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PORT MORESBY, MONDAY, 28th AUGUST

[2017

NOTICE BY THE OMBUDSMAN COMMISSION

LIFTING THE DIRECTION ISSUED

Pursuant to Constitution Section 27(4)

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

Notice by the Ombudsman Commission—continued**Lifting the Direction Issued—continued****Pursuant to Constitution Section 27(4)—continued**

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

- (1) District Education Service Improvement Program; and
- (2) District Health Service Improvement Program; and
- (3) District Law and Order Improvement Program; and
- (4) District Water Supply & Sanitation Improvement Program; and
- (5) District Agriculture and Community Based Improvement Programs; and
- (6) District Rural Communication and Electrification Improvement Programs; and
- (7) District Transport and Community Infrastructure Improvement Programs; inclusive of
- (8) Provincial and District Social and Administration Infrastructure; and
- (9) Provincial and District Land and other Physical Infrastructure Development; and
- (10) Provincial and District Development of Village and Social Services; inclusive
for the fiscal years 2015 and 2016 and 2017; and

WHEREAS the distribution of substantial public funds to the District Treasuries and the Provincial Treasuries during the period of 2017 general election was insufficient time for the funds to be properly applied to development purposes as intended and therefore these substantial public funds may be misapplied or misused contrary to law and the relevant guidelines; and

WHEREAS the Ombudsman Commission had on 20th April, 2017 issued Directions pursuant to its powers under Section 27(4) of the *Constitution* to enable compliance by each of you named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above with relevant laws, policies and guidelines before the release, disbursement, transfer and receipt of public money purporting to be in the form of electoral and discretionary funds and various development funds under Provincial Support Grants and District Support Grants, but not limited to:

- (1) District Education Service Improvement Program; and
- (2) District Health Service Improvement Program; and
- (3) District Law and Order Improvement Program; and
- (4) District Water Supply & Sanitation Improvement Program; and
- (5) District Agriculture and Community Based Improvement Programs; and
- (6) District Rural Communication and Electrification Improvement Programs; and
- (7) District Transport and Community Infrastructure Improvement Programs; inclusive of
- (8) Provincial and District Social and Administration Infrastructure; and
- (9) Provincial and District Land and other Physical Infrastructure Development; and
- (10) Provincial and District Development of Village and Social Services; inclusive
for the fiscal years 2015 and 2016 and 2017; and

Notice by the Ombudsman Commission—*continued***Lifting the Direction Issued—*continued******Pursuant to Constitution Section 27(4)—continued***

WHEREAS each of you named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above, are expected to perform your duly mandated functions according to law, including the proper disbursement of funds now that the writs for the 2017 general elections have been returned; and

WHEREAS the 2017 general election has been completed, the writs returned and 110 of the 111 seats as of the date of this Direction are now being represented in the 10th National Parliament, and the Ombudsman Commission considers that the serious concerns associated with application of public funds giving rise to the issuance of the Directions of 20th April, 2017 has abated; and

WHEREAS the Ombudsman Commission considers it necessary to uplift its Directions issued on 20th April, 2017 with respect to elected Members of Parliament of the 9th National Parliament who have retained their seats for the 10th National Parliament; and

WHEREAS the Ombudsman Commission further considers it necessary for newly elected Members of Parliament to the 10th National Parliament to put in place their respective Joint Provincial Planning Budget and Priorities Committee and District Development Authority Board Members (formerly known as Joint District Budget and Priorities Committee) as the case may be, and appraise themselves of the relevant laws, policies and guidelines applicable to public money purporting to be in the form of electoral and discretionary funds and various development funds under Provincial Support Grants and District Support Grants; and

WHEREAS each of you holding leadership positions named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above is a person to whom the National Goals and Directive Principles, in particular the second National Goal which is for all citizens to have an equal opportunity to participate in and benefit from the development of our country, the Basic Social Obligations, in particular the duty to respect and act in the spirit of the *Constitution* and to protect Papua New Guinea and to safeguard the national wealth, and Division III.2 (*Leadership code*) of the *Constitution* apply; and

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

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

WHEREAS each of you holding leadership positions named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above is subject to Section 27 of the *Constitution* and accordingly:

- (1) you have a duty to conduct yourself in such a way, both in your public or official life and your private life, and in your associations with other persons; as not —
 - (a) to place yourself in a position in which you have or could have a conflict of interests or might be compromised when discharging your public or official duties; or
 - (b) to demean your office or position; or
 - (c) to allow your public or official integrity, or your personal integrity, to be called into question; or
 - (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea; and

Notice by the Ombudsman Commission—continued**Lifting the Direction Issued—continued****Pursuant to Constitution Section 27(4)—continued**

- (2) you have a duty, in particular, not to enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether you are carrying out or have carried out the duties imposed by Section 27(1) of the *Constitution*; and
- (3) you have a further duty if necessary to publicly disassociate yourself from any activity or enterprise or any of your associates that might be expected to give rise to such a doubt; and

