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[2005

Central Banking Act 2000

Central Banking (Foreign Exchange & Gold) Regulation

EXEMPTION FROM CERTAIN PROVISIONS OF THE REGULATION

THE BANK OF PAPUA NEW GUINEA (the "Central Bank"), by virtue of the powers conferred upon it by the *Central Banking Act 2000* (the "*Central Banking Act*") and acting pursuant to Section 3(b) of the Central Banking (Foreign Exchange & Gold) Regulation (the "Regulation"), hereby exempts the persons specified in Schedule 1 from obtaining an authority under, or complying with, the Exempted Regulations on the condition that such persons comply with the Conditions.

Any provisions of the Regulation that are not Exempted Regulations are not the subject of this Exemption Notice and remain in full force and effect.

The following Notices are revoked with effect from the Effective Date:—

- General Authority Under the Regulation dated 21st May, 1996 and published in *National Gazette* No. G42;
- Exemption from the Provisions of the Regulation dated 21st May, 1996 and published in *National Gazette* No. G42.

The exemptions granted under this Exemption Notice are granted subject to compliance with the Conditions. Failure to comply with any of the Conditions by any person in respect of any act or thing will result in:—

- the exemptions granted under this Exemption Notice not applying to that person in respect of that act or thing; and
- a breach of the Regulation,

and may result in imposition of penalties in accordance with the Regulation.

The Central Bank may amend, vary or revoke this Exemption Notice (including the Conditions) at any time by notice in the *National Gazette*.

In respect of any approvals, authorities or declarations made by the Central Bank under the Exempted Regulations prior to the Effective Date ("Prior Approval"):—

- this Exemption Notice applies to any act or thing required to be done as a condition to any Prior Approval;
- this Exemption Notice does not exempt breaches of the Regulation or any breach of any Prior Approval or conditions attaching to them which occurred prior to the Effective Date; and
- recipients of a Prior Approval must comply with the Conditions.

Exemption from Certain Provisions of the Regulation—*continued***SCHEDULE 1**

Persons granted exemption under this Exemption Notice.

- (a) All persons other than those specified in Schedule 2;
- (b) The persons specified in Schedule 2 in respect of the performance of the transaction or the operation of the account approved under the Regulation; and
- (c) The National Government, a Provincial Government and all Local-level Governments.

SCHEDULE 2

Persons not granted exemption under this Exemption Notice.

1. A person who after the Effective Date without the authority of the Central Bank enters into an agreement in writing between a Resident and a Non-Resident:—
 - a. to lend, borrow or raise money;
 - b. to create or evidence financial indebtedness by the use of financial instruments of any kind;
 - c. to guarantee the indebtedness of a third party or indemnify a third party against financial loss;
 - d. to effect an arrangement having the same or similar commercial effect to any of the above; and
 - e. to vary any such agreement.
2. A person, being a Resident, who after the Effective Date without the authority of the Central Bank enters into an agreement in writing to acquire, dispose of or otherwise deal with, directly or indirectly, an asset (including listed or unlisted securities) outside Papua New Guinea.
3. A person, being a Non-Resident, who after the Effective Date without the authority of the Central Bank enters into an agreement in writing to acquire, dispose of or otherwise deal with, directly or indirectly, an asset (including listed or unlisted securities) in Papua New Guinea.
4. A person, being a Resident, who after the Effective Date without the authority of the Central Bank opens and operates a bank account outside Papua New Guinea.

SCHEDULE 3 — Exempted Regulations

Regulation 7 — Transfer or removal of currency out of Papua New Guinea

Regulation 9 — Control of certain payments and Transactions

Regulation 10 — Borrowings from outside Residents

Regulation 11 — Blocked Accounts

Regulation 12 — Specified Currency

Regulation 13 — Issue or dispatch of Securities

Regulation 14 — Foreign Securities

Regulation 15 — Returns of Foreign Securities

Regulation 18 — General Restrictions on Export

Regulation 19 — Additional Documentation and Information

Regulation 21 — Fulfilment of Arrangements

Regulation 22 — Currency or Property retained or obtained in Contravention of Part II.

Exemption from Certain Provisions of the Regulation—*continued***SCHEDULE 4 — Conditions**

This Exemption Notice is subject to the following conditions:—

1. The Central Bank may, at any time, by written notice:—
 - (a) require an Affected Person to provide to it any information or document; and
 - (b) conduct a Compliance Audit in respect of an Affected Person or a party that the Central Bank reasonably believes to be an Affected Person.
2. An Affected Person must (and must procure that its Associates) provide all information and documentation required by the Central Bank under paragraph 1 of this Schedule 4 in a form and within any time period specified by the Central Bank in its request.
3. An Affected Person must, in relation to any act or thing to which, but for this Exemption Notice, the Regulation would apply, maintain all documents which evidence or support that act or thing for the duration of the relevant transaction or 7 years whichever is shorter.
4. An Affected Person must comply with the obligations set out in the Foreign Exchange Manual.
5. To the extent that an Affected Person provides information and documentation to the Central Bank in relation to an act or thing under this Schedule 4, that Affected Person must (and must procure that any of its Associates) also provide any information and documentation to the Central Bank relating to any variation, reconstruction or amendment to that act or thing.
6. In circumstances where, but for this Exemption Notice, a person would have been required to produce a tax clearance certificate in order to obtain authority from the Central Bank to enter into or undertake any act or thing, that person must produce a tax clearance certificate to the relevant authorised dealer prior to entering into or undertaking that act or thing.
7. A person must not without the approval of the Central Bank transfer or remove in person from Papua New Guinea physical cash in excess of K20,000 or the foreign currency equivalent.
8. Only Authorised Dealers may conduct currency exchange transactions.
9. Nothing in this Exemption Notice or these Conditions relieves a person from complying with any of their obligations under any other law.

