

4.5 Terms of Reference 1(e) Tender Procedures

4.5.1 Introduction

In this part of the report, I will look into matters set out in TOR 1(e) which read:

Whether, in the performance of its functions and the exercise of its powers, particularly in the management of the Investment Corporation Fund, the Investment Corporation failed to comply with the provisions of the Investment Corporation Act (Chapter 140), the Public Finances (Management) Act 1995 or any other Act and with relevant policies and directions from the National Executive Council between the years 1998 and 2002 concerning but not limited to the following:?

whether there was any failure to comply with prescribed tender procedures in connection with

The Y2K upgrade at the cost of about 700,000. 00 paid to Bank of Papua New Guinea in or around September 1999

(ii) the engagement of Fiocco Possman and Kua as lawyers for the Investment Corporation;

the acquisition in 1999 of a VX Toyota Station Wagon registration No BBE 585 for the Managing Director and his purchase and disposal of the vehicle less than a year latter;

(iv) the acquisition in or around June 1999 of a VX Station Wagon registration No BBF 71 7 for the Managing Director and 3 units of Toyota Hilux for each for the Corporate Services Manager, the Investment Manager and the Fund Manager respectively; and

the sale and disposal of properties including those commonly known as Sea Park Apartments, Credit House, Monian House and Ilimo Farm

I will be examining and reporting on the manner in which contractors were engaged and how the assets of the Fund and the Corporation were disposed prior to and during

the conversion of the Fund to the Pacific Balanced Fund which occurred between the

period of 1998 and 2002.

There were complaints and allegations that proper tender procedures were not followed to procure certain services and dispose assets. This reflects adversely on the

management and Board of the Corporation who acted as both trustee and fund manager of the Fund. Considering the fact that the interest of unit holders in the

Fund

is paramount, any transaction or dealings was to have been conducted in View of that interest.

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4.5.2

It is imperative and prudent for any public body such as the Corporation to ensure that tender procedures are in place and are strictly adhered to so as to ensure accountability and transparency in the process to refute any possible suspicion or suggestions of mismanagement, abuse of power, imprudent management, breach Of fiduciary duties and so on.

Under this TOR, I will report on my findings on the allegation of whether or not established tender procedures had been observed and complied with by the management and Board of the Corporation in procuring services and disposing of assets.

I do this by setting out the legislative framework for public tender procedures followed by the discussion of specific references under TOR I will discuss the TOR chronologically by highlighting the various contracts entered into and assets disposed during the term of both Mr Yamuna and Mr Ruimb.

Legislative Framework for Tender Procedures

The establishment and the operations Of the Corporation is governed by the Act. As a statutory corporation it qualified as a public body, and was therefore subject to the requirements of the PFM Act.

In May Of 1987, Sir Kingsford Dibela, the then Governor General made a declaration under the now repealed PFM Act declaring that the Corporation is a public body to which the PFM Act 1986 applied. That declaration was gazetted on the 15th May 1987 and is attached and marked as Exhibit 94 in the Appendixes to this report.

The general scheme of tender procedures in which the Corporation was to have been guided by is set out under the PFM Act, the Act and the Financial Manuals.

4.5.2.1 Investment Corporation Act

The Act does not contain any specific provision on tender procedures. However, section 30(1) of the Act makes reference to the general application of the PFM Act, which provides that:-

Subject to Subsection (3), the Public Finance (Management) Act applies to and in relation to the Investment Corporation

However, section 30(3) of the Act sets out an exclusion provision with regard to the application of certain sections in the PFM Act, which reads:-

Sections 51 the Public Finances (Management) Act 1995 do not apply to or in relation to the Investment Corporation

Sections 51 the PPM Act, do not apply to the Corporation pursuant to section 30(3) of the Act. For the purpose of this topic, section 61 Of the

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PFM Act is the appropriate section that establishes the legal framework for public tender procedures that is applicable to all public bodies.

The non-application of section 61 of the PFM Act as provided under section 30(3) of the Act will be further discussed under my discussion of the PPM Act.

4.5.2.2 Investment Guidelines

I have adequately covered discussion on Investment Guidelines of the Corporation under Chapter three of this Report. In summary the Board and Management must manage the Corporation and Fund in accordance with 'sound business principles' as required by the Act.

Apart from this general rule under section 10(1), there has been no specific policy issued by the Minister at any one time in relation to tender procedures for the Corporation. However, there was an internal Tender Committee established to oversee the tendering process.

4. 5.2.3 Public Finances (Management) Act

Certain provisions of the PFM Act applied to the Corporation. The relevant provisions relating to tender procedures are provided under sections 59 61 while section 60 provides for the policy directions on tendering.

Section 59 of the PFM Act provides for contracts for works and services to public bodies in the following terms:?

Subject to subsection (2), tenders shall be publicly invited and contracts taken by a public body to which this Act applies for all works, supplies and services the estimated cost of which exceeds such sum as is specified in its constituent law or declared by the Minister.

(2) Subsection (1) does not apply to any works, supplies and services

that are to be executed, furnished or performed by the State, or an arm, agent or instrumentality of the State approved by the Minister for the purposes of this subsection; or

in respect of which the public body certifies that the inviting of

tenders is impracticable or inexpedient?

In essence, section 59 provides that as the Corporation is a public body, the PFM Act applies to it in mandatory terms to ensure that all tenders must be publicly invited and

any contract entered for all works, supplies and services must be so invited and contract entered if the cost for that work, supply or service exceeds an amount specified in the Act or declared by the Minister. The only exceptions where section 59 of the PFM Act does not apply are in cases where such works, supplies and

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services are supplied or performed by the State or its agent or if the process of inviting public tenders is not practical or expedient under certain circumstances.

