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[2007

Commission of Inquiry Act (Chapter 31)

COMMISSION OF INQUIRY

Into

THE MANAGEMENT GENERALLY OF PUBLIC MONIES BY THE DEPARTMENT OF FINANCE

To: MAURICE SHEEHAN, Commissioner.

STATEMENT OF CASE

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

- A. The management of the Department of Finance, in particular in relation to the disbursement of public monies, has received considerable publicity in recent months with the arrest and prosecution by the police of senior officers of the Department for various offences under the *Criminal Code Act* (Chapter 262). During this time, the expenditure of public monies has given rise to considerable public disquiet and debate. Disquiet has principally been in the manner in which claims for payment of public funds have been made to the Department, the method used to quantify such claims and the authorization for such payments to be made particularly in relation to consent and default judgments and out-of-court settlements entered against the State.
- B. The Department of Finance (the Department) was established under the *Public Services (Management) Act 1995*. By notice published in *National Gazette* No. G65 of 26th August, 1997, the Head of State, acting on advice of the National Executive Council, determined in accordance with Section 21 of the *Public Services (Management) Act 1995* that the Department shall have the following functions:—
- (a) to be responsible for the management of policies, regulations and laws pertaining to the collection and disbursement of public monies;
 - (b) to administer and provide advice on debt management and foreign aid;
 - (c) to formulate and administer the annual estimates of revenue and expenditure;
 - (d) to control and administer Government revenues.
- C. In the exercise of its functions, the Department manages and disburses public funds in accordance with the *Public Finances (Management) Act 1995* and the Regulations and Financial Instructions made thereunder.

Statement of Case—continued

Statement of Case on which the Commission of Inquiry is Ordered into the Management of Public Monies by the Department of Finance—*continued*

- D. The offices of Attorney-General and Solicitor General are established under the *Attorney-General Act* 1989. Under Section 7 of the Act, the Attorney-General is the principal legal adviser to the National Executive Council and, as principal legal advisor, is required to tender legal advice and opinion to the National Executive in accordance with Section 8. Under Section 9 of the Act, the Attorney-General appoints the Solicitor-General whose primary function is to appear as an advocate for the State in matters coming before the courts in Papua New Guinea. As part of his function, the Solicitor-General recommends to the Department matters before the courts that are to be settled out of court or by consent judgment.
- E. The controversies surrounding the Department, in particular in relation to payments made in satisfaction of out-of-court settlements, default or consent judgments or other claims against the State, have given rise to concerns that the management of the Department particularly since 2000 was not done transparently and in accordance with good management and accounting practices, and that public monies have been made falsely, fraudulent, improperly or in a manner not authorized by law.

COMMISSION OF INQUIRY

TERMS OF REFERENCE

KNOW you that I, Grand Chief Sir Michael Thomas Somare, Prime Minister of Papua New Guinea, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the *Commission of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby:—

- (a) appoint you, Maurice Shechan, to be Chief Commissioner and the Commission is to enquire into and report on the following matters:—
1. To inquire into the existence and extent of illegal, false or improper claims for payment made to the State and approved or paid by the Department of Finance in the period 2000 - 1st July, 2006 and to establish:—
 - (i) the extent of illegal and improper claims; Judgments or out-of-court settlements against the State; and
 - (ii) the identity(s) of those persons who have made or been paid such claims; and
 - (iii) the value of such claims for each year in the period 2000 - 1st July, 2006; and
 - (iv) the number of illegal, false or improper claims, Judgments or out-of-court settlements, approved for payment by the Department of Finance in the period 2000 - 1st July, 2006; and
 - (v) the number of illegal claims that have been paid by or from the Department of Finance in the period 2000 - 1st July, 2006; and
 - (vi) the amount so paid in each year during the period 2000 - 1st July, 2006; and
 - (vii) whether, in the opinion of the Commission, the Department of Finance failed to detect and disallow illegal, false or improper claims and if so, how and why those failures occurred; and
 - (viii) the degree to which the *bona fides* of each illegal, false or improper claim was investigated by the Department of Finance before approval and/or payment; and
 - (ix) the involvement (if any) of officers of the State in the making approval and payment of illegal, false or improper claims against the State; and
 - (x) how and by whom such illegal, false or improper claims were approved; and
 - (xi) the degree and extent of involvement of legal firms in the making and payment of illegal claims against the State; and
 - (xii) whether all tax or other imposts arising from the payment of illegal, false or improper claims, Judgments or out-of-court settlements by the State during the period 2000 - 1st July, 2006, were paid either by the State or payees from the State; and

