Hermsley was done at the very last minute.

In October 2013, a Committee called the IPIC Exchangeable Bond Committee met and decided to get proposals from potential financiers for the Exchangeable Bond. The Committee got five financiers to submit their proposals and the proposals were then submitted to the NEC to deliberate and make a decision on.

Then on 19 December 2013, the NEC endorsed two financiers, UBS AG and Citi Bank as its potential Bidders for the borrowing to refinance the IPIC loan.

The NEC then forwarded the two (2) Financiers' proposals to Mr Bakani and requested him to evaluate the two proposals in accordance with the information that was provided. BPNG was not aware of the list of Financiers until it was informed of the NEC's Decision directing BPNG to evaluate the two (2) proposals from UBS AG and Citi Bank.

This was unfair and improper as BPNG's impartiality and independence was put at stake. In addition, BPNG was not given ample time and information for it to analyse the preferred financiers and other Bidders' proposals. It would have been better if the NEC have left BPNG out as it had already made up its mind on which financier to engage for the borrowing.

Based on the information before it, BPNG evaluated the potential financiers' proposals and forwarded its recommendation to Minister Micah to take to the NEC for decision making on the refinancing of the IPIC Exchangeable Bond.

Hence, it seemed that BPNG was put into a position where it was not given enough time to properly analyse the preferred financiers' proposals to re-finance the IPIC Exchangeable Bond.

This was confirmed when during his interview Mr Bakani stated that he was not aware of

the list of financiers until he was informed of the NEC decision that directed BPNG to evaluate Citi Bank and UBS AG proposals.

Mr Bakani stated that he was given a task by the NEC through its Decision No: 479/2013 made during its Special Meeting No: 37/2013 and he had to comply with the directions and complete the evaluation and then forward BPNG's recommendation to the NEC.

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Therefore, in light of the above evidence gathered, it seems that BPNG was conveniently used by Mr Vele to legitimise the deal to engage UBS AG to re-finance IPIC Exchangeable Bond.

There is no evidence to confirm that Minister Micah reported back to NEC as per its Decision No: 479/2013 and there is no evidence whether NEC made a decision on the recommendation by BPNG to accept UBS AG's proposal to re-finance IPIC Exchangeable Bond.

[2.1] RESPONSE FROM THE GOVERNOR OF BANK OF PAPUA NEW GUINEA
MR LOI BAKANI

On 24 February 2015, Mr Bakani responded to the Provisional Report. Below is Mr Bakani's response:

Mr. Rgo A. Lua, OBE
Chief Ombudsman
Ombudsman Commission of Papua New Guinea
P. O. 1831
PORT MORESBY 121
National Capital District

Dear Mr. Lua,

PROVISIONAL REPORT ON THE AU\$1.2 BILLION UBS LOAN

I refer to your provisional report furnished to me under cover of your letter of 8 December 2014 regarding the above loan.

I wish to reiterate from the outset once again that neither I nor the Bank of Papua New

Guinea (BPNG) were ever involved in the AU\$1.2 billion Loan from UBS AG to purchase shares in Oil Search Ltd. Our involvement was limited to the evaluation and recommendation of an appropriate financier to finance up to AU \$1.7 billion, the buy-back of IPIC Exchangeable Bond which were pledged in 2009 by the State. Upon the completion of the assessment and submission of our recommendation to the Minister, our involvement ceased.

Your investigation and the subsequent preliminary report, in my view erroneously makes allegations against me for a matter which neither I nor BPNG had any involvement in. That is your investigation was to do with the AU\$1.2 billion loan for the purchase of shares in Oil Search Ltd by the State which I had no part in and yet various allegations have been made against me.

I note from the report that there are two (2) allegations or findings of misconduct against me and I wish to clarify my position on the two (2) findings.

Firstly, your Finding No. 15 alleges amongst others that my conduct was wrong and improper when I failed to provide due diligence check in the process of selecting financiers for the buy-back of IPIC Exchangeable Bond and advised against the appointment of UBS AG as the financier.

The NEC Decision No. 479/2013 directing the Bank to do evaluations was quite specific and

explicit. We were advised to assess and evaluate only 2 financiers, namely UBS and CitiBank. As to how the NEC came up with these 2 financiers was beyond my knowledge.

Even though not specifically directed, but for good governance purposes and to ensure the State was given the best advice, we (the Bank of PNG) went beyond the list of financiers and requested other reputable financiers such as BNP Paribas and ANZ/Barclays to also submit their bids. A thorough interview and evaluation was done on these potential

financiers within a timing constraint, and the UBS AG proposal was recommended to the

State because it was least costly. In the circumstance, it is my strong view that the Bank of

PNG had done the best it could do to meet the State's request.

On your Finding No. 16 wherein it is alleged that I had informed UBS AG that the State had

engaged them to finance the IPIC Exchangeable Bond buy back without the approval of

NEC. Although I now realize that there was no NEC Decision in place to that effect at that

time, I had been advised by Mr. Micah before 30 January 2014, that the State had made that

decision. Note that such advice from the Minister was sufficient for me to form an opinion

that the State had made a decision.

Note also that my letter of 30 January 2014 to UBS AG was necessary as a matter of good

business practice, and as a matter of courtesy and prudent practice I was obliged to inform

UBS AG of the outcome of my assessment. I reiterate that this letter was sent only after I

had been assured by a Minister of State that UBS AG had been selected to finance the IPIC

Exchangeable Bond buy back.

On the whole, I reiterate that these two allegations relate to the AU\$1.7 billion loan to

redeem the IPIC Exchangeable Bond and was not related to the AU \$1.2 billion for the

purchase of shares in Oil Search Ltd. I note that your investigation was in relation to the

AU\$1.2 billion loan and not the AU\$1.7 billion. If for any reason you may have been

informed that the State or any of its agents used our recommendation for the IPIC

refinancing, as an approval for the AU\$1.2 billion loan for the purchase of Oil Search Shares,

then that is misleading and untrue. Our recommendation to use financing from UBS AG

was specifically for the buy-back of the IPIC Exchangeable Bond and not for the purchase

of 10.1% equity in Oil Search Ltd.

I hope the above clarification on these 2 allegations or your Findings are sufficient.

Yours sincerely

signed
Loi M Bakani

Comments

Evidence provided indicate that Mr Bakani and officers within the BPNG conducted due diligence checks and complied with the laws governing their conduct and borrowings, in this case, the borrowing relating to the IPIC Exchangeable Bond.

The findings of facts in regard to the due diligence checks by the BPNG in securing UBS AG as the financier to provide a loan of AU\$1.7 Billion was to buy back the IPIC Exchangeable Bond from IPIC and not for the State to borrow in order to purchase shares in Oil Search Ltd.

In light of Mr Bakani's response to the Provisional Report, the Ombudsman Commission's Preliminary Finding No. 15 in regard to his conduct has been noted and not included in this Final Report.

However, the Ombudsman Commission's Finding No. 16 remains as Mr Bakani's conduct in informing UBS AG that the State had engaged UBS AG as the Lender of the Loan to refinance the IPIC Exchangeable Bond without NEC's approval was wrong and improper.

[3] THE STATE ENGAGES UBS AG TO FINANCE PURCHASE OF NEW SHARES IN OIL SEARCH LIMITED

On 30 January 2014, Mr Bakani advised UBS AG that the State decided to accept the proposal by UBS to refinance the IPIC Exchangeable Bond, by a combined structure of Rollover Collar and Term Loan.

On even date, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd.

On 23 February 2014, during a meeting in the Grand Papua Hotel, the Prime Minister, Mr Vele and Mr Botten discussed and agreed for the State to buy shares in Oil Search Ltd which was formalised in the Prime Minister's letter dated 26 February 2014 to Mr Botten.

On 25 February 2014, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi.

On even date, the GGPNG signed the document agreements outlining the terms and conditions of the engagement of UBS AG which were witnessed by Mr Okuk as Commissioner of Oath.

On 26 February 2014, Prime Minister wrote to Mr Botten regarding the State's willingness to buy shares in Oil Search Ltd without prior NEC approval.

On 27 February 2014, four days after the meeting, the Prime Minister wrote to Mr Guy Fowler, MD for UBS AG regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd for AU\$8.20 per share.

On even date, UBS AG responded by issuing a Commitment Letter to the attention of Mr Vele and incorporated the Equity Derivative Term Sheet and Debt Term Sheet that outlined the terms and conditions which are perceived to be prejudicial to the State, in particularly the acceptance of its appointment as the arranger to arrange and participate in the facility contained in the letter which is disclosed below.

1. Appointment

1.1 The State appoints UBS as the exclusive arranger of the facility to arrange and participate in the facility on the basis of the Commitment Documents

1.2 Unless this mandate terminates in accordance with paragraph 14 (Termination):

(a) no other person shall be appointed as arranger or other similar position

(b) no other titles should be awarded; and

(c) except as provided in the Commitment Document, no other compensation

shall be paid to any other person.

In connection with the Facility or other financial accommodation to be provided to the

State for purposes similar to those for which the facilities are to be provided without the prior written consent of UBS.

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On 5 March 2014, Mr Guy Fowler, Head of Australian Investment Banking, UBS AG wrote to the Prime Minister and requested the Prime Minister's direct intervention to assist with resolving the most challenging issues such as IPIC Exchangeable Bond, Papua New Guinea Liquefied Natural Gas direction-to-pay and Sovereign Bond take-out of the Bridge Loan.

On even date, Mr Fowler responded to the letter of Prime Minister of 27 February 2014, advising him that he had responded to the Prime Minister on the same date.

On 6 March 2014, during the Special Meeting No: 79/2014, the NEC effectively engaged UBS AG to be the Arranger, Financier and Advisor to the loan to purchase new Shares in Oil Search Ltd.

On even date, UBS AG issued a Bridge Takeout Letter to Mr Vele and outlined the terms of fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by GGPNG, and witnessed by Mr Okuk.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On 12 March 2014, UBS AG wrote to the Mr Vele and the State and confirmed the terms and conditions of the financing transaction entered into between the State and UBS AG in respect of Oil Search Ltd shares.

On even date, the loan agreement was executed by the GGPNG and UBS AG witnessed by Mr Okuk.

On 15 May 2014, representatives of UBS AG, Mr Goldsworthy and Ms Raguine wrote to Mr Vele and pointed out to him the breach to clause 5.1(b) of the Agreement by the State, when the State failed to pay the interest for the loan on 14 May 2014 as a result of the Directions issued by the Commission.

Comments

There is no evidence to confirm that Minister Micah reported back to the NEC by the end of January 2014 with the final evaluation report provided by BPNG on the proposal by Citi Bank and UBS AG to re-finance IPIC Exchangeable Bond, as per NEC Decision No: 479/2013.

There is no evidence to confirm whether NEC made a decision to engage UBS AG to re-finance the IPIC Exchangeable Bond as recommended by BPNG.

However on 30 January 2014, BPNG Governor Mr Bakani proceeded to inform UBS AG of it's engagement by the State to re-finance the IPIC Exchangeable Bond without any formal NEC Decision to that effect. Hence, Mr Bakani had no authority from NEC to engage UBS AG.

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It is also noted that Mr Vele was wrong when he effectively engaged UBS AG on 30 January 2014 to act as the Sole Financial Advisor and Sole Lead Arranger in relation to management of the investment of the State in Oil Search Ltd without NEC Decision to that effect. He also had no authority from the NEC to engage UBS AG in January 2014.

It was evident that the DoT made upfront payments as fees to UBS AG

in order to secure the loan without the CSTB engaging the UBS AG as the Advisor and Arranger for the Loan.

It was also noted that the GGPNG signed the documents/Agreement outlining the terms and conditions of engagement of UBS AG on 25 February 2014 witnessed by Mr Okuk prior to the NEC's Decision to engage them on 6 March 2014.

It is noted that the NEC's original intention was to engage a Financier re-finance the IPIC Exchangeable Bond, however that changed after Prime Minister met with Mr Botten, Mr Aopi and Mr Vele on 23 February 2014 and made commitment for the State to buy shares from Oil Search Ltd and to engage UBS AG to finance the purchase of the shares without NEC's prior approval. This arrangement was subsequently approved by the NEC on 6 March 2014.

[4] BUY BACK OF IPIC EXCHANGEABLE BOND BY THE STATE FAILS

In 2009, the GoPNG mortgaged its shares in Oil Search Ltd with IPIC and acquired the needed funding and financed the PNG LNG project. An Extract of the IPIC Loan Agreement is attached as an appendix to this Report.

On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved BPNG to evaluate the proposals from Citi Bank, UBS, ANZ/Barclays and Hermsley in relation to the re-financing of IPIC's Exchangeable Bond.

On 4 February 2014, the Prime Minister wrote to HH Sheik Mansour bin Zayed Al Nahyan and advised that the GoPNG wanted to retain a significant shareholding in Oil Search Ltd and appointed the UBS AG as the Financial Advisor, Underwriter and Arranger of a financing package to facilitate the Exchangeable Bond and further requested for a six month extension for the State to finalise all legal and financial agreements to refinance the IPIC Exchangeable Bond.

On 23 February 2014, the Prime Minister, Mr Botten, Mr Aopi and Mr Vele met for coffee at Grand Papua Hotel and it was during this meeting that the decision was made for the State to acquire 149, 390, 244 shares which translates to 10.01 % shareholding in Oil Search Ltd.

On 24 February 2014, Minister Pato on behalf of the GoPNG requested

HH Sheikh

Abdullah bin Zayed Al Nahyan, Minister for FAI, Abu Dhabi, United Arab Emirates to support a decision for GoPNG to redeem the Exchangeable Bond in cash and retain ownership of the Oil Search Ltd shares and that an extension of six months be granted to improve on the financing terms with the banks to provide the funds to pay IPIC.

Comments

In 2009, the State signed the IPIC Loan Agreement where it mortgaged its shares to finance the PNG LNG Project and when the loan matured the GoPNG would go back and renegotiate the terms and conditions of the loan to buy back the Oil Search Ltd shares.

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Minister Pato led the GoPNG team to Abu Dhabi to negotiate with IPIC in order for the GoPNG to buyback the IPIC Exchangeable Bond which fell through as the Arabs wanted to retain the shares in Oil Search Ltd.

It appears that the IPIC may not have responded to the Prime Minister's letter dated 4 February 2014, hence the negotiations fell through as the Arabs wanted to retain its shares in Oil Search Ltd.

This triggered Mr Botten to approach the Prime Minister, and Mr Vele to negotiate for GoPNG to be a substantial Shareholder in Oil Search Ltd that would prevent an imminent takeover by IPIC of Oil Search Ltd.

Therefore, the fear of a takeover by IPIC led Oil Search Ltd to arrange an alternative arrangement that was mooted by Mr Botten and the Prime Minister and that was to sell Oil Search Ltd shares to the GoPNG.

[5] THE PRIME MINISTER'S MEETING WITH MR PETER BOTTEN, MANAGING DIRECTOR OF OIL SEARCH LIMITED

On 23 February 2014, there was a meeting in the Grand Papua Hotel where the Prime Minister, Mr Vele, Mr Botten and Mr Aopi met, discussed and agreed for the State to buy

shares in Oil Search Ltd which was formalised in the letter dated 26 February 2014.

On 26 February 2014 three days after their meeting at Grand Papua Hotel in Port Moresby, the Prime Minister wrote to and informed Mr Botten that he wanted the State to purchase shares in Oil Search Ltd. Below is an extract of the Prime Minister's letter to Mr Botten:

I am writing to you following our discussion in Port Moresby on 23 February 2014 regarding a share placement by Oil Search Limited (Oil Search or the Company) to the State (together the Placement).

The letter is intended to convey the State's willingness to participate in the Placement in order to form a long term investment in Oil Search with a view to further strengthening our existing relationship.

The State offers to invest an amount of A\$1,225 Billion at a subscription price of A\$8.20 per share on the basis that this occurs on or before March 10 2014.

Given the significance of the transaction, the State wants to ensure that the financing and hedging arrangements that are put in place minimize the cost to the State and also provide for an orderly solution in the market for the company. Accordingly the State request the assistance of Oil Search to help minimize the price achieved via hedging arrangements.

The State's commitment to the Placement is subject to the following-

The PNG Government receiving formal approval from PNG's National Executive Council, which I intend to secure on or before March 6, 2014, [and signing final binding financing agreements]; and

Oil Search entering into a contingent placement agreement with UBS, as the State's strategic Advisor under which Oil Search will gain the benefit of hedging arrangement that UBS will have undertaken on its behalf.

Please find attached a draft announcement to the market. Please liaise with Mr Dairi Vele, Secretary of the Treasury who will be coordinating the Placement on behalf of the PNG

Government.

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Yours sincerely,

(signed)
Hon Peter O'Neil, CMG, MP
Prime Minister

On 27 February 2014 four days after the meeting, the Prime Minister wrote to Mr Fowler regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd for AU\$8.20 per share. The letter reads:

I write to you regarding the proposal for UBS AG, Australia (-UBSII) to provide funding facilities to The Independent State of Papua New Guinea (the -Statell) in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Limited (-Oil SearchIII) at A\$8.20 per share (-TransactionII).

I confirm that the commercial terms contained in the enclosed draft documents dated 27 February 2014 (the -documentII) are expected to be acceptable to the State but are subject to the approval process described below:

- Confirmation letter from UBS to be counter-signed by the State, which annexes the Equity Derivative Term Sheet and Debt Term Sheet: and
- Subscription agreement between Oil Search and the State and the associated side letter relating to hedge disruption events.

I also confirm that the Transaction and the drafts of the documents, together with any other ancillary documents, will be taken to the National Executive Council of the State for approval at its next meeting and that the necessary approvals required for the State to enter into the above agreements will be sought at that meeting, such that the Documents can be executed on or before 6 March 2014.

Given that Oil Search requires certainty of funding in respect of the PRL15 acquisition,

should the documents not be approved and executed by the State on or before 6 March 2014, the State acknowledges that the placement to the State will not proceed and will be replaced by a placement by Oil Search to UBS.

Yours sincerely

(signed)
Peter O'Neill, CMG, MP
Prime Minister

On 22 December 2014, Young and Williams Lawyers acting on behalf of the Prime Minister forwarded a letter to the Commission and stated that the following:

Conclusion

For the record, our client refutes any improper or wrong conduct as asserted by you or otherwise in relation to the subject matter of the investigation.

42. This is an open letter and we reserve the right to bring it to the attention of the Court should the need arise. We also reserve the right to draw to the attention of the Court the failure of the Ombudsman Commission to provide the written advice and undertaking requested in this letter.

43. In short, the purported investigation of our client by the Ombudsman Commission and issuance of the Report is fatally flawed. The investigation was conducted, and the Report issued, in circumstances where the Ombudsman Commission has failed

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to comply with its Constitutional obligations and duties. In fact, the investigation has been conducted unconstitutionally, as has the issuance of the Report.

44. If the Ombudsman Commission contends otherwise, it should, given the serious matters raised in this letter, seek an authoritative determination from the Supreme Court on questions relating to the interpretation or application of provisions of Constitutional Laws.

Comments

The maturity date of 5 March 2014 for the IPIC loan was approaching and both HH Sheik Mansour bin Zayed Al Nahyan or HH Sheik Abdullah Al Nahyan had not responded to the GoPNG's request for an extension of another 90 days or for the State to pay cash for the Exchangeable Bond.

The nonresponse resulted in the negotiations failing, which meant that IPIC could takeover Oil Search Ltd as the major stakeholder and this made Oil Search Ltd panic.

The Prime Minister, Mr Vele, Mr Botten and Mr Aopi met, discussed and agreed for the State to purchase 10.01% shareholding which is equal to 149,390,244 substantial shares in Oil Search Ltd.

Commission investigation revealed that technical officers from the relevant State Agencies were not consulted or involved in the whole matter.

The Prime Minister and Oil Search Ltd reached an agreement (subject to approvals) under which the State will be issued 149.39 million shares in Oil Search Ltd at AU\$8.20 per share and the Prime Minister approved the announcement by Oil Search Ltd of its share placement with the State without prior NEC approval.

On 27 February 2014, (four (4) days after their meeting with the Prime Minister) Oil Search Ltd shares trading were suspended ahead of its announcement in the Australian Stock Exchange.

On even date, Oil Search Ltd announced that it had agreed to acquire a 22.835% gross interest in Petroleum Resources Licence (PRL) No. 15 (Elk/Antelope) from the PacLNG Group Companies for US\$900 million to be funded through a placement of new shares to the State.

On the same date (ie 27 February 2014) the Prime Minister also wrote to UBS AG regarding the funding facilities to the State in connection with State's purchase of the shares in Oil Search Ltd.

The proper thing for the Prime Minister to do in this circumstances

was to bring the proposals for State's purchase of 10.01% shareholding in Oil Search Ltd and for UBS AG's funding facility in connection with State's purchase of new Oil Search shares, to the NEC for its approval first, which did not happen until later on 6 March 2014 when NEC endorsed the commitments made by the Prime Minister to Oil Search Ltd and UBS AG.

[6] THE ACTING SECRETARY, DEPARTMENT OF TREASURY, INVOLVEMENT
IN THE WHOLE UBS AG TRANSACTION

On 6 August 2013, the NEC appointed Mr Vele as the Acting Secretary for DoT. Between 12 and 16 August 2013, Mr Vele met with officials of various Financial Institutions in Australia which included UBS AG, Morgan Stanley, JP Morgan and Credit Suisse.

On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.

On 27 January 2014, Mr Bakani recommended the UBS AG to Minister Micah.

On 30 January 2014, Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

On even date, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to IPIC of Abu Dhabi.

On 23 February 2014, the Prime Minister, Mr Vele, Mr Botten and Mr Aopi met at the Grand Papua Hotel and agreed to commit the State to purchase shares

in Oil Search Ltd
which was formalised in the Prime Minister's letter dated 26
February 2014 to Mr Botten.

On 25 February 2014, UBS AG wrote to Mr Vele and outlined the terms
of engagement of
UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was
effected on 30
January 2014, in relation to the management of the investment of the
State in Oil Search Ltd
and associated matters flowing from the issuance in 2009 of
Exchangeable Bond in respect
of the State's 196.6 million shares in Oil Search Ltd to the IPIC of
Abu Dhabi. These terms
were agreed to when the GPNG signed the document that was witnessed
by Mr Okuk.

On 26 February 2014 four (4) days after their meeting at Grand Papua
Hotel in Port
Moresby, the Prime Minister wrote to Mr Botten expressing the
State's willingness to
purchase shares in Oil Search Ltd.

On 5 March 2014, Mr Vele wrote to Mr Rolpagarea and stated that the
documents related to
a proposed transaction whereby the State entered into financial
arrangements to fund the
acquisition by the State of 149,390,244 shares in Oil Search Ltd and
requested for his legal
clearance. Pacific Legal Group Lawyers representing Mr Vele
delivered 28 documents
pertaining to the UBS AG loan that included the Bridge Facility
documents, Collar
documents, Subscription documents, fee letters, Authorisations and
other related
documents and Engagement letter and related letters to Mr Rolpagarea
for his legal
clearance. The draft loan transaction documents and draft NEC Policy
Submission
documents were delivered to Mr Rolpagarea very late at night by
Pacific Legal Group
Lawyers, purportedly engaged by Mr Vele.

On even date, Mr Rolpagarea wrote to Mr Vele and requested
confirmation and clear
instructions from him regarding the engagement of Pacific Legal
Group Lawyers to act on
behalf of the DoT as the legal firm had drafted an NEC Policy
Submission that proposed for
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the State to enter into financial arrangements to fund the
acquisition by the State of

149,390,244 shares in Oil Search Ltd. Mr Rolpagarea advised among other matters that Section 209 of the Constitution also requires that Parliament's approval be obtained for these Bridge and Collar Loans which total up to AU\$1.225 Billion through the Budgetary process and that Mr Vele take appropriate steps to facilitate this constitutional requirement. He advised Mr Vele to proceed to NEC with the documents to be considered taking into account the advice he had given.

On 6 March 2014, Mr Vele was called to attend the NEC Special Meeting No: 08/2014 to clarify the contents of the NEC Policy Submission No: 67/2014. The NEC subsequently made a Decision No: 79/2014 among other things to engage UBS AG to be the Arranger, Financier and Advisor for the Loan to purchase 149,390,244 new shares in Oil Search Ltd; appointed Petromin as the State's subscriber and nominee for the transaction; endorsed NPCP to execute the Payment Direction Deed concerning payments from PNG LNG Global Company (GloCo) with approval of Minister for Finance on recommendation of IPBC and endorsed the issuance of COI to tender by the CSTB under Section 40(3) of the PFMA and an APC by the Secretary for Finance under Section 47B of the Public Finance (Management) Act 1995.

On even date, UBS AG issued a Bridge Takeout Letter to Mr Vele and outlined the terms of fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by GGPNG, and witnessed by Mr Okuk.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, Mr Vele advised Treasury Minister Polye that the Loan would not affect the State's debt program and that Petromin was the subscriber and nominee of the State for the

Transactions.

On even date, Mr Vele requested Mr Eludeme CSTB to approve the request for COI at the earliest to cover the advisory costs. Mr Vele then explained to Mr Eludeme that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd.

On 7 March 2014, Mr Vele wrote to Mr Rolpagarea and requested as a matter of importance and urgency for the legal clearance to be issued on the State's borrowing of loan arrangements.

On 8 March 2014, Mr Vele sent an electronic mail to Dr Thomas Webster, then Chairman for IPBC Board and requested for the documents to be progressed to the IPBC Board for its consideration and approval. The electronic mail included electronic copies of documents that Mr Vele had prepared for the IPBC Board and NPCP Board to endorse and approve.

On 10 March 2014, Mr Vele confirmed with Mr Rolpagarea that the GGPNG and Minister for Treasury were to execute the transaction documents to purchase Oil Search Ltd shares

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on behalf of the State, knowing with full knowledge that IPIC rejected GoPNG to buy the Exchangeable Bond on 24 February 2014.

On even date, Mr Vele wrote to Dr Ngangan and requested that he approve the payment made to UBS AG in relation to the acquisition of the new shares in Oil Search Ltd.

On 12 March 2014, UBS AG wrote to Mr Vele and the State and confirmed the terms and conditions of the financing transaction entered into between the State and UBS AG in respect of Oil Search Ltd shares.

On 14 May 2014, Mr Vele wrote to the Commission and advised that the State was required to make periodic interest payments to UBS AG as per the terms and conditions of the Loan Agreement.

On even date, the DoT raised Finance Forms number 3 & 4 (FF3& FF4) indicated AU\$2,261,938.36 which is about K5,543,966.57 was paid to UBS AG.

On 15 May 2014, representatives of UBS AG, Mr Goldsworthy and Ms Raguine wrote to Mr Vele and pointed out to him the breach to clause 5.1(b) of the Agreement by the State, when the State failed to pay the interest for the loan on 14 May 2014 due to Directions issued by the Commission under the Leadership Code.

On even date, Mr Vele wrote to the Commission and requested clearance to allow the DoT to process and pay the interest payment to UBS AG.

On 16 May 2014, Ms Betty Palaso, Commissioner-General for the Internal Revenue Commission (IRC) issued a Tax Clearance Certificate to the DoT allowing the Department to transfer or remit moneys for the purpose of payment of interest on the UBS AG Loan.

On even date, a copy of the Notification (transmission) of Original was produced that indicated that the BPNG transferred AU\$2,261,938.36 to the Reserved Bank of Australia.

On 5 June 2014, Mr Eludeme, the Chairman of CSTB confirmed that he approved a request for application for COI that was forwarded to him by Mr Vele.

On 6 June 2014, Mr Vele filed his affidavit pertaining to the National Court proceedings against the Commission and the State.

On 4 July 2014, Mr Vele stated in his letter to the Commission that the UBS loan transaction was constitutional and have been lawfully undertaken by the State and its related parties in every aspect.

Comment

Mr Vele was appointed by the NEC as the Acting Secretary for DoT on 6 August 2013. He was not a career public servant and hence was not very familiar with Government's public finance management process and procedures and the public service machinery as can be seen from his handling of the UBS AG Loan transaction.

Between the period 12 – 16 August 2013, soon after Mr Vele was appointed as Acting

Secretary for DoT, he engaged in discussions with officials of various Financial Institutions in Australia which included UBS AG, Morgan Stanley, JP Morgan and Credit Suisse.

On 19 December 2013, NEC during a Special Meeting No. 37/2013 decided in Decision No: 479/2013 to approve BPNG to provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond and report back to Minister for Public Enterprises and State Investments by end of January 2014.

On 27 January 2014 BPNG Governor, Mr Bakani recommended UBS AG to Minister Micah for him to report back to NEC. There is no evidence to confirm that Minister Micah reported back to NEC on BPNG's recommendations on engagement of UBS AG or that NEC approved the engagement of UBS AG to re-finance IPIC Exchangeable Bond.

Hence, Mr Vele had no authority and was wrong when he engaged UBS AG on 30 January 2014, as the Sole Financial Advisor and Sole Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance of the 2009 IPIC Exchangeable Bond, when he had no authority from the NEC at that point in time to engage UBS AG.

The Commission's investigation revealed that Mr Vele engaged Legal and Financial Consultants to facilitate the Loan Transaction to purchase shares in Oil Search Ltd without complying with the tender procedures and requirements for issuance of COI under the Public Finance (Management) Act 1995 and Finance Management Manual. The preparations of the NEC Submission on this matter were done by the Consultants engaged by him.

The Financial and Technical Consultants were UBS AG, KPMG and Pacific Capital Ltd whilst the Legal Consultants involved were Pacific Legal Group Lawyers, Norton Rose Fulbright of Australia and Ashurst that acted for UBS AG. The Law Firms involved were not cleared by the Attorney-General to act on behalf of the DoT and the State in accordance

with Section 8 of the Attorney-General Act 1989.

The Commission's investigation revealed that the original intention of the State to engage UBS AG on 30 January 2014 was as Financier of AU\$1.7 Billion Loan for the buyback of the IPIC Exchangeable Bond.

However, when the IPIC Exchangeable Bond buyback negotiations failed, the Prime Minister committed the State to purchase new shares from Oil Search Ltd with Loan from UBS AG without prior approval of NEC and National Parliament. Hence the original intention of the State engaging UBS AG to refinance IPIC Exchangeable Bond was cancelled and the Prime Minister and Mr Vele indicated to Oil Search Ltd that the State wanted to purchase new shares from Oil Search Ltd.

The Commission's investigation also revealed that the engagement of UBS AG as the Lender of the Loan to the State to purchase shares in Oil Search Ltd came about as a result of Mr Vele's earlier engagement of UBS AG in January 2014 as the Sole Financier and Sole Lead Arranger in relation to management of investment of the State in Oil Search Ltd and associated matters flowing from the issuance of 2009 IPIC Exchangeable Bond and their engagement was done without complying with the tender process and the requirements for issuance of COI under the Public Finance (Management) Act 1995 and Finance Management Manual.

It is noted that Mr Vele was present at the NEC Meeting on 6 March 2014 when NEC's Decision No: 79/2014 was made to borrow AU\$1.239 Billion from UBS AG to purchase 149,390,244 new shares from Oil Search Ltd however he failed to advise NEC of the State Solicitor's advice on the requirement to comply with Section 209 of the Constitution.

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This was unfair and unethical business engagement by Mr Vele and the State against other Bidders who had shown interest in providing a loan package for the State.

It was also a breach of Section 40(1) of the Public Finance (Management) Act 1995 and Part 13,

Division 4, Clause 13 of the Finance Management Manual as proper procedures were not complied with and that the COI was applied retrospectively.

The five (5) Consultants; Norton Rose Fulbright of Australia, Pacific Legal Group Lawyers, Pacific Capital Ltd, Ashurst Lawyers and KPMG were all engaged by Mr Vele prior to the awarding of the contract by the CSTB and this was in breach of Section 40(1) of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clause 13 of the Finance Management Manual.

Part 13, Division 4, Clause 13 of the Finance Management Manual states:

13. A Certificate of Inexpediency cannot be issued to retrospectively cover a contract already executed.

Therefore, Mr Vele's statement that proper processes and procedures were complied with for the engagement of the Consultants was not correct and was done in breach of the above stated laws.

The Commission's investigation also revealed that Mr Vele and DoT did not prepare the NEC Policy Submission on the UBS Loan Transaction to purchase new shares in Oil Search Ltd. The NEC Policy Submission and the Transaction Documents were prepared by the Legal and Financial Consultants engaged by Mr Vele. Apart from Mr Vele, DoT officials were not involved in the negotiations for the UBS AG loan to purchase new shares in Oil Search Ltd nor the preparation of the NEC Policy Submission and the Transaction Documents.

[6.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to Part 1 [6] of the Provisional Report. Below is the extract from his response.

FINDINGS OF FACTS

PART 1 THE DECISION OF THE NEC TO BORROW FROM UBS AG AND ITS IMPLEMENTATION

Sub Parts [1] – [5] and [7 – 13] response included in Response Below

Sub Part [6] MR DAIRI VELE'S INVOLVEMENT IN THE WHOLE UBS TRANSACTION

Comment

There are three main errors which make these findings of fact distorted, untrue and without proper basis:-

(b) A superficial and limited investigation into the facts was conducted by the Ombudsman Commission, with limited witnesses interviewed coupled with a refusal by the Ombudsman Commission to receive witness testimony from numerous involved parties such as UBS AG, or any of the retained advisors.

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(c) An assumption by the Ombudsman Commission that the decision on financial advisors and lenders was last minute.

(d) Assumptions by the Ombudsman Commission as to the legal requirements for the State when seeking and obtaining an overseas loan pursuant to Section 209 of the Constitution and other Legislation – and the application of those assumptions in this Report—in circumstances where the issue as to compliance with the legal requirements for such a loan is before the Supreme Court for Constitutional Interpretation in SCCOS 4 of 2014 and is sub judice.

Response

Section of Advisors commenced December 2012

1. The selection of UBS AG as financial advisors and lenders was the end of a process that commenced in late 2012, not a process that commenced in December 2013.

2. In 2009 the State through IPBC and IPIC had obtained a loan to purchase the State's interest in the PNG LNG project by virtue of the issue of an Exchangeable

Bond.

3. The loan had been secured by the State's shares in Oil Search Limited and mortgages over all the State owned Enterprises. The maturity date of the Bond was 5 March 2014. Under the terms, IPIC could take on the maturity in repayment of the loan either the shares, cash and share or just cash. IPIC had to make an irrevocable election 2 weeks prior to maturity date as to what it wanted in repayment.

4. As the State through IPBC would need to seek a large funding amount to repay the loan, a long lead time was needed for the planning.

Appointment of Legal Advisors by IPBC in 2012

5. In addition to its own investigations, IPBC retained Norton Rose Fulbright Lawyers (NRF) on 5 December 2012 to provide legal advice on the IPIC Bond Project (see Retainer letter 5 December 2012 NRF marked -All). The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advise options available to IPBC for refinancing of the loan and or a restructure of the terms of the existing loan. Specifically it was recognised in the scope of work that -a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares.

6. It was always at the forefront of concerns of the State - through IPBC - to retain ownership of the Oil Search shares.

Dairi Vele - appointed Director Gas Project Co-Ordination Office

7. I had been appointed in December 2011 as Director of the Gas Project Co-ordination Office where I was essentially the Project Manager for the State of the PNG LNG Project.

8. During 2013, in my roles at the Gas Office and NPCP I spent a lot of time negotiating on behalf of the State and IPBC with IPIC about whether it would convert the bond and thereby retain the Oil Search shares.

9. Because of the terms of the Convertible Bond, I was aware that IPIC might elect to retain the shares and therefore I gave some thought to other methods by which PNG could obtain an interest in Oil Search. In my view the other ways to obtain an

interest in Oil Search was by a private placement or alternatively on the public market. I considered that a private placement (if available) was a better option as buying a large amount of shares on the public market would lead to an increase in share price.

Cabinet confirms that IPBC is to be Agency to Review the IPIC Bond

10. On 5 April 2013, the Cabinet explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds. [see NEC meeting 03/2013, decision no. 117/2013 marked -BII]

Appointment of Members of IPIC Exchangeable Bond Review Committee – Mr. Dairi Vele

11. In July 2013, Cabinet determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. Cabinet appointed a committee under the direction of IPBC and the Gas Projects Coordination Office (myself), the Secretary of Public Enterprises, the Secretary of

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Treasury (or his nominee), the State Solicitor (or his nominee). [See NEC Decision 241/2013 at meeting 20/2013 attached marked -CII].

12. Part of my role in the Committee, in my capacity as Director of the Gas Project Coordination Office, was to review and evaluate the process that the Committee had considered to retain an interest in Oil Search. I drafted a discussion paper about the approach to take if IPIC was prepared to accept a cash payment in exchange for the shares. I set out in the paper that whilst buying the shares back from IPIC was the State's first plan for acquiring shares in Oil Search, its other option was to buy them from the market. This was for the purpose of seeking views from financiers into the future. [See Discussion Paper Dairi Vele marked -DII].

13. At the time I was appointed Chair, the Committee had already solicited some offers from various banks and I raised my concerns that the work that had been done up to that time was in my view quite limited.

14. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as members of Treasury, and the Committee, had limited financial experience. Norton Rose Fulbright, as sent out above, were first engaged by IPBC on these issues on 5 December 2012 and continue to be engaged by IPBC. I therefore referred to them for advice on these matters given the committee was under the Direction of IPBC.

Appointing Acting Secretary for Treasury

15. On 6 August 2013, I was appointed Acting Secretary for Treasury.

16. We, the IPIC Bond committee, had already set up meetings with various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond.

17. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to Cabinet decision No. 241/2013.

Consultations with Banks

18. Accordingly, between 12 August and 16 August 2013, I travelled to Sydney and attended the arranged meetings with the representatives of the advisory sections of UBS, Morgan Stanley, ANZ, JP Morgan, Citigroup and Credit Suisse. I provided the discussion paper to those banks about the approach to take if IPC was prepared to accept a cash payment in exchange for the shares. At that stage, we were looking at the transaction from an advisory perspective and not seeking to obtain a loan from these banks.

19. In my discussions with those banks I told each of the banks words to effect that while buying the shares back from IPIC was the State's first plan for acquiring shares in Oil Search, its other option was to buy them from the market. This also can be seen in the discussion paper.

20. In those discussions with the bank, it was also contemplated that if the Oil Search share price went down below \$8.55 and that if the shares were returned to the State, then the State would still need to pay the difference between the market price at that time and the price under the

Convertible Bond.

21. The discussion paper also proposed as an option, a funding facility to enable the State to buy Oil Search shares on market. Such a facility would have allowed the State to buy Oil Search shares on occasions when they fell below \$8.55 during the period before the IPIC Convertible Bond expired. Such a facility would mean that in the event that IPIC returned the shares to the State then the State would simply have additional shares which was in its interest or alternatively, in the event that IPIC retained the shares it would result in the price of the Oil Search shares being pushed up and thereby reducing the amount that the State had to pay IPIC if the share's market price was less than the amount agreed to in the Convertible Bond at the time it expired.

22. While the discussion paper did not specifically deal with other options to acquire Oil Search shares if IPIC decided to retain them, it was clearly raised at my meetings with the banks that thought needed to be given to this.

23. The banks were approached in their advisory capacity and they were approached to look at searching for options for acquiring the shares. At that stage they were not approached in order to provide specific products, though clearly the banks approached would also be in a position to provide funds at a later stage.

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24. I invited other meetings of the IPIC Committee to attend these meetings but none of the members were available to come with me. As a result I attended these meetings by myself.

25. During these meetings on 12-16 August 2013 I formed the view that UBS was the most appropriate bank to provide advice to the State. This was on the basis that they had considered in the most detail other options available to the State if IPIC were to decide to retain the shares under the Convertible Bond. I recall that none of the other banks had particularly considered other options despite me raising this as an issue in the first round of meetings.

26. In my discussions with all of the prospective banks, I made it clear that there were to be no local subcontractors or intermediaries involved in the arrangement that the State might enter into. I made clear that any proposal to use local subcontractors would not be acceptable to me or to the State.

27. I knew that Oil Search had a close working relations with one of the banks approached Morgan Stanley, the representatives seemed to –parrotll the views previously expressed to me by Peter Botten of Oil Search. I considered that given this approach they may put the interests of Oil Search before the interests of the State and for this reason was very reluctant to use Morgan Stanley.

28. After these meetings I reported back to the Committee members orally. I advised members of the Committee words to the effect that: of the all the banks that had made proposals to the State, I thought that UBS was the one with the best understanding of the issues.

29. Additionally, I thought it was necessary to make a decision about which bank the State would have advising it. The discussions with the banks could only go on for so long in my view because otherwise too much information about what the State intended to do may be revealed to the banks and they may end up competing against the State.

30. Except for ANZ, all of the banks that had made a pitch to the State had proposed a collar and bridge loan structure of some kind. Whilst the structures of the proposed loans were slightly different, essentially all of the banks were making similar proposals. Some banks offered lower rates than others and offered the loan over a longer period, but this reflected the various levels that could be used to structure a loan.

31. The bridge loan was a fairly straightforward loan whereby the bank would lend money in return for holding a certain number of shares as security. The collar loan involved the bank making an upfront payment, with the remainder of the shares being transferred to that bank with it entitling the bank to use those shares as part of its hedging activities.

32. A consortium of ANZ and Barclays Bank came with an offer to fund that did not involve a

derivative and was at a lower rate. However, I was firmly of the view, based on my experience with other banks, that their proposal would not pass the credit committee and therefore was not a viable option.

33. Other members of the committee favoured those banks that had proposed a structures loan with lower interest rates but my view was that those members of the Committee didn't understand the downsides to the arrangements proposed by those banks. I had views about what kind of loan repayments the economy could handle as well as what would be politically acceptable to Cabinet. My view was that the other members of the Committee did not understand how to compare the various products on offer. At the end of the day, the Committee recommended to IPBC that UBS AG was the appropriate institution.

Cabinet Determines UBS AG and Citibank to be further evaluated.

34. When the matter was put to Cabinet in December 2013, UBS AG was recommended to be the Financial Advisor and Lead Arranger, but Cabinet wanted to also consider proposals from Citibank which had not been included in the first round of discussions.

35. Citibank provided a very similar proposal to UBS but I still regarded UBS to have the better understanding of the issues for the State and most consistent with the terms of reference that were developed in January 2014.

36. To assist in a final decision being made, the Bank of Papua New Guinea (BPNG) was asked by Minister Micah to review and evaluate the proposals from the banks in relation to the structure of any loans for the buyback of Oil Search shares. Cabinet authorised the bank of PNG to provide evaluations of the proposals put by both UBS and Citibank. [Cabinet Decision 479/2013 on 19 December 2013].

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37. During the process of BPNG reviewing the bank proposals, I was informed that BNP Paribas had been approached by BPNG to also make a proposal to the State. I recall that their pitch was a heavily qualified bid and not particularly thorough. I am aware

that certain persons with BPNG had regularly used BNP Paribas and meetings were held with BNP Paribas in Singapore but this bank was not ultimately successful. BPNG ultimately concluded that UBS was the bank that should be used, with the bank providing its recommendations to the Minister for Public Enterprise and State Investment on 23 January 2014.

38. In January 2014, the Minister for Public Enterprises was going to travel to Abu Dhabi to negotiate with IPIC about buying shares back from it. I was concerned about going to Abu Dhabi unprepared in terms of the State's financial arrangements and so advised the Minister that I did not want to go on this trip. I understand from discussions with the Minister for Public Enterprises that representatives of the State still ended by going to Abu Dhabi. The State did not have any of the finance arrangements in place and so there was little to negotiate about. I understand from discussion with the Minister for Public Enterprises that the Sheik did not give any indication as to whether the shares would be retained by IPC or whether they were prepared to accept a cash settlement in exchange for the Oil Search shares.

39. It was my view that it was necessary to have the financing arrangements in place for the buyback of the IPIC shares before the State could approach and negotiate with IPIC.

40. I did not have any pre-existing relations with UBS AG (Aust) prior to my discussions with them around the purchase of the Oil Search shares. I was introduced to Paddy Jilek of UBS by Minister Micah. I was also provided with the name of some other UBS officials by staff at Norton Rose Fulbright but as Paddy Jilek was more senior, I ended up having discussions with him.

41. It is simply not correct to say that the process for selecting financial advisors and arrangers were left to the last minute – the process had commenced in 2012.

42. BPNG was tasked with giving an evaluation on Banks already investigated at length by IPBC and their IPIC committee. It was consultation as required under the Constitution and it took place. There were commercial deadlines in place that needed to be adhered to – and public service institutions needed to lift their work performance to meet those deadlines.

43. The impression given in the Provincial Report is that some banks were suggested to Cabinet in December 2013 out of the blue – and BPNG was the only entity that had any dealings with the banks or that were to formulate any evaluation. This is just not correct – the preparation and proposals were put to BPNG for their opinion, not for them to commence the whole process again. The Ombudsman Commission report completely fails to include all the facts and consequently the version presented is distorted and untrue.

DECISION OF STATE TO PURCHASE OIL SEARCH SHARES

The Decision to borrow from UBS AG and to purchase Oil Search Shares was made by NEC on 6 March 2014 and no earlier agreement was made.

44. The finding of fact by the Ombudsman Commission that on 23 February 2014, the Prime Minister, Mr. Botten, Mr. Aopi and I decided for the State to buy 149,390,244 shares or that we agreed to commit the State to purchase shares in Oil Search Ltd is as false as it is illogical.

45. The decision to hold Oil Search Shares was one taken by the government years ago, since before it was Oil Search Ltd, but Origin.

46. The desire by government to retain Oil Search shares has been a constant, as evidence by all steps taken in this process – commencing with the decision of IPBC to retain Norton Rose Fulbright in December 2012 to receive on the IPIC Bond Issue and in the clear words of the Cabinet Decisions 117/2013 made 5 April 2013 and No. 241/2013 made 9 July 2013.

47. The possibility of such purchase was included in the discussion paper that I placed before all the Banks in the meetings 12 – 16 August 2013.

48. It is mischievous to suggest that the decision taken by the Cabinet to purchase Oil Search shares was somehow engineered by the Prime Minister for the benefit of Oil Search. That conclusion is simply not supportable on the facts.

Meeting in Abu Dhabi and Notification IPIC to take shares in payment

49. I was asked by the Prime Minister to go with the Foreign Minister to Abu Dhabi to meet with the Sheik in relation to the IPIC shares. The trip occurred between

Sunday, 16 February and

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Thursday, 20 February 2014. Representatives of UBS, Peter Botten of Oil Search and Anthony Latimer, a partner from Norton Rose Fulbright also attended this trip. When we arrived in Abu Dhabi the Sheik was in the United Kingdom attending a football match and we were only able to meet with a relatively low ranking official from IPIC.

50. Just before my return to PNG I was advised that IPBC had been served by IPIC with a Notification of Exchange on Friday 13 February 2014 just before we left for Abu Dhabi. This was the formal indication by IPIC that it intended to retain the Oil Search shares.

Commencement of Negotiations for a Proposal to Buy Oil Search Ltd Shares

51. Given the government's consistent and constant desire to retain shares in Oil Search Ltd. I formed the view that serious thought now had to be given to other methods of acquiring shares in Oil Search.

52. In around mid-February 2014, I heard rumours that Oil Search Ltd was going to purchase an asset and I noticed an upward movement in the price of shares in Oil Search Ltd which indicated to me at that time I did not know what that was. I considered that if the State waited until after the transaction was completed the share price may become too high for the State to contemplate purchasing shares on the market.

53. I was told by UBS AG that based on market rumours they considered that there would be a placement of shares by Oil Search. We had a discussion about the share price of Oil Search. At this time the State was notionally after 15% but would have taken a lesser issuing of shares.

54. In order to even place a possible purchase before NEC, many matters needed to be attended to so that any purchase proposal would be possible and not theoretical. In order to do that, I had to see if there was funding available, whether there was going to be a placement of shares on the open market or whether sufficient shares would be available on market.

55. Cabinet would need a proposal that had certainty attached to it in order to make a decision.

56. Consequently, I needed to ascertain whether a purchase could actually be achieved.

57. On the afternoon of my return from Abu Dhabi, I met with Mitchel Turner and Paddy Jilek of UBS AG in Sydney and began discussions with UBS AG to give us an indication whether they would agree to provide the funding as part of a purchase of the new placement by Oil Search Ltd. I believe it was necessary to have an offer from UBS to fund in order to make any approach to Oil Search Ltd by the State to look serious. Anthony Latimer from Norton Rose Fulbright also attended this matter at UBS with me, on his continuing retainer from IPBC.

58. On the same day I called the Prime Minister and said words to the effect of: would the State be interested in buying a placement of shares from Oil Search given that IPIC was to retain their shares. He said the State would be as it was a cabinet decision to retain an interest in Oil Search Ltd and instructed me to proceed with putting together essentially a draft deal.

59. On 21 February 2014, I approached Peter Botten in Sydney and said words to the effect that the State was keen the State informed of any plans to issue additional shares. I also informed him that the State would be able to obtain funding from UBS AG.

60. I understand that there was talk of Oil Search purchasing an interest in the Elk Antelope project and if this happened then the share price would be much more expensive for the State to buy shares from the market. The Oil Search price is very closely linked to what projects they currently have under development and so an announcement of the acquisition of part of the Elk Antelope project would cause the price to rise. Additionally, as Oil Search shares traded at relatively small volumes, it would be take a very long period of time to buy a 10% shareholding. I therefore regarded a purchase of a new placement of shares as a good option for the State.

61. The other reason that the State would be interested in acquiring an interest in Oil Search was that its purchase of an interest in Elk Antelope gave it an interest in PRL15. The purchase of

PRL15 gave Oil Search certain pre-emptive rights including the right to offer other parties to partner in the development with it. This would enable Oil Search to invite Exxon Mobil to partner with it, which was already developing projects in PNG, rather than a company such as Totale. It was Total that would otherwise have been involved in PRL15 and given Totale's diverse interests across the world and not just in NG there was a risk that PRL15 might not be a priority for it and therefore there would be delays to its development. Therefore I considered it was a very good outcome for the State to have Oil Search able to take a proactive involvement in PRL15.

62. While I was still in Sydney and understood the private placement might be available there was also rumour that Oil Search would go into a trading hold on the following Monday [24 February 2014]. I made arrangements to get UBS and Ashursts ready to move if the opportunity became available and I recall that several UBS staff began making calls trying to make arrangements with Oil Search.

63. I kept the Prime Minister updated with developments at this time and spoke with him regularly by telephone. I would have spoken to the Prime Minister on multiple times on Friday, 21 February though for much of this day there was no certainty around the Oil Search placement and matters were largely based on rumours and somewhat coded conversations between myself and Mr Botten of Oil Search.

64. On 22 February 2014, I was advised by the Prime Minister that Peter Botten of Oil Search had arranged to meet with him that day whilst I was still in Sydney. I said words to the Prime Minister to the effect that the Prime Minister could discuss specific price of shares with Oil Search but should leave the final negotiations to me.

65. On Friday 21 February 2014, the Oil Search share price was approximately \$8.49.

66. I arrived in Port Moresby on Sunday, 23 February 2014. Later that day I met at the Grand Papua Hotel with the Prime Minister and Peter Botten of Oil Search.

The discussion was about the availability of a placement of Oil Search shares. Whilst I recalled the Prime Minister said words to the effect of, talk to Dairi about price. At that meeting while the State through the Prime Minister and myself expressed that the State had an interest in buying Oil Search shares no agreement or commitment was made on behalf of the State, the share price was not settled on and I understood that negotiations would be ongoing. The only agreement was that we agreed that all parties could explore the options in the matter.

67. The next day, Monday 24 February 2014 a number of discussions took place between myself and Mr. Botten about the price that the State would pay. The prices of shares on Monday had gone up to \$8.57. Mr Botten informed me that he had spoken to current shareholders who did not want their shares diluted and that there was a lot of interest in the placement. Mr Botten told me that Oil Search would accept \$8.50 a share which was about 5 per cent discount. He also indicated that whilst we could discuss the price, ultimately he would need to take any proposed price back to the Board of Oil Search. I also said words to the effect that I would need to speak to the Prime Minister about the price and then any proposed deal would need to be put to and approved by cabinet.

68. The Prime Minister of Fiji was visiting Port Moresby that day and a function was being held for him which the Prime Minister attended. After I met with Mr Botten, I attended that function to speak to with the Prime Minister. I recall that the Prime Minister said words to the effect of, the State should only pay \$8.20 per share because that was the price that Mr Botten had raised with him at the meeting on Saturday.

69. I then went back to Mr Botten and said words to the effect of as Mr Botten had indicated a price of \$8.20 per share on Saturday to the Prime Minister that was the price that the State would consider in relation to the placement. He informed me that he couldn't do a deal at \$8.20 per share and that Oil Search would want \$8.50 a share.

70. During this time I also received a call from Paddy Jilek of UBS and recall that he said words to the effect that, \$8.20 was an unrealistic price and that the State was unlikely to secure the shares for this price and that the State would need to pay \$8.50 a share.

However, I had a clear instruction from the Prime Minister to push for \$8.20 and so continued to make clear to Oil Search that this was the price that the State wanted.

71. I recalled that Oil Search had also indicated at this time that it was concerned that it was concerned that the State would be unable to make the arrangements to finance the matter. There was also a concern by Oil Search and PNG that Cabinet may not approve the purchase of the share placement. That was of course always open to Cabinet.

72. I understand from discussions with Paddy Jilet of UBS, that UBS and Oil Search entered into a separate underwriting agreement whereby if the State did not go through with the deal, and specifically if the NEC did not approve the transaction then UBS could buy the shares.

No Engagement of Consultants

73. Throughout these discussions with UBS and representatives of Oil Search at no time did I understand that anyone believed that an agreement had been entered into. Rather negotiations were still on foot with all of the parties trying to reach an agreement and the State would not

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commit to any purchase of the placement in Oil Search or loan agreement until after cabinet approval.

74. During this time I was receiving advice on legal matters from Norton Rose Fulbright as a result of their retainer by IPBC. As Acting Secretary for Treasury I will still a member of the IPIC Bond Committee and that was under the direction of IPBC.

75. I was not receiving advice from the State Solicitor as I was informed he was busy and a derivative transaction of this type was complicated not something that had any experience in or expertise and we therefore required specialist advice.

76. On 25 February 2014 UBS AG wrote to me and outlined the terms of the proposed engagement as Lender, including fees charged in relation to the role as Financial Advisor and Lead Arranger as well as financial modelling.

77. At about this time KPMG was also brought in as part of the State's due diligence to provide independent advice on the structure of the loan for the purchase of Oil Search shares. KPMG's role was to test the assumptions about the pricing auctions that UBS AG had developed and generally to ensure that UBS was providing good value for money to the State. We wanted to ensure that the State was getting value for money and that the financial calculations were correct. We thought this was the responsible and prudent course to take.

78. I recall that KPMG's advice was ultimately that UBS's fees were on the high side but within the market range and therefore acceptable. Subsequent to this I had further negotiations with UBS and was able to get them to agree to further reduce their fees. [See KPMG Report attached marked -E1].

79. There was no retainer agreement with KPMG at that stage and they were well aware that payment for their work very much depended upon whether or not Cabinet determined to go ahead with the transaction.

80. While I had also received advice about the transaction from Pacific Capital I wanted advice from KPMG in order to confirm this advice and it also provided some comfort to me and to the Cabinet that UBS loan structure was appropriate and the fees payable reasonable.

81. Regarding UBS AG, they required local counsel and as part of the arrangements, and normal commercial practice, the borrower pays for those counsels. Ashursts were advised to us to be UBS AG's counsel.

82. I did not retain Ashursts. They were retained by UBS AG.

83. The transactional documents were being drafted by Ashursts for UBS AG but only on the basis that the Cabinet would still need to approve the transaction.

84. I was being advised by Pacific Legal Group and Norton Rose Fulbright about who in the government needed to provide sign-off on the deal. I did not engage Pacific Legal Group. I am informed that Norton Rose Fulbright had engaged Pacific Legal Group as their local counsel at that stage.

Negotiations continue on Proposal for Loan and Purchase.

85. I recall that during this process I also had a discussion with UBS AG about a sovereign bond that had been issued and said that they wanted to be involved in the issuing of the next sovereign bond. I told them words to the effect that, a sovereign bond would need to go through a tender process and that therefore I could not give them assurances that they would be involved in it.

86. I understood from my meetings with the banks that there were four variables in such an arrangement that could be negotiated with the banks. These were: the interest rate to be charged, the tenor of the loan, put/call options and the payment of dividends. Generally speaking changing one of these factors had an impact on the price or rate of the other factors.

87. I discussed with UBS that I considered that an interest of 4.95% would be attractive to cabinet. It was discussed that, the loan would be for a period of 24 months, the put/call option would be 90/121 and the State would only be entitled to the existing dividend with any increase in the dividend being paid to UBS.

88. It was also agreed that in the proposal 12.5 million shares would not be part of the collar loans and the reason for this was the State's desire to gradually own all of the shares that has been issued in the new placement by Oil Search.

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89. The 12.5 million shares not subject to the collar loan were subject to the bridge loan and those shares were security for the advance of money. This loan was paid for from the profits from the LNP project. Because there were cash flows from the LNP project the bridge loan was structured so that these profits would be repaid by NCPC to UBS.

90. While these discussions were going on, no agreement had yet been reached and negotiations at that price were still going on with Oil Search.

91. On 27 February 2014, I received a commitment letter that outlined the terms and conditions it was willing to arrange and participate in a Loan Facility with State.

92. It was at this time that the potential of the State to be

able to purchase the Oil Search shares became more than a possibility.

93. I then arranged to consult with BPNG on the terms of the draft proposal and met with the Governor of the BPNG, Dr Jacob Weiss from the BPNG and Paddy Jilek of UBS. I went through the structure of the proposal by UBS and showed the Governor and Mr Weiss that the proposal that UBS was making was not substantially differently to what had previously been proposed in their previous advice on the IPIC refinancing. The terms and conditions therefore cannot in any way be said to be prejudicial to the State as claimed by the Ombudsman Commission. I recall that the Governor and Dr Weiss asked some questions about why foreign exchange reserves were not being used and I explained to them why I did not think that this could be done.

94. I arranged for them to meet with Craig Roberts and Paddy Jilet of UBS to explain the structure of the loan and so that they could clarify any queries. I was also present at that meeting. I recall that Jacob Weiss wanted a higher interest rate but a better upside and to be able to roll the collar loan after 6 months. Paddy Jilek of UBS said words to the effect that this was not possible. Mr Jilek did say that UBS would be willing to offer a 12 month arrangement but this would mean an 11% interest rate. My view was that a high interest rate would not be attractive to cabinet.

95. It was my opinion that at the conclusion of this meeting, the Governor and Dr Weiss understood the proposal that was being made by UBS and had the opportunity to ask any questions that they had about the proposal.

96. Throughout this time I was keeping the Prime Minister updated on developments on a regular basis and while I had a number of discussions with the Treasurer and understood that he was aware of the general arrangements under consideration, I did not brief the Treasurer as frequently.

97. Given we had no an actual offer of a loan, documents could be prepared to facilitate the terms of the purchase to go before NEC. This does not just mean a NEC Submission, but also all the actual transaction documents.

98. During this time, Wendy Isu, my Executive Officer at Treasury

and Carl Okuk were liaising with
Norton Rose Fulbright to arrange the necessary documents,
approvals and permissions that
would be needed should NEC approve the deal.

99. Norton Rose Fulbright to my knowledge had engaged Pacific
Legal Group to assist them with
their on-going retainer as now they were being asked to advice
on the necessary processes to put
the deal together to acquire Oil Search shares.

100. I was aware that interactions with the State Solicitor were
being managed by the legal team of
Norton Rose Fulbright and Pacific Legal Group. I, at all times,
followed and acted in accordance
with the advice provided to me by Pacific Legal Group, Norton
Rose Fulbright and the State
Solicitor about what sign-offs were necessary in order to get
the necessary approvals for the
proposed arrangement.

101. Prior to the State committing to any agreement UBS needed to
make arrangements in respect to
buy some Oil Search shares. This was because under the collar
loan UBS would be holding the
shares and therefore needed to buy shares in order to build a
delta hedge and put a book together.
Even though there was no legal obligation by the State yet, UBS
needed to build up a hedge, at
their own risk, so that if the agreement did go ahead they
would have the necessary hedges in
place to manage the collar loan.

102. I understood that in order for the deal to go ahead it would
be necessary for the State Solicitor to
sign a certificate of necessity which stated that the written
agreements reflected the commercial
agreement that had been struck between the parties and IPBC
would need to provide board
approval.

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103. I was also conscious that once the terms had been agreed
between Oil Search and the structuring
had been finalised with UBS it would then be necessary to go to
Cabinet for Cabinet to decide
whether the State would complete the determination to purchase
the shares on the terms offered.
I was then involved in preparing the cabinet submissions, with
the help of the team of advisers
that I had assisting me with this.

104. At this time I was the Acting Secretary of Treasury. The Deputy Secretary at that time was Andrew Yauieb, and he was the only other person who was also applying to be appointed permanently to the position of Secretary.

105. UBS AG through their lawyers and Oil Search through their lawyers and we through Norton Rose Fulbright had all the necessary documents drawn up for the transaction. This was so the necessary documents drawn up for the transaction. This was so the entire transaction could first be perused and cleared or otherwise by the State Solicitor and also so the entire transaction terms and conditions were in final form to go before NEC to make a decision.

106. At all material times, and by all persons involved it was known that there would be no transaction unless and until it was approved and agreed to be NEC.

107. On 5 March 2014, the State Solicitor providing copies of the loan transaction documents and seeking his advice on them. The State Solicitor was aware the matter was to go to Cabinet on 6 March 2014.

108. On 5 March 2014, the State Solicitor issued his first letter of advice in relation to the proposal.

109. The State Solicitor advised me to proceed to cabinet for its approval on the documents to be considered, taking into account the advice he had given, and that I should facilitate all statutory and administrative approval made necessary should NEC determine the transaction should go ahead.

110. I had then been advised by Norton Rose Fulbright and by Ashurts that all processes had been and were being followed in accordance with S209 of the Constitution and the respective legislation that provides the mechanics for S209.

111. I had not retained Pacific Legal group; Norton Rose Fulbright had retained them to assist with local processes.

112. On 5 March 2014 I had had dinner with the then Treasurer, Don Polye who indicated that he was uncomfortable with signing off of the deal. I explained why it was considered it to be in the best

interests of the State. He said words to the effect that he wanted the loan to be through a State owned entity, specifically Petromin, rather than it being held by the State.

113. I explained to him that usually there is an equity cushioning which is needed in order to secure borrowings. As the State was the only entity that could get an equity cushion, it was the only entity that could secure the \$300 million bridge loan. Therefore I advised him that it was not possible in the first instance for a State owned entity Petromin or IPBC to secure the loan but that it could be transferred to them at a later time, but within the financial year.

114. I recall that the Treasurer also said words to the effect that, he was concerned that the loan would be in breach of debt to GDP ratios. I explained to them that this could only be determined at the end of the 2014 financial year and that there were provisions to correct any such issues in the 12 month period after the end of the financial year. Nonetheless the Treasurer was explicit that he wanted the transaction off the balance sheets. This was simply impossible. I did not think that Petromin was an inappropriate entity to hold the loan but as I have noted above I did not believe that it would have been able to secure the loan and then transfer it to Petromin. UBS had made it quite clear to me that they would not loan directly to Petromin in relation to the bridging loan.

NEC Meeting and Decision 6 March 2014

115. On 6 March 2014, the NEC met in relation to the purchase of the Oil Search shares. I attended this meeting. A lengthy Cabinet Submission was made containing details of the entire IPIC Bond and the genesis of the proposal to buy Oil Search shares and the use of UBS AG as Financier, as well as consultants. The fact was that –time was of the essence because it was a commercial transaction was also covered at length. The Written Submission covered every necessary point [NEC Submission No 67/2014 marked –FII].

116. I presented the purchase of the Oil Search shares in a neutral format as it was for NEC to decide whether the State was to purchase the Oil Search shares and I was aware of the sensitivities of my

own Minister being uncomfortable with the proposal. I advised them how the deal would be structured if NEC were to approve the purchase of the shares and the consequences to the State if NEC chose not to approve the purchase of the shares.

117. At the meeting Minister Polye argued against the purchase of the shares by the State.

118. NEC noted the transaction documents, approved Petromin as the eventual subscriber but that the State would be the initial subscriber, noted the certificate of correctness from the State Solicitor and confirmed the authority of the Minister for Treasury to finalise any documents that were not included in the NEC submission prior to submission of the transaction documents to the Head of State for Execution.

119. NEC then approved to advise the Head of State to approve the borrowing for the purchase of shares and to execute the transaction documents for the State.

120. NEC also approved to advise the Minister for Treasury to sign such documents, instruments and certificates as the transaction required. He was not given the discretion to refuse to sign by NEC. It was a NEC decision to go ahead with the transaction and he was to implement parts of that decision.

121. NEC noted other approvals were required from other State Agencies and endorsed all of them including but not limited to a Certificate of Inexpediency be issued by CSTB, an authority to pre-commit by the Secretary for Finance and a certificate by the Secretary for Treasury certifying deed by NPCP, and the payment direction by IPBC.

122. This approval by NEC was specifically to cover any processes that had to occur either before or after the decision by NEC so that the transaction could proceed in a commercial time frame.

123. The distribution list of NEC Decision No. 79/2014 included the Minister for Justice and Attorney-General, the Minister for Treasury, the Minister for Finance, the Departments of Finance, Treasury, Justice & Attorney-General, IPBC, the State Solicitor, BPNG, NCPC and Petromin. [See NEC Decision No. 79/2014 marked -GII].

Implementation of NEC Decision No 79/2014

124. It is incumbent on those on the Distribution List to implement and give effect to the Decision of NEC as far as their respective offices and powers allow.

125. There was no contact or representation by the Minister for Justice and Attorney-General Kerenga Kua at any state to me before or after the NEC meeting that he was unhappy or in opposition to anything that had been determined or of any of the procedures and processes that were being followed. He was completely silent.

126. It is only at the time he was removed from his position as Minister and Attorney-General on 18 June 2014 for an unrelated reason that he started making complaints about any of the processes involved in the transaction.

127. Subsequent to NEC approval I sent a letter to the Treasurer which attached the relevant documents to be executed by him. I also had a discussion with Mr Polye about the State Solicitor's letter dated 5 March 2014. He said words to the effect that he wanted further advice from the State Solicitor and in particular who was to sign off on the loan documents.

128. Also on 6 March 2014, pursuant to and for the purposes of implementing the NEC decision, I wrote to the Central Supply Tenders Board and requested that a Certificate of Inexpediency for the retainer of services for Pacific Legal Group, Pacific Capital Group, UBS, Ashurst, Norton Rose Fulbright and KPMG.

129. On 8 March 2014, I was requested by Minister Polye to obtain a further letter of advice from the State Solicitor about the loan sign offs.

130. I had a lot of difficulty locating the State Solicitor as he had been in Singapore at this time. I was not able to locate him until about 1 am on 9 March 2014 at which time he gave me a second letter of advice about sign-off. I contacted the Treasurer immediately on receiving the letter from the State Solicitor and he advised me to give it to his First Secretary. I made arrangements to meet the First Secretary in a car park and handed him a copy of the State Solicitor's letter. At the same time, he provided me with a copy of a letter from the Treasurer dated 9 March 2014, which was clearly postdated. In that letter the Treasurer advised me

that he would not be signing off on the arrangement.

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131. I recall that on 9 March 2014 I met the Prime Minister just as he was preparing to fly out of Port Moresby and had him sign the NEC minutes approving the arrangement. I then made arrangements to see Minister Polye on the next Monday to have him sign the necessary documents.

132. At this time I also requested that IPBC calling a meeting to discuss the issues, though I did not give a direction as to what should be done at that meeting, in accordance with NEC decision No. 79/2014.

133. It was only after the NEC approved the transaction that the UBS engagement letters were signed. It was always understood that the arrangement was subject to NEC approval and therefore it was only upon NEC approval that the other aspects of the deal could proceed.

134. After the NEC decision, the Secretary of Finance, in accordance with and for the purposes of implement the NEC decision, gave his approvals as did the Attorney-General.

135. On 10 March 2014, I took the relevant documents for the Treasurer to sign, but despite the NEC decision of 6 March 2014 he refused. I rang the Prime Minister and said to him words to the effect that Minister Polye would not sign the necessary documents. Not only is the Prime Minister the Prime Minister – he is also the Chairman of NEC, whose decision it was incumbent upon me to implement. He told me he would speak to Minister Polye by telephone. I understand from my presence in his office that the Prime Minister called him and they had a discussion about the signing the documents and reminded him NEC had approved the transaction on 6 March 2014.

Minister Polye still refused to sign to documents. Shortly after the Prime Minister called me again and I said to the Prime Minister words to the effect of, the Treasurer won't sign. I recall that the Prime Minister said to me words to the effect of, go back into the Treasurer and try again. I again asked Minister Polye to sign the documents and he said words to

the effect of that he would not sign and that they can sack him if they wish and he wouldn't change his mind.

136. The Prime Minister called me again shortly thereafter, I believe after he had again spoken to the Treasurer, and said words to the effect that the deal wouldn't go ahead and asked me to go and approach UBS and talk about what fees would be payable for breaking the arrangement. The Prime Minister told me words to the effect that the State should try and get out of the transaction and then he would sack Minister Polye as he was causing instability in the government.