Section 61 of the PFM Act provides the requirement for the approval for certain contracts in the following terms:-

The provisions of this section apply to and in respect of all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) Subject to subsection (3), a public body shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt of an amount, or of property to a value, (or both) exceeding

100,000.00; or

In the case of a public body declared by the Head of State, acting on advice by notice in the National Gazette, to be a public body to which this paragraph applies K5 00, 000. 00

(3) The provisions of subsection (2) do not apply to a contract relating to investments by a public body (including a subsidiary corporation) the subject of a declaration under section 57(3)

The Act at section 30(3) states that sections 59 and 61 of the PFM Act does not apply to the Corporation while the PFM Act states otherwise:?

In such cases Where there appears to be inconsistencies between the provisions of the PFM Act and any other legislation relating to a subject matter, the provisions of the PFM Act overrides in so far as the inconsistency is concerned.

This position stems from section 48(4) of the PFM Act which provides:?

?Where any provision in this Part (Part ?Public Bodies) is stated to apply to all public bodies notwithstanding any contrary provision in any other law,

then such provision shall apply, notwithstanding any provision to the contrary and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications in any other law?

Section 61 (1) also reinforces section 48(4) of the PFM Act.

This goes to say that regardless of the exclusion provision in section 30(3) of the Act, the combined reading and effect of section 48(4) and 61(1) of the PFM Act is clear, in that, all provisions of the PFM Act applies to all public bodies including the Corporation irrespective of What its constituent law, in this case, the Act says.

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Following from the above interpretation, Section 61(2) of the PPM Act further provides that subject to subsection (3), a public body shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt of an amount, or of property to a value, or both) exceeding:-

?K1 00, 000. 00; or

In the case of a public body declared by the Head of State, acting on advice, by notice in the National Gazette, to be a public body to which this paragraph applies -

In the case of the Corporation, any payment or receipt of monies exceeding K500, 000.00 requires the Finance Minister?s approval.

Pursuant to Section 61(3) of the PFM Act, the provisions of subsection (2) do not apply to a contract relating to investments by a public body (including a subsidiary corporation) the subject of a declaration under Section 57(3).

Section 57 makes provision for Investments. Section 57(3) of the PFM Act provides that:?

?The Minister may, by notice in the National Gazette, declare a public body (including a subsidiary corporation) to which this Act applies to be a public body which may, without the approval of the Minister, invest its moneys that are not immediately required, provided that each investment, whether a sale or a

purchase, does not exceed a maximum level of 3% of its total asset?.

Section 61(3) of the PFM Act does not apply to the Corporation as there was no declaration under Section 57(3) of the PFM Act. There was also no equivalent provision to Section 61(3) in the repealed 1986 Finance Act.

Section 61(4) of the PFM Act empowers the Minister to permit a public body to enter into a contract or class of contracts without obtaining his prior approval and to impose conditions for such permission. This sub?section (61.4) was repealed in 1998.

Section 60 of the PFM Act deals with policy directions on the tendering process and states:-

The provisions of this section apply to and in respect of all public bodies and subsidiary corporations notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

The Minister may, from time to time, issue directions to public bodies and subsidiary corporations on policy to be followed in relation to the viewing of preference to national tenderers and local manufacturers in relation to tenders invited and contracts taken by public bodies.

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4.5.3

A public body and a subsidiary corporation shall be bound by directions issued under Subsection (2)

Section 60(1) again reinforces sections 48(4) and 61(1) as to the application of the PFM Act while subsection (2) of section 60 empowers the Minister from time to time to issue directions to public bodies and subsidiary corporations on policy to be followed in relation to the giving of preference to national tenderers and local manufacturers in relation to tenders invited and contracts taken by public bodies.

Section 60(3) of the PFM Act renders any direction issued by the Minister binding on a public body and a subsidiary corporation.

I have found that no policy had been issued pursuant to section 60(2) of the PFM Act.

Section 62(1) of the PFM Act provides that:-

Subject to Subsection (2), a public body or a subsidiary corporation to which this Act applies shall cause to be kept proper accounts and records of its transactions and affairs, and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized (my emphasis) and that adequate control is maintained over its assets, or assets in its custody, and over the incurring of liabilities by it.

(2) In the case of a public body or a subsidiary corporation that is declared by a constituent law or by the Minister to be a trading enterprise for the purpose of section 62, the accounts and records required by Subsection (1) must be kept in accordance with the accounting principles generally applied in commercial practice

Section 62 stipulates that all public bodies which include the Corporation must ensure that all transactions involving the payment of monies must be authorized and must be

accounted for and records kept. This provision requires public bodies to ensure that there is adequate control over payments made; assets in its custody; and over liabilities incurred.

I have found that proper records of accounts and records of the affairs of the Corporation and the Fund were not properly kept and this has made my task during this inquiry somewhat difficult in tracing evidence in support or otherwise in respect to allegations raised in the TOR.

The Corporation's Board and Management

There were two separate Managing Directors and Boards who were responsible for the affairs of the Corporation and the Fund over the period under inquiry (1998-2002).

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4.5.3.1 The Board of Directors

Section 9(1) of the Act establishes the Corporation's Board of Directors. The Board is responsible for the proper management of the affairs of both the Corporation and the Fund.

Section 12 of the Act provides for the composition of the Board of Directors and these included the following:-

I the Managing Director

. an officer of the Rural Development Bank appointed by the Minister through gazettal notice

an officer of the Department of Finance appointed by the Minister through gazettal notice

I a minimum of 5 and maximum of 9 members of whom 4 or more are citizens who are appointed by the Minister through gazettal notice.

Under section 14 of the Act, the members of the Board of Directors are required to make a declaration of office and declaration of secrecy before performing duties on the Board.

The chairman and deputy chairman of the board are appointed by the Minister who also determines their term on the board under section 18 of the Act.