WHEREAS each of you holding leadership positions named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above has a duty under Section 23 of the *Organic Law on the Duties and Responsibilities of Leadership* to not obstruct the Ombudsman Commission and to cooperate to the best of your ability with the Ombudsman Commission in any investigation or other proceedings for the purpose of that Law; and

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

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

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

1. **STOP THE RELEASE, DISBURSEMENT, TRANSFER AND/OR RECEIPT OF PUBLIC MONEY PURPORTING TO BE IN THE FORM OF PROVINCIAL SUPPORT GRANT & DISTRICT SUPPORT GRANT FOR THE FISCAL YEARS 2015 And 2016 and 2017, FOR THE NEW MEMBERS OF PARLIAMENT FOR THE 10TH NATIONAL PARLIAMENT, AND IN PARTICULAR**
2. **UPON RECEIPT OF THIS DIRECTION STOP PAYMENT OF ALL CHEQUES OR WARRANTS AND ALL MONIES CARRIED FORTH FROM 2015 DRAWN ON ANY BANK IN PAPUA NEW GUINEA INCLUDING THE BANK OF PAPUA NEW GUINEA BY OR ON BEHALF OF THE GOVERNMENT OF PAPUA NEW GUINEA IN RESPECT OF PUBLIC MONIES PURPORTING TO BE IN THE FORM OF PROVINCIAL SUPPORT GRANT AND DISTRICT SUPPORT GRANT AND VARIOUS DEVELOPMENT FUNDS FOR THE NEW MEMBERS OF PARLIAMENT FOR THE 10TH NATIONAL PARLIAMENT; AND**
3. **FURTHER UPON RECEIPT OF THIS DIRECTION STOP OPERATING ANY TRUST ACCOUNTS WHERE SUCH FUNDS ARE STORED FOR THE ELECTORATES RELATING TO THE NEW MEMBERS OF PARLIAMENT FOR THE 10TH PARLIAMENT; BUT NOT LIMITED TO:**
 - (A) **DISTRICT EDUCATION SERVICE IMPROVEMENT PROGRAM FUNDS; AND**
 - (B) **DISTRICT HEALTH SERVICE IMPROVEMENT PROGRAM FUNDS; AND**
 - (C) **DISTRICT LAW AND ORDER IMPROVEMENT PROGRAM FUNDS; AND**

Notice by the Ombudsman Commission—*continued*Lifting the Direction Issued—*continued*Pursuant to Constitution Section 27(4)—*continued*

- (D) DISTRICT WATER SUPPLY & SANITATION IMPROVEMENT PROGRAM FUNDS; AND
- (E) DISTRICT AGRICULTURE AND COMMUNITY BASED IMPROVEMENT PROGRAM FUNDS;
AND
- (F) DISTRICT RURAL COMMUNICATION AND ELECTRIFICATION IMPROVEMENT
PROGRAM FUNDS; AND
- (G) DISTRICT TRANSPORT AND COMMUNITY INFRASTRUCTURE IMPROVEMENT
PROGRAM FUNDS; AND
- (H) PROVINCIAL AND DISTRICT SOCIAL AND ADMINISTRATION INFRASTRUCTURE FUNDS;
AND
- (I) PROVINCIAL AND DISTRICT LAND AND OTHER PHYSICAL INFRASTRUCTURE
DEVELOPMENT FUNDS; AND
- (J) PROVINCIAL AND DISTRICT DEVELOPMENT OF VILLAGE AND SOCIAL SERVICES FUND;
AND
- FOR THE FISCAL YEARS 2015 AND 2016 AND 2017; AND

4. TRANSFER TO THE CONSOLIDATED REVENUE FUND AT THE END OF THE 2016 FISCAL
YEAR, ALL PUBLIC FUNDS IN RESPECT OF THE VARIOUS PROGRAMS REFERRED TO
ABOVE THAT ARE NOT COMMITTED TO THE RELEVANT PROJECTS;

AND TAKE NOTICE:

- (a) that this Direction supersedes the previous Direction issued on 20th April, 2017; and
- (b) that as a result of this Direction, Members of Parliament who have retained their seats for the 10th National Parliament, subject to usual compliance with relevant laws, policies and guidelines will no longer require clearance from the Ombudsman Commission and the working committee comprising of the Department of Rural Development and Implementation and the Department of Finance;
- (b) that if any of the person named in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) above fails to comply with this direction he or she will be guilty of misconduct in office under Section 27(5)(b) of the *Constitution* and liable to prosecution before a leadership tribunal and subject to penalties under Section 28(1)(g)(ii) of the *Constitution*, Section 27(5) of the *Organic Law on the Duties and Responsibilities of Leadership* and Section 2 of the *Leadership Code (Alternative Penalties) Act*, including dismissal from office; and
- (c) proceeding under the Leadership Code does not bar them from other proceedings under any other laws against them; and
- (c) if any of the persons named in (12) and (14) above fails to comply with this direction, they may be subject to enforcement proceedings in the National Court under Section 23 of the *Constitution*; and
- (d) that this Direction will cease to take effect on and from 6th September, 2017

Dated this 21ST day of August, 2017.

M. DICK,
Chief Ombudsman.

R. PAGEN,
Ombudsman.