137. As I was trying to reach UBS by telephone, the Prime Minister called me back and told me that Minister Polye had been decommissioned. I recalled that I then went in and spoke to the Treasurer to see if was okay and he told me that no longer being Treasurer would allow him to spend more time focussing his efforts on being Chairman of the World Bank and IMF. I told him words to the effect of, I assumed that he would also lose these positions now that he was no longer Treasurer. He then became quite upset.

138. On Minister Polye being decommissioned, the Prime Minister replaced Mr Polye as Minister of Treasury and this was formally gazetted by National Gazette on 10 March 2014.

139. On 12 March 2014, the Prime Minister in his capacity now as Treasurer signed the relevant documents on behalf of the State.

140. On 12 March 2014 the transaction documents were signed by the Head of State with Carl Okuk as witness.

141. It is not a requirement of law that the witness be a commissioner of oath, just that the witness be over 18 and of sound mind. The effect of Carl Okuk affixing a stamp saying commissioner for oaths on the agreement/documents has no effect on the agreement/documents whatsoever.

12 March 2014 – Transaction Completes.

142. The transaction of the purchase of the Oil Search shares and the UBS loan was completed on 12 March 2014.

143. Oil Search Limited is listed on the Australian Stock Exchange and the Australian Stock Exchange was notified on 12 March 2014 by Oil Search Limited on accordance with the Rules of the Australian Stock Exchange that the completion of share placement of 149,390,244 fully paid ordinary shares to the Independent State of Papua New Guinea had occurred that day. This notification, announcement and information are publicly available on the Australian Stock Exchange Website. Notice by Oil Search to the Public announcement dated placed on the Australian Stock Exchange register that the completion of Share Placement to the government of Papua New Guinea had occurred. New Issue Announcement Form lodged with the Australian

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Stock Exchange on 12 March 2014. Compushare document showing the State's ownership of the shares. [Documents marked -HII].

Ombudsman Commission Investigation

144. On 14 March 2014 the Ombudsman Commission determined to investigate into the conduct of those leaders involved with the loan and the transaction with regards to its jurisdiction under Section 27 of the Constitution being the leadership code.

145. Also on 14 March 2014, the Ombudsman Commission issued a notice of the leadership investigation and further issued numerous directives to stop work on the UBS loan. The Ombudsman Commission had not realized that the deal had actually been finalized. All documentation has been provided to the OC on the loan and transaction and now it is a current investigation into the deal that has been done. There was nothing left for the direction to stop. [See Ombudsman Commission Notice and Directives dated 14 March 2014 marked -TII].

146. Don Polye MP then filed proceeding numbered OS142 of 2014 to seek declaratory orders in the National Court that the loan was non-compliant with Section 209 of the Constitution and ought to be declared void, and further that he be re-instated as Minister for Treasury.

147. On 8 May 2014, the National Court dismissed Don Polye's proceedings on the basis that they

were an abuse of process in that he was seeking to quash a decision of the National Executive Council and he had failed an ordinary OS proceeding instead of a Judicial Review. The National Court also made the factual findings however that the loan transaction had been completed and that there was nothing left for the Ombudsman Commission directives dated 14 March 2014 left to stop. [See decision of the National Court dated 8 May 2014 marked -JII].

Supreme Court Application Pursuant to Section 18(1) Constitution to challenge the UBS loan

148. On 19 May 2014 Don Ploye filed a Supreme Court Application pursuant to Section 18(1) Constitution to challenge the UBS loan being SCOS No. 4 of 2014 [See SCCOS No.4/2014 marked -KII].

149. He is seeking that the Supreme Court declare that

a) The executive actions of the Prime Minister and the NEC in borrowing \$1.239 million from UBS to purchase 10.1% interest without parliamentary approval were unconstitutional and invalid.

b) That the loan agreement is illegal and unenforceable against the State.

150. This application before the Supreme Court is still on foot and the matter is sub judice.

151. The Ombudsman Commission should not make any findings at all until the Supreme Court has dealt with this matter.

152. An interest payment was due on the UBS loan on 16 May 2014. To be certain that I would not be in breach of the Directives of the Ombudsman Commission, notwithstanding the decision of the National Court, I wrote to Ombudsman Commission on 14 May 2014 to advise that I would be making the interest payment due under the binding loan documents. [See letter to the Ombudsman Commission dated 14 May 2014 marked -LII].

153. I explained to the Ombudsman Commission that to not make such interest payments would place the government and the people of Papua New Guinea in a very bad situation. Papua New Guinea has not defaulted on a loan since Independence.

154. I explained that the OSH Shareholding is an extremely valuable asset of the State. Based on the closing Australian Stock Exchange trading price for Oil Search Limited on 30 April 2014 of \$8.89 per share, the OSH Shareholding has a value of \$1.33 billion (Australian dollars), which is the Kina equivalent of K3.24 billion.

155. Norton Rose Fulbright had received a letter from the legal advisors to UBS, being Ashurst Lawyers, highlighting the implications of non-payment of interest payments. I enclosed such letter with the letter to the Ombudsman Commission.

156. The State had then obtained advice about possible implications of default by the State in repayment of the UBS Loan, under a letter from the Australian legal advisers to the State, Norton Rose Fulbright addressed to myself as Secretary for Treasury. I enclosed also a copy of the letter from Norton Rose Fulbright to the letter to the Ombudsman Commission.

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157. I further explained to the Ombudsman Commission that under the UBS Loan, the State is required to make periodic interest payments. If the State is prevented from making those payments, the State will be in default, and UBS will have the right to commence enforcement processes without further notification to the State. The enforcement processes without further notification to the State. The enforcement process could result in the loss by the State of its OSH Shareholding. This could lead to substantial financial and strategic disadvantages to the State because it would lose the opportunity to benefit from holding those shares.

158. A default under the UBS Loan would also highly likely to have much broader adverse ramifications for the State and its people. Loans to the State from multilateral institutions, such as the World Bank and ADB, typically include cross default provisions. A default under the UBS Loan is likely to trigger cross defaults under such other arrangements which could have significant adverse implications for the economic development of the State and its people, and could adversely affect the sovereign credit ratings of the State. An associated perception by international capital markets of an increase in sovereign risk

would likely have significant adverse implications for the value of the Kina, and the ability and the ability and cost of the State and its subsidiaries to borrow from banks and international investors.

159. I therefore advised the Ombudsman Commission that the State would therefore be making interest payments in accordance with the loan agreement, given the factual findings of the National Court and the advice from Norton Rose Fulbright, in light of the very serious consequences for Papua New Guinea of default.

160. I received a letter back from the Ombudsman Commission dated May 2014 stated that they were an independent body and that they were not subject to direction by anyone including the Court, and that they would analyse the situation and then write back to me. [See letter from the Ombudsman Commission dated 15 May 2014 marked -MII].

161. Time was of essence as there was a deadline before which the interest payment had to be made so I wrote to again to the Ombudsman Commission to further seek clearance for the payment and emphasizing the seriousness of default. [See letter to the Ombudsman Commission dated 15 May 2014 marked -NII].

162. I did not receive a response from the Ombudsman Commission so the State made the interest payment prior to the deadline and no default under the loan agreement occurred.

163. On 26 May 2014 however I received a letter from the Ombudsman Commission dated 23 May 2014 which essentially stated that they were investigating various alleged legal and financial breaches occasioned by the loan, then set out in detail what those alleged breaches were and then concluded that stated by the State could not make interest payments as they stated the directives issued 14 May 2014 effectively froze everything to do with the loan including interest payments. [See letter from the Ombudsman Commission dated 23 May 2014 but received by my office on 26 May 2014 marked -OII].

164. I considered the letter and obtained legal advice on such letter and responded by way of letter dated 5 June 2014, setting out in detail why each alleged legal breach was false and that why the Ombudsman Commission did not have powers to prevent the State from conducting its business

and from complying with binding loan agreements. [See letter to the Ombudsman Commission dated 5 June 2014 marked -PII].

165. I was concerned that the Ombudsman Commission may create a situation where the State may find itself in breach of a binding international loan agreement, when there is no legal impediment to the interest being paid, because the Ombudsman Commission is purporting to exercise powers it just does not possess and threatening those that are subject to the leadership code with being charged with breaches if they comply with the State's legal obligations under the loan agreement. I therefore thought we should seek a judicial review of the decision of the Ombudsman Commission to not allow interest payments to be made pursuant to the loan agreement with UBS.

166. I had expressed my concerns to the Prime Minister and we concluded that we need to seek protection for the State from the Courts against what we perceived as illogical and harmful directions given by the Ombudsman Commission that we believed also that were beyond the powers of the Ombudsman Commission and tantamount to giving an injunction.

167. On 6 June 2014 the Prime Minister and I filed a Judicial Review of the decision of the Ombudsman Commission to issue directions restraining any dealings between the parties to the UBS/Oil Search transactions, in particular restraining any payments, being OS 383 of 2014.

168. On 10 June 2014, the Prime Minister and I were granted leave for Judicial Review.

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169. On 11 June 2014, the Directions of the Ombudsman Commission, particularly those that restrained any payment of interest by the State to UBS AG were stayed by the National Court and the State was free to make interest payments.

170. On 3 December 2014, the National Court in OS383 of 2014 determined to refer questions as to the nature and scope of the Ombudsman Commission to issue directions pursuant to Section 27(4) of the Constitution; consequently the Judicial Review is stayed pending the Supreme Court Hearing

and Determination of the Constitutional Questions.

171. This report and investigation should be halted pending the hearing and determination of SCC 05

NO. 4 of 2014, as the issue of the validity of the Loan is sub judice the Supreme Court.

Comments

The Ombudsman Commission in its deliberations on Mr Vele's response was considered the points raised and noted.

It was noted that on 19 July, Justice Catherine Davani of the National Court made reference to the Supreme Court under SCR No: 5 of 2016, eleven (11) questions pertaining to whether the OC had the jurisdiction to investigate the PM and whether or not the issuing of the OLOC Provisional Report ultra vires the power of the Ombudsman Commission.

In his submissions to the National and Supreme Courts, the Prime Minister's Lawyers stated that the Ombudsman Commission lacked jurisdiction over the Office of the Prime Minister and the Prime Minister himself. Hence, the Ombudsman Commission's investigation into the conduct of the Prime Minister, Hon Peter O'Neill, CMG, MP and the subsequent publishing of the Provisional Report were ultra virus and unconstitutional.

However, on 6 October 2017, the Supreme Court dismissed the Supreme Court Reference SCR No: 5 of 2016 and conclusively determined that the Office of the Prime Minister does fall within the OLOC functions of the Ombudsman Commission. Therefore, the Ombudsman Commission did conduct its investigations in accordance with the OLOC and that it can publish its Provisional and Final Reports on the investigation.

[7] STATE SOLICITOR'S ADVICE ON THE WHOLE OF UBS AG TRANSACTION

On 5 March 2014, Mr Vele wrote to Mr Rolpagarea and stated that the documents related to a proposed transaction whereby the State entered into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd and requested for his legal

clearance. The draft loan transaction documents and draft NEC Policy Submission and other related documents were delivered to Mr Rolpagarea by Pacific Legal Group Lawyers, purportedly engaged by Mr Vele very late at night.

On even date, Mr Rolpagarea wrote to Mr Vele and requested confirmation and clear instructions from him regarding the engagement of Pacific Legal Group Lawyer to act on behalf of the DoT as the legal firm had drafted an NEC Policy Paper that proposed for the State to enter into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd. Below is an extract:

FINANCIAL ACCOMMODATION FOR THE INDEPENDENT STATE OF PAPUA NEW GUINEA (The State)

I refer to your letter dated 5th March 2014 on the above.

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Your letter makes reference to documents relating to the proposed transaction (transaction documents) whereby the State will enter into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Limited. These documents were delivered to my office this morning by way of personal service by Pacific Legal Group Lawyers upon your instructions. Your letter referred to above and delivered later during the day requests my urgent consideration of these documents and issuance of the legal clearance of National Executive Council's (NEC) consideration.

I noted from the documents that Norton Rose Fulbright and Pacific Legal Group Lawyers are the State lawyers engaged and instructed through your office in relation to the above subject. I also noted that the following transaction documents listed below were negotiated and finalised between the State's lawyers and respective parties. These documents are;

1. Specific Security Deed between the State and UBS Nominees Pty Ltd ABN 32 001 450
522.

2. Bridge Facility Agreement between the State and UBS AG,

Australia Branch and UBS
Nominees Pty Ltd.

3. Participants Sponsorship Agreement between the State and UBS
Nominees Pty Ltd
and UBS Securities Australia Limited.

4. Payment Direction Deed between the State and the National
Petroleum Company of
PNG (Kroton) Limited, Papua New Guinea Liquefied Natural Gas
Global Company
LDC and UBS AG, Australia Branch.

5. Security Trust Deed between the State and UBS Nominees Pty
Ltd.

6. Nominee Deed between the State and UBS AG, Australia Branch,
UBS Nominees Pty
Ltd and UBS Securities Australia Limited.

7. Specific Security Deed (CHESS Securities-Collar) between the
State and UBS AG,
Australia Branch ABN 47 088 129 613.

8. Subscription Agreement between the State and Oil Search
Limited.

I have gone through the above listed documents within the
permitted time today and
despite the lack of explanatory notes, I have formed the view
that the terms of these
agreements are a reflection of the State's negotiated position
based on your instructions
taking into account the State's intentions and as such are
acceptable to the State.

There are also other documents forming part of the transaction
documents and listed below:

1. Advice to Governor-General
2. Verification Certificate from the State to UBS AG, Australia
Branch
3. Minutes of a meeting of the Board of Directors of IPBC
4. Resolution In Lieu of Meeting of shareholders pursuant to
Sections 103, 89 and 110 of
the Companies Act 1997
5. Minutes of a meeting of the Board of directors of National
Petroleum Company of
PNG (Kroton) Limited held at Port Moresby with no specific
dates

6. Power of Attorney from the National Petroleum Company of PNG (Kroton) Limited (the Grantor) and

7. Letter from Norton Rose Fulbright to the Independent State of PNG, care of the Acting Secretary of Treasury, Mr Dairi Vele, March 2014.

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I have read that these documents listed immediately above are yet to be signed and/or approved by the respective individuals or company boards. Please facilitate such signatures/or board meetings.

I have read the NEC Decision and noted the background information particularly the State's intention to acquire a 10.01% interest in Oil Search.

I have also noted the recommendations and make the following comments;

1. The recommendations should include clearly the fact that the State and NPCP will direct all PNG LNG equity cash flows to be paid to UBS to be applied to prepayment of the bridge loan. I am aware that the Organic Law on the Sovereign Wealth Fund provides that all revenue from the PNG LNG Project will flow into the Sovereign Wealth Fund. This is stated in paragraph (c) ii on Page 5 of the NEC submission but not included in the recommendations. This in my view is a Major decision to be taken by the State's lead agency in this regard and may take a decision.

2. Some or if not most of the recommendations to NEC for approvals require approvals/authorizations specifically from the State's relevant agencies acting independently/pursuant to their respective laws but of course taking into consideration the Government/NEC Decision. I therefore advise that the relevant approvals be sought from the State's relevant agencies after NEC consideration and approval of the financing transaction.

3. I must also advise that section 209 of the PNG Constitution also requires that Parliament's approval be obtained for these Bridge and Collar loans which total up to A\$1.225 Billion through the budgetary process. I am sure you are aware of this constitutional requirement and further advise that you take appropriate steps to facilitate this process.

4. Note that I make no comments in relation to the amounts and percentage of fees in relation to the transaction as these are within your expertise to do so including the debt to equity ratio under the Loans (Overseas Borrowings) No. 2 Act and the requirements under the Papua New Guinea Fiscal Responsibility Act.

You may proceed to NEC with the documents to be considered taking into account my foregoing advice.

Please note that after the NEC approval of the Transaction documents, I will then prepare an advice to the Head of State advising him to execute the transaction documents. As such, I request that you provide to me the NEC Decision as soon as the decision is signed by the Chairman (Prime Minister).

On even date, Mr Rolpagarea also noted that most of the documents were yet to be signed and/or approved by the respective individuals or Company Boards and that Section 209 of Constitution was not complied with by the NEC.

On 7 March 2014, Mr Vele wrote to Mr Rolpagarea and requested as a matter of importance and urgency for the legal clearance to be issued on the State's borrowing of loan arrangements.

On 9 March 2014, Mr Rolpagarea responded to Mr Vele and reiterated his advice in his letter of 5 March 2014. Below is an extract:

(1) I have confirmed and advise that the authorised person to execute loan agreements on behalf of the State is the Minister for Treasury per Section 2(7) of the Loans (Overseas Borrowing) (No.2) Act 1976. As such the Minister for Treasury will have to execute the transaction documents.

(2) I have raised matters that needed to be seriously considered in my letter of 5th March 2014 after briefly perusing the NEC submission submitted to me also on the 5th March 2014 and brought to NEC's attention in its special meeting No.08/2014 and affirm those comments. I make particular mention again of the requirement to comply with Section 209 of the Constitution.

(3) As alluded to in my letter, transaction documents were prepared, negotiated and confirmed by the external lawyers instructed through Department of Treasury taking into consideration the Government's intentions including the terms contained in the transaction documents. These intentions are reflected in the transaction documents and hence accepted by the NEC in its special meeting No.08/2014.

(4) As it is commercially urgent for parties to execute the transaction documents, you may now proceed to organise for the Minister for Treasury to execute the transaction documents on behalf of the State.

On even date, Mr Rolpagarea advised Mr Vele that the Minister for Treasury was authorised to execute Loan Agreements on behalf of the State and that Section 209 of the Constitution should have been complied with and the State should not have engaged external lawyers to prepare a NEC submission.

In light of the above advice Mr Vele should have organised for the Minister for Treasury to execute the Transaction Documents.

On 10 March 2014, Mr Rolpagarea wrote to the GGPNG and advised him that all documentations relating to the borrowing of loan were in order and that Mr Vele was satisfied with the Terms of the Transaction Documents.

On 12 March 2014, Mr Naime wrote to Mr Rolpagarea and advised him on the CSTB's endorsement on the issuance of the COI and awarding of the contract to both local and international firms to facilitate the borrowing of the UBS AG Loan

during its Meeting No:
M-03/14 on 7 March 2014 and sort clearance on the matter. Below is
an extract of the letter:

This contract was endorsed by the Board at its Meeting No M-03/14
held on Friday 07th

March 2014. The Board approved the award of the contract to both
PNG and International
Consulting firms.

PNG Consultants

1. Pacific Legal Group Lawyers
2. Pacific Capital Ltd (PNG)

The fees to cover the cost is up to an APC Limit K9,000,000.00

International Consultants

1. UBS AG Australia Branch
2. Ashurst Lawyers
3. Norton Rose Fulbright of Australia
4. KPMG

The fees for the above Consultants is up to a limit of AU
\$14,555,759.00.

The Board understands that the state will finance the cost of the
Local Consultants whilst

the cost of the overseas Consultants will be paid from the UBS
loan components.

Attached is also a copy of the Board's decision with the
Authority to Pre-Commit
International for ease of reference.

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*Note that the APC for the PNG component together with Finance
Secretary's cover letter

have been processed and will be released as soon as signed by the
financial delegate.

On 20 March 2014, Mr Rolpagarea wrote to Mr Naime and advised him of
his legal opinion

on the request for the issuance of Legal Clearance – CSTB COI 02/04.
An extract of the

letter is set out below:

1. I refer to your letter and enclosures of 12th March, 2014
requesting legal clearance for the
subject matter.

BACKGROUND

2. The National Executive Council ('NEC') approved in its Decision No. 79/2014 the transaction for the purchase of shares in Oil Search Limited with funds obtained under a UBS loan. Amongst others, NEC approved the engagement of financial, legal and technical Consultants within PNG and internationally.

3. Due to the urgency of the matter, Consultants were engaged to provide services without complying with the procurement process under the Public Finance (Management) Act 1995 ('PNG').

4. In a letter dated 6th March 2014, Acting Secretary for the Department of Treasury (-Treasury), Mr Dairi Vele sought approval from the Central Supply and Tenders Board ('CSTB') for a Certificate of Inexpediency ('COI') for the payment of services for the following Consultants:
PNG Consultants to a total value of K9 million

- (i) Pacific Legal Group Lawyers
- (ii) Pacific Capacity Limited

International Consultants to a total value of AU\$14,555,759.00

- (i) UBS AG Australian Branch
- (ii) Ashurst Lawyers
- (iii) Norton Rose Fulbright of Australia
- (iv) KMPG

5. The CSTB convened on 7th March 2014 to consider the request from Treasury and approved the issuance of the COI subject to clearance from my Office.

6. Having noted your request and the relevant documents pertaining to it, I now provide my advice on the following issues.

Questions and Short Answer

7. The questions and Short Answers are as follows:

Q1: Whether a COI can be issued for the engagement of the Consultants (financial, legal and technical)?

A1: No

Q2: Whether CSTB has the power to approve retrospectively the payment of service for the engagement of the Consultants?

A2: No

Reasons

Certificate of Inexpediency

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8. I note that the National Executive Council in Decision No. 79/2014, amongst other things, endorsed the issuance of a COI for the captioned engagements. However, such issuance of a COI is subject to the relevant provisions of the PFMA and Financial Instructions.

9. Section 40(3)(b) of the PFMA empowers CSTB to certify that the inviting of tenders is impractical or inexpedient. Part 13, Division 4.14 of the Financial Instructions limits the issuance of a COI to the following declared situations:

- (a) Natural Disaster; or
- (b) Defence Emergency; or
- (c) Health Emergency; or
- (d) Civil Unrest

10. Furthermore, part 13, Division 4.13 of the Financial Instructions further provides that a COI cannot be issued to retrospectively cover a contract that has been performed. The principles of retrospectively will only apply if it is expressed in a law.

In light of the above, the circumstances in this case do not warrant the issuance of a COI. I have noted that an Authority to Pre-Commit Funds has been issued and CSTB has also approved as requested by Secretary for the Department of Treasury. This shows approval for such engagement, however such approval came after the task was completed. All the arrangements obtain the requisite approvals should have been obtained prior to the engagement of the Consultants to be compensated for the work already carried out. This can be done on a Quantum Meruit basis.

Quantum Meruit

11. Quantum Meruit is an equitable principle which provides for the

reasonable payment for the actual value of work that is done. The Courts held in the case of Fly River Provincial Government v Pioneer Health Services [2003] SC705 that where work has been performed on a contract not procured through the PFMA process, the party that has performed the work may obtain restitution under equity to avoid unjust enrichment by the other party to whom work has been performed for.

12. You would note that the work carried out is a commercial transaction which requires significant effort. Treasury was involved from the beginning with the Consultants until the tasks were completed. Therefore Treasury would be better placed to work out the remuneration based on the principle of Quantum Meruit. This means the Consultants will not be paid as per the initial amount agreed to, but for work done taking into account the nature of the transaction.

Attorney-General Approval

13. Section 8(4) of the Attorney-General Act 1989 provides:

-On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.¶

It is based on approval by the Attorney-General that legal services can be sought by government agencies from private firms both within PNG or internationally.

14. In the given circumstances, the engagement and payment of legal services from private firms must be done in consultation with the Attorney-General. Payment for the provision of legal services should be made on a Quantum Meruit basis provided the State is fully satisfied with the services rendered. Treasury would in this case be in a position to make an assessment of the amount to be paid.

15. I suggest that the prior to payment for legal services, Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision.

16. Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision of legal services to the State.

Way Forward

17. Provided that a COI is not justified in these circumstances, Treasury and the Central Bank may consider paying for the services rendered by the Consultants on a Quantum Meruit basis as discussed above. In addition, the payment for legal services should be done in consultation with the Attorney-General.

Yours sincerely

(signed)
Daniel Rolpagarea
State Solicitor

Comments

It is noted that the State Solicitor, Mr Rolpagarea was not involved in the initial loan negotiations, nor was he involved in the preparation of the various UBS AG Loan Transaction Documents. He is a member of the CSTB but he was not aware and hence was not present at the CSTB Meeting that approved the issuance of the COI for the engagement of the Consultants.

Mr Rolpagarea was served the 28 volumes of documents that included a draft NEC Policy Submission, unsigned Transaction Documents and other related documents by Pacific Legal Group Lawyers upon Mr Vele's instructions at 12 midnight on the eve of the NEC Special Meeting scheduled for 6 March 2014 and was not given enough time to thoroughly read through those documents in order to give his legal clearance. He noted that the Transaction Documents lacked explanatory notes to assist him.

Given the urgency of the matter, Mr Rolpagarea advised among other

matters that Section 209 of the Constitution also requires that Parliament's approval be obtained for these Bridge and Collar Loans which total up to AU\$1.239 Billion through the Budgetary process and that Mr Vele take appropriate steps to facilitate this constitutional requirement.

Mr Rolpagarea was aware that the State's borrowing was very excessive and that it would have an impact on the country's Budget and the Debt to Gross Domestic Production ratio. However, he accepted that the terms of the agreements was a reflection of the State's negotiated position based on Mr Vele's instructions taking into account the State's intentions and hence he advised Mr Vele to proceed to NEC with the documents to be considered taking into account the advice he had given. As noted earlier, Mr Vele did not adhere to his advice nor did he inform the NEC of the State Solicitor's advice on the constitutional requirement for Parliamentary approval.

[8] NEC DECISION TO PURCHASE SHARES IN OIL SEARCH LIMITED

On 23 February 2014, during a meeting in the Grand Papua Hotel with Mr Vele, Mr Botten and Mr Aopi, the Prime Minister committed the State to purchase new shares in Oil Search Ltd which was formalised in his letter dated 26 February 2014 to Mr Botten.

On 25 February 2014, trading in the Australian Stock Exchange of Oil Search Ltd shares was halted ahead of its announcement of issuing shares to existing Shareholders and interested buyers.

On 26 February 2014, the Prime Minister wrote to Mr Botten and advised him of the State's desire and willingness to participate in the Placement in order to form a long term

investment in Oil Search Ltd with a view to further strengthening the State and Oil Search Ltd's relationship. A draft Announcement to the share market was attached to his letter to Mr Botten.

On 27 February 2014, Oil Search Ltd shares trading were suspended ahead of its announcement in the Australian Stock Exchange.

On even date, Oil Search Ltd announced that it had agreed to acquire a 22.835% gross interest in PRL 15 (Elk/Antelope) from the PacLNG Group of Companies for US\$900 million funded through a placement of new shares to the State. The State and Oil Search Ltd reached an agreement under which the State was issued 149.39 million shares in Oil Search Ltd at AU\$8.20 per share.

On 5 March 2014, Mr Vele wrote to Mr Rolpagarea and stated that the documents related to a proposed transaction whereby the State entered into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd and requested for his legal clearance. The draft loan transaction documents and draft NEC Policy Submission and other related documents were delivered to Mr Rolpagarea by Pacific Legal Group Lawyers, purportedly engaged by Mr Vele very late at night.

On even date, Mr Rolpagarea requested Mr Vele to confirm and give clear instructions on the engagement of Norton Rose Fulbright and Pacific Legal Group Lawyers to act on behalf of the DoT as the legal firm had drafted a NEC Policy Submission No: 67/2014 that was presented to the NEC. Below is an extract:

I refer to your letter dated 5th March 2014 on the above.

Your letter makes reference to documents relating to the proposed transaction (transaction documents) whereby the State will enter into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Limited. These documents were delivered to my office this morning by way of personal service by Pacific Legal Group Lawyers upon your instructions. Your letter referred to above and delivered later during the day requests my urgent consideration of these documents and issuance of the legal clearance of National

Executive Council's (NEC) consideration.

I noted from the documents that Norton Rose Fulbright and Pacific Legal Group Lawyers are the State lawyers engaged and instructed through your office in relation to the above subject. I also noted that the following transaction documents listed below were negotiated and finalised between the State's lawyers and respective parties. These documents are;

1. Specific Security Deed between the State and UBS Nominees Pty Ltd ABN 32 001 450 522.

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2. Bridge Facility Agreement between the State and UBS AG, Australia Branch and UBS Nominees Pty Ltd.

3. Participants Sponsorship Agreement between the State and UBS Nominees Pty Ltd and UBS Securities Australia Limited.

4. Payment Direction Deed between the State and the National Petroleum Company of PNG (Kroton) Limited, Papua New Guinea Liquefied Natural Gas Global Company LDC and UBS AG, Australia Branch.

5. Security Trust Deed between the State and UBS Nominees Pty Ltd.

6. Nominee Deed between the State and UBS AG, Australia Branch, UBS Nominees Pty Ltd and UBS Securities Australia Limited.

7. Specific Security Deed (CHESS Securities-Collar) between the State and UBS AG, Australia Branch ABN 47 088 129 613.

8. Subscription Agreement between the State and Oil Search Limited.

I have gone through the above listed documents within the permitted time today and despite the lack of explanatory notes, I have formed the view that the terms of these agreements are a reflection of the State's negotiated position based on your instructions taking into account the State's intentions and as such are acceptable to the State.

There are also other documents forming part of the transaction documents and listed below as:

1. Advice to Governor-General
2. Verification Certificate from the State to UBS AG, Australia Branch
3. Minutes of a meeting of the Board of Directors of IPBC
4. Resolution In Lieu of Meeting of shareholders pursuant to Sections 103, 89 and 110 of the Companies Act 1997
5. Minutes of a meeting of the Board of directors of National Petroleum Company of PNG (Kroton) Limited held at Port Moresby with no specific dates
6. Power of Attorney from the National Petroleum Company of PNG (Kroton) Limited (the Grantor) and
7. Letter from Norton Rose Fulbright to the Independent State of PNG, care of the Acting Secretary of Treasury, Mr Dairi Vele, March 2014.

I have read that these documents listed immediately above are yet to be signed and/or approved by the respective individuals or company boards. Please facilitate such signatures/or board meetings.

I have read the NEC Decision and noted the background information particularly the State's intention to acquire a 10.01% interest in Oil Search.

I have also noted the recommendations and make the following comments;

1. The recommendations should include clearly the fact that the State and NPCP will direct all PNG LNG equity cash flows to be paid to UBS to be applied to prepayment of the bridge loan. I am aware that the Organic Law on the Sovereign Wealth Fund provides that all revenue from the PNG LNG Project will flow into the Sovereign Wealth Fund. This is stated in paragraph (c) ii on Page 5 of the NEC submission but not included in the recommendations. This in my view is a Major decision to be taken

by the State's lead agency in this regard and may take a decision.

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2. Some or if not most of the recommendations to NEC for approvals require approvals/authorizations specifically from the State's relevant agencies acting independently/pursuant to their respective laws but of course taking into consideration the Government/NEC Decision. I therefore advise that the relevant approvals be sought from the State's relevant agencies after NEC consideration and approval of the financing transaction.

3. I must also advise that section 209 of the PNG Constitution also requires that Parliament's approval be obtained for these Bridge and Collar loans which total up to A\$1.225 Billion through the budgetary process. I am sure you are aware of this constitutional requirement and further advise that you take appropriate steps to facilitate this process.

4. Note that I make no comments in relation to the amounts and percentage of fees in relation to the transaction as these are within your expertise to do so including the debt to equity ratio under the Loans (Overseas Borrowings) No. 2 Act and the requirements under the Papua New Guinea Fiscal Responsibility Act.

You may proceed to NEC with the documents to be considered taking into account my foregoing advice.

Please note that after the NEC approval of the Transaction documents, I will then prepare an advice to the Head of State advising him to execute the transaction documents. As such, I request that you provide to me the NEC Decision as soon as the decision is signed by the Chairman (Prime Minister).

On 6 March 2014, the Prime Minister personally sponsored the NEC Policy Submission No: 67/2014 NEC during its Special Meeting No: 08/2014 that made the Decision No: 79/2014 where NEC:

2. noted the proposed Transaction Documents referred to in Schedule A (attached) and the transactions contemplated by them including:

a) for the State to acquire 149,390,244 shares in Oil Search Limited (-Oil SearchII);

b) for the State to borrow A\$1.239 Billion from UBS AG (Australia Branch) (-UBSII), initially comprising two facilities (a A\$335 million bridge loan facility and a A\$904 million collar facility) (the -BorrowingII); and

c) for the State to engage UBS as its Advisor on the financing and the acquisition of Oil Search shares, including that UBS implement (on behalf and upon the request of the State) a sovereign bond issue to replace the bridge loan, (the -TransactionII).

3. approve to appoint Petromin PNG Holdings Limited as the State's eventual subscriber and nominee for this transaction;

4. noted the receipt of certificate correctness from the State Solicitor in relation to the Transaction Documents to which the State is a party, as set out in Schedule E (attached);

5. confirmed the authority for the Minister for Treasury to agree and finalize on behalf of the State any of the terms of the Transaction Documents referred to in this submission which for reasons of commercial sensitivity or otherwise, are not set out in this submission or its attachments, prior to the submission of the Transaction Documents to the Head of State for execution on behalf of the State;

6. approve to advise the Head of State (without limiting the authority of any other person as may be authorized to do so on behalf of the State) to:

(a) approve the Borrowing for the purpose of the purchase of shares in Oil Search

and for the purpose of meeting the expenses of the Borrowing and for the services of the State, to agree with UBS the manner and the terms and conditions of that Borrowing, pursuant to section 2(1) of the Loans (Overseas Borrowing) No.2 Act; and

(b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State Party is listed in Part 2 of the Schedule A pursuant to section 47 of the Public Finance (Management) Act 1995 and are attached to the State Solicitor's certificate set out in Schedule E.

7. approve to advise the Minister for Treasury to:

a) issue a direction pursuant to section 2 (11) of the Loans (Overseas Borrowings) No. 2 Act, that sections 13 and 14 of the Public Finance (Management) Act 1995 do not apply to the State in relation to the Borrowing;

b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State is a party listed in Part 1 of Schedule A pursuant to section 2(7) of the Loans (Overseas Borrowings) No.2 Act and attached to the State Solicitor's certificate as set out in Schedule E; and

c) authorise in writing and appoint as the State's Authorized Representative, the Secretary of the Department of Treasury and any other officers of the Department of Treasury as the Minister may determine and authorize each of them to execute any of the documents referred to in paragraph (b) and any documents as may be necessary to give effect to, or which are ancillary to, the documents referred to in paragraph (b), including any drawdown notice and any certificates.

And

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders Board under section 40(3)(b), and an authority to pre-commit expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department of Treasury certifying that after the full amount of the borrowing pursuant to the Transaction Documents, the total value of overseas commercial debt which will be owed by the State will not exceed 125% of the estimated internal revenue of the State for the calendar year 2014 within the meaning of section 2(3) of the Loans (Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and

d) approval of the payment direction in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

On 12 March 2014, Mr Gardiner of Oil Search Ltd advised that Goldman Sachs Financial

Markets Pty Ltd with a Bank Account number 011-112034-041 was the

recipient of the
Subscription.

On even date, Oil Search Ltd announced the completion of share placement and file appendix 3B, Cleansing Notice and Completion Letter.

On 7 July 2014, Mr Ilagi Veali, MPS, Secretary to the NEC as requested under the Organic Law on the Ombudsman Commission, provided a copy of the Attendant Sheet of the NEC Special Meeting No: 08/2014 held on 6 March 2014. Listed below are Ministers who were present:

1. Hon Peter O'Neill, Prime Minister
2. Hon Leo Dion, Deputy Prime Minister and Minister for Inter-Government Relations
3. Hon Don Polye, Minister for Treasury
4. Hon Ben Micah, Minister for State Enterprise and State Investments
5. Hon Ano Pala, Minister for Transport
6. Hon Rimbink Pato, Minister for Foreign Affairs and Immigrations
7. Hon Puka Temu, Minister for Public Services
8. Hon Loujaya Kouza, Minister for Religion, Youth and Community Development
9. Hon Fabian Pok, Minister for Defence
10. Hon Nick Kuman, Minister for Education
11. Hon James Marape, Minister for Finance
12. Hon Nixon Duban, Minister for Petroleum and Energy
13. Hon Richard Maru, Minister for Commerce, Trade and Industry
14. Hon Michael Malabag, Minister for Health and HIV/AIDS
15. Hon Mao Zeming, Minister for Fisheries and Marine Resources
16. Hon Steven Pirika Kama, Minister Bougainville Affairs
17. Hon Benny Allen, Minister for Lands and Physical Planning
18. Hon Charles Abel, Minister for Planning
19. Hon Davis Steven, Minister for Civil Aviation

And below is the list of Ministers who were absent during this NEC Special Meeting No: 08/2014:

1. Hon Patrick Pruaitch, Minister for Forest and Climate Change
2. Hon Tommy Tomscoll, Minister for Agriculture and Livestock
3. Hon John Pundari, Minister for Environment and Conservation
4. Hon Delilah Gore, Minister for Higher Education
5. Hon Kerenga Kua, Attorney-General
6. Hon Paul Isikiel, Minister for Housing and Urban Development
7. Hon Boka Kondra, Minister for Culture and Tourism
8. Hon Justin Tkatchenko, Minister for Sports and Pacific Games

9. Hon Mark Maipakai, Minister for Labour and Industrial Relations
10. Hon Robert Atiyafa, Minister for Police

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11. Hon Jim Simatab, Minister for Correctional Services
12. Hon Jimmy Miringtoro, Minister for Communication and Information
13. Hon Byron Chan, Minister for Mining
14. Hon Francis Awesa, Minister for Works and Implementation

Comments

The Commission's investigation revealed that the Prime Minister was personally involved in the negotiations with Oil Search Ltd where he committed the State to the purchase of shares in Oil Search Ltd to the value AU\$1.239 Billion at the subscription price of AU\$8.20 per share. He followed this up with a letter to MD of UBS, Mr Fowler regarding the proposal for UBS AG to provide funding facilities to the State for the purchase of the new Oil Search shares.

Based on the commitment made by the Prime Minister, Oil Search Ltd proceeded to suspend trading and made an announcement (which had been approved by the PM) in the Australian Stock Exchange regarding their acquisition of 22.835% gross interest in PRL 15 Elk/Antelope Project from PacLNG Group of Companies for US\$900 million to be funded through a placement of new shares to the State.

It is also noted that the Prime Minister then personally sponsored the NEC Policy Submission on this matter to the NEC and not Hon Polye, then Treasury Minister who was also present at the NEC meeting that made the decision for the State to purchase shares in Oil Search Ltd.

It was also revealed that the entire NEC was not present to deliberate on the NEC Policy Submission No: 67/2014 and there was no proper discussion on the same. The Commission notes that 14 out of 33 Ministers were not present in the NEC Special Meeting No: 08/2014 amongst them, the Attorney-General who is the Principal Legal Advisor to the NEC.

Mr Vele was the only Technical Official invited to address the NEC

on the NEC Policy

Submission for obvious reasons as he was personally involved in the whole transaction without the involvement of appropriate officers from the DoT.

The buying of shares in a speculative market by the Government using huge Loans from a financial institution is highly inappropriate as it defeats the whole purpose of the government. That is, the Government was created by the people through their elected representatives to serve their needs by regulating and facilitating service delivery and not to take out huge Loans for the purpose of purchasing shares.

The State had options available and these options should have been properly assessed and a strategic decision made after consultation conducted with all relevant authorities including BPNG, Treasury and appropriate State Owned Enterprises (SOEs).

For instance, the State had the option to directly invest in the Elk/Antelope gas fields in the Gulf of Papua, instead of buying shares in Oil Search Ltd and indirectly participating in the Elk/Antelope project through its purchase of shares in Oil Search Ltd which was irregular.

It appears the State helped Oil Search Ltd to acquire a 22.835% interest in PRL 15 (Elk/Antelope) from PacLNG Group of Companies through funding given for its purchase of new shares in Oil Search Ltd as alluded to in Oil Search announcement to the Australian
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Stock Exchange. It is noted that under the Oil and Gas Act the State will be expected at some stage to take up its mandatory 22.5% interest in the same Elk/Antelope project and will require funding for that purpose.

The State is part and partial of the Oil and Gas and Mineral exploration and operations in the country and that it will always benefit directly from Elk/Antelope project through its mandatory acquisition of 22.5% of interest under the Oil and Gas Act. This opportunity will arise in due course of time and the State will require funding for that purpose.

However, the Prime Minister informed the people of Papua New Guinea that the State and

the nation would benefit from the strategic move from the dividends gained from Oil Search Ltd and the LNG revenues.

It is also noted that the NEC Policy Submission No: 67/2014 by the Prime Minister ignored the State Solicitor's advise that a loan of such magnitude should have been debated on and approved by the Parliament through the Budgetary process as it would have a large impact on the country's debt.

The NEC Policy Submission No: 67/2014 and subsequent NEC Decision No: 79/2014 improperly imposed obligations/liabilities on SOEs (ie Petromin and NPCP) without prior consultation with such entities on their capacity to take on additional liabilities arising from the UBS Loan transaction. It is noted also that the Draft Board Minutes and Resolutions for these SOEs were also prepared and formed part of the Transaction Documents for NEC approval, thereby pre-empting the SOE Board's decision and resolutions.

It is noted that NEC also endorsed the issuance of COI to waiver tender by CSTB for the engagement of Consultants which was not proper and in direct breach of the requirements of Section 40(3)(b) of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual.

The NEC Decision No: 79/2014, Clause 2 (a), (b) and (c) stated that the NEC effectively approved the engagement of UBS AG as the lender of the Loan to purchase 149,390,244 shares in Oil Search Ltd and also as Financial Advisor for the State and as the Implementer. It was evident that the Prime Minister had placed the NEC in an awkward position that consented and compromised it's position in terms of obtaining independent financial advise on the UBS Loan transaction.

The Prime Minister should have known that the decision was not in the best interest of the people and hence should have taken all necessary measures to adequately and properly address the borrowing of UBS Loan in line with the PNG Fiscal Responsibility Act 2006 and Loans (Overseas Borrowing) (No. 2) Act (Chapter 133A).

Therefore, it is apparent that the Prime Minister may have misled the NEC and the public on the borrowing of UBS AG AU\$1.239 Billion Loan which was for the benefit of Oil Search Ltd to thwart the imminent take-over by IPIC of Abu Dhabi and to provide funding to Oil Search Ltd through purchase of shares in Oil Search Ltd to acquire 22.835% interest in PRL 15 Elk/Antelope from PacLNG Group of Companies.

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[9] HON DON POLYE MP DECOMMISSIONED AS MINISTER FOR TREASURY

On 27 January 2014, Minister Polye wrote to Mr Bakani and requested for a full brief on the implementation of the NEC Decision No: 479/2013 regarding the refinancing of IPIC Exchangeable Bond.

On 6 March 2014, the NEC through its Decision No: 79/2014 shifted its intentions from borrowing a loan to re-finance the IPIC Exchangeable Bond to the borrowing of a Loan from UBS AG to purchase new shares in Oil Search Ltd.

On even date, Mr Vele wrote to Minister Polye and advised that the Loan would not affect the State's debt program and that Petromin was the subscriber and nominee and then issued draft directions to the Minister for Treasury and his Authorization document to sign. Below is an extract from the letter:

- You are then required to (in accordance with approval No.4) advise the Head of State (without limiting the authority of any other person as may be authorized to do so on behalf of the State) to:
 - (a) approve the borrowing for purposes of purchase of the shares in Oil Search and for purposes of meeting the expenses of the borrowing and for the services of the State, and to agree with UBS the manner and the terms and the conditions that Borrowing, pursuant to Section 2(1) of the Loan (Overseas Borrowing) No.2 Act; and
 - (b) Execute under his signature on behalf of the State those of

the agreements, deeds
and other documents to which the State is party listed in Part
2 of the Schedule A
pursuant to Section 47 of the Public Finance (Management) Act
1995.

(c) These attached documents then allow for you to (in
accordance with approval
No.05) to:

- Issue a direction pursuant to Section 2(11) of the Loans
(Overseas Borrowings) No.2 Act
that Section 13 and 14 of the Public Finance (Management) Act
1995 do not apply to the
State in relation to the borrowing.
- Execute under his signature on behalf of the State those of the
agreements, deeds and other
documents to which the State is a party listed in Part 1 of
Schedule A pursuant to Section
2(7) of the Loan (Overseas Borrowing) No.2 Act.
- Once these documents are executed, the documents related to the
Governor-General will
be presented to him for execution also. Please let me know if
there are any further queries.

On 9 March 2014, Minister Polye wrote back to Mr Vele and advised
that he was not
prepared to commit the State with a total of K6 Billion debt this
fiscal year and that the
proposed loan should have been debated on the floor of Parliament
subject to Section 209 of
the Constitution. He added that the borrowing itself breached the
Papua New Guinea Fiscal
Responsibility Act 2006 and that revenue from the LNG project will
not be deposited in the
Sovereign Wealth Fund, but will go into servicing the UBS AG Loan.

On 10 March 2014, the Prime Minister through his mobile telephone
number No. 73777777
texted Minister Polye on his mobile telephone No. 70812280 the
following message below:

Don, I tried to call you but no response. I wish to inform you
that I waited for you to carry
out your responsibilities as directed by NEC without success. I
am disappointed that cabinet
solidarity has been undermined by your action and national
interest including business
confidence will be affected by your action. Therefore I have no
alternative but to
decommission you as Minister today. Thank you for your
contribution in the last two years

On even date, Minister Polye responded and texted back to the Prime Minister the following message below:

PM. Bro. I was getting advice from Gov, BPNG n Treasury in the treasury conference room when you called....you are the Pm and you make decisions and you have just made one.I was applying CONSERVATIVE CONSCIENCE on this very bad deal I thought might destroy PNGs economy....but you decided otherwise...May Gods will be done!!!

On even date, the Instrument of Determination of responsibilities of Ministers was executed decommissioning Mr Polye as Minister for Treasury and allowing the Prime Minister to assume the title of Minister for Treasury and assumed the responsibility for Treasury portfolio.

On 28 April 2014, then Minister Polye wrote to Hon Theodore Zurenuoc MP, the Speaker of Parliament and reiterated that the GoPNG's borrowing of AU\$1.239 Billion Loan from UBS AG to purchase shares in Oil Search Ltd was bad.

Comments

Then Minister for Treasury, Mr Polye was not involved in the negotiations with Oil Search Ltd and UBS AG on the purchase of shares with funding from UBS AG nor was he involved in the preparation of the NEC Policy Submission to approve the UBS Loan to purchase the Oil Search shares. The Prime Minister and Acting Secretary for Treasury, Mr Vele took carriage of these matters.

Then Minister Polye highlighted several issues he stated that should have been addressed and corrective measures taken in accordance with the relevant laws. For instance, Section 209 of the Constitution should have been complied with for Parliamentary approval through the Budgetary process as the magnitude of the UBS AG Loan would rise over the country's debt ceiling of 125% as stipulated in Section 3 of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

Section 209 of the Constitution states:

1. Notwithstanding anything in this Constitution, the raising and expenditure of finance by the National Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament, and shall be regulated by an Act of the Parliament.

2. For each fiscal year, there shall be a National Budget comprising-

(a) estimates of finance proposed to be raised and estimates of proposed expenditure by the National Government in respect of the fiscal year; and

(b) separate appropriations for the service of that year in respect of-

(i) the services of the Parliament; and

(ii) general public services; and

(iii) the services of the Judiciary; and

(c) such other supplementary Budgets and appropriations as are necessary.

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Section 3 of the Loans (Overseas Borrowing) (No.2) Act 1976(Chapter 133A) states:

3. The sums which may be borrowed under Subsection (1) shall be such that the total value of overseas commercial debt which will be owed by the State after any borrowing shall not exceed 125% of the estimated internal revenue for the year in which the borrowing takes place except only as a result of any bridge financing and subject to Subsection 2(b).

It seems that the borrowing of AU\$1.239 Billion from UBS AG breached Section 3 of the Loans (Overseas Borrowing) (No.2) Act 1976 (Chapter 133A) and

Section 4(c) of the Papua New Guinea Fiscal Responsibility Act 2006.

Section 4(c) of the Papua New Guinea Fiscal Responsibility Act 2006 states:

4. Principles for sound fiscal management

The principles for the sound fiscal management and implementation of the Government's Budgets are that:

(d) Government will not raise the overall level of debt during its term;

The UBS AG Loan exceeded the State's Gross Domestic Product to Debt ratio threshold of 35%. Hence, the Papua New Guinea Fiscal Responsibility Act 2006 being an Act to promote economic and financial transparency and accountability in the interests of a stable macroeconomic environment may not have been complied with.

The borrowing exceeded the 125% of total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 thereby breaching Section 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

Hence, then Minister Polye's assertion that the borrowing was an unplanned activity and was not appropriated in the 2014 budget was correct and the borrowing breached the Appropriation Act 2014.

The Commission's investigation revealed the following:

1. That there was no wide consultation with relevant Government Agencies that included the BPNG. In fact the BPNG was only made aware that there was a list of potential financiers for the IPIC Exchangeable Bond and that it was required to evaluate the proposals.

2. That there was no public tender by the State through its relevant agencies, including the CSTB to seek out the best and affordable financier to provide the loan to the State to buy shares in Oil Search Limited, thereby effectively owning 10.01% stake in Oil Search Ltd.

3. That the Prime Minister addressed the issue as an extension of the IPIC loan and the buyback of the Exchangeable Bond. When in fact the issue was whether or not the GoPNG should buy new shares in Oil Search Ltd.

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According to the Prime Minister, then Minister Polye was part of the NEC Special Meeting No: 79/2014 that approved for the loan.

However, evidence indicated that even though Hon Polye was present in the Special NEC Meeting No: 79/2014, he voiced his opposition and was against the NEC submission to approve for the purchase of shares in Oil Search Ltd.

The Commission's investigation also indicated that when Hon Polye refused to sign the Payment Direction Deed and other instruments on the drawdown of the UBS AG Loan, he was decommissioned as Minister for Treasury by the Prime Minister who then assumed the responsibility of Minister for Treasury and signed the Transaction Documents for the draw-down of the UBS AG Loan.

[10] INVOLVEMENT OF INDEPENDENT PUBLIC BUSINESS CORPORATION

On 6 March 2014, the NEC in its Special Meeting No: 8/2014, Decision No: 79/2014, Clauses 3 and 8(c) and (d), specifically stated that the IPBC to recommend to the Minister for Finance to approve the NPCP to execute the Payment Direction Deed to enable GloCo to forward all the proceeds from the PNG LNG project to UBS AG (Singapore). Below is an extract.

3. approve to appoint Petromin PNG Holdings Limited as the State's eventual subscriber and nominee for this transaction;

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

- c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and
- d) approval of the payment direction to in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

On 7 March 2014, the Prime Minister informed IPBC of the GoPNG's decision to enter into the UBS AG Loan Agreement.

On even date, the Prime Minister's Chief of Staff, Amb Isaac Lupari wrote to Mr Kumarasiri and advised that the NEC on 6 March 2014 resolved to approve the State to enter into certain borrowing arrangements with UBS AG in order to fund its acquisition of shares in Oil Search Ltd.

On even date, Minister Micah wrote to the IPBC Board of Directors and directed the IPBC Board to approve the Payment Direction Deed and any other necessary documents. Below is an extract:

the State, NPCP and UBS under which NPCP will instruct and direct Papua New Guinea Liquefied Natural Gas Global Company LDC (GloCo) to pay all payments, distributions or Findings of Facts

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other property (including by management or other fee, interest on shareholder loans, dividend, return of capital, repayment or redemption) that are payable to NPCP and UBS, including (but without limitation) exceptions for (1) funds necessary to support NPCP's ongoing cash call requirements for the PNG LNG project and (2) a pro rata portion of such proceeds from GloCo relevant to the PNG LNG Project area under the Umbrella Benefits

Sharing Agreement when the option is exercised. Funds from this bank account will be applied to repay and prepay amounts owing under the borrowing arrangements (the Payment Direction). The State is required to procure that NPCP sign the Payment Direction on or before 9 March 2014.

The Minister directs the Board and management of IPBC to urgent take all actions necessary to:

approve NPCP entering into the Payment Direction and any documents as shall be necessary or ancillary to give effect to the Payment Direction or to satisfy the conditions precedent to funding under the borrowing arrangements (including, without limitation, passing any necessary resolutions of the Board or management of IPBC, passing any necessary resolutions of the shareholders of NPCP and directing NPCP and directing NPCP itself to enter into the Payment Direction to be entered into by National Petroleum Company PNG (Kroton) Limited (INPCPII), Independent State of Papua New Guinea and UBS AG, Australia Branch (-UBSII)

(a) ...As part of the arrangements, the Stat is required to procure that NPCP enter into a payment direction deed between Payment Direction); and

(b) authorise any director, attorney or authorise representative of IPBC and NPCP (as applicable) to sign the documents referred to in paragraph (a) and to provide any necessary evidence and certifications to UBS in relation to the approvals referred to in paragraph (a), including any specimen signatures of any person that signs the Payment Direction),

so that NPCP may sign the Payment Direction on or before 9 March 2014.

On 8 March 2014, Mr Vele sent an electronic mail to Dr Webster, then IPBC Chairman and Board Members and urging them to progress considerations of the matters with the IPBC Board on the State's acquisition of shares in Oil Search Ltd. The attachments in the electronic mail are as follows:

1. IPBC Board briefing pack – Memo with explanation of transaction and payment Direction
2. Draft Payment Direction Deed
3. IPBC Shareholder Approval of Payment Direction
4. IPBC Board Approval
5. NPCP Board Resolution for Payment Directions
6. Power of Attorney

On even date, Mr Kumarasiri issued the following directives to Mr Frank Kramer, the Chairman of NPCP:

1. The National Petroleum Company of Papua New Guinea (Kroton) Limited as the Primary Party to the transaction in line with the 8. (c) of the NEC decision, on payment directions, NPCP Board has to pass a resolution immediately that covers the transaction and payment directives, special board resolution. Also recognize that to effect the transaction and payment directives, the resolution will require:

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a. Section 110 Companies Act, Shareholder approval for Major Transactions

b. IPBC ACT sec. 46 as it is over K1M and also unbudgeted transaction.

2. Once the NPCP Board has completed its resolutions, NPCP Management should make an urgent submission to IPBC along with the documents prepared by A/ Secretary Treasury to seeking:

a. Section 46 approval

b. Companies Act 110, Shareholder Resolution as the shareholder of NPCP

3. Upon receipt of the above, IPBC Board to consider the above two requirements in a timely manner.

...Please arrange your Board Resolutions urgently to facilitate the State's objective per the NEC Decision. I will forward you a copy of the Board Pack prepared by Dairi Vele for your information which will assist to fast tract this urgent initiate

by the State.

IPBC Management team waiting ready to take the matter to IPBC Board after NPCP Board's actions.

On 9 March 2014, Mr Erastus Kamburi the Chief Legal Officer to the IPBC sent an electronic mail to the Chairman and Directors of IPBC and requested them to meet at the IPBC Board Room at 9:30am on Monday 10 March 2014. This was to discuss the Circular Resolutions and Explanatory Notes in relation to the directives from Minister Micah, Amb Isaac Lupari and the NEC Decision No: 79/2014.

On even date, Mr Kumarasiri wrote to Hon James Marape, MP, Minister for Finance and requested his approval of the Memorandum of Approval to enable NPCP to enter into the Transaction Documents.

On 10 March 2014, Mr Kumarasiri certified the Circular Resolution of the Board of Directors for IPBC that authorised the execution of the Payment Direction Deed by NPCP.

On even date, Mr Kumarasiri also wrote a memorandum of recommendation that recommended for Minister Marape's approval that authorised NPCP to enter into the Transaction Documents.

On 11 March 2014, Mr Kamburi wrote an inter-office memorandum to Mr Kumarasiri and advised that the Certificate did not include the Shareholder Resolution which was signed and hence he sent an amended and verified certificate for Mr Kumarasiri's signature.

Comments

The NEC changed its intentions from refinancing of the IPIC loan to purchasing of new shares in Oil Search Ltd and approved Petromin as the State's eventual subscriber and nominee for the loan transaction. However, in his letter to the IPBC Board, Minister Micah directed and instructed Dr Webster, Mr Kumarasiri and the IPBC Board that the NPCP was to enter into the Payment Direction on or before 9 March 2014.

Minister Micah's letter and his directions contained therein were in direct breach of Section 59 of the Independent Public Business Corporation of Papua New

Guinea Act 2002. This particular Section prevented the Ministers or any Members of Parliament or Members of Provincial or Local-level Government influencing the Board and Management functions. Hence, Minister Micah had no authority to issue directives or instructions to the SOEs Managements and

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Boards. The actions of the Minister Micah were seen as asserting political influence on the IPBC Board and Management.

In addition, Minister Micah failed to present a report to Parliament regarding his directions to IPBC and that of Mr Vele and Amb Isaac Lupari as required by Section 59 of the to IPBC and that of Mr Vele and Amb Isaac Lupari as required by Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002.

Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002 states:
:

59. POLITICAL INFLUENCE.

(1) No Minister, member of the National Parliament or any member of a Provincial or Local-level Government may seek to direct or influence the exercise by a Director of his or her duties, powers or judgments or any Board decision other than through a written communication that is tabled concurrently in the National Parliament if it is in session or otherwise with the Speaker of the National Parliament (who shall table any such communications in the National Parliament at the next opportunity).

(2) A Director who receives any representations made by or on behalf of such persons shall record the fact of, and the content of, such representations at the next Board meeting and table copies of any written communications containing such representations at the Board meeting and with the Speaker of the National Parliament within seven days of receipt.

The actions of Amb Isaac Lupari to issue instructions to Mr

Kumarasiri were also improper as he had no authority to issue such instructions.

Mr Vele's actions were also improper when he issued directives and instructions to the IPBC Chairman and Board members regarding documents they were to consider on State's acquisition of shares in Oil Search Ltd as he had no authority to issue such directives and instructions.

It is also noted that Mr Vele had already contemplated the decision of IPBC Board and NPCP Board and produced the final documentation to the two (2) Boards to facilitate which included the IPBC Board briefing pack; that included a Memorandum with explanation of transaction and payment Direction, a Draft Payment Direction Deed, IPBC Shareholder Approval of Payment Direction Deed, IPBC Board Approval, NPCP Board Resolution for Payment Directions and Power of Attorney.

The Commission's investigations revealed that IPBC was not consulted nor involved in the discussions to borrow the UBS AG Loan to fund the purchase of new shares in Oil Search Ltd.

The Commission's investigation also revealed that Parliamentary approval was not sought on the loan arrangement and that Minister Micah and Amb Isaac Lupari asserted their political influence on the IPBC Board and Management to convene and implement the NEC Decision No: 79/2014 Clause 8(d).

[11] INDEPENDENT PUBLIC BUSINESS CORPORATION BOARD DECISION

On 6 March 2014, the NEC in its Special Meeting No: 8/2014, NEC Decision No:79/2014, specifically directed under Clauses 8(c) and (d) the IPBC to recommend to the Minister for Finance to approve the NPCP to execute the Payment Direction Deed to

UBS AG.

On 9 March 2014, Mr Kumarasiri prepared an Explanatory Note to the Board Circular Resolution outlining the purpose of the Special Board Meeting and request the Board to approve to empower any director to execute on behalf of the IPBC the resolution in lieu of meeting of shareholders and recommend to the Minister for Finance for his approval for NPCP to enter into the various Agreements.

On even date, Mr Sonk the Managing Director for NPCP, forwarded to Mr Kumarasiri an Extract of Minutes of a Meeting of the Board of Directors that contained the resolutions that authorised the NPCP to effect the Payment Direction Deed and appoint members of Management as holders of Power of Attorney to execute the Payment Direction Deed and the executed copy of the Payment Direction Deed which became effective upon the IPBC approval.

On 10 March 2014, the IPBC Board in its Special Board Meeting No: 3/2014, noted the legal advice by the State Solicitor to Mr Vele and in particular the requirement to comply with Section 209 of the Constitution and further actions that were taken by the State to address the requirements and made the following resolutions as outlined below:

a) That for the purpose of section 89 of the Companies Act 1997 that the IPBC agrees to and concurs in the execution by the NPCP of each and every document referred to in the Schedule (the Transaction Documents) and the directors of NPCP are hereby authorized to enter into the Transaction Documents.

b) That the transactions that subject of the Transaction Documents and the entry of NPCP into the Transaction Documents are approved by the IPBC in its capacity as sole shareholder of NPCP as a major transaction for the purpose of section 110 of the Companies Act.

c) That any director be authorized to execute on behalf of the IPBC the resolution in lieu of meeting of shareholders under section 103 of the Companies Act by which IPBC, as sole shareholder of NPCP, gives effect to resolutions (a) and (b).

d) To approve for the purpose of Section 46B(1) of the IPBC Act that the Managing Director of IPBC recommend to the Minister for Finance for approval, a proposal by National Petroleum Company of PNG (Kroton) Limited to enter into Agreement referred to in the Schedule to this document.

On 28 March 2014, Mr Kumarasiri advised the Commission that the IPBC gave its approval for the Payment Direction Deed to be executed by the NPCP and for NPCP to go ahead with the execution of the transaction and referred the matter to the Minister for Finance.

Comments

As noted previously IPBC was not consulted nor involved in the discussions to borrow the UBS AG Loan to fund the purchase of new shares in Oil Search Ltd.

The IPBC was aware of the State Solicitor's advice that Section 209 of the Constitution must be complied with however it proceeded to make the decision approving NPCP's execution

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of the Payment Direction Deed consistent with the Draft Board Resolution and other documents prepared by Mr Vele for this purpose.

The appropriate measure that should have been followed by the IPBC was for the Chairman for IPBC Board through Minister Micah to have referred the documents to the Speaker of the Parliament for tabling in Parliament for approval of the Loan Transaction in accordance with Section 209 (Parliamentary Responsibility) of the Constitution.

It appears that this was commercially not possible as the due date for the transaction to be finalised was to have taken place immediately within two weeks with the execution of the documents by the Prime Minister and GGPNG.

The IPBC Board immediately convened and facilitated the NEC Decision which was relayed to them by Minister Micah and Amb Isaac Lupari, by approving for NPCP to execute a Payment Direction Deed concerning payments from PNG LNG Global

Company to be
diverted to UBS to repaying the Loan.

As noted earlier, the IPBC Board Documents giving approval for NPCP to execute a Payment Direction Deed consistent with NEC Decision was prepared by Mr Vele and forwarded to the IPBC for this purpose pre-empting the decision of IPBC and the IPBC Board was rushed and pressured into making their decision.

[12] INVOLVEMENT OF PETROMIN PNG HOLDINGS LIMITED

On 6 March 2014, the NEC in Special Meeting No: 8/2014 made its Decision No: 79/2014 and under Clause 3, appointed Petromin as the State's eventual subscriber and nominee for the transaction to acquire the shares and the liability for the repayment of the loan to UBS AG. Below is an extract.

3. approve to appoint Petromin PNG Holdings Limited as the State's eventual subscriber and nominee for this transaction;

On even date, Mr Vele advised then Minister Polye that the borrowing would not affect the State's debt program for the year 2014. Below is an extract:

As you will be aware, on 6 March 2014, the National Executive Council (NEC) approved for the State to purchase 10.1% of Oil Search Limited (OSH).

In the discussion, you raised the issue of exactly where the liability was going to sit, with the implication being that it was an unplanned borrowing that would affect the State's debt program over the fiscal year 2014.

NEC then amended the recommendation to approve for Petromin Holdings (PNG) Limited (Petromin) as the eventual subscriber and nominee.

After legal advice from the external legal counsel was that under the agreed structure, the State would conduct the borrowing in the first instance and then transfer both the asset and the liability to Petromin by no later than three months from date of commencement which is 11 March 2014.

You have also stated you preferred outcome is for Treasury to on-lend to Petromin. Treasury as the authority to agree and finalise on behalf of the State any

terms of the Transaction

Documents prior to submission to the Head of State.

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You are then required to (in accordance with Approval No.4) advise the Head of State

(without limiting the authority of any other person as may be authorised to do so on behalf of the State) to:

1. Approve the Borrowing for the purpose of the purchase of shares in Oil Search and for the purpose of meeting the expenses of the Borrowing and for the services of the State, and to agree with UBS the manner and the terms and conditions of that borrowing, pursuant to section 2(1) of the Loans (Overseas Borrowings) No.2 Act; and

2. Execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State is party listed in Part 2 of Schedule A pursuant to section 47 of the Public Finance (Management) Act 1995.

These attached documents then allow for you to (in accordance with Approval No.5) to:

a. issue a direction pursuant to section 2(11) of the Loans (Overseas Borrowings) No.2 Act that sections 13 and 14 of the Public Finance (Management) Act 1995 do not apply to the State in relation to the Borrowing;

b. execute under his signature on behalf of the State those of the agreements, deed and other documents to which the State is a party listed in Part 1 of Schedule A pursuant to section 2(7) of the Loans (Overseas Borrowings) No.2 Act.

Once these documents are executed, the documents related to the Governor-General will be present to him for execution also.

Please let me know is there are any further queries.

(signed)
Mr Dairi Vele

On 25 March 2014, Mr Basu wrote to the Commission and stated that Petromin was never involved in the transaction of the Oil Search Ltd shares, nor was it involved in the negotiation of the transaction or preparation of the related agreements.

Section 4(a), (b) & (c) of the Petroleum PNG Holdings Limited Authorization Act 2007 outlines Petromin's role in the mineral and petroleum sector and it is clearly states:

(a) to acquire from the State and from others, whether directly or as a nominee of the State, interests in mining and petroleum projects in Papua New Guinea;

(b) to engage in mineral and petroleum exploration, evaluation and development and the production and recovery of any naturally occurring minerals and petroleum, whether in solid, liquid, or gaseous form or mixed together or with other material and substances, and to process, sell, or otherwise dispose of the same;

(c) to engage in and carry on, in all means, transportation, in Papua New Guinea and any part of the world, of mineral and petroleum or their derivatives whether in solid, liquid, gaseous or mixed together, of with other substances, and to sell or dispose of the same

Comments

Petromin was established as a business arm of the Government that specialised in the mineral and petroleum sector to hold and develop mining and petroleum tenements in Papua New Guinea and either alone or with others and for that purpose. Hence, the NEC

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Decision No: 79/2014 was in line with the Petromin Holding PNG Limited Authorization Act 2007 in that Petromin would be the State's subscriber and nominee for the transaction.

During his presenting of evidence to the Commission, Mr Kumarasiri furnished and produced Petromin's Balance Sheet that indicated that Petromin was not in a favourable and sound financial position to take on the Loan transaction.

The Commission's investigation revealed that Petromin Holdings Ltd MD and Board were not consulted nor involved in the discussions to borrow the UBS AG Loan to fund the purchase of new shares in Oil Search Ltd.

Therefore, it appears NEC was misled on the financial status of Petromin when it made the decision for Petromin to be the State's subscriber and nominee for the Loan transaction to purchase shares in Oil Search Ltd.

[13] INVOLVEMENT OF NATIONAL PETROLEUM COMPANY OF PAPUA NEW GUINEA (KROTON) LIMITED

On 3 February 2014, Minister Micah wrote to Mr Kramer and informed him on the progress on the IPIC Exchangeable Bond negotiations and the appointment of UBS AG.

On even date, Minister Micah accepted the BPNG's recommendations and the NPCP's lead to re-finance IPIC Exchangeable Bond process on behalf of the State.

On even date, the NPCP Management presented its financial position to the IPBC Board that indicated that the NPCP was financially struggling with support from the IPBC and the GoPNG through proceeds from the PNG LNG with payments from GloCo. Below is an extract:

EXECUTIVE SUMMARY

The National Petroleum Company of NPCP (-NPCP||) is the State Nominee that holds a 16.57% interest in the PNG LNG Project (the Project||) the 3rd largest interest after Exxon Mobil and Oil Search. The total construction cost after the November 2012 US\$3.3 billion cost increment, was revised up to US\$19.4 billion. NPCP maintains its representation in regular Project meetings such as the Operating, Technical, Finance and Sales, Shipping & Marketing committee meetings and ongoing liaison with the Co-Venture partners.

Following NPCP' revival as directed through NEC Decision 18/2013

on 30 January 2013,
separation from IPBC has progressed well culminating in the
Separation Agreement being
concluded in December. Additionally NPCP continued to build the
company with
emphasis on:

- NPCP identity—building the NPCP identity, for example the design and construction of NPCP offices. Additionally the formal Separation Agreement with IPBC;
- People—the identification of core competencies and the implementation of work plans to deliver upon these competencies (such as technical evaluation skills);
- Processes—the design, construction and implementation of business processes such as Employee KPI Management; and
- Governance—enhancing corporate governance through the implementation of policies, resolution of outstanding issues such as the 2010 Annual Accounts and adoption of a Board Manual.

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Since its revival, the Company has had 8 (eight) Board meetings to steer and position itself for the future while the Kumul structure is being developed in the background. The Board comprising a mix of respected Papua New Guineans has played a significant role in guiding management with its immediate mandate to restore the Company's full functions while at the same time strategically focussing on its final landing place with the Kumul structure.

This quarterly report summarises the operational and financial performance of NPCP as at the end of December 2013.