The meetings of the Board can be called or set by the Board or as the Chairman or the Deputy Chairman directs and six members of the board can form a quorum.

The Board considers submissions and recommendations prepared and put forward by the management of the Corporation and makes decisions for both the Fund and the Corporation if a matter requires the board's input or approval.

The Board of Directors can authorize and exercise financial discretion up to while any transaction involving the receipt or payment of money over K5 00,000.00 requires ministerial approval from the Treasury Minister.

4. 5. 3.2 The Management

The operations of the Corporation and the Fund were managed by the managing director and the deputy managing director who are required to act in accordance with the policies of the Corporation and with the directions from the Board of Directors pursuant to section 16(4) of the Act.

According to the PFM Act as discussed, the management's financial limit is K100, 000.00 which can be exercised by the Managing Director.

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4.5.4

Evidence given by Mr. Enoch PokalOp confirmed (Transcript page 208) that:

or contract values up to K100, 000. That is at the discretion of the managing director; contracts up to 've hundred thousand, the board, and anything beyond that goes to the minister for approval

Mr. Ruimb also confirmed Mr. Pokarop's evidence.

In practical terms it is the management that recommends to the Board to approve monies within the Board's limit and if the amount exceeds the Board's limit the management advises the Board of the need to obtain ministerial approval and seeks the approval once the Board approves the recommendation.

To appreciate when the allegations Specified under the TOR 1(e) transpired, it is important to identify the management team and the Board of Directors who were party to decisions for or on behalf of the Comoration and the Fund in terms of whose services were engaged contractually, which assets were disposed, and the manner in which those services were obtained and assets were di5posed.

There were two different boards of directors and management team between February 1998 and January 2002 when the allegations raised under this TOR unfolded.

From period February 1998? mid 1999, the Comoration and the Fund was guided under the management of Wandu Yamuna and a separate Board of Directors. From August 1999 January 2002 John Ruimb and his management team managed the

affairs of the Corporation and the Fund under a different Board.

Management under Wandu Yamuna

The management of the Corporation and the Fund under the leadership of Wandu Yamuna as managing director was from February 1998 to mid 1999. Wandu Yamuna's management was responsible for the following matters referred to under TOR

i the Y2K upgrade at the cost of about K700, 000.00 paid to the Bank of Papua New Guinea in or around September 1999;

ii the engagement of Fiocco Possman and Kua as lawyers for the Investment Corporation; and

iii the sale and disposal of properties including those commonly known as Sea Park Apartments, Monian House and Jilimo Farm.

4.5.4.1 The Management from February 1998 to 1999

The following individuals formed the Corporation's management team during Mr Yamuna's tenure as Managing Director:-

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The Senior Executive Management Team

Mr. Wandu Yamuna - Managing Director

Mr. Lincoln Taru Deputy Managing Director

Mr. Stephen Mokis Manager Personnel Administration

Mr. Chris Gideon Corporate Secretary

Mr. Kris Bongare Investment Manager

Mr. Fred Angoman - Financial Controller

Mr. Gerald Senapali Board Secretary

Mr. Enoch Pokarop Senior Investment Analyst

Mr Alu Tongia Fund Administrator

4.5.4.2 The Board of Directors from February 1998 - 1999

The following individuals formed the Board of Directors of the Corporation during Mr Yamuna's tenure as Managing Director.

Sir Dennis Young Chairman (removed in August 1999)

Mr. Napoleon Liosi Deputy Chairman

Mr. Robert Seeto Director (removed in March 1999)
Mr. Jack Patterson Director (removed in August 1999)
Mr. Demas Kavavu Director (removed in August 1999)
Mr. Michael Varapik Director (removed in March 1999)
Mr. Joseph Kumgal Director (removed in June 1999)
Mr. Ben Pokanau Director (replaced in August 1999)
Mr. Ted Taru - Director (removed in June 1999)

Mr Peter Jabri, Mr Peter Kopunye, Mr Rarua Gamu, and Mr Klei Kera were appointed in about May/June 1999 and were removed in October 1999.

There was no appointee from the Rural Development Bank. This was contrary to law under section 12 of the Act.

The ICPNG Accounting Policies and Procedures Manual comprehensively covered procedures for public tender and complimented the PFM Act. Strict adherence to the established tender process was lacking when Mr Yamuna was appointed the Managing Director of the Corporation and during his tenure the use of public tender system was abolished (Transcript page 208 to 209).

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4.5.4.3 Internal Tender Procedures

Prior to Wandu Yamuna's appointment as managing director, the tenders system use was guided by the PFM Act and complimented by the ICPNG Accounting Policies and Procedures Manual. A copy of the manual is attached and marked as Exhibit 95 in the Appendices to this report. The relevant captions of the manual relating to the tender process is set out below:

ORPORATION OF PAPUA NEW GUINEA
ACCOUNTING POLICIES AND PROCEDURES MANUAL
4.4 PROCEDURES FOR TENDERS
AREA OF INTEREST: Procurement by Tender

OBJECTIVES: To provide guidelines that will ensure the most prudent

manner of finding the right supplier for goods and services required, by inviting tenders.

SCOPE: These guidelines will provide the correct policies and procedures to be followed in regard to,

Invitation of Tenders

- Handling of the Tender documents
Approval of the Tenders

The Tender Committee

Responsibilities: The Tender Committee members listed in subsection below are jointly and severally responsible for the above objectives.

FUNCTIONS

Invitation to Tender
Receiving and Opening Tenders
Approval of Tenders

The Tender Committee
GUIDELINES:

(A) INVITATION TO TENDER

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All Tenders should be allocated a unique tender number and this number should appear on all tender documents

For Contracts under K5 0,000 suitable suppliers may be invited to tender. The invitation should be restricted to suppliers with the necessary capabilities and financial viability to carry out the contract.

