



National Gazette

PUBLISHED BY AUTHORITY

(Registered at the General Post Office, Port Moresby, for transmission by post as a Qualified Publication)

No. G607]

PORT MORESBY, FRIDAY, 19th JULY

[2019

Securities Commission Act 2015

Sec. 54(1)(d) & (2) 55

INVESTIGATIONS AND SIZURE OF PACIFIC BALANCED FUND (PBF) FOR MELANESIAN TRUSTEE SERVICES LIMITED

STATEMENT OF CASE

INTRODUCTION

The Securities Commission of Papua New Guinea through its regulatory review conducted in 2018 discovered that Melanesian Trustee Services Limited (MTSL) was insolvent since 2014, according to Ernst & Young, the external auditors of MTSL and endorsed by John Sanday, sole shareholders and Executive Chairman of MTSL. MTSL was a Licensed Trustee under Section 72 of the repealed *Securities Act 1997* but is not an holder of a Capital Market license under Sections 36 and 189 of the *Capital Market Act 2015* (CMA) as a Trustee. MTSL was the past immediate Trustee and Interim Fund Manager for Pacific Balanced Fund (PBF) pursuant to Section 189 of CMA.

The audited Financial Reports for MTSL for the financial years 2014 & 2015 provides very serious qualifications by the auditors, where MTSL is not available to meet its liabilities in the ordinary course of business. The auditors further stated that MTSL is not even in a position to convert its noncurrent assets to meet its liabilities.

However, the audited Financial Reports of Pacific Balanced Fund for the financial years 2014 to 2016 provides a different picture whereby MTSL paid itself significant fees, including Trustee, Management and Performance fees as well as its administrative expenses being fully paid for by PBF.

There are also very serious allegations by the Unit Holders against MTSL and the Commission has the obligation to the Unit Holders to ensure that these issueds are addressed and investments of unit holders are properly managed for their benefits.

On or about 9 April 2019 upon an application by MTSL to declare its license issued under Section 72 of the repealed Act as perpetual and does not required renewal, the National Court found that MTSL does not have a license under the *Capital Market Act 2015*. The Court found that under Section 44 of the *Capital Market Act 2015*, a Trustee

**Investigations and Seizure of Pacific Balanced Fund (PBF) for Melanesian Trustee Services Limited—
*continued***

Statement of Case—continued

License in renewal annually and there is no evidence to show that MTSL renewed its license. The Commission provided several opportunities for MTSL to renew its Trustee Application, however failed to do so. Hence, MTSL is no longer a license Trustee and the Commission has taken regulatory measures to protect the assets of PBF from MTSL and its associates.

OBJECTIVE

The objective of your engagement is for you to secure all physical assets of Pacific Balanced Fund, from MTSL and its associates.

TERMS OF REFERENCE

I, **Alex Tongayu, MBE**, the Acting Chairman of the Securities Commission of Papua New Guinea reposing confidence in your integrity and ability to do so, hereby appoints **Michael Badui of Cabran Ikhlas (PNG) Limited** of P.O. Box 245, WAIGANI, National Capital District as an investigation officer pursuant to Section 55 of the *Securities Commission Act 2015* for the purposes of conducting thorough investigations and securing all physical assets of Pacific Balanced Fund;

- (a) Identify all physical assets of PBF and its subsidiaries and related companies and secure all such assets.
- (b) Identify any physical assets of PBF and its related or subsidiary Companies overseas.
- (c) Below are subsidiaries of PBF:
 - (i) Melanesian Metals Corporation Limited (MMC)
 - (ii) Metals Refinery Operations Limited (MRO)
 - (iii) PBF Agro Limited
 - (iv) PBF Power Limited
 - (v) PBF Properties Limited
 - (vi) D & D Holdings Limited
 - (vii) Moni Kam Kwik Limited
 - (viii) Any other hidden subsidiaries created by MTSL to avoid regulatory oversight.

This engagement is for a period of three months from the date of this terms and you are required to update the Securities Commission regularly on your progress. Within the above period, you are required to use all the powers vested on the investigation officer under Section 55 to 65 of the *Securities Commission Act 2015*.

AND I FURTHER direct that the investigation and seizure of the assets be conducted in the National Capital District, or at such other places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.

AND I FURTHER direct that you shall commence with the investigations without delay and proceed therein with all dispatch and render to me your final report within three months from the date of commencement of the Investigations.

Dated this 18th day of July, 2018.

A. TONGAYU, MBE,
Acting Chairman.