Management Account

1) Financial Performance

Below is the management account for NPCP showing the Income Statement and Working Capital for the period ending and as at 31 December 2013. All numbers remain unaudited and are subject to adjustments subsequent to the date of release of this report:

BUDGET	MOVEMENT	ACTUALS
-	Revenue from Operation	-
	Other Income	
	Hides Gas to Electricity – Gas Sales	9,132
6,480	2,652	
	Budgetary support from IPBC – NEC Decision	-
3,600	(3600)	
	Treasury Department Allocation	-
16,200	(16,200)	
<hr/>		
26,280	Total Gross Revenue	9,132
	2,652	
	Operating Expenses	
	Employee Benefits and expenses	(4,729)
(3,314)	1,415	
	Travel expenses	(264)
(369)	(104)	
	Professional and consultancy services	(2,146)
(2,124)	22	
	Directors' expenses	(454)
(360)	94	
	Government Affairs expenses	(8)
8		
	Other operating expenses	(951)
(1,562)	(444)	
	Total Operating expenses	(8,553)
(7,562)	(991)	
	Profit/(Loss) before tax and finance cost	579
18,718	3,643	

Financial Position

NPCP's Working Capital as at 31 December 2013 has positioned the Company in a Net Liability position. This position is mainly driven by the PNG LNG project cash calls which we are committed to contribute our share of the 16.57%. This project cash calls are paid directly on our behalf by GloCo (70% portion) and IPBC (30% portion). Note that at the time of preparing this report we have yet to receive the PDL Project numbers for the month of December 2013. All numbers remain unaudited and are subject to adjustments subsequent to the date of release of this report:

US\$'000	US\$'000	
Current Assets		Current

Liabilities			
Cash and cash equivalents		22,153	Trade
Creditors	9,967		
Advance cash call payable	1,249,185	14,958	Related party
Prepayments		17,869	Taxes payable
322			
Accounts Receivables		1,417	Provision for
employment benefits	354		
Other Receivables		1,254	Other
creditors and liabilities	78,762		
		57,652	
1,338,590			
Non Current Assets			Non Current
Liabilities			
Property, plant and equipment		2,251	LTR payable
153			
Oil and gas assets		2,823,660	Provision
for employee benefits	359		
Inventories		18,124	Related
party payable	2,061,667		
Investment in related party		17	Borrowings
9,740			
		2,844,052	
2,071,918			
TOTAL ASSETS		2,901,704	TOTAL
LIABILITIES	3,410,508		NET LIABILITIES
508,803			
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On 6 March 2014, the NEC in its Special Meeting No: 8/2014 appointed the NPCP as the State's nominee to execute the Payment Direction Deed concerning payments from GloCo. Below is an extract.

7. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied Natural Gas Global Company

LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and

On 8 March 2014, Mr Kramer upon directives from Mr Kumarasiri submitted a proposal to the IPBC Board requesting its approval for NPCP to enter into the Payment Direction Deed. Below is an extract:

The purpose of this memo is to inform the Independent Public Business Corporation (IPBC) Board of:

- the proposed financial arrangements for an acquisition by the Independent State of Papua New Guinea (State) of 149,390,244 shares in the listed public company Oil Search Limited (Oil Search) (Transaction); and
- the necessity of the payment direction from the National Petroleum Company of PNG (Kroton) Limited (NPCP) described below.

A. Background to Transaction

The Transaction involves the following:

- the State is to obtain a 10.01% interest in Oil Search;
- the State's shareholding will partially replace the IPBC shareholding under the previous exchangeable bond transaction with the International Petroleum Investment Corporation of Abu Dhabi (IPIC), which on 5 March 2014 is exchanged and converts to a shareholding by IPIC in Oil Search, resulting in IPBC holding no shares in Oil Search;
- an loan to the State of A\$1.225 Billion from UBS AG (Australia Branch) (UBS), initially comprising two facilities (a A\$330 million bridge loan facility and a A\$904 million collar loan facility), together with the engagement of UBS as advisers to the State on the acquisition of Oil Search and arranger of financing;
- the bridge loan facility is intended to be refinanced as quickly as possible after its

drawdown (by no later than 30 June 2014) and UBS, together with other international bankers as required, will be mandated to implement (on behalf of the State a sovereign bond issue (Sovereign Bond Issue) anticipated to be no later than 30 June 2014 to replace the bridge loan.

The Oil Search shares to be acquired are viewed as a strategic asset of the State which will provide benefit to the State and State-owned entities such as NPCP and IPBC by providing greater potential economic returns to the State through Oil Search involvement in the PNG LNG project.

Background to Payment Direction

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As part of the financing to be provided by UBS AG, Australia Branch (UBS) which will be used to fund the acquisition of shares of Oil Search;

- UBS is the facility agent under a bridge facility of up to AUD330,000,000 proposed to be provided by UBS to the State (the Bridge Facility);
- UBS require NPCP to enter into a payment direction deed between NPCP, Papua New Guinea Liquefied Natural Gas Global Company LDC (GloCo) and UBS (in its capacity as Facility Agent under the Bridge Facility) (Payment Direction);
- Under that Payment Direction NPCP will irrevocably instruct and direct GloCo to pay all payments, distributions or other property that are payable to NPCP by GloCo instead to UBS;
- Such proceeds are to be applied to repay and prepay amounts owing under the Bridge Facility. Such cash flows to be utilised to prepay the Bridge Facility to the extent the Bridge Facility is not previously refinanced by the Sovereign Bond Issue. The PNG LNG Case Flow Recourse is not a security interest and will not breach the sovereign negative pledge requirements; and
- Provided that the State exercises its option to extend the maturity of the Bridge Loan for another 6 month, the State and NPCP will undertake to

use their

reasonable endeavours to procure within 1 month of the extension a first ranking security to be granted by NPCP over NPCP's interest in PNG LNG for the benefit of UBS under the Bridge Facility.

It is a condition precedent of funding being advanced under the Bridge Facility that the

Company grant the Payment Direction in a form and substance satisfactory to UBS.

B. Documents and IPBC/NPCP approvals required

In order to implement the above following documents and approvals are required;

- the Payment Direction;
- IPBC shareholder resolution approving that NPCP give the Payment Direction;
- IPBC Board resolution approving that NPCP give the Payment Direction;
- NPCP board minutes approving giving the Payment Direction and entry into a power of attorney; and
- Power of attorney by NPCP appointing attorneys to execute the Payment Direction and associated documents.

The grant of the Payment Direction is subject to approval by:

- IPBC as the sole shareholder of NPCP, as a major transaction of NPCP pursuant to section 110 of the Companies Act 1997; and
- by the Minister for Finance, upon the recommendation of the Managing Director of the IPBC, pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002.

C. Timing

- The above transactions are extremely time critical for the State and its agencies, as there is a deadline of 4pm (Port Moresby Time) on Thursday 6 March 2014 for the State and its agencies to approve the acquisition of shares and financing package (including approvals and signature by the Head of State), with relevant documentation to be executed by 5pm (Port Moresby Time) on the same date.

- Additional facts and considerations

- On Thursday 27 February 2014, Oil Search announced that it had agreed to acquire a 22.835% gross interest in PRL 15 (Elk Antelope) from the Pac LNG Group

Companies for US900million to be funded through a placement of new shares to

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the State. The State and Oil Search reached an agreement (subject to approvals) under which the State will be issued 149.39 million shares in Oil Search at a A\$8.20 per share. The State will have a 10.01% shareholding in Oil Search following the share placement. The State is funding the placement through a committed financing package from UBS. The State has until 4pm (Port Moresby Time) on Thursday 6 March to approve the share placement and until 5pm (Port Moresby Time) on Thursday 6 March for the relevant documentation to be executed. In the event the State chooses not to or fails to approve the share placement, the State will not secure a shareholding in Oil Search and Oil Search will issue shares to institutional investors.

- Oil Search has agreed to acquire a 22.835% gross interest in Elk Antelope through the acquisition of the Pac LNG Group Companies for US900 million. Oil Search has announced that this transaction is unconditional and is expected to settle on Tuesday 11 March 2014. Post this acquisition; Elk Antelope's ownership will be divided between InterOil (75.6%), Oil Search (22.8%) and other smaller private interests (1.6%).

- Oil Search intends to fund this acquisition through the placement of 149.39 million shares to the State at A\$8.20 per share. The State will hold a 10.01% shareholding in Oil Search following the share placement.

- InterOil has released a press announcement stating it welcomes Oil Search as a joint venture partner and the acquisition creates a stable and sustainable joint venture partnership to develop Elk Antelope. The InterOil-Total sell-down transaction terms are likely to acquire change as a direct

result of the Oil Search acquisition. Total has publicly stated that it is committed to completing the PRL 15 acquisition, however there is no certainty this will occur. Oil Search's acquisition provides for pre-emptive rights and influence over the development plans for Elk Antelope, which potentially opens the door for co-operation with ExxonMobil and other PNG LNG project participants.

- The Exchangeable Bond issued by the State through IPBC to IPIC in 2009 has a maturity date of 5 March 2014. The proceeds raised from the Exchangeable Bond financing were used to fund the State's share of project capital expenditure for PNG LNG, which is expected to begin commercial production during 2014. Repayment of the IPIC financing is via the bonds being exchanged for the current stake in Oil Search held by the IPBC.

- Based on the impending transfer of IPBC's current stake in Oil Search, Oil Search has expressed a strong desire for the State to maintain a material shareholding in Oil Search so that the State shares in the additional upside from Oil Search's completed and producing projects, PNG LNG (in final commissioning) and the new Elk/Antelope gas field development.

On even date, Mr Vele sent an electronic mail to Dr Webster and Board Members urging them to progress considerations of the matters on the State's acquisition of shares in Oil Search Ltd and attached electronic copies of documents intended for the IPBC Board to approve. Below are the titles of the documents sent to the IPBC Board:

1. IPBC Board briefing pack – Memo with explanation of transaction and payment Direction
2. Draft Payment Direction Deed
3. IPBC Shareholder Approval of Payment Direction
4. IPBC Board Approval
5. NPCP Board Resolution for Payment Directions
6. Power of Attorney

On 9 March 2014, Mr Sonk forwarded to Mr Kumarasiri an Extract of Minutes of a Meeting of the Board of Directors that contained the resolutions that authorised NPCP to effect the Payment Direction Deed and appoint members of Management as holders of Power of Attorney to execute the Payment Direction Deed and the executed copy of the Payment Direction Deed which became effective upon IPBC's approval.

On even date, in its Special Board of Directors Meeting No: 02/2014, the NPCP Board passed resolutions that effected the signing of the Transaction Documents. Below is an extract from the Meeting Minute:

(a) the Company enter into any Transaction Document necessary to give effect to the Payment Direction or to satisfy the conditions precedent to funding under the Bridge Facility; and

(b) each Attorney is severally authorised, on behalf of the Company, to execute and deliver (or enter in any other way into) each Transaction Document and to do anything else that an Attorney is authorised to do under the Power of Attorney; and

(c) the Power of Attorney to be executed by the Company by fixing the common seal to it and that the fixing of the common seal be witnessed by any two directors or any director and a Company secretary.

Mr Sonk forwarded to Mr Kumarasiri an Extract of Minutes of a Meeting of the Board of Directors that contained the resolutions that authorised NPCP to effect the Payment Direction Deed and appoint members of Management as holders of Power of Attorney to execute the Payment Direction Deed and the executed copy of the Payment Direction Deed which became effective upon IPBC's approval.

On even date, the NPCP Board of Directors gave the Power of Attorney to Mr Sonk and Mr Wato.

On even date, Mr Sonk verified copies of the Shareholder resolutions of the NPCP Board dated 09 March 2014, Minutes of the Meeting and Power of Attorney of the NPCP.

On even date, Minister Marape approved the Memorandum of Approval

that enabled NPCP
to enter into the Transaction Documents.

On 10 March 2014, the IPBC Board in its Special Board Meeting No: 3 of 2014, noted the legal advice by the State Solicitor to the DoT and in particular the requirement to comply with Section 209 of the Constitution and further actions that were taken by the State to address the requirements made the following resolutions as outlined below:

(a) That for the purpose of section 89 of the Companies Act 1997 the IPBC agrees to and concurs in the execution by the NPCP of each and every document referred to in the Schedule (the Transaction Documents) and the directors of NPCP are hereby authorized to enter into the Transaction Documents.

(b) That the transactions that subject of the Transaction Documents and the entry of NPCP into the Transaction Documents are approved by the IPBC in its capacity as sole shareholder of NPCP as a major transaction for the purpose of section 110 of the Companies Act.

(c) That any director be authorized to execute on behalf of the IPBC the resolution in lieu of meeting of shareholders under section 103 of the Companies Act by which IPBC, as sole shareholder of NPCP, gives effect to resolutions (a) and (b).

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(d) To approve for the purpose of Section 46B(1) of the IPBC Act that the Managing Director of IPBC recommend to the Minister for Finance for approval, a proposal by National Petroleum Company of PNG (Kroton) Limited to enter into Agreement referred to in the Schedule to this document.

On even date, the IPBC Board deliberated and passed a resolution in lieu of meeting of shareholders pursuant to Sections 103, 89 and 110 of the Companies Act 1997. Below is an extract:

AGREEMENT OF SOLE SHAREHOLDER
RESOLVED that for the purposes of section 89 of the Companies

Act 1997 the shareholders
agrees to and concurs in the execution by the Company of each
and every document referred
to in the Schedule (the Transaction Documents) and the directors
of the Company are
hereby authorised to enter into the Transaction Documents.
MAJOR TRANSACTION

RESOLVED as a special resolution that the transactions the
subject of the Transaction
Documents and the entry by the Company into the Transaction
Documents are approved as
a major transaction for the purposes of section 110 of the
Companies Act 1997.

On 11 March 2014, Minister Marape approved of the NPCP to enter into
the execution of the
Payment Direction Deed.

On 11 April 2014, Mr Sonk wrote to Mr Graham and directed any
distributions made to the
NPCP to be paid to UBS AG (Singapore Branch).

On even date both Mr Sonk and Mr Wato wrote to Mr Graham and issued
the following
instructions and directions on the release of funds to NPCP to pay
the interest payment on
the loan to UBS AG. Below is an extract of the letter.

Papua New Guinea Liquefied Natural Gas Global Company LDC
C/o Esso Highlands Limited (Co. No.1- 18948)
Level 17 Central Plaza 1
345 Queen Street, Brisbane, Qld 4000

Attention: Peter Graham
Managing Director
Esso Highlands Limited
peter.m.graham@exxonmobil.com

RE: PAYMENT DIRECTION
The National Petroleum Company PNG (Kroton) Limited (-NPCP II)
hereby instructs and
directs Papua New Guinea Liquefied Natural Gas Global Company
LDC (GloCo) to pay
immediately available funds, all Distributions which are to be
paid from time to time to
NPCP in relation to all shares or other securities held by NPCP
in GloCo from time to time,
to the following bank account:

Correspondent Bank UBS AG, Stamford Branch
Swift: UBSWUS33XXX
Accountholder Bank: UBS AG, Singapore Branch
Swift: UBSWSGSGXXX

Account: 101-WA-216003-000
For Credit to: National Petroleum Company of PNG (Kroton)
Ltd
Account: TC501650

In this letter, –Distributionll means any payment or distribution of money or other property (including by management or other fee, interest on shareholder loans, dividend, return of capital, repayment or redemption) to or for the benefit of any holder (in that capacity) of securities issued by GloCo.

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This letter is a –Transaction Documentll for the purposes of paragraph (f) of the definition of –Transaction Documentll in clause 1.1 of the Bridge Facility Agreement dated 12 March 2014 between the Independent State of Papua New Guinea, UBS AG, Australia Branch and UBS Nominees Pty Ltd.

Yours sincerely,
PETROLEUM COMPANY OF PNG (KROTON) LIMITED

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney

SIGNED, SEALED and DELIVERED for
NATIONAL PETROLEUM COMPANY OF
PNG (KROTON) LIMITED under power
Of attorney in the presence of:

ROGEN WATO
Company Secretary

WAPU SONK
Managing Director

On 3 June 2014, Mr Kramer wrote to the Commission and advised that the NPCP's involvement was limited to the execution of the Payment Direction Deed as per the IPBC Board direction. Below is an extract of Mr Kramer's letter.

(d) My understanding of the transaction at that time (and my understanding has not changed) was that financing of the acquisition of Oil Search Shares included a Bridge Facility for an amount of about \$AUD330 million.

(e) NPCP was not a party to the relevant Bridge Facility agreement/document and had no opportunity to negotiate or affect the provisions of the document.

(f) NPCP was directed to enter into the Payment Direction Deed which gives UBS a secondary source for loan repayment for the Bridge Facility amount only, against NPCP's cash flow in the event that the State fails to issue bonds to replace the Bridge Facility.

(g) As you may be aware, NPCP is a Majority State Owned Enterprise under the Independent Public Business Corporation of PNG 2000 (IPBC Act) with 100% of its shares held by IPBC as Trustee of the General Business Trust for the State.

(h) The IPBC Act provides in Section 46I that IPBC may, by notice to a majority State Owned Enterprise, set policies or give directions in any matter concerning the activities of the Majority State Owned Enterprise.

(i) The IPBC Act further provides in Section 46J for sanctions and penalties for Directors who fail to comply with such direction as follows:

(i) A majority State Owned Enterprise which fails...to give prompt effect to a direction given to it under Section 46I shall have contravened this Part VIA of the (IPBC) Act.

(ii) If a majority State Owned Enterprise has contravened Part VIA, each of the Directors, including the Managing Director (if any) shall be deemed to have been involved in that contravention and thereby to have breached their duties as directors pursuant to Section 112 of the Companies Act 1977 and be punished according under Section 413 of that Act.

Section 112 of the Companies Act requires a Director of NPCP Kroton to act in good faith and in the best interest of NPCP Kroton's holding company (IPBC) when exercising his powers or performing his duties.

The effect of not complying with a Direction by IPBC under Section 461 of the IPBC Act is to establish a breach of the provisions of Section 112 and by that make the directors liable to the penalties under Section 413 of the Companies Act. Section 413 imposes fines up to K200,000.00 or imprisonment for a term not exceed 5 years, or both.

(j) The directors to NPCP Board were confirmed in an Email dated 8 March from Mr Wasantha Kumarasiri, the Managing Director of IPBC, and addressed to Mr Thomas Webster, the then Chairman of IPBC Board, with copies sent to a number of people including to members of his Board, the Managing Director of NPCP, Mr Wapu Sonk, and myself as Chairman of NPCP Board.

The 8th March email set out the resolutions required to be passed under the IPBC Act and concluded specifically addressed to NPCP –

–Chairman NPCP and MD NPCP...Please arrange your NPCP Board Resolutions urgently to facilitate the State's objective per the NEC Decision. I will forward you a copy of the Board Pack prepared by Dairi Vele for your information which will assist to fast tract this urgent initiative by the State.}}

(k) The effect of the Payment Direction Deed is for NPCP to direct that funds received by NPCP from the PNG LNG Project be deposited into an Escrow Account.

2.

(b) The Escrow Account is established in the name of NPCP with UBS AG Singapore and a direction has been provided to GloCo to make all payments due to NPCP into that nominated account.

Comments

It is noted that the NPCP was not a party to the Loan Negotiations in the first instance. However, Mr Kramer the Chairman for NPCP confirmed that pursuant to the Independent Public Business Corporation of PNG 2000 Act (Section 46I), the IPBC being the major Shareholder in NPCP (as Trustee for the State), can give directions

in any matter concerning the activities of the NPCP as a SOE.

Hence, the NPCP Board executed the directions from the IPBC Board in order to satisfy the NEC Decision of 6 March 2014 for execution of a Payment Direction Deed by NPCP concerning payments from GloCo to be diverted to UBS AG to repaying the Loan.

In light of the above approvals and decisions, the NPCP Managing Director and Company Secretary under Power of Attorney directed MD of Esso Highlands, Mr Graham to divert from time to time all immediate available funds which are payable to NPCP, to be forwarded to paying the interest payment on the Loan to UBS AG.

The Commission's investigation revealed that at and before the time that the GoPNG borrowed the Loan, the NPCP was a SOE that was operating at negative basis and had a lot of operational liabilities. Copies of various SOE's Balance Sheets obtained confirmed this.

NPCP came into existence in order to divert the proceeds from PNG LNG Project away from Petromin and paid directly to UBS AG to offset or service the Loan.

It is also noted that NPCP's existence to enforce the Payment Direction Deed is also questionable as it is not legally established under the proposed PNG Petroleum Company (Kroton) Act as this Act has not been certified by the Speaker of Parliament in order to be fully in force. Thus the involvement of NPCP in this whole process may be improper.

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PART 2 ENGAGEMENT OF CONSULTANTS TO FACILITATE THE BORROWING OF UBS AG LOAN

[1] ENGAGEMENT OF LEGAL CONSULTANTS

On 25 June 2013, the Prime Minister wrote to Hon Kua, then Attorney-General and advised that while the Attorney-General has discretion whether or not to Brief-Out legal services, this discretion did not extend to the appointment of a specific legal firm. The Prime Minister then ended his letter by stating that it was clear

therefore that legal services should be publicly tendered.

On 13 June 2014, Hon Kua responded to the Commission's summons dated 24 March 2014 in which he denied categorically the allegations that he was personally involved in giving clearance for the UBS AG loan and in particular confirmed that he was not present in the NEC Meeting that approved the borrowing of the UBS AG loan.

The Attorney-General has to be satisfied that individuals and legal firms have complied with the requirements outlined in Sections 8(4) of the Attorney-General Act 1989, an extract is outlined below:

Sections 8(4) of the Attorney-General Act 1989 states:

8. LEGAL ADVICE AND OPINION.

(4) On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.

The Legal Consultants who provided legal services relating to the UBS AG Loan and purchase of Oil Search shares were engaged by Mr Vele without the Attorney-General's approval.

Comments

Commission's investigations revealed that Mr Vele did not seek the Secretary for DJAG or the Attorney-General's approval to engage Pacific Legal Group Lawyers, Ashurst Lawyers and Norton Rose Fulbright of Australia to provide legal services to the State through the DoT. Hence the unilateral act of Mr Vele to usurp the powers of Attorney-General was wrong and illegal.

The CSTB stated in its Good Procurement Manual that the tender

processes set down in law are non-negotiable and other contracting processes, such as direct price negotiation, pre-qualification, selective tendering are illegal and not acceptable.

In other words, before any Government Agency or Department decides to engage a private legal firm, the Head of the Department or Agency must do a formal request to DJAG for Brief-Out of legal services by the Attorney-General.

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Furthermore Mr Vele and the DoT should have conducted a public tender for provision of the legal services required by the Department with assistance from the CSTB pursuant to Sections 39(2), (a) & (b) and 40(1), (a) & (b) of the Public Finance (Management) Act 1995.

Sections 39(2), (a) & (b) of the Public Finance (Management) Act 1995 states:

39. CENTRAL SUPPLY AND TENDERS BOARDS.

(2) In the exercise of its powers under Subsection (1), the Central Supply and Tenders Board may—

(a) invite a tender for any amount; and

(b) enter into a contract for any amount up to K10,000,000.00,

for and on behalf of the State.

Section 40(1), (a) & (b) of the Public Finance (Management) Act 1995 states:

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

(1) Subject to—

(a) this section; and

(b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of

which exceeds the prescribed amount.

The CSTB Good Procurement Manual states that the tendering of contracts to attract the best supplier to execute a project at the least cost to effectively and efficiently execute a project, is the mandatory requirement of the State when deciding to engage contractors or consultants to implement projects using government funds.

In this case, the proper procedure Mr Vele should have followed was for him to seek assistance from the Secretary for DJAG, Dr Kalinoe to obtain the Attorney-General's approval to engage private law firms to act on behalf of the State.

The Commission's investigations revealed that Mr Vele did not request the CSTB to advertise the contracts for legal services to be outsourced by the DoT to engage private legal firms to facilitate the borrowing of the UBS AG Loan.

It was also revealed that Dr Kalinoe and Hon Kua, then Attorney-General were not approached and consulted on any formal requests from Mr Vele to engage private legal firms relating to the borrowing of the UBS AG Loan. Therefore, it seemed that Mr Vele usurped the powers of the Attorney-General and breached Section 8 of the Attorney-General Act 1989, when he wrongly engaged private legal firms to provide legal services in relation to the UBS AG Loan.

[1.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [1] of the Report. Below is his response.

[1] ENGAGEMENT OF LEGAL CONSULTANTS

General Comment

Unfortunately again, the findings of fact are incorrect, and this is due to the superficial and limited investigation into the facts that was conducted by the Ombudsman Commission.

Only a limited amount of witnesses were interviewed with regards to this area and none of those interviewed were the Consultants.

Consultants did approach the Ombudsman Commission to provide information and the factual circumstances, and despite some of those Consultants actually being named in the Directions by the Ombudsman Commission resulting in factual findings that are for the most part untrue.

Response to Comments p65-66

My comments below are in addition to my full statement in response to Findings of Fact Part 1

1. There is an assumption that I retained Norton Rose Fulbright to provide legal services to the Department of Treasury at some stage in 2013 and prior to the NEC decision of 6 March 2014. This is incorrect.

2. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advise option available to IPBC for refinancing of the loan and or a restructure of the terms of the existing loan. Specifically it was recognized in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares. [see Letter 5 December 2012].

3. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

4. On 5 April 2013 the Cabinet explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds. [see NEC meeting 03/2013, decision no 117/2013].

Appointment of Members to IPIC Exchangeable Bond Review Committee – Dairi Vele Chairman

5. In July 2013 Cabinet determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Coordination Office, the Secretary of Public

Enterprises, the Secretary of Treasury (or his nominee), the State Solicitor (or his nominee) and the MD of IPBC to advise on options available to the State to refinance and maintain an interest in Oil Search (the Committee). [See NEC Decision 241/2013 at meeting 220/2013 attached].

6. On 6 August I was appointed Acting Secretary for Treasury.

7. We, the IPIC committee, had already set up meetings with various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond. Norton Rose Fulbright assisted with advice at these meetings.

8. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to Cabinet decision No 241/2013.

9. I sought the advice of Norton Rose Fulbright from the time that I was appointed Chairman of the IPIC Bond and that was due to the fact the Committee was under the direction of IPBC, and IPBC had retained Norton Rose Fulbright to advise on the IPIC refinancing issue. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as member of Treasury, and the Committee, had limited financial experience.

10. This continued until special circumstances arose for them to be appointed to represent the State on the transaction pursuant to the NEC decision.

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11. After the NEC Decision on 6 March 2014 which endorsed for a Certificate of Inexpediency for service and other contracts, for the purposes of giving effect to the NEC decision, and I was the person with the responsibility to implement it, I sought a certificate of inexpediency and to contract those consultants who were necessary for the transaction to proceed.

12. I say that at all material times the issue with regards to compliance with the Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

13. Mr Kua however did not raise an issue with regards to compliance with the Attorney-General Act and

indeed by his lack of complaint allowed the Consultants to be retained as a result of the NEC Decision and the CSTB Certificate of Inexpediency.

14. Mr Kua by his inaction at the time effectively waived any compliance issues, and indeed he was bound by the NEC decision, as we all were.

15. Mr Kua did not raise any issue with the retainer of Legal Consultants until the time he was removed by the Prime Minister as Attorney-General in June 2014.

16. It is incorrect to say that I usurped the powers of the Attorney-General, firstly as Norton Rose Fulbright has been retained by IPBC, and secondly as NEC has approved and endorsed the way forward with regards to service contracts which was to apply for a certificate to inexpediency due to the short commercial time limits that needed to be adhered to.

17. With regards to Ashurts, they were paid for by the State as it was a term of the loan agreement with UBS AG that the legal services of the lender would be funded by the borrower. This is a normal commercial condition. They were not retained by me but by UBS AG.

18. With regards to Pacific Legal Group, they were actually retained by Norton Rose Fulbright to act as their local Counsel for advice and assistance on procedures after Norton Rose Fulbright were asked to advice on the possibility of an UBS AG loan/Oil Search transaction in accordance with the terms of their retainer for IPBC. I did not retain them.

19. At the time of the request for a Certificate of Inexpediency, it was considered by all that it would be much more convenient for all parties that Pacific Legal Group and Ashurts be paid for directly by the State in Papua New Guinea, rather than the State remitting funds to Norton Rose and UBS in Australia and then Norton Rose and UBS remitting funds back to Papua New Guinea to pay Pacific Legal Group and Ashurts respectively.

20. Essentially, the request for the COI was to facilitate payment, as the only actual retainer was for Norton Rose Fulbright and not for Pacific Legal Group or Ashurts.

21. Had the Ombudsman Commission interviewed Pacific Legal group or Norton Rose Fulbright or Ashurts, myself and asked the specific questions, this would have been made clear.

22. I deny that I breached any proper processes or procedure with regards to the engagement of legal consultants.

23. I deny that I have breached the Attorney-General Act.

Comments

The Ombudsman Commission notes Mr Vele's comments in regard to the engagement of Legal Consultants to assist the State in facilitating the borrowing of the UBS AG Loan to purchase Oil Search Ltd shares.

However, the Ombudsman Commission's original comments on Mr Vele not complying with the procedures and processes outlined in Section 8 of the Attorney-General Act 1989 and Sections 39 and 40 of the Public Finance (Management) Act 1995 are sustained. That is, Mr Vele should have consulted the Attorney-General and then requested the Central Supply & Tenders Board to conduct public tender for legal firms to be engaged to provide legal advice on the borrowing. Even if Mr Vele said that Mr Kua was aware of the NEC Decision of 6 March 2014 and did not raise any issue with regards to compliance, for purpose of transparency and project of such magnitude, his checklist would have triggered the alarm.

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[2] ENGAGEMENT OF FINANCIAL AND TECHNICAL CONSULTANTS

[i] ENGAGEMENT OF UBS AG AS FINANCIAL ADVISOR AND LEAD ARRANGER FOR THE REFINANCING OF IPIC EXCHANGEABLE BOND

On 6 August 2013, the NEC appointed Mr Vele, as the Acting Secretary for the DoT.

On 12 August 2013, Mr Vele met with UBS AG officials at Sydney, Australia in regard to the refinancing of the IPIC Exchangeable Bond.

On 13 August 2013, Mr Vele met with Morgan Stanley officials in Sydney, Australia.

On 14 August 2013, Mr Vele met with JP Morgan officials at Sydney, Australia.

On 15 August 2013, Mr Vele held a second meeting with UBS AG officials at Sydney,

Australia.

On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.

On 7 January 2014, Mr Bakani advised Minister Micah that the State re-negotiate the funding structure of the proposals with the two (2) Financiers the UBS AG and Citi Bank.

On 15 January 2014, Minister Micah wrote to Mr Bakani and requested that the BPNG provide its final recommendations on the two (2) Financiers, UBS AG and Citi Bank.

On 16 January 2014, Mr Bakani requested all parties including the BPNG, Minister Micah, IPBC, and the DoT to draft the Terms of Reference to be used during negotiations with potential Financiers to re-finance the IPIC Exchangeable Bond.

17 January 2014, Mr Bakani wrote to and advised Mr Kumarasiri that the BPNG's evaluations and recommendations were based on information provided in accordance with the NEC Decision No: 479/2013 in its Special Meeting No: 37/2013 to borrow a loan to re-finance the IPIC Exchangeable Bond.

On even date Mr Bakani requested Ms Natalie Yacoubian of PNP Paribas to resubmit PNP Paribas proposal incorporating the refined terms relating to the re-financing of the IPIC Exchangeable Bond.

On even date Mr Bakani requested Mr Mitchell Turner of UBS AG to resubmit UBS AG proposal incorporating the refined terms relating to the re-financing of the IPIC Exchangeable Bond.

On even date Mr Bakani requested Mr Philip Graham to resubmit Citi Bank's proposal incorporating the refined terms relating to the re-financing of the IPIC Exchangeable Bond.

On even date Minister Micah advised Mr Bakani that he expected a recommendation from the BPNG regarding its evaluation of potential Financiers to re-finance the IPIC Exchangeable Bond by Wednesday 22 January 2014.

On 23 January 2014, Mr Bakani recommended to the NEC to request the Abu Dhabi Government for an extension of six months, to allow time to improve on the proposal by BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays.

On 27 January 2014, then Minister Polye wrote to Mr Bakani and requested for a full brief on the implementation of the NEC Decision No. 479/2013 regarding the re-financing of IPIC Exchangeable Bond.

On even date, Mr Bakani wrote to Minister Micah and recommended that UBS AG be given the mandate to fund the IPIC Exchangeable Bond.

On 30 January 2014, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger in relation to the management of the State's investment in Oil Search Ltd and the associated matters flowing from the issuance in 2009 of Exchangeable Bonds in respect of the State's 196.6 million shares in Oil Search to the IPIC of Abu Dhabi (Exchangeable Bond). On even date, Minister Micah wrote to Mr Bakani and instructed him to confirm with UBS AG that it had been accepted as the financier for the IPIC Exchangeable Bond. Below is an extract:

As we have discussed, could you please confirm with UBS that –

(i) it can meet the full refinancing amount of A\$1.7 Billion by 5th March 2014, and

(ii) it is able to provide sufficient funds above the A\$1.7 Billion if IPIC wants to exchange the bonds at a higher share price, i.e. above the strike price of A\$8.55.

The State will not be seeking an extension of six (6) months as you recommended because it will incur additional costs.

On even date, Mr Bakani wrote to Mr Mitchel Turner the Director for Investment Banking, UBS AG and advised that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion. Below is an extract:

Thank you and your team for the presentation and comprehensive discussion we had in Singapore on 20 January 2014.

On the recommendation of the Bank of Papua New Guinea (Bank), the Independent State of Papua New Guinea (State) decided to accept the proposal by UBS to refinance the IPIC EB, by a combined structure of a Rollover Collar and Term Loan.

Please note that, as discussed with you and the team, we need a written commitment from UBS, that a financing package of A\$1.7 billion, will be in place as of the 5th of March 2014 to meet the total cost of refinancing the IPIC EB. This commitment by the UBS will be presented by the State to the Government of Abu Dhabi.

Will you please be so kind to confirm in writing the commitment by UBS to fund the A\$1.7 billion IPIC EB on receipt of this letter.

In the event that IPIC will request a premium above the A\$8.55 share price, we will discuss with the accommodation of the additional amount to cover the difference.

In our meeting we brought to your attention that the Bank will recommend to the State to have a Government to Government meeting with Sheik Mansour Bin Zayed, Prime Minister of Abu Dhabi, and ask for an extension of the settlement date beyond the 5th of March 2014. If such an extension will be agreed on, we will inform you immediately.

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On 3 February 2014, Minister Micah wrote to Mr Bakani and advised that he accepted the BPNG's recommendation to use UBS AG as the State's Financial Advisor for the re-financing of the IPIC Exchangeable Bond.

On even date, Minister Micah also instructed Mr Kramer to seek approval from the NPCP Board and get other required approvals to formally mandate UBS AG as Financial Advisor for the IPIC Exchangeable Bond.

On 7 February 2014, Mr Bakani re-assured Minister Micah on its recommendation to use UBS AG to re-finance IPIC Exchangeable Bond.

On 25 February 2014, UBS AG wrote to Mr Vele and set out the terms on which the State engaged UBS AG with effect from 30 January 2014. Below is an extract:

Dear Dairi,

The purpose of this letter is to set out the terms on which The Independent State of Papua New Guinea (the –Statell) has engaged UBS AG, Australia Branch (ABN 47 088 129 613) (–UBSII) with effect from 30 January 2014 (–Effective Datell) to act as its Sole Financial Advisor and Sole Lead Arranger (–EngagementII) in relation to the management of the investment of the Independent State of Papua New Guinea (–Statell) in Oil Search Limited (–Oil SearchII) and the associated matters flowing from the issuance in 2009 of Exchangeable Bonds in respect of the State’s 196.6 million shares in Oil Search to the International Petroleum Investment Corporation (–IPICII) of Abu Dhabi (Exchangeable BondII).

For the purpose of this letter, –TransactionII means, whether effected directly or indirectly or in one transaction or a series of transactions:

(a) The acquisition by the State of all or any part of the share capital of Oil Search by whatever means, including direct placement by Oil Search, on-market purchases and derivatives; or

(b) Any acquisition, refinancing, redemption, cancellation or other business combination by the State or a third party of all or part of the Exchangeable Bonds;

(c) The reduction or elimination of the need for the State to make a cash payment to IPIC in respect of the Oil Search shares to be exchanged under the Exchangeable Bonds at maturity in the event that the Exchangeable Bonds are not repurchased by the State.

1. Role of UBS

UBS will, as requested by the State, provide the following advisory services and assistance together with any additional assistance agreed in writing between UBS and the State.

On 27 February 2014, four (4) days after his meeting with Mr Botten, Mr Aopi and Mr Vele, the Prime Minister wrote to Mr Fowler regarding the UBS AG's proposal to provide funding facilities to the State in connection with the subscription by the State for 149,390,244 million shares in Oil Search Ltd for AU\$8.20 per share.

On even date, a Subscription Agreement was signed between UBS AG (the Equity Derivative Financier) and Oil Shares Ltd.

On even date, UBS AG forwarded a Commitment Letter that was signed by the GGPNG which was witnessed by Mr Okuk as Commissioner of Oath.

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On 4 March 2014, Ashurst Lawyers and Pacific Legal Group Lawyers forwarded draft documents from UBS AG to the State that outlined the financial package that UBS AG was offering the State.

On 5 March 2014, Mr Fowler requested the Prime Minister to intervene in resolving the IPIC Exchangeable Bond issue, the PNG LNG direction-to-pay and the Sovereign Bond take-out of the Bridge Loan.

On 6 March, UBS AG issued a Bridge Takeout Letter to Mr Vele which letter outlined the terms of the fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was

signed by the GGPNG and witnessed by Mr Okuk.

On even date, the Prime Minister submitted an NEC Policy Submission No: 67/2014 to the NEC.

On even date, the NEC in its NEC Decision No: 79/2014 directed that the CSTB issue a COI and further directed the DoF to issue an APC to engage and pay the financial, legal and technical consultants for facilitating the borrowing. Below is an extract of the NEC Decision No:79/2014:

2. noted the proposed Transaction Documents referred to in Schedule A (attached) and the transactions contemplated by them including:

a) for the State to acquire 149,390,244 shares in Oil Search Limited (-Oil SearchII);

b) for the State to borrow A\$1.239 Billion from UBS AG (Australia Branch) (-UBSII), initially comprising two facilities (an A\$335 million bridge loan facility and a A\$904 million collar facility) (the -BorrowingII); and

c) for the State to engage UBS as its Advisors on the financing and the acquisition of Oil Search shares, including that UBS implement (on behalf and upon the request of the State) a sovereign bond issue to replace the bridge loan, (the -TransactionII).

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders Board under section 40(3)(b), and an authority to pre-commit expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

On even date, Mr Vele requested Mr Eludeme to approve his request for a COI to be issued at the earliest to cover the advisory costs on the consultants who

were engaged by him.

On even date, Mr Okuk representing Mr Vele, Pacific Legal Group Lawyers and Ashurst Lawyers delivered 28 documents pertaining to the UBS AG loan to Mr Rolpagarea, the State Solicitor, for his legal clearance.

On 7 March 2014, Mr Vele explained to Mr Rolpagarea that the COI was needed to access funds to pay for fees relating to the State's acquisition of the shares in Oil Search Ltd.

On even date, Mr Vele requested Mr Rolpagarea to issue legal clearance on the NEC Submission regarding the State's borrowing of the UBS AG Loan arrangements.

On even date, Amb Isaac Lupari wrote to Mr Kumarasiri and advised that the NEC approved the State's intent to borrow from UBS AG to fund its acquisition of shares in Oil Search Ltd.

On even date, the GGPNG signed the document enabling the State to borrow AU\$335 million from UBS AG under the Collar Loan structure to purchase shares in Oil Search Ltd and pay all expenses and services rendered to the State relating to the Borrowing.

On even date, Mr Vele advised Mr Eludeme that the local and international consultants should be paid for services rendered relating to the borrowing of the UBS AG Loan.

On even date, Dr Ngangan and Mr Vele signed and approved the APC form to release AU\$14,555,759.00 that was paid to the Consultants that were engaged to facilitate the borrowing of the UBS AG Loan of AU\$1.239 Billion to purchase 149,390,244 shares from Oil Search Ltd.

On 12 March 2014, Mr Naime advised Mr Rolpagarea that the CSTB awarded contracts to both local and international consultants to provide financial and technical advice to the State in regard to the borrowing of the UBS AG Loan.

On even date, Mr Eludeme certified that the inviting of tenders for the provision of financial, legal and technical advisory services was impractical or inexpedient. That is, he approved for the issuance of the COI to be issued to waiver public tender of the contracts.

On even date, Dr Ngangan approved Mr Vele's application for the Department complete and issued the APC for the above procurement indicating that there were funds available to pay the consultants.

On even date, the State, the NPCP and UBS AG agreed to the terms and conditions upon signing the Payment Direction Deed that directed the State through GloCo to pay immediately all available funds to the NPCP to pay to UBS AG to offset or service the Loan.

On even date, UBS AG confirmed with Mr Vele the terms and conditions of the financing transaction that were entered into between the State and UBS AG in respect to the purchasing of new shares in Oil Search Ltd.

On even date, the Prime Minister, Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Bridge Facility Agreement.

On even date, the GGPNG signed the Specific Security Deed (CHESS Securities – Collar) with UBS AG that provided security to the loan acquisition. The signing was witnessed by Mr Okuk.

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On even date, the GGPNG, signed the Security Trust Deed with UBS Nominees Pty Ltd that provided security to the loan acquisition. The signing was witnessed by Mr Okuk.

On even date, the GGPNG, witnessed by Mr Okuk signed the Participant Sponsorship Agreement with UBS Nominees Pty Ltd.

On even date, the Prime Minister, Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Confirmation Side Letter.

On even date, the GGPNG signed the Nominee Deed with UBS AG, UBS Nominees Pty Ltd and UBS Securities Australia for the Nominee (UBS Nominees Pty Ltd). The signing was witnessed by Mr Okuk.

On even date, the Substantial shareholders notice was prepared and lodged with Port Moresby Stock Exchange (POMSox) and ASX lodged on 17 March 2014.

On even date, the State (Subscriber) represented by the GGPNG witnessed by Mr Okuk signed the Subscription Agreement with Oil Search Limited (Issuer).

On even date, Mr Stephen Gardiner, the Chief Financial Officer for Oil Search Ltd, advised that Goldman Sachs Financial Markets Pty Ltd with a Bank Account number 011-112034-041 was the recipient of the Subscription.

Comments

The Commission's investigation revealed that the manner in which Mr Vele and Minister Micah engaged the UBS AG to provide a Loan facility for the State to purchase 149,390,244 shares in Oil Search Ltd was improper.

For instance, the BPNG was initially engaged by the NEC in its NEC Decision No: 479/2013 to re-finance the IPIC Exchangeable Bond loan. However, the State's intention was changed from re-financing the IPIC Exchangeable Bond to purchasing of new shares in Oil Search Ltd after the Prime Minister's meeting with Mr Botten and Mr Aopi when negotiations with IPIC and the Government of Abu Dhabi to buyback the IPIC Exchangeable Bond failed when IPIC did not respond to the GoPNG request.

It was also revealed that on 30 January 2014, Mr Vele engaged UBS AG as the Sole Financial Advisor and Lead Arranger in relation to the management of the Investment of the State in Oil Search Ltd and associated matters flowing from the issuance of 2009 IPIC Exchangeable Bond, without a formal NEC Decision advising of the UBS AG engagement to re-finance the IPIC Exchangeable Bond.

It was also revealed that Mr Vele had engaged UBS AG to be the Financial Advisor, Leader Arranger and then later as the Lender of the loan to the State for the purpose of purchasing

shares in Oil Search Ltd and this was done prior to the NEC Decision of 6 March 2014.

In addition, the engagement of UBS AG as the Financial Advisor, Lead Arranger and Lender of the Bridge and Collar Loan totalling AU\$1.239 Billion to the State to purchase 149,390,244 shares in Oil Search Ltd was done without complying with the public tender process and requirements for COI to waiver the tender under the Public Finance Management Act 1995.

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[2i] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [2(i)] of the Report. Below is his response.

PART 2 ENGAGEMENT OF CONSULTANTS TO FACILITATE THE BORROWING OF UBS AG LOAN

[2] ENGAGEMENT OF FINANCIAL AND TECHNICAL CONSULTANTS

[i] ENGAGEMENT OF UBS AG AS FINANCIAL ADVISOR AND LEAD ARRANGER FOR THE REFINANCING OF IPIC EXCHANGEABLE BOND

(i) Response to Comments page 72

In addition to my response to Findings of Fact Part 1 of this Provisional Report, I make additional comments.

1. On 30 January 2014, Mr. Bakani wrote to the Director of Investment banking UBS AG regarding the re-financing of the IPIC Loan and advised that the State accepted its proposal to re-finance the IPIC Exchangeable Bond by the combined structure of a Rollover Collar and term Loan. Mr Bakani also requested the UBS AG to confirm in writing its commitment to fund the AU\$1.7 Billion IPIC Exchangeable Bond.

2. The finding is incorrect it is false the state that on 30 January 2014 I engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd. I did not engage UBS AG on 30 January 2014 or at any other time

prior to 6 March 2014 or after.

3. UBS AG were only actually engaged by the State following NEC decision no 79/2014. Following the advice from BPNG that the State had accepted UBS AG proposal, as essentially project manager of the IPIC Bond matter, I commenced negotiations and dealings with UBS AG, but their retainer was contingent on the NEC Decision of 6 March 2014.

4. It is also false to state that I engaged UBS AG as the Lender of the Loan. A proposal was put to NEC for the engagement of UBS AG as Financial advisor, Lead arranger and Lender on 6 March 2014. It was only a decision of NEC that could determine to engage them. All parties involved were aware of this. No retainer agreements were signed until after the NEC Decision No 79/2014 on 6 March 2014.

5. I was working with them to put the essentially –draft deal before NEC as BPNG had originally selected them as the preferred advisor and arranger.

6. If NEC has decided against the deal then they would never have been officially retained. As to their fees for work done in assisting with putting together the draft deal to include in the proposal for NEC – consideration would have had to have been given to paying for the preparation work for the draft deal on a quantum meruit basis.

Comments

The Ombudsman Commission notes Mr Vele's comments in regard to the engagement of UBS AG as financial advisor and lead arranger for the refinancing of OPIC exchangeable bond.

However, the Ombudsman Commission's original comments on Mr Vele not complying with the procedures and processes outlined in Sections 39 and 40 of the Public Finance (Management) Act 1995 remains.

Mr Vele should have complied with the provisions of the Public Finance (Management) Act 1995 and called for open tender inviting potential Financial Advisors and Lead Arrangers for the refinancing of the IPIC exchangeable bond.

There was no need for Mr Vele to request the NEC for a COI to be issued when there was no natural disaster or defence emergency or health emergency or a situation of civil unrest. In fact this was a blatant ignorance of the procedural requirements of the procurement and tender process and abuse of the COI.

[ii] ENGAGEMENT OF KPMG AND PACIFIC CAPITAL LIMITED TO FACILITATE THE BORROWING OF UBS AG LOAN

On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No:

479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.

On 27 January 2014, Mr Bakani recommended the UBS AG to Minister Micah as the State's preferred Financer for the re-financing of the IPIC Exchangeable Bond.

On 30 January 2014, Mr Vele engaged UBS AG to act as the Sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of the IPIC Exchangeable Bond.

On even date, Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

On 7 February 2014, Mr Bakani re-assured Minister Micah on the BPNG's recommendation to use UBS AG to re-finance IPIC Exchangeable Bond.

On 23 February 2014, the Prime Minister, Mr Botten, Mr Aopi and Mr Vele met at Grand Papua Hotel and decided for the State to buy 149, 390, 244 shares which translated to 10.01 % shareholding in Oil Search Ltd.

On 27 February 2014 four days after the meeting, the Prime Minister wrote to Mr Fowler regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd for AU\$8.20 per share.

On 4 March 2014, Ashurst Lawyers forwarded draft documents for its client UBS AG to the State that outlined the financial package that UBS AG was offering the State.

On even date, Mr David Heathcote of KPMG presented KPMG's analysis on the monetised collars relating to financing the purchase of Oil Search Ltd shares to NPCP.

On 5 March 2014, Mr Vele wrote to Mr Rolpagarea and stated that the documents related to a proposed transaction whereby the State entered into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd and requested for his legal clearance. The draft loan transaction documents and draft NEC Policy Submission and other documents were delivered to Mr Rolpagarea by Pacific Legal Group Lawyers, purportedly engaged by Mr Vele very late at night on the eve of the NEC Special Meeting scheduled for 6 March 2014.

On even date, Mr Rolpagarea requested Mr Vele to provide to him details of confirmation and clear instructions on the engagement of Pacific Legal Group Lawyers and advised him on the need to comply with Section 209 of (Parliament Responsibility) of the Constitution by the NEC.

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On 6 March 2014, the Prime Minister submitted an NEC Policy Submission No: 67/2014 to the NEC and the NEC in its Decision No: 79/2014 among other things approved the borrowing of the UBS AG Loan for purpose of purchase of Oil Search Ltd shares and for purpose of meeting the expenses of the borrowing and CSTB to issue a COI and APC to be executed by the DoF.

On even date, Mr Vele requested Mr Eludeme to approve his request for COI at the earliest to cover the advisory costs pertaining to the facilitation of the borrowing of the UBS AG Loan. Below is an extract of Mr Vele's request:

...It is imperative that State be provided with urgent relevant and necessary financial, legal and technical advisory services in connection with that purchase

and related financing of the purchase by the State of the shares in Oil Search Limited. The transaction completing is to be completed at close of business on Sunday 9th March 4pm and therefore the appointment of the Legal, Financial and Technical Advisors were urgent and necessary. NEC has approved the appointments of the following firms on the recommendation of Department of Treasury:

Norton Rose Fulbright of Australia (Overseas Lawyers), Pacific Legal Group Lawyers (local lawyers) and Pacific Capital Limited (Financial and Technical Advisors) to act for the State on this matter.

It would be appreciated if you could consider and approve the Request for Certificate of Inexpediency enclosed at the earliest to cover the advisory fees of up to a limit of K9,000,000.00.

On even date, the Prime Minister advised the GGPNG, that the NEC approved the borrowing of a loan for the purpose of purchasing shares in Oil Search Ltd and for the purpose of meeting the expenses of the borrowing itself.

On even date, Mr Vele requested Dr Ngangan to approve the payment to UBS AG in relation to the acquisition of the shares.

On even date, Mr Vele advised Mr Eludeme that the Local and International financial and legal Advisors engaged as Consultants should be paid for services rendered to the State in relation to the borrowing of the UBS AG loan.

On 7 March 2014, Dr Ngangan approved the APC Expenditure Forms that indicated that there were funds available to pay the Local Consultants who facilitated the borrowing of the UBS AG Loan and purchase of shares in Oil Search Ltd. Below is an extract of Dr Ngangan's approval:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that he provisions of Part VII of the Public Finance (Management) Act 1995 have been complied with in relation to the purchase or supply of the property and services referred to in the Schedule and that funds will be available to meet the proposed schedule of payments for that property and those

services authorised the pre-commitment of expenditure of up to K9,000,000.00 for the purchase or supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of 149.39 million ordinary shares in Oil Search Limited through UBS AG, Australia Branch (ARBN 088 129 613).

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On 10 March 2014, Mr Eludeme advised Mr Vele that the CSTB resolved and approve the issuance of the COI for the awarding of contracts to both Local and International Advisors.

Below is an extract of Mr Eludeme's response:

The Board at its Meeting No: M-03/2014, held on Friday 07 March 2014 carefully considered your submission and resolved to approve the issuance of certificates of inexpediencies for award of contracts to the following financial/legal/technical firms from Papua New Guinea and International Law firms.

PNG Firms

1. Pacific Legal Group Lawyers
2. Pacific Capital Limited

The fees to cover the cost is PG Kina Nine Million, only (PGK9,000,000.00)

International Firms

1. UBS AG Australia Branch
2. Ashurst Lawyers,
3. Norton Rose Fulbright of Australia
4. KPMG

The fees to cover the cost is AU\$ Fourteen Million, Five Hundred and Fifty Five Thousand Seven Hundred and Fifty Nine only (AU\$14,555,759.00).

The Board further advised that the contracts must be compiled separately with the exact

amount for each firms.

The Board's approval is subject to the State Solicitor's clearance together with the receiving an approved original Authority to Pre-Commit (APC) to confirm funding.

The Board carefully noted the NEC Decision No: 79/2014 and is satisfied that all processes have been followed and the award was made in accordance to the provisions of the Public Finance (Management) Act 1995. The Secretariat will inform the respective firms through a Letter of Acceptance.

You are hereby advised to prepare a draft Contract Agreement and refer back to the Central Supply and Tenders Board to obtain legal clearance from the State Solicitors Office. Upon obtaining clearance, the agreement will be executed by me for and on behalf of the State.

Your original submission, stamped and signed is returned for your appropriate action.

On even date, Mr Vele wrote to Mr Eludeme and sought clearance from the CSTB to pay the financial, legal and technical Advisors who were engaged by Mr Vele to facilitate the State's borrowing of the UBS AG loan to finance the acquisition of Oil Search Ltd shares. Below is an extract of Mr Vele's letter:

The transaction has been completed and I would like to thank your office for your assistance in this matter.

One final issue that has to be cleared before my office can process payment for the Local Legal Advisors and the Local Financial Advisors is a clearance letter from the Office of the State Solicitor.

As you will note a loan to the State of A\$1.225 Billion from UBS AG, Australia Branch (UBS), initially comprising two facilities (a A\$330 million bridge loan facilities and a A\$904 collar loan facility), together with the engagement of UBS as Advisors to the State on the acquisition of the Oil Search shares and arranger of the financing, including that UBS may be

further engaged to implement (on behalf) of the State) a sovereign bond issue anticipated to be no later than 30 June 2014 to replace the bridge loan.

The Bridge Loan will to be urgently refinanced in the near future and the collar loan facility

in the next 12 to 24 months hence my office requested that the office issue a COI for the local

Advisors to be capped at nine million kina. The purpose was that the Acquisition of the Oil

Shares and the financing of this transaction is the first phase of their consultancy services.

On this basis they were retained to conclude this transaction for the following fees subject to

clearance from your office and the office of the State Solicitor: (first stage)

Pacific Legal Group Lawyers K1.6 million

Pacific Capital Limited K1.25 million

The Department has retained both Firms to continue work on the second phase of the

transaction which is the refinancing of the Bridge and Collar Loan.

To summarise the engagements of the two firms were:

STAGE 1

Discussion and possible negotiation with International Petroleum Investment Corporation

(IPIC) of Abu Dhabi in respect of the deposition of the Exchangeable Bonds issued by the

Independent Public Business Corporation (IPBC) in respect of the IPBC's holdings of the

196.6 million shares in Oil Search Limited (Oil Search).

Assistance with the proposed subscription by the State (through Treasury) for a significant

number of shares in Oil Shares under a placement arrangement in the event that discussions

with IPIC do not result in the reacquiring all or part of the shares in Oil Search shares

covered by the IPIC – issued Exchangeable Bonds.

STAGE 2

As a second phase to the above Project, assistance with the refinancing of all or part of the

initial finance raised to acquire the interest in Oil Search.

Since they have completed the first stage of their service to the

Department I have endorsed
the payment of the first phase fees as mentioned above subject to
necessary clearance from
your office and the office of the State Solicitor.

On 11 March 2014, Mr Vele completed and endorsed an APC Form that
requested for the
release of AU\$14,555,759 to be paid to the International Consultants
that prepared and
advised the State on the purchase of Oil Search Ltd shares.

On even date, Dr Ngangan approved the APC Expenditure and stated:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that he
provisions of Part VII of the
Public Finance (Management) Act 1995 have been complied with in
relation to the
purchase or supply of the property and services referred to in
the Schedule and that funds
will be available to meet the proposed schedule of payments for
that property and those
services authorised the pre-commitment of expenditure of up to A
\$10,347,821.00 for the
purchase or supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services
in connection with that
purchase and related financing of the purchase by the State of
149.39 million ordinary
shares in Oil Search Limited through UBS AG, Australia Branch
(ARBN 088 129 613).

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On 12 March 2014, Mr Vele endorsed an APC Form to release
K1,250,000.11 that was paid to
the Pacific Capital Ltd as consultancy fees.

On even date, Dr Ngangan advised Mr Eludeme that he received two APC
Forms from Mr
Vele. Below is an extract:

Department of Finance has received two APC applications from
Treasury Department for
deliberations.

Proposed Procurement

Amount

PNG Financial & Technical Advisors K1,250,000.00
Acquisition by State of Oil Search Shares

State (PNG) Legal Advisors – Acquisition K1,600,000.00
By State of Oil Search Shares

Pursuant to the requirements of s47 of the Public Finances (Management) Act, I have approved the application for the Department for authority to pre-commit for the above Procurement. The approved forms are enclosed with this letter.

I now recommend you for your deliberation and Board assistance with GoPNG procurement requirements and Board approval. A copy is given to the respective Department for the confirmation of the approved procurement.

Yours sincerely,

(signed)
Dr KEN NGANGAN CMA CPA
Acting Secretary

Comments

As noted previously the Commission's investigations revealed that Mr Vele engaged the financial and technical Consultants which included KPMG and Pacific Capital Ltd to facilitate the documentation to enable the State to borrow UBS AG Loan to purchase shares in Oil Search Ltd without complying with the public tender and procurement processes under the Public Finance (Management) Act 1995 and the Finance Management Manual.

Instead, Mr Vele wrote to Mr Eludeme and requested for a COI to be issued in order to waiver the public tendering of the Contracts and to formalise the earlier engagement of these Consultants who provided financial and technical advisory services to the State through the DoT. Mr Vele also requested Mr Eludeme to approve the retrospective application of the COI as these Consultants had rendered their services prior to their formal engagement to facilitate the borrowing. This was improper and in breach of the Public Finance (Management) Act 1995 and the Finance Management Manual.

In his interview with the Commission in regard to the borrowing of the UBS AG Loan, Mr Vele stated that the Legal, Financial and Technical Consultants were

already engaged by the DoT to provide consultancy and advisory services to the Department before his appointment as Acting Secretary. However, there is no evidence to confirm Mr Vele's statement.

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[2ii] RESPONSE FROM MR DAIRI VELE ON THE ENGAGEMENT OF KPMG AND PACIFIC CAPITAL LIMITED

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [2(ii)] of the Report. Below is his response.

PART 2 ENGAGEMENT OF CONSULTANTS TO FACILITATE THE BORROWING OF UBS AG LOAN
[2] ENGAGEMENT OF FINANCIAL AND TECHNICAL CONSULTANTS
[ii] ENGAGEMENT OF KPMG AND PACIFIC CAPITAL LIMITED TO FACILITATE THE BORROWING OF UBS AG LOAN

(i) Response to Commenting page 77

2. On 25 February 2014 UBS AG wrote to me and outlined the terms of engagement, including fees charged in relation to the role as Financial Advisor and Legal Arranger as well as financial modelling.

3. At about this time KPMG was also brought in as part of the State's due diligence to provide independent advice on the structure of the loan for the purchase of Oil Search shares. KPMG's role was to test the assumptions about the pricing auctions that UBS AG had developed and generally to ensure that UBS was providing good value for money to the State. We wanted to ensure that the State was getting value for money and that the financial calculations were correct. We thought this was the responsible and prudent course to take.

4. I recall that KPMG's advice was ultimately that UBS's fees were on the high side but within the market range and therefore acceptable. Subsequent to this I had further negotiations with UBS

and was able to get them to agree to further reduce their fees.

5. There was no retainer agreement with KPMG at that stage and they were well aware that
retainer and payment for their work very much depended upon whether or not Cabinet
determined to go ahead with the transaction.

6. While I had also received advice about the transaction from Pacific Capital. I wanted advice from
KPMG in order to confirm this advice and it also provided some comfort to me and to the
Cabinet that UBS loan structure was appropriate and the fees payable are reasonable.

7. With regards to my communications with CSTB and a request for a COI, I say I at all times acted
on the legal advice of the IPBC retained Norton Rose Lawyers, the State Solicitor and the Cabinet
Decision No 79/2014. I made no decision on my own to request a COI. I was merely implementing
the decision of Cabinet No 79/2014.

8. I was advised by Norton Rose to seek clearances on all the transaction documents and required
approvals. I sent the documents to the State Solicitor on 5 March 2014.

9. I That State Solicitor quite clearly advised that there were statutory approvals and permissions
needed and he advised that I should seek these after NEC had decided in favour of the deal. He
made this at point 2 of his letter dated 6 March 2014 after the starting sentence –I have also noted
the recommendations and make the following comments. The COI was one of the
recommendations he noted.

10. The matter then went before Cabinet on 6 March 2014 and NEC determined to endorse a COI to
be issued by SCTB and I was on the distribution List.

11. I then wrote on 6 and 7 March 2014 to CSTB to apply for a COI to be issued on the advice of and
in accordance with the advice of the State Solicitor, and in accordance and for the purposes of
giving effect to the NEC decision No 79/2014.

12. I did not make the decision to apply for a COI–NEC did. I did not made the decision to issue a
COI–CSTB did.

13. My conduct was not improper at all and certainly not in breach of the PFMA and Financial

Management Manual.

14. Norton Rose Fulbright was retained by IPBC on 5 December 2012 to advise on IPIC refinancing and options, and their retainer letter evidences that.

15. None of the other Consultants were engaged by me on behalf of the State prior to the 6 March 2014 Cabinet decision.

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[2iii] RESPONSE FROM MR FRANK KRAMER

On 16 February 2015, Mr Frank Kramer responded to the Ombudsman Commission's Provisional Report. Below is an extract of his letter:

Dear Sir

Investigation in relation to the UBS Transaction & the Oil Search Shares

I write to you to raise my concerns regarding the Commission's recent investigations and findings in relation to the above matter.

I was been reliably informed that the findings of those investigations purport to implicate me in my former capacity as a Director of Pacific Capital Limited (the Company). Please allow me the opportunity to put the record straight.

I was a former Chairman and non-executive Director of the Company and sold my interests (3.86%) in the company to Geefin Limited on 24th January 2012. The former Directors resigned with the exception of myself who was asked to stay on to facilitate certain formal transfers to the new owners. (Please refer to attached copies of notice of change of shareholders and directors).

It was intended that I would resign immediately thereafter. However, due to an oversight by the Chief Accountant my cessation as Director of the Company and removal as a signatory to the Company's bank accounts were never effected from the date of sale of my interest in the Company on 24th January 2012, I have had no direct or indirect interest in Pacific Capital Ltd. My position as Chairman of the Company ceased effective from the date of appointment of new Director and representative of Geefin Ltd, Malcolm Gheno.

To support my position, I attach herewith sworn statements by myself and the Company's secretary Bipin Agarwal. These sworn statements are self-explanatory.

Should you have any queries please do not hesitate to contact me.

Yours sincerely,

(signed)
Frank M. Kramer

Comments

The Ombudsman Commission notes the comments made by Mr Vele and Mr Kramer in regard to this particular section of the Report.

Mr Vele responded to the Provisional Report stating that the engagement of KPMG and Pacific Capital Ltd to facilitate the borrowing of UBS AG Loan was based advice from Norton Rose Fulbright, the State Solicitor and the NEC Decision No. 79/2014.

It was noted on Mr Vele's response to the Provisional Report that he failed to state how KPMG and Pacific Capital Ltd were engaged to provide financial and technical consultancy services to the State.

The Ombudsman Commission noted Mr Kramer's response to the Provisional Report. It was also noted that Mr Kramer was then the Chairman of the NPCP at that material time when the NEC made its decision to engage NPCP to execute a Payment Direction Deed as one of the Transaction Documents to facilitate the borrowing and interest payments accordingly.

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After assessing Mr Kramer's response and all other relevant documents before the Ombudsman Commission, it was established that the NPCP was never involved in the procedures leading up to the borrowing of the UBS AG Loan. The only time that NPCP was brought into the whole saga was when the State had to make repayments to UBS AG.

In regard to Mr Kramer being a Director of Pacific Capital Ltd at the time that he was the Chairman of NPCP, Mr Kramer advised that he sold his shares in Pacific Capital Ltd on 24th January 2012 and hence he was no longer a Director in Pacific Capital Ltd.

A search of company records with the Investment Promotion Authority (IPA) established that Mr Kramer became Director of Pacific Capital Ltd on 15 May 1997 and that his Directorship ceased on 05 February 2015.

However, Mr Kramer submitted evidence with supporting documents to the Commission that indicated that he had resigned as a Director of Pacific Capital Ltd. He further stated that even though he was no longer a Director, he was requested to stay on to formally transfer the shareholdership and Directorship to the new owners.

The Ombudsman Commission further noted in Mr Kramer's response that at that material time that Mr Kramer was the Chairman of NPCP Board of Directors, he was still a Director of Pacific Capital Ltd.

It was also noted that no evidence was provided to the Ombudsman Commission indicating that Mr Kramer declared his interest in Pacific Capital Ltd when NPCP was brought into the whole saga to execute the Payment Direction Deed. This created a conflict of interest situation in that Mr Kramer's position as Chairman of NPCP and his continued Directorship with Pacific Capital Ltd either directly or indirectly influenced Mr Vele to engage Pacific Capital Ltd to provide financial and technical advice to the State in regard to the borrowing of the UBS AG Loan.

It was also noted that on 10 April 2014, a DoT cheque No: 005039 with the amount K1,250,000.00 was deposited into Pacific Capital Ltd's bank account with Australia and New Zealand Banking Group (PNG) Ltd. Then between 15 April 2014 and 27 June 2014, moneys were transferred from Pacific Capital Ltd to Pertusio Capital Partners Ltd, a company in which Mr Vele is a Shareholder and Director.

[3] MR DAIRI VELE'S, ACTING SECRETARY, DEPARTMENT OF TREASURY,
ENGAGEMENT OF CONSULTANTS TO FACILITATE THE UBS AG LOAN

TRANSACTION

On 6 August 2013, the NEC appointed Mr Vele, as the Acting Secretary for DoT.

Between 12 and 16 August 2013, Mr Vele met with officials of various Financial Institutions in Australia which included UBS AG, Morgan Stanley, JP Morgan and Credit Suisse.

On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.

On 20 December 2013, Minister Micah wrote to Mr Bakani and requested the BPNG to evaluate the potential financiers' proposals to re-finance the IPIC Exchangeable Bond.

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On 27 January 2014, Mr Bakani recommended the UBS AG to Minister Micah.

On 30 January 2014, Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

On even date, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in request of the State's 196.6 million shares in Oil Search Ltd to IPIC of Abu Dhabi.

On 23 February 2014, Prime Minister, Mr Vele, Mr Botten and Mr Aopi met at the Grand Papua Hotel and agreed to commit the State to purchasing shares in Oil Search Ltd which was formalised in the Prime Minister's letter dated 26 February 2014 to Mr Botten.

On 25 February 2014, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of the IPIC

Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi. These terms were agreed to when the GGPNG signed the document and witnessed by Mr Okuk.

On 26 February 2014, four (4) days after their meeting at Grand Papua Hotel in Port Moresby, the Prime Minister wrote to Mr Botten expressing the State's willingness to purchase shares in Oil Search Ltd.

On 5 March 2014, Mr Vele wrote to Mr Rolpagarea and stated that the documents related to a proposed transaction whereby the State entered into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd and requested for his legal clearance. The draft loan transaction documents and draft NEC Policy Submission and related documents were delivered to Mr Rolpagarea very late at night by Pacific Legal Group Lawyers purportedly engaged by Mr Vele.

On even date, Pacific Legal Group Lawyers and Mr Okuk representing Mr Vele, delivered 28 draft documents on the UBS AG Loan that included Draft Board Minutes and Resolutions for the IPBC and NPCP pre-empting the Board Decisions.

On even date, Mr Rolpagarea wrote to Mr Vele requesting confirmation and clear instructions from him regarding the engagement of Pacific Legal Group Lawyers and Norton Rose Fulbright Lawyers to act on behalf of the DoT, as the legal firm had drafted an NEC Submission that proposed for the State to enter into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Ltd. Mr Rolpagarea advised among other matters that Section 209 of the Constitution also requires that Parliament's approval be obtained for these Bridge and Collar Loans which total up to AU\$1.225 Billion through the Budgetary process and that Mr Vele take appropriate steps to facilitate this constitutional requirement. He advised Mr Vele to proceed to NEC with the documents to be considered taking into account the advice he had given.

On 6 March 2014, Mr Vele was called to attend the Special NEC Meeting 08/2014 to clarify the content of the NEC Policy Submission No: 67/2014. The NEC subsequently made a

Decision No. 79/2014 among other things to engage UBS AG to be the Arranger, Financier and Advisor for the Loan to purchase 149,390,244 new shares in Oil Search Ltd; appointed

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Petromin as the State's subscriber and nominee for the transaction; endorsed NPCP to execute the Payment Direction Deed concerning payments from GloCo with approval of Minister for Finance on recommendation of IPBC and endorsed the issuance of COI to tender by the CSTB under Section 40(3) of the Public Finance (Management) Act 1995 and an APC by the Secretary for Finance under Section 47B of the Public Finance (Management) Act 1995.

On even date, UBS AG issued a Bridge Takeout Letter to Mr Vele and outlined the terms of fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by GGPNG, and witnessed by Mr Okuk.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, Mr Vele advised Treasury Minister Polye that the Loan would not affect the State's debt program and that Petromin was the subscriber and nominee of the State for the Transactions.