The possibility of getting a local supplier should be fully explored before extending invitations to foreign companies operating in Papua New Guinea, or to overseas suppliers, to conform with the policy of the Government of

Papua New Guinea.

possible a minimum of three suppliers should be invited to tender for every contract.

For contracts over 50,000 the invitation to Tender should be by press advertisement, calling interested parties to register their interest, providing details about their background, experience in similar contracts and expertise of their staff members where appropriate.

The following information should be provided to interested parties along with the Tender documents.

(C)

(8)

Full description of the Corporation's requirements.

Other specific requirements such as delivery/completion time.
Closing Date and time for the submission of Tenders

Name and Title of Contract Officers.

Amount of deposit required at the time of lodgement. (Refundable on return of documents if Unsuccessful).

The tender documents should be initialled by the tenderer in order that the initialed copies become the contract copies should the tender be successful.

The tender documents given to all tenderers should be identical.
- Changes to tender documents, if absolutely essential, may be made

by the Tender Document and all the changes should be communicated in writing to all tenderers.

All tenderers should be instructed that the tenders should be submitted in sealed envelopes with the following information clearly shown on the envelope.

(ii) The Name and Address of the Tenderer.

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Tender Number

(iv) A Brief description of the contract.

The closing date and time.

RECEIVING AND OPENING OF TENDER

Tender Period

Tender periods should be of adequate duration to suit both the Corporation and the tenderers.

- Ideally no extension of the tender period should be granted. However, under exceptional circumstances extension may be considered and if granted all interested parties should be notified and confirmed in writing.

The time for closing tenders should not be earlier than 3.00 pm on a working day other than Mondays and days immediately after a public holiday. On the closing date the Corporation's Post Office Box should be checked shortly before the closing time of the tender.

- Tender submissions by Fax or Telex should not be accepted under any circumstances.

Late submission should be returned to the senders unopened.

2. OPENING OF TENDERS

All Tenders received should immediately be put in the tender box.

The tender box should be in the custody of the Secretary of the Tender Committee.

Tenders Opened in error shall be rescaled by the Secretary of the Tender committee, initialed and put in the Tender box.

- At the time of opening the Tender box, at least three members of the Committee shall be present and all three members shall initial each and every tender.

A summary of all tenders received together with the relevant documents will be forwarded to the appropriate division/section or consultants for evaluation and subsequent return to the tender committee with their recommendation along with the summary.

- The tender may if necessary call upon the persons involved in the evaluation to assist the final decision.

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3. APPROVAL OF TENDERS

Contracts under K1000 will be approved by the appropriate authority as per the delegation of authority issued by the Managing Director.

Contracts over K5, 000 and under 00, 000 shall be approved by the Managing Director.

- Contracts over K100, 000 but under should be submitted to the Board of Directors of the Corporation along with the recommendations of the Tender Committee for approval.

Contracts over [?300,000 or over should be referred to the Minister for approval with the endorsement of the Board of Directors.

The awarding of the tender to the successful bidder should ideally happen within 30 days of the opening of the tenders.

Unsuccessful bidders should be notified accordingly.

- The successful bidder will be issued a purchase Order specifying relevant details as per the tender documents.

THE TENDER COMMITTEE

The tender committee members will include:

The Managing Director

The Deputy Managing Director

The Financial Controller

The Personnel and Administration Manager

The Property Manager

The Investment Manager

For contracts below K100, 000 the Deputy Managing Director will chair the committee.

For Contracts over K100, 000 the Managing Director shall be the Chairman of the Committee.

Any one of the Committee members, other than the Managing Director and the Deputy

Managing Director, may serve as the Secretary of the Committee as directed by the Managing Director?

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There is evidence that strict adherence to the established tender process changed when Wandu Yamuna was appointed the Managing Director of the Corporation and during his tenure the use of public tender system was abolished.

4.5.4.4 The Tender Committee

The establishment of the Tender Committee dates back to 1993 when the Corporation

opted to outsource the management of its properties which were then managed in-house. Initially the property portfolio was managed in-house but due to very poor performance attributed to lack of professional in-house management services, the Corporation resolved in late 1993 to have the balance of its properties still managed in-house, to be contracted out to professional property management firms to provide management services.

To implement the board's resolution and in order to ensure a credible selection process was in place with tender provisions, a management team was established as a sub-committee called the Tender Committee. The establishment and functions of the tender committee was guided by the PFM Act and the ICPNG Accounting Policies and Procedures Manual. This Tender Committee was also the Tender Committee for the Fund.

The composition of the Tender Committee comprised of the following management members:-

The Managing Director

The Deputy Managing Director

The Financial Controller

The Personnel and Administration Manager

The Property Manager

The Investment Manager

Under the Accounting Policies and Procedures Manual, contracts valued below required the Deputy Managing Director to chair the committee. For contracts over the Managing Director shall be the Chairman of the committee. Any one of the committee members, other than the Managing Director and the Deputy Managing Director, may serve as the Secretary of the Committee as directed by the Managing Director

The Tender Committee's functions included drawing up the tender documents and selection criteria which were both approved by the Managing Director. The Committee then screens all tender submissions and makes its final recommendation to the Managing Director for approval and the managing director then recommends to the Board of ICPNG to implement.

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The committee deliberated on the screening for bids for sale of properties and considered the selection process in terms of tenders for property management, security services, cleaning services and others. The decisions reached by the Tender Committee would be presented as part of the submissions during board meetings for the board to consider and make its resolution in respect of those tenders. (Transcript page 332)

I noted from records that in actual practice after February 1998, there was no strict compliance as to who formed the tender committee. An example of this is noted from Board Submission dated 07/06/98 where a submission was presented from the tender committee who comprised of the following management team:

Investment Manager - Chairman
- Personnel Administration Manager Member
- Financial Controller - Member
Property Administrator Member
Senior Investment Analyst Member

A copy of the Board Submission referred to is attached and marked as Exhibit 96 in the Appendices to this report.