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

Commission of Inquiry—*continued*Terms of Reference—*continued*

2. The Commission is to inquire into all Consent and Default Judgments entered against the State in the period 2000 - 1st July, 2006 and conclude as to the number and value of these Judgments and the circumstances in which they came to be entered against the State; and
3. The Commission is to inquire and conclude whether the entry of any Default Judgment was the result of negligence or failure by any Officer of the State and to make recommendations for action against those Officers; and
4. The Commission is to make recommendations for action by the State in respect of Consent and Default Judgments made against it and the liabilities therefrom; and
5. The Commission is to examine each out-of-court settlement made against or entered into by the State in the period 2000 - 1st July, 2006 and conclude as to:—
 - (i) The facts and circumstances in and by which each out-of-court settlement made; and
 - (ii) The legality of each out-of-court settlement; and
 - (iii) Whether liability should have been admitted by the State; and
 - (iv) The involvement of the Offices of the Attorney-General and the Solicitor-General in each out-of-court settlement; and
 - (v) The quantum accepted and agreed by the State and the property and legality of that agreement; and
 - (vi) Whether the interests of the State have been in respect of any out-of-court settlement entered into by the State; and
 - (vii) What changes should be made to protect the State and public monies from the making or payment of improper out-of-court settlements; and
6. To inquire into the systems that protect public monies from illegal claim, to identify the core failures that have exposed the State to improper liability and allowed public monies to be applied to payment of illegal, false or improper claims, Judgments and out-of-court settlements and make recommendations to secure or further protect public monies from such misapplication; and
7. To inquire into the role of the Department of Finance in screening all claims for payment by the State and detecting and rejecting illegal, false or improper claims, to establish the extent of Departmental responsibility in this regard and conclude whether the Department of Finance has complied with these obligations; and
8. To inquire into the involvement of the Office of the Attorney-General, the Solicitor-General, the Department of Finance and the Registry of the National Court of Justice in the making and payment of illegal, false or improper claims or Judgments against the State in the period 2000 - 1st July, 2006; and
9. To inquire into and identify the source of monies used to pay all identified illegal, false and improper claims and conclude as to the legality of the use of those sources; and
10. To inquire into and conclude and involvement of legal firms in the making and paying of illegal, false or improper claims, Judgments or out-of-court settlements against the State; and
11. Inquire into and identify any improper or illegal involvement in or benefit or payment to any State Officer made for or in any way arising from false, illegal or improper claims, Judgments or out-of-court settlements against the State in the period 2000 - 1st July, 2006; and
12. To inquire and conclude as to whether the relevant Attorneys-General and Solicitors-General in the period 2000 - 1st July, 2006 have advised and protected the State to an acceptable and competent standard in negotiating, entering and processing for payment Consent Judgments and out-of-court settlements; and
13. Make any further recommendations arising from the inquiry; and
14. Make such referrals for prosecution as the Commission deems appropriate; and

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

*Commission of Inquiry—continued***Terms of Reference—continued**

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

AND I FURTHER direct that you shall commence the inquiry without delay by Monday 29th October, 2007 and proceed therein with all dispatch and render to me your final report within six (6) months from the date of commencement of hearing.

AND I FURTHER direct that you shall furnish to me your interim report on your investigations into Department of Finance for the period 15th February, 2007 to 20th May, 2007 by 14th December, 2007.

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

Dated this 25th day of October, 2007.

M.T. SOMARE,
Prime Minister.

*Commission of Inquiry Act (Chapter 31)***APPOINTMENT OF COMMISSIONER TO A COMMISSION OF INQUIRY**

I, Grand Chief Sir Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Maurice Sheehan as Chief Commissioner and sole Commissioner of the Commission of Inquiry to the Commission of Inquiry into the management generally of public monies by the Department of Finance.

Dated this 25th day of October, 2007.

M.T. SOMARE,
Prime Minister.

*Commission of Inquiry Act (Chapter 31)***APPOINTMENT OF SECRETARY TO ASSIST A COMMISSION OF INQUIRY**

I, Grand Chief Sir Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Madaha Maina as Secretary to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance.

Dated this 25th day of October, 2007.

M.T. SOMARE,
Prime Minister.

*Commission of Inquiry Act (Chapter 31)***APPOINTMENT OF COUNSEL TO ASSIST A COMMISSION OF INQUIRY**

I, Grand Chief Sir Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Sarea Soi as Counsel to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance.

Dated this 25th day of October, 2007.

M.T. SOMARE,
Prime Minister.

*Commission of Inquiry Act (Chapter 31)***REVOCATION, APPOINTMENT AND DETERMINATION OF OTHER STAFF TO ASSIST A COMMISSION OF INQUIRY**

I, Grand Chief Sir Michael Thomas Somare, Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commission of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby revoke the appointments of Heni Vada as Accountant, Shiraz Karmally as Senior Investigator, Joe Posi as Associate to Commissioner, Barbara Velekiri as Executive Secretary to the Commissioner, Collin Geno as Investigator, Albert Kimisi as Investigator, Antonia Paul as Transcriber, Kathy Kalama as Transcriber, Kila Wari as Procurement Clerk, Shirley Karigal as Assistant Investigator, Michelle Wally as Receptionist, Steven Haiveta as Driver, Bruno Sui as Summons Officer and Paulus Glawe as Summons Officer and hereby appoint the following Other Staffs to assist the Commission of Inquiry into the management generally of public monies by the Department of Finance, namely:—

Names		Positions
1.	Douglas Anayabere	Accountant
2.	Monica Kaijah	Executive Secretary to the Commissioner
3.	Kaupā Aiwa	Investigator
4.	Richard Pangiweyin	Investigator
5.	Joan Arni	Lawyer
6.	Margaret Leva	Transcriber
7.	Jullie Gwaibo	Transcriber
8.	Siritoi Maraga	Receptionist
9.	Betty Arua	Executive Secretary to the Counsel Assisting
10.	Onu Naime	Transcriber
11.	Gina N'Drafiu	Manager Multi-Skilled Reporter
12.	Grace Ravu	Accounts Clerk
13.	Luke Damu	Summons Officer
14.	Philip Kautete	Driver

(a) SANCTION OF PAYMENT

Pursuant to Section 18 of the *Commission of Inquiry Act* (Chapter 31) sanction the payment of remuneration to these Other Staff to the Commission of Inquiry into the management generally of public monies by the Department of Finance.

(b) TERMS AND CONDITIONS

Determine that the terms and conditions applicable to these Other Staffs shall be specified in the Schedule hereto.

(c) PREVIOUS APPOINTMENTS

This Instrument of Appointment supercedes previous Instrument of Appointment issued under my hand.

Dated this 25th day of October, 2007.

M.T. SOMARE,
Prime Minister.