On even date Mr Vele wrote to Mr Eludeme and request for the CSTB to approve the request for COI at the earliest to cover the advisory costs.

On 7 March, Mr Vele wrote to Mr Eludeme and explained that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd.

On even date, Mr Vele wrote to Mr Rolpagarea and requested as a matter of importance and urgency for the legal clearance to be issued on the State's borrowing of loan arrangements.

On 8 March 2014, Mr Vele sent an electronic mail to Dr Webster requesting for the documents to be progressed to the IPBC Board for its consideration and approval. The electronic mail included electronic copies of documents that Mr Vele had prepared for the Board to endorse and approve.

On 10 March 2014, Mr Vele confirmed with Mr Rolpagarea that the GGPNG and Minster for Treasury were to execute the transaction documents to purchase Oil Search Ltd shares on behalf of the State, knowing with full knowledge that IPIC rejected GoPNG's proposal to buy the Exchange Bond on 24 February 2014.

On even date, Mr Vele wrote to Dr Ngangan and requested that they approve a payment to UBS AG in relation to the acquisition of the shares.

On 12 March 2014, UBS AG wrote to Mr Vele and the State and confirmed the terms and conditions of the financing transaction entered into between the State and UBS AG in respect of Oil Search Ltd shares.

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On 14 May 2014, Mr Vele wrote to the Commission and advised that the State is required to make periodic interest payments to UBS AG as per the Loan Agreement that was signed on 12 March 2014.

On even date, the DoT raised Requisition and Expenditure Forms (Finance Forms No: 3 & 4) and approved for AU\$2,261,938.36 which is about K5,543,966.57 to be paid to UBS AG.

On 15 May 2014, representatives of UBS AG, Mr Goldsworthy and Ms Raguine wrote to Mr Vele and pointed out to him the breach to clause 5.1(b) of the Agreement by the State, when the State failed to pay the interest for the loan on 14 May 2014 as a result of the Directions issued by the Commission under Section 27(4) of the Constitution.

On even date, Mr Vele requested clearance from Commission on the interest payment to UBS AG.

On 16 May 2014, Ms Betty Palaso, Commissioner-General for Internal Revenue Commission (IRC) issued a Tax Clearance Certificate to the DoT to transfer or remit moneys for the purpose of payment of interest on UBS AG Loan.

On even date, a copy of the Notification (transmission) of Original indicated that the BPNG transferred AU\$2,261,938.36 to the Reserved Bank of Australia.

On 5 June 2014, Mr Eludeme confirmed that CSTB approved a request for application for COI from Mr Vele.

On 6 June 2014, Mr Vele filed his affidavit pertaining to the National Court proceedings against the Commission and the State.

On 4 July 2014, Mr Vele stated in his letter to the Commission that that the UBS loan transaction was constitutional and have been lawfully undertaken by the State and its related parties in every aspect.

Comments:

As noted earlier, Mr Vele was appointed by the NEC as the Acting Secretary for Department of Treasury on 6 August 2013. He was not a career public servant and hence was not very familiar with Government's public finance management process and procedures and the public service machinery.

Between the period 12-16 August 2013, soon after Mr Vele's was appointed as Acting Secretary for DoT, he engaged in discussions with officials of various Financial Institutions in Australia which included UBS AG, Morgan Stanley, JP Morgan and Credit Suisse.

On 19 December 2013, NEC during a Special Meeting No. 37/2013 decided in Decision No. 479/2013 to approve BPNG to provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance that IPIC Exchangeable Bond and report back to Minister for Public Enterprises and State Investments by end of January 2014.

On 27 January 2014 BPNG Governor, Mr Bakani recommended UBS AG to Minister Micah for him to report back to NEC. There is no evidence to confirm that Minister Micah reported back to NEC on BPNG's recommendations on engagement of UBS AG or that NEC approved the engagement of UBS AG to re-finance IPIC Exchangeable Bond.

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Hence, Mr Vele had no authority and was wrong when he engaged UBS AG on 30 January 2014, as the Sole Financial Advisor and Sole Lead Arranger and then Lender of the AU\$1.239 Billion loan to the GoPNG.

The Commission's investigation revealed that Mr Vele engaged Legal and Financial Consultants to facilitate the Loan Transaction to purchase shares in Oil Search Ltd without complying with the tender procedures and requirements for issuance of COI under the Public Finance (Management) Act 1995 and Finance Management Manual. The preparations of the NEC Submission on this matter were done by the Consultants engaged by him.

The Financial and Technical Consultants were UBS AG, KPMG and Pacific Capital Ltd whilst the Legal Consultants involved were Pacific Legal Group lawyers, Norton Rose Fulbright of Australia and Ashurst that acted for UBS AG. The Law Firms involved were not cleared by the Attorney-General to act on behalf of the DoT and the State in accordance with Section 8 of the Attorney-General Act 1989.

The Commission's investigation also revealed that the engagement of UBS AG as the Lender of the Loan to the State to purchase shares in Oil Search in Oil Search Ltd came about as a result of Mr Vele's earlier engagement of UBS AG in January 2014 as the Sole Financier and Sole Lead Arranger in relation to management of investment of the State in Oil Search Ltd and associated matters flowing from the issuance of 2009 IPIC Exchangeable Bond and their engagement was done without complying with the tender process and the requirements for issuance of COI under the Public Finance (Management) Act 1995 and Finance Management Manual.

The five (5) Consultants; Norton Rose Fulbright of Australia, Pacific Legal Group Lawyers, Pacific Capital Ltd, Ashurst Lawyers and KPMG were all engaged by Mr Vele prior to the awarding of the contract by the CSTB and this was in breach of Section 40(1) of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clause 13 of the Finance Management Manual.

Part 13, Division 4, Clause 13 of the Finance Management Manual states:

13. A Certificate of Inexpediency cannot be issued to retrospectively cover a contract already executed.

Therefore, Mr Vele's statement that proper processes and procedures were complied with for the engagement of the Consultants was wrong and breached the above stated laws.

The Commission's investigation also revealed that Mr Vele and DoT did not prepare the NEC submission on the UBS Loan Transaction to purchase new shares in Oil Search Ltd. The NEC Submission was prepared by the Legal and Financial Consultants engaged by Mr Vele.

[3.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [3] of the Report. Below is his response.

[3] MR DAIRI VELE'S, ACTING SECRETARY, DEPARTMENT OF TREASURY, ENGAGEMENT OF CONSULTANTS TO FACILITATE THE UBS AG LOAN TRANSACTION

Response to Page 81 & 82 and Page 83 & 84

The facts that are set out on pages 78–80 and 82–83 inclusive are inaccurate and I refer to my Response to the Chronology in this regard.

With regards to the comments, I say as follows:-

1. At all times during the assessment of financial institutions, the preparation of the draft deal for NEC and the implementation of the NEC Decision 79/2014, I followed advice of lawyers both external and State and all steps taken were in accordance with such advice and the NEC Decision No 79/2014.

2. I engaged in discussions with Bank Officials between 12–16 august 2013 as mandated by my role as Member of the IPIC Bond Committee and in my role as Secretary for Treasury.

3. On 30 January, the finding is incorrect. It is false to state that I engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd. I did not engage UBS AG on 30 January 2014 or at any other time prior to 6 March 2014 or after.

4. UBS AG was not only actually engaged by the State following Cabinet Decision no 79/2014. Following the advice from BPNG that the State had accepted UBS AG proposal, as essentially project manager of the IPIC Bond matter, I commenced negotiations and dealings with UBS AG to put together the proposal for NEC but their retainer was contingent on the NEC Decision of 6 March 2014.

5. It is also false to state that engaged UBS AG as the Lender of the Loan. A proposal was put to NEC for the engagement of UBS AG as Financial Advisor, Lead Arranger and Lender on 6 March 2014. It was only a decision of NEC that could determine to engage them. All parties involved were aware of this. No retainer agreements were signed until after the NEC Decision No 79/2014 on 6 March 2014.

6. I was working with them to put the essentially –draft deal before NEC as BPNG had originally selected them as the preferred advisor and arranger.

7. If NEC has decided against the deal then they would never have been officially retained. As to their fees for work done in assisting with putting together the draft deal to include in the proposal for NEC – consideration would have had to have been given to paying for the preparation work for the draft deal on a quantum meruit basis.

8. I engaged no legal or financial consultants in breach of the Public Finance Management Act and Finance Manual before the Cabinet meeting of 6 March 2014 or after.

9. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advise option available to IPBC for refinancing of the loan and or a restructure of them terms of the existing loan. Specifically it was recognised in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares.

10. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

11. On 5 April 2013 the NEC explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds.

12. In July 2013 NEC determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Coordination Office, the Secretary of Public Enterprises, the Secretary of Treasury (of his nominee), the State Solicitor (or his nominee)

and the MD of IPBC to advise on options available to the State to refinance and maintain an interest in Oil Search (the Committee).

13. On 6 August I was appointed Acting Secretary for Treasury.

14. We, the IPIC committee, had already set up meetings with

various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC for the refinancing advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond. Norton Rose Fulbright assisted with advice at these meetings.

15. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to NEC decision No 241/2013.

16. I sought the advice of Norton Rose Fulbright from the time that I was appointed Chairman of the IPIC Bond and that was due to the fact the Committee was under the direction of IPBC, and IPBC had retained Norton Rose Fulbright to advise on the IPIC refinancing issues. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as members of Treasury, and the Committee, had limited financial experience.

17. This continued until special circumstances arose for them to be appointed to represent the State on the transaction pursuant to the NEC decision.

18. After the NEC Decision on 6 March 2014 which endorsed for a certificate of inexpediency for service and other contracts, for the purposes of giving effect to the NEC decision, and I was the person with the responsibility to implement it as directed by the State Solicitor on 5 March 2014, I sought a certificate of inexpediency and to contract those consultants who were necessary for the transaction to proceed.

19. I say that at all material times the then Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

20. Mr Kua however did not raise an issue with regards to compliance with the Attorney-General Act and indeed by his lack of complaint allowed the Consultants to be retained as a result of the NEC Decision and the CSTB Certificate of Inexpediency.

21. Mr. Kua by his inaction at the time effectively waived any compliance issues, and indeed he was bound by the NEC decision, as we all were.

22. Mr Kua did not raise any issue with the retainer of Legal Consultants until the time he was

removed by the Prime Minister as Attorney-General in June 2014.

23. It is incorrect to say that I usurped the powers of the attorney-General, firstly as Norton Rose Fulbright has been retained by IPBC, and secondly as NEC has approved and endorsed the way forward with regards to service contracts which was to apply for a Certificate of Inexpediency due to the short commercial time limits that needed to be adhered to.

24. With regards to Ashurts, they were paid for by the State as it was a term of the loan agreement with UBS AG that the legal services of the lender would be funded by the borrower. This is a normal commercial condition. They were not retained by me but by UBS AG.

25. With regards to Pacific Legal Group, they were actually retained by Norton Rose Fulbright to act as their local Counsel for advice and assistance on procedures after Norton Rose Fulbright were asked to advice on the possibility of an UBS AG loan/Oil Search transaction in accordance with the terms of their retainer for IPBC. I did not retain them.

26. At the time of the request for a Certificate of Inexpediency, it was considered by all that it would be much more convenient for all parties that Pacific Legal Group be paid directly by the State in Papua New Guinea, rather than the State remitting funds to Norton Rose in Australia and then Norton Rose remitting funds back to Papua New Guinea to pay Pacific Legal Group.

27. Essentially, the request for the COI was to facilitate payment, as the only actual retainer was for Norton Rose, and not for Pacific Legal Group or Ashursts.

28. Had the Ombudsman Commission interviewed Pacific Legal group or Norton Rose Fulbright or myself and asked the specific questions, this would have been made clear.

29. I deny that I breached any proper processes or procedure with regards to the engagement of legal consultants.

The Ombudsman Commission noted Mr Vele's response to the Provisional Report.

The Ombudsman Commission also noted that Mr Vele stated that the State through the IPBC retained Norton Rose Fulbright and not Pacific Legal Group Lawyers or Ashursts. It was noted that Norton Rose Fulbright retained Pacific Legal Group Lawyers as it's in country partner, while Ashursts was retained by UBS AG as it's in country partner.

Mr Vele also stated that due to time constraints, it was necessary for commercial purpose for the NEC to approve the issuance of the COI. He further stated that it was convenient for the State to pay UBS AG, KPMG, Pacific Capital Ltd, Pacific Legal Group Lawyers, Norton Rose Fulbright and Ashurst for services rendered under the COI which was applied retrospectively.

However, as pointed out earlier in the original comment in the Provisional Report, the Ombudsman Commission maintains that Mr Vele failed to comply with the tender and procurement procedures outlined in the Public Finance (Management) Act 1995 and the Finance Management Manual. That is, Mr Vele's engagement of Norton Rose Fulbright, KPMG, Pacific Capital Ltd, Pacific Legal Group lawyers, and Ashursts to act as the Financial and Legal Consultants to provide financial, technical and legal advice on the borrowing of UBS AG Loan to purchase Oil Search Ltd shares was improper and wrong.

[4] REQUEST FOR A CERTIFICATE OF INEXPEDIENCY FOR THE ENGAGEMENT OF CONSULTANTS

On 6 March 2014, in its Special Meeting No: 08/2014, the NEC made a Decision No: 79/2014 and endorsed that a COI should be issued by the CSTB to facilitate the process of making sure that the UBS AG Loan is secured. Below is an extract of the NEC decision:

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:
a) issue of a certificate of inexpediency to tender by the

Central Supply and
Tenders Board under section 40(3)(b), and an authority to
pre-commit
expenditure by the Secretary of the Department of Finance
under section 47B, of
the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department
of Treasury certifying
that after the full amount of the borrowing pursuant to the
Transaction
Documents, the total value of overseas commercial debt which
will be owed by
the State will not exceed 125% of the estimated internal
revenue of the State for
the calendar year 2014 within the meaning of section 2(3) of
the Loans (Overseas
Borrowings) No. 2 Act;

On even date, Mr Vele wrote to Mr Eludeme and requested the CSTB to
approve his
Request for COI to be issued.

On 7 March 2014, Mr Vele signed on the Request for COI Form and
stated that a COI was
needed to access funds totalling K9 million to pay Norton Rose
Fulbright Australia, Pacific
Legal Group Lawyers and Pacific Capital Ltd as financial, legal and
technical Advisors in
connection with the purchase and related financing of the purchase
by the State of 149.39
million shares in Oil Search Ltd through UBS AG. However, he did not
tick the appropriate

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emergency situation (Natural Disaster, Defence Emergency, Health
Emergency or Civil
Unrest Emergency) nor did he provide any reason for the urgency, but
referred to the
appendix attached to the Request for COI form. At this juncture no
shares in Oil Search Ltd
were acquired. Below is an extract of the appendix:

APPENDIX

On Thursday 27 February, Oil Search announced that it had agreed
to acquire a 22.835%
gross interest in PRL 15 (Elk/Antelope) from the Pac LNG Group
Companies for US\$900
million to fund through a placement of new shares to the State.
The State and Oil Search
reached an agreement (subject to approvals) under which the State
will be issued 149.30

million shares in Oil Search at A\$8.20 per share. The State will have a 10.01% shareholding in Oil Search following the share placement. The State is funding the placement through a committed financing package from UBS. The State has until 4pm (Port Moresby Time) on Thursday 6 March to approve the share placement and until 5pm (Port Moresby Time) on Thursday 6 March for the relevant documents to be executed. In the event the State choose not to or fails to approve the share placement, the State will not secure a shareholding in Oil Search and Oil Search will issue shares to institutional investors. Failure to complete this transaction could expose the State to costs up to AUD\$18 million.

On 11 March 2014, Mr Vele and then Dr Ngangan signed and approved the APC form to release AU\$14,555,759.00 to be paid to the Consultants relating to the purchasing of Oil Search Ltd shares.

On 12 March 2014, Mr Eludeme certified that the inviting of tenders for the provision of financial, legal and technical advisory services was impractical or inexpedient and awarded the Contract to both local and international consulting firms.

Comments

Section 40(3)(b) of the Public Finance (Management Act) 1995 and Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual clearly outline the situations when a Certificate of Inexpediency will be issued.

Section 40(3)(b) of the Public Finance (Management Act) 1995 states:

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

(3) The preceding provisions of this section do not apply to the purchase or disposal of property or stores or the supply of works and services—

(b) In respect of which a Board certifies that the inviting of tenders is impracticable or inexpedient; or

Part 13, Division 4, Clauses 14 of the Finance Management Manual states:

14. Certificates of Inexpediency will only be issued in situations where a declared:

- a. Natural Disaster, or
- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest

As noted earlier the NEC's Decision to endorse the issuance of a COI to waive tender by

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CSTB for the engagement of Consultants, was not proper and in direct breach of the requirements of Public Finance (Management) Act 1995 and the Finance Management Manual referred to above.

When Mr Vele forwarded a Request for COI form together with an APC Form to Dr Ngangan and stated that the contracts were for providing financial, legal and technical services in connection with the purchase and related financing of the State's 149,390,244 million shares in Oil Search Ltd through UBS AG, this was improper as the procedures outlined in the Finance Management Manual pertaining to the issuance of COI and the approving of an APC form in order for funds to be released were not followed.

Mr Vele requested Dr Ngangan to approve the APC Form without the endorsement of the COI by Mr Eludeme for the Contract to provide financial, legal and technical services and advice to the State to be awarded to Norton Rose Fulbright of Australia, Pacific Legal Group Lawyers, Pacific Capital, Ashurst Lawyers, KPMG and UBS AG.

Mr Vele's reasons for a COI to be issued to engage the Consultants by bypassing the tender process was improper as none of the situations mentioned in Part 13, Division 4, Clause 14 of the Finance Management Manual were stated in his reasons for a COI and that he failed to adhere to Mr Rolpagarea's advice in that the COI cannot be applied retrospectively as it breached the Public Finance (Management) Act 1995 and the Financial Management Manual.

Contrary to Mr Rolpagarea's advice, Mr Vele also in his request for a COI to be issued by

the CSTB, included the UBS AG to be awarded the contract as Consultant and this cost was also included to be paid from the AU\$1.239 Billion loan to the State.

[4.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [4] of the Report. Below is his response.

[4] REQUEST FOR A CERTIFICATE OF INEXPEDIENCY FOR THE ENGAGEMENT OF CONSULTANTS

Issuing of COI

30 With regards to the Issuing of the COI, I followed the advice of external lawyers, the State Solicitor and the NEC Decision No 79/2014 with regards to my actions.

31 As part of the documents delivered to the State Solicitor on 5 March 2014, were recommendations for the NEC and for various statutory approvals. In his letter of advice dated 5 March 2014, Mr Rolpagarea specifically noted the recommendations and advised that after the NEC determines to proceed with the deal, all statutory authorisations should be sort. The COI was one of those authorisations in the recommendations. The matters included in the recommendations were advised to me to be part of the required process by Norton Rose Fulbright.

32 The NEC specifically endorsed the issuance of a COI by the CSTB in its decision of 6 March 2014, which was based on the NEC Submission where this was recommended.

33 After the decision I acted in accordance with the State Solicitor's and Norton Rose's advice AND the NEC decision and applied to CSTB for a COI.

34 The CSTB, an Independent Tribunal met and awarded at COI for the Services contracts and engagements for consultants.

35 This is of course in accordance with their power under PFMA, which gives the Board and an unfettered discretion to issue a COI if it determines that it is inexpedient or impracticable to

36 The contents of the Financial Manual are instructions issued by the Secretary pursuant to Section 117 of the PFMA. These instructions are only to be issued if they are not inconsistent with the PFMA.

37 The financial instructions that limit the CSTB's discretion to four circumstances are inconsistent with the Act, and I would respond those instructions are not valid.

38 In any event, that is not the issue. The CSTB determined that a COI issue and then approved the payment contracts for services.

39 I then acted upon their decision and in accordance with the NEC Decision and implemented those decisions.

40. When I was later advised by CSTB that the COI was being revoked, I was also informed that the State Solicitor had advised that although the consultants that had been engaged by the State could not be paid under the COI—they could be paid on a quantum meruit basis as to what actual work they had done and that I, the Secretary for Treasury, would be the person best placed to assess what that quantum would be as I had been working with them on the preparation of the draft deal and then the transaction itself.

41. That is then what happened. The payments made were on the basis of the work completed as proper bills had been performed before and after that time.

42. I repeat, I did not engage any Consultants prior to the NEC Decision, or after the NEC Decision of 6 March 2014. Norton Rose had already been engaged by IPBC.

43. I made the application to CSTB for a COI, not on my own decision, but following the advice of the external lawyers and State Solicitor—and as directed by the NEC. I was merely implementing an NEC decision which as Secretary for Treasury is my obligation to do.

44. I believe I cannot be held responsible for decisions I did not make, and in any event, no

decisions that were taken by CSTB or NEC were contrary to law.

45. I deny that I breached any provision of the public Finances (Management) Act 1995 or the Attorney-General Act.

Comments

The Ombudsman Commission noted Mr Vele's response to the Provisional Report.

However, the Ombudsman Commission original comments on Mr Vele's abuse and misapplication of the COI remains.

In addition, the Ombudsman Commission noted with concern Mr Vele's blatant disregard and non-compliance to the relevant laws and regulations that govern and guides the tender and procurement procedures that resulted in Consultants been engaged to facilitate the borrowing.

[5] STATE SOLICITOR'S ADVICE ON THE ENGAGEMENT OF CONSULTANTS TO FACILITATE THE BORROWING

On 6 March 2014, the NEC in its Decision No: 79/2014, approved among other matters for the State to acquire 149,390,244 shares in Oil Search Ltd; for the State to borrow AU\$1.239 Billion from UBS AG; appointed Petromin as the State's subscriber and nominee for the transaction; approved execution of the Payment Direction Deed by NPCP on approval of IPBC; approved CSTB to issue a COI and Secretary for Finance to issue an APC Form to release public funds.

On even date, Mr Vele requested Mr Eludeme to approve his request for COI to be issued for payment of the advisory costs of the six (6) financial, legal and technical Consultants he had engaged.

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On 7 March 2014, Mr Vele signed the Request for COI Form and stated that a COI was needed to access funds totalling K9 million to pay Norton Rose Fulbright Australia, Pacific Legal Group Lawyers and Pacific Capital Ltd as financial, legal and

technical Consultants in connection with the purchase of shares in Oil Search Ltd.

On even date, the CSTB met and resolved to approve Mr Vele's request for issuance of a COI for awards of Contract to the six (6) financial, legal and technical firms from PNG and international as follows;

PNG Consultants: Total value of K9 million
(i) Pacific Legal Group Lawyers
(ii) Pacific Capital Ltd

International Consultants: Total value of AU\$14,555,759.00
(i) UBS AG (Australia)
(ii) Ashurst Lawyers
(iii) Norton Rose Fulbright (Australia)
(iv) KPMG

The CSTB approval was subject to the State Solicitor's clearance together with the receiving of an approved Original APC to confirm funding.

On 12 March 2014, Mr Naime advised Mr Rolpagarea of CSTB's decision and sought legal clearance on the subject matter.

On 20 March 2014, Mr Rolpagarea wrote to Mr Naime and gave his legal opinion on the request for the issuance of Legal Clearance – CSTB COI 02/04. Below is an extract Mr Rolpagarea's response:

1. I refer to your letter and enclosures of 12th March, 2014 requesting legal clearance for the subject matter.

BACKGROUND

2. The National Executive Council ('_NEC') approved in its Decision No. 79/2014 the transaction for the purchase of shares in Oil Search Limited with funds obtained under a UBS loan. Amongst others, NEC approved the engagement of financial, legal and technical Consultants within PNG and internationally.

3. Due to the urgency of the matter, Consultants were engaged to provide services without complying with the procurement process under the Public Finance (Management) Act 1995 ('_PNG').

4. In a letter dated 6th March 2014, Acting Secretary for the

Department of Treasury

(–Treasury)), Mr Dairi Vele sought approval from the Central Supply and Tenders Board

(‘CSTB’) for a Certificate of Inexpediency (‘COI’) for the payment of services for the following Consultants:

PNG Consultants to a total value of K9 million

(i) Pacific Legal Group Lawyers

(ii) Pacific Capacity Limited

International Consultants to a total value of AU\$14,555,759.00

(i) UBS AG Australian Branch

(ii) Ashurst Lawyers

(iii) Norton Rose Fulbright of Australia

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(iv) KMPG

5. The CSTB convened on 7th March 2014 to consider the request from Treasury and approved

the issuance of the COI subject to clearance from my Office.

6. Having noted your request and the relevant documents pertaining to it, I now provide my advice on the following issues.

Questions and Short Answer

7. The questions and Short Answers are as follows:

Q1: Whether a COI can be issued for the engagement of the Consultants (financial, legal and technical)?

A1: No

Q2: Whether CSTB has the power to approve retrospectively the payment of service for the engagement of the Consultants?

A2: No

Reasons

Certificate of Inexpediency

8. I note that the National Executive Council in Decision No. 79/2014, amongst other things, endorsed the issuance of a COI for the captioned engagements. However, such issuance of a

COI is subject to the relevant provisions of the PFMA and Financial Instructions.

9. Section 40(3)(b) of the PFMA empowers CSTB to certify that the

inviting of tenders is impractical or inexpedient. Part 13, Division 4.14 of the Financial Instructions limits the issuance of a COI to the following declared situations:

1. Natural Disaster; or
2. Defence Emergency; or
3. Health Emergency; or
4. Civil Unrest

Furthermore, part 13, Division 4.13 of the Financial Instructions further provides that a COI cannot be issued to retrospectively cover a contract that has been performed. The principles of retrospectively will only apply if it is expressed in a law.

10. In light of the above, the circumstances in this case do not warrant the issuance of a COI. I have noted that an Authority to Pre-Commit Funds has been issued and CSTB has also approved as requested by Secretary for the Department of Treasury. This shows approval for such engagement, however such approval came after the task was completed. All the arrangements obtain the requisite approvals should have been obtained prior to the engagement of the Consultants to be compensated for the work already carried out. This can be done on a Quantum Meruit basis.

Quantum Meruit

11. Quantum Meruit is an equitable principle which provides for the reasonable payment for the actual value of work that is done. The Courts held in the case of Fly River Provincial Government v Pioneer Health Services [2003] SC705 that where work has been performed on a contract not procured through the PFMA process, the party that has performed the work may obtain restitution under equity to avoid unjust enrichment by the other party to whom work has been performed for.

12. You would note that the work carried out is a commercial transaction which requires significant effort. Treasury was involved from the beginning with the Consultants until the tasks were completed. Therefore Treasury would be better placed to work out the remuneration based on the principle of Quantum Meruit. This means the Consultants will

not be paid as per the initial amount agreed to, but for work done taking into account the nature of the transaction.

Attorney-General Approval

13. Section 8(4) of the Attorney-General Act 1989 provides:

—On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.¶

14. It is based on approval by the Attorney-General that legal services can be sought by government agencies from private firms both within PNG or internationally.

15. In the given circumstances, the engagement and payment of legal services from private firms must be done in consultation with the Attorney-General. Payment for the provision of legal services should be made on a Quantum Meruit basis provided the State is fully satisfied with the services rendered. Treasury would in this case be in a position to make an assessment of the amount to be paid.

16. I suggest that the prior to payment for legal services, Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision.

17. Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision of legal services to the State.
Way Forward

18. Provided that a COI is not justified in these circumstances, Treasury and the Central Bank may consider paying for the services rendered by the Consultants on a Quantum Meruit basis as discussed above. In addition, the payment for legal services should be done in

consultation with the Attorney-General.

Comments

As noted earlier, Mr Vele engaged the National and International Consultants referred to above to provide legal, financial and technical services to the DoT in relation to the UBS AG Loan Transaction for the State to purchase shares in Oil Search Ltd and they provided their services, before the necessary approvals were obtained including the request to CSTB to issue a COI to waive the tender process for engagement of such Consultants, under the Public Finance (Management) Act 1995 and this was wrong.

As noted earlier, Mr Vele engaged the legal consultants to provide legal services to DoT without the approval of the Attorney-General as required under Section 8(4) of the Attorney-General Act 1989.

The proper thing for the CSTB to do after receiving Mr Vele's request for issuance of COI for the engagement of the Consultants, was to seek the advice of the State Solicitor (who is also a member of the CSTB) before making its decision to approve the issuance of a COI for the engagement of the Consultants. The CSTB failed to do that. It sought the advice of State Solicitor after the event (ie after it had made its decision to approve the issuance of a COI) which was wrong. As noted earlier, the State Solicitor was not aware of the CSTB meeting and did not attend the Meeting to decide on the issuance of the COI.

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The State Solicitor's advice on the engagement of the legal, financial and technical Consultants and the issuance of COI to facilitate their engagement and for retrospective approval of COI for payment of their services was in order consistent with the specific requirements of the Public Finance (Management) Act 1995 and the Financial Management Manual and the Attorney-General Act 1989.

As a result, the issuance of the COI to engage the legal, financial and technical Consultants

was improper as the circumstances did not warrant the issuance of a COI under the Public Finance Management Act 1995 and the Finance Management Manual.

[6] CENTRAL SUPPLY & TENDERS BOARD APPROVED THE ISSUANCE OF THE CERTIFICATE OF INEXPEDIENCY

On 6 March 2014, the NEC in its Decision No: 79/2014 made during its Special Meeting No: 8/2014 related to the financial arrangement for State acquisition of shareholding in Oil Search Ltd and State's borrowing from UBS AG for such purpose, approved among other matters for the CSTB to issue the COI. Below is an extract of the NEC Decision:

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders Board under section 40(3)(b), and an authority to pre-commit expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

On even date, Mr Vele wrote to Mr Eludeme and stated:

—...It is imperative that State be provided with urgent relevant and necessary financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of the shares in Oil Search Limited. The transaction completing is to be completed at close of business on Sunday 9th March 4pm and therefore the appointment of the Legal, Financial and Technical Advisors were urgent and necessary. NEC has approved the appointments of the following firms on the recommendation of Department of Treasury:

Norton Rose Fulbright of Australia (Overseas Lawyers), Pacific Legal Group Lawyers (local lawyers) and Pacific Capital Limited (Financial and Technical Advisors) to act for the State on this matter.

It would be appreciated if you could consider and approve the

Request for Certificate of
Inexpediency enclosed at the earliest to cover the advisory fees
of up to a limit of
K9,000,000.00ll.

On 7 March 2014, Mr Vele signed on the request for COI Form formalising his request for a COI in order to access funds totalling K9 million to pay Norton Rose Fulbright Australia, Ashurst Australia, Pacific Legal Group Lawyers, KPMG and Pacific Capital Ltd as Financial, Legal and Technical Advisors in connection with the purchase and related financing of the purchase by the State of 149, 390,244 million shares in Oil Search Ltd through UBS AG. Below is an extract:

APPENDIX

On Thursday 27 February, Oil Search announced that it had agreed to acquire a 22.835% gross interest in PRL 15 (Elk Antelope) from the Pac LNG Group Companies for US900 million to be funded through a placement of new shares to the State. The State and Oil
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Search reached an agreement (subject to approvals) under which the State will be issued 149.39 million shares in Oil Search at A\$8.20 per share. The State will have a 10.01% shareholding in Oil Search following the share placement. The State is funding the placement through a committed financing package from UBS. The State has until 4pm (Port Moresby Time) on Thursday 6 March for the relevant documentation to be executed. In the event the State chooses not to or fails to approve the share placement, the State will not secure a shareholding in Oil Search and Oil Search will issue shares to institutional investors. Failure to complete this transaction could expose the State to costs up to AUD\$18 million.

On even date, Mr Eludeme certified that the inviting of tenders for the provision of financial, legal and technical advisory services in connection with the purchase and related financing of the purchase by the State of 149, 390,244 million shares in Oil Search Ltd through the UBS AG Loan was impractical or inexpedient.

On 10 March 2014, Mr Eludeme wrote to Mr Vele in regard to the issuance of the COI and

advised that the CSTB was satisfied that all processes were followed and the award was made in accordance to the provisions of the Public Finance (Management) Act 1995. Below is an extract from Mr Eludeme's letter:

The Board at its Meeting No: M-03/2014, held on Friday 07 March 2014 carefully considered your submission and resolved to approve the issuance of certificates of inexpediencies for award of contracts to the following financial/legal/technical firms from Papua New Guinea and International Law firms.

PNG Firms

1. Pacific Legal Group Lawyers
2. Pacific Capital Limited

The fees to cover the cost is PG Kina Nine Million, only (PGK9,000,000.00)

International Firms

1. UBS AG Australia Branch
2. Ashurst Lawyers,
3. Norton Rose Fulbright of Australia
4. KPMG

The fees to cover the cost is AU\$ Fourteen Million, Five Hundred and Fifty Five Thousand Seven Hundred and Fifty Nine only (AU\$14,555,759.00).

The Board further advised that the contracts must be compiled separately with the exact amount for each firms.

The Board's approval is subject to the State Solicitor's clearance together with the receiving an approved original Authority to Pre-Commit (APC) to confirm funding.

The Board carefully noted the NEC Decision No: 79/2014 and is satisfied that all processes have been followed and the award was made in accordance to the provisions of the Public Finance (Management) Act. The Secretariat will inform the respective firms through a Letter of Acceptance.

You are hereby advised to prepare a draft Contract Agreement and refer back to the Central Supply and Tenders Board to obtain legal clearance from the State Solicitors Office. Upon

obtaining clearance, the agreement will be executed by me for and on behalf of the State.

Your original submission, stamped and signed is returned for your appropriate action.

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On even date, Mr Vele wrote to Mr Eludeme and sought clearance from the CSTB to pay the financial, legal and technical Advisors who were engaged by Mr Vele to facilitate the State's borrowing of the UBS AG loan to finance the acquisition of Oil Search Ltd shares. Below is an extract from Mr Vele's letter:

The transaction has been completed and I would like to thank your office for your assistance in this matter.

One final issue that has to be cleared before my office can process payment for the Local Legal Advisors and the Local Financial Advisors is a clearance letter from the Office of the State Solicitor.

As you will note a loan to the State of A\$1.225 Billion from UBS AG, Australia Branch (UBS), initially comprising two facilities (a A\$330 million bridge loan facilities and a A\$904 collar loan facility), together with the engagement of UBS as Advisors to the State on the acquisition of the Oil Search shares and arranger of the financing, including that UBS may be further engaged to implement (on behalf) of the State) a sovereign bond issue anticipated to be no later than 30 June 2014 to replace the bridge loan.

The Bridge Loan will to be urgently refinanced in the near future and the collar loan facility in the next 12 to 24 months hence my office requested that the office issue a COI for the local Advisors to be capped at nine million kina. The purpose was that the Acquisition of the Oil Shares and the financing of this transaction is the first phase of their consultancy services.

On this basis they were retained to conclude this transaction for the following fees subject to clearance from your office and the office of the State Solicitor:

(first stage)

1. Pacific Legal Group Lawyers K1.6 million
2. Pacific Capital Limited K1.25 million

The Department has retained both firms to continue work on the second phase of the transaction which is the refinancing of the Bridge and Collar Loan.

To summarise the engagements of the two firms were:

STAGE 1

Discussion and possible negotiation with International Petroleum Investment Corporation (IPIC) of Abu Dhabi in respect of the deposition of the Exchangeable Bonds issued by the Independent Public Business Corporation (IPBC) in respect of the IPBC's holdings of the 196.6 million shares in Oil Search Limited (Oil Search).

Assistance with the proposed subscription by the State (through Treasury) for a significant number of shares in Oil Shares under a placement arrangement in the event that discussions with IPIC do not result in the reacquiring all or part of the shares in Oil Search shares covered by the IPIC – issued Exchangeable Bonds.

STAGE 2

As a second phase to the above Project, assistance with the refinancing of all or part of the initial finance raised to acquire the interest in Oil Search.

Since they have completed the first stage of their service to the Department I have endorsed the payment of the first phase fees as mentioned above subject to necessary clearance from your office and the office of the State Solicitor.

On 12 March 2014, Mr Naime wrote to Mr Rolpagarea and advised him on the CSTB's endorsement on the awarding of the contract to both local and international firms to facilitate the borrowing of the UBS AG Loan during its Meeting No: M-03/14 on 7 March 2014. Below is an extract of the letter:

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This contract was endorsed by the Board at its Meeting No M-03/14

held on Friday 07th

March 2014. The Board approved the award of the contract to both PNG and International Consulting firms.

PNG Consultants

Pacific Legal Group Lawyers
Pacific Capital Ltd (PNG)

The fees to cover the cost is up to an APC Limit K9,000,000.00

International Consultants

UBS AG Australia Branch
Ashurst Lawyers
Norton Rose Fulbright of Australia
KPMG

The fees for the above Consultants is up to a limit of AU \$14,555,759.00.

The Board understands that the state will finance the cost of the Local Consultants whilst the cost of the overseas Consultants will be paid from the UBS loan components.

Attached is also a copy of the Board's decision with the Authority to Pre-Commit International for ease of reference.

*Note that the APC for the PNG component together with Finance Secretary's cover letter have been processed and will be released as soon as signed by the financial delegate.

On 20 March 2014, Mr Rolpagarea wrote to Mr Naime and advised among other issues raised that the issuance of a COI to waiver the tendering of the contract for the provision of advisory services by financial, legal and technical Advisors to facilitate the Borrowing was unjustified and improper and the Attorney-General should have been consulted. An extract of the letter is set out below:

1. I refer to your letter and enclosures of 12th March, 2014 requesting legal clearance for the subject matter.

Questions and Short Answer

2. The questions and Short Answers are as follows:

Q1: Whether a COI can be issued for the engagement of the

Consultants (financial, legal and technical)?

A1: No

Q2: Whether CSTB has the power to approve retrospectively the payment of service for the engagement of the Consultants?

A2: No

Reasons

Certificate of Inexpediency

3. I note that the National Executive Council in Decision No. 79/2014, amongst other things, endorsed the issuance of a COI for the captioned engagements. However, such issuance of a COI is subject to the relevant provisions of the PFMA and Financial Instructions.

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4. Section 40(3)(b) of the PFMA empowers CSTB to certify that the inviting of tenders is impractical or inexpedient. Part 13, Division 4.14 of the Financial Instructions limits the issuance of a COI to the following declared situations:

1. Natural Disaster; or
2. Defence Emergency; or
3. Health Emergency; or
4. Civil Unrest

5. Furthermore, part 13, Division 4.13 of the Financial Instructions further provides that a COI cannot be issued to retrospectively cover a contract that has been performed.

The principles of retrospectively will only apply if it is expressed in a law.

In light of the above, the circumstances in this case do not warrant the issuance of a COI. I have noted that an Authority to Pre-Commit Funds has been issued and CSTB has also approved as requested by Secretary of Department of Treasury. This shows approval for such engagement, however such approval came after the task was completed. All the arrangements obtain the requisite approvals should have been obtained prior to the

engagement of the Consultants to be compensated for the work already carried out. This can be done on a Quantum Meruit basis.

Attorney-General Approval

6. Section 8(4) of the Attorney-General Act 1989 provides:

-On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.¶

7. It is based on approval by the Attorney-General that legal services can be sought by government agencies from private firms both within PNG or internationally.

8. In the given circumstances, the engagement and payment of legal services from private firms must be done in consultation with the Attorney-General. Payment for the provision of legal services should be made on a Quantum Meruit basis provided the State is fully satisfied with the services rendered. Treasury would in this case be in a position to make an assessment of the amount to be paid.

9. I suggest that the prior to payment for legal services, Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision.

10. Treasury should seek an audience with the Attorney-General as the person authorized by law to brief out to private law firms for the provision of legal services to the State.

Way Forward

11. Provided that a COI is not justified in these circumstances, Treasury and the Central Bank may consider paying for the services rendered by the Consultants on a Quantum Meruit basis as discussed above. In addition, the payment for legal services should be done in consultation with the Attorney-General.

On 28 March 2014, Mr Eludeme wrote to Mr Vele in regard to the legal clearance of the COI for the engagement of financial, legal and technical Advisors in connection with the UBS AG Loan and the purchase of 149,390,244 shares in Oil Search Ltd and related financial advice of the purchase. Below is an extract from Mr Eludeme's letter:

Your careful attention is drawn to the attached letter dated 20th March, 2014 from the Solicitor in respect to the captioned subject matter.

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You will note that the State Solicitor has declined to issue legal clearance due to technical issues and breach of the Part 13, Division 4.13 and 4.14 of the Financial Instruction.

Firstly, a Certificate of Inexpediency cannot be issued for the engagement of Consultants for purposes other than Natural Disaster, Defence Emergency, Health Emergency or Civil Unrest. Secondly, the Board does not have powers to approve retrospectively the payments of services for the engagement of Consultants.

Further, the necessary approvals for the APC and CSTB approval were obtained after the task was completed, as in a cart before the horse situation.

However, the State Solicitor maintains that equity requires Consultants to be compensated for the work already carried out and this can be done on a Quantum Meruit basis. Since your department was involved in the beginning with the Consultants until the tasks were completed, they would be in a better position to work out the remuneration based on the principle of Quantum Meruit.

The engagement and payment of legal services from private firms must be done in consultation with the Attorney-General. Payment for the provisions of legal services should be made on Quantum Meruit basis provided the State is fully satisfied with the services rendered.

Your department therefore should seek an audience with the Attorney-General as the person authorised by law to brief out to private firms. Again,

your department as the lead agency would be in a better position to make assessment of the amount to be paid.

As a way forward, the State Solicitor has recommended that the Department of Treasury and the BPNG consider paying for the services rendered by the Consultants on Quantum Meruit basis. While the payment for legal services are done in consultation with the Attorney-General.

The two local consulting firms and the Chief Secretary to the Government will be copied this letter for their information and records purposes.

On 10 April 2014, Mr Eludeme advised Mr Vele on the CSTB's decision to rescind the issuance of COI to waive the public tender of the contract relating to the facilitation of the UBS AG loan. Below is an extract.

Further to my letter dated 28th March 2014 regarding the legal opinion received from the State Solicitor in respect to the captioned subject matter has reference.

The Board at its meeting No. M 05/14 held on Thursday the 03rd April, 2014 carefully reviewed its decision to award contracts and resolved to rescind the award of contracts to;

Local Consultants

1. Pacific Legal Group Branch
2. Pacific Capital Limited

For the combined APC total of PG Kina Nine Million only
PGK9,000,000.00

International Consultants

1. UBS AG Australia Branch
2. Ashurst Lawyers
3. Norton Rose Fulbright of Australia
4. KPMG

The fees to cover the cost is AU\$ Fourteen Million, Five Hundred and Fifty Five Thousand Seven Hundred and Fifty Nine only (AU\$14,555,759.00)

The rescinding of the Board's decision effectively nullifies the issuance of the Certificate of Inexpediencies for these engagements.

This decision is required to formally amend our records accordingly.

Yours Sincerely,

(signed)
Philip Eludeme
CHAIRMAN

Comments

It is noted that Mr Eledume and Mr Vele breached Section 39 and 40 of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual which deal with the tender process for awarding of Contracts and issuance of COI to waiver the tender process.

Firstly, the engagement of Consultants to provide legal, financial and technical services to DoT in relation to the financial arrangement for State's acquisition of shareholding in Oil Search Ltd and State's borrowing from UBS AG for such purpose, was not put on tender as required by Section 39 and 40 of the Public Finance (Management) Act 1995.

Secondly, the issuance of COI to waiver the tender process can only be issued where there is a Natural Disaster, Defence Emergency, Health Emergency or Civil Unrest Emergency and hence the issuance of the COI for the engagement of the Consultants was improper as it did not fall into the above prescribed situations.

Thirdly, during the Ombudsman Commission's investigations, Mr Rolpagarea stated that the issuance of COI cannot be applied retrospectively and this is consistent with Part 13, Division 4, Clause 13 of the Finance Management Manual which states that a COI cannot be issued retrospectively to cover a contract that has been performed. Hence, Mr Vele and DoT's engagement of the Consultants prior to the awarding of the actual contract through the issuance of a COI was improper and breached the above mentioned laws.

It is noted that Mr Eludeme and the CSTB took steps to rescind their decision to issue the COI after they had sought legal clearance from the State Solicitor on the matter and the State Solicitor refused to give them the legal clearance because of the breaches of the various laws referred to above.

[6.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [6] of the Report. Below is his response.

[6] CENTRAL SUPPLY & TENDERS BOARD APPROVED THE ISSUANCE OF THE CERTIFICATE OF INEXPEDIENCY

Response to Comments p87 and p93-94

It is completely untrue to say that I engaged any consultants to Department of Treasury or at all, before the necessary approvals were obtained or after. I never engaged any consultants.

1. At all times during the assessment of financial institutions, the preparation of the draft deal for NEC Decision 79/2014, I followed advice of lawyers with such advice and the NEC Decision No 79/2014.

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2. I engaged in discussions with Bank officials between 12-16 August 2013 as mandated by my role as Member of the IPIC Bond Committee and in my role as Secretary for Treasury.

3. On 30 January, the find is incorrect. It is false to state that I engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd. I did not engage UBS AG on 30 January 2014 or at any other time prior to 6 March 2014 or after.

4. UBS AG were only actually engaged by the State following Cabinet Decision no 79/2014. Following the advice from BPNG that the State had accepted UBS AG proposal, as essentially project manager of the IPIC Bond matter, I commenced negotiations and dealings with UBS AG to put together the proposal for NEC but their retainer was contingent on the NEC

Decision of 6 March 2014.

5. It is also false to state that I engaged UBS AG as the Lender of the Loan. A proposal was put to NEC for the engagement of UBS AG as Financial Advisor, Lead Arranger and Lender on 6 March 2014. It was only a decision of NEC that could determine to engage them. All parties involved were aware of this. No retainer agreements were signed until after the NEC Decision No 79/2014 on 6 March 2014.

6. I was working with them to put the essentially –draft deal before NEC as BPNG had originally selected them as the preferred advisor and arranger.

7. If NEC has decided against the deal then they would never have been officially retained. As to their fees for work done in assisting with putting together the draft deal to include in the proposal for NEC – consideration would have had to have been given to paying for the preparation work for the draft deal on a quantum meruit basis.

8. I engaged no legal or financial consultants in breach of the Public Finance (Management) Act and Finance Manual before the Cabinet meeting of 6 March 2014 or after.

9. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advise options available to IPBC for refinancing of the loan and or a restructure of the terms of the existing loan. Specifically it was recognized in the scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares.

10. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

11. On 5 April 2013 the NEC explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds.

12. In July 2013 NEC determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Coordination Office, the Secretary of

Public Enterprises, the Secretary of Treasury (or his nominee), the State Solicitor (or his nominee) and the MD of IPBC to advise on options available to the State to refinance and maintain an interest in Oil Search (the Committee).

13. On 6 August I was appointed Acting Secretary for Treasury.

14. We, the IPIC Committee, had already set up meetings with various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond. Norton Rose Fulbright assisted with advice at these meetings.

15. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to NEC decision No 241/2013.

16. I sought the advice of Norton Rose Fulbright from the time that I was appointed Chairman of the IPIC Bond and that was due to the fact the Committee was under the direction of IPBC, and IPBC had retained Norton Rose Fulbright to advise on the IPIC refinancing issues. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as members of Treasury, and the Committee, had limited financial experience.

17. This continued until special circumstances arose for them to be appointed to represent the State on the transaction pursuant to the NEC decision.

18. After the NEC Decision on 6 March 2014 which endorsed for a certificate of inexpediency for services and other contract, for the purposes of giving effect to the NEC decision, and I was the person with

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the responsibility to implement it as directed by the State Solicitor on 5 March 2014, I sought a certificate of inexpediency and to contract those consultants who were necessary for the transaction.

19. I say that at all material times the then Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

20. Mr Kua however did not raise an issue with regards to

compliance with the Attorney-General Act
and indeed by his lack of complaint allowed the Consultants
to be retained as a result of the NEC
Decision and the CSTB Certificate of Inexpediency.

21. Mr Kua by his inaction at the time effectively waived any
compliance issues, and indeed he was
bound by the NEC decision, as we all were.

22. Mr. Kua did not raise any issue with the retainer of Legal
Consultants until the time her was removed
by the Prime Minister as Attorney-General in June 2014.

23. It is incorrect to say that I usurped the powers of the
Attorney-General, firstly as Norton Rose
Fulbright has been retained by IPBC, and secondly as NEC has
approved and endorsed the way
forward with regards to service contracts which was to apply
for a Certificate of Inexpediency due to
the short commercial time limits that needed to be adhered
to.

24. With regard to Ashurst, they were paid for by the State as it
was a term of the loan agreement with
UBS AG that the legal services of the lender would be funded
by the borrower. This is a normal
commercial condition. They were not retained by me but by UBS
AG.

25. With regards to Pacific Legal Group, they were actually
retained by Norton Rose Fulbright to act as
their local Counsel for advice and assistance on procedures
after Norton Rose Fulbright were asked
to advise on the possibility of an UBS AG loan/Oil Search
transaction in accordance with the terms of
their retainer for IPBC. I did not retain them.

26. At the time of the request for a certificate of Inexpediency,
it was considered by all that it would be
much more convenient for all parties that Pacific Legal Group
be paid for directly by the State in
Papua New Guinea, rather than the State remitting funds to
Norton Rose Fulbright in Australia and
then Norton Rose remitting funds back to Papua New Guinea to
pay Pacific Legal Group.

27. Essentially, the request for the COI was to facilitate
payment, as the only actual retainer was for
Norton Rose, and not for Pacific Legal Group or Ashursts.

28. Had the Ombudsman Commission interviewed Pacific Legal Group
or Norton Rose Fulbright or
myself and asked the specific questions, this would have been
made clear.

29. I deny that I breached any proper processes or procedures with regards to the engagement of legal consultants.

Issuing of COI-

30. With regards to the Issuing of the COI, I followed the advice of external lawyers, the State Solicitor and the NEC Decision No 79/2014 with regards to my actions.

31. As part of the documents delivered to the State Solicitor on 5 March 2014, were recommendations for the NEC and for various statutory approvals. In his letter of advice dated 5 March 2014, Mr. Rolpagarea specifically noted the recommendations and advised that after the NEC determines to proceed with the deal, all statutory authorisations should be sort. The COI was one of those authorisations in the recommendations. The matters included in the recommendations were advised to me to be part of the required process by Norton Rose Fulbright.

32. The NEC specifically endorsed the issuance of a COI by the CSTB in its decision of 6 March 2014, which was based on the NEC Submission where this was recommended.

33. After the decision I acted in accordance with the State Solicitor's and Norton Rose's advice AND the NEC decision and applied to CSTB for a COI.

34. The CSTB, an Independent Tribunal met and awarded at COI for the service contracts and engagements of consultants.

35. This is of course in accordance with their power under PFMA, which gives the Board an unfettered discretion to issue a COI if it determines that it is inexpedient or impracticable to require a tender process.

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36. The contents of the Financial Manual are instructions issued by the Secretary pursuant to Section 117 of the PFMA. These instructions are only to be issued if they are -not inconsistent with the PFMA.

37. The financial instructions that limit the CSTB's discretion to four circumstances are inconsistent

with the Act, and I would respond those instructions are not valid.

38. In any event, that is not the issue. The CSTB determined that a COI issue and then approved the payment contracts for services.

39. I then acted upon their decision and in accordance with the NEWC Decision and implemented those decisions.

40. When I was later advised by CSTB that the COI was being revoked, I was also informed that the State Solicitor had advised that although the consultants that had been engaged by the State could not be paid under the COI – they could be paid on a quantum meruit basis as to what actual work they had done and that I, the Secretary for Treasury, would be the person best placed to assess what that quantum would be as I had been working with them on the preparation of the draft deal and then the transaction itself.

41. That is then what happened. The payments made were on the basis of the work completed as proper bills had been performed before and after that time.

42. I repeat, I did not engage any Consultants prior to the NEC Decision, or after the NEC Decision of 6 March 2014. Norton Rose had already been engaged by IPBC.

43. I made the application to CSTB for a COI, not on my own decision, but following the advice of the external lawyers and the State Solicitor – and as directed by the NEC. I was merely implementing an NEC decision which as Secretary for Treasury is my obligation to do.

44. I believe I cannot be held responsible for decision I did not make, and in any event, no decisions that were taken by CSTB or NEC were contrary to law.

Comments

The Ombudsman Commission noted Mr Vele's response to this section of the Provisional Report. However, the Ombudsman Commission's original comments contained in the Provisional Report on this matter have not changed.

[7] DR KEN NGANGAN, ACTING SECRETARY FOR DEPARTMENT OF FINANCE APPROVED THE AUTHORITY TO PRE-COMMIT FUNDS

On 6 March 2014, the NEC in its Decision No: 79/2014 made during its Special Meeting No: 8/2014 related to the financial arrangement for the State acquisition of shareholding in Oil Search Ltd and State's borrowing from UBS AG for such purpose, approved among other matters for the Acting Secretary for DoF to issue APC Forms for funds to be released. Below is an extract of the NEC decision:

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders Board under section 40(3)(b), and an authority to pre-commit expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department of Treasury certifying that after the full amount of the borrowing pursuant to the Transaction Documents, the total value of overseas commercial debt which will be owed by the State will not exceed 125% of the estimated internal revenue of the State for

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the calendar year 2014 within the meaning of section 2(3) of the Loans (Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002,

including the
documentation listed in Part 3 of Schedule A; and

d) approval of the payment direction to in paragraph (c) by
the IPBC pursuant to
section 110 of the Companies Act 1997.

On even date, Mr Vele wrote to Mr Eludeme and requested for CSTB to
approve his request
for COI to be issued for payment of services to the six (6)
Consultants he had engaged.

On 7 March 2014, the CSTB met and resolved to approve Mr Vele's
request for issuance of
COI to engage and pay the Consultants subject to State Solicitor's
clearance and receipt of
approved original APC to confirm funding.

On even date, Dr Ngangan approved the APC Expenditure Forms that
indicated that there
were funds available to pay the local Consultants who facilitated
the borrowing of the UBS
AG Loan and purchase of shares in Oil Search Ltd. Below is an
extract:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that the
provisions of Part VII of the
Public Finance (Management) Act 1995 have been complied with in
relation to the purchase
or supply of the property and services referred to in the Schedule
and that funds will be
available to meet the proposed schedule of payments for that
property and those services
authorised the pre-commitment of expenditure of up to
K9,000,000.00 for the purchase or
supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services
in connection with that
purchase and related financing of the purchase by the State of
149.39 million ordinary shares
in Oil Search Limited through UBS AG, Australia Branch (ARBN 088
129 613).

On 10 March 2014, Mr Vele wrote to Dr Ngangan and requested that Dr
Ngangan approve
the payment to UBS AG in relation to the acquisition of the shares
in Oil Search Ltd.

On 11 March 2014, Mr Vele completed and endorsed an APC Form that
requested for the
release of AU\$14,555,759 to be paid to the International Consultants
that prepared and

advised the State on the purchase of Oil Search Ltd shares.

On even date, Dr Ngangan approved the APC Form and stated:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that the provisions of Part VII of the Public Finance (Management) Act 1995 have been complied with in relation to the purchase or supply of the property and services referred to in the Schedule and that funds will be available to meet the proposed schedule of payments for that property and those services authorised the pre-commitment of expenditure of up to A \$10,347,821.00 for the purchase or supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of 149.39 million ordinary shares in Oil Search Limited through UBS AG, Australia Branch (ARBN 088 129 613).

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On 12 March 2014, Mr Vele endorsed an APC form to release K1,250,000.11 that was paid to the Pacific Capital Limited as consultation fees.

On even date, Dr Ngangan advised Mr Eludeme that he received two APC Forms from Mr Vele. Below is an extract:

Department of Finance has received two APC applications from Treasury Department for deliberations.

Proposed Procurement	Amount
1. PNG Financial & Technical Advisors Acquisition by State of Oil Search Shares	K1,250,000.00
2. State (PNG) Legal Advisors – Acquisition By State of Oil Search Shares	K1,600,000.00

Pursuant to the requirements of s47 of the Public Finances (Management) Act 1995, I have approved the application for the Department for authority to pre-commit for the above Procurement. The approved forms are enclosed with this letter. I now recommend you for your deliberation and Board assistance with GoPNG procurement requirements and Board approval. A copy is given to the respective Department for the confirmation of the approved procurement.

Yours sincerely,

(signed)
Dr KEN NGANGAN CMA CPA
Acting Secretary

Comments

Under Section 47B of the Public Finance (Management) Act 1995, the Secretary for DoF approves and issues to a requesting Departmental Head an APC in relation to purchase of properties, stores or for the supply of goods or services where he is satisfied that the proposed expenditure exceeds K500,000.00; and that the provisions of this Part of the Public Finance (Management) Act 1995 have been complied with in relation to the purchase or supply and funds will be available to meet the proposed schedule of payments for the purchase or supply. An APC Form shall specify the purchase of property or stores or the supply of goods or services to which it relates and the maximum amount to which the authority extends.

The Ombudsman Commission's investigation revealed that there were four (4) APCs endorsed and approved by Mr Vele and Dr Ngangan. Neither Dr Ngangan nor Mr Vele indicated on the APC Forms from which Vote or Item on the Requisition Forms (FF3) and Expenditure Forms (FF4) the intended funds were to be accessed.

In light of the above, it was revealed that the signed APC Forms were improper, not valid and of no effect on four (4) grounds:
That the APC Form was not registered and allocated an APC number by the DoF

That there was no CSTB number allocated to the APC Form

That there was no current PGAS printout attached with the reasons for an APC Form to be approved

That the Supplier of the service was not issued an original copy of the APC Form.

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Even though both Dr Ngangan and Mr Vele were aware that the activity

was unbudgeted for, they proceeded to sign the APC Forms committing funds that were not appropriated in the 2014 Budget.

The APC Forms endorsed by Mr Vele and approved by Dr Ngangan were as follows:

No	Date	APC No.	Receiver	Amount
1	7 March 2014	None	Local Consultants Pacific Capital Ltd Pacific Legal Group Lawyers	K9,000,000
2	10 March 2014	None	Pacific Capital Ltd	K1,250,000
3	11 March 2014	None	International Consultants	AU \$10,347,821.00*
			KPMG	Mr Vele
			Norton Rose Fulbright	the APC
			Ashurst Lawyers	AU \$14,555,759.
			UBS AG	However, approved
				AU\$10,347,821
4	11 March 2014	None	Pacific Capital Ltd	K1,250,000.11
5	12 March 2014	None	Pacific Legal Group Lawyers	K1,600,000.00

It is noted that the APC raised and approved on 7 March 2014 was for K9 million to cover for Local Consultants which included Pacific Capital Ltd and Pacific Legal Group Lawyers. However, further APCs for K1.25 million were raised on 10 and 11 March 2014 for Pacific Capital Ltd and on 12 March 2014 for K1.6 million for Pacific Legal Group Lawyers indicating double payments may have been made to the Local Consultants.

It is noted that the APC that was raised on 11 March 2014 was for AU \$14,555,759.00 to cover for the International Consultants, however only AU \$10,347,821.00 was approved by Dr Ngangan.

It was also noted that the APC Forms did not have APC numbers allocated to them however, Mr Vele further indicated to the Commission that Consultants' fees would be paid out from the UBS AG Loan component.

It is noted that the UBS AG Loan to purchase Oil Search Ltd shares, was transacted overseas in Australia and funds were not transferred into the PNG Government's Accounts in-country, so how could an APC Form be filled and approved for funds that were not held in-country nor part of the Government's Appropriation for 2014.

The Ombudsman Commission's investigations revealed that the COI and APC for the engagement for those Consultants were issued after their tasks were completed and it was also noted that the Consultancy fees totalling K1.25 million for Pacific Capital Ltd (Local Consultant) was paid out by the DoT.

[7.1] RESPONSE FROM DR KEN NGANGAN

On 22 January 2015, Dr Ngangan, the Secretary for Department of Finance responded to the Commission's Section 17(4) of the OLOC Report and advised that they did deliberate on the APC and approved the release of K1,250,000.00 and K1,600,000.00 that were paid to the Financial and Technical and Legal Advisors in regard to the acquisition by State of Oil Search shares.

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Comments:

The Ombudsman Commission noted Dr Ken Ngangan's response to the Provisional Report. It was also noted that Dr Ngangan did not make any comments to defend his actions in his response to the Provisional Report. Therefore, the Ombudsman Commission maintains its original comments contained in the Provisional Report.

[8] PRIVATE CONSULTANTS PREPARE POLICY SUBMISSION & OTHER DOCUMENTS FOR THE NATIONAL EXECUTIVE COUNCIL

On 30 January 2013, Mr Vele engaged UBS AG as Sole Financial Advisor and Sole Arranger in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance of 2009 IPIC Exchangeable Bond.

On 23 February 2014, the Prime Minister met with Mr Botten, Mr Aopi and Mr Vele where it was agreed to commit the State to purchase shares in Oil Search Ltd without prior approval of NEC.

On 26 February 2014, the Prime Minister wrote to Mr Botten regarding State's willingness to buy shares in Oil Search Ltd without prior NEC approval.

On 27 February 2014, the Prime Minister wrote to Mr Fowler regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd for AU\$8.20 per share.

On 4 March 2014, Ashurst Lawyers forwarded draft documents for the UBS AG to Mr Vele that outlined the financial package that UBS AG was offering the State.

On even date, Mr David Heathcote representing KPMG presented to Mr Vele KPMG's analysis report on the monetised collars relating to financing the purchase of shares in Oil Search Ltd.

On 5 March 2014, Mr Vele requested Mr Rolpagarea to give legal clearance on the documents relating to the transaction for the State to acquire 149,390,244 shares in Oil Search Ltd with loan from UBS AG.

On even date, Mr Rolpagarea wrote to Mr Vele and requested confirmation and clear instructions from him regarding the engagement of Pacific Legal Group Lawyers to act on behalf of the State as the Documents were prepared and delivered to his Office by the Legal Firm on instructions of Mr Vele. Below is an extract from Rolpagarea's letter:

FINANCIAL ACCOMMODATION FOR THE INDEPENDENT STATE OF PAPUA NEW GUINEA (The State)

I refer to your letter dated 5th March 2014 on the above.

Your letter makes reference to documents relating to the proposed transaction (transaction documents) whereby the State will enter into financial arrangements to fund the acquisition by the State of 149,390,244 shares in Oil Search Limited. These

documents were delivered to my office this morning by way of personal service by Pacific Legal Group Lawyers upon your instructions. Your letter referred to above and delivered later during the day requests my urgent consideration of these documents and issuance of the legal clearance of National Executive Council's (NEC) consideration.

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I noted from the documents that Norton Rose Fulbright and Pacific Legal Group Lawyers are the State lawyers engaged and instructed through your office in relation to the above subject. I also noted that the following transaction documents listed below were negotiated and finalised between the State's lawyers and respective parties. These documents are;

1. Specific Security Deed between the State and UBS Nominees Pty Ltd ABN 32 001 450 522.
2. Bridge Facility Agreement between the State and UBS AG, Australia Branch and UBS Nominees Pty Ltd.
3. Participants Sponsorship Agreement between the State and UBS Nominees Pty Ltd and UBS Securities Australia Limited.
4. Payment Direction Deed between the State and the National Petroleum Company of PNG (Kroton) Limited, Papua New Guinea Liquefied Natural Gas Global Company LDC and UBS AG, Australia Branch.
5. Security Trust Deed between the State and UBS Nominees Pty Ltd.
6. Nominee Deed between the State and UBS AG, Australia Branch, UBS Nominees Pty Ltd and UBS Securities Australia Limited.
7. Specific Security Deed (CHESS Securities-Collar) between the State and UBS AG, Australia Branch ABN 47 088 129 613.
8. Subscription Agreement between the State and Oil Search Limited.

I have gone through the above listed documents within the

permitted time today and

despite the lack of explanatory notes, I have formed the view that the terms of these

agreements are a reflection of the State's negotiated position based on your instructions

taking into account the State's intentions and as such are acceptable to the State.

There are also other documents forming part of the transaction documents and listed below

as:

1. Advice to Governor-General
2. Verification Certificate from the State to UBS AG, Australia Branch
3. Minutes of a meeting of the Board of Directors of IPBC
4. Resolution In Lieu of Meeting of shareholders pursuant to Sections 103, 89 and 110 of the Companies Act 1997
5. Minutes of a meeting of the Board of directors of National Petroleum Company of PNG (Kroton) Limited held at Port Moresby with no specific dates
6. Power of Attorney from the National Petroleum Company of PNG (Kroton) Limited (the Grantor) and
7. Letter from Norton Rose Fulbright to the Independent State of PNG, care of the Acting Secretary of Treasury, Mr Dairi Vele, March 2014.

I have read that these documents listed immediately above are yet to be signed and/or

approved by the respective individuals or company boards. Please facilitate such

signatures/or board meetings.

I have read the NEC Decision and noted the background information particularly the State's

intention to acquire a 10.01% interest in Oil Search.

arrangement to fund the State's acquisition of shares in Oil Search Ltd. The NEC in Decision No: 79/2014 approved among other matters for the State to acquire 149,390,244 shares in Oil Search Ltd and for State to borrow AU\$1.239 Billion from UBS AG to fund this acquisition.

On even date, Mr Vele wrote to Mr Eludeme and urged him to engage the private consultants to provide financial, legal and technical advisory services to the State.

On 7 March 2014, Mr Vele signed on the request for COI form formalising his request for a COI. However, he did not tick the appropriate emergency situations (Natural Disaster, Defence Emergency, Health Emergency or Civil Unrest Emergency) nor did he provide any reason for the urgency as required by the Public Finance (Management) Act 1995 and the Finance Management Manual.

On even date, Mr Eludeme certified that the inviting of tenders for the provision of financial, legal and technical advisory services in connection with the purchase and related financing of the purchase by the State of 149.39 million shares in Oil Search Ltd through UBS AG was impractical or inexpedient.

On 9 March 2014, Norton Rose Fulbright of Australia wrote to the GGPNG and then Minister Polye regarding financing of the acquisition of the shares and possible options to refinance following completion.

On 10 March 2014, Mr Eludeme wrote to Mr Vele in regard to the issuance of the COI for the engagement of financial, legal and technical Advisors in connection with the purchase and related financing of the purchase by the State. Below is an extract from Mr Eludeme's letter:

I refer to your letter dated 06th March 2014 operating to the captioned applications.

The Board at its Meeting No: M-03/2014, held on Friday 07 March 2014 carefully considered your submission and resolved to approve the issuance of certificates of inexpediencies for award of contracts to the following financial/legal/technical firms from Papua New Guinea

and International Law firms.

PNG Firms

1. Pacific Legal Group Lawyers
2. Pacific Capital Limited

The fees to cover the cost is PG Kina Nine Million, only (PGK9,000,000.00)

International Firms

1. UBS AG Australia Branch
2. Ashurst Lawyers
3. Norton Rose Fulbright of Australia
4. KPMG

The fees to cover the cost is AU\$ Fourteen Million, Five Hundred and Fifty Five Thousand Seven Hundred and Fifty Nine only (AU\$14,555,759.00).

The Board further advised that the contracts must be compiled separately with the exact amount for each firms.

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The Board's approval is subject to the State Solicitor's clearance together with the receiving an approved original Authority to Pre-Commit (APC) to confirm funding.

The Board carefully noted the NEC Decision No: 79/2014 and is satisfied that all processes have been followed and the award was made in accordance to the provisions of the Public Finance (Management) Act 1995. The Secretariat will inform the respective firms through a Letter of Acceptance.

You are hereby advised to prepare a draft Contract Agreement and refer back to the Central Supply and Tenders Board to obtain legal clearance from the State Solicitors Office. Upon obtaining clearance, the agreement will be executed by me for and on behalf of the State.

Your original submission, stamped and signed is returned for your appropriate action.

On even date, Mr Vele wrote to Mr Eludeme and sought clearance from the CSTB to pay the financial, legal and technical Advisors who were engaged in

facilitating the State's borrowing of the UBS AG Loan. Below is an extract of Mr Vele's response:

FINANCING FOR THE ACQUISITION OF SHARES IN OIL SEARCH LIMITED

I refer to your letter of 6th March 2014.

The transaction has been completed and I would like to thank your office for your assistance in this matter.

One final issue that has to be cleared before my office can process payment for the Local Legal Advisors and the Local Financial Advisors is a clearance letter from the Office of the State Solicitor.

As you will note a loan to the State of A\$1.225 Billion from UBS AG, Australia Branch (UBS), initially comprising two facilities (a A\$330 million bridge loan facilities and a A\$904 collar loan facility), together with the engagement of UBS as Advisors to the State on the acquisition of the Oil Search shares and arranger of the financing, including that UBS may be further engaged to implement (on behalf) of the State) a sovereign bond issue anticipated to be no later than 30 June 2014 to replace the bridge loan.

The Bridge Loan will to be urgently refinanced in the near future and the collar loan facility in the next 12 to 24 months hence my office requested that the office issue a COI for the local Advisors to be capped at nine million kina. The purpose was that the Acquisition of the Oil Shares and the financing of this transaction is the first phase of their consultancy services.

On this basis they were retained to conclude this transaction for the following fees subject to clearance from your office and the office of the State Solicitor: (first stage)

1. Pacific Legal Group Lawyers K1.6 million
2. Pacific Capital Limited K1.25 million

The Department has retained both firms to continue work on the second phase of the transaction which is the refinancing of the Bridge and Collar Loan.