I find from Exhibit 66 and evidence heard from Enoch Pokarop (Transcript page number 207) that the following persons formed part of the Tender Committee when it existed:

Wandi Yamuna (Managing Director) Chairman
Gerard Senapili (Executive Officer) - Tender secretary
Fred Anogoman (Financial Controller) - Member
Kiis Bongare (Investment Manager) Member

- Enoch Pokarop (Senior Investment Analyst) Alternate member

4,504.5 Abolition of the Tender System

According to Enoch Pokarop's evidence, he never attended any of the tender committee meetings, he was only named as an alternate member in the event the investment manager (Kris Bongare) was not available.

Mr Pokarop in his written statement dated 26th November 1999, said that the standard practice was not followed. He stated:

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Note that as a standard practice in addition to the tender procedure, the Managing Director has always excluded himself from the tender committee in order to do an independent and impartial final decision on the tender committee's recommendation. The rationale was to avoid any conflict of interest in the decision making of the tender committee.

However, when the new Managing Director Mr. Wandu Yamuna) took over in February 1998, a circular was issued to the Divisional Managers advising that the following personal form the members of the tender committee:?

Managing Director Wandu Yamuna (Chairman)
- Financial Controller Fred Angoman (Member)
- Investment Manager Kris Bongare (Member)

/Enoch Pokarop (Alternate Member)

Executive Officer Gerald Senapili (Tender Secretary)

The removal of the Deputy Managing Director is in contravention of the accounting manual and tender procedure. The change was also not submitted to the Board for approval.

Not that the applicable law in relation to the approval of contracts is the Public Finance (Management) Act 1995 as amended. In addition, ICPNG accounting manual also apply.viz,

Contract Value Approval Authority
Contracts up to K100, 000?00 Managing Director
Contracts up to 5 00, 000?00 Board

Contracts over K5 00, 000-00 Minister for Finance

A copy of Mr. Pokarop's written statement is attached and marked as Exhibit 66? in the Appendices to this Report.

Mr. Gideon who also gave evidence said (Transcript page 333), that the system of having the tender committee deliberate on public tenders was not working well and procedures were not followed. By April 1998 the tender committee ceased to operate effectively.

The management at the time failed to follow procedures or utilize the tender committee and eventually the committee ceased functioning.

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4.5.5 Management under John Ruimb

Mr Ruirnb who initially held the position of Senior Investment Analyst and one time as acting Deputy Managing Director was appointed. He was appointed as acting Managing Director of the Corporation on or around the 26th August 1999 when the Management and Board of the Corporation was suspended following controversies relating to the sale of properties and allegations of mismanagement at the

Corporation.

Mr Ruirnb's acting appointment was confirmed four (4) months later in December 1999, and he held that position up to 31st January 2002 when he was retrenched.

The following engagements of professionals and sale of properties took place during John Ruimb's tenure as Managing Director.

I the engagement of Fiocco Possman and Kua as lawyers for the Investment Corporation;

I the acquisition in 1999 of a VX Toyota Station Wagon registration No BBE 585 for the Managing Director and his purchase and disposal of the vehicle less than a year later;

I the acquisition in or around June 1999 of a VX Station Wagon registration No BBF 717 for the Managing Director and 3 units of Toyota Hilux for each for the Corporate Services Manager, the Investment Manager and the and Manager respectively;

4.5. 5.1 The Management from August 1999 to January 2002

The Corporation's management team lead by Mr Ruimb as Managing Director also comprised of some of the staff under Mr Yarnuna's tenure and included the following individuals:?

The Senior Executive Management

Mr. John Ruimb - Managing Director (acting as from August 1999 until confirmed in December 1999)

Mr. Lincoln Taru - Deputy Managing Director

Mr. Chris Gideon Board Secretary

Mr. Enoch Pokarop - Investment Manager

Mr. Nelson Wilson Senior Investment Analyst

There was no Financial Controller under Mr Ruimb's tenure. The former financial controller, Fred Angoman, was administering the financial division of the Corporation through Kincorp who were engaged to manage the finance division

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4.5.5.2 The Board of Directors from:

4.5.6

when the Corporations accounting function was outsourced following the board and management's decision to downsize the operations of the Corporation.

August 1999 January 2002

The following individuals formed the Board of Directors of the Corporation during Mr Ruimb's tenure as Managing Director:-

Mr. Rex Augwi

Mr. Napoleon Liosi

Mr. Abraham Tahija

Mr. Toffamo Mionzing

Mr. Ambeng Kandakai

Mr. John Tari

Mr. Mete Kahona

Mr. Puliwa Mapikon

Sir Pato Kakaraya

Y2K Upgrade

Chairman

Deputy Chairman

Director

Director

Director (resigned in November 2000)

Director

Director

Director (appointed in November 2000)

Director (appointed in October 2001)

Whether there was any failure to comply with prescribed tender procedures in connection with

the Y2K upgrade at the cost of about 700,000.00 paid to the Bank of Papua New Guinea in or around September 1999

Enoch Pokarop gave evidence (Transcript page 213) that the Central Bank issued a direction to all statutory bodies and departments to ensure their information and computer data base were compliant in response to the global Y2K scare. Mr. Pokarop's evidence is also continued by record of the Corporation's board meeting 133/99 (Exhibit held on the 17th December 1999:?)

?133/99/ 2(d) Y2K Computer Upgrade

Board was informed that its resolution of the previous meeting was not pursued as the Bank has exercised its powers under the Banks and Financial Institutions Act to take control of the upgrading works. As a result of this new development, the Bank has appointed its Y2K Consultant Mr. Jack Bar?T or to review and institute immediate remedial actions to attain Y2K Compliance by the rollover date.