For the purposes of this Exemption Notice and unless a contrary intention appears:—

“**Affected Person**” means any person that, but for this Exemption Notice, would be required to obtain an authority from the Central Bank under, or comply with, the Exempted Regulations, and includes a person who holds a Prior Approval.

“**Associate**”, in relation to a person, means:

- (a) where that person is a natural person, other than in the capacity of a trustee:
 - (i) a relative of the person; or
 - (ii) a partner of the person or a partnership in which the person is a partner; or
 - (iii) if a person who is an associate of the person by virtue of subparagraph (ii) is a natural person—the spouse or a child of that person; or
 - (iv) a trustee of a trust estate where the person or another person who is an associate of the person by virtue of another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or
- (v) a company where:—
 - (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person, of another person who is an associate of the person by virtue of another subparagraph of this paragraph, of a company that is an associate of the person by virtue of another application of this subparagraph or of any two or more such persons; or
 - (B) the person is, the persons who are associates of the person by virtue of subparagraph (A) and the preceding subparagraphs are, or the person and the persons who are associates of the person by virtue of that subparagraph and those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; and

Exemption from Certain Provisions of the Regulation—continued

- (b) where the person is a company, other than a person in the capacity of a trustee:—
- (i) a partner of the person or a partnership in which the person is a partner; or
 - (ii) if a person who is an associate of the person by virtue of subparagraph (i) is a natural person—the spouse or a child of that person; or
 - (iii) a trustee of a trust estate where the person or another person who is an associate of the person by virtue of another subparagraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or
 - (iv) another person where:—
 - (A) the person company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, or of that person and another person or other persons, whether those directions, instructions or wishes are communicated directly to the person company or its directors, or through any interposed companies, partnerships or trusts; or
 - (B) that person is, or that person and the persons who, if that person were the person would be associates of that person by virtue of paragraph (a), by virtue of subparagraph (A), by virtue of another subparagraph of this paragraph or by virtue of paragraph (c) are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the person company; or
 - (v) another company where:—
 - (A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person company, of a person who is an associate of the person company by virtue of another subparagraph, of a company that is an associate of the person company by virtue of another application of this subparagraph or of any two or more such persons; or
 - (B) the person company is, the persons who are associates of the person company by virtue of the subparagraph (A) and the other subparagraphs are, or the person company and the persons who are associates of the person company by virtue of that subparagraph and those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
 - (vi) any other persons who, if a third person who is an associate of the person company by virtue of subparagraph (iv) were the person, would be an associate of that third person by virtue of paragraph (a), by virtue of another subparagraph of this paragraph or by virtue of paragraph (c); and
- (c) where the person is a trustee of a trust estate:—
- (i) any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under that trust estate, either directly or through any interposed companies, partnerships or trusts; or
 - (ii) where a person who is an associate of the person by virtue of subparagraph (i) is a natural person—any person who, if that natural person were a person, would be an associate of that natural person by virtue of paragraph (a) or this paragraph; or
 - (iii) where a person who is an associate of the person by virtue of subparagraph (i) or (ii) is a company—any person who, if that company were the person, would be an associate of that company by virtue of paragraph (b) or this paragraph; or
- (d) where the person is a partner in a partnership:—
- (i) another partner in the partnership; or
 - (ii) where any partner in the partnership is a natural person—any person who, if that natural person were the person, would be an associate of that natural person by virtue of paragraphs (a) or (c); or
 - (iii) where any partner in the partnership is a company—any person who, if the company were the person, would be an associate of the company by virtue of paragraphs (b) or (c); or

“**Compliance Audit**” means an audit to ensure compliance with the Conditions in such form as the Central Bank may determine from time to time;

“**Conditions**” means the requirements and conditions set out in Schedule 4 to this Exemption Notice;

Exemption from Certain Provisions of the Regulation—*continued*

“**Effective Date**” means 1st June, 2005;

“**Exempted Regulations**” means the Regulation listed in Schedule 3 to this Exemption Notice;

“**Foreign Exchange Manual**” means the manual published by the Central Bank and provided to the authorised dealers under the Regulation as amended from time to time;

“**Non-resident**” means a person who is not a Resident; and

“**Resident**” means a person who is a resident of Papua New Guinea as defined from time to time in the Foreign Exchange Manual.

Unless a contrary intention appears, expressions used in this Exemption Notice that are defined in the *Central Banking Act*, the Regulation or the *Income Tax Act 1959* have the same respective meanings in this Exemption Notice.

This Exemption Notice takes effect from the Effective Date.

Dated this 31st day of May, 2005.

B.B.M. POPOITAI, MBE.,
Acting Governor of the Bank of Papua New Guinea.