To summarise the engagements of the two firms were:

STAGE 1

Discussion and possible negotiation with International Petroleum Investment Corporation (IPIC) of Abu Dhabi in respect of the deposition of the Exchangeable Bonds issued by the Independent Public Business Corporation (IPBC) in respect of the IPBC's holdings of the 196.6 million shares in Oil Search Limited (Oil Search).

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Assistance with the proposed subscription by the State (through Treasury) for a significant number of shares in Oil Shares under a placement arrangement in the event that discussions with IPIC do not result in the reacquiring all or part of the shares in Oil Search shares covered by the IPIC – issued Exchangeable Bonds.

STAGE 2

As a second phase to the above Project, assistance with the refinancing of all or part of the initial finance raised to acquire the interest in Oil Search.

Since they have completed the first stage of their service to the Department I have endorsed the payment of the first phase fees as mentioned above subject to necessary clearance from your office and the office of the State Solicitor.

On 12 March 2014, Mr Naime advised Mr Rolpagarea on the CSTB's endorsement during its Meeting No.M-03/14 that was held on 7 March 2014 and advised that the CSTB endorsed, approved and awarded the contract to both local and international consulting firms to facilitate the borrowing of AU\$1.239 Billion from UBS AG to purchase 149,390,244 shares in Oil Search Ltd.

Comments

The preparation of the NEC Policy Submission No. 67/2014 was highly irregular as such documents were prepared by Legal Firms and other Consultants previously engaged by Mr Vele and were not prepared by Government Officials nor were Government Officials involved in the preparation of these Documents for NEC.

As noted previously, Mr Vele engaged the Legal Firms and other Technical Consultants to prepare documents including the NEC Submission relating to the borrowing of AU\$1.239 Billion from UBS AG to purchase shares in Oil Search Ltd, without complying with the tender process and process for COI under the Public Finance (Management) Act 1995 and Finance Management Manual and without obtaining the approval of the Attorney-General as required by Section 8 of the Attorney-General Act 1989 for the engagement of Legal Firms.

Section 8(4) of the Attorney-General Act 1989 states clearly how a Legal Firm or Lawyer is to be engaged by any Government Body or Agency to act on behalf of the Department or Agency or the State.

Therefore, Mr Vele's conduct was wrong and improper when he usurped the powers of the Attorney-General and engaged private Legal Firms to provide legal services to the State by preparing legal documents that included NEC Submission for the State.

The Ombudsman Commission's investigation revealed that the NEC Submission together with the 28 Attachments were delivered by the Pacific Legal Group Lawyers to Mr Rolpagarea for legal clearance late in the evening on the eve of the NEC Special Meeting scheduled for 6 March 2014. Some of the Documents attached to the NEC Submission were yet to be signed or approved by respective Government Agencies or Boards of SOEs, eg IPBC and NPCP. This confirms the haste in which this matter was dealt with and the lack of consultation with relevant Government Agencies and SOEs.

[8.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to the Provisional Report, in particular Part 2 [8] of

the Report. Below is his response.

[8] PRIVATE CONSULTANTS PREPARE POLICY SUBMISSION & OTHER
DOCUMENTS FOR
THE NATIONAL EXECUTIVE COUNCIL

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The Factual findings are incorrect and the comments are also incorrect.

The Submission was prepared by myself with assistance and advice from external consultants and was put before the Prime Minister and NEC only after the State Solicitor had cleared it.

1. I as Secretary for Treasury complied with the NEC submission along with the very experienced consultants that had been working on the Draft Proposal for the loan and purchase of Oil Search shares.

2. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as members of Treasury, and the IPIC Committee, had limited financial experience.

3. Norton Rose Fulbright was first engaged by IPBC on these issues on 5 December 2012 and continue to be engaged by IPBC. I therefore referred to them for advice on these matters given the committee was under the Direction of IPBC.

4. The NEC Submission and enclosed recommendations were examined by the State Solicitor and found to be in order.

5. I did not fail to advise the NEC that I had already engaged the UBS AG in January to refinance the IPIC Exchangeable Bond as I had NOT so engaged UBS AG. Their engagement was contingent on the NEC Decision. They had commenced work on the matter due to Mr Bakani's advice on 30 January 2014.

6. I did not fail to advise the NEC that the engagement of the financial, legal and technical consultants was improper and in breach of tender requirements of the Public Finance (Management) Act 1995 and the Attorney-General Act 1986, as it was not in breach of the Public Finance (Management) Act 1995 and the Attorney-General Act 1986.

7. There is an assumption that I retained Norton Rose Fulbright to provide legal services to the Department of Treasury at some stage in 2013 and prior to the NEC decision of 6 March 2014.
This is incorrect.

8. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advise option available to IPBC for refinancing of the loan and or a restructure of the terms of the existing loan. Specifically it was recognised in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares. [see Letter 5 December 2012.

9. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

10. On 5 April 2013 the Cabinet explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds.

11. In July 2013 Cabinet determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Coordination Office, the Secretary of Public Enterprises, the Secretary of Treasury (or his nominee) the State Solicitor (or his nominee) and the MD of IPBC to advise on options available to the State to refinance and maintain an interest on Oil Search (the Committee).

12. On 6 August I was appointed Acting Secretary for Treasury.

13. We, the IPIC Committee, had already set up meetings with various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond. Norton Rose Fulbright

assisted with advice at these meetings.

14. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to Cabinet decision No 241/2013.

15. I say that at all material times the then Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

16. Mr. Kua however did not raise an issue with regards to compliance with the Attorney-General Act 1986 and indeed by his lack of complaint allowed the Consultants to be retained as a result of the NEC Decision and the CSTB Certificate of Inexpediency.

17. Mr Kua by his inaction at the time effectively waived any compliance issues, and indeed he was bound by the NEC decision, as we all were.

18. Mr Kua did not raise any issue with the retainer of Legal Consultants until the time he was removed by the Prime Minister as Attorney-General in June 2014.

19. It is incorrect to say that I usurped the powers of the Attorney-General, firstly as Norton Rose Fulbright has been retained by IPBC, and secondly as NEC has approved and endorsed the way forward with regards to service contracts which was to apply for a Certificate of Inexpediency due to the Short commercial time limits that needed to be adhered to.

20. With regards to Ashursts, they were paid for by the State as it was a term of the loan agreement with UBS AG that the legal services of the lender would be funded by the borrower. This is a normal commercial condition. They were not retained by me but by UBS AG.

21. With regards to Pacific Legal Group, they were actually retained by Norton Rose Fulbright to act as their local Counsel for advice and assistance on procedures after Norton Rose Fulbright were asked to advise on the possibility of an UBS A loan/Oil Search transaction in accordance with the terms of their retainer for IPBC. I did not retain them.

22. It was clear to me that the State Solicitor did not think the submission was in breach of the Public Finance (Management) Act 1995 and the Attorney-General Act 1986.

23. There was no improper conduct regarding the NEC submission.

Comments

The Ombudsman Commission noted Mr Vele's response to this section of the Provisional Report. However, the Ombudsman Commission maintains its original comment contained in the Provisional Report.

[9] EXECUTION OF THE LOAN CONTRACT

On 6 March 2014, NEC met and made its Decision No: 79/2014 among other matters to approve the borrowing of AU\$1.239 Billion from UBS AG to purchase 149,390,244 shares in Oil Search Ltd.

On even date, the Prime Minister advised the GGPNG that in its Special Meeting No: 08/2014 the NEC approved the borrowing of a loan for the purpose of purchasing shares in Oil Search Ltd and for the purpose of meeting the expenses of Borrowing.

On 9 March 2014, the GGPNG signed the document enabling the State to borrow AU\$1.239 Billion from UBS AG to purchase shares in Oil Search Ltd and meet expenses relating to the Borrowing and for the services of the State.

On 10 March 2014, the State and Oil Search Ltd signed the subscription Agreement.

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On even date, Hon Polye was decommissioned by the Prime Minister due to the fact that he refused to sign and authorise the Payment Direction Deed and other related documents to facilitate the borrowing of the UBS AG Loan to purchase shares in Oil Search Ltd and also to facilitate the interest payments to UBS AG.

On even date, the decommissioning of Hon Don Polye as Minister for Treasury was gazetted in the National Gazette No. G83 and G89. The Prime Minister then became the Minister for Treasury.

On 12 March 2014, the State, NPCP and UBS AG agreed to the terms and conditions upon signing the Payment Direction Deed that directed the State through PNG Liquefied Natural Gas Global Company (GloCo) to pay immediately available funds to NPCP to be paid to an Account with UBS (Singapore).

On even date, the State represented by the Prime Minister as the Minister for Treasury and Mr Vele, UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS AG Nominees Pty Ltd signed the Bridge Facility Agreement.

On even date, the State represented by the GGPNG and witnessed by Mr Okuk, as the Consultant engaged by the DoT, signed the Specific Security Deed (CHESS Securities – Collar) with UBS AG that provided security to the loan acquisition. On even date, the State represented by the GGPNG and witnessed by Mr Okuk signed the Participant Sponsorship Agreement with UBS AG Nominees Pty Ltd. Mr Okuk was not a registered lawyer with PNGLS nor was he a Commissioner for Oaths under the Oaths and Affirmation Act.

On even date, the State represented by the Prime Minister and Mr Vele and the UBS AG (the Arranger), UBS AG (the Facility Agent) and UBS AG Nominees Pty Ltd signed the Confirmation Side Letter that confirmed certain terms and conditions of the letter agreement.

On even date, the GGPNG signed the Nominee Deed with UBS AG, UBS AG Nominees Pty Ltd and UBS AG Securities for the Nominee (UBS Nominees Pty Ltd) to act on the terms set out in the deed as Trustee for the State. The signing was witnessed by Mr Okuk.

On even date, the State (Subscriber) represented by the GGPNG witnessed by Mr Okuk signed the Subscription Agreement with Oil Search Ltd (Issuer).

Comments

The Prime Minister and Mr Vele ill-advised the GGPNG by stating that all technical requirements regarding the UBS AG loan of AU\$1.239 Billion were correct and that legal clearance on the same was sought, contrary to Mr Rolpagarea's advice

contained in a letter dated 5 March 2014 to Mr Vele, that Section 209 (Parliamentary Responsibility) of the Constitution should have been complied with.

We note that the signing of the UBS AG Loan Agreement by the Prime Minister as Treasury Minister and the GGPNG was done in secret and without much publicity given the magnitude of the loan and its impact on the country's debt and budget implications, unlike in other instances where the State has signed Loan Agreements with other Parties including Donor Agencies and the signing ceremony was given much publicity through the media.

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We also note that the GGPNG executed the UBS AG Loan Agreement and other Transaction Documents without the presence of all parties concerned including Government Officials. This was facilitated after official hours and without a prior appointment made through the Office of the Official Secretary to the GGPNG. This was improper.

We note that the counterpart provisions were included in the Loan Agreement for UBS AG to allow for the GGPNG to sign without their presence and presence of all concerned parties. Below is an extract of what is contained as a counterpart provision:

Counterparts

This document may be executed in counterparts. Delivery of a counterpart of this document by email attachment or fax constitutes an effective mode of delivery.

We also note the lack of –natural disasterll provisions in the Loan Agreement.

We also note that the Contract Documents are governed by the laws of the State of New South Wales, Australia.

We note that the GGPNG also signed the Agreement on the terms and conditions of engagement of UBS AG, on 25 February 2014, which was witnessed by Mr Okuk, prior to the NEC's Decision on 6 March 2014 approving the borrowing of AU \$1.239 Billion from

UBS AG to purchase 149,390,244 shares in Oil Search Ltd. Questions arise as to who advised the GGPNG to sign such Agreement without an NEC Decision in place to effect such purpose as required by Section 86(2) of the Constitution which states that the GGPNG shall act only with and in accordance with the advice of the NEC.

PART 3 PAYMENTS MADE TO CONSULTANTS AND UBS AG AS PER
NEC DECISION NO. 79/2014

[1] PAYMENTS MADE TO UBS AG (AUSTRALIA BRANCH)

On 30 January 2014, Mr Bakani advised UBS AG that the State decided to accept the proposal by UBS to refinance the IPIC Exchangeable Bond, by a combined structure of Rollover Collar and Term Loan.

On even date, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead

Arranger, in relation to the management of the investment of the State in Oil Search Ltd.

On 25 February 2014, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi. These terms were agreed to when the GGPNG signed the document that was witnessed by Mr Okuk on the same day.

On 27 February 2014, UBS AG responded by issuing a Commitment Letter to the attention of Mr Vele and incorporated the Equity Derivative Term Sheet and Debt Term Sheet that outlined the terms and conditions which are perceived to be prejudicial to the State, in particular the acceptance of its appointment as the arranger to arrange and participate in the facility contained in the letter which is disclosed below.

1. Appointment

1.1 The State appoints UBS as the exclusive arranger of the facility to arrange and participate in the facility on the basis of the Commitment Documents

9.2 Unless this mandate terminates in accordance with paragraph 14

(Termination):

a) no other person shall be appointed as arranger or other similar position

b) no other titles should be awarded; and

c) except as provided in the Commitment Document, no other compensation

shall be paid to any other person.

In connection with the Facility or other financial accommodation to be provided to the State

for purposes similar to those for which the facilities are to be provided without the prior written consent of UBS.

On 5 March 2014, Mr Guy Fowler, Head of Australian Investment Banking, UBS AG wrote to the Prime Minister and requested the Prime Minister's direct intervention to assist with resolving the most challenging issues such as IPIC Exchangeable

Bond, Papua New Guinea
Liquefied Natural Gas direction-to-pay and Sovereign Bond take-out
of the Bridge Loan.

On even date, Mr Fowler responded to the letter of Prime Minister of
27 February 2014,
advising him that he had responded to the Prime Minister on the same
date.

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On 6 March 2014, the NEC Special Meeting No: 8/2014 effectively
engaged UBS AG to be
the Advisor, Arranger and Financier to the loan to purchase new
Shares in Oil Search Ltd.
Below is an extract of the NEC Decision No: 79/2014.

2. noted the proposed Transaction Documents referred to in
Schedule A (attached) and
the transactions contemplated by them including:

a) for the State to acquire 149,390,244 shares in Oil Search
Limited (-Oil SearchII)

b) for the State to borrow A\$1.239 Billion from UBS AG
(Australia Branch) (-UBSII),
initially comprising two facilities (an A\$335 million bridge
loan facility and a
A\$904 million collar facility) (the -BorrowingII); and

c) for the State to engage UBS as its Advisors on the
financing and the acquisition of
Oil Search shares, including that UBS implement (on behalf
and upon the request
of the State) a sovereign bond issue to replace the bridge
loan, (the
-TransactionII).

6. approve to advise the Head of State (without limiting the
authority of any other
person as may be authorized to do so on behalf of the State)
to:

a) approve the Borrowing for the purpose of the purchase of
shares in Oil Search
and for the purpose of meeting the expenses of the Borrowing
and for the
services of the State, to agree with UBS the manner and the
terms and conditions
of that Borrowing, pursuant to section 2(1) of the Loans

(Overseas Borrowing)
No.2 Act; and

b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State Party is listed in Part 2 of the Schedule

A pursuant to section 47 of the Public Finance (Management) Act 1995 and are attached to the State Solicitor's certificate set out in Schedule E.

On even date, UBS AG issued a Bridge Takeout Letter to Mr Vele and outlined the terms of fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by GGPNG, and witnessed by Mr Okuk on 25 February 2014.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by GGPNG and witnessed by Mr Okuk on 25 February 2014.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk on 25 February 2014.

On 10 March 2014, Mr Eludeme wrote to Mr Vele in regard to the issuance of COI and advised that the CSTB met on 7 March 2014 and approved the issuance of COI for awarding of Contracts to both Local and International Consulting firms. Below is an extract of Mr Eludeme's advice:

I refer to your letter dated 06th March 2014 operating to the captioned applications.

The Board at its Meeting No: M-03/2014, held on Friday 07 March 2014 carefully considered your submission and resolved to approve the issuance of certificates of inexpediencies for award of contracts to the following financial/legal/technical firms from Papua New Guinea and International Law firms.

PNG Firms

1. Pacific Legal Group Lawyers
2. Pacific Capital Limited

The fees to cover the cost is PG Kina Nine Million, only (PGK9,000,000.00)

International Firms

1. UBS AG Australia Branch
2. Ashurst Lawyers
3. Norton Rose Fulbright of Australia
4. KPMG

The fees to cover the cost is AU\$ Fourteen Million, Five Hundred and Fifty Five Thousand Seven Hundred and Fifty Nine only (AU\$14,555,759.00).

The Board further advised that the contracts must be compiled separately with the exact amount for each firms.

The Board's approval is subject to the State Solicitor's clearance together with the receiving an approved original Authority to Pre-Commit (APC) to confirm funding.

The Board carefully noted the NEC Decision No: 79/2014 and is satisfied that all processes have been followed and the award was made in accordance to the provisions of the Public Finance (Management) Act. The Secretariat will inform the respective firms through a Letter of Acceptance.

You are hereby advised to prepare a draft Contract Agreement and refer back to the Central Supply and Tenders Board to obtain legal clearance from the State Solicitors Office. Upon obtaining clearance, the agreement will be executed by me for and on behalf of the State.

Your original submission, stamped and signed is returned for your appropriate action.

On 12 March 2014, UBS AG wrote to the Mr Vele and the State and confirmed the terms and conditions of the financing transaction entered into between the State and UBS AG in respect of Oil Search Ltd shares.

On even date, the loan agreement was executed by the GGPNG and UBS

AG witnessed by
Mr Okuk.

On 15 May 2014, representatives of UBS AG, Mr Goldsworthy and Ms Raguine wrote to Mr Vele and pointed out to him the breach to clause 5.1(b) of the Agreement by the State, when the State failed to pay the interest for the loan on 14 May 2014 because of Directions issued by the Commission under Section 27 (4) of the Constitution.

Comments

The Ombudsman Commission's investigation revealed that the State through the DoT had proceeded to pay the UBS AG various fees even though there was no formal execution of the Loan Agreement prior to 12 March 2014. Examples of such fees include the Facility Agent fee, Security Trustee fee, Advisory fee and Bridge Facility fee that were paid to UBS AG.

It is also noted that Mr Vele's request for CSTB's issuance of COI for awarding of Contracts to International Consultants included UBS AG's costs and their lawyer's costs (ie. Ashurst Lawyers). Mr Vele indicated that funds would be derived from the UBS AG Loan to pay for the Consultants fees. Hence, the costs of the engagement of Consultants including UBS

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AG's various fees and their Lawyer's fees, was paid out of the total Loan UBS AG provided to the State. This was in addition to the Loan and Interest payments to UBS AG by the State.

[2] PAYMENTS TO OTHER CONSULTANTS

On 6 March 2014, the Prime Minister personally sponsored the NEC Policy Submission No: 67/2014 relating to the financial arrangement to fund the State's acquisition of shares in Oil Search Ltd, for NEC's consideration at its Special Meeting No: 8/2014. The NEC in Decision No: 79/2014 approved among other matters for the State to acquire 149,390,244 shares in Oil Search Ltd and for the State to borrow AU\$1.239 Billion from UBS AG to fund its acquisition. Below is an extract of the NEC Decision No: 79/2014:

2. noted the proposed Transaction Documents referred to in Schedule A (attached) and the transactions contemplated by them including:

a) for the State to acquire 149,390,244 shares in Oil Search Limited (–Oil SearchII);

b) for the State to borrow A\$1.239 Billion from UBS AG (Australia Branch) (–UBSII), initially comprising two facilities (an A\$335 million bridge loan facility and a A\$904 million collar facility) (the –BorrowingII); and

c) for the State to engage UBS as its Advisors on the financing and the acquisition of Oil Search shares, including that UBS implement (on behalf and upon the request of the State) a sovereign bond issue to replace the bridge loan, (the –TransactionII).

3. approve to appoint Petromin PNG Holdings Limited as the State’s eventual subscriber and nominee for this transaction;

4. noted the receipt of certificate correctness from the State Solicitor in relation to the Transaction Documents to which the State is a party, as set out in Schedule E (attached);

5. confirmed the authority for the Minister for Treasury to agree and finalise on behalf of the State any of the terms of the Transaction Documents referred to in this submission which for reasons of commercial sensitivity or otherwise, are not set out in this submission or its attachments, prior to the submission of the Transaction Documents to the Head of State for execution on behalf of the State;

6. approve to advise the Head of State (without limiting the authority of any other person as may be authorized to do so on behalf of the State) to:

a) approve the Borrowing for the purpose of the purchase of shares in Oil Search and for the purpose of meeting the expenses of the Borrowing and for the services of the State, to agree with UBS the manner and the terms and conditions of that Borrowing, pursuant to section 2(1) of the Loans (Overseas Borrowing) No.2 Act; and

b) execute under his signature on behalf of the State those of the agreements, deeds

and other documents to which the State Party is listed in Part 2 of the Schedule A pursuant to section 47 of the Public Finance (Management) Act 1995 and are attached to the State Solicitor's certificate set out in Schedule E.

7. approved to advise the Minister for Treasury to:

a) issue a direction pursuant to section 2 (11) of the Loans (Overseas Borrowings) No. 2 Act, that sections 13 and 14 of the Public Finance (Management) Act 1995 do not apply to the State in relation to the Borrowing;

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b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State is a party listed in Part 1 of Schedule A pursuant to section 2(7) of the Loans (Overseas Borrowings) No.2 Act and attached to the State Solicitor's certificate as set out in Schedule E; and

c) authorise in writing and appoint as the State's Authorized Representative, the Secretary of the Department of Treasury and any other officers of the Department of Treasury as the Minister may determine and authorize each of them to execute any of the documents referred to in paragraph (b) and any documents as may be necessary to give effect to, or which are ancillary to, the documents referred to in paragraph (b), including any drawdown notice and any certificates.

And

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders

Board under section 40(3)(b), and an authority to pre-commit expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department of Treasury certifying that after the full amount of the borrowing pursuant to the Transaction Documents, the total value of overseas commercial debt which will be owed by the State will not exceed 125% of the estimated internal revenue of the State for the calendar year 2014 within the meaning of section 2(3) of the Loans (Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and

d) approval of the payment direction in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

On even date, Mr Vele wrote to Mr Eludeme and stated:

...It is imperative that State be provided with urgent relevant and necessary financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of the shares in Oil Search Limited. The transaction completing is to be completed at close of business on Sunday 9th March 4pm and therefore the appointment of the Legal, Financial and Technical Advisors were urgent and necessary. NEC has approved the appointments of the following firms on the recommendation of Department of Treasury:

Norton Rose Fulbright of Australia (Overseas Lawyers), Pacific Legal Group Lawyers (local lawyers) and Pacific Capital Limited (Financial and Technical Advisors) to act

for the State on this matter.

It would be appreciated if you could consider and approve the Request for Certificate of Inexpediency enclosed at the earliest to cover the advisory fees of up to a limit of K9,000,000.00.

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On 10 March 2014, the DoT deposited in Pacific Capital Ltd's account with Australia and New Zealand Banking Group (PNG) Ltd an amount of K1,250,000.00 for services rendered to the State.

Note

Other relevant facts related to this Section are covered in Part 2 on the CSTB and issuance of the COI.

Comments

As noted previously, Mr Vele engaged the Legal Firms and Financial and Technical Consultants to prepare documents including the NEC Submission relating to the borrowing of AU\$1.239 Billion from UBS AG to purchase shares in Oil Search Ltd, without complying with the tender process and process for COI under the Public Finance (Management) Act 1995 and the Finance Management Manual and without obtaining the approval of the Attorney-General as required by Section 8 of the Attorney-General Act 1989 for the engagement of Legal Firms.

The fees or costs of the Legal Firms and Financial and Technical Consultants referred to above were paid by the State from the UBS Loan as follows:

Payee	Amount
UBS advisory fee	AU\$4,207,938
Ashurst Lawyers	AU\$ 812,500
Norton Rose Fulbright	AU\$ 600,000
KPMG	AU\$ 166,221
Pacific Capital Limited	PGK1,250,000
Pacific Legal Group Lawyers	PGK1,600,000

It is noted that after receipt of State Solicitor's advice that the circumstances in this case did not warrant the issuance of a COI under the Public Finance (Management) Act 1995 and Finance Management Manual, the CSTB later rescinded its decision to approve issuance of a COI to facilitate the engagement of these Consultants including UBS AG thereby nullifying their earlier decision on COI which was the initial basis for the above payments to be made to these Consultants.

The Ombudsman Commission's investigations revealed that one of the Shareholders and Director of Pacific Capital Ltd is Mr Frank Kramer, who is the Chairman of NPCP Board.

As noted in this Report, out of the payment Pacific Capital Ltd received, payments totaling K660,000.00 were made to Pertusio Capital Partners Ltd of which Mr Vele is a Shareholder and Director. Below is an extract of a Bank Statement:
 Account Number: 12386296
 Currency: PGK
 Type: C/A – CORPORATE

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Name: PACIFIC CAPITAL LTD – MANAGED ACCOUNT
 Address: PACIFIC CAPITAL LIMITED
 PO BOX 2064
 PORT MORESBY

Transaction Description	Amount
Balance	
Date	
BALANCE B/F	
934.72	
10/04/2014 CREDIT	1,250,000.00
1,320,751.93	
REF:DOTCHQ005039	
SPECIAL ANS PACIFIC CAPITAL LTD	
15/04/2014 TRANSFER	100,000.00
1,193,684.93	
REF:337	
TRF INF PERTUSIO CAPITAL PARTNERS LIMITED	
TRANSFER TO 13552050	
25/04/2014 TRANSFER	200,000.00
862,667.93	
REF:339	
TRF INF PERTUSIO CAPITAL PARTNERS LIMITED	

	TRANSFER TO 13552050	
06/05/2014 562,722.01	TRANSFER REF:341 TRF INF PERTUSIO CAPITAL PARTNERS LIMITED TRANSFER TO 13552050	100,000.00
05/06/2014 462,753.47	TRANSFER REF:343 TRF INF PERTUSIO CAPITAL PARTNERS LIMITED TRANSFER TO 13552050	60,000.00
12/06/2014 412,753.47	TRANSFER REF:344 TRF INF PERTUSIO CAPITAL PARTNERS LIMITED TRANSFER TO 13552050	50,000.00
27/06/2014 212,663.47	TRANSFER REF:346 TRF INF PERTUSIO CAPITAL PARTNERS LIMITED TRANSFER TO 13552050	150,000.00

[2.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to Part 3 [2] of the Ombudsman Commission's Provisional Report. Below is his response.

PART 3 PAYMENTS MADE TO CONSULTANTS AND UBS AG AS PER NEC
DECISION NO.
79/2014

[2] PAYMENTS TO OTHER CONSULTANTS

I respond that all facts and relevant information as to these findings are contained in my responses as to Findings of Fact 1 and 2.

I repeat with regards to payment of Consultants, I say

I never engaged any legal or financial Consultants (including UBS AG), before or after the NEC Decision 79/2014 made on 6 March 2014.

Consultants were engaged by the State after 6 March 2014 pursuant to the NEC Decision 69/2014 and the COI issued by CSTB in accordance with such decision.

Following the State Solicitor's advice on 20 March 2014 that the COI was not issued correctly, and the

COI issued by CSTB in accordance with such decision.

This was following and in accordance with the State Solicitor's advice that the consultants could be

paid for work performed on a quantum meruit basis and the best person to determine what the

quantum was myself, the Secretary for Treasury.

Comments

The Ombudsman Commission noted Mr Vele's response to this section of the Provisional

Report. However, the Ombudsman Commission maintains its original comment contained

in the Provisional Report.

[3] DR KEN NGANGAN, ACTING SECRETARY FOR DEPARTMENT OF FINANCE APPROVED THE RELEASE OF FUNDS FOR CONSULTANTS

On 6 March 2014, the NEC during its Special Meeting No: 8/2014 relating to the financial arrangement to fund the State's acquisition of shares in Oil Search Ltd, made its Decision

No: 79/2014, which approved among other matters for the State to acquire 149,390,244

shares in Oil Search Ltd and for State to borrow AU\$1.239 Billion from UBS AG to fund this

acquisition and for Secretary for DoF to issue an APC expenditure under Section 47B of the

Public Finance (Management) Act 1995. Below is an extract of the NEC Decision:

8. noted that the Transaction Documents are subject to the issue by other State Agencies

of necessary or convenient statutory authorizations that are being sought in parallel

with this submission, and or endorse the issue of any such authorizations for the

Transaction, including, without limitation:

a. issue of a certificate of inexpediency to tender by the Central Supply and

Tenders Board under section 40(3)(b), and an authority to pre-commit

expenditure by the Secretary of the Department of Finance under section 47B,

of the Public Finance (Management) Act 1995;

On 7 March 2014, Dr Ngangan approved the APC Expenditure in relation to payments made to national Consultants and stated:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that he provisions of Part VII of the Public Finance (Management) Act 1995 have been complied with in relation to the purchase or supply of the property and services referred to in the Schedule and that funds will be available to meet the proposed schedule of payments for that property and those services authorised the pre-commitment of expenditure of up to K9,000,000.00 for the purchase or supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of 149.39 million ordinary shares in Oil Search Limited through UBS AG, Australia Branch (ARBN 088 129 613).

On 10 March 2014, Mr Vele wrote to Dr Ngangan and requested that they approve a payment to UBS AG in relation to the acquisition of the shares in Oil Search Ltd.

On even date, the DoT deposited K1.250,000.00 into Pacific Capital Ltd's bank account with Australia and New Zealand Banking Group (PNG) Ltd for services rendered to the State.

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On 11 March 2014, Mr Vele completed and endorsed an APC Form and requested for the release of AU\$14,555,759 to be paid to the financial and legal firms that prepared and advised the State on acquisition of Oil Search Ltd shares.

On even date, Dr Ngangan approved the APC Form in relation to payments made to international Consultants and stated:

I, Dr Ken Ngangan, Secretary of Finance being satisfied that he provisions of Part VII of the Public Finance (Management) Act 1995 have been complied with in relation to the purchase

or supply of the property and services referred to in the Schedule and that funds will be available to meet the proposed schedule of payments for that property and those services authorised the pre-commitment of expenditure of up to A \$10,347,821.00 for the purchase or supply of that property and those services.

SCHEDULE

The provision of financial, legal and technical advisory services in connection with that purchase and related financing of the purchase by the State of 149.39 million ordinary shares in Oil Search Limited through UBS AG, Australia Branch (ARBN 088 129 613).

On 12 March 2014, Mr Vele endorsed the second APC Form to release K1,250,000.11 to be paid to the Pacific Capital Ltd as consultation fees.

On even date, Dr Ngangan advised Mr Eludeme that he received two APC Forms from Mr Vele. Below is an extract:

Department of Finance has received two APC applications from Treasury Department for deliberations.

Proposed Procurement	Amount
1. PNG Financial & Technical Advisors Acquisition by State of Oil Search Shares	K1,250,000.00
2. State (PNG) Legal Advisors – Acquisition By State of Oil Search Shares	K1,600,000.00

Pursuant to the requirements of s47 of the Public Finances (Management) Act, I have approved the application for the Department for authority to pre-commit for the above Procurement. The approved forms are enclosed with this letter.

I now recommend you for your deliberation and Board assistance with GoPNG procurement requirements and Board approval. A copy is given to the respective Department for the confirmation of the approved procurement.

Comments

Although both Dr Ngangan and Mr Vele were aware that the activity was unbudgeted, they proceeded to sign the APC Form committing funds that were not

appropriated in the 2014.

The Ombudsman Commission's investigations revealed that neither Dr Ngangan nor Mr Vele indicated on the APC Forms dated 7, 11 and 12 March 2014, from which Vote Item the funds were to be accessed. Mr Vele indicated on the form that the funds would be from the UBS AG Loan. However, it was revealed that the completion of the APC Form was improper on two grounds:

1. That the name of the suppliers were not indicated on the form and

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2. That the CSTB Chairman did not endorse the Form.

It is also noted that the UBS AG Loan to purchase Oil Search Ltd shares, was transacted overseas in Australia and funds were not transferred into the PNG Government's Accounts in-country so how could an APC Form be filled and approved for funds that were not held in-country nor part of the Government's Budget Appropriation for 2014.

As noted earlier, on 10 April 2014 the DoT raised a Cheque No: 005039 for K1,250,000.00 in favour of Pacific Capital Ltd, a company owned by Mr Kramer, Chairman of NPCP. Then from 15 April 2014 to 27 June 2014, Pacific Capital Ltd transferred various amounts from its bank account to Pertusio Capital Partners Ltd, a company owned by Mr Vele. Hence, Mr Kramer and Mr Vele both benefited from the UBS AG Loan transaction by the State.

[3.1] RESPONSE FROM DR KEN NGANGAN

On 22 January 2015, Dr Ngangan the Secretary for DoF responded to the Commission's Section 17(4) of the OLOC Report and advised that they did deliberate on the APC and approved the release of K1,250,000.00 and K1,600,000.00 that were paid to the Financial and Technical and Legal Advisors in regard to the acquisition by State of Oil Search shares.

Department of Finance has received two APC applications from Treasury Department for

deliberations.

Proposed Procurement	Amount
1. PNG Financial & Technical Advisors Acquisition by State of Oil Search Shares	K1,250,000.00
2. State (PNG) Legal Advisors – Acquisition By State of Oil Search Shares	K1,600,000.00

Pursuant to the requirements of s47 of the Public Finances (Management) Act, I have approved the application for the Department for authority to pre-commit for the above Procurement. The approved forms are enclosed with this letter.

I now recommend you for your deliberation and Board assistance with GoPNG procurement requirements and Board approval. A copy is given to the respective Department for the confirmation of the approved procurement.

Yours sincerely,

(signed)
Dr KEN NGANGAN CMA CPA
Acting Secretary

Comments

The Ombudsman Commission noted Dr Ken Ngangan's response to this section of the Provisional Report. It was also noted that Dr Ngangan's response did not provide new information to change the Ombudsman Commission's original comments contained in the Provisional Report.

Therefore, the Ombudsman Commission maintains its original comments contained in the Provisional.

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[4] PAYMENTS MADE TO UBS AG BY NATIONAL PETROLEUM COMPANY OF PAPUA NEW GUINEA (KROTON) LIMITED

On 6 March 2014, the NEC during its Special Meeting No: 8/2014 relating to the financial arrangement to fund the State's acquisition of shares in Oil Search Ltd, made it's Decision

No: 79/2014 which approved among other matters for NPCP to execute the Payment Direction Deed concerning payments from GloCo. Below is an extract.

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

- a) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and
- b) approval of the payment direction in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1995.

On 8 March 2014, Mr Vele sent an electronic mail to Dr Webster and Board Members urging them to progress considerations of the matters with the IPBC Board on the State's acquisition of shares in Oil Search Ltd. The attachments in the electronic mail are as follows:

1. IPBC Board briefing pack – Memo with explanation of transaction and payment Direction
2. Draft Payment Direction Deed
3. IPBC Shareholder Approval of Payment Direction
4. IPBC Board Approval
5. NPCP Board Resolution for Payment Directions
6. Power of Attorney

On even date, Mr Kramer upon directives from Mr Kumarasiri submitted a proposal with the subject titled –Financial arrangements for State's acquisition of shareholding in Oil Search Ltd and State borrowing and need for payment direction by NPCP to the IPBC Board.

On 9 March 2014, in its Special Board of Directors Meeting No: 02/2014, the NPCP Board passed resolutions that effected the signing of the Transaction Documents. Below is an extract from the Meeting Minute:

a) the Company enter into any Transaction Document necessary to give effect to the

Payment Direction or to satisfy the conditions precedent to funding under the Bridge Facility,

b) each Attorney is severally authorised, on behalf of the Company, to execute and deliver (or enter in any other way into) each Transaction Document and to do anything else

that an Attorney is authorised to do under the Power of Attorney; and

c) the Power of Attorney to be executed by the Company by fixing the common seal to it

and that the fixing of the common seal be witnessed by any two directors or any

director and a Company secretary.

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On even date, Mr Sonk verified copies of the Shareholder resolutions of the NPCP dated 09 March 2014, Minutes of a Meeting of the Board of Directors and Power of Attorney of the NPCP.

On 9 March 2014, Mr Sonk forwarded to Mr Kumarasiri an Extract of Minutes of a Meeting of the Board of Directors that contained the resolutions that authorised NPCP to effect the Payment Direction and appoint members of Management as holders of Power of Attorney to execute the Payment Direction Deed and the executed copy of the Payment Direction Deed which became effective upon IPBC approval.

On even date, the NPCP Board of Directors gave the Power of Attorney to Mr Sonk and Mr Wato.

On even date, Minister Marape approved the Memorandum of Approval that enabled NPCP to enter into the Transaction Documents.

On 10 March 2014, the IPBC Board in its Special Board Meeting No: 3 of 2014, noted the legal advice by the State Solicitor to the DoT and in particular the requirement to comply with Section 209 of the Constitution and further actions that were

taken by the State to address the requirements made the following resolutions as outlined below:

a) That for the purpose of section 89 of the Companies Act 1997 that the IPBC agrees to and concurs in the execution by the NPCP of each and every document referred to in the Schedule (the Transaction Documents) and the directors of NPCP are hereby authorized to enter into the Transaction Documents.

b) That the transactions that subject of the Transaction Documents and the entry of NPCP into the Transaction Documents are approved by the IPBC in its capacity as sole shareholder of NPCP as a major transaction for the purpose of section 110 of the Companies Act.

c) That any director be authorized to execute on behalf of the IPBC the resolution in lieu of meeting of shareholders under section 103 of the Companies Act by which IPBC, as sole shareholder of NPCP, gives effect to resolutions (a) and (b).

d) To approve for the purpose of Section 46B(1) of the IPBC Act that the Managing Director of IPBC recommend to the Minister for Finance for approval, a proposal by National Petroleum Company of PNG (Kroton) Limited to enter into Agreement referred to in the Schedule to this document.

On even date, the IPBC Board deliberated and passed a resolution in lieu of meeting of Shareholder pursuant to Sections 103, 89 and 110 of the Companies Act 1997. Below is an extract:

AGREEMENT OF SOLE SHAREHOLDER

RESOLVED that for the purposes of section 89 of the Companies Act 1997 the shareholders agrees to and concurs in the execution by the Company of each and every document referred to in the Schedule (the Transaction Documents) and the directors of the Company are hereby authorised to enter into the Transaction Documents.
MAJOR TRANSACTION

RESOLVED as a special resolution that the transactions the subject of the Transaction Documents and the entry by the Company into the Transaction Documents are approved as a major transaction for the purposes of section 110 of the

Companies Act 1997.

On 11 March 2014, Minister Marape approved NPCP to enter into Payment Direction Deed.

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On even date, Mr Sonk wrote to Mr Graham and directed any distributions made to NPCP to be paid to UBS AG (Singapore Branch).

On even date both Mr Sonk and Mr Wato wrote to Mr Graham and issued instructions and directions for all NPCP's payments from PNG LNG held by GloCo be made payable to UBS AG (Singapore) to offset the UBS AG Loan.

On 3 June 2014, Mr Kramer advised the Ombudsman Commission that NPCP was only involved and limited to the execution of the Payment Direction Deed as per the IPBC Board request and direction. He also stated as indicated in the extract below:

a) My understanding of the transaction at that time (and my understanding has not changed) was that financing of the acquisition of Oil Search Shares included a Bridge Facility for an amount of about \$AUD330 million.

b) NPCP was not a party to the relevant Bridge Facility agreement/document and had no opportunity to negotiate or affect the provisions of the document.

c) NPCP was directed to enter into the Payment Direction Deed which gives UBS a secondary source for loan repayment for the Bridge Facility amount only, against NPCP's cash flow in the event that the State fails to issue bonds to replace the Bridge Facility.

d) As you may be aware, NPCP is a Majority State Owned Enterprise under the Independent Public Business Corporation of PNG 2000 (IPBC Act) with 100% of its shares held by IPBC as Trustee of the General Business Trust for the State.

e) The IPBC Act provides in Section 46I that IPBC may, by notice to a majority State Owned Enterprise, set policies or give directions in any

matter concerning the activities of the Majority State Owned Enterprise.

The IPBC Act further provides in Section 46J for sanctions and penalties for Directors who fail to comply with such direction as follows:

(i) A majority State Owned Enterprise which fails...to give prompt effect to a direction given to it under Section 46I shall have contravened this Part VIA of the (IPBC) Act.

(ii) If a majority State Owned Enterprise has contravened Part VIA, each of the Directors, including the Managing Director (if any) shall be deemed to have been involved in that contravention and thereby to have breached their duties as directors pursuant to Section 112 of the Companies Act 1977 and be punished according under Section 413 of that Act.

Section 112 of the Companies Act requires a Director of NPCP Kroton to act in good faith and in the best interest of NPCP Kroton's holding company (IPBC) when exercising his powers or performing his duties.

The effect of not complying with a Direction by IPBC under Section 46I of the IPBC Act is to establish a breach of the provisions of Section 112 and by that make the directors liable to the penalties under Section 413 of the Companies Act. Section 413 imposes fines up to K200,000.00 or imprisonment for a term not exceed 5 years, or both.

f) The directions to NPCP Board were confirmed in an Email dated 8 March from Mr Wasantha Kumarasiri, the Managing Director of IPBC, and addressed to Mr Thomas Webster, the then Chairman of IPBC Board, with copies sent to a number of people including to members of his Board, the Managing Director of NPCP, Mr Wapu Sonk, and myself as Chairman of NPCP Board.

passed under the IPBC

Act and concluded specifically addressed to NPCP –

–Chairman NPCP and MD NPCP,....Please arrange your NPCP Board Resolutions

urgently to facilitate the State's objective per the NEC Decision. I will forward you a

copy of the Board Pack prepared by Dairi Vele for your information which will assist

to fast tract this urgent initiative by the State.||

g) In light of the above advice on the effect of Section 46I of the IPBC Act and Sections

112 and 413 of the Companies Act, it was my view that the NPCP Directors had no

option other than to pass the resolutions as directed and to execute the Payment

Direction Deed.

h) The effect of the Payment Direction Deed is for NPCP to direct that funds received

by NPCP from the PNG LNG Project be deposited into an Escrow Account.

2.

(b) ...The Escrow Account established in the name of NPCP with UBS AG Singapore and

a direction has been provided to GloCo to make all payments due to NPCP into that

nominated account.

Comments

The NPCP Board executed the directions from the IPBC Board in order to facilitate the NEC Decision that was made on 6 March 2014 for NPCP to execute a Payment Direction Deed concerning payments from GloCo.

In light of the above approvals and decisions, Mr Sonk and Mr Wato directed Mr Graham, MD for Esso Highlands to divert from time to time all immediate available funds payable to NPCP from proceeds from the PNG LNG project to be forwarded to paying the interest payment on the loan to UBS AG (Singapore).

The execution of the Payment Direction Deed by NPCP was a condition precedent for UBS

AG approval of funding for the Loan facility to the State. It was intended that revenue from the LNG Project would not go into the Sovereign Wealth Fund but it would go into servicing the UBS Loan.

At and before the time that the GoPNG borrowed the UBS AG Loan, the

NPCP was a State Owned Enterprise that had no cash flow and an unfavourable Balance Sheet.

This was confirmed when the Ombudsman Commission obtained various SOEs' Balance Sheets from IPBC. It was notable that Balance Sheet for NPCP was in the negative and with operational liabilities.

The involvement of NPCP to execute the Payment Direction Deed is questionable as it is not legally established as the proposed PNG Petroleum Company (Kroton) Act has not been certified by the Speaker of Parliament in order to be fully in force. Thus the involvement of NPCP in this whole process was improper.

[5] LOAN AND INTEREST PAYMENT TO UBS AG (AUSTRALIA BRANCH)

On 30 January 2014, Mr Vele engaged UBS AG to act as the Sole Financial Advisor and Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of the Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd of the IPIC of Abu Dhabi.

On 23 February 2014, the Prime Minister, Mr Peter Botten, MD of Oil Search Ltd, Mr Gereia Aopi, Board Chairman for Oil Search Ltd and Mr Vele met at Grand Papua Hotel and decided for the State to buy 149, 390, 244 shares which translated to 10.01 % shareholding in Oil Search Ltd.

On 24 February 2014, Hon Rimbink Pato, MP, Minister for Foreign Affairs and Immigration (FAI) advised HH Sheikh Abdullah bin Zayed Al Nahyan, the Minister for FAI, Abu Dhabi, United Arab Emirates, that the GoPNG wanted to retain ownership of

the Oil Search Ltd shares.

On 25 February 2014, trading in Oil Search Ltd shares halted ahead of its announcement issuing shares to existing shareholders and interested buyers.

On even date, UBS AG wrote to Mr Vele and outlined the terms of engagement of UBS AG as the Sole Financial Advisor and Sole Lead Arranger that was effected on 30 January 2014, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to the IPIC of Abu Dhabi.

On even date, the GGPNG signed the Agreements outlining the terms and conditions of the engagement of UBS AG which was witnessed by Mr Okuk as Commissioner of Oath.

On 26 February 2014, the Prime Minister advised Mr Botten regarding the State's willingness to buy shares in Oil Search Ltd.

On 27 February 2014, the Prime Minister wrote to Mr Fowler regarding UBS AG proposal to provide funding facilities to State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd at AU\$8.20 per share.

On 4 March 2014, Mr David Heathcote presented KPMG's analysis to IPBC and NPCP on the monetized Collars relating to financing the purchase of Oil Search Ltd shares.

On even date, Ashurst Lawyers forwarded draft documents for its client UBS AG to the State that outlined the financial package that UBS AG was offering the State and it was indicated that the loan repayment would expire on 17 June 2016. Below are extracts:

SCHEDULE 1 – OPTION TERMS APPLICABLE TO THE BORROWING

Tranche and Component Collar details
Each Tranche is made up of five Component Collars with the same Expiration Date. Each Component Collar is made up of the same Number of Put Options and Number of Call Options with the same Expiration Date. Each Component Collar has

different Put Strikes
and Call Options set out below.

Whilst different Tranches have different Expiration Dates, all of the Tranches are made up of five Component Collars with the Strike Prices and Number of Put Options and Number of Call Options set out below.

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Composition of Put Strike Call Strike Number of each Tranche (A\$) Options per Component	Put Strike (as % of notional Call A\$8.20)	Put Strike (A\$)	Number of notional Put Options per Component Collar	Call Strike (as % of A\$8.20)
Collar Component \$7.3800	80%	\$6.56	913,415	90%
Collar A Component \$9.0298	85%	\$6.97	913,415	110.12%
Collar B Component \$10.7379	90%	\$7.38	913,415	130.95%
Collar C Component \$11.2258	95%	\$7.79	913,415	136.90
Collar D Component \$11.6440	100%	\$8.20	913,415	124%
Collar E				
Average = \$10.00	Average = 90%	Average = A\$7.38	Total for each Tranche = 4,567,075	Average = 122% A

The number of Shares subject to each Tranche is 4,567,075. Each Collar Group is made of five Tranches expiring on five consecutive Scheduled Trading Days (assuming there are no Disrupted Days). The number of Shares subject to each Collar Group is 22,835,375.

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Collar Group and Tranche Details

Collar Group 1, comprising: Tranche 1 with Expiration Date
of 7-Mar-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 2 with Expiration Date of
8-Mar-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Mar-16 Tranche Quantity: 4,567,075 Tranche 3 with Expiration Date of 9-
\$33,705,013.50 Tranche Notional:

10-Mar-16 Tranche Quantity: 4,567,075 Tranche 4 with Expiration Date of
\$33,705,013.50 Tranche Notional:

11-Mar-16 Tranche Quantity: 4,567,075 Tranche 5 with Expiration Date of
\$33,705,013.50 Tranche Notional:

Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 1 Final Exchange Date: 4-Mar-16

(applicable if Cash Settlement is elected in respect of this Collar Group)

Collar Group 1 Final Exchange Amount: \$168,525,067,.50
(payable on Collar Group 1 Final Exchange Date if Cash Settlement is elected in respect of Collar Group 1)

Collar Group 2, comprising: Tranche 6 with Expiration Date of 29-Mar-16
Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

30-Mar-16 Tranche Quantity: 4,567,075 Tranche 7 with Expiration Date of
\$33,705,013.50 Tranche Notional:

31-Mar-16 Tranche Quantity: 4,567,075 Tranche 8 with Expiration Date of
\$33,705,013.50 Tranche Notional:

1-Apr-16 Tranche Quantity: 4,567,075 Tranche 9 with Expiration Date of
\$33,705,013.50 Tranche Notional:

4-Apr-16 Tranche Quantity: 4,567,075 Tranche 10 with Expiration Date of
\$33,705,013.50 Tranche Notional:

Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 2 Final Exchange Date: 24-Mar-16

(applicable if Cash Settlement is elected in respect of this Collar Group)

Collar Group 2 Final Exchange Amount: \$168,525,067,.50
(payable on Collar Group 2 Final Exchange Date if Cash Settlement is elected in respect of Collar Group 2)

Collar Group 3, comprising: Tranche 11 with Expiration Date of 18-Apr-16
Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

19-Apr-16 Tranche Quantity: 4,567,075 Tranche 12 with Expiration Date of
\$33,705,013.50 Tranche Notional:

20-Apr-16 Tranche Quantity: 4,567,075 Tranche 13 with Expiration Date of
\$33,705,013.50 Tranche Notional:

Tranche 14 with Expiration Date of

21-Apr-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 15 with Expiration Date of
22-Apr-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 3 Final Exchange Date: 15-Apr-16
(applicable if Cash Settlement is elected in respect of this Collar Group)

Collar Group 3 Final Exchange Amount: \$168,525,067,.50
(payable on Collar Group 3 Final Exchange Date if Cash Settlement is elected in respect of Collar Group 3)

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Collar Group 4, comprising: Tranche 16 with Expiration Date
of 9-May-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 17 with Expiration Date of
10-May-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 18 with Expiration Date of
11-May-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 19 with Expiration Date of
12-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 20 with Expiration Date of
13-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 4 Final Exchange Date: 6-May-16
(applicable if Cash Settlement is elected in respect of this Collar Group)

Collar Group 4 Final Exchange Amount: \$168,525,067,.50
(payable on Collar Group 4 Final Exchange Date if Cash Settlement is elected in respect of Collar Group 4)

Collar Group 5, comprising: Tranche 21 with Expiration Date
of 30-May-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50

Tranche 22 with Expiration Date of

31-May-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 23 with Expiration Date of
1-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 24 with Expiration Date of
2-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 25 with Expiration Date
of 3-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 5 Final Exchange Date: 27-May-16
(applicable if Cash Settlement is elected in respect of this Collar
Group)
Collar Group 5 Final Exchange Amount: \$168,525,067
(payable on Collar Group 5 Final Exchange Date if Cash Settlement is
elected in respect of Collar Group 5)

Collar Group 6, comprising: Tranche 26 with Expiration Date
of 20-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 27 with Expiration Date of
21-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 28 with Expiration Date of
22-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 29 with Expiration Date of
23-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Tranche 30 with Expiration Date of
24-Jun-16 Tranche Quantity: 4,567,075 Tranche Notional:
\$33,705,013.50
Collar Group Quantity: 22,835,375
Collar Group Notional Amount: \$168,525,067.50
Collar Group 5 Final Exchange Date: 17-Jun-16
(applicable if Cash Settlement is elected in respect of this Collar
Group)
Collar Group 5 Final Exchange Amount: \$168,525,067,.50
(payable on Collar Group 5 Final Exchange Date if Cash Settlement is
elected in respect of Collar Group 5)

On 5 March 2014, Mr Fowler requested the Prime Minister to intervene in resolving the IPIC Exchangeable Bond, PNG LNG direction-to-pay and Sovereign Bond take-out of the Bridge Loan.

On 6 March 2014, the Prime Minister personally sponsored the NEC Policy Submission No: 67/2014 in its Special Meeting No: 08/2014 and NEC made the following Decision No: 79/2014 that effectively engaged UBS AG as Advisor and the lender of the loan to purchase shares in Oil Search Ltd. Below is an extract:

2. noted the proposed Transaction Documents referred to in Schedule A (attached) and the transactions contemplated by them including:

a) for the State to acquire 149,390,244 shares in Oil Search Limited (-Oil SearchII);

b) for the State to borrow A\$1.239 Billion from UBS AG (Australia Branch) (-UBSII), initially comprising two facilities (an A\$335 million bridge loan facility and a A\$904 million collar facility) (the -BorrowingII); and

c) for the State to engage UBS as its Advisors on the financing and the acquisition of Oil Search shares, including that UBS implement (on behalf and upon the request of the State) a sovereign bond issue to replace the bridge loan, (the -TransactionII).

3. approved to appoint Petromin PNG Holdings Limited as the State's eventual subscriber and nominee for this transaction;

4. noted the receipt of certificate correctness from the State Solicitor in relation to the Transaction Documents to which the State is a party, as set out in Schedule E (attached);

5. confirmed the authority for the Minister for Treasury to agree and finalise on behalf of

the State any of the terms of the Transaction Documents referred to in this submission which for reasons of commercial sensitivity or otherwise, are not set out in this submission or its attachments, prior to the submission of the Transaction Documents to the Head of State for execution on behalf of the State;

6. approved to advise the Head of State (without limiting the authority of any other person as may be authorized to do so on behalf of the State) to:

a) approve the Borrowing for the purpose of the purchase of shares in Oil Search and for the purpose of meeting the expenses of the Borrowing and for the services of the State, to agree with UBS the manner and the terms and conditions of that Borrowing, pursuant to section 2(1) of the Loans (Overseas Borrowing) No.2 Act; and

b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State Party is listed in Part 2 of the Schedule A pursuant to section 47 of the Public Finance (Management) Act 1995 and are attached to the State Solicitor's certificate set out in Schedule E.

7. approved to advise the Minister for Treasury to:

a) issue a direction pursuant to section 2 (11) of the Loans (Overseas Borrowings) No. 2 Act, that sections 13 and 14 of the Public Finance (Management) Act 1995 do not apply to the State in relation to the Borrowing;

b) execute under his signature on behalf of the State those of the agreements, deeds and other documents to which the State is a party listed in Part 1 of Schedule A pursuant to section 2(7) of the Loans (Overseas Borrowings) No.2 Act and attached to the State Solicitor's certificate as set out in Schedule E; and

c) authorise in writing and appoint as the State's Authorized Representative, the Secretary of the Department of Treasury and any other

officers of the
Department of Treasury as the Minister may determine and
authorize each of
them to execute any of the documents referred to in
paragraph (b) and any
documents as may be necessary to give effect to, or which
are ancillary to, the
documents referred to in paragraph (b), including any
drawdown notice and
any certificates.

and

8. noted that the Transaction Documents are subject to the issue
by other State Agencies
of necessary or convenient statutory authorizations that are
being sought in parallel
with this submission, and or endorse the issue of any such
authorizations for the
Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the
Central Supply and
Tenders Board under section 40(3)(b), and an authority to
pre-commit
expenditure by the Secretary of the Department of Finance
under section 47B,
of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department
of Treasury certifying
that after the full amount of the borrowing pursuant to the
Transaction
Documents, the total value of overseas commercial debt
which will be owed by
the State will not exceed 125% of the estimated internal
revenue of the State for
the calendar year 2014 within the meaning of section 2(3)
of the Loans
(Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the
Transaction Documents
by the National Petroleum Company of PNG (Kroton) Limited
concerning
payments from Papua New Guinea Liquefied natural Gas Global
Company
LDC, with the approval of the Minister for Finance on the
recommendation of
the Managing Director of the IPBC pursuant to section 46B
of the Independent
Public Business Corporation of Papua New Guinea Act 2002,
including the
documentation listed in Part 3 of Schedule A; and

d) approval of the payment direction in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

On even date, UBS AG issued a Bridge Takeout Letter to Mr Vele and outlined the terms of fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Facility Agent for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr Okuk.

On even date, UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Security Trustee fees as per the Bridge Facility Agreement that was signed by GGPNG and witnessed by Mr Okuk.

On 12 March 2014, Ms Hoser wrote to Mr Vele and the State and confirmed that terms and conditions of the financing transaction entered into between the State and UBS AG in respect of Oil Search Ltd shares.

On even date, the Loan Agreement was executed by the GGPNG and UBS AG witnessed by Mr Okuk.

On 22 April 2014, Ashurst Lawyers representing UBS AG wrote to Norton Rose Fulbright of Australia, the Law Firm representing the DoT and advised that non-compliance with payment obligations would constitute an Event of Default and UBS AG can commence enforcement processes without further reference to the State.

On 30 April 2014, Ms Hoser wrote to Mr Vele and advised that if interest due on a particular interest payment date is not paid within two Business Days of that date, UBS AG would be entitled to declare an –Event of Default. As a result, the entire loan (and other unpaid amounts) under the Bridge Facility would become immediately

repayable and the security over the Oil Search Ltd shares would become immediately enforceable meaning that UBS AG could sell the Oil Search Ltd shares to repay all amounts owing by the State. UBS AG would be entitled to charge default interest on any unpaid interest (at the rate of 2% per annum).

On 14 May 2014, Mr Vele wrote to the Ombudsman Commission and advised that under the UBS AG loan, the State is required to make periodic interest payments and for the Ombudsman Commission to prevent the interest payments, the State would be in default and UBS AG will commence enforcement processes without further notification to the State that could result in the loss by the State of its Oil Search Ltd shareholding. Therefore, the State had to make the interest payments in accordance with the loan agreement, given the factual findings of the National Court and the advice from Norton Rose Fulbright of Australia, in light of the very serious consequences for Papua New Guinea of default.

On even date, Mr Vele, raised Finance Forms number 3 & 4 (FF3& FF4) that indicated AU\$2,261,938.36 which was about K5,543,966.57 to be paid to UBS AG account number 242888 as interest payment to the loan. However, on the Finance Form 4C indicated that K5 million was paid to UBS AG.

On even date, Mr Vele, wrote to the Ombudsman Commission and requested for clearance on the interest payment to UBS AG.

On 15 May 2014, representatives of UBS AG, Mr Goldsworthy and Ms Raguine wrote to Mr Vele and pointed out to him the breach to clause 5.1(b) of the Agreement by the State, when the State failed to pay the interest for the loan on 14 May 2014.

On 16 May 2014, Mr Vele wrote to Mr Bakani and instructed him to immediately process and remit funds to the UBS AG designated account in Sydney, Australia as interest payment due as per the UBS loan Agreement.

On even date, Mr Vele sent an electronic mail to Mr Bakani and stated that the legal advice he got was that the interest payment must be paid to UBS AG in order to avoid far reaching

consequences of defaulting on the UBS loan. Mr Vele then requested that the interest payment be made as a matter of the utmost urgency (reaching UBS by no later than 5pm today) so as to avoid being in default.

On even date, Ms Betty Palaso, Commissioner-General for Internal Revenue Commission (IRC) issued a Tax Clearance Certificate indicating that the DoT had satisfied the requirements of the Income Tax Act 1959 (as amended) and there was no objection to the issue of an authority to transfer moneys to payment of interest on UBS AG Loan.

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On even date, a copy of the Notification (transmission) of Original indicated that the BPNG transferred AU\$2,261,938.36 to the Reserved Bank of Australia, Sydney, Australia and the same was transferred to UBS AG.

Comments

Under the UBS AG Loan Agreement, the Loan itself has been divided into two parts, Collar Loan facility of AU\$904 million and a Bridge Loan facility of AU\$335 million with interest payments to be made after each Oil Search Ltd share held by UBS AG is sold to interested buyers and these proceeds are then used to offset the Bridge Loan.

It was noted that the actual Collar Loan facility of AU\$904 million plus the Collar Loan interest repayment of AU\$106,594,645 totalled AU\$1,011,150,405 were paid upfront to UBS AG together with other related costs.

It is noted that the Bridge Loan facility of AU\$335 million is held by UBS AG in the form of 12.5 million Oil Search shares as collateral for the loan. In the event that the State fails to pay off the UBS AG Bridge Loan, then UBS AG will sell these shares to interested buyers and the proceeds from these sales will offset the Bridge Loan.

It should be noted that prior to the signing of the Loan Agreement between the State and UBS AG, the State through the DoT had made payments to UBS AG in the

form of Facility

Agent fee and Security Trustee fees. In addition, the State paid UBS AG Consultancy costs as Advisors and Arranger of the Loan transaction and also paid costs of their Lawyers (Ashurst Lawyers).

In addition, NPCP also executed a Payment Direction Deed (ie, a precondition for UBS AG's approval of funding) concerning payments from PNG LNG Project to be diverted to UBS AG (Singapore) to service the UBS AG Loan.

Despite the Direction issued by the Commission pursuant to Section 27(4) of the Constitution, preventing any of the mentioned authorities and agencies from further dealing with the UBS AG until the investigation is complete, Mr Vele acted on Ms Hoser advice that if interest due on a particular interest payment date is not paid within two Business Days of that date, UBS AG would be entitled to declare an –Event of Defaultll.

Mr Vele then instructed Mr Bakani to transfer AU\$2,261,938.36 as first interest payment on the UBS AG Loan to the Australian Reserve Bank for the money to be then transferred to UBS AG. Mr Vele then instructed Ms Palaso to give tax clearance for the amount of money to be transferred to Reserve Bank of Australia, Sydney, Australia which amount was later transferred to UBS AG.

It is noted that the Finance Forms (FF3 and FF4) indicated AU \$2,261,938.36 (the equivalent of K5,543,966.57) was to be paid to UBS AG however, the Finance Form FF4C indicated that only K5 million was paid to UBS AG and not the full amount, raising doubts as to what became of the remaining balance of K543,966.57.

[5.1] RESPONSE FROM MR DAIRI VELE

On 23 January 2015, Mr Vele responded to Part 3 [6] of the Ombudsman

Commission's
Provisional Report. Below is his response.

With regards to the payment of interest on the loan, I say

1. An interest payment was due on the UBS AG loan on 16 May 2016. To be certain that I would not be in breach of the Directives of the Ombudsman Commission, notwithstanding the decision of the National Court, I wrote to the Ombudsman Commission on 14 May 2014 to advise that I would be making the interest payment due under the binding loan documents.
2. I explained to the Ombudsman Commission that to not make such interest payments, would place the government and the people of Papua New Guinea in a very bad situation.
3. I explained that the OSH Shareholding is an extremely valuable asset of the State. Based on the closing Australian Stock Exchange trading price for Oil Search Limited on 30 April 2014 of \$8.89 per share, the OSH Shareholding has a value of \$1.33 billion (Australian dollars), which is the Kina equivalent of K3.24 Billion. It equates to a gain to Papua New Guinea of K240 million since purchase of each share for \$8.20 on 12 March 2014.
4. Norton Rose Fulbright, had received a letter from the legal advisors to UBS, being Ashursts Lawyers, highlighting the implications of non-payment of interest payments. I enclosed such letter with the letter to the Ombudsman Commission.
5. The State had then obtained advice about possible implications of default by the State in repayment of the UBS Loan, under a Letter from the Australian Legal advisers to the State, Norton Rose Fulbright to the letter to the Ombudsman Commission.
6. I further explained to the Ombudsman Commission that under the UBS Loan, the State is required to make periodic interest payments. If the State is prevented from making those payments, the State will be in default, and UBS will have the right to commence enforcement processes without further notification to the State. The enforcement process could result in the loss by the State of its OSH Shareholding. This could lead to substantial financial and strategic disadvantages to the State because it would lose the opportunity to benefit from holding those

shares.

7. A default under the UBS Loan would also highly likely to have much broader adverse ramifications for the State and its people. Loans to the State from multilateral institutions, such as the World Bank and ADB, typically include cross default provisions. A default under the UBS Loan is likely to trigger cross defaults under such other arrangements which could have significant adverse implications for the economic development of the State and its people, and could adversely affect the sovereign credit ratings of the State. An associated perception by international capital markets of an increase in sovereign risk would likely have significant adverse implications for the value of the Kina, and the ability and cost of the State and its subsidiaries to borrow from banks and international investors.

8. I therefore advised the Ombudsman Commission that the State would therefore be making interest payments in accordance with the loan agreement, given the factual findings of the National Court and the advice from Norton Rose Fulbright, in light of the very serious consequences for Papua New Guinea of default.

9. I received a letter back from the Ombudsman Commission dated May 2014 stated that they were an independent body and that they were not subject to direction by anyone including the Court, and that they would analyse the situation and then write back to me.

10. Time was of the essence as there was a deadline before which the interest payment had to be made so I wrote again to the Ombudsman Commission to further seek clearance for the payment and emphasizing the seriousness of default.

11. I did not receive a response from the Ombudsman Commission so the State made the interest payment prior to the deadline and no default under the loan agreement occurred.

12. On 26 May 2014 however I received a letter from the Ombudsman Commission dated 23 May 2014 which essentially stated that they were investigating into various alleged legal and financial breaches occasioned by the loan, then set out in detail what those alleged breaches were and then concluded that stated the State could not make

interest payments as they stated
the directives issued 14 March 2014 effectively froze
everything to do with the loan agreements.

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13. I considered the letter and obtained legal advice on such letter and responded by way of letter dated 5 June 2014, setting out in detail why each alleged legal breach was false and that why the Ombudsman Commission did not have powers to prevent the State from conducting its business and from complying with binding loan agreements.

14. I was concerned that the Ombudsman Commission may create a situation where the State may find itself in breach of a binding international agreement, when there is no legal impediment to the interest being paid, because the Ombudsman Commission is purporting to exercise powers it just does not possess and threatening those that are subject to the leadership code with being charged with breaches if they comply with the State's legal obligation under the loan agreement. I therefore thought we should seek a judicial review of the decision of the Ombudsman Commission to not allow interest payments to be made pursuant to the loan agreement with UBS.

15. I had expressed my concerns to the Prime Minister and we concluded that we needed to seek protection for the State from the directions given by the Ombudsman Commission that we believed also that were beyond the powers of the Ombudsman Commission and tantamount to giving an injunction.

16. On 6 June 2014 the Prime Minister and I filed a Judicial review of the decision of the Ombudsman Commission to issue directions restraining any dealings between the parties to the UBS/Oil Search transaction, in particular restraining any interest payments, being OS 383 of 2014.

17. On 10 June 2014, the Prime Minister and I were granted leave for Judicial Review.

18. On 11 June 2014, the Directions of the Ombudsman Commission, particularly those that restrained any payment of interest by the State to UBS AG were stayed by the National Court

and the State was free to make interest payments.

19. Supreme Court Application Pursuant to Section 18(1) Constitution to challenge the UBS loan

20. On 19 May 2014, Don Polye filed a Supreme Court Application pursuant to Section 18(1) of the Constitution to challenge the UBS loan being SCCOS No. 4 of 2014 [See SCCOS No. 4/2014 marked -KII].

21. He is seeking that the Supreme Court declare that:

22. The executive actions of the Prime Minister and the NEC in borrowing \$1.239 million from UBS to purchase 10.1% interest without parliamentary approval were unconstitutional and invalid.

23. That the loan agreement is illegal and unenforceable against the State.

24. This application before the Supreme Court is still on foot and the matter is sub judice.

25. The Ombudsman Commission should not make any findings at all until the Supreme Court has dealt with this matter.

Comments

The Ombudsman Commission noted Mr Vele's response to this section of the Provisional Report.

However, the Ombudsman Commission maintains its original comment contained in the Provisional Report.

In addition to this, the Supreme Court made its own findings in particular to the Provisional Report and further ruled that Ombudsman Commission has jurisdiction over the Office of the Prime Minister. A summary of the Court proceedings appear on page 16 to 18 of this Report.

3. INTERVIEWS WITH WITNESSES

This Chapter discusses the evidence given by witnesses with the Ombudsman Commission.

The purpose of the interview was to:

- Establish the proper decision making process, i.e. checking whether the Laws and the consultation processes were followed and complied with,
- Establish whether the tendering process that led to the engagement of the UBS AG (Australia Branch) as the lender of AU\$1.239 Billion loan was followed, and
- Establish existence of legal and administrative discrepancies in the decision making relating to the borrowing of UBS AG loan processes.

[3.1] EVIDENCE GIVEN BY HON DON POLYE, THEN MINISTER FOR TREASURY
On 10 March 2014, Hon Don Polye, then Minister for Treasury was interviewed at the Ombudsman Commission Office at Deloitte Tower, Port Moresby during which he stated that it was during his term as Treasurer that the 2014 budget was compiled and tabled in Parliament.

Hon Polye stated that the UBS AG loan did not go through the normal budget appropriation process and the Parliament did not approve it in November 2013.

Hon Polye stated that he was present and expressed his disagreement with the State's borrowing of the loan due to the fact that the loan exceeded the State's Gross Domestic Product to Debt ratio threshold of 35%.

Hon Polye also stated that the PNG Fiscal Responsibility Act 2006 being the Act to promote economic and financial transparency and accountability in the interests of a stable macroeconomic environment was not complied with as the borrowing exceeded the 125% of total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 thereby breaching Section 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

His refusal to sign the Direction Payment Deed and other related documents to facilitate the

borrowing and interest payments consequently resulted in his decommissioning as Minister for Treasury.

[3.2] EVIDENCE GIVEN BY MR DANIEL ROLPAGAREA, STATE SOLICITOR
On 26 March 2014, Mr Rolpagarea was interviewed at the Ombudsman Commission Office at Deloitte Tower, Port Moresby during which he stated that he advised against the issuance of the COI for the engagement of Consultants and its application retrospectively.

Mr Rolpagarea also stated that he noted in the middle of the NEC Submission that the State would give all its revenue to UBS AG and advised Mr Vele that the submission need to be debated on the floors of Parliament pursuant to Section 209 of the Constitution.

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[3.3] EVIDENCE GIVEN BY HON KERENGA KUA, THEN MINISTER FOR JUSTICE AND ATTORNEY-GENERAL
On 31 March 2014, Hon Kua, then Attorney-General was interviewed at the Commission Office at Deloitte Tower, Port Moresby during which he stated that he was never present at the NEC meeting that made the decision to approve the borrowing, nor was he consulted on the matter.

Hon Kua stated that he never gave clearance for the engagement of legal firms to be engaged by DoT to act on behalf of the State.

[3.4] EVIDENCE GIVEN BY MR LOI BAKANI, GOVERNOR FOR BANK OF PAPUA NEW GUINEA
On 3 April 2014, Mr Bakani was interviewed at the Commission Office at Deloitte Tower, Port Moresby during which he stated that the BPNG was not involved in the second part of the UBS AG loan in which the loan was obtained to purchase shares in Oil Search Ltd.

Mr Bakani confirmed that the BPNG was involved in the IPIC Exchangeable Bond buyback negotiations and the purchasing of shares in Oil Search Ltd.

Mr Bakani also stated that he was not aware of the loan arrangement that led to the State purchasing shares in Oil Search Ltd.

[3.5] EVIDENCE GIVEN BY MR DAIRI VELE, ACTING SECRETARY FOR THE

DEPARTMENT OF TREASURY

On 6 August 2013, the National Executive Council appointed Mr Dairi Vele, as the Acting Secretary for the Department of Treasury (DoT) and he was involved in the IPIC Exchangeable Bond buyback negotiations.

On 2 May 2014, Mr Vele, was interviewed at the Commission Office at Deloitte Tower in Port Moresby, National Capital District during which he stated that UBS AG was engaged as the financial advisor and then later engaged as the Lender of the AU\$1.239 Billion Loan to the State and he further stated that this was normal practice in the commercial arrangements.

Mr Vele stated that there was no Meeting Minute taken during the meeting that was attended by the Prime Minister, Mr Botten, Mr Aopi the Chairman for Oil Search Ltd Board and himself at Grand Papua Hotel, Port Moresby.

Mr Vele stated that it was during this meeting over a cup of coffee that the decision to buy shares in Oil Search Ltd was made.

Mr Vele stated that the financial and legal firms, namely UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia, Pacific Legal Group Lawyers, Pacific Finance Group and KPMG were engaged prior to him been appointed as Acting Secretary, hence it was only appropriate that the DoT continue to engage them to facilitate this borrowing.

Mr Vele further stated that the State Solicitor advised him to go ahead with the submission of the NEC Policy Paper that was prepared with the assistance from UBS AG, Ashurst

Interview with Witnesses

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Lawyers, Norton Rose Fulbright of Australia, Pacific Legal Group Lawyers, Pacific Finance Group and KPMG.

Mr Vele stated that Mr Rolpagarea did not stop him from continuing with the progressing of the NEC submission. However, he did admit that procedures may not have been followed in getting the loan.

[3.6] EVIDENCE GIVEN BY MR ANTHONY YAUIEB, DEPUTY SECRETARY
(POLICY), DEPARTMENT OF TREASURY

On 9 May 2014, Mr Anthony Yauieb was interviewed at the Commission Office at Deloitte Tower, Port Moresby during which he stated that the DoT was not involved in the transaction. That is, his officers, including him were left out and they did not know what was happening and that Mr Vele was the only one handling the borrowing at the Secretary's level.

Mr Yauieb stated that proper procedures outlined in the Constitution that would have been adhered to jointly with the relevant Acts of Parliament, in particular Sections 209, 212 and 255 of the Constitution were not complied with. In other words, Mr Yauieb said that the Prime Minister, the then Minister for Treasury and the Minister for Public Enterprises and State Investments breached the applicable laws and legal procedures.

[3.7] EVIDENCE GIVEN BY MR WASANTHA KUMARASIRI, THE MANAGING
DIRECTOR FOR IPBC

Mr Kumarasiri furnished and provided information to the Commission and it was revealed the SOE's in particular NPCP and Petromin did not have sound Balance Sheets and hence they were not financially sound and capable to handle such a loan Transaction.

4. FINDINGS

[4.1] FINDING No. 1

In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he committed the State to purchase 149,390,244 shares in Oil Search Ltd without prior approval from the National Executive Council.

Reason(s):

- On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.
- On 23 February 2014, the Prime held a meeting with Mr Botten, Mr Aopi and Mr Vele at Grand Papua Hotel in Port Moresby and over a cup of coffee and committed the State to purchasing shares in Oil Search Ltd.
- On 25 February 2014, as soon as the Prime Minister made his intentions known to Mr Botten, Oil Search Ltd suspended trading its stock in the Australian Stock Exchange and made it's announcement of issuing shares to existing shareholders and interested buyers.
- After the above events, on 27 February 2014, the Prime Minister wrote to Mr Fowler and informed him that the State had engaged UBS AG as the lender and financier of the loan to purchase shares in Oil Search Ltd.
- A Subscription Agreement was then signed between UBS AG (the Equity Derivative Financier) and Oil Shares Ltd.
- Oil Search Ltd then announced that it had agreed to acquire a 22.835% gross interest in PRL 15 (Elk/Antelope) from the PacLNG Group Companies for US

\$900 million to
be funded through a placement of new shares to the State.

- This was highly suspicious and may amount to insider trading as the GoPNG had prior knowledge and information that was in its favour and denied other interested buyers the opportunity to buy at the same share price of A\$8.55 of Oil Search Ltd shares.

Comments:

The Prime Minister is a leader and is subject to investigation under the Leadership Code.
The Ombudsman Commission's comments on this finding have not changed.

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[4.2] FINDING No. 2

In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper in that he failed to present the Government's proposal on the borrowing of a loan from UBS AG (Australia Branch) on the floor of Parliament for debate and approval as required by Sections 209(1), 211 and 212 of the Constitution.

Reason(s):

. Section 209 (Parliamentary Responsibility) of the Constitution states:

(1) Notwithstanding anything in this Constitution, the raising and expenditure of finance by the GoPNG, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament, and shall be regulated by an Act of the Parliament.

. Sections 211 (Accounting, etc., for public moneys) of the Constitution states:

(1) All moneys of or under the control of the National Government for public expenditure and the Parliament and the Judiciary for

their respective services, shall be dealt with and properly accounted for in accordance with law.
shall be dealt with and properly accounted for in accordance with law.

(2) No moneys of or under the control of the National Government for public expenditure or the Parliament and the Judiciary for their respective services, shall be expended except as provided by this Constitution or by or under an Act of the Parliament. of the Parliament.

. Section 212 (Revenue and expenditure without prior approval) of the Constitution states:

(1) If at the beginning of a fiscal year the Parliament has not made provision for public expenditure by the National Executive or expenditure by the public expenditure by the National Executive or expenditure by the Parliament or the Judiciary for their respective services for that year, the National Executive, the Parliament or the Judiciary, as the case maybe, may, without authorization other than this section but in accordance with an Act of the Parliament, expend amounts appropriated out of the Consolidated Revenue Fund for the purpose not exceeding in total one-third of its respective budgeted expenditure during the immediately preceding fiscal year. budgeted expenditure during the immediately preceding fiscal year.

(2) The authority conferred by Subsection (1) lapses when the Parliament has made provision for the public expenditure for the fiscal year in question, and any amounts expended by virtue of that subsection are a charge against the expenditure so provided for and shall be properly brought to account accordingly.

. From the provisions of the Constitution stated above, it is apparent that the UBS AG loan did not go through the normal budget appropriation process and Parliament G loan did not go through the normal budget appropriation process and Parliament

did not approve it in November 2013 sitting as required by the Appropriation Act 2014.

The loan exceeded the State's Gross Domestic Product to Debt ratio threshold of 35% and thereby breaching the PNG Fiscal Responsibility Act 2006 being an Act to promote economic and financial transparency and accountability in the interests of a stable macroeconomic environment. The borrowing exceeded the 125% of total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 thereby breaching Section 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

. The Prime Minister and Mr Vele are obliged under the Law to comply with the relevant provisions of the Constitution and State Solicitor's advice for the borrowing to be debated on the floor of Parliament.

Comments:

The Prime Minister is a leader and is subject to investigation under the Leadership Code. The Ombudsman Commission's comments on this finding have not changed.

[4.3] FINDING No. 3

In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he personally sponsored and submitted NEC Policy Submission No: 67/2014 and misled the National Executive Council to approve the borrowing of AU\$1.239 Billion from UBS AG to buy shares in Oil Search Ltd.

Reason(s):

. The Prime Minister personally sponsored the NEC Policy Submission No: 67/2014 and not the then Minister for Treasury, Hon Polye who was never involved in the Loan negotiations.

~ The NEC during its Special Meeting No: 08/2014, Decision No: 79/2014 approved Petromin Holdings Ltd as the State's subscriber and nominee to sign the Transaction

Documents. However, Petromin Holdings Ltd did not have a sound Balance Sheet and was not capable to take-on the responsibility of handling of the borrowing.

~ Evidence gathered revealed that the engagement of UBS AG and the other Financial and Legal Consultants were not in line with the Public Finance (Management) Act 1995 and Attorney-General Act 1989. That is, their engagement was done prior to the NEC's decision.

. Section 209 of the Constitution is very clear, in that the Prime Minister is required to seek the Parliament's approval of the Loan of this magnitude.

. Prime Minister and Mr Vele should have complied with Section 255 of the Constitution and conducted wide consultation with the relevant authorities and agencies on the Loan transaction.

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. This borrowing exceeded the fixed 35% set in the 2014 budget and the current overseas borrowing ceiling has been exceeded by 125% of total value of overseas commercial debt to the estimated internal revenue for the Fiscal Year 2014 contrary to Section 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A).

Comments:

The Prime Minister is a leader and is subject to investigation under the Leadership Code.

The Ombudsman Commission's comments on this finding have not changed.

[4.4] FINDING No.4

In the opinion of the Ombudsman Commission, the conduct of the Prime Minister was wrong and improper when he failed to consult Petromin Holdings Ltd to be the State's subscriber and nominee to acquire shares in Oil Search Ltd.

Reason(s):

. The NEC in its Special Meeting No: 8/2014 Decision No: 79/2014 appointed

Petromin Holdings Ltd as the State's eventual subscriber and nominee for this transaction to facilitate the repayment of the loan to UBS AG.

. Mr Basu, the CEO for Petromin Holdings Ltd formally wrote and confirmed that

Petromin Holdings Ltd was never consulted and involved in the transaction of the Oil Search Ltd shares, nor was it involved in the negotiation of the transaction or

preparation of the related agreements contrary to the NEC Decision No: 79/2014 and

Section 4 of the Petroleum PNG Holdings Limited Authorization Act 2007 that states the purpose of Petromin Holdings Ltd.

Section 4(a), (b) & (c) of the Petroleum PNG Holdings Limited Authorization Act 2007 states:

(a) to acquire from the State and from others, whether directly or as a nominee of the

State, interests in mining and petroleum projects in Papua New Guinea;

(b) to engage in mineral and petroleum exploration, evaluation and development and

the production and recovery of any naturally occurring minerals and petroleum,

whether in solid, liquid, or gaseous form or mixed together or with other material

and substances, and to process, sell, or otherwise dispose of the same;

(c) to engage in and carry on, in all means, transportation, in Papua New Guinea and

any part of the world, of mineral and petroleum or their derivatives whether in

solid, liquid, gaseous or mixed together, of with other substances, and to sell or

dispose of the same.

. Petromin Holdings Ltd's Balance Sheet was not sound to take on a transaction of

such magnitude.

Comments:

Prime Minister is a leader and is subject to investigation under the Leadership Code. The Ombudsman Commission's comments on this finding have not changed.

[4.5] FINDING No. 5

In the opinion of the Ombudsman Commission, the existence of the National Petroleum Company of Papua New Guinea is questionable as it is not legally established as the proposed Papua New Guinea Petroleum Company (Kroton) Act has not been certified by the Governor-General in order to be fully in force.

Reason(s):

- . The NEC during its Special Meeting No: 08/2014, Decision No: 79/2014 approved Petromin as the State's subscriber and nominee to sign the Transaction Documents.
- . On 3 February 2014, Minister Micah informed Mr Kramer on the progress on the negotiations regarding the Exchangeable Bond and the appointment of UBS AG.
- . However, it was apparent that the NEC Decision No: 79/2014 did not appoint NPCP as the nominee and subscriber to the transaction.
- . The NEC Decision No: 79/2014 Clause 8 approved the NPCP to be involved in executing of the Payment Direction Deed and nothing else, concerning payments from the PNG LNG Project. Below is an extract of the NEC Decision No: 79/2014:
 - 8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:
 - a) issue of a certificate of inexpediency to tender by the Central Supply and Tenders Board under section 40(3)(b), and an authority to pre-commit

expenditure by the Secretary of the Department of Finance under section 47B, of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department of Treasury certifying that after the full amount of the borrowing pursuant to the Transaction Documents, the total value of overseas commercial debt which will be owed by the State will not exceed 125% of the estimated internal revenue of the State for the calendar year 2014 within the meaning of section 2(3) of the Loans (Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and

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d) approval of the payment direction in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

. The NPCP was set up under the PNG Petroleum Company (Kroton) Act which is yet to be certified and gazetted in the National Gazette.

[4.6] FINDING No. 6

In the opinion of the Ombudsman Commission, there was a conflict of interest situation in regard to Mr Frank Kramer, the Chairman for the National Petroleum Company of Papua New Guinea Board, when he is a Director and Shareholder of Pacific Capital Ltd, a company that was engaged by Mr Dairi Vele to provide financial

consultancy services to the State for the borrowing of A\$1.239 Billion UBS AG Loan to purchase shares in Oil Search Ltd.

Reason(s):

- ~ On 3 February 2014, Minister Micah informed Mr Kramer regarding the negotiations progress on the Exchangeable Bond and the appointment of UBS AG.
- . On 6 March 2014, NPCP was then engaged as the State's agency to execute the Payment Direction Deed.
- . On even date, Mr Vele requested Mr Eludeme to approve the Request for COI form at the earliest to cover the advisory cost provided by the Consultants that included Pacific Capital Ltd.
- . On 7 March 2014, Mr Vele explained to Mr Eludeme that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd.
- . On even date, Mr Vele requested Mr Rolpagarea to issue legal clearance on the submission regarding the State's borrowing of loan arrangements.
- . The Ombudsman Commission's investigations revealed that one of the Directors and Shareholders of Pacific Capital Ltd is Mr Frank Kramer who is the same Mr Frank Kramer who is the Chairman of NPCP.
- . It was also revealed that Pacific Capital Ltd was paid K1,250,000.00 by the DoT for providing consultancy and advisory services to DoT and the State regarding the borrowing of UBS AG loan to purchase shares in Oil Search Ltd.

Comments:

Mr Frank Kramer is not a leader covered by the Leadership Code and hence this matter will be referred to the Police for further investigation.

RESPONSE FROM MR FRANK KRAMER

On 16 February 2015, Mr Frank Kramer responded to the Ombudsman Commission's Provisional Report. Below is an extract of his letter:

Dear Sir

Investigation in relation to the UBS Transaction & the Oil Search Shares

I write to you to raise my concerns regarding the Commission's recent investigations and findings in relation to the above matter.

I was been reliably informed that the findings of those investigations purport to implicate me in my former capacity as a Director of Pacific Capital Limited (the Company). Please allow me the opportunity to put the record straight.

I was a former Chairman and non-executive Director of the Company and sold my interests (3.86%) in the company to Geefin Limited on 24th January 2012. The former Directors resigned with the exception of myself who was asked to stay on to facilitate certain formal transfers to the new owners. (Please refer to attached copies of notice of change of shareholders and directors).

It was intended that I would resign immediately thereafter. However, due to an oversight by the Chief Accountant my cessation as Director of the Company and removal as a signatory to the Company's bank accounts were never effected. From the date of sale of my interest in the Company on 24th January 2012, I have had no direct or indirect interest in Pacific Capital Ltd. My position as Chairman of the Company ceased effective from the date of appointment of new Director and representative of Geefin Ltd, Malcolm Gheno.

To support my position, I attach herewith sworn statements by myself and the Company's secretary Bipin Agarwal. These sworn statements are self-explanatory.

Should you have any queries please do not hesitate to contact me.

Yours sincerely,

(signed)
Frank M. Kramer

Comments:

Mr Frank Kramer stated in his letter above that he was not a Director or a Shareholder of Pacific Capital Ltd, a company that was involved in facilitating the interest payment to UBS AG.

However, company extract from IPA, revealed that Mr Kramer was still a registered Director with Pacific Capital Ltd at that material time that he was the Chairman of NPCP.

On 6 March 2014, when Mr Vele engaged Pacific Capital Ltd to provide Financial and Technical consultancy and advisory services to the DoT and the State regarding the borrowing of the UBS AG Loan to purchase shares in Oil Search Ltd, Mr Kramer was still a registered Director of Pacific Capital Ltd and on 05 February 2015, he ceased to be a registered Director of Pacific Capital Ltd. Therefore, Mr Kramer's position as Chairman of

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NPCP and his continued Directorship in Pacific Capital Ltd at that material time, created a conflict of interest situation.

The Ombudsman Commission maintains its original comments contained in the Provisional Report.

[4.7] FINDING No. 7

In the opinion of the Ombudsman Commission, the conduct of Minister Micah was wrong and improper when he issued directives and instructions to the Independent Public Business Corporation Board and Management to approve the Payment Direction Deed to facilitate the interest payment to UBS AG.

Reason(s):

- . The NEC during its Special Meeting No: 08/2014, Decision No: 79/2014, Clause 3 approved Petromin as the State's subscriber and nominee to sign

the Transaction Documents.

. NEC's Decision under Clause 8(c) approved NPCP to execute the Payment Direction Deed concerning payments from PNG LNG Project through GloCo.

. Minister Micah directed and instructed the IPBC Chairman and Board to take all actions necessary to approve NPCP entering into the Payment Direction and any Transaction Documents as shall be necessary or ancillary to give effect to the direction and that the NPCP should sign the Payment Direction on or before 9th March 2014.

. These directions and instructions were in breach of Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002 as Minister Micah had no authority to issue directives or instructions to the IPBC Board or its management. Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002 states:

59. POLITICAL INFLUENCE

(1) No Minister, member of the National Parliament or any member of a Provincial or Local-level Government may seek to direct or influence the exercise by a Director of his or her duties, powers or judgments or any Board decision other than through a written communication that is tabled concurrently in the National Parliament if it is in session or otherwise with the Speaker of the National Parliament (who shall table any such communications in the National Parliament at the next opportunity).

(2) A Director who receives any representations made by or on behalf of such persons shall record the fact of, and the content of, such representations at the next Board meeting and table copies of any written communications containing such representations at the Board meeting and with the Speaker of the National Parliament within seven days of receipt.

. It was apparent that Minister Micah did not table a report on the floor of Parliament and sought Parliament's approval of his communication with the IPBC Management t and sought Parliament's approval of his communication with the IPBC Management and the IPBC Board.

. The Commission's investigation revealed that undue political influence was asserted by Minister Micah on the IPBC Board and management to enforce the NEC Decision No. 79/2014.

. Minister Micah usurped the powers of the Minister for Treasury. Therefore, the actions of Minister Micah brought into question the independence of the IPBC and all the other State Owned Enterprises.

Comments:

Minister Micah is a leader and is subject to investigation under the Leadership Code.

Minister Micah did not respond to the Provisional Report and hence the Ombudsman Commission's comments on this matter have not changed.

However, Mr Micah is no longer a Member of Parliament and therefore the recommendation for an investigation under the Leadership Division of the Ombudsman Commission no longer applies.

[4.8] FINDING No. 8

In the opinion of the Ombudsman Commission, the conduct of Ambassador Isaac Lupari was wrong and improper when he advised the Independent Public Business Corporation Managing Director of the NEC Decision No: 79/2014 for the State to acquire shares in Oil Search Ltd.

Reason(s):

~ Amb Isaac Lupari is the Chief of Staff to the Prime Minister and his functions are to assist the Prime Minister and manage staff employed in the Prime Minister's Office

o assist the Prime Minister and manage staff employed in the Prime Minister's Office and does not include issuing advice and instructions to Heads of Departments which responsibility would come under the Chief Secretary's Office.

~ The NEC during its Special Meeting No: 08/2014, Decision No: 79/2014 approved among other matters for State to acquire 149,390,244 shares in Oil Search Ltd and for the State to borrow AU\$1.239 Billion from UBS AG for such purpose and Petromin as the State's subscriber and nominee to sign the Transaction Documents.
~ However, Amb Isaac Lupari then conveyed the NEC Decision to the IPBC Chairman and Board that NEC approved for State to borrow from UBS AG to fund its acquisition of shares in Oil Search Ltd and that the NPCP was to facilitate the Payment Direction on or before 9 March 2014.

. Amb Isaac Lupari has no authority to issue advice or instructions to the IPBC or to any Government Agency regarding decisions made by the NEC, as this is the role

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and the function of the Secretary to the NEC Secretariat or the Chief Secretary to the GoPNG.

Comments:

Amb Isaac Lupari is a leader under Section 26(1)(L) of the Constitution and is subject to investigation under the Leadership Code.

Amb Isaac Lupari did not respond to the Provisional Report and hence the Ombudsman Commission's comments on this matter have not changed.

[4.9] FINDING No. 9

In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he engaged UBS AG as the Sole Financial Advisor and Lead Arranger in relation to the management of the investment of the State in Oil Search Ltd without the National Executive Council approval.

Reason(s):

- On 6 August 2013, the NEC appointed Mr Vele, as the Acting Secretary for DoT.
- On 12 August 2013, Mr Vele met with UBS AG officials at Sydney, Australia in order to get their proposal to refinance the IPIC Exchangeable Bond.
- On 15 August 2013, Mr Vele held a second meeting with UBS AG officials at Sydney, Australia to get their proposal to refinance the IPIC Exchangeable Bond.
- On 19 December 2013, the NEC during a Special Meeting No: 37/2013 in its Decision No: 479/2013 approved that the BPNG provide final evaluations on the proposals from Citi Bank and UBS AG to re-finance the IPIC Exchangeable Bond.
- On 30 January 2014, Mr Vele engaged UBS AG to act as the sole Financial Advisor and Lead Arranger, in relation to the management of the investment of the State in Oil Search Ltd and associated matters flowing from the issuance in 2009 of the Exchangeable Bond in respect of the State's 196.6 million shares in Oil Search Ltd to IPIC of Abu Dhabi.
- There was no NEC Decision to indicate that the NEC had directed or instructed the Secretary for DoT to formally write to UBS AG and advice of UBS AG's appointment as the Financial Advisor and Lead Arranger and then Lender of the Loan to the State for the purpose of purchasing new shares in Oil Search Ltd.

Comments:

Mr Vele is a leader subject to the Leadership Code.

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RESPONSE FROM MR DAIRI VELE

I deny completely the finding that –in the opinion of the Ombudsman Commission the conduct of Mr Dairi Vele was wrong and improper when he engaged UBS AG as the Sole Financial Advisor and Lead Arranger in relation to the

management of the investment of the State in Oil Search Ltd without the National Executive Council approval.

I say firstly, that the findings of fact that led to this –findings of improper conduct are incorrect, and consequently the –finding of improper conduct are incorrect, and consequently the –finding of improper conduct is wrong.

Secondly, I say I never engaged UBS AG as the sole financial advisor and lead arranger at all.

I say that the correct facts are as follows, which show no improper conduct on my part:-

1. On 5 December 2012 Norton Rose Fulbright was retained by IPBC to provide legal advice on the IPIC Bond Project (see Retainer letter 5 December 2012 NRF). The work expressly included

- reviewing the terms and conditions of the IPIC Bond,
- reviewing and advising options available to IPBC for refinancing of the loan and or a restructure of the terms of the existing loan.

Specifically it was recognized in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares.

2. On 5th April 2013, the NEC:

- Noted the strategic investment positive and negative implications of not retaining the Oil Search Shares currently pledged in the IPIC Bond transactions;

- Approved for the Minister for Public Enterprise and the State Investments to direct the Board and Management of IPBC and its successive organisations to explore the following;

- To raise funds in the capital market (estimated to be AUD 1.8 billion) to repurchase Oil Search shares through the Redemption of IPIC Bonds and negotiate the best interest rates with favourable conditions to PNG to the

term of the loan/bond not to exceed 10 years but preferably at 7 years.

- . IPBC should minimize cost associated with raising funds through direct negotiations with potential financiers and use of IPBC Management;

- + Provide appropriate security options to meet financier's security requirements;

- . To raise funds needed for Train 3 of the PNG LNG Project expansion estimated to be AUD 1.2 billion; and

- Consider USD (United State Dollar) as a form of currency during the fund raising preferred by the financiers.

- + Directed the Minister for Public Enterprises and State Investments and the Acting Managing Director for IPBC to report back to the NEC of potential financiers and their team sheets immediately for NEC final approval.

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3. On 5th April 2013, NEC:

~ Appointed Mr. Wasantha Kumarasiri, OBE as the Managing Director of IPBC and its successive organisation for period of four (4) years effective from the date of this Decision in accordance with Section 23 of the IPBC Act (as amended).

- Note that until the establishment of –Kumul Petroleum Holding Limitedll in line with the NEC decision and the appointment of its Managing Director, during the interim period, the Managing Director of IPBC shall manage all affairs necessary on Abu Dhabi based IPIC Transaction and any refinance requirements and negotiations and also oversee NPCP as part of the General Business Trust.

4. On 9th July 2013, Council:

- Noted the content of Policy Submission

No. 176/2013;

- Noted the refinancing options presented in the submission to redeem the International Petroleum Investment Company (IPIC) Exchangeable Bonds;

~ Appointed the following as members of the IPIC Exchangeable Bond Review Committee:

- Director, Gas Project Coordination Office – Chairman; (Mr Vele)
- Secretary, Public Enterprise
- Deputy Chairman;
- Secretary, Treasury or his nominee – Member;
- State Solicitor or his nominee – Member; and
- Managing Director, IPBC – Member

~ Included the following in Terms of the Reference for the Review Committee to look at:

~ –Bidding internationally for the engagement of international experts to provide up market and up to date advice to the Government on petroleum and gas issues.

~ Approved the Terms of Reference for Committee;

~ Approved to repeal clause 3 of the NEC Decision No. 119/2013 in its entirety;

- Directed the Minister for Public Enterprise and State Investments to take carriage of all matters pertaining to the redemption of IPIC Exchangeable Bond and the retention of Oil Search Shares and that this NEC Decision supersedes all previous NEC Decision, namely NEC Decision No. 117/2013 or such other decisions pertaining to the IPIC Bond issue; and

- Directed that the IPIC Exchangeable Bond Review Committee reports its finding back to the Minister for Public Enterprise and State Investments before 31st August 2013 with a clear path

towards completing IPIC Exchangeable Bond transaction.

5. The Terms of Reference for the IPIC Exchangeable Bond Review Committee were as follows:

–Under the Director of the Minister of Public Enterprise and State Investments, Hon Ben Micah, MP, and the Chairman of Dr. Thomas Webster, Chairman IPBC, the Committee is directed to:

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1. Meet as required by the Chairman to consider and review proposals for the State to refinance the IPIC Exchangeable Bond.
2. The Chairman is to report the final recommendation of the Committee to the Minister by 31 August 2013.
3. All information you require with regard to the original IPIC funding, other related matters and the current position and negotiations with IPIC are to provide to the Chairman of the Committee immediately on request of any relevant party.
4. Proposals must meet the following requirements:
 - 4.1 The amount to be raised is estimated to be AU\$1.681M plus interest of approximately another AU\$84M.
 - 4.2 If the Oil Search shares are to be used as collateral for new funding, those shares are to be secured as a stand-alone asset and are not to be conditional on any other asset.
 - 4.3 As stand-alone security, Oil Search equity must be the only security available for any funding proposal which includes the Oil Search equity on a basis which has no recourse to any other asset.
 - 4.4 For any cash flow security component in any proposal, security recourse is to be the cash flow above. No security other than the

potential cash receipt is available. Where cash flow is monetized or securitized by a lender, the control or de facto ownership of the underlying asset is not available to the lender.

4.5 The underlying control interest of Oil Search shares must be vested with IPBC and all dividends during the term of the refinance transaction must be paid to IPBC.

4.6 Neither the whole of nor any part of NPCP's equity is available to support the refinancing. NPCP's equity is not available as security or sale nor will any dilution of its current equity to any party to be accepted except the 4.20% mandatory acquisition by landowner company as provided under the benefit-sharing arrangements.

4.7 First interest payment should not be earlier than December 2015 to align and prepare with cash inflows from PNG LNG Project.

4.8 No State guarantee should be a condition requirement.

4.9 Transaction fees on success must be kept at minimal or zero if possible.

4.10 Meet Regulatory Transaction Certification requirements through Certificate Agent in the appropriate Financial Markets complying post Global Financial Crisis (GFC) Financial Transaction Regulatory Requirements.

5. Timing to finalise this refinancing is critical. A successful proposal must demonstrate funding to be complete after the 31 August 2013, with absolute certainty.

6. As Chairman of the IPIC Exchangeable Bond Review Committee, under the direction of IPBC, Mr Vele utilized the services of Norton Rose Fulbright in accordance with their retainer by IPBC for the purposes of the achievement of the Committee's Terms of Reference.

7. On 6 August 2013, the National Executive Council appointed Mr. Dairi Vele, as the Acting Secretary for Department of Treasury (DoT).

8. On 8th August 2013, a Recommendation by Gas Office and Chairman of the IPIC Exchangeable Bond Review Committee that Financial Advisers be appointed and position/discussion paper drafted by Mr. Vele

9. On 12 August 2013, Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with the Union Bank of Switzerland, Aktiengesellschaft, Australia Branch (UBS AG) officials at Sydney, Australia.

10. On 13 August 2013, Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with Morgan Stanley officials in Sydney, Australia.

11. On 14 August 2013, Mr Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with JP Morgan officials in Sydney, Australia.

12. On 15 August 2013, Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury held a second meeting with UBS AG officials at Sydney, Australia.

13. On 16 August 2013, Mr. Vele, in his capacity as IPIC Exchangeable Bond Review Committee Member and Acting Secretary for Treasury met with Credit Suisse Officials at Sydney, Australia.

14. On 19 December 2013, the National Executive Council (NEC) during a Special Meeting No.: 37/2013 in its Decision No.: 479/2013 noted the submission that UBS AG was the preferred financial adviser and arranger by IPBC and the IPIC Committee but approved and directed that the BPNG provide final evaluations on the proposals to be obtained from Citi Bank and UBS AG to re-finance the International Petroleum Investment Company (IPIC) Exchangeable Bond and to retain the

interest of the State
in Oil Search.

15. On 20 December 2013, Hon Ben Micah, MP, Minister for State Enterprises and State Investment (SE&SI) wrote to Mr Loi Bakani, the Governor of Bank of Papua New Guinea (BPNG) and requested the BPNG to evaluate the potential financiers' proposals to re-finance the IPIC Exchangeable Bonds refinancing facility.

16. On 22 December 2013, Mr Bakani advised Minister Micah that the four financiers should have been provided all the information and requested to bid for the Exchangeable Bonds refinancing facility.

17. On 27 December 2013, Minister Micah requested Mr Bakani for clarification on the BPNG's advice.

18. On 7 January 2014, Mr Bakani advised Minister Micah that the State re-negotiated the funding structure of the proposals with the two Financiers the UBS AG and Citi Bank.

19. On 9 January 2014, Mr Bakani forwarded the BPNG's recommendations to Minister Micah as requested.

20. Mr. Bakani requested the Prime Minister to allow the BPNG the mandate to assist the State in meeting the basic re-financing requirements in the negotiation process.

21. On 14 January 2014, Mr. Wasantha Kumarasiri for Independent Public Business Corporation (IPBC), requested Mr Bakani to correct his advice to Minister Micah as it was incorrect and misleading.

22. On 15 January 2014, Minister wrote to Mr Bakani and requested that the BPNG provide its final recommendations on the two Banks, UBS AG and Citi Bank.

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23. On 16 January 2014, Mr. Bakani requested all parties including the BPNG, Minister Micah, IPBC, and DoT to draft the Terms of Reference to be used during negotiations

with potential Financiers.

24. On 17 January 2014, Mr Bakani wrote to and advised Mr Kumarasiri that the BPNG's evaluations and recommendations were based on information provided in accordance with the NEC Decision No: 479/2013 in its Special Meeting No: 37/2013.,

25. Mr Bakani requested Ms Natalie Yacoubian of PNP Paribas to resubmit PNP Paribas proposal incorporating the refined terms.

26. Mr Bakani requested Mr Mitchell Tuner of UBS AG to resubmit UBS AG proposal incorporating the refined terms.

27. Mr Bakani requested Mr Philip Graham to resubmit Citi Bank's proposal incorporating the refined terms.

28. Minister Micah advised Mr Bakani that he expected a recommendation by Wednesday 22 January 2014.

29. On 23 January 2014, Mr. Bakani recommended to the NEC to request the Abu Dhabi Government for an extension of six months, to allow time to improve on the proposal by BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays.

30. On 30 January 2014, Mr Bakani recommended the UBS AG to Minister Micah.

31. On 30 January 2014, Mr. Bakani wrote to the Director of Investment banking UBS AG regarding the re-financing of the IPIC Loan and advised that the State accepted its proposal to re-finance to IPIC Exchangeable Bond by a combined structure of a Rollover Collar and term Loan. Mr Bakani also requested the UBS AG to confirm in writing its commitment to fund the AUD\$1.7 Billion IPIC Exchangeable Bond.

32. The Ombudsman Commission has the facts completely incorrect. Mr. Vele did not engage UBS AG on 30 January 2014 or at other time prior to 6 March 2014.

33. UBS AG was only actually engaged by the State following Cabinet Decision no

79/2014. Following the advice from BPNG that the State had accepted UBS AG proposal, as essentially project manager of the IPIC Bond matter, Mr Vele commenced negotiations and dealings with UBS AG, but their retainer was contingent on the NEC Decision of 6 March 2014.

34. Mr. Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

35. Minister Micah noted Mr Bakani's recommendations but he advised that the six months extension recommended would incur cost and was not possible.

36. On 3 February 2014, Minister Micah informed Mr Frank Kramer, Chairman for National Petroleum Company of PNG Ltd (NPCP) Board regarding the Exchangeable Bond and the proposed appointment of UBS AG.

37. On 7 February 2014, Mr Bakani re-assured Minister Micah on his recommendations to use UBS AG to re-finance IPIC Exchangeable Bond.

38. On 13 February 2014, a Mandatory Exchange Notice to Deutsche Bank AG, London Branch (Exchange Agent) indicated that the IPIC did not want to sell its shares to the Government of Papua New Guinea (GoPNG).

39. Consideration was given by the State team that other methods of acquiring shares in Oil Search needed to be explored, to replace the shares to be retained by IPIC.

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40. On 20 February 2014, Mr Vele and Mr Latimer meet with UBS AG in Sydney to discuss whether UBS AG could give an indication whether they would agree to provide funding to purchase part of a share placement by Oil Search, as any submission to Cabinet would need to have some certainty that funding would be available to purchase the Oil Search shares.

41. On 25 February 2014, UBS AG writes to Mr Vele and outlined the proposed terms of engagement including fees charged in relation to the role as

financial advisor and lead arranger as well as financial modeling.

42. On 26 February 2014, as Ashurst were the local Counsel of UBS AG they drafted documents relevant to the proposed deal, but on the basis that Cabinet was still to approve the transaction. They were retained by UBS AG and not the State.

43. On 26 February 2014, UBS AG and Oil Search enter into separate underwriting agreement whereby if the State through Cabinet did not approve and go through with the deal to buy Oil Search Shares, then UBS AG could buy the Oil Search Shares for their own investment purposes.

44. On 27 February 2014, the Prime Minister wrote to Mr. Guy Fowler, the MD for UBS AG regarding UBS AG proposal to provide funding facilities to the State in connection with the subscription by the State for approximately 149.39 million shares in Oil Search Ltd at AU\$8.20 per share.

45. On 27 February 2014, Mr Vele receives a commitment letter from UBS AG.

46. A Subscription Agreement was signed between UBS AG (the Equity Derivatives Financier) and Oil Search Ltd.

47. UBS AG forwarded a Commitment Letter that was signed by the GGPNG which was witnessed by Mr. Okuk.

48. On 28 February 2014, consolation between Mr Vele as Secretary for Treasury and in his capacity as member of IPIC Exchangeable Bond Review Committee and BPNG being the Governor and Dr Jakob Weiss on the terms and conditions of the UBS AG proposal. Paddy Jilek of UBS AG was available at the meeting to assist. The proposal that UBS was making was not substantially different to what had previously been proposed in tier previous advice. The terms and conditions therefore cannot in any way be said to be prejudicial to the State.

49. On 4 March 2014, Ashurst Lawyers forwarded draft documents for its client UBS AG to the State that outlined the financial package that UBS AG

was offering the State.

50. On 5 March 2014, which was as soon as the documents were provided to Mr Vele from the Counsel to UBS AG being Ashursts, Mr Vele requested Mr Daniel Rolpagarea, the State Solicitor to give legal clearance on the documents relating to the transactions for the State to acquire 149,390,244 shares in Oil Search Ltd. The State Solicitor was informed the matter was to go to Cabinet on 6 March 2014.

51. On 5 March 2014, Mr. Rolpagarea advised Mr Vele that

- The documents are a reflection of the State's negotiated position and as such are acceptable to the State.
- That the documents which were Minutes and Certificates that were not as yet signed by respective individuals or Company Boards were in order for Mr Vele to facilitate such signatures and/or Board meetings. (This includes IPBC Board meeting minutes, the IPBC shares resolution and the NPCP minutes and POA – Mr Vele forwarded these documents to IPBC on the express advice and clearance of the State Solicitor contrary to QC assertions of wrong doing).

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And Commented

- That his advice was that many recommendations for the NEC approvals require approvals/authorisations especially from the State agencies acting independently but taking into account the NEC decision and advised further that the relevant approvals should be sought by Mr Vele from the State's relevant agencies after NEC consideration and approval of the financing transaction.
- That Section 209 of the Constitution required parliament's approval for the Bridge and Collar loans and advised that Mr Vele take the appropriate steps to facilitate the process.

- That Mr Vele may proceed to NEC taking into account his advice.
- That after NEC approval, he would then prepare an advice to the Head of State to execute the transaction documents.

52. NPCP Board Chairman submitted a proposal to the IPBC Board advising of the State's acquisition of 149,390,244 shares in Oil Search Ltd and that UBS AG required PCP to enter into a payment direction between NPCP, PNG LNG Global Company LDC (GloCo).

53. The Prime Minister submitted and NEC Policy paper No: 67/2014 to NEC.

The NEC in its Decision No: 79/2014

a) Noted the transaction documents, approved Petromin as the eventual subscriber but that the State would be the initial subscriber, noted the certificate of correctness from the State Solicitor and confirmed the authority of the Minister for Treasury to finalise any documents that were not included in the cabinet submission prior to submission of the transaction documents to the Head of State for Execution.

b) Approved to advise the Head of State to approve the borrowing for the purchase of shares and to execute the transaction documents for the State.

c) Approved the advice the Minister for Treasury to sign such documents, instruments and certificates as the transactions required. He was not given the discretion to refuse to sign by Cabinet. It was a Cabinet decision to go ahead with the transaction and he was to implement parts of that decision.

d) Noted other approvals were required from other State Agencies and endorsed all of them including but not limited to a Certificate of Inexpediency be issued by CSTB, an authority to pre-commit by the Secretary for Finance and a Certificate by the Secretary for Treasury certifying the extent of overseas commercial debt, execution of a payment deed by NPCP, and the payment direction by IPBC.

e) Noted that the approval by Cabinet was specifically to cover any processes that had to occur either before or after the decision by Cabinet so that the transaction could proceed in a commercial time frame.

f) The distribution list of the Cabinet Decision included the Minister for Justice & Attorney-General, the Minister for Treasury, the Minister for Public Enterprises, the Minister for Finance, the Departments of Finance, Treasury, Justice & Attorney-General, IPBC, the State Solicitor, BPNG, NPCP and Petromin.

54. On 6 March, the UBS AG issued a Bridge Takeout letter to Mr. Vele that outlined the terms of the fees payable to UBS AG as Facility Agent under the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr. Okuk.

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55. UBS AG as the Security Trustee for the loan wrote to Mr Vele and requested for the State to pay the Facility Agent fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr. Okuk.

56. UBS AG as the Security Trustee fees as per the Bridge Facility Agreement that was signed by the GGPNG and witnessed by Mr. Okuk.

57. On 6 March 2014, Mr. Vele requested Mr. Philip Eludeme, the Chairman for CSTB to approve the request for COI at the earliest to cover the advisory costs, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

58. The Prime Minister advised the GGPNG, that the NEC approved the borrowing of a loan for the purpose of purchasing shares in Oil Search Ltd and for the purpose of meeting the expenses for the borrowing itself.

59. Mr. Okuk representing Mr. Vele delivered 28 documents pertaining to the UBS AG loan to Mr. Rolpagarea for his legal clearance.

60. On 7 March 2014, Mr. Vele explained to Mr. Eludeme that the

COI was needed to
access funds to pay for fees pertaining to the State's
acquisition of the shares in Oil
Search Ltd, in accordance with and for the purposes of
implementing Cabinet
Decision No 79/2014.

61. Mr. Vele requested Mr. Rolpagarea to issue legal clearance on
the submission
regarding the State's borrowing of loan arrangements in
accordance with Mr.
Rolpagarea's advice of 5 March 2014 and in accordance with
and for the purposes of
implementing Cabinet Decision No. 79/2014.

62. The Prime Minister informed IPBC of the government's decision
to enter into the
agreement, in accordance with and for the purposes of
implementing Cabinet
Decision No 79/2014.

63. Mr. Isaac Lupari, the Chief of Staff to the Prime Minister,
advised Mr. Kumarasiri that
the NEC approved the State's intent to borrow from UBS AG to
fund its acquisition of
shares in Oil Search ltd, in accordance with and for the
purposes of implementing
Cabinet Decision No. 79/2014.

64. Minister Micah directed the Board of IPBC to approve the
Payment Direction Deed
and to sign the Payment Direction Deed on or before 9 March
2014, in accordance
with and for the purposes of implementing Cabinet Decision
No. 79/2014.

65. On 8 March 2014, Mr. Vele requested Dr. Thomas Webster, the
then Chairman of
IPBC Board, to progress the documents to the IPBC Board for
its consideration and
approval, in accordance with Mr. Rolpagarea's advice of 5
March 2014 and in
accordance with and for the purposes of implementing Cabinet
Decision No. 79/2014.

66. On 9 March 2014, the GGPNG signed the document enabling the
State to borrow
AU\$335 million from UBS AG for the purpose of the purchase of
shares in Oil Search
Ltd and for the purpose of meeting the expenses of the
Borrowing and for the services
of the State, in accordance with Mr. Rolpagarea's advice of 5
March 2014, his advice
following the Cabinet meeting and in accordance with and for

the purposes of
implementing Cabinet Decision No. 79/2014.

67. Mr. Eludeme advised Mr. Vele that the CSTB resolved and approved the issuance of the COI for the awarding of contracts to both local and international Consulting Firms, in accordance with the PFMA 1995 and in accordance with Cabinet Decision No. 79/2014.

68. Mr. Rolpagarea advises Mr. Vele that the GGPNG and Minister for Treasury were to execute the transaction documents to purchase Oil Search Ltd shares on behalf of the State, which of course included the retainer and all agreements with UBS AG.
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69. Mr. Vele requested Dr. Ken Ngangan, Acting Secretary for DoF to approve the payment to UBS AG in relation to the acquisition of the shares, in accordance with Mr. Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014.

70. Mr. Rolpagarea advised the GGPNG that all documentations relating to the borrowing were in order and that Mr. Vele was satisfied with the Terms of the Transaction Documents.

71. On 7 March 2014, Mr. Vele advised Mr. Eludeme that the local and international financial and legal Advisors should be paid for services rendered in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014.

72. On 12 March 2014, Mr. Babaga R. Naime, Acting Board of Secretary for CSTB, advised Mr. Rolpagarea that the CSTB awarded the Contract to both local and international Consulting Firms, in accordance with the PFMA 1995 and the powers of the CSTB under such Act and in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014.

73. Mr. Eludeme certified that the inviting of tenders for the

provision of financial, legal and technical advisory services was impractical or inexpedient, in accordance with the PFMA 1995 and the powers of the CSTB under Section 40 of such Act in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014.

74. Dr. Ngangan approved the application for the Department to complete and issue the APC for the above Procurement, in accordance with the provision by CSTB of the COI and in accordance with Mr. Rolpagarea's advice of 5 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014.

75. The State, NPCP and UBS AG agreement to the terms and conditions upon signing the Payment Direction Deed that directed PNG liquefied Gas Global Company (GloCo) to pay immediately available funds due to NPCP to UBS AG.

76. UBS AG confirmed with Mr. Vele the terms and conditions of the financing transaction that were entered into between the State and UBS AG in respect of Oil Search Ltd shares.

77. The Prime Minister, as Treasurer and Mr. Vele in accordance with Mr. Rolpagarea's advice of 5 and 10 March 2014, his advice following the Cabinet meeting and in accordance with and for the purposes of implementing Cabinet Decision No. 79/2014, UBS AG (the Arrangers) UBS AG (the Facility Agent) and UBS Nominees Pty Ltd signed the Bridge Facility Agreement.

78. The GGPNG witnessed by Mr. Okuk signed the Specific Security Deed (CHESS Security – Collar) with UBS AG that provided security to the loan acquisition.

79. The GGPNG witnessed by Mr. Okuk signed the Security Trust Deed with UBS Nominees Pty that provided security to the loan acquisition.

80. The GGPNG witnessed by Mr. Okuk signed the Participant Sponsorship Agreement with UBS Nominees Pty Ltd signed the Confirmation Side Letter.

81. The GGPNG witnessed by Mr. Okuk signed the Nominee Deed with UBS AG, UBS Nominees Pty Ltd and UBS Securities Australia for the Nominee (UBS Nominee Pty Ltd).

82. The Substantial shareholders notice prepared and lodged with Port Moresby Stock Exchange (POMSox) and ASX lodged on 17 March 2014.

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83. The State (Subscriber) represented by the GGPNG witnessed by Mr Okuk signed the Subscription Agreement with Oil Search Ltd (Issuer).

84. IT IS CLEAR THAT THERE WAS NO BINDING RETAINER OF UBS AG DONE BY THE STATE, AND NOT MR VELE UNTIL AFTER THE NEC DECISION NO 79/2014 ON 6 MARCH AND AFTER THE CSTB HAD ISSUED A COI.

85. AT NO STAGE DID MR VELE RETAIN UBS AG. The only steps he took were to facilitate the decisions of the NEC and CSTB.

Comments:

Mr Vele responded in detail to the Provisional Report and maintained that he did not perse engage the UBS AG to provide loan to the State to purchase shares from Oil Search Ltd.

However, in the chronology that he provided justifying his actions, it shows that Mr Vele was the one who engaged the UBS AG on 30 January 2014 when he signed as the then Acting Secretary for DoT along with the GGPNG who signed a Subscription Agreement and a Commitment Letter, on behalf of the State.

The actions of Mr Vele alone cemented the UBS AG as the Sole Financier and Lead Arranger. The NEC decision approving for UBS AG to be engaged followed on 6 March 2014.

The engagement of UBS AG as the Financier and Lead Arranger did not go through the public tender process. In fact, the only time that the CSTB was

involved was after the
NEC had made the decision approving UBS AG as the Financier of the
borrowing and
approving the issuance of the COI. Therefore, the Ombudsman
Commission's comments
on this matter have not changed.

[4.10] FINDING No. 10

In the opinion of the Ombudsman Commission, the conduct of Mr Dairi
Vele was
wrong and improper when he misinformed and misled the National
Executive
Council regarding the NEC Policy Submission No: 67/2014 that it was
in order.

Reason(s):

- Mr Vele prepared the NEC Submission Policy Paper No: 67/2014
without consulting
his own Department officers who are competent and experienced
technical officers
to assist in this matter.
- Mr Vele was called to attend the Special NEC Meeting 08/2014 to
clarify the content
of the Policy Paper No: 67/2014.
- Then Minister for Treasury, Hon Polye was not involved in the
drafting and
presenting of the NEC Submission Policy Paper No: 67/2014.

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- Mr Vele failed to inform the NEC of the four (4) financiers that
were shortlisted and
included in the Statutory Business Paper No: 179/2013 and
submitted on 19
December 2013 to the NEC for deliberation and approval was done
without proper
tender process and without proper consultation with the relevant
agencies, such as
his Department and the BPNG and it was for refinancing of the IPIC
Exchangeable
Bond. Whereas the new NEC Submission Policy Paper No: 67/2014 was
for the
buying of new shares in Oil Search Ltd to be refinanced by UBS AG.
- Mr Vele failed to advise the NEC that he had already engaged the
UBS AG to

refinance the IPIC Exchangeable Bond when he signed the Letter of Engagement on 30 January 2014 (see page xi paragraph 29).

- Mr Vele failed to advise the NEC that the engagement of the financial, legal and technical consultants was improper and in breach of tender requirements of the Public Finance (Management) Act 1995 and the Attorney-General Act 1986.
- Mr Vele failed to advise the NEC that the approval of the issuance of the COI to waive the tender process for engagement of UBS AG and other legal and technical consultants was not proper and in direct breach of Section 40(3) (b) of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual.
- Mr Vele failed to advise the NEC that he had not fully consulted the relevant authorities, including the State Solicitor, the BPNG and his own officers within the DoT.
- Mr Vele failed to involve the Minister for Treasury in the drafting of the NEC Policy Submission.
- Mr Vele failed to inform the NEC that the General Business Trust of NPCP should not be used as security or collateral. Hence, non-compliance with the requirement of Independent Public Business Corporation of Papua New Guinea Act 2002, which provides for among others, the establishment and management of the NPCP to hold certain assets, including interests in business enterprises, as Trustee for the benefit of the State and to act as Trustee of other prescribed trusts.
- Mr Vele failed to inform the NEC that Petromin was not financially sound at the time of the transaction to be the State's subscriber and nominee for the transaction.
- Mr Vele failed to inform the NEC that the NPCP was not properly established under the law to execute the Payment Direction Deed to enforce the NEC Decision.

Comments:

Mr Vele is a leader subject to the Leadership Code.

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RESPONSE FROM MR DAIRI VELE

1. This finding is totally without basis from even the findings of fact from the Ombudsman Commission.

2. I as Secretary for Treasury compiled the NEC submission along with the very experienced consultants that had been working on the Draft Proposal for the loan and purchase of Oil Search shares.

3. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as members of Treasury, and the IPIC Committee, had limited financial experience.

4. Norton Rose Fulbright was first engaged by IPBC on these issues on 5 December 2012 and continued to be engaged by IPBC. I therefore referred to them for advice on these matters given the committee was under the Direction of IPBC.

5. The NEC Submission and enclosed recommendations were examined by the State Solicitor and found to be in order.

6. I did not fail to advise the NEC that I had already engaged the UBS AG in January 2014 to refinance the IPIC Exchangeable Bond as I had NOT so engage UBS AG. Their engagement was contingent on the NEC Decision. They had commenced work on the latter due to Mr. Bakani's advice on 30 January 2014.

7. I did not fail to advise the NEC that the engagement of the financial, legal and technical consultants was improper and in breach of tender requirements of the Public Finance (Management) Act 1995 and the Attorney-General Act 1989, as it was not in breach of the Public Finance (Management) Act 1995 and the Attorney-General Act 1989.

8. There is an assumption that I retained Norton Rose Fulbright to provide legal services to the Department of Treasury at some stage in 2013 and prior to the NEC decision of 6 March 2014.
This is incorrect.

9. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included reviewing the terms and conditions of the IPIC Bond, review and advice option available to IPBC for refinancing of loan and or a restructure of the terms of the existing loan. Specifically it was recognized in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares.

10. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

11. On 5 April 2013, the Cabinet explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds.

12. In July 2013 Cabinet determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Coordination Office, the Secretary of Public Enterprises, the Secretary of Treasury (or his nominee), the State Solicitor (or his nominee) and the MD of IPBC to advise on options available to the State to refinance and maintain an interest in Oil Search (the Committee).

13. On 6 August 2014, I was appointed Acting Secretary for Treasury.

14. We, the IPIC committee, had already setup meetings with various banks in Sydney to assess proposals from banks as to being the financial advisor and arranger to the State through IPBC

for the refinancing of the IPIC Bond. Norton Rose Fulbright assisted with advice at these

meetings.

15. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a Member of the IPIC Committee due to Cabinet decision No 241/2013.

16. I say that at all material times the then Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

17. Mr. Kua however did not raise an issue with regards to compliance with the Attorney-General Act 1989 and indeed by his lack of compliant allowed the Consultants to be retained as a result of the NEC Decision and the CSTB Certificate of Inexpediency.

18. Mr. Kua by his inaction at the time effectively waived any compliance issues and indeed he was bound by the NEC decision, as we all were.

19. Mr. Kua did not raise any issue with the retainer of Legal Consultants until the time he was removed by the Prime Minister as Attorney-General in June 2014.

20. It is incorrect to say that I usurped the powers of the Attorney-General, firstly as Norton Rose Fulbright has been retained by IPBC, and secondly as NEC has approved and endorsed the way forward with regards to service contracts which was to apply for a Certificate of Inexpediency due to the short commercial time limits that needed to be adhered to.

21. With regards to Ashursts, they were paid for by the State as it was a term of the loan agreement with UBS AG that the legal services of the lender would be funded by the borrower. This is a normal commercial condition. They were not retained by me but by UBS AG.

22. With regards to Pacific Legal Group, they were actually retained by Norton Rose Fulbright to act as their local Counsel for advice and assistance on procedures after Norton Rose Fulbright we asked to advise on the possibility of an UBS AG loan/Oil Search transaction in accordance with the terms of their retainer for IPBC. I did not retain them.

23. It was clear to me that the State Solicitor did not think the submission was in breach of the Public Finance (Management) Act 1995 and the Attorney-General Act 1989.

24.

25. I did not fail to advise the NEC that the approval of the issuance of the COI to waive the tender process for engagement of UBS AG and other legal and technical was not proper and in direct breach of Section 40(3)(b) of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clause 13 and 14 of the Finance Management Manual as it was not in breach of such legislation—indeed the provision of the Financial manual is ultra vires the power of the Secretary under Section 117.

26. With regards to the advice to NEC on COI, I followed the advice of external lawyers and the State Solicitor.

27. As part of the documents delivered to the State Solicitor on 5 March 2014, were submissions and recommendations for the NEC and for various statutory approvals. In his letter of advice dated 5 March 2014, Mr Rolpagarea specifically noted the recommendations and advised that after the NEC determines to proceed with the deal, all statutory authorisations should be sought. The COI was one of those authorisations in the recommendations. The matters included in the recommendations were advised to me to be part of the required process by Norton Rose Fulbright.

28. Mr Rolpagarea advised me to proceed to NEC on the documents I had, as they were in order to go to NEC. I gave the submission to NEC on the basis it was cleared by the State Solicitor and in order.

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29. It was clear to me that the State Solicitor did not think the submission was in breach of the Public Finance (Management) Act 1995.

30. The NEC specifically endorsed the issuance of a COI by the CSTB in its decision of 6 March 2014, which was based on the NEC Submission where this was recommended.

31. After the decision I acted in accordance with the State Solicitor's and Norton Rose's advice AND the NEC decision and applied to CSTB for a COI.

32. The CSTB, an Independent Tribunal met and awarded a COI for the service contracts and engagements of consultants.

33. This is of course in accordance with their power under PFMA, which gives the Board an unfettered discretion to issue a COI if it determines that it is inexpedient or impracticable to require a tender process.

34. The contents of the Financial Manual are instructions issued by the Secretary pursuant to Section 117 of the PFMA. These instructions are only to be issued if they are –not inconsistentll with the PFMA.

35. The financial instructions that limit the CSTB's discretion to four circumstances are inconsistent with the Act, and I would respond those instructions are not valid, and that was what I was advised by the external lawyers.

36. I did not fail to advise NEC that I had not fully consulted the relevant authorities, including the State Solicitor and the BPNG and my own officers within the DoT, as I had consulted BONG fully and the State Solicitor and the external legal advisers.

37. DoT advisors have very limited capacity on these types of transactions. As stated previously, I am aware there have only been three before – and on every occasion external advisors had been utilized.

38. I received the required and necessary approvals and clearances from both BPNG and the State Solicitor.

39. It is totally false to say there was insufficient consultation and that I failed to advise NEC of it.

40. It is also untrue to say that I failed to advice of both the external lawyers and the State Solicitor that all was in order. I say it is prudent and responsible for me to have sought advice and clearance on these issues from both external advisors and the State Solicitor and only following that I went to Cabinet.

41. I totally deny the allegations in this finding.

Comments:

Mr Vele responded to the Provisional Report and stated that he did not mislead the NEC regarding the NEC Policy Submission No. 67/2014. In that he complied with the set procedures and processes that led to the Prime Minister sponsoring the NEC Submission Policy Paper No. 67/2014 to the NEC.

The Ombudsman Commission assessed Mr Vele's response and found that the policy submission was only made after Mr Vele had engaged the Financial, Legal and Technical Consultants.

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Mr Vele did not comply with the process when he facilitated for the State to borrow AU\$1.239 Billion from UBS AG to purchase shares from Oil Search Ltd.

The State was forced to accept the loan from UBS AG as Mr Vele and the Prime Minister had already committed the State to the borrowing.

As such, the Ombudsman Commission's comments on this matter have not changed.

[4.11] FINDING No. 11

In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he issued directions and instructions to the Independent Public Business Corporation Chairman and Management.

Reason(s):

- The NEC Decision No: 79/2014 Clause 8 gave specific directions for IPBC to approve the NPCP to be involved in executing of the Payment Direction Deed and nothing else concerning payments from the PNG LNG Project. Below is an extract of the NEC Decision No: 79/2014:

8. noted that the Transaction Documents are subject to the issue

by other State Agencies
of necessary or convenient statutory authorizations that are
being sought in parallel
with this submission, and or endorse the issue of any such
authorizations for the
Transaction, including, without limitation:

a) issue of a certificate of inexpediency to tender by the
Central Supply and
Tenders Board under section 40(3)(b), and an authority to
pre-commit
expenditure by the Secretary of the Department of Finance
under section 47B,
of the Public Finance (Management) Act 1995;

b) issue of a certificate by the Secretary of the Department
of Treasury certifying
that after the full amount of the borrowing pursuant to the
Transaction
Documents, the total value of overseas commercial debt
which will be owed by
the State will not exceed 125% of the estimated internal
revenue of the State for
the calendar year 2014 within the meaning of section 2(3)
of the Loans
(Overseas Borrowings) No. 2 Act;

c) execution of a Payment Direction Deed as one of the
Transaction Documents
by the National Petroleum Company of PNG (Kroton) Limited
concerning
payments from Papua New Guinea Liquefied natural Gas Global
Company
LDC, with the approval of the Minister for Finance on the
recommendation of
the Managing Director of the IPBC pursuant to section 46B
of the Independent
Public Business Corporation of Papua New Guinea Act 2002,
including the
documentation listed in Part 3 of Schedule A; and

d) approval of the payment direction in paragraph (c) by the
IPBC pursuant to
section 110 of the Companies Act 1997.

- Mr Vele sent an electronic mail to Dr Webster and urged him to
progress
considerations of the matters with the IPBC Board on the State's
acquisition of
shares in Oil Search Ltd. The attachments in the electronic mail
are as follows:

IPBC Board briefing pack – Memo with explanation of transaction and the Payment Direction
Draft Payment Direction Deed
IPBC Shareholder Approval of Payment Direction
IPBC Board Approval
NPCP Board Resolution for Payment Directions
Power of Attorney

- Mr Vele was trying to perform the roles and functions of the Secretary for the NEC Secretariat when he conveyed the NEC Decision No: 79/2014 to the IPBC Board and Management and NPCP Board and Management.
- Mr Vele's actions by issuing directives and instructions to the IPBC Chairman and Board Members were improper as he had no authority to issue such directives and instructions and that he had already contemplated the Board's decision and produced the final documents for execution by the IPBC and NPCP Boards to consider and approve.
- These directions and instructions were in breach of Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002 as Mr Vele has no authority to issue directives or instructions to the IPBC Board or its management.

Section 59 of the Independent Public Business Corporation of Papua New Guinea Act 2002 states:

59. POLITICAL INFLUENCE.

(1) No Minister, member of the National Parliament or any member of a Provincial or Local-level Government may seek to direct or influence the exercise by a Director of his or her duties, powers or judgments or any Board decision other than through a written communication that is tabled concurrently in the National Parliament if it is in session or otherwise with the Speaker of the National Parliament (who shall table any such communications in the National Parliament at the next opportunity).

(2) A Director who receives any representations made by or on behalf of such persons shall record the fact of, and the content of, such representations at the next Board meeting and table copies of any written communications containing such representations at the Board meeting and with the Speaker of the National Parliament within seven days of receipt.

Comments:

Mr Vele is a leader subject to the Leadership Code.

RESPONSE FROM MR DAIRI VELE

1. I deny this allegation in all its parts.

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2. The external legal advisors had produced documents and advice that certain approvals and authorisations had to be received from various statutory institutions and government bodies.

3. Decisions and approvals were necessary from IPBC.

4. Draft Minutes of Board resolutions and other documents were drawn up by the external legal advisors so that when the matter went before IPBC they could be directed as to what legal processes had to be completed if and only if they were decided in accordance with the overall proposal. This is normal commercial practice. It provides a checklist for the Board of any organization so their resolutions can be in line with what is legally required.

5. These Draft minutes and other documents were initially put before the State Solicitor for his advice and clearance.

6. Not only did the State Solicitor clear these documents and processes on 5 March 2014, he specifically advised me to facilitate the obtaining of the

IPBC decisions and minutes.

7. After the NEC decision on 6 March 2014, I was on the distribution list of the NEC decision and it is incumbent upon all those on the distribution list to ensure that the NEC decision is implemented.

8. All my actions following the NEC Decision No 79 of 2014 were in accordance with the State Solicitor's advice and the decision of the NEC.

9. It is illogical and ridiculous to suggest that I acted improperly in this area.

Comments:

Mr Vele responded to the Provisional Report stating that he denied this finding. However, it was evident that Mr Vele did direct the IPBC Board to approve the transaction documents along with the draft minutes and resolutions. Therefore, the Ombudsman Commission's comments on this matter have not changed.

[4.12] FINDING No. 12

In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele wrong and improper when he requested the Central Supply & Tenders Board for a Certificate of Inexpediency to be issued for the engagement of Consultants and that it should be applied retrospectively which was contrary to the Public Finance (Management) Act 1995 and the Finance Management Manual.

Reason(s):

- The Public Finance (Management) Act 1995 clearly outlines the procedures that must be followed when the Government decides to outsource contracts to private contractors for providing goods and services. This is stated in Section 40 of the Public Finance (Management) Act 1995. The CSTB outlined five key principles that are fundamental in tendering and contracting. The key principles are:

1. Value for Money – involves obtaining works, goods and services for the GoPNG that best meet the government's need at the Lowest Total Cost.

2. Transparency – involves the clear and public documentation of procurement processes, tender requirements, evaluation criteria, and decisions. All processes used and decisions made should be able to withstand independent review and scrutiny.

3. Effective competition – Competition that is effective encouraging a number of independent companies tendering to provide services to the GoPNG through the public tendering process providing timely and adequate information to contractors and ensuring that new entrants and small contractors are able to participate.

4. Fair and ethical dealing – The central principles underpinning fair and ethical dealing include:

- treating potential and existing contractors with equality and fairness
- not seeking personal or family gain
- treating tenderers' and tender information with respect and confidentiality;

It is important that all CSTB staff involved in major procurements, follow these principles and if they do not follow the principles, it undermines the credibility of the whole government procurement process.

5. Efficiency and effectiveness
The principal of effective and efficient procurement requires procurement staff to use procurement processes that are appropriate to the amount of monies been spent.

- Mr Daniel Rolpagarea, State Solicitor advised to Mr Eludeme that the circumstances

did not warrant a COI that it cannot be issued and applied retrospectively. This advice is consistent with Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual.

Clause 13 of the Finance Management Manual states:

13. A Certificate of Inexpediency cannot be issued retrospectively to cover a contract already executed.

Part 13, Division 4, Clause 14 of the Finance Management Manual is very specific in regard to situations where a Certificate of Inexpediency can be issued.

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Clause 14 of the Finance Management Manual states:

15. Certificates of Inexpediency will only be issued in situations where a declared:

- a. Natural Disaster, or
- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest

- The Ombudsman Commission's investigation revealed that the engagement of UBS AG and the other Financial and Legal Consultants was done prior to the NEC's Decision of 6 March 2014.
- It was also revealed that Mr Vele is a Shareholder of Pertusio Capital Partners Ltd that was paid a total of K660,000.00 by Pacific Capital Ltd.
- Pacific Capital Ltd was engaged by Mr Vele to provide financial consultancy and advisory services to the State through DoT regarding the borrowing of AU\$1.239 Billion from UBS AG.

- Therefore, Mr Vele's conduct was wrong and improper when he went ahead and requested Mr Eludeme to issue a COI and further requested for a retrospective application of the same.

Comments:

Mr Vele is a leader subject to the Leadership Code.

RESPONSE FROM MR DAIRI VELE

I deny entirely this finding and allegation

1. With regards to the issuing of the COI, I followed the advice of external lawyers, the State Solicitor and the NEC Decision No 79/2014 with regards to my actions.

2. Following the NEC Decision on 6 March 2014, I requested Mr. Philip Eludeme, the Chairman for CSTB to approve the request for COI at the earliest to cover the advisory costs, in accordance with the External Lawyers advice, the State Solicitor's advice on 5 March 2014, and in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

3. On 7 March 2014, Mr. Vele explained to Mr. Eludeme that the COI was needed to access funds to pay for fees pertaining to the State's acquisition of the shares in Oil Search Ltd, in accordance with and for the purposes of implementing Cabinet Decision No 79/2014.

4. As part of the documents delivered to then State Solicitor on 5 March 2014, were recommendations for the NEC and for various statutory approvals. In his letter of advice dated 5 March 2014, Mr. Rolpagarea specifically noted the recommendations and advised

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that after the NEC determines to proceed with the deal, all statutory authorisations should be sought and facilitated by me. The COT was one of those authorisations in the recommendations. The matters included in the recommendations

were advised to me to
be part of the required process by Norton Rose Fulbright.

5. The NEC specifically endorsed the issuance of a COT by the CSTB in its decision of 6 March 2014, which was based on the NEC Submission where this was recommended (such Submission was cleared by the State Solicitor).

6. After the decision I acted in accordance with the State Solicitor's and Norton Rose's advice AND the NEC decision and applied to CSTB for a COT.

7. The CSTB, in accordance with their power under PFMA, which gives the Board an unfettered discretion to issue a COT if it determines that it is inexpedient or impracticable to require a tender process.

8. This is of course in accordance with their power under PFMA, which gives the Board an unfettered discretion to issue a COT if it determines that it is inexpedient or impracticable to require a tender process.

9. The contents of the Financial Manual are instructions issued by the Secretary pursuant to Section 117 of the PFMA. These instructions are ONLY to be issued if they are not inconsistent with the PFMA.

10. The financial instructions that limited the CSTB's discretion to four circumstances are inconsistent with the Act, and T would respond those instructions are not valid. So too is the instruction that the COT cannot be applied retrospectively.

11. In any event, that is not the issue. The CSTB determined that a COT issue and then approved the payment contracts for services.

12. All T did was apply for the COT in accordance with the NEC decision and my legal advice.

13. T acted upon and in accordance with the NEC Decision and implemented that decision.

14. When T was later advised by CSTB that the COT was being revoked, T was also informed that the State Solicitor had advised that although the consultants that had been engaged by the State could not be paid under the COT- they could be paid on a quantum meruit

basis as to what actual work they had done and that T, the Secretary for Treasury, would be the person placed to assess what that quantum would be as T had been working with them on the preparation of the draft deal and then the transaction itself.

15. That is then what happened. The payments made were on the basis of the work completed as proper bills had been collated before the CSTB decision as to work that had been performed before and after that time.

16. T repeat, T did not engage any Consultatns prior to the NEC Decision, or after the NEC Decision of 6 march 2014. Norton Rose had already been engaged by TPBC.

17. T made the application to CSTB for a COT, not on my own decision, but following the advice of the external lawyers and the State Solicitor—and as directed by the NEC. T was merely implementing an NEC decision which as Secretary for Treasury is my obligation to do.

18. T believe T cannot be held responsible for decisions T did not make, and in any event, no decisions that were taken by CSTB or NEC were contrary to law.

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Comments:

Mr Vele responded to the Provisional Report denying the finding against his conduct. However, the investigation on this matter showed that Mr Vele had requested for a COI to be issued and that the COI be applied retrospectively.

This was contrary to the Public Finance (Management) Act 1995 and the defeated the purpose of the public tender process that promotes transparency and accountability.

Therefore, the Ombudsman Commission's comments on this matter have not changed.

[4.13] FINDING No. 13

In the opinion of the Ombudsman Commission, the conduct of Mr Dairi Vele was wrong and improper when he failed to formally request the Attorney-General for a Brief-Out of legal services to engage private law firms as required under Section 8(4) of the Attorney-General Act 1989.

Reason(s):

- On 25 June 2013, the Prime Minister wrote to Hon Kua, then Attorney-General and advised that while the Attorney-General has discretion as to whether or not to Brief-Out legal services, this discretion does not extend to the appointment of a specific legal firm and therefore the engagement of private legal services should be publicly tendered.
- It was obvious the Prime Minister was referring to the tendering processes outlined in the Public Finance (Management) Act 1995 that are non-negotiable.
- It was also obvious that the Prime Minister was also referring to the fact that other contracting processes, such as direct price negotiation, pre-qualification, selective tendering etc, are illegal and not acceptable.
- Hence, it was proper that prior to engaging the private law firms, Mr Vele should have written a formal request for Brief-Out of legal services to the Attorney-General.
- Only when the Attorney-General has been satisfied that individuals and legal firms have complied with the requirements outlined in Sections 8(4) of the Attorney-General Act 1989 he can then approve the request.

Section 8(4) of the Attorney-General Act 1989 states:

8. LEGAL ADVICE AND OPINION.

(4) On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2)

or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.

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- Mr Vele did not seek approval from Dr Kalinoe or Hon Kua then Attorney-General to engage the private law firms that provided legal consultation in relation to the borrowing of loan from UBS AG to purchase new shares in Oil Search Ltd.
- In addition, Mr Vele should have conducted a public tender with the assistance from the CSTB pursuant to Sections 39(2), (a) & (b) and 40(1) of the Public Finance (Management) Act 1995 to attract the best contractors to provide legal services to the DoT.

Sections 39(2), (a) & (b) and 40(1), (a) & (b) of the Public Finance (Management) Act 1995 state:

39. CENTRAL SUPPLY AND TENDERS BOARDS.

(2) In the exercise of its powers under Subsection (1), the Central Supply and Tenders Board may—

(a) invite a tender for any amount; and

(b) enter into a contract for any amount up to K10,000,000.00,

for and on behalf of the State.

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

(1) Subject to—

(a) this section; and

(b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

- Both Dr Kalinoe and Hon Kua informed the Commission that:
 - a. They were not aware of any formal request from Mr Vele.
 - b. They were not involved in the whole process of the State obtaining a loan from UBS AG. Apart from the fact that Mr Rolpagarea was approached very late at night on the eve of the NEC Meeting scheduled on 6 March 2014 and served the documentations and sought his legal clearance of the documentations.
- Therefore, Mr Vele's conduct was wrong and improper when he failed to comply with the above relevant laws when he engaged private legal firms to facilitate the borrowing of the UBS AG loan to purchase shares in Oil Search Ltd which included the drafting of the NEC Policy Submission to be presented by Prime Minister before the NEC for deliberation.

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Comments:

Mr Vele is a leader subject to the Leadership Code.

RESPONSE FROM MR DAIRI VELE

I DENY COMPLETELY THIS FINDING AND ALLEGATION

My comments below are in addition to my full statement in response to Findings of Fact Part 1

1. There is an assumption that I retain Norton Rose Fulbright to provide legal services to the Department of Treasury at some stage in 2013 and prior to the NEC decision of 6 March 2014. This is incorrect.
2. Norton Rose Fulbright was retained by IPBC on 5 December 2012, some 14 months earlier, to provide legal services with regards to the IPIC Bond Project. The work expressly included

reviewing the terms and conditions of the IPIC Bond, review and advise option available to IPBC for refinancing of the loan and or structure of the terms of the existing loan.

Specifically it was recognized in the scope of work that –a significant aspect of this scope of work would involve meeting the objectives regarding the ownership of the Oil Search Shares. [See Letter 5 December 2012]

3. I was appointed Director of the Gas Project Co-ordination Office in December 2011.

4. On 5 April 2013, the Cabinet explicitly authorised the Minister for Public Enterprises and IPBC to explore methods of raising money to redeem the Convertible Bonds. [See NEC meeting 03/2013, decision no 117/2013]

5. In July 2013, Cabinet determined to look at ways to refinance the IPIC loan and to retain an interest in Oil Search. It appointed a committee under the direction of IPBC and the Minister for Public Enterprises, comprising of the Director of the Gas Projects Co-ordination Office, the Secretary of Public Enterprises, the Secretary of Treasury (or his nominee), the State Solicitor (or his nominee) and the MD of IPBC to advise on options available to the State to refinance and maintain an interest in Oil Search (the Committee). [See NEC Decision 241/2013 at meeting 20/2013 attached].

6. On 6 August 2013, I was appointed Acting Secretary for Treasury.

7. We, the IPIC committee, had already set up meetings with various banks in Sydney to assess proposals from the banks as to being the financial advisor and arranger to the State through IPBC for the refinancing of the IPIC Bond. Norton Rose Fulbright assisted with advice at these meetings.

8. Whether I was Director of the Gas Office or the Acting Secretary for Treasury, I will still be a member of the IPIC Committee due to Cabinet decision No 241/2013.

9. I sought the advice of Norton Rose Fulbright from the time that I was appointed Chairman of the IPIC Bond and that was due to the fact the Committee was under the direction of IPBC, and IPBC had retained Norton Rose Fulbright to advise on the IPIC refinancing issues.

I did not retain them anew.

10. I was aware that Treasury had only undertaken 3 other transactions and on each occasion engaged external lawyers as member of Treasury, and the Committee, had limited financial experience.

11. This continued until special circumstances arose from them to be appointed to represent the State on the transaction pursuant to and after the NEC decision.

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12. After the NEC Decision on 6 March 2014 which endorsed for a Certificate of Inexpediency for service and othe contracts, for the purposes of giving effect to the NEC decision, and I was the person with the responsibility to implement it according to the State Solicitor's advice of 5 March 2014, I sought a Certificate of Inexpediency and to contract those consultants who were necessary for the transaction to proceed.

13. I say that at all material times the then Attorney-General Kerenga Kua was aware of the NEC Decision of 6 March 2014 and the steps necessary to implement it.

14. Mr Kua however did not raise an issue with regards to compliance with the Attorney-General Act and indeed by his lack of complaint allowed the Consultants to be retained as a result of the NEC Decision and the CSTB Certificate of Inexpediency.

15. Mr. Kua by his inaction at the time effectively waived any compliance issues, and indeed he was bound by the NEC decision, as we all were.

16. Mr Kua did not raise any issue with the retainer of Legal Consultants until the time he was removed by the Prime Minister as Attorney-General in June 2014. His statements are tainted by personal and political interest.

17. It is incorrect to say that my conduct was improper as I failed to formally request the Attorney-General for a brief out, firstly as Norton Rose Fulbright has been retained by IPBC, and secondly as NEC has approved and endorsed the way forward with regards to service contracts which was to apply for a certificate of inexpediency

due to the short commercial
time limits that needed to be adhered to.

18. The State itself did not retain any other lawyers.

19. With regards to Ashurst, they were paid for by the State as it was a term of the loan agreement with UBS AG that the legal services of the lender would be funded by the borrower. This is a normal commercial condition. They were not retained by the State or I, but by UBS AG.

20. With regards to Pacific Legal Group, they were actually retained by Norton Rose Fulbright to act as their local Counsel for advice and assistance on procedures after Norton Rose Fulbright were asked to advise on the possibility of an UBS AG loan/Oil Search transaction in accordance with the terms of their retainer for IPBC. I did not retain them and neither did the State.

21. At the time of the request for a Certificate of Inexpediency, it was considered by all that it would be much more convenient for all parties that Pacific Legal Group and Ashursts be paid for directly by the State in Papua New Guinea, rather than the State remitting funds to Norton Rose and UBS in Australia and then Norton Rose and UBS remitting funds back to Papua New Guinea to pay Pacific Legal Group and Ashursts respectively.

22. Essentially, the request for the COI was to facilitate payment, as the only actual retainer was for Norton Rose Fulbright, and not for Pacific Legal Group or Ashursts.

23. Had the Ombudsman Commission interviewed Pacific Legal Group or Norton Rose Fulbright or Ashursts, myself and asked the specific questions, this would have been made clear.

24. I deny that I breached any proper processes or procedure with regards to the engagement of legal consultants.

25. I deny that my conduct was in any way improper in this regard.

Comments:

The retaining of Legal Firms or Lawyers to perform specific tasks or jobs as per their contracts is entirely the role of the Government Body and or Agency with approval from the Attorney-General.

In this particular matter, the State was intent on engaging a Lender for a loan to the State to purchase shares from Oil Search Ltd. The IPBC had initially engaged Norton Rose Fulbright as its Legal Advisor on the IPIC Exchangeable Bond. However, since the IPIC Exchangeable Bond deal fell through, the IPIC Project ceased to exist.

The State through the Departmental Bodies and Agencies was then forced to look for funds from other potential Lenders for the loan to purchase shares from Oil Search Ltd. This was a new project and hence needed to comply with all the relevant processes and procedures to facilitate the borrowing. This included the request from the Attorney-General to Brief-Out Lawyers or Legal Firms to act on behalf of the State.

Mr Vele failed to seek approval from the Attorney-General in regard to the engagement of Norton Rose Fulbright.

Therefore, the Ombudsman Commission's comments on this matter have not changed.

[4.14] FINDING No. 14

In the opinion of the Ombudsman Commission, the conduct of Mr Philip Eludeme, Chairman of Central Supply & Tenders Board was wrong and improper when he approved the issuance of the COI for the engagement of the Consultants.

Reason(s):

- On 10 March 2014, Mr Eludeme wrote to Mr Vele and advised that the CSTB

approved the issuance of a COI in order to waiver from public tender the contract to provide Consultancy services relating to the borrowing of the UBS AG Loan to purchase 149, 390,244 shares in Oil Search Ltd.

- Mr Eludeme breached Sections 40 of the Public Finance (Management) Act 1995 and Part 13, Division 4, Clauses 13 and 14 of the Finance Management Manual.

Section 40 of the Public Finance (Management) Act 1995, states that

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

- (1) Subject to—
- (a) this section; and
 - (b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

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Clause 13 of the Finance Management Manual states:
13. A Certificate of Inexpediency cannot be issued to retrospectively cover a contract already executed.

- Firstly, Part 13, Division 4, Clause 14 of the Finance Management Manual state that the issuance of COI can only be issued where there is a Natural Disaster or Defence Emergency or Health Emergency, or Situation of Civil Unrest. In this instance, there was no such event and hence the issuance of a COI was improper.
- Secondly, Mr Rolpagarea stated in his letter to Mr Eludeme that the circumstances did not warrant a COI and that the issuance of COI cannot be applied retrospectively. Hence, Mr Vele's engagement of Consultants prior to the issuance a COI was wrong.
- Therefore, Mr Eludeme deliberately ignored and breached the Public Finance (Management) Act 1995, the Attorney-General Act 1989 and the Finance Management Manual

when he issued the COI that waived the public tender of contract and thereby engaging the private legal, financial and technical Consultants.

Comments:

Mr Eludeme did not respond to the Ombudsman Commission's Provisional Report.

Mr Eludeme is currently on suspension as the Chairman of the CSTB. However, apart from referring Mr Eludeme to the Ombudsman Commission to be investigated under the Leadership Code, the Ombudsman Commission should also consider referring Mr Eludeme to the Police.

[4.15] FINDING No. 15

In the opinion of the Ombudsman Commission, the conduct of Mr Loi Bakani was wrong and improper when he failed to independently provide due diligence check in the process of selecting financiers for the IPIC Exchangeable Bond buy back and advice against the UBS AG appointment as the Lender of the loan.

Reason(s):

- The NEC during a Special Meeting No: 37/2013 on 19 December 2013 made its Decision No: 479/2013 in relation to the re-financing of IPIC's Exchangeable Bond and directed the BPNG to evaluate potential financiers. Below is an extract from NEC Decision No: 479/2013:

1. noted the content of Statutory Business Paper No. 179/2013 and the attachment provided;

2. noted the submissions from Citi, UBS, ANZ/Barclays and Hermsley

3. approved the following recommendations;

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- v) approved the Bank of Papua New Guinea to provide final evaluations on the proposals from Citi and UBS AG to refinance the IPIC

Exchangeable Bond on the specific terms of reference provided (appended herewith) and report back to the Minister for Public Enterprises and State Investments by end of January 2014;

~ Minister Micah requested Mr Bakani to have the BPNG evaluate the potential financiers' proposals based on the NEC's Terms of Reference and recommend a financier for the refinancing of the IPIC Exchangeable Bond.

~ Mr Bakani advised Minister Micah that the time to conclude the refinancing of the IPIC Exchangeable Bond was short and the GoPNG had to make a decision immediately. The BPNG was of the view that the four financiers should have been provided all the information and requested to bid for the Exchangeable Bond refinancing facility.

. Minister Micah sought clarification from Mr Bakani on the BPNG's advice regarding the IPIC Exchangeable Bond.

~ Mr Bakani then recommended to Minister Micah that the State renegotiate the funding structure of the proposals with the two financiers (UBS AG and Citi Bank), in the event that the negotiations do not meet the States objectives, the State should consider other financiers.

. Mr Bakani also recommended to Minister Micah to invite other financiers apart from Citi Bank and UBS AG to bid for the re-financing of the IPIC Exchangeable Bond.

~ Mr Bakani advised the Prime Minister that the two financiers for the loan to re-finance the IPIC Exchangeable Bond fell short of the re-financing requirements and requested that the BPNG be mandated to assist the State in meeting the basic refinancing requirements in the negotiation process.

. Minister Micah wrote to Mr Bakani and requested that the Bank provide its final recommendation on the two banks, UBS AG and Citi Bank.

~ Mr Bakani requested Minister Micah for all parties including BPNG, Ministry for

SE&SI, IPBC and DoT to meet and draft the Terms of Reference to form the basis for the negotiations with the potential financiers for the IPIC Exchangeable Bond.

. Minister Micah directed Mr Bakani to furnish his recommendation by Wednesday, 22 January 2014 and for the NEC to sanction on Thursday, 23 January 2014.

. Mr Bakani wrote to Ms Yacoubian and requested her to resubmit PNP Paribas proposal incorporating the refined terms.

. Mr Bakani wrote to Mr Turner and requested him to resubmit UBS AG proposal incorporating the refined terms.

. Mr Bakani wrote to Mr Philip Graham of Citi Bank and requested him to resubmit Citi Bank proposal incorporating the refined terms.

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~ Mr Bakani wrote to Minister Micah and strongly recommended that the NEC decide to approach the Abu Dhabi Government and request for an extension of six months in IPIC's right to exercise the Exchangeable Bond option. This would allow time for BNP Paribas, the superior proposal, as well as the UBS AG, Citi Bank and ANZ/Barclays to improve on their proposals.

~ Mr Bakani wrote to Minister Micah and recommended UBS AG should be given the mandate to fund the IPIC Exchangeable Bond refinancing and further advised that the State should seek an extension of six months for the refinancing of the IPIC Exchangeable Bond on the present terms.

~ On 27 January 2014, Hon Polye wrote to Mr Bakani and requested for a full brief on the implementation of the NEC's Decision No. 479/2013 regarding the re-financing of IPIC Exchangeable Bond.

~ In spite of Mr Polye's request for an update and briefing of the progress on the matter, Mr Bakani did not respond.

~ On 30 January 2014, three days after Hon Polye had requested for

a brief on the status of negotiations, Mr Bakani wrote to Mr Fowler regarding the refinancing of the IPIC loan and advised that the State accepted its proposal to refinance the IPIC Exchangeable Bond by a combined structure of a Rollover Collar and Term Loan.

Mr Bakani also requested the UBS AG to confirm in writing its commitment to fund the AU\$1.7 Billion IPIC Exchangeable Bond.

~ Minister Micah wrote to Mr Bakani and advised that he noted the BPNG's recommendation for UBS AG to be given the mandate for the IPIC Exchangeable Bond and that the State would not seek the six months extension as it will incur additional interest.

. Minister Micah wrote to Mr Bakani and advised that he accepted the BPNG's recommendations and that he had asked NPCP to lead the refinance IPIC, Exchangeable Bond process on behalf of the State.

. Mr Bakani wrote to Minister Micah and reassured him that the Bank was pleased that he had accepted its recommendation to use UBS AG to refinance IPIC Exchangeable Bond.

~ BPNG was given the task to evaluate the proposals from potential financiers for the IPIC Exchangeable Bond, but it was not given time to evaluate all the proposals. Despite the limitations, Mr Bakani wrote to Minister Micah and UBS AG and advised that UBS AG was appointed as the lender of the loan to refinance the IPIC Exchangeable Bond.

~ The Commission's investigations revealed that the NEC never made a decision to appoint UBS AG or any other financier to provide a loan facility to refinance the IPIC Exchangeable Bond. Hence, Mr Bakani had no authority to appoint UBS AG as the preferred financier to refinance the IPIC Exchangeable Bond.

. The Commission's investigations also revealed that the NEC only

appointed UBS

AG as Advisor to provide financial advice in regard to the borrowing to finance the purchase of shares in Oil Search Ltd in March 2014.

Comments:

Mr Bakani is a leader subject to the Leadership Code.

RESPONSE FROM MR LOI BAKANI

In a letter dated 24 February 2014, Mr Bakani stated:

–Firstly, your Finding No. 15 alleges amongst others that my conduct was wrong and improper when I failed to provide due diligence check in the process of selecting financiers for the buy-back of IPIC Exchangeable Bond and advised against the appointment of UBS AG as the financier.

The NEC Decision No. 479/2013 directing the Bank to do evaluations was quite specific and explicit.

We were advised to assess and evaluate only 2 financiers, namely UBS and Citi Bank. As to how the NEC came up with these 2 financiers was beyond my knowledge.

Even though not specifically directed, but for good governance purposes and to ensure the State was given the best advice, we (the Bank of PNG) went beyond the list of financiers and requested other reputable financiers such as BNP Paribas and ANZ/Barclays to also submit their bids.

A thorough interview and evaluation was done on these potential financiers within a timing constraint, and the UBS AG proposal was recommended to the State because it was least costly. In the circumstance, it is my strong view that the Bank of PNG had done the best it could do to meet the State's requestll.

Comment

Mr Bakani responded to the Ombudsman Commission's Provisional Report, stating that neither he nor BPNG were involved in the UBS AG matter as neither Mr Vele, the DoT or the Prime Minister approached him formerly and requested for assistance.

The Ombudsman Commission accepts Mr Bakani's response and comments on this particular finding as adequate to release him from the findings. The recommendation for his investigations under the Leadership Code is removed.

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[4.16] FINDING No. 16

In the opinion of the Ombudsman Commission, the conduct of Mr Loi Bakani was wrong and improper when he informed UBS AG that the State had engaged UBS AG as the Lender of the Loan to refinance the IPIC Exchangeable Bond, without NEC's approval.

Reason(s):

~ In a Special Meeting No: 37/2013 on 19 December 2013, NEC made a Decision No: 479/2013 in relation to the re-financing of the IPIC Exchangeable Bond and directed the BPNG to evaluate potential financiers. Below is an extract of NEC Decision No: 479/2013:

1. noted the content of Statutory Business Paper No. 179/2013 and the attachment provided;
2. noted the submissions from Citi, UBS, ANZ/Barclays and Hermsley
3. approved the following recommendations;
 - v) approved the Bank of Papua New Guinea to provide final

evaluations on the proposals from Citi and UBS AG to refinance the IPIC Exchangeable Bond on the specific terms of reference provided (appended herewith) and report back to the Minister for Public Enterprises and State Investments by end of January 2014;

~ On 30 January 2014, Mr Bakani informed the Directors for Investment Banking, UBS AG that the State had accepted its proposal to re-finance IPIC Exchangeable Bond worth AU\$1.7 Billion.

. Mr Bakani's advice was wrong and improper as there was no NEC Decision that specifically stated that the State had approved to engage UBS AG as the Lender of a Loan to re-finance the IPIC Exchangeable Bond.

. There was no NEC Decision that specifically directed or instructed the Governor for BPNG to advise the UBS AG as the Lender of the Loan to re-finance the IPIC Exchangeable Bond.

~ Hence, Mr Bakani did not have the authority to engage UBS AG as the preferred financier to provide a Loan facility to re-finance the IPIC Exchangeable Bond.

. Mr Bakani failed to advise the then Minister for Treasury, Hon Polye on the status of BPNG's negotiations with the potential financiers to re-finance the IPIC Exchangeable Bond when then Minister Polye specifically requested for such briefing by Mr Bakani.

Comments:

Mr Bakani is a leader subject to the Leadership Code.

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RESPONSE FROM MR LOI BAKANI

In Mr Bakani's letter dated 24 February 2014, he stated that:

On your Finding No. 16 wherein it is alleged that I had informed UBS AG that the State had engaged them to finance the IPIC Exchangeable Bond buy back without

the approval of NEC.

Although I now realize that was no NEC Decision in place to that effect at that time, I had been advised by Mr. Micah before 30 January 2014, that the State had made that decision. Note that such advice from the Minister was sufficient for me to form an opinion that the State had made a decision.

Note also that my letter of 30 January 2014 to UBS AG was necessary as a matter of good business practice, and as a matter of courtesy and prudent practice I was obliged to inform UBS AG of the outcome of my assessment. I reiterate that this letter was sent only after I had been assured by a Minister of State that UBS AG had been selected to finance the IPIC Exchangeable Bond buy back.

Comments:

Mr Bakani acted on the advise of the then Minister Micah that the State had made the decision to engage the UBS AG to finance the IPIC Exchangeable Bond buy back.

The conduct of Mr Bakani was wrong as the NEC was yet to make any decision on engaging a financier to lend a loan to the State to buy back the PIC Exchangeable Bond.

Therefore, the Ombudsman Commission's original comments on this finding have not changed.

[4.17] FINDING No. 17

In the opinion of the Ombudsman Commission, the conduct of Dr Ken Ngangan was wrong and improper when he signed and approved the APC Forms committing funds that were not appropriated in the 2014 Budget for the payment of Financial, Legal and Technical Consultants.

Reason(s):

~ Section 47B, 47C and 47D of the Public Finance (Management) Act

1995 and Part 13

Division 10 of the Finance Management Manual, state that an APC is a mandatory requirement of the tender process in order to qualify for funds to be released from the DoF to implement services provided by the Consultants.

~ Dr Ngangan approved the APC for AU\$14, 555,759.00 to be released for the payment of legal and finance services by the Consultants.

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~ Dr Ngangan approved the APC without the endorsement of the Chairman of CSTB, hence the APC was null and void in the circumstances according to the fine print at the bottom of the APC Form (FF5A) that stated the following:

1. This Authority to Pre Commit form does not become active until it has been registered and the APC No. has been allocated by the Department of

Finance/Provincial Treasury.

2. This Authority to Pre Commit is not valid until a Supply & Tenders Board file number is allocated.

. Dr Ngangan did not indicate on the APC form where the funds to pay the Consultants was going to come from.

. It was revealed that there were no funds available to pay the Consultants as this was an unbudgeted activity.

~ The engagement of private Consultants, the issuance of the COI and the approval of

the APC funds were all done prior to the NEC's formal approval.

The private

Consultants' engagement was illegal and premeditated actions that were taken by

Dr Ngangan and Mr Vele.

Comments:

At the time of the transaction, Dr Ngangan was the Acting Secretary for the Department of Finance. He is a leader and is subject to the Leadership Code.

Comments:

Dr. Ken Ngangan responded to the Ombudsman Commission's Provisional Report, however, he did not deny nor confirm the comments made against him. Therefore, the Ombudsman Commission's comments on this matter have not changed.

[4.18] FINDING No. 18

In the opinion of the Ombudsman Commission, the conduct of Mr Carl Okuk was wrong and improper when he commissioned the documents on the borrowing of the UBS AG Loan by the Governor-General of Papua New Guinea.

Reason(s):

- . Mr Okuk was the Consultant engaged by Mr Vele to provide consultancy services to DoT.

- ~ On 25 February 2014, Mr Okuk commissioned the signing of all UBS AG documents relating to the UBS AG Loan facility, by the GGPNG prior to the NEC Decision to appoint UBS AG as the Lender of the Loan.

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- . On 12 March 2014, Mr Okuk witnessed the execution of the UBS AG Loan Agreement documents by the GGPNG and acted as Commissioner of Oath on behalf of the State.

- . Mr Okuk was not registered as a practicing lawyer with the PNGLS nor was he appointed as Commissioner of Oaths. He should not have acted as a Commissioner of Oaths under the Oaths, Affirmations and Statutory Declarations Act (Chapter 317), rendering the entire contract documents of UBS AG loan questionable.

- . Section 35 of the Lawyers Act 1986 states:

PART IV.—PRACTISING CERTIFICATES

35. Requirement to hold a practising certificate.

- (1) A person shall not practise as a lawyer unless—
- (a) he has signed the Roll; and
 - (b) he is the holder of a current restricted or unrestricted practising certificate.
- (2) A person who practises as a lawyer contrary to the provisions of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

- . Section 108 of the Lawyers Act 1986 states:

108. Lawyer to be Commissioner for Oaths.

For the purposes of the Oaths, Affirmations and Statutory Declarations Act (Chapter 317), every lawyer admitted to practise in the country is, by this Act, appointed a Commissioner for Oaths.

- . Section 12A of the Oaths, Affirmations and Statutory Declarations Act (Chapter 317)

12A. Commissioner for oaths appointed under Lawyers Act 1986

Notwithstanding Section 108 of the Lawyers Act 1986, a lawyer shall not perform the duties of a Commissioner for Oaths unless he is the holder of a current practising certificate issued under the Lawyers Act 1986.

Comments:

This is a matter for PNG Law Society to consider

Mr Carl Okuk did not respond to the Ombudsman Commission's Provisional Report.

Therefore, the Ombudsman Commission's comments on this matter have not changed.

[4.19] FINDING No. 19

In the opinion of the Ombudsman Commission, the conduct of Hon James Marape, MP, Minister for Finance was wrong and improper when he approved the Payment Direction Deed for NPCP when it was not properly established by law.

Reason(s):

~ The NEC during its Special Meeting No: 08/2014 deliberated on the content of Policy Submission No: 67/2014 with the subject title as financial arrangement for

State acquisition of shareholding in Oil Search Ltd and State borrowing and made its

Decision No: 79/2014 that directed Minister for Finance Hon Marape to facilitate the

Payment Direction Deed by NPCP.

~ On 9 March 2014, Mr Erastus Kamburi, the Chief Legal Officer for IPBC, requested

the IPBC Directors to meet and discuss the Circular Resolutions and Explanation

and directives from Minister Micah and the NEC Decision No: 79/2014.

~ On even date, the NPCP Special Board of Directors Meeting No: 02/2014 resolved

that the Company enter into any Transaction Document to give effect to the

Payment Direction and authorised Mr Sonk and Mr Wato with the Power of Attorney.

. On even date, Mr Sonk verified copies of the Shareholder resolutions of the NPCP

dated 09 March 2014, Minutes of a Meeting of the Board of Directors and Power of Attorney of the NPCP.

. On even date, Mr Kamburi prepared an Explanatory Note with the Board Circular

Resolution outlining the purpose of the Special Board Meeting.

. On even date, the NPCP Board empowered Mr Sonk and Mr Rogen Wato, the

Company Secretary for NPCP with the Power of Attorney.

. On even date, Mr Managing Director for NPCP forwarded to Mr Kumarasiri an

Extract of the Board Meeting Minutes.

. On even date, Mr Kumarasiri wrote to Hon James Marape MP, Minister for Finance and requested him to approve the Memorandum of Approval to enable NPCP to enter into the Transaction Documents.

. On even date, Minister Polye advised Mr Vele that he will not sign the documents that enabled the State to borrow the said UBS AG loan.

. On even date, Minister Marape approved the Memorandum of Approval that enabled NPCP to enter into the Transaction Documents.

. On even date, the GGPNG signed the document enabling the State to borrow AU\$335 million from UBS AG for the purpose of the purchase of shares in Oil Search Findings

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Ltd and for the purpose of meeting the expenses of the Borrowing and for the services of the State.

. On even date, Minister Marape gave his approval for the NPCP to enter into Payment Direction Deed.

. Mr Sonk wrote to Mr Graham and directed any distributions payable to NPCP from the PNG LNG proceeds to be paid to UBS AG (Singapore Branch).

~ NPCP's existence and involvement in the Loan transaction is questionable as it is not legally established as the proposed Papua New Guinea Petroleum Company (Kroton) Act has not been certified by the Speaker of Parliament in order to be fully in force. Thus the involvement of NPCP in this whole process maybe improper.

. NPCP did not have a sound Balance Sheet to handle transaction of such magnitude.

Comments:

Minister Marape is a leader and is subject to investigation under the Leadership Code.

The Ombudsman Commission cannot make a finding against Mr Sonk as the Papua New Guinea Petroleum Company (Kroton) Act has not been certified by the

Speaker of Parliament in order to be fully in force. However, after the Provisional Report was released, the Papua New Guinea Petroleum Company (Kroton) Act was enforced and NPCP was formerly launched as one of the GoPNG's State Owned Enterprises that was responsible for managing the repayment of the UBS AG loan.

Hence, in light of this development, Mr Sonk is now referred to the Ombudsman Commission to be investigated under the Leadership Code.

Minister Marape did not respond to the Provisional Report. Therefore, the Ombudsman Commission's comments on this finding have not changed.

[4.20] FINDING No. 20

In the opinion of the Ombudsman Commission, the establishment of National Petroleum Company of Papua New Guinea (Kroton) Ltd and its engagement by the NEC was wrong and improper.

Reason(s):

~ On 3 February 2014, Mr Frank Kramer was approached by Minister Micah and he was advised on the engagement of UBS AG for the refinancing of the IPIC Exchangeable Bond.

. On 6 March 2014, the NEC in its Decision No: 79/2014 made during its Special Meeting No: 08/2014 deliberated on the content of NEC Policy Submission No: 67/2014 with the subject title as financial arrangement for State acquisition of Findings

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shareholding in Oil Search Ltd and State borrowing. Below is an extract of the NEC decision:

8. noted that the Transaction Documents are subject to the issue by other State Agencies of necessary or convenient statutory authorizations that are being sought in parallel with this submission, and or endorse the issue of any such authorizations for the Transaction, including, without limitation:

a. execution of a Payment Direction Deed as one of the Transaction Documents by the National Petroleum Company of PNG (Kroton) Limited concerning payments from Papua New Guinea Liquefied natural Gas Global Company LDC, with the approval of the Minister for Finance on the recommendation of the Managing Director of the IPBC pursuant to section 46B of the Independent Public Business Corporation of Papua New Guinea Act 2002, including the documentation listed in Part 3 of Schedule A; and

b. approval of the payment direction to in paragraph (c) by the IPBC pursuant to section 110 of the Companies Act 1997.

~ The NPCP is to be established by the National Petroleum Company of Papua New Guinea (Kroton) Act, however, at the time of the NEC's Decision of 6 March 2014, the Act was yet to be certified by the Speaker of Parliament and gazetted in the National Gazette.

~ It was improper for the NEC to engage a company that has no legal foundation to handle all the PNG LNG proceeds from the LNG project.

~ It was also improper for the NEC to engage a company that did not have a sound Balance Sheet at that relevant time to handle transaction of such magnitude.

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5. RECOMMENDATIONS

[5.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation is to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective.

The Commission is expressly authorized to form such opinions by Section 22(2) of the Organic Law on the Ombudsman Commission.

If, after making its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorized to make recommendations. Such recommendations are made under Section 22(2) of the Organic Law on the Ombudsman Commission.

Section 22(2) OLOC:

If in any case to which this section applies the Commission is of the opinion that any service,

body, person or other appropriate authority should –

- (a) consider the matter further; or
- (b) take certain specific action; or
- (c) modify or cancel any administrative act; or
- (d) alter any regulation or ruling; or
- (e) explain more fully any administrative act; or

(f) do any other thing,

the Commission shall report its opinion and the reasons for its opinion, to the Minister

responsible for the relevant service, body or person and to the Permanent Head or statutory

head responsible for the service, body or person, and may refer the matter to the Public

Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

In this chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the report.

Each recommendation is set out as follows:

- o The recipients (i.e. the persons to whom the recommendations are directed) are identified.

- o The main reason for making the recommendation, are stated.

Recommendations

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[5.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

[5.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the Organic Law on the Ombudsman Commission to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the Organic Law on the Ombudsman Commission to

report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this Chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[5.4] RESPONSIBLE MINISTERS

Section 148 of the Constitution provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

[5.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP ON THE IMPLEMENTATION OF RECOMMENDATIONS

Prime Minister
Speaker of Parliament
Minister for Finance
Minister for Treasury
Minister for Public Enterprises & Investment
Minister for Justice & Attorney-General.

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In the event that the title or responsibilities of the Minister changes after the date of this report, the responsibility for notifying the Ombudsman Commission of the steps being taken to give effect to its recommendations will pass to the Minister who, from time to

time, has political responsibility for the services, bodies or persons who received our recommendations.

[5.6] DUTIES OF RECIPIENTS TO ACT ON THE RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of recommendations does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the Organic Law on the Ombudsman Commission to notify the Ombudsman Commission in writing within 30 days after the day of the service of the report, of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.

Accordingly, there is a duty placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the Constitution and the Organic Law on the Ombudsman Commission.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the Constitution.

The Ombudsman Commission made eleven (11) recommendations against those individuals and entities that have been found to have committed wrong conduct. Below are the recommendations.

[5.7] RECOMMENDATIONS

In line with the above findings, the Ombudsman Commission formulated thirteen (13) recommendations. These recommendations are outlined in the following pages.

Recommendations

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[5.7.1] RECOMMENDATION No. 1

The Ombudsman Commission recommends that the Prime Minister, Hon Peter O'Neill, CMG be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Receipient

1. Chief Ombudsman
2. Prime Minister
3. Chief Secretary to the Government of Papua New Guinea
4. Secretary for the Department of the Prime Minister & National Executive Council.

Reasons

- The Prime Minister, Hon Peter O'Neill, CMG, MP committed the State to purchase 149, 390,244 shares in Oil Search Ltd without prior approval from the NEC.
- The Prime Minister, Hon Peter O'Neill, CMG, MP failed to present the Government's proposal on the borrowing of a loan from UBS AG (Australia Branch) on the floor of Parliament for debate and approval as required by Sections 209(1), 211 and 212 of the Constitution.

- The Prime Minister Hon Peter O'Neill, CMG, MP personally sponsored and submitted NEC Policy Submission No. 67/2014 and misled the NEC to approve the borrowing of AU\$1.239 Billion from UBS AG to buy shares in Oil Search Ltd when evidence revealed that proper procedures were not complied with in regard to the engagement of the Financial, Legal and Technical Advisors pertaining to the loan.
- The Prime Minister Hon Peter O'Neill, CMG, MP failed to consult Petromin Holdings Ltd to be the State's subscriber and nominee to acquire shares in Oil Search Ltd when it was clear under the Petroleum PNG Holdings Limited Authorization Act 2007 that Petromin Holdings Ltd shall be consulted on such matters.
- The Prime Minister Hon Peter O'Neill's, CMG, MP committed a misconduct in office when he committed the State to a borrowing of UBS AG Loan of AU\$1.239 Billion to buy shares in Oil Search Ltd. That is, the Prime Minister deliberately did not comply with the relevant laws and procedures leading up to the borrowing.

Recommendations

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[5.7.2] RECOMMENDATION No. 2

The Ombudsman Commission recommends that Hon James Marape, MP, Minister for Finance be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Recipients

1. Chief Ombudsman
2. Minister for Finance
3. Secretary for Department of Finance.

Reasons

- Hon James Marape, MP, Minister for Finance was aware at that material time NPCP was not a legally established entity as the PNG Petroleum Company (Kroton) Act had not been certified by the GGPNG in order to be fully in force.
- With the knowledge that his actions were improper, Hon James Marape, MP, Minister for Finance still signed and approved the Memorandum of Approval, thereby enabling NPCP to enter into the Transaction Documents.
- Hon James Marape, MP, Minister for Finance also approved for NPCP to enter into Payment Direction Deed.

[5.7.3] RECOMMENDATION No. 3

The Ombudsman Commission recommends that Ambassador Isaac Lupari, Prime Minister's Chief of Staff be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Recipient

1. Prime Minister
2. Chief Secretary to the Government of Papua New Guinea
3. Secretary for the Department of Prime Minister & National Executive Council.

Reasons

- Amb Isaac Lupari has no authority to issue advice or instructions to the IPBC or to any Government Agency regarding decisions made by the NEC, as this is the role and the function of the Secretary to the NEC Secretariat or the Chief Secretary.

Recommendations

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[5.7.4] RECOMMENDATION No. 4

The Ombudsman Commission recommends that Dr Ken Ngangan, Secretary for Department of Finance to strictly comply with the Public Finance (Management) Act 1995 when approving funds that had not been appropriated in the Budget to be released.

Recipient

1. Minister for Finance
2. Secretary for the Department of Finance.

Reasons

- The APC Form is a mandatory requirement that qualifies for funds to be released from the Department of Finance to implement services provided by the Legal, Finance and Technical Advisors.
- The Head of the DoF approves that APC Form indicating that funds are available and that the Chairman of the CSTB endorsed the APC Form and a CSTB file number allocated indicating that a Contractor had been awarded the Contract.
- Dr Ken Ngangan failed to indicate on the APC Form where the funds to pay the Legal, Finance and Technical Advisors would be derived from.
- Dr Ken Ngangan approved the APC Form without Mr Philip Eludeme's endorsement indicating that a Contractor was awarded the Contract to provide Legal, Finance and Technical advisory services to the State.
- Therefore, the APC Form that was approved by Dr Ken Ngangan was null and void in the circumstances according to the fine print at the bottom of the APC Form that stated the following:
 1. This Authority to Pre Commit form does not become active until it has been registered and the APC No. has been allocated by the Department of Finance / Provincial Treasury.
 2. This Authority to Pre Commit is not valid until a Supply & Tenders Board file number is allocated.

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[5.7.5] RECOMMENDATION No. 5

The Ombudsman Commission recommends that Mr Dairi Vele, Secretary for Department of Treasury to strictly comply with the relevant laws governing the borrowing a Loan of such magnitude and advice the Government appropriately.

Recipient

1. Minister for Treasury
2. Secretary for the Department of Treasury
3. Governor of the Bank of Papua New Guinea.

Reasons

- The borrowing of the UBS AG loan was a new arrangement that required the Department responsible to comply with the Public Finance (Management) Act 1995 and the Attorney-General Act 1986.
- Since this was a new loan, it was the responsibility of the DoT to request the assistance of the BPNG to invite interested Financial Advisors and Lead Arrangngers to bid for the Contract to provide financial and technical advice in regard to this particular loan to purchase new Oil Search Ltd Shares.
- Mr Vele assumed that since Norton Rose Fulbright the Legal Advisors were retained by IPBC and already working on the IPIC Exchangeable Bond, it was

proper for Mr

Vele to engage them to provide legal services relating to the UBS AG loan.

- Amongst many roles and functions that the DJAG plays, one such function is to give clearance for State Departments and Agencies to engage Law Firms or private lawyers. In this case, Mr Vele failed to seek advice and clearance from the DJAG on the Brief-Out of legal services to private legal practitioners.
- Mr Vele should have engaged the assistance of the CSTB to conduct the procurement process and awarded the contract of providing Financial, Legal and Technical advice in relation to the securing of the UBS AG loan to purchase new Oil Search Ltd Shares to the best Bidder.
- Mr Vele approached the CSTB after he had already engaged the Legal, Financial and Technical Advisors and the Lender of the Loan. It was evident that the CSTB's role in this particular matter was to enable the issuance of the COI and to request the CSTB to apply the COI retrospectively.

Recommendations

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[5.7.6] RECOMMENDATION No. 6

The Ombudsman Commission recommends that Mr Dairi Vele, Acting Secretary for Department of Treasury be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Recipient

1. Minister for Treasury
2. Secretary for the Department of Treasury.

Reasons

- The borrowing of the UBS AG Loan was a new arrangement that required the DoT

to comply with relevant laws and regulations in the borrowing and facilitating the transaction to purchase the Oil Search Ltd shares.

- These laws; the constitutional requirements of Section 209 of the Constitution, the Public Finance (Management) Act 1995, the Attorney-General Act 1986, the Papua New Guinea Petroleum Company (Kroton) Act, PNG Fiscal Responsibilities Act 2006, Sections 2(3) of the Loans (Overseas Borrowing) (No.2) Act (Chapter 133A), Oaths, Affirmations and Statutory Declarations Act (Chapter 317) and the Finance Management Manual, should have been complied with by consulting the appropriate authorities.
- Mr Vele's ignorance of the laws and regulations was a deliberate act as he had already made up his mind to comply with the Prime Minister's directives.
- The State through the DoT, IPBC, Petromin Holdings Ltd and the Office of the GGPNG moved to attain the UBS AG loan to purchase shares in Oil Search Ltd, thereby securing the 10.1% of ownership of Oil Search Ltd.

[5.7.7] RECOMMENDATION No. 7

The Ombudsman Commission recommends that that the Chairman for the Central Supply & Tenders Board to strictly comply with the relevant laws governing the issuance of a Certificate of Inexpediency and its application.

Recipient

1. Minister for Finance
2. Secretary for the Department of Finance
3. Chairman for the Central Supply & Tenders Board
4. Secretary to the Board, Central Supply & Tenders Board.

Recommendations

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Reasons

- The issuance of the COI is regulated by the Public Finance (Management) Act 1995 and Finance Management Manual.
- There was no CSTB meeting to deliberate on whether the

application for a COI was relevant in this particular matter.

- There are four (4) specific situations that can only warrant the issuance of a COI and these are outlined below: these are outlined below:

- a. Natural Disaster, or
- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest.

- . A COI cannot be issued to retrospectively cover a contract already executed.

~ Mr Eludeme issued the COI and approve for its retrospective application in order for the DoT and DoF to raise cheque payments to those Legal, Finance and Technical Advisors that had rendered their services. After the payments were made, Mr Eludeme then ordered for the COI to be withdrawn.

[5.7.8] RECOMMENDATION No. 8

The Ombudsman Commission recommends that Mr Philip Eludeme, Chairman for the Central Supply & Tenders Board be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Recipient

1. Minister for Finance
2. Secretary for the Department of Finance
3. Chairman for the Central Supply & Tenders Board
4. Secretary to the Board, Central Supply & Tenders Board.

Reasons

- The issuance of the COI is governed and regulated by Sections 39 and 40 of the Public Finance (Management) Act 1995 and Clauses 13 and 14 of the Financial Management Manual. Finance (Management) Act 1995 and Clauses 13 and 14 of the Financial Management Manual.

- Mr Eludeme's conduct on the issuance of the COI to enable the DoF to release the funds to the DoT to pay service providers and then later withdraw the COI after the payments were made was improper and wrong.

Recommendations

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[5.7.9] RECOMMENDATION No. 9

The Ombudsman Commission recommends that Mr Wapu Sonk, the Managing Director for the then National Petroleum Company of Papua New Guinea (Kroton) Ltd and now Kumul Petroleum Holdings Limited be referred to the Ombudsman Commission to be investigated under the Leadership Code.

Recipients

1. Minister for Public Investment & State Enterprises
2. Secretary for the Department of Public Investment & State Enterprises
3. Chairman of Kumul Consolidated Holdings Limited Board
4. Managing Director for Kumul Consolidated Limited
5. Chairman of the Kumul Petroleum Holdings Limited Board
6. Managing Director for Kumul Petroleum Holdings Limited.

Reasons

- The NEC approved for IPBC to direct NPCP to direct GloCo to make payments to NPCP in order for NPCP to pay off the UBS AG loan.
- On 9 March 2014, Mr Erastus Kamburi, the Chief Legal Officer for IPBC, requested the IPBC Directors to meet and discuss the Circular Resolutions and Explanation and directives from Minister Micah and the NEC Decision No: 79/2014.
- On even date, the NPCP Special Board of Directors Meeting No: 02/2014 resolved that the Company enter into any Transaction Document to give effect to the Payment Direction and authorised Mr Sonk and Mr Wato with the Power of Attorney.
- Mr Sonk signed the Payment Deed and directed any distributions payable to NPCP from the PNG LNG proceeds to be paid to UBS AG (Singapore Branch), with full knowledge that the National Petroleum Company of Papua New Guinea (Kroton) Act was yet to be certified.
- This is not proper as NPCP's existence and involvement in the Loan transaction is

questionable as it is not legally established as the proposed Papua New Guinea Petroleum Company (Kroton) Act has not been certified by the Speaker of Parliament in order to be fully in force. Thus the involvement of NPCP in this whole process maybe improper.

- NPCP did not have a sound Balance Sheet to handle transaction of such magnitude.

Recommendations

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[5.7.10] RECOMMENDATION No. 10

The Ombudsman Commission recommends that Mr Carl Okuk be referred to the Papua New Guinea Law Society to be investigated.

Recipients

1. Minister for Finance
2. Secretary for the Department of Finance
3. Minister for Justice & Attorney-General
4. Secretary for the Department of Justice & Attorney-General
5. Mr Carl Okuk
6. Papua New Guinea Law Society.

Reasons

- Mr Vele engaged Mr Carl Okuk as a Legal Consultant for the DoT.
- Mr Carl Okuk acted as the Commissioner of Oath and witnessed the signing of all the legal documentations on the borrowing and the payments to be made to UBS AG and Contractors.
- However, it was established later that at that material time, Mr Okuk Lawyer was not registered with the Papua New Guinea Law Society.
- Therefore, the engagement of Mr Carl Okuk to witness the signing of all legal documents on the UBS AG Loan borrowing was improper.

[5.7.11] RECOMMENDATION No. 11

The Ombudsman Commission recommends that all future government borrowings and related documentations including memorandums of agreements and or memorandums of understanding are to be signed by all concerned parties in Papua New Guinea.

Recipients

1. All Government Bodies and Agencies.

Reasons

. The Departments and Agencies mentioned in this Report deliberately ignored the relevant sections of the Public Finance (Management) Act 1995 and Clauses within the

Recommendations

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Finance Management Manual dealing specifically with the procurement and tender of government sanctioned projects.

~ The UBS AG loan documentations were signed separately and not in one place with all the parties present. That is, Representatives of the GoPNG and the State signed the loan documentations here in Port Moresby and then sent copies of the same documents to Sydney, Australia where Representative of UBS AG signed.

~ The GGPNG and Mr Vele signed the Letter of Engagement witnessed by Mr Carl Okuk engaging UBS AG as Lead Arranger and Facilitator to facilitate the borrowing. Mr Carl Okuk signed as witness not in the presence of both GGPNG and Mr Vele. His conduct was not in compliance with Section 12A of the Oath, Affirmation and Statutory Declarations Act (Chapter 317). See page 246.

~ The UBS AG documentations were not included as part of the GGPNG's list or items to be executed on that day. The GGPNG himself was not fully aware of the procedures that were bypassed by Mr Vele to have the UBS AG loan documentations presented before him to approve and sign.

. After the GGPNG had signed the UBS AG loan documentations, Mr Vele sent the same documentations to Sydney, Australia. This act alone exposed and put to risk Papua New Guinea's independence and sovereignty.

. The Office of the State Solicitor was not a party to the signing and eventual engagement of UBS AG as sole Arranger and Facilitator for the State to borrow K3 Billion from UBS AG to purchase shares from Oil Search Ltd.

~ Neither the DoT or Mr Vele or Minister Micah wrote back to Mr Bakani and BPNG to advise that the State had decided to engage UBS AG. Hence, Mr Loi Bakani and BPNG were not aware that the State had engaged UBS AG to facilitate the borrowing and that UBS AG was to lend AU\$1.239 Billion to the State to purchase shares in Oil Search Ltd.

[5.7.12] RECOMMENDATION No. 12

The Ombudsman Commission recommends that the Secretary for the Department of Finance ensures that all Government Bodies and Agencies shall strictly comply with the Public Finance (Management) Act 1995 and Finance Management Manual when requesting and applying the Certificate of Inexpediency for the engagement of Contractors to implement Government sanctioned projects.

Recipients

1. All Government Bodies and Agencies.

Reasons

. Those Departments and Agencies mentioned in this Report deliberately ignored the relevant Sections of the Public Finance (Management) Act 1995 and Clauses within the Recommendations

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Finance Management Manual dealing specifically with the procurement and tender of government sanctioned projects.

. The Prime Minister committed the State to purchase 149,390,244 shares in Oil

Search Ltd prior to the NEC Policy Submission that was prepared by Mr Vele with assistance from the Technical, Finance and Legal Advisors.

. The NEC Policy Submission that requested the NEC to approve the issuance of the COI was misleading on several grounds, namely:

a) There was no situation present at that material time that warranted the issuance of the COI to award the contract to the Contractors and make facilitate payments.

b) The NEC can only deliberate and award contracts where the amount is K10 million and above. Any contract less than K10 million is delegated to the CSTB and other Supply Tenders Boards.

c) The COI cannot be applied retrospectively as it is a breach of the Public Finance (Management) Act 1995 and the Finance Management Manual

. The CSTB Chairman issued the COI that facilitated payments made to the Legal, Finance and Technical Advisors and to those who assisted in preparing a NEC Policy Submission.

[5.7.13] RECOMMENDATION No. 13

The Ombudsman Commission recommends that all Government Bodies and Agencies strictly comply with the Attorney-General Act 1986 and Lawyers Act 1986 when engaging private Lawyers and or Firms.

Recipients

1. Prime Minister
2. Minister for Treasury
3. Minister for Justice & Attorney-General
4. Minister for Public Enterprises & State Investments
5. Chief Secretary to the Government of Papua New Guinea
6. Secretary for the Department of the Prime Minister & National Executive Council
7. Secretary for the Department of Treasury
8. Secretary for the Department of Justice & Attorney-General
9. Secretary for the Department of Public Enterprises & State Investments
10. Office of the State Solicitor.

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Reasons

- . The UBS AG was a new loan arrangement that required new contracts to be awarded to legal advisors engaging them to provide legal advice to the State on the borrowing.

- . It was not proper for Mr Vele to have engaged Norton Rose Fulbright and other law firms who were already engaged by IPBC and working on the IPIC loan.

- . Mr Vele should have formally written to the DJAG to do a Brief-Out for the State to engage private Lawyers or Law Firms to act on behalf of the State.

6. CONCLUSION

Good and desirable governance of the public institutions as well as the nation is dependent upon good and sound management and decisions being made by those placed in responsible positions. Virtuous public officials and managers understand their roles and responsibilities and perform their duties within the ambit of the laws that governs their conduct. Public officials who are empowered by law to make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws.

Public officials must exercise due diligence, honesty and dedication in the work they are entrusted with. Inconsistency in decision making or non-compliance with relevant laws creates doubt in the minds of the public that the decision maker has been influenced by outside sources and forces not conducive to good governance and accountability. Professional negligence must be dealt with seriously.

Some characteristics of good governance necessary to eliminate bad administrative practices include honesty, diligence, consistency, competency, compliance with established laws and procedures, and standing up to political interference.

This Report highlights irregularities in the borrowing of the UBS AG Loan and payments made to the Contractors; Pacific Legal Group Lawyers, Pacific Capital Ltd, UBS AG, Ashurst Lawyers, Norton Rose Fulbright of Australia and KPMG to provide finance, legal and technical services to facilitate documentations on the borrowing. It also highlighted that the Department of Treasury failed to request a Brief-Out from

the Department of Justice & Attorney-General to engage private Lawyers or Legal Firms. It further highlighted the abuse of the Certificate of Inexpediency by the Central Supply & Tenders Board and the Department of Treasury.

The National Executive Council, the Office of the Prime Minister, Department of Treasury, the Department of Finance, the Central Supply & Tenders Board failed to live up to the expectation of the people and State in complying with the administrative processes and procedures and the Acts governing the operation of the Department.

The officers of the Department of Treasury are to take note of the findings and recommendations made in this Report and make special effort to correct the irregularities for the good of the Department and the people of Papua New Guinea.

The leaders to whom the Ombudsman Commission directs its recommendation are to carefully consider the recommendations and implement them.

MICHAEL DICK RICHARD PAGEN KEVIN KEPORE
CHIEF OMBUDSMAN OMBUDSMAN OMBUDSMAN

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December 2018
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7. APPENDIX

7.1 RELEVANT LAWS AND SPECIFIC PROVISIONS

[7.1.1] CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

26. APPLICATION OF DIVISION 2 – LEADERSHIP CODE

1. Personnel Staff of the Governor-General, the Ministers and the Leader and Deputy

Leader of the Opposition.

27. Responsibilities of Office

(1) A person to whom this Division applies has a duty to conduct himself in such a way,
both in his public or official life and his private life, and in his associations with other

persons, as not-

(a) to place himself in a position in which he has or could have a conflict of interests
or might be compromised when discharging his public or official duties; or

(b) to demean his office or position; or

(c) to allow his public or official integrity, or his personal integrity, to be called into question; or

(d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea.

(2) In particular, a person to whom this Division applies shall not use his office for personal gain or 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 he is carrying out or has carried out the duty imposed by Subsection (1).

(3) It is the further duty of a person to whom this Division applies-

(a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and

(b) if necessary, to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.

(4) The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (further provisions) may, subject to this Division and to any Organic Law

made for the purposes of this Division, give directions, either generally or in a

particular case, to ensure the attainment of the objects of this section.

(5) A person to whom this Division applies who—

(a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or

(b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),

is guilty of misconduct in office.

Section 209 of the Constitution sets out the responsibility of the Parliament

209. Parliamentary Responsibility

(1) Notwithstanding anything in this Constitution, the raising and expenditure of finance by the National Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament, and shall be regulated by an Act of the Parliament.

(2) For each fiscal year, there shall be a National Budget comprising—

(a) estimates of finance proposed to be raised and estimates of proposed expenditure by the National Government in respect of the fiscal year; and

(b) separate appropriations for the service of that year in respect of—

(i) the services of the Parliament; and

(ii) general public services; and

(i) the services of the Judiciary; and

such other supplementary Budgets and appropriations as are necessary.

(2A) For the purposes of this Subdivision—

(a) —the services of the Parliamentll include the salaries and allowances (financial and otherwise) of the Members of Parliament, the maintenance of the precincts

of the Parliament, and the Parliamentary Service established under the

Parliamentary Service Act 1995; and

(b) –the services of the Judiciaryll include–

(i) the salaries and allowances (financial and otherwise) of Judges of the Supreme and National Courts; and

(ii) the maintenance of the Supreme and National courts; and

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(iii) the National Judicial Staff Service established under the National Judicial Staff Service Act 1987; and

(iv) the salaries and allowances (financial and otherwise) of all persons appointed under the Supreme Court Act 1975, the National Court Act 1975 and the Sheriff Act 1973.

(2B) For the purposes of Subsection (2)(b)(i) and (iii), the Speaker of the Parliament and the Chief Justice respectively shall, before 30 September each year, submit to the Prime Minister estimates of expenditure for the services of the Parliament and the services of the Judiciary respectively in the following fiscal year.

(3) Before any Budget or appropriation is prepared for submission to the Parliament, the NEC shall consult with any appropriate Permanent Parliamentary Committee, but this subsection does not confer any right or impose any duty of consultation after the initial stages of the preparation of the Budget or appropriation.

Sections 211 and 212 of the Constitution sets out the accounting requirements of public moneys.

211. Accounting, etc., for public moneys.

(1) All moneys of or under the control of the National Government for public expenditure and the Parliament and the Judiciary for their respective services, shall be dealt with and properly accounted for in accordance with law.

(2) No moneys of or under the control of the National Government for

public expenditure
or the Parliament and the Judiciary for their respective
services, shall be expended
except as provided by this Constitution or by or under an Act of
the Parliament.

212. Revenue and expenditure without prior approval.

(1) If at the beginning of a fiscal year the Parliament has not made
provision for public
expenditure by the National Executive or expenditure by the
Parliament or the
Judiciary for their respective services for that year, the
National Executive, the
Parliament or the Judiciary, as the case maybe, may, without
authorization other than
this section but in accordance with an Act of the Parliament,
expend amounts
appropriated out of the Consolidated Revenue Fund for the purpose
not exceeding in
total one-third of its respective budgeted expenditure during the
immediately
preceding fiscal year.

(2) The authority conferred by Subsection (1) lapses when the
Parliament has made
provision for the public expenditure for the fiscal year in
question, and any amounts
expended by virtue of that subsection are a charge against the
expenditure so
provided for and shall be properly brought to account
accordingly.

Sections 217, 218 and 219 of the Constitution established that
Ombudsman Commission sets
out its purpose and functions.

217 The Ombudsman Commission

(1) There shall be an Ombudsman Commission, consisting of a Chief
Ombudsman and
two Ombudsmen.

(5) In the performance of its functions under Section 219 (functions
of the Commission)
the Commission is not subject to direction or control by any
person or authority.

(6) The proceedings of the Commission are not subject to review in

any way, except by
the Supreme Court or the National Court on the ground that it has
exceeded its
jurisdiction.

(7) An Organic Law shall make further provision in respect of the
appointment, powers,
procedures and immunity of the Commission.

(8) In this section –conductll includes–

(a) any action or inaction relating to a matter of
administration; and

(b) any alleged action or inaction relating to a matter of
administration.

218 Purpose of the Commission

The purposes of the establishment of the Ombudsman Commission are–

(a) to ensure that all governmental bodies are responsive to the
needs and
aspirations of the People; and

(b) to help in the improvement of the work of governmental
bodies and the
elimination of unfairness and discrimination by them; and

(c) to help in the elimination of unfair or otherwise defective
legislation and
practices affecting or administered by governmental bodies.

219 Functions of the Commission

(1) Subject to this section and to any Organic Law made for the
purposes of
Subsection (7), the functions of the Ombudsman Commission are–

(a) to investigate, on its own initiative or on complaint by a
person affected,
any conduct on the part of–

(i) any State Service or provincial service, or a member of
any such
service; or

(ii) any other governmental body, or an officer or employee of
a
governmental body.

(2) Subject to Subsections (3), (4) and (5), and without otherwise
limiting the generality
of the expression, for the purposes of Subsection (1)(a) conduct

is wrong if it is-

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (d) based wholly or partly on a mistake of law or of fact; or
- (e) conduct for which reasons should be given but were not,

Section 255 of the Constitution sets the procedures that lead to the proper decision making.

255. Consultation

In principle, where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.

[7.1.2] ORGANIC LAW ON THE OMBUDSMAN COMMISSION

13. Functions of the Commission

For the purposes of Section 219(1)(a) (functions of the Commission) of the Constitution the functions of the Commission, in addition to the functions specified in Section 219(1)(b), (c), (d) and (e) (functions of the Commission) of the Constitution, are to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of-

- (a) any State Service or a member of any State Service; or
- (b) any governmental body, or an officer or employee of a governmental body; or
- (c) any other service or body referred to in Section 219(a) (functions of the Commission) of the Constitution that the Head of State, acting with, and in accordance with, the advice of the NEC, by notice in the National Gazette,

declares to be a service or body for the purposes of this section.

17. Proceedings of the Commission

(1) Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.

(4) Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that—

(a) where a report of the Commission may affect a State Service, provincial government body or statutory body, the Commission shall provide reasonable opportunity for the Permanent Head of that service or the statutory head of that body, as the case may be, to comment on the subject of the investigation; and

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(b) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without—

(i) providing him with reasonable opportunity of being heard; and

(ii) fairly setting out his defence in its report.

18. Evidence

(1) Subject to the provisions of this section and of Section 20, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.

(3) The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter that is being investigated by the

Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation.

21. Preservation of secrecy

(1) The Commission may direct that any evidence given before it, or any document, paper or thing produced to it, be not published.

[7.1.3] ATTORNEY-GENERAL ACT 1989

The Attorney-General Act 1989 is an Act of Parliament that outlines the roles and functions of the Attorney-General.

8. Legal advice and opinion

(4) On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.

[7.1.4] CENTRAL BANKING ACT 2000

The Central Banking Act 2000 is an Act of Parliament that promotes the implementation of monetary policy and financial regulation and prudent standards to ensure stability of the financial system in the country.

7. Objectives of the Central Bank

For the advantage of the people of Papua New Guinea, the objectives of the Central Bank are:

(a) to formulate and implement monetary policy with a view to achieving and maintaining price stability; and

(b) to formulate financial regulation and prudential standards to ensure stability of

the financial system in Papua New Guinea; and

(c) to promote an efficient national and international payments system; and

(d) subject to the above, to promote macro-economic stability and economic growth in Papua New Guinea.

8. Functions of the Central Bank

(1) In pursuance of its objectives the Central Bank may:

(a) issue currency; and

(b) act as banker and financial agent to the Government; and

(c) regulate banking, credit and other financial services as empowered by this Act or by any other law of the Independent State of Papua New Guinea; and

(d) manage the gold, foreign exchange and other international reserves of Papua New Guinea; and

(e) perform any function conferred on it by or under any international agreement to which Papua New Guinea is a party; and

(f) perform any other function conferred on it by or under any other law of Papua New Guinea.

(2) The Central Bank shall advise the Minister as soon as practicable where it considers that a body regulated by the Central Bank is in financial difficulty.

[7.1.5] LOANS (OVERSEAS BORROWING) ACT (CHAPTER 133)

The Loans (Overseas Borrowing) Act (Chapter 133) is an Act of Parliament that promotes the economic and financial transparency and accountability in the interest of a stable macroeconomic environment.

2. General Borrowing Powers.

(1) The Head of State, acting on advice, may, on behalf of the State, borrow from or through overseas financial institutions, in such manner and on such terms and conditions as are agreed on by the Head of State, acting on

advice, and the
institutions, sums not exceeding in total the sum of
K65,000,000.00 or the equivalent
in other currencies, for the purposes of—

(a) meeting the expenses of borrowing; and

(b) works and services of the Government; and

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(c) making loans to—

the
(i) the Papua New Guinea Harbours Board for the purposes of
Board;

the
(ii) the National Housing Corporation for the purposes of
Corporation; or

the
(iii) the Rural Development Bank of Papua New Guinea for
purposes of the Bank; or

purposes
(iv) the Investment Corporation of Papua New Guinea for the
of the Corporation.

(2) Any sum borrowed under Subsection (1) shall be applied only in
accordance with the
loan agreement with such modifications (if any) as are agreed on
by the Head of State,
acting on advice, and the institution concerned.

(3) A loan agreement shall be made in the name of the State and be
executed on behalf of
the State by the Minister or a person authorized by the Minister
for the purpose.

(4) As soon as practicable after the execution of a loan agreement,
the Minister shall cause
a copy of the agreement to be laid before the Parliament for its
information.

(5) Nothing in this section or in a loan agreement constitutes an
appropriation of the
proceeds of a loan.

3. Issue of Instruments (Including Bonds) Under Loan Agreements.

(1) Notwithstanding anything in any other law, the Head of State,
acting on advice, may,
on behalf of the State, issue such bonds, promissory notes and

other instruments, and
on such terms and conditions, as are necessary or convenient for
the purpose of giving
effect to the terms of a loan agreement.

(2) A bond, promissory note or instrument issued under Subsection
(1) shall be executed
on behalf of the State by the Minister or a person authorized by
the Minister for the
purpose.

4. Moneys For Repayment of Loans.

All payments of principal and interest and other charges payable
under a loan agreement
shall be made out of the Consolidated Revenue Fund.

1. Effect of Agreements.

A loan agreement entered into under this Act has the force of law as
if contained in this Act,
and applies notwithstanding anything in any other law.

6. Exemptions From Taxation, etc.

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Notwithstanding anything in any other law, where a loan agreement
provides that any
person, income, matter or thing shall be exempt, wholly or partly,
and absolutely or
conditionally, from any rate, charge, tax, duty, levy, fee or
imposition under any law, the
person, income, matter or thing is exempt accordingly.

7. Operation of Certain Acts.

(1) Subject to Subsection (2), nothing in the Loans Securities Act
1960 applies to or
affects this Act or any agreement entered into under this Act.

(2) Part VI of the Loans Securities Act 1960 applies to and in
relation to all sums
borrowed under this Act.

(3) Nothing in the Public Finances (Management) Act 1995 applies to
or in respect of a
loan agreement made under this Act.

(4) Nothing in this Act affects the operation of the Loans and
Assistance (International
Agencies) Act 1971.

8. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[7.1.6] LOANS (OVERSEAS BORROWINGS) (No.2) ACT (CHAPTER 133A)

2. General Borrowing Powers.

(1) The Head of State, acting on advice, may, on behalf of the State, borrow from or through overseas financial institutions, in such manner and on such terms and

conditions as are agreed on by the Head of State, acting on advice, and the

institutions, sums not exceeding in total the sum of K65,000,000.00 or the equivalent

in other currencies, for the purposes of—

(a) meeting the expenses of borrowing; and

(b) works and services of the Government; and

(c) making loans to—

(i) the Papua New Guinea Harbours Board for the purposes of the Board;

(ii) the National Housing Corporation for the purposes of the Corporation;

or

(i) the Rural Development Bank of Papua New Guinea for the purposes of the Bank; or

(ii) the Investment Corporation of Papua New Guinea for the purposes of the Corporation.

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(iii) The Post and Telecommunication Corporation for the purposes of the Corporation; and

(iv) Any other prescribed public authorities for prescribed purposes.

(2) The Minister may, on behalf of the State, borrow from or through overseas financial

institutions, in such manner and on such terms and conditions as are agreed by the

Minister and the institutions, sums for the purpose of—

(a) refinancing, swapping debt, substituting, replacing, rescheduling and prepaying the total or any portion of any debt owed by the State; or

(b) bridge financing, provided such borrowing shall not remain outstanding for more than six months.

(3) The sums which may be borrowed under Subsection (1) shall be such that the total value of overseas commercial debt which will be owed by the State after any borrowing shall not exceed 125% of the estimated internal revenue for the year in which the borrowing takes place except only as a result of any bridge financing and subject to Subsection 2(b).

(4) For the purposes of Subsection (3)—

—ordinary revenue¹ includes revenue from taxes, levies, duties, fees, rents and royalties

and also from profits and income from any investment or undertaking of the State, but

does not include any loans, grants or other forms of external aid or any capital raised;

—overseas commercial debt² means sums owed by the State in respect of borrowings

under—

(a) Loans (Overseas Borrowings) Act 1973; and

(b) this Act; and

—year in which the borrowing takes place³ means the financial year in which the sums borrowed are received.

(5) Any sum borrowed under Subsection (1) shall be applied only in accordance with the loan agreement, with such modifications (if any) as are agreed on by the Head of State, acting on advice, and the institution concerned.

(6) Any sum borrowed under Subsection (2) shall be applied only in accordance with the loan agreement, with such modifications (if any) as are agreed on by the Minister and the institution concerned.

(7) A loan agreement shall be made in the name of the State and be executed on behalf of the State by the Minister or a person authorized in writing by the

Minister.

(8) As soon as practicable after the execution of a loan agreement, the Minister shall cause
a copy of the agreement to be laid before the Parliament for its information.

(9) Nothing in this section or in a loan agreement constitutes an appropriation of the
proceeds of a loan.

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(10) A loan made by the State under Subsection (1)(d) shall be made in accordance with
the terms and conditions agreed by the Minister, on behalf of the State, and the public
authority to whom the loan is being made and contained in a written agreement
executed on behalf of the State by the Minister or a person authorized in writing by
the Minister for the purpose.

(11) The Minister may direct that the provisions of Sections 13 and 14 of the Public
Finances (Management) Act 1995 do not apply to any sums borrowed under
Subsection (1) or (2).

3. Power to Issue Instruments (Including Bonds) Under Loan Agreements.

(1) Notwithstanding anything in any other law, the Head of State, acting on advice, may,
on behalf of the State, issue such bonds, promissory notes and other instruments, and
on such terms and conditions, as are necessary or convenient for the purpose of giving
effect to the terms of a loan agreement.

(2) A bond, promissory note or instrument, issued under Subsection (1), shall be executed
on behalf of the State by the Minister or a person authorized by the Minister for the
purpose.

4. Moneys for Repayment of Loans.

All payments of principal and interest and other charges payable under a loan agreement
shall be made out of the Consolidated Revenue Fund.

5. Effect of Agreements.

A loan agreement entered into under this Act has the force of law as if contained in this Act, and applies notwithstanding anything in any other law.

6. Exemptions from Taxation, etc.

Notwithstanding anything in any other law, where a loan agreement provides that any person, income, matter or thing shall be exempt, wholly or partly and absolutely or conditionally, from any rate, charge, tax, duty, levy, fee or imposition under any law, the person, income, matter or thing is exempt accordingly.

7. Operation of Certain Acts.

(1) Subject to Subsection (2), nothing in the Loans Securities Act 1960 applies to or affects this Act or any agreement entered into under this Act.

(2) Part VI of the Loans Securities Act 1960 applies to and in relation to all sums borrowed under this Act.

(3) Nothing in this Act affects the operation of the Loans and Assistance (International Agencies) Act 1971 or the Loans (Overseas Borrowings) Act 1973.

8. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[7.1.7] OFFICIAL PERSONNEL STAFF ACT (CHAPTER 383)

2. Personal Staff.

(1) Subject to this Act, each Member of Parliament is entitled to personal staff.

(2) The entitlement of a Member of Parliament under Subsection (1) is in addition to any entitlement to official personal staff which the Member may have under the Official Personal Staff Act 1980.

(3) The Salaries and Remuneration Commission shall determine the number of personal staff which each Member may have.

(4) A determination under Subsection (3) may be by reference to a fixed number or by reference to a ceiling fortnightly amount of salary available for personal staff.

[7.1.8] PAPUA NEW GUINEA FISCAL RESPONSIBILITY ACT 2006

The Papua New Guinea Fiscal Responsibility Act 2006, been an Act of Parliament that promotes the economic and financial transparency and accountability in the interest of a stable macroeconomic environment.

4. Principles for sound fiscal management

The principles for the sound fiscal management and implementation of the Government's Budgets are that:

(c) Government will not raise the overall level of debt during its term;

[7.1.9] INDEPENDENT PUBLIC BUSINESS CORPORATION OF PAPUA NEW GUINEA ACT 2002

59. Political Influence

(1) No Minister, member of the National Parliament or any member of a Provincial or Local-level Government may seek to direct or influence the exercise by a Director of his or her duties, powers or judgments or any Board decision other than through a written communication that is tabled concurrently in the National Parliament if it is in session or otherwise with the Speaker of the National Parliament (who shall table any such communications in the National Parliament at the next opportunity).

(3) A Director who receives any representations made by or on behalf of such persons shall record the fact of, and the content of, such representations at the next Board meeting and table copies of any written communications containing such representations at the Board meeting and with the Speaker of the National Parliament within seven days of receipt.

[7.1.10] PETROLEUM PNG HOLDINGS LIMITED AUTHORIZATION ACT 2007

4. Establishment and Operation of the Company

(a) to acquire from the State and from others, whether directly or as a nominee of the State, interests in mining and petroleum projects in Papua New Guinea;

(b) to engage in mineral and petroleum exploration, evaluation and development and the production and recovery of any naturally occurring minerals and petroleum, whether in solid, liquid, or gaseous form or mixed together or with other material and substances, and to process, sell, or otherwise dispose of the same;

(c) to engage in and carry on, in all means, transportation, in Papua New Guinea and any part of the world, of mineral and petroleum or their derivatives whether in solid, liquid, gaseous or mixed together, or with other substances, and to sell or dispose of the same.

[7.1.11] COMPANIES ACT 1997

110. Major Transactions

(1) A company shall not enter into a major transaction unless the transaction is—

- (a) approved by special resolution; or
- (b) contingent on approval by special resolution.

(2) In this section—

—assets^{ll} includes property of any kind, whether tangible or intangible;

—major transaction^{ll}, in relation to a company, means—

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the assets of the company before the acquisition; or

(b) the disposition of, or an agreement to dispose of, whether contingent or not,
assets of the company the value of which is more than half the value of the
assets of the company before the disposition; or

(c) a transaction which has or is likely to have the effect of the company acquiring
rights or interests or incurring obligations or liabilities the value of which is
more than half the value of the assets of the company before the transaction.

(3) Nothing in Paragraph (c) of the definition of the term –major transactionll in
Subsection (2) applies by reason only of the company giving, or entering into an
agreement to give, a floating charge secured over the assets of the company the value
of which is more than half the value of the assets of the company for the purpose of
securing the repayment of money or the performance of an obligation.

(4) Nothing in this section applies to a major transaction entered into by a receiver
appointed pursuant to an instrument creating a charge over all or substantially all of
the property of a company.

[7.1.12] LAWYERS ACT 1986

PART IV.–PRACTISING CERTIFICATES

35. Requirement to hold a practising certificate

(1) A person shall not practise as a lawyer unless–

(a) he has signed the Roll; and

(b) he is the holder of a current restricted or unrestricted practising certificate.

(2) A person who practises as a lawyer contrary to the provisions of Subsection (1) is
guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

108. Lawyer to be Commissioner for Oaths.

For the purposes of the Oaths, Affirmations and Statutory Declarations Act (Chapter 317), every lawyer admitted to practise in the country is, by this Act, appointed a Commissioner for Oaths.

[7.1.13] OATHS, AFFIRMATIONS AND STATUTORY DECLARATIONS ACT
(CHAPTER 317)

12A. Commissioner for oaths appointed under Lawyers Act 1986

Notwithstanding Section 108 of the Lawyers Act 1986, a lawyer shall not perform the duties of a Commissioner for Oaths unless he is the holder of a current practising certificate issued under the Lawyers Act 1986.

[7.1.14] PUBLIC FINANCE (MANAGEMENT) ACT 1995

The Public Finance (Management) Act 1995 stipulates roles and responsibilities of finance accountable officers, the safe control of public funds and the procedures and processes governing the Central Supply & Tenders Board. Following are relevant Sections of the Act:

5. Responsibilities of Heads of Departments.

(1) Each Departmental Head is responsible for ensuring that, in relation to the Department of which he is Head—

(d) all expenditure is properly authorized and applied to the purposes for which it is appropriated.

29. Warrants for issue and expenditure of public moneys.

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(1) The Minister may, by warrant, authorize the Departmental Head of the Department responsible for financial management to issue warrant authorities authorizing the expenditure of moneys from the Consolidated Revenue Fund for the purpose for which those moneys were appropriated or charged or were deemed to have been appropriated or charged.

(2) A warrant issued under Subsection (1) may limit the amount of

moneys to be
expended from the Fund if, in the opinion of the Minister,
financial exigencies or the
public interest so require.

39. Central Supply and Tenders Board.

(1) The Central Supply and Tenders Board is hereby established to
control and
regulate—

(a) the purchase and disposal of property and stores; and

other than those in relation to which specialized Supply and
Tenders Boards
have been established under Section 39A, for and on behalf of
the State.

(2) In the exercise of its powers under Subsection (1), the Central
Supply and Tenders
Board may—

(a) invite a tender for any amount; and

(b) enter into a contract for any amount up to K10,000,000.00,
for and on behalf of
the State.

for and on behalf of the State.

40. Tenders for property, stores, works and services.

(3) The preceding provisions of this section do not apply to the
purchase or
disposal of property or stores or the supply of works and
services—

(b) in respect of which a Board certifies that the inviting of
tenders is
impracticable or inexpedient; or

(c) where, in individual transactions involving amounts not
exceeding
K500,000.00, the Minister in his discretion considers that
there is a natural
disaster or it is not expedient or proper to call public
tenders and, prior to the
goods or services being provided, by certificate in writing
narrates these
circumstances and waives the provisions of this section;

42. Consideration of tenders.

(1) Where under this Part tenders have been invited, the Secretary

of the Board

concerned shall, as soon as possible after the closing date for the receipt of tenders,

prepare for the Chairman details in schedule form of the tenders received for

presentation to the Board at the meeting at which the tenders are to be considered.

(2) The Board shall co-opt, or seek the advice of, persons with specialized knowledge to

assist the Board in its consideration of tenders received.

(3) The Board shall consider a tender in the light of conditions of tender and the

specifications and plans (if any) of the matter or thing in respect of which tenders

were invited and shall apply to the consideration of all tenders the criteria supplied

by the Minister.

(4) Any representations by a tenderer to amend his tender after the closing time for

tenders shall be immediately reported to the Board.

(5) In examining a tender, the Board shall give consideration to the capacity, experience,

integrity, financial status and past performance of the tenderer and such other

matters as it thinks relevant.

(6) Where—

(a) the amount of the most cost-effective tender—

(i) exceeds the upper limit of authority of the Board specified under

Section 39(2)(a); and

the Chairman of the Board shall refer that tender to the Small Contracts Award

Board to be dealt with in accordance with Section 43.

(8) Where, in the opinion of the Board, it is in the best interests of the State to do so, the

Board may, subject to directions issued by the Minister under Section 39—

(a) where the amount of the tender does not exceed the prescribed amount—

- (i) accept a tender; and
- (ii) reject all other tenders,

and the reasons for the acceptance and rejection shall be detailed in the minutes of the meeting of the Board; and

(b) where the amount of the tender exceeds the prescribed amount recommend to the Minister responsible—

- (i) the acceptance of the tender; and
- (ii) the rejection of all other tenders,

and the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board.

(9) Where a Minister receives a recommendation from a Board under Subsection (8)(b), he shall submit to the NEC the recommendation together with particulars of other tenders received and the NEC shall decide which tender shall be accepted.

(10) Where, after consideration of the tenders—
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(d) where the amount of a tender exceeds the prescribed amount, the Board shall recommend to the Minister responsible the acceptance of a satisfactory tender except that the Board may, in its discretion and to ensure as far as practicable a fair division of business within an area, where it is satisfied that the action is warranted, recommend to the Minister responsible the division of acceptance between two or more of the satisfactory tenders, and in any such case the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board and in the recommendation.

(11) Where a Minister receives a recommendation under Subsection (10)(d), he shall submit to the NEC the recommendation together with particulars of all tenders received and the NEC shall decide which tender or tenders shall be accepted.

47B. Authority to Pre-commit Expenditure

(1) The Departmental Head of the Department responsible for financial management may issue to a Departmental Head an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services where the Departmental Head of the Department responsible for financial management is satisfied that—

(a) in the case of proposed expenditure exceeding K100,000.00—

(i) the provisions of this Part have been complied with in relation to the purchase or supply; and

(ii) funds will be available to meet the proposed schedule of payments for the purchase or supply; and

(2) An Authority to Pre-commit Expenditure under Subsection (1) shall specify—

(a) the purchase of property or stores or the supply of goods or services to which it relates; and

(b) the maximum amount to which the Authority extends.

(3) Subject to Subsection (4), an Authority to Pre-commit expenditure under Subsection

(1) authorizes the execution, in accordance with and subject to compliance with the procedures specified in this Part, of a contract for the purchase of property or stores or for the supply of goods and services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.

(5) A contract under Section 47 shall not be entered into unless—

(a) an Authority to Pre-commit Expenditure under Subsection (1) relating to the contract has been issued; and

(b) all other requirements of this Part relating to the contract have been complied with.

47C. Certain contracts null and void

(1) In this section—

—Authority to Pre-commit Expenditure^{ell} means an Authority to Pre-commit Expenditure issued under Section 47B;

—Integrated Local Purchase Order and Chain (ILOC)^{ll} means Financial Form 4A— Integrated Local Purchase Order and Claim issued in accordance with the Financial Instructions.

(2) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the State, in respect of which purchase of supply no Authority to Pre-commit Expenditure has been issued or no Integrated Local Purchase Order and Claim has been issued, is null and void.

(3) The provisions of this section apply in respect of contracts entered into, or purported to have been entered into, or purported to have been entered into, by or on behalf of the State, on or after 1 March 2003.

47h. Claim against State not enforceable in certain circumstances.

(1) In this section—

—Authority to Pre-commit Expenditure^{ell} means an Authority to Pre-commit Expenditure issued under Section 47B;

—Integrated Local Purchase Order or Claim (ILPOC)^{ll} means Finance Form 4A— Integrated Local Purchase Order or Claim issued in accordance with the Financial Instructions.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the State shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces—

(a) an Integrated Local Purchase Order or Claim (ILPOC); or

(b) an Authority to Pre-commit Expenditure, relating to the

property or stores or
goods or services, the subject of the claim, to the full
amount of the claim.

(3) The provisions of this section apply where the property or
stores were purported sold
to the State or the goods or services were purportedly supplied
to the State on or after
1 March 2003.

[7.1.15] THE FINANCE MANAGEMENT MANUAL

PART 11 – PROCUREMENT – FRAMEWORK AND PRINCIPLES
DIVISION 1 – FUNDAMENTAL PRINCIPLES

1. The five fundamental principles in the GoPNG procurement system
are:

- a. Value for money,
- b. Transparency,
- c. Effective competition,
- d. Fair and ethical dealing,
- e. Efficiency and Effectiveness.

These principles are explained below.

2. Value for Money

Value for money involves obtaining goods and services that best meet
the government's
need at the lowest total cost. The main objective of GoPNG
procurement is to obtain –value
for moneyll in the acquisition of goods and services using ethical,
transparent processes
whilst promoting open and effective competition. All decision makers
in the procurement
process must satisfy themselves that a proposed contract will make
effective use of
taxpayers or donor agency funds.

3. Transparency:

Transparency involves the clear and public documentation of procurement processes and decisions. All processes used and decisions made should be able to withstand independent review and scrutiny. It is the responsibility of all GoPNG staff involved in procurements to act in a transparent manner.

4. Effective Competition:

Effective competition is a key operating principle that must be applied if –value for money is to be achieved. Competition that is effective will see a number of independent companies bidding to provide goods and services to the GoPNG, through the procurement process. Creating effective competition involves publicly requesting tenders and quotes from suppliers, providing timely and adequate information to suppliers, and ensuring that new entrants and small suppliers are able to participate.

5. Fair and Ethical Dealing:

The GoPNG in spending taxpayers and donor agency money has a special responsibility to avoid waste, act honestly and impartially, and be accountable for procurement actions. The central principles underpinning fair and ethical dealing include:

- a. Treating potential and existing suppliers with equality and fairness
- b. Not seeking personal or family gain
- c. Treating suppliers and potential suppliers information with respect and confidentiality;
- d. Where conflict of interest occurs, it must be declared.

It is important not only that all staff involved in major procurements follow these principles; but also that they be seen at all times to follow these principles. Failure to do so undermines the credibility of the whole GoPNG procurement process.

6. Efficient and Effective Operation:

The principle of efficient and effective procurement requires procurement staff to use

procurement processes that are commensurate with the amount of monies being spent. For example, it would not be efficient or effective to run a public tender for expenditure of K5,000. The overhead cost of running a public tender is substantial, and such a small purchase would not be able to justify the expense of the procurement process. Appropriate processes for different levels of expenditure are laid down in Part 11, Division 2 of these instructions.

DIVISION 2 – PROCUREMENT DEFINITION and PROCESSES

7. Procurement is defined as a process undertaken by the Government in order to obtain goods, works or services. As such, procurement includes all minor purchases, major purchases, hire purchases, rentals and leases.

8. The procurement processes to be used are determined by the value (in kina), of the procurement. The categories of expenditure by value are:

- a. Minor Procurements – less than K500,000, and
- b. Major Procurements – greater than or equal to K500,000.

This is summarised in the table below.

Procurement Value	Classification	Process	Detailed Reference
< K500,000	Minor	Quotes	Part 12
>= K500,000	Major	Public Tender	Part 13

9. When considering whether a procurement is –major or –minor, the total amount of monies to be paid to a supplier over the life of the contract must be established.

10. Major procurements generally occur through a public tender process – Part 13 provides specific details of processes available for major procurements.

11. Minor procurements occur by obtaining quotes – Part 12 provides specific detail of these procurement processes.

12. The fundamental principles of procurement are to be adhered to, irrespective of whether the procurement is major or minor.

13. Procurement processes result in the formation of a contract between the GoPNG and a Contractor. A contract is an exchange of a conditional agreement between GoPNG and a Contractor, which once executed is a legally enforceable

agreement in law.

14. For clarity, contractors, suppliers and Consultants are simply referred to in Parts 11, 12, 13, 14, 15as =Contractors'.

15. No express or implied contract can be entered into or purchase order raised without following the prescribed financial procedures for purchase of goods and services, or capital works or for disposal of Government assets; as outlined in Parts 11, 12, 13, 14 and 15 of this Manual.

16. For the following expenditures, the additional special procedures (Part 13 of this Manual) will apply:

- a. Official overseas travel
- b. Air Charters (including helicopter charters)
- c. Engaging of Consultants
- d. Official Entertainment Expenses

Approval by a special committee does not dispense with the need to use the appropriate procurement (major or minor) process, based upon the amount of the expenditure.

DIVISION 3 – LINKAGE BETWEEN FINANCIAL MANAGEMENT PROCESSES AND PROCUREMENT PROCESSES

17. Procurement activities are governed by the Public Finances Management Act, Regulations, and Financial Instructions. Procurement processes necessarily interlace with financial management processes such as budgeting, commitment of funds, and management of expenditure.

18. The specific linkages between the Financial Management System, and Procurement processes are detailed for Major Procurements in Part 13, and for Minor Procurements in Part 12.

DIVISION 4 – OTHER REQUIREMENTS

19. Splitting Contracts: No attempt must be made to circumvent or by-pass the limits on the powers given under the Public Finance Management Act or other limits laid down

in this Manual by splitting contracts, requisitions or purchase orders.

20. Existing Contracts: Responsible Officers must satisfy themselves before purchasing, that no current contract exists for the particular item they require.

21. Forward Planning: Purchases of goods and services (including Works) must be planned well in advance especially where purchases require a long lead-time. Since Parliamentary appropriations are annual, contracts should be planned in a timely manner, and orders for purchases raised in time so that payments are made as far as possible before the close of the year.

22. Contracts Spanning Fiscal Years: Departments must ensure that, where contracts span more than 1 fiscal year, appropriations are made for each fiscal year. This requirement is fully outlined in Part 13, Attachment 1.

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23. Mandated Government Suppliers: For printing or mapping needs, the appropriate specialist Government agency such as Government Printing Office, or National Mapping Bureau must be used.

24. Purchase from other Government Agencies: All purchases where the goods, services or works are to be provided by one government agency to another, are exempt from tender procedures under Section 40 (3) and (4) of the Act.

25. Commitment Control:

a. The procedure for obtaining the Section 32 officer's approval and maintaining control over funds allocated through Cash Fund Certificates is outlined in Part 7 of this Manual.

b. All purchase orders must be pre-committed using the appropriate accounting system (PGAS) and raised under the authorised Financial Delegate's signature. The Departmental Head who appoints the Financial Delegate can sign the purchase orders or other Finance Forms in the place of Financial Delegates notwithstanding the issue

of Cash Fund Certificates, after following the prescribed commitment procedure.

- c. All major procurements must be pre-committed using the process outlined in Part 13, Attachment 1.

PART 13 – MAJOR PROCUREMENTS – (COSTING K500,000 AND ABOVE)

DIVISION 1 – PROCUREMENT THROUGH SUPPLY AND TENDERS BOARDS

- 1. All procurements of K500,000 or more are to be conducted through the relevant Supply and Tenders Board. A list of these Boards, their purpose, membership, and powers is provided in Part 14.

DIVISION 2 – AVAILABLE PROCUREMENT PROCESSES

- 2. Public Tenders to be Used:

Section 40 of the Public Finances (Management) Act prescribes that goods, works and services with a value greater than K500,000 are to be purchased through a public tender process as the public tender process provides government with the best chance of obtaining a –value for money|| outcome.

- 3. Public tenders involve the widespread advertising of opportunities to supply the government with the goods or services required. They promote competition. This differentiates them from selective tenders, expressions of interest and other procurement mechanisms.

- 4. Selective tenders are NOT allowed as they restrict the level of competition.

- a. Expressions of Interest (EoI's) may be used to provide market research, but are not an acceptable procurement process in themselves, and must be followed up with one of the available procurement processes (eg public tender). Contractors cannot be short listed through the use of EoI's.

- 5. The processes available for procurement must also be used for the disposal of items no

longer required by government.

6. In circumstances where a Supply and Tenders Board issues a
-Certificate of
Inexpediency, the public tendering process will not apply. A
-Certificate of
Inexpediency may only be issued in exceptional circumstances as
outlined in Division
4 of Part 13.

7. International Financing Arrangements:

In circumstances where the terms of an agreement with an
international organisation
under which the Government of PNG is to receive monies, make
specific provision for
the manner in which tenders will be invited for contracts
performed as a result of the
agreement, other procurement processes may be used. However, in
order to maximise
the extent to which -value for money is obtained, all efforts
should be made to ensure
that the public tendering process is specified as the appropriate
procurement process
when drafting such international agreements.

DIVISION 3 – PUBLIC TENDERING PROCESS

8. The key responsibilities in the public tendering process are outlined in the diagram below:

Key Responsibilities in the Public Tendering Process

Establish the Need for
Goods, Works or Services

Develop Specification and
Bid Documents and costs
estimates

Obtain an Authority to
Pre-Commit

Issue Bid Documents to
prospective Suppliers

Analyse Tenders

Write Report	Consider
Recommending a	Recommendation Report
Supplier(s)	The Board may require
	clarification of issues in
	relation to the tender.
Implement and	Execute Contract
Administer Contract to	(if within the Boards
Completion	delegated limit,

The diagram above has been provided to assist Supply and Tenders Boards, and purchasing Departments and agencies to:

- . Understand the tender process used for major procurements, and
- . Separate the responsibilities and accountabilities within the procurement process in accordance with the Public Finances (Management) Act and good procurement practice.

9. These key steps should be followed by all agencies and Supply and Tenders Boards

involved in a public tender. Each step is briefly outlined below:

a. Establish the Need for Goods, Works and Services.

Departments/agencies should consider carefully why they require the goods, works or services that are proposed to be purchased. The purchase should be prioritised (in importance) in accordance with approved plans. An estimated cost must also be established and approved in the annual budget.

b. Develop a Specification and Bid Documents

The bid documents should consist of:

- 1) Conditions of tendering – the rules of tendering
 - 2) Specification – a clear description of the goods or services that the Department wishes to buy
 - 3) Draft Conditions of Contract – a draft contract that will form the basis of the final contract agreed between the Government of PNG and the successful supplier
 - 4) Standard Tenderer Response Sheets – standard forms that will enable the Tenderer to clearly define their offer, and the Department to easily evaluate and compare each tenderer's offer
 - 5) Selection criteria – publication of Selection criteria is required, to assist in establishing a transparent tendering process
 - 6) Pre-tender cost estimates – Wherever possible, standard template bid documents (issued by the Central Supply and Tenders Board) are to be used. It is however, the responsibility of the Department or agency to produce high quality bid documents. The Department should generally use the people it wishes to have evaluate the tender, to also develop the bid documents; including the selection criteria.
- c. Obtain an –Authority to Pre-commit (APC) Expenditure and other requirements.
- The process for obtaining an Authority to Pre-Commit Expenditure (APC) is clearly documented in Attachment 1 to Part 13 of this manual. An APC confirms that funds will be made available to the supplier once a contract has been executed and fulfilled. A Supply and Tenders Board must not invite a tender without an APC having been issued.

d. Advertising the Tender.

Tender advertisement is designed to inform suppliers of opportunities, promote transparency and equal opportunity, and create a competitive environment.

For goods and services; where the tender is valued at:

- Greater than K500,000 and less than K10.0m it must be advertised in a national newspaper with large circulation (eg –The Nationalll or the –Post-Courierll)
- Greater than K10.0m it must be advertised in at least two national newspapers and relevant international media.

For capital works and construction; where the tender is valued at:

- Greater than K500,000 and less than K10.0m it must be advertised in a national newspaper with large circulation (eg –The Nationalll or the –Post-Courierll)
- Greater than K10.0m it must be advertised in at least two national newspapers and relevant international media.

e. Issue Bid Documents.

Bid documents must be issued to all prospective tenderers that have paid the required fee.

The fee is to recover the cost of reproduction of the bid documents.

Documents are issued by

the Supply and Tenders Board, which must also retain a list of all individuals and companies

receiving the bid documents along with their contact details.

f. Receiving and Opening Tenders.

The Supply and Tenders Board will arrange for tenders to be opened on the day that the

tender closes. All tenders will be opened –publiclyll. Departmental/ agency representatives

should be encouraged to attend the public opening, along with representatives of the

companies that have submitted bids.

The Supply and Tenders Board representative at the opening will read out the following

information in relation to each bid:

- Company Name, and
- Price
- Submitted Bid Securities (if applicable)

Where more than one bid is received from a company, the detail of each offer submitted

must be read out. The Supply and Tenders Board representative then formally registers all

copies of offers. The Supply and Tenders Board will hold one copy of each tender, whilst all

subsequent copies will be given to the Department for evaluation.

The only exception to this will be when the Conditions of Tendering require a –two envelopell offer, where companies are required to submit details of their price in a separate envelope to qualitative aspects of their offer.

In this case initially only the Company Name will be read out publicly. Once the Department has completed its qualitative (nonfinancial) analysis, a second public opening will be held where prices will be read out.

g. Analysing Tenders.

Upon advice from the Supply and Tenders Board, Departments are to nominate suitably qualified staff or Consultants to undertake the tender evaluation. These staff will be known as the –Technical Evaluation Committeell (TEC). The Supply and Tenders Board may reject one or more of the nominations, in which case the Department is to offer a substitute. The TEC is a small team of specialists from the Department(s), which under the direction of the Supply and Tenders Board, evaluate the tenders. The role of the TEC is to carry out the tender evaluation in accordance with the Public Finances (Management) Act, Regulations and Financial Instructions, using the processes outlined in the –Good Procurement Manualll. In a practical sense this requires the TEC to evaluate tenders according to the requirements of the bid documents, and previously defined selection criteria.

The TEC must follow the steps outlined below when analysing tenders:

STEP 1. Read ALL of the Offers

STEP 2. Clarify – Write to any tenderer to clarify aspects of their tender that are unclear.

Be sure that you do not create a –counter–offerll in doing this – consult people with a good understanding of contract law if in any doubt. The Central Supply and Tenders Board Secretariat can also advise you in relation to such matters.

STEP 3. Rate the Qualitative (Non–Cost) aspects (Technical, Capacity, Experience, Past Performance, Integrity, Financial status, Contractual,

Financial, Other) of each tenderers offer against the selection criteria previously established.

STEP 4. Identify the Price of each Tenderer and adjust it for all or any of the following:

- a) Arithmetic mistakes made by the Tenderer
- b) Significant whole of life costs that vary across the different offers
- c) Any price variation or foreign exchange exposures borne by the GoPNG

The adjusted price can now be used to rank tenderers in relation to Cost.

STEP 5. Make a transparent and supportable judgment, based upon the Qualitative ranking of each tenderer and Adjusted Price, as to which offer represents best value for money for the GoPNG.

Where doubts exist within the TEC as to how an evaluation should be conducted the TEC may seek guidance from the Supply and Tenders Board to which it reports.

h. Write the Recommendation Report.

The TEC must ensure that the evaluation and Recommendation Report is undertaken

promptly, and within the validity period specified in the Conditions of Tender. The TEC

must write a recommendation report designed to:

- 1) Describe the procurement process used to arrive at the recommended tenderer, so that the Supply and Tenders Board is able to certify that the procurement has taken place in accordance with the Public Finances Management Act, and
- 2) Outline why the recommended tenderer represents value for money. A valid,

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approved APC must be included with the Recommendation Report.

3) All bidders ranked must be included in the recommendation to the Board.

The Recommendation Report MUST be signed by each of the people in the TEC, as well

as the Departmental / Agency Head.

i. Consideration of the Recommendation Report. Supply and Tenders Boards MUST

satisfy themselves that:

1) The tender has been conducted in accordance with the Public Finances

Management Act, Regulations and Financial Instructions, and

2) The recommended offer represents value for money.

In carrying out this role, Supply and Tenders Boards should ask inquiring questions of purchasing Departments and agencies where information presented is deficient.

Recommendations must not be approved until the Board is confident that the

abovementioned conditions have been met.

The Supply and Tenders Board is not obliged to accept the recommendation of the TEC.

However, when the Board disagrees with the TEC's recommendation, in the first instance

the Board is to discuss the matter with the TEC. If required, the TEC is then required to

consider additional information provided by the Board. If deemed appropriate the TEC is to

prepare a revised evaluation report.

In the event that the Board disagrees with the initial and subsequent evaluations, the Board

may disregard the TEC's recommendation and award the contract, based on the Board's sole

recommendation. In this event the Board must prepare its own evaluation report with clear

and comprehensive justifications in accordance with the law, for the recommended award.

The Board must also attach to their evaluation report the TEC's evaluation report(s) and all

relevant correspondence in regards to the disagreement of the recommendation.

Where an organization disagrees with a Boards decision, a formal complaint may be pursued

under Division 6 of Part 14.

j. Contract Execution.

The Supply and Tenders Board Chairman may execute a contract within the Boards delegated

authority, once the Supply and Tenders Board has approved the recommended tenderer.

Where the contract consideration exceeds the Boards delegated limit, the Chairman of the

Board will refer the Board's recommendation with supporting

documents to the NEC through the Minister responsible for the Department.

Contracts should be executed by the signing of a single contract agreement by all of the parties to the agreement. Letters of Acceptance must not be used for contract execution.

The State Sol must sight all contracts before they are executed, unless a template contract that has previously been given blanket approval by the State Solicitor is used. In this circumstance, a copy of the signed contract must be lodged with the State Solicitor for information.

The Supply and Tenders Board is also responsible for completing the relevant section of the APC form (FF5A), by inserting details of the successful supplier, its file number, and

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stamping the form. The –Bluell copy of the APC is to be sent to the Department of Finance, whilst the original and –Greenll copy are to be sent to the contract officer nominated by the Department on the APC.

The Supply and Tenders Board must retain a photocopy of the approved APC on their file.

The APC process is fully detailed in Part 10, Attachment 1.

Section 47 (3) of the Public Finances (Management Act) requires every Minister whose portfolio establishes a contract greater than K5.0m to provide a copy of that contract to Parliament at the first sitting of Parliament after the execution of the contract.

k. Implement Contract and Administer to Completion.

Once a contract is executed, the purchasing Department / agency is responsible for the effective administration of the contract in accordance with the Public Finance Management Act, Financial Instructions and good accounting practice.

For assistance in relation to contract implementation, refer to Division 7 – –Contract Implementationll in this part.

DIVISION 4 – CERTIFICATE OF INEXPEDIENCY

10. Section 40, (3), (b) of the Public Finances Management Act provides Supply and

Tenders Boards with the powers to certify that the inviting of tenders is impracticable or inexpedient.

11. A Supply and Tenders Board must ensure that there is a valid approved APC for the procurement before approving a Certificate of Inexpediency.

12. A Certificate of Inexpediency must clearly identify the:

- a. Supplier, and
- b. Department / agency requesting the certificate, and
- c. Name and signature of the Departmental / agency head requesting the certificate, and
- d. Goods, works or services being procured, and
- e. Value of the procurement, and
- f. Reason for the certificate to be issued, and
- g. Date on which the Certificate is awarded, and
- h. Name of those Board members issuing the Certificate, and
- i. Name and signature of the Chairman of the Supply and Tenders Board issuing the certificate.

1. A Certificate of Inexpediency cannot be issued to retrospectively cover a contract already executed.

14. Certificates of Inexpediency will only be issued in situations where a declared:

- a. Natural Disaster, or

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- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest exists, and procurement processes must be undertaken urgently, to remedy the situation.

Supply and Tenders Boards must be prepared to hold extraordinary meeting(s) where these declared situations have arisen, in order to expedite procurements.

15. In the past, –Certificate of Inexpediencyll have enabled Departments and agencies to avoid the public tendering process. Certificates have generally been issued on the basis that:

- a. There is only one suitable supplier, or

b. The Department has –run out of timell to conduct a proper tendering process

Closer examination of the former justification generally means that the specification for the goods or services is biased in some way. The second justification (lack of forward planning by departments) is no longer acceptable. Departments must now be planning their major procurements in a timely manner.

16. Contract Execution (refer to processes under Public Tendering)

DIVISION 5 – CONFIDENTIALITY

17. Section 46 of the Public Finances Management Act requires members of Supply and Tenders Boards, Secretariat staff, technical evaluation staff and other public servants NOT to discuss (or communicate with by nonverbal means) the contents of a tender except when:

- a. Recording details of the tender in the Tender Register
- b. Preparing a notice of acceptance of late tender
- c. Giving advice to the Board on the tender
- d. Considering the tender at a Board meeting
- e. Making a recommendation that involves reference to the tender
- f. Causing notice of the tender to be sent to other tenderers

Under no circumstances are Supply and Tenders Board members, Secretariat staff, technical evaluation staff or other public servants to communicate the details of a tenderers offer to another tenderer or potential tenderer, or their agent or affiliate except where details of successful tenderers are published in the Boards Annual Report, or other general publicly available reports.

DIVISION 6 – CONFLICT OF INTEREST

18. Avoidance of Conflict of Interest

The private interest of a GoPNG employee, Supply and Tenders Board member, appointee or representative, must under no circumstances be allowed to conflict with the duties of the person as a member of a Supply and Tenders Board, Secretariat staff to a Supply and Tenders Board, evaluation committee/team, or as a Head of Department, or other relevant position, whilst involved in a major procurement.

A conflict of interest situation may arise from the following:

- A conflict exists, or
- A conflict might reasonably be thought to exist, or
- There is the potential of a conflict.

20. Action When a Conflict of Interest Situation Arises:

A GoPNG employee, Supply and Tenders Board member, appointee or representative in a Conflict of Interest situation in relation to a:

- Major Contract, or
- Proposed Major Contract

MUST disclose the nature of their interest to the Board, and MUST NOT take part in any evaluation or deliberations with respect to the contract, and MUST NOT take part in any recommendation with respect to the contract, and MUST NOT be involved in the Administration with respect to the contract, and MUST NOT attempt to influence others involved in such tasks.

The Secretary to the Supply and Tenders Board must record the disclosure of conflict of interest situations in the Board minutes, and related contract files.

DIVISION 7 – CONTRACT IMPLEMENTATION

21. This division explains the relationship between key contract participants including their usual roles and obligations. Important contract administration issues are outlined in order to assist Contract Managers to fulfill their role.

22. Contract Parties and Relationships:

There are two principal parties to a contract; the GoPNG and the Contractor. The contract is established on behalf of the GoPNG by an Executing Authority (either Chairman of the Supply and Tenders Board or the Governor-General).

23. Contract Manager:

The Contract Manager manages the implementation of the contract on

behalf of the
GoPNG. This person may be either a Public Servant or a Consultant
appointed for the
purpose (if the contract is either large or complex). All GoPNG
contracts must have a
nominated Contract Manager (sometimes referred to as; Project
Manager, or
Superintendent, or Engineer) and contact details of this person
provided to the Contractor.

24. Principles of Delivery and Performance:

A number of key principles are embodied in good contract
implementation. These are
detailed below:

a. Accountability and Responsibility

Once the contract is agreed and signed (in accordance with the law),
both parties are legally
accountable and responsible to carry out their respective
responsibilities under the
contract. The Contractor is responsible to carry out the works/
goods/services as stated in
the contract. GoPNG and its Contract Manager are responsible for
duties including;
providing access to sites and information, responding to requests
and timely payments.

b. Timeliness

Both parties are required to undertake duties in a timely manner.
The contract will normally
state the time within which these responsibilities are to be carried
out. However regardless
of whether stated in the contract or not, respective
responsibilities must be actioned in a
reasonable timeframe.

c. Knowledge of Contract Administration and Contract Documents

The Contract Manager must have a good working knowledge of contract
administration
within the relevant specialist field. The Contract Manager must have
a comprehensive
knowledge of the contract documents. Contractors will take advantage
of Contract
Managers who either have inadequate skills or do not understand the
contract documents.

Both the Contract Manager and Contractor must have a properly
executed copy of the
agreement.

d. Good Documentation

The Contract Manager administering the contract must maintain
documentation to ensure
the Contractor delivers the works/goods/services as stated in the
contract and that
accounting and payment details are clearly documented. During a
contract disagreement or

dispute, good documentation will assist with achieving a quick and fair solution.

25. Contractual Obligations:

The following obligations are usually common to all contracts regardless of their scale and nature:

a. Government of Papua New Guinea

- Appoint a Contract Manager and allow this person to administer the contract impartially, without influence and in accordance with the law.
- Provide unhindered access for the Contractor to implement the contract.
- Make timely payment for completed portion(s) in accordance with the contract agreement.
- Allow the Contractor to complete the whole contract, unless there has been mutual consent to change the scope of the contract or the Contractor is in breach of the contract.
- Provide information and directions in a timely manner.

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- If provided for under the contract, provide work, equipment, materials and services in a timely manner.

b. Contractor

- ~ Carry out and complete the works/goods/services under the contract
- ~ Complete the works/goods/services to the required standard under the contract in a professional manner and with due care.
- ~ To provide early notice of expected variations to the contract.
- ~ To proceed at an appropriate rate and complete the contract either as specified under the contract or within a reasonable time, where detailed timings are not specified in the contract.

c. Contract Manager

- To act as the Government's agent to administer the contract to ensure timely and satisfactory completion of the contract.
- ~ To implement the contract in accordance with its terms and

conditions.

~ To act impartially to make determinations that affects both parties, such as variations, latent conditions and liquidated damages.

~ To supervise, make determinations, give instructions, exercise discretion and certify completed portions of the contract.

~ To certify payment(s) for completed portion(s) of the contract.

~ The Contract Manager must endeavour to promptly settle disagreements with the Contractor and the Government of Papua New Guinea in a professional, impartial manner. The Contract Manager must maintain accurate records of the disputed issue, as these records will be critical to any possible legal determination.

26. Contract Administration:

The Contract Manager administers the contract on behalf of the Government of Papua New Guinea. Specific contract administration issues that must be considered by the Contract Manager are:

a. Documentation

Maintain an updated copy of the contract agreement. Maintain appropriately filed and documented records of; meetings and decisions, Trading Documents (bills of lading and invoices), insurance details, design information, quality control records, measurement and payment records and conditions and events affecting the contract: so to allow independent scrutiny or audit.

b. Variations

Variations where necessary, are to be implemented in accordance with Division 8 of Part 13

of this Manual.

c. Quality Control

Maintain records of the quality of the works/goods/services provided and note either

acceptance, rejection or rectification measures taken.

d. Measurement and Payment

To use means of measurement which is acceptable to the Contractor and GoPNG, as stated

in the contract. All payments made must comply with the relevant sections of the Public

Finance Management Act, Regulations and Financial Instructions.

e. Financial Control

Maintain adequate financial records of payments including variations. Notify the relevant

Executing Authority if contract value is to exceed the delegate authority for the Department

to approve variations, in accordance with Division 8 of Part 13 of this Manual.

f. Project Completion

Upon physical and financial completion of the contract, advise the relevant Supply and

Tenders Board that the contract is successfully completed, and the total amount of monies

spent on the contract.

27. Suspension of Contract:

If allowed for in the Contract Agreement, the Contract Manager can suspend the contract if

either the Contractor or the Government of Papua New Guinea substantially fails to

perform their obligations. Refer to the Contract Administration Manual for detailed

information on the process of contract suspension.

28. Termination of Contract:

Contract termination processes should only begin after all reasonable actions to end a dispute

have been explored, and formal legal and other advice has been sought. Only the Chairman

of a Supply and Tenders Board, or Head of State can terminate a contract in accordance

with their powers to execute contracts.

DIVISION 8 – CONTRACT VARIATION AND TERMINATION

29. Contract Variation:

Section 32 (2) of the Public Finances Management Act enables designated officers to approve

variations to contract as regards time, price, or other conditions within such limits as are

specified in the Financial Instructions.

30. For major procurements (costing more than K100,000) the following will apply:

Nature of	Limits	Designated	Form of
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Additional

Change
Requirements

Approval Officer Approval

Price Where the price
approved such
Changes change
changes must be

Departmental
Head

In writing, with
Once
justification

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is less than a 10 %
increase
from the originally
approved price **
attached
reported to the
relevant Supply and
Tenders Board
within 5 days of the
approval.
Where the price
change
is greater than a
10% increase from
the originally
approved
price **
Changes to Where the
changes do not
materially
effect
the goods, works
or services provided
Scope or
Specification
or timing
Original
Contracting
Authority (normally
the relevant Supply
Tender Board, or
Head of State)

Written
approval, with
justification
attached
Departmental
Head

In writing, with
justification
attached

Changes to scope or
Specification must
be filed with the
contract file and be
available for
Independent audit.

Where the changes
Original Contracting
Written

approval,
materially effect the
Authority (normally the
justification attached
with

goods, works or services relevant Supply and Tender
provided
Board, or Head of State.

** 1. Where more than one price change occurs in relation to a
contract the cumulative
(total) of all the price changes must be less than a 10 % increase
from the originally
approved price, for the Departmental Head to be able to approve the
variation.

** 2. In all instances the Section 32 Officer must also confirm that
financial authority is
available to vary the contract. This is in addition to the above
requirements.

31. Contract Termination:

From time to time it may be necessary to terminate a contract before
it reaches its natural
conclusion. The following rules apply in relation to contract
terminations:

a.

Contracts can only be terminated by the authority that executed the
contract. (For
major contracts this will normally be the relevant Chairman of the
Supply and
Tenders Board or the Head of State.)

b.

Written legal opinion from the State Solicitor MUST be sought prior
to terminating
a contract.

c.

Prior to the Chairman of a Supply and Tenders Board terminating a
contract, the

Supply and Tenders Board must meet and decide to terminate the contract.

d.

Where the Head of State is required to terminate the contract, he may only do so on written advice from the NEC, supported by written advice from the relevant Supply and Tenders Board and State Solicitor.

e.

The authority terminating the contract must immediately notify the Department of Finance, Expenditure and Cash Management Division, APC Secretariat in writing of the termination.

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DIVISION 9 –PROCUREMENT PROCESS AND THE FINANCIAL MANAGEMENT PROCESS

32. The major procurement process parallels the financial management process. This interaction is outlined in the diagram below.

Establish the Need for
Goods, Works or Services

Establish Annual Budget
and Work plan

Develop Specification

Obtain an APC, based

and Bid Documents

upon clear estimates

Contractor Signs APC form given to Contractor
Contract (Original Copy)

of
and

Contractor Completes
Requirement In large contracts the process
requesting work, doing work,
invoicing can occur many times.

Contract Manager Invoice
Receives Invoice and
Confirms completion

Supplier Prepare General Expenses Form
(FF4) and attach supporting
documentation

Confirm that the Contractor Paid
Contractor has
received full payment

Claims Examination and
Payment Authorisation Process

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DIVISION 10 – AUTHORITY TO PRE-COMMIT PROCESS

33. Introduction:

The Authority to Pre-Commit (APC) process has been introduced to bring under control the problem of 'arrears.' The legislation within the PFMA relating to the APC process is contained within Sections 47B, 47C, and 47D. The amendments aim to achieve this by limiting the validity of contracts with the government to:

34. Those that are authorised by a PGAS generated Integrated Local Purchase Order Claim (ILPOC) (Form 4A) [The national Department of Works shall continue using its ORACLE based computer generated ILPOC], i.e. where funds are available in the current year, or,

35. Where there is a need to commit expenditure in advance of funds becoming available, those that are authorised by the Secretary for Finance as evidenced by his signature on an Authority to Pre Commit (Finance Form 5A).

The amendments provided that unless contracts with government are supported by one of these two forms of authority, those contracts will be null and void and will not be enforceable against the Government.

36. Purpose:

The purpose of the APC process is to ensure proper accounting, management and reporting on the Pre-Commitment of Expenditure is maintained in all levels of the National, Provincial and Local-Level Governments.

37. Application:

37.1 Those agencies and Commercial Statutory Authorities that are classed as trading enterprises are exempted from these amendments and this Financial Instruction (unless their Act specifically binds them to the PFMA). Though

any agency that requires Section 61 approval under the PFMA will need to comply with the amendments and first obtain an APC. Should this say –binds or –exempts?

37.2 This APC process is effective from 1st March 2003, the same date that the amendments to the PFMA and Claims By and Against the State Act became effective.

38. Relationship between the APC process and other Financial instructions dealing with procurement:

38.1 The APC process is additional to other procurement requirements, and Supply and Tender Board requirements contained within the Financial Management Manual.

38.2 Departments, Provincial and Local Level Governments are reminded that the use of manual ILPOCs is illegal i.e. not allowed. Any Department or level of Government without a computer capable of producing PGAS generated ILPOCs will need to proceed to their nearest PGAS site to do this.

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In situations where National Departments in the provinces do not have access through the PGAS system, they should contact their Departmental Heads to send their CFCs (ex-warrant) to the nearest Provincial Treasury Office to be downloaded into the PGAS system in order that PGAS generated ILPOCs and cheques can be raised.

39. Arrears:

In recent years some Departments and provinces have increasingly turned to the Finance and Treasury Departments to pay claims or invoices from suppliers because those Departments do not have sufficient funds to meet these claims.

40. These new provisions in the PFMA will make it clear that suppliers who provide

goods or services without proper authority from the Government, i.e. without a purchase order (ILPOC) or contract (backed by an APC), will have no valid contract or claim against the Government.

41. Responsibility of Departmental Heads:

Departmental Heads are responsible for ensuring compliance with the new changes to the PFMA and these Financial Instructions. Failure to comply with these amendments could result in penalties and charges being imposed on Departmental Heads.

42 The Head of each spending Department or province must ensure that all pre commitments made by their own Department or province are included in the annual bids or estimates in the following year (and any subsequent years).

43 Purchases, claims and contracts under K100,000:

43.1 The Secretary for Finance will not approve an APC for amounts less than K500,000 (even though the amendments to the PFMA does make allowance for this). If there are insufficient funds available in a vote to make the purchase using an ILPOC in the current year, the relevant Department should make use of available capacity, or seek to have the purchase funded through Estimates for the following year. The relevant Department or province should not enter into a contract with a supplier if there are insufficient funds available. The relevant Department cannot anticipate that funds will be available in the following year (without an APC).

43.2 These are the cases that sections 47B, 47C and 47D are intended to eliminate, i.e. unauthorised officers ordering goods or services without an ILPOC when there are no funds or insufficient funds available. An ILPOC (Form 4A) is the only legitimate evidence that funds are immediately available in the current year. An APC (for amounts over K500,000) is the only legitimate evidence that funds will be made available later in the current year or in a following year.

Officers who deal with suppliers and contractors without an

ILPOC (Form 4A) or an APC are not acting on behalf of their Department or the Government. Suppliers and contractors cannot seek to be paid for any goods or services they have provided, where they did not first obtain an ILPOC (Form 4A) or an APC.

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43.3 Departments are reminded that normal procurement procedures apply for amounts under K500,000. This includes obtaining three written quotes and the issuance of ILPOCs.

43.4 The only exemption to the above will be the use of an FF4 for purchases in genuine emergency situations up to a maximum amount of K300. Examples could include purchase of food for a large and unexpected police cell intake in a remote area. Fixing a dripping tap, purchase of stationery and other such examples cannot and do not constitute an emergency. This provision may not be used to substitute for poor planning and preparation by a Department.

42. APCs for contracts K500,000 and above:

Where a Department wishes to enter into contracts for amounts of K500,000 or above, and there will be funds available to meet the schedule of payments under the contract (either in the current or subsequent financial years), that Department will be able to apply to the Secretary for Finance for an APC. It will be the Head of that Department's responsibility to ensure that funds are secured in subsequent years' estimates and appropriations through their budget negotiations with the Department of National Planning and Monitoring and with the DOT.

43. An application for an APC (see application form attached) should be completed by

officials of the relevant Department, and signed by the Head of that Department. All relevant parts of the application form should be completed.

44. The APC must be applied for and obtained by the relevant spending Departments prior to inviting any tender including applying for any Certificate of Inexpediency (CoI). All other requirements of any relevant Supply and Tenders Board must be complied with after an APC has been obtained. An APC is not required for utility payments.

45. The application should be delivered to the First Assistant Secretary, Expenditure and Cash Management Division of Finance Department (marked for the attention of the Assistant Secretary, Expenditure), where it will be registered. If the application form is not complete, the application will not be registered or accepted and will be returned to the relevant Department if such omissions are subsequently discovered.

46. The First Assistant Secretary, Expenditure and Cash Management Division will evaluate the application according to the criteria set out below. The results of this evaluation will then be considered at the weekly APC Committee meeting (chairman of which will be the First Assistant Secretary, Public Accounts). The committee will include heads of the relevant divisions of the Treasury Department and the Department of National Planning and Monitoring in order to jointly ascertain the merits of the APC request and the likelihood of funds becoming available to fund payments under the contract.

47. The First Assistant Secretary Expenditure and Cash Management Division (in his capacity as Chairman of the APC Committee) will then make recommendation to the Secretary for Finance as to whether an APC should be approved, together with a recommended maximum amount of pre commitment.

48. If approved by the Secretary, the First Assistant Secretary Expenditure and Cash Management Division will allocate an APC number, and the APC details will be entered into the register accordingly (see below). The APC will be in triplicate – white (original for the supplier/contractor); blue – Department of Finance copy and green – implementing department's copy.

49. For all APCs the Department of Finance will make and retain a photocopy of the APC form (the supplier/contractor has not been filled in at this stage). The entire APC form is then passed on to the nominated contact officer of the implementing Department. This officer will then make a photocopy of the form and forward the entire APC form, together with any requisition (FF3), to the relevant Supply and Tenders Board. The relevant Supply and Tenders Board will not proceed to tender or grant a COI unless an APC has first been obtained from and approved by the Secretary for Finance.

50. The relevant Supply and Tenders Board will write their file number on the original of the APC, and place their stamp and date over the top of that file number.

51. When a Notice of Successful Tender or COI has been issued by a Supply and Tenders Board, the relevant Supply and Tenders Board will fill in the contractor/supplier to whom the contract has been awarded. The relevant Supply and Tenders board will make and retain a photocopy of the APC and return the blue copy to the Department of Finance, and the original (white) and implementing Department copy (green) to the nominated contact officer on the APC. The nominated contact officer will then forward the original APC to the selected supplier or contractor.

52. Any remaining contractual documentation may then be finalised with the supplier or contractor. It is the supplier's or contractor's responsibility to retain the original of the APC. Without the original, the supplier or contractor will not be able to demonstrate that they have a valid enforceable contract with

GoPNG should any disputes subsequently arise.

53. Neither the First Assistant Secretary (PAD) nor his officers will discuss any aspect of applications or approvals or progress with suppliers or contractors. Only the relevant Head of Department or the contact officer nominated on the application may contact the First Assistant Secretary to discuss the progress of applications.

54. For all proposed contracts requiring an APC, the APC is not valid unless it has an APC Number that matches the APC number entered in the Register held by the Department of Finance. The APC is also not valid unless it has a relevant Supply and Tenders Board file number, stamped by the relevant Supply and Tenders Board, and matching the file number for that contract held by that Supply and Tenders Board.

55. An APC does not need to be obtained in respect of expenditure or contracts that are 100% donor funded. An APC will however be required for any contract that will involve Government counterpart contributions and that would normally require tender procedures to be undertaken. The APC would be issued for the full amount but the separation between Government contribution (cash) and donor funds (non-cash) will need to be made clear on the new revised APC form (copy attached).

56. An APC is not required for cash transfers from one level of Government to another

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e.g. Grant transfers to Provincial Governments, Department of Education school subsidies, Department of Health transfers to NGOs and so forth. An APC is also not required for principal and interest payments for debt.

57. Criteria used by Secretary in approving APCs:

59.1 In order to authorise a pre commitment the Secretary for Finance needs to be satisfied that the provisions of the PFMA have been complied with, and that

funds will become available at a later time. The criteria used by the Secretary for Finance (and the APC Committee) in deciding whether to approve (endorse) an application for an APC will include:

59.2 The likelihood of the contract being funded from warrants issued later in the current year or in a subsequent year's estimates and appropriations. In this respect, the Secretary will consult with Treasury Department, Department of National Planning and Monitoring and may consult any other agency.

59.3 Whether all provisions of Part VII of the PFMA have been complied with in respect of the proposed contract.

59.4 Whether the application for the APC has been completed fully and correctly, and whether any required attachments are attached (this includes the covering letter from the Head of Department and the PGAS printout showing the current appropriation, warrants, commitments and expenditure).

59.5 Whether the Secretary believes that the Head of the Department or province applying for the APC is fully aware of the nature of the purchase or contract, and of the amounts that the Departmental Head is committing their Department or province and the Government to in future years.

59.6 Whether the Department / Division has commitments already in place that are not fully funded in the Department's / Division's Budget for the year, the APC request can be rejected and the relevant agency told to transfer funds to the underfunded vote e.g. a Department has an appropriation of K0.5 million for the purchase of cars and submits an APC request for their purchase. The Department however also has an ongoing road project that requires K0.8 million in this year but it has only K0.6 million in the Budget for the road project.

59.7 This request for an APC for the cars and any further APC requests would be rejected and the Department concerned told to shift K0.2

million to the road project appropriation. It may transfer the appropriation from the cars appropriation or from elsewhere in its Budget. Only once this has been done will the Department be allowed to resubmit its request for an APC for the vehicles and for other purposes. In summary: no new commitments will be allowed unless existing commitments are fully funded.

58. Period contracts and standing contracts:

60.1 New period contracts and standing contracts

60.1.1 From 1 March 2003, as various Departments seek to enter into new period contracts or standing contracts, e.g. for mess supplies,

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rations, pharmaceuticals, security services, property leases etc, the new provisions, in section 47B, 47C and 47D will need to be complied with, and the procedures set out above will need to be followed.

60.2 Validating existing period or supply contracts

60.2.1 Section 47B is effective for contracts entered into or purported to have been entered into by or on behalf of the State on or after 1 March 2003. At that time there will be numerous existing period or supply contracts entered into on earlier dates that will require ongoing payment as services are supplied or goods are delivered.

These include:

Rental contracts or property leases

- Electricity supply contracts
- Telephone service contracts
- Water supply contracts
- Pharmaceutical supply contracts
- Mess supplies, rations etc

60.3 For ease of administration and consistent application of the new sections 47B, 47C and 47D to claims for payments from suppliers after 1 March 2003, the Secretary for Finance may issue APCs for contracts entered into prior to 1 March 2003. This will allow claims under valid pre commitment from 1 March 2003 contracts to be distinguished from other claims lodged by suppliers whose contracts were entered into after 1 March 2003, but who have no ILPOC and no APC. These latter claims will be rejected by government (see below).

60.4 Departments are required to provide a list of ongoing (i.e. that commenced prior to 1 March 2003) contractual commitments that exceed K500,000 to the Department of Finance / Provincial Treasury by 30 May 2003.

59. Register of APCs:

61.1 The First Assistant Secretary, Expenditure and Cash Management Division of the Department of Finance and the Provincial Treasurer will maintain a register of applications for and approvals of APCs. The First Assistant Secretary will arrange for relevant parts of that register to be available in hard copy or electronic format to relevant line agencies and other central agencies. This will facilitate preparation of budget estimates by spending agencies and by central planning and budgeting agencies.

61.2 All Departments that are in receipt of APCs will be required to keep a register of the APCs applied for awarded and expenditures made against these APCs.

61.3 In the event that the project or contract is to be completed in a short period

and within the same year, all expenditures must be committed within the appropriation for that same financial year.

61.4 If the project or contract is ongoing, the relevant Departmental Head or Provincial Administrator must ensure that the contract must have its limitation and if it continues to the next financial year, the estimates for the project or contract must be appropriated for in the next financial year's budget.

61.5 The register will also enable Departments and provinces to check on the validity and authenticity of APCs attached to claims or invoices, prior to processing those claims or invoices.

61.6 Manual Registers will be maintained parallel to the spread sheets both in the Finance Department and Provincial Treasuries.

60. Provincial Government and LLG purchases and contracts:

62.1 The Secretary for Finance will delegate the authority to approve APCs to Provincial Administrators. The Provincial Treasurer will perform the role of the Chairman of the APC Committee. Provincial Administrators will apply the same criteria as the Secretary for Finance in deciding whether to approve applications for APCs.

62.2 The Provincial Authority to Pre Commit Committee (PAPCC) that meets weekly (or when APCs are lodged) will consider APC requests that have been evaluated and endorsed by the Expenditure Accountant (who would have checked on funds availability and that the requested pre-commitment is, in the Budget for the Province). If the APC Committee approves, it will then make recommendations to the Administrator for his final approval and signature.

62.3 The Provincial Authority to Pre Commit Committee (PAPCC) will comprise of the following:-

- Provincial Treasurer Chairman
- D/Administrator Economics D/Chairman
- Provincial Legal Officer Member
- Provincial Budget Officer Member
- Provincial Planner Member

62.4 If an APC request comes through that is not in the Budget for the current year it will need the support of the Joint District Planning and Budgetary Committee (JDPBC). Appropriation will also have to be transferred to the new vote prior to endorsement from the Provincial Treasurer.

62.5 Provincial Governments will be limited to issuing APC commitments for future years up to a maximum level of 10 per cent of their current non-salaries and wages Budget (this includes National Government grants, internally generated revenue and VAT flows to the provinces). E.g. Current

total Budget for the Province (excluding salaries and wages) is K20.0 million. In this example, APC commitments running into the following year can only be issued up to a maximum level of K2.0 million. Any levels above this limit will need to be endorsed by the national APC Committee and approved by the Secretary for Finance.

62.6 In addition to the above, the limit for endorsement at the Provincial level for APCs is K3.0 million – the same as that currently set for tenders. Any single APC request that exceeds K3.0 million will need to be submitted to the National Department of Finance for its consideration.

62.7 Where there are National and Provincial contributions to a project, these will need to be separated out clearly on the revised APC form. Any project that has both Provincial and National funding contributions will need to be submitted to the National Department of Finance for

approval (and not the Provincial Government).

62.8 The amendments to the law and these Financial Instructions cover all expenditures and commitments of the Provincial Government and LLG – whether the funds used are sourced in the Province, LLG or from grants from the National Government.

62.9 Provincial Treasurers will maintain a similar register to that maintained by the First Assistant Secretary (PAD) for national departmental contracts, and will use the same APC form.

61. Reporting

63.1 All Departments / Divisions that have been granted APCs must provide quarterly reports to the Department of Finance (FAS Public Accounts) / Provincial Treasury by the 11th of the month following the end of each quarter.

63.2 Failure to produce these reports will result in a cessation of approvals for APCs in the future (until any outstanding reports have been submitted).

63.3 The Provincial Treasurers must furnish their reports to Expenditure and Cash Management Division on Provincial APCs by the 22nd of the month following the end of every quarter.

63.4 The format for reporting is attached to this Financial Instruction.

62. Forms

64.1 Departments or provinces seeking an APC on behalf of suppliers and contractors are required to complete the application form supplied by the Department of Finance. This is an approved Finance Form 5A that is required for all contracts and purchases over K500,000. Amongst other details this application form will require:

- Name of Department
- Name of contact officer and contact details

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- Name of the supplier or contractor, and the business address of the supplier or contractor (entered by the relevant Supply and Tenders Board after the tender has been awarded)
- Total value of contract, amount funded in current year, and amount to be pre committed against the following year(s) appropriation
- An accurate description of the goods or services to be supplied under the contract
- The vote number against which the department anticipates that funds will be made available at some future time
- Signature of Head of Department (or Acting Head of Department) and the date signed.

[7.2] INVESTMENT PETROLEUM INVESTMENT COMPANY (IPIC) LOAN AGREEMENT

This is an extract of the IPIC Loan Agreement that was signed in 2009 by the Investment Petroleum Investment Company (IPIC) of Abu Dhabi, United Arab Emirates.

7. Maturity, redemption and purchase

7.1 Maturity: Each Bond will be redeemed at its Principal Amount plus accrued interest on the Maturity Date to the extent it has not previously been redeemed, purchased and cancelled or exchanged in accordance with these Terms and Conditions.

Where the Exchange Parcels are comprised, wholly or partly, of Other Property, or where a valuation is required under condition 7.5.8(i)(c), the Issuer shall give notice in writing to the Calculation Agent not later than the 25th Business Day before the Maturity Date instructing it to initiate the valuation process in condition 23.

7.2 Issuer Redemption: The Issuer may, at its option, on giving notice in accordance with condition 24, redeem all, but not some only, of the outstanding Bonds at their aggregate Principal Amount plus interest accrued up to the day

immediately preceding the date of redemption (an –Issuer Redemption) if the VWAP of Ordinary Shares exceeds 130 per cent of their Adjusted Exchange Price, on 20 or more Trading Days during a period of 30 consecutive Trading Days, commencing on or after the sixth Interest Payment Date occurring after the Issue Date. The notice of Issuer Redemption may only be given within the period of 15 Business Days falling after the last day of such period of 30 consecutive Trading Days. Where the Exchange Parcels are compromised, wholly or partly, of Other Property, or where a valuation is required under condition 7.5.8(i)(c), the Issuer shall give a copy of the notice to the Holders under this condition 7.2.

The notice of Issuer Redemption shall be irrevocable and shall state the –Call Redemption Date, being 25 Business Days after the date of the notice and the facts which established the Issuer’s right to redeem the Bonds. If the Call Redemption Date falls within an Exclude Period, the Call Redemption Date will be the day falling 6 Business Days following the end of the Excluded Period irrespective of the Call Redemption Date specified in the notice.

For purpose of this condition 7.2:

–Adjusted Exchange Price for an Ordinary Share on a Trading Day is A\$8.550174, or if Exchange Parcels comprise other property, the price calculated as follows:

$$AEP = A\$8.550174 \times OS \times \frac{58,478.33938}{T}$$

Where:

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AEP = the Adjusted Exchange Price for an Ordinary Share on the relevant Trading Day;

OS = the Current Market Value of an Ordinary Share on the relevant Trading Day; and

T = the current Market Value of the aggregate of all Ordinary Shares and other

property comprising an Exchange Parcel on the relevant Trading Day.

For the purpose of this condition 7.2 –Current Market Value on any Trading Day means:

i. in respect of securities that are quoted for trading on the ASX, the VWAP of that security for the period of 20 consecutive Trading Days ending on that Trading Day;

ii. in respect of cash, the amount of that cash; and

iii. in respect of Other Property, its market value on that Trading Day determined in accordance with condition 23.

Any determination by the Calculating Agent and Valuer will (in the absence of manifest or proven error) bind all parties concerned.

7.3 Clean-up Redemption: The Issuer may, at its option, on giving notice in accordance with condition 24, redeem all, but not some only, of the outstanding Bonds at their aggregate Principal; Amount plus interest accrued up to the day immediately preceding the date of redemption (a Clean-up Redemption) if at any time the aggregate Principal Amounts of the Bonds outstanding is equal to or less than 10 per cent of the aggregate Principal Amount of the Bonds originally issued. Where the Exchange Parcels are compromised, wholly or partly, of Other Property, or where a valuation is required under condition 7.5.8(i)(c), the Issuer shall give a copy of the notice of Clean-up Redemption to the Calculating Agent at the same time as it gives the notice to the Holders under this condition 7.3.

Any notice of Clean-up Redemption shall be irrevocable and shall state the –Call Redemption Date, being 25 Business Days after the date of the notice, and the facts which established the Issuer's right to redeem the Bonds. If the Call Redemption Date falls within an Excluded Period, the Call Redemption Date will be the day falling 6 Business Days following the end of the Excluded Period irrespective of the Call Redemption Date specified in the notice.

7.4 Purchase: The Issuer may at any time purchase (or procure the

purchase on its behalf
of) Bonds in the open market or otherwise and at any price.
Bonds purchased by (or on
behalf of) the Issuer may, at the option of the Issuer, be
held, resold, cancelled or
exchanged in accordance with condition 10. If exchanged, the
number of Ordinary
Shares and other securities comprising Exchange Parcels that
would be delivered to the
Issuer in respect of the Bonds exchanged by the Issuer
pursuant to condition 10.3, will
cease to be subject to the restrictions in condition 16.

7.5 Mandatory Exchange:

7.5.1 On maturity or redemption in accordance with condition 7.1,
condition 7.2 or condition
7.3, as applicable, the Bonds shall be subject to mandatory
exchange in accordance with
this condition 7.5 (–Mandatory Exchange)).

7.5.2 The Holder shall deliver, at that Holder's own expense,
to the Exchange Agent
and the Calculation Agent directly, or via the Custodian
(if any) for transfer to
the Exchange Agent and the Calculation Agent, a duly
completed and executed
notice in the form set out in Annexure D to the Bond
Deed Poll (or such other
for as the Issuer and the Holders (by Extraordinary
Resolution), or the Issuer
and the Holder (without Extraordinary Resolution where
there is only 1
Holder), determine)(the –Mandatory Exchange Notice))
which notice must be
received by the Exchange Agent during normal business
hours not later than
the day (that day being the –Valuation Date)) falling 10
Business Days before
the maturity Date or the relevant Call Redemption Date,
with respect to the

registration in the Company's register of shareholders
(the –Shareholders
Register)) and in any other applicable register.

7.5.3 The Holder may, at its discretion, issue the Mandatory

Exchange Notice after the Valuation Date but in no event later than the 90th Business Day (the –Long– Stop Datell for the purpose of this condition 7.5.3) after the Maturity Date or the relevant Call Redemption Date, as the case may be; provided, that (i) the right to issue a Mandatory Exchange Notice shall lapse after the Long–Stop Date and (ii) the Holder shall not be entitled to interest or Default Interest in respect of the period commencing on the Maturity Date or the relevant Call Redemption Date, as the case may be, and ending on the date of delivery of a duly completed Mandatory Exchange Notice.

7.5.4 The Issuer shall have no obligation to deliver any Ordinary Shares or other property comprising Exchange Parcels to the Holder unless and until the date (the –Unconditional Delivery Datell for the purpose of this condition 7.5), being the later of:

(i) the Maturity Date or the relevant Call Redemption Date (as the case may be); and

(ii) x Business Days after the Business Day on which:

(a) a duly completed Mandatory Exchange Notice is delivered;

(b) all taxes, imposts, levies and duties, if any, which may be imposed or levied in connection with the delivery of the Ordinary Shares or other property comprising Exchange Parcels, have been paid in full by the relevant Holder; and

(c) if the Exchange Parcels comprise, wholly or partly, any Other Property, a determination of the value of Other Property comprising Exchange Parcels has been delivered by the Valuer in accordance with condition 23; provided, that (x) this condition 7.5.4(ii)(c) shall only apply to the extent the aggregate Current Market Value of such Other Property and other property comprising the Exchange Parcels referable to the

Bonds being
Amount of the
that Holder,

exchanged by that Holder exceeds the Principal
Bonds (plus accrued interest) being exchanged by

where:

x = 5 to the extent the Exchange Parcels are comprised of only securities quoted for trading on the ASX and/or cash,

x = 8 to the extent the Exchange Parcels are comprised, wholly or partly, of Other Property.

Notwithstanding anything to the contrary in these Terms and Conditions, interest shall cease to accrue on the maturity Date or the relevant Call Redemption Date (as the case may be) in respect of the aggregate Principal Amount that is equal to the Current Market Value on the relevant Valuation Date of the aggregate of all Ordinary Shares and other property comprising the Exchange Parcels to be delivered to the relevant Holder following the delivery of a Mandatory Exchange Notices.

15. Negative Pledge

15.1 For so long as any Bond, or any amount due in respect of any Bond, remains outstanding, the Issuer will not create, or permit to subsist, any Security upon the whole or any part of the undertaking, assets or revenues of the General Business Trust, present or future, to secure any Financial Indebtedness or to secure any guarantee of or indemnity in respect of any Financial Indebtedness unless, on or before that time, the rateably with Security, or (ii) have the benefit of such other security, guarantee, indemnity or other arrangement as the Holders as is approved by an Extraordinary Resolution of the Holders or, where there is only 1 Holder, as that Holder in its absolute

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discretion considers, without the need for an Extraordinary Resolution, to be not materially prejudicial to its interest.

15.2 For so long as any Bond, or any amount due in respect of any Bond, remains outstanding:

the Issuer will not Dispose (as defined in condition 16.3) of any Other Property which is added to and forms part of the Share Holding except Disposals which are expressed permitted or required by these Terms and Conditions (including without limitations by condition 13.6);

15.2.2 the Issuer and the Holders will use reasonable endeavours to agree escrow or quarantine arrangements in respect of such Other Property that are on terms similar to those in condition 16 and/or condition 17 subject to such arrangement:

(i) being reasonably practicable having regard to the nature of the Other Property;

(ii) not restricting Disposals which are expressly permitted or required by these Terms and Conditions (including without limitation by condition 13.6); and

(iii) being structures so that they will not at any time:

(a) give rise to any Security, privilege or priority of any kind; or

(b) otherwise breach, or give rise to, trigger or enable to be exercised any powers, rights or remedies under or in respect of, any negative pledge (or similar arrangement) to which the Issuer, the State or any of either's affiliates is party from time to time; and

15.2.3 the Issuer will use reasonable endeavours to procure that such Other Property is held subject to such escrow or quarantined arrangements (until such time as the relevant Other Property is Disposed in circumstances permitted under such arrangements).

27. Miscellaneous

27.1 The Bonds and the Bond Deed Poll and the rights and duties of the Holders and the Issuer and all matters arising from or connected with all or

any of the them and any non-
contractual obligations arising out of or in connection with
all or any of them are
governed by, and shall be construed in accordance with, the
laws of England and Wales.

27.2 The place of performance is Australia.

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[7.3] UBS AG LOAN DOCUMENTS

The following are documents that were approved and agreements
signed by
representatives of the Independent State of Papua New Guinea and
UBS AG Australia
Branch.

[7.3.1] Confirmation Side Letter

[7.3.2] Nominee Deed,

[7.3.3] Specific Security Deed (CHESS Securities ± Collar)

[7.3.4] Subscription Agreement

[7.3.5] NEC Decision No: 79/2014 of 6th March 2014

[7.3.6] 1 (&E&EiIP DQT DUYff1PR 11e GRYeInRI-General dated 6th

March 2014

[7.3.7] Payment Direction Deed signed by the State, NPCP and UBS AG
Australian
Branch

[7.3.8] Two letters dated 11 April 2014 from NPCP to GloCo

[7.3.9] Email dated 8th March 2014 from IPBC Managing Director to
IPBC Board
Chairman.