Mr. Bar?T or has come up with three approaches that will run simultaneously to achieve compliance. The estimated total cost of this is 000, which falls within the previous approval given by the Board.

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In view of the timing constraints, directors resolved to commend management for the pro?active steps taken to execute agreements with the Bank of PNG project team and the positive developments that have been attained since the last meeting.

Moved: A.Kandakasi Seconded: T. Mionzing?

The Y2K compliance computer upgrade was ?rst mentioned by the Corporation's Board in board meeting number 128/98 tendered as part of Exhibit ?61? held on 11th September 1998 as agenda 3(a) but the board resolved to defer that paper. There are no further records from which I could ascertain if the Board did consider the paper on the Y2K compliance and approved C?Vision?s engagement to address the compliance

issue.

From the evidence on this aspect, I find that the Tender Committee did consider and recommend to the Board to approve and award the contract to C-Vision. There were 12 tender applications received following publication. This is evidenced from an internal memorandum from the Financial Controller, Fred Angoman to the Managing Director, Mr Yamuna dated 15/11/1998 the purpose of the memorandum was to brief the Chairman, Sir. Dennis Young on the Y2K project:

CPNG BOARD CHAIRMAN BRIEF
YEAR 2000 BUG COMPLIANCE PROJECT
I. PURPOSE

The purpose of this paper is to brief the ICPNG Board Chairman Mr. Denis Young on the year 2000 compliance (Y2K) project.

2. PROJECT

The Y2K project is the replacing of the Share Register System (SRS) and the Pay Deduction Scheme (PBS) with year 2000 compatible softwares and the acquisition of appropriate software to run the Pension Fund.

The current systems are not year 2000 compatible and they are corrupt. The memory available has also run out and there is only 10% capacity left. This is enough to operate the system for a few months only. The above problems have caused the computer to produce incorrect reports and the frequent system failure. We have no luck so far to keep the system operating. This will not be long and it will collapse any time. Installing of additional hard disk will not fix the problem.

Further the current system is not user friendly meaning the data entry can not be done on line. This has caused the delays in producing required customer and management information and end products.

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The complete system (software hardware) must be replaced as soon as possible before it collapses. The software required must be off the shelf meaning they can be upgraded when current version is superseded, must be user friendly and its performance must be similar to current system. The hardware must have the maximum hard disk capacity, maximum operating capacity, must be user friendly and must be able to integrate with the accounting software and the printers must perform all required prints (edit reports, cheques, certificates, statements, inquiry information etc.)

CALL FOR BID

Twelve interested firms sent their bids for the project. The complete list of the bidders is attached as Appendix J.

Quotation and tender were called between July and October 98 for the supply and installation of appropriate software and hardware. The twelve bidders were screened by the Tender Committee on Tuesday the October 98 as follow;

PMSC good of the shelf software, no hardware, price in SA UD too high.

3.2 Computer Spot propose to rewrite SRS PDS, of the shelf Pension Fund software, no hardware. Does not meet requirements.

3.3 Concept Software Propose to convert the current SRS PDS, write/develop a Pension Fund, can not provide Hardware, cost too high.

3.4 Computers Communication Proposed two options for hardware, hardware not comprehensive, can not provide software.

3.5 Able Computing Price for hardware only, they can not provide software.

3.6 Data General Price for hardware only, they can not provide software.

3.7 C?Vision quoted for of the shelf software and hardware, they spent more time studying the existing system and inquire on the proposed Pension Fund. Their hardware proposal is also very comprehensive. Their proposal includes two additional software a Property database and Investment Analysis Tool. Their price is reasonable.

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3.8 Datec PNG Propose both software and hardware, they supplied the current SRS PDS software and hardware. Propose to convert SR8 PDS, supply of the shelf Pension Fund software. Price too high.

3.9 Award Technologies Propose both software hardware, though off the shelf programs for SRS PDS they are not quite certain if the software will perform all required functions, can not quote for Pension Fund. No details of hardware to provide.

3.10 Daltron Electronics Propose to provide hardware only, not

comprehensive.

3.11 PNG Micro Computers Propose for both software

hardware, propose software too cheap, some good hardware included.

3.12 Workers Mutual Proposed for both software hardware, propose to develop software, hardware not comprehensive.

BIDDER RECOMMENDED

The bidder recommended by the Tender Committee for approval by the Board is the Vision. They are Australian based company. They have a branch in PNG located at Pacific View Place. Their tender amount is K397, 998.18.

FUNDING

The budgeted amount for computer related cost is K255, 000. About a 1000.00 of this was spent so far. The rest of the fund is to come from the K500, 000 budgeted for the repair and maintenance of the Investment House now that the property was sold.

COMPLETE OF PROJECT

The project will take three months from the date of award of contract to complete. Once the data is transferred to the new system the entry to data will be done on line by the Fund Division and Accounts section.

The Accounting information from the SRS, PBS and Pension Funds will be imported direct. Further the property data and valuations of investments will also be imported direct. This means a lot of time saving, error omissions, reduction in manual labor and efficient periodical management accounts-

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Further more the outstanding matters such as the Share Spilt and Bonus Issues can be affected

A copy of the internal memo from Mr. Angoman to Mr. Yamuna referred to above is attached and marked as Exhibit 97 in the Appendices to this report.

C-Vision's engagement was rushed given the urgency to ensure the Corporation's computers were Y2K compliant before January 2000. The Corporation's Board on the 30:11 October 1998 during its special board meeting number 2/98 (Exhibit considered the proposal which was sanctioned by the Tender Committee and resolved

that the work be awarded to C?Vision for a fee of and that the required work be completed within three (3) months.

75% of the total cost (K397, 998.18) was paid up front on a contract however, Vision failed to complete the contract work. During the Commission?s hearing Enoch Pokarop and John Ruimb both gave evidence (Transcript page 214 410-411) to the effect that C?Vision failed to deliver the services it was engaged to provide. Consequently, on the 28th October 1999, the Board in meeting number 132/99 (Exhibit resolved to re?award the contract to Datec who also bided for the tender at a cost of K1 .5 million. The Board minutes reads:-

?132/99/2(c) Y2K Compliance Program

Board noted the unsatisfactory progress made by C-Vision and resolved to re?award the project to Datec Limited for million and approved K5 00, 000 which was within its authority for Datec to start the upgrading work and that management make a submission to the Treasurer for his approval of the full amount to comply with the Public Finances (Management) Act.

Moved: A. Kandakasi Seconded: TMionzing

John Ruimb through his statement tendered as Exhibit (a copy is attached in the Appendices to this report) gave evidence that:?

?The company called Vision Limited was engaged to undertake the Computer systems upgrade to Y2K compliant at the beginning of 1 999 by the previous management to be delivered by March 1999. At the time of my re?appointment on or about 26th August 1999, not much work was done and delivered despite some upfront payment already made. This company was unknown in the market place at the time and neither was there any contract outlining the terms. The management at the time left this matter to the Investigation team to examine considering the urgency of time to 31? December 1999, and recommended to the Board the appointment of Datec PNG Limited to undertake the Systems up grade to Y2K Compliant. Before arrangements for the engagement of Datec could be ?nalized, Bank of PNG undertook an inSpection on the .28? October 1999 which revealed that in the assessment of the Bank of Papua New Guinea, the Investment Corporation does not meet the minimum preparatory requirements necessary to address the risks brought

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about by the Millennium Bug and that the Bank of PNG was concerned that depositors funds might be at risk. The Bank of Papua New Guinea wrote to ICPNG on 0151 November 1999 advising their inspection result and further advised that in accordance with section 18(2) of the Banks (.9: Financial Institutions Act, the Bank of Papua New Guinea has decided to engage Mr. Yaacov (Jack) Bar?Tor, a Y2K Consultant to review the existing systems and related Y2K issues) and o??er expert advise on ways to address identi?ed problems, at the cost of Investment Corporation. As a licensed financial institution at the time, ICPNG was subject to the regulatory supervisory

control of the Bank of Papua New Guinea, hence this was taken as a lawful regulatory direction and ensuring arrangements were made to cooperate with the Bank of PNG to make the systems Y2K compliant including the payment of AUD 350,000.00 to Bank of Papua New Guinea Trust Account in December 1999 and not in or around September 1999 as stated in the Terms of Reference. Funds were controlled and disbursed by Bank of Papua New Guinea?

Due to intervention Datec was not allowed to complete its engagement.

I also noted from an assessment from in 2002 that a sum of K700, 755.00 was paid into an account opened with the Bank of PNG in 1999. The account was managed by designated officers of the Bank of PNG for the sole purpose of paying expenses that would be incurred by consultants engaged to work on the Y2K compliance requirements. This full amount was paid to the Bank of PNG for the Y2K compliance consultants to commence work.

A copy of PwC's report is attached and marked as Exhibit in the Appendices to this report.

My investigations of the Bank of PNG records show that the said Bank utilized almost all of the money by paying the consultant it engaged. Only a small portion of it was returned to the Corporation.

The amount paid by the Corporation was in excess of K500, 000.00 which required ministerial approval at the time. There is no evidence to suggest that there was compliance with section 61(2) of the PFM Act. I therefore find that the payment of 700,755.00 to the Bank of PNG, while it may have been paid in line with lawful direction, was done without obtaining the mandatory approval from the Minister for Treasury. This rendered the payment unlawful and in breach of the public tender

procedure set out under the PFM Act.

I should also add that the Board on the 13th December 2001, in its meeting number 137/2000 (Exhibit resolved and directed that the Corporation's Management continue to pursue the recovery of moneys paid to the Y2K Team with the Bank of PNG. Whether that has eventuated is a matter for further investigation.

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4.5.7

I have noted in this section of my report on the proposed K37 million write off that this amount has been proposed for write off. However, the amount is recoverable and should not be written off.

Engagement of Lawyers

Whether there was any failure to comply with prescribed tender procedures in connection with

(ii) the engagement of Fiocco Possman and Kna as lawyers for the Investment Corporation;

Posman Kua Aisi Lawyers was one of the law firm engaged to provide necessary legal opinions and advises to the board and management of the Corporation. According to Lincoln Taru's Final Report on ICPNG dated 22nd July 2005 (a copy of which is marked and attached as Exhibit 12 to the Appendices to this report), that firm was principally engaged from 1998 - 2004. According to that report, advice and opinions provided by FPK Lawyers covered the controversial purchase/sale agreement of Ilimo Poultry Products to Athmaize and Peak Performance Feed of Australia as well as conveyancing on the sale of all institutional houses sold under the Corporation Home Ownership Scheme.

Evidence was also given by Managing Directors, Mr Ruimb in his written statement dated 8th November 2006 and Mr Yamuna in his written statement dated 4th December 2006 that the Corporation did not engage any one particular law firm on a retainer basis but opted to engage various law firms to provide legal services for different legal work and these firms include:-

I Carter Newell Lawyers;

I Young Williams Lawyers;

I Pato Lawyers;

I Mawa Lawyers;

I Peter Pena Associates;

I Thirwall, Aisi Koiri Lawyers;

I Parua Lawyers;

I FPK Lawyers;

I Mai Lawyers;

I Liosi Lawyers; and

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. Parua Lawyers

My investigation revealed that there was nothing improper or unlawful about the engagement of FPK Lawyers. There was no need for tender process, and in any case

there is no evidence to suggest that their engagement were unlawful or improper.

A copy of Mr. Ruimb's statement dated 8th November 2006 is marked Exhibit

and Mr. Yamuna's statement dated 4th December 2006 is marked Exhibit both exhibits are attached in the Appendices to this report.

4.5.8 Purchase and Disposal of Vehicles

4.5.8.1 VX Toyota Station Wagon BEE 585

Whether there was any failure to comply with prescribed tender procedures in connection with

the acquisition in 1999 of a VIX Toyota Station Wagon registration No BBE 585 for the Managing Director and his purchase and disposal of the vehicle less than a year later;

In respect to this the Commission heard on the 9th November 2006 the evidence of Mr. John Ruimb, who gave evidence by his statement dated 8th November 2006 refer to Exhibit attached to the Appendices to this report) by making the

following statement:

"The Toyota VX Station registration number BBE 585 was not acquired in 1999 as per the Terms of Reference. This vehicle was purchased for the previous Managing Director Mr. Wandu Yamuna some time on or about 24: March 1998. Upon Mr. Yamuna's suspension and my appointment, I assumed use of this vehicle in September 1999. I later purchased this vehicle some time in the year 2000 by choosing to utilize the motor vehicle provision of my contract of employment where I had an option to purchase at a sum of or written down value which ever was lower. I elected to utilize that provision by paying K45, 000. 00 to ICPNG

According to John Ruimb's evidence, he purchased the subject vehicle two (2) years after it was purchased in March 1998. At the time of his purchase no valuation was done to the vehicle to determine its market value.

Prior to the purchase of the official vehicle, John Ruimb was using an official issue of the Investment Corporation's vehicle.

This Commission does not have a copy of Mr. Ruimb's second contract of employment despite requests to his lawyers to provide a copy. Hence, my findings in relation to this TOR will be reserved as I have not had the benefit of perusing Mr. Ruimb's second contract of employment.

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4. 5. 8.2 VXStation Wagon BBF 717 and Toyota Hilux

Whether there was any failure to comply with prescribed tender procedures in connection with

(iv) the acquisition in or around June 1999 of a VX Station Wagon registration No BBF 717 for the Managing Director and 3 units of Toyota Hilux for each for the Corporate Services Manager, the Investment Manager and the Fund Manager respectively;

The Corporation's former corporate secretary, Chris Gideon, gave evidence (Transcript page 334-335) that those four (4) vehicles referred to in 1(e) (iv) were obtained from Credit Corporation through a three (3) year lease arrangement and due to the retrenchment exercise which commenced in the beginning of 2002 the operations of the Corporation were scaling down so the Board approved the sale of those vehicles through public tender. The Board also approved the tender prices. Mr. Gideon also gave evidence that he did not acquire any of the Toyota hilux referred to in the when the Corporation decided to tender the sale of the vehicles.

John Ruimb also gave evidence that the vehicles were purchased as normal replacement vehicles from Credit Corporation for the Corporate Services Manager, Investment Manager and Fund Manager respectively. By 31st January 2002 when the retrenchment exercise at the Corporation became effective all those vehicles were locked away and the Board of the Corporation in September 2002 approved that they be sold through public tender.

1 found that none of the management team of the Corporation was successful in the bid for all four vehicles.

The following are records of the sale of the vehicles:
Sale of VX Toyota Station Wagon, Registration Number BBF 717

With respect to the tender of Toyota VX BBF 717, the Board in meeting number 141/2002 held on the 30th August 2002, considered 6 short listed bidders from a total of 86 bidders after notice of public tender was made. There were two bidders who bid for the Toyota Land Cruiser; Leonard Tale and Tourism Promotion Authority. Those two bidders both bided which was the highest bid. The Board noted the recommendation that the vehicle Toyota Land Cruiser BBF 717 be sold to any of the short Zisted bidder first to come up with the cash. A copy of the board meeting minute 141/2002 is attached and marked as Exhibit 98 in the Appendices to this report.

There were two payments made by a Leonard Tale to purchase the Toyota Land Cruiser, BBF 717 for 150,000.00. The first payment was the 10% deposit made by a Westpac bank cheque dated 3rd September for under cover letter dated 2nd September 2002 for which an official receipt No 11419 was issued on 3rd September 2002:

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The letter of 2nd September 2002 reads:?

?Dear Sir,
RE: ICPNG TENDER TOYOTA VX (BLUE) 717

Reference is made to my tender dated 26/06/02 in relation to the above motor vehicle.

As per your telephone advise of today that the Board of ICPNG has accepted my above tender, attached herewith is a Bank Cheque for the amount of Fifteen Thousand Kina

being 10% deposit on the accepted tender price.
I shall arrange to pay the balance K135, 000?00 within 30 days.
Please acknowledge receipt of this payment by way of a receipt or letter.

Yours faith?dly,

Leonard Tale?

A copy of the letter referred above and the copy of the of?cial receipt issued by the Corporation is attached and marked as Exhibit ?99? in the Appendices to this report.

A further payment of was received from Leonard Tale by another Westpac bank cheque dated 17th September 2002. An of?cial receipt from the Corporation numbered 11425 and dated 17th September 2002 was issued as receipt of the payment.
The letter of 17th September 2002 reads:?

?Dear Sir,

RE: ICPNG TENDER ACCEPTANCE TOYOTA VX (BLUE) BBF 717

Further to my letter of 02/09/02 together with a bank cheque being 10% deposit,

Attached herewith is another bank cheque being for further payment of as part payment of the remaining balance of 135,000?00.

After this payment, A balance of 50, 000?00 remains to complete the purchase of the above vehicle.

Please acknowledge receipt of this payment by way of a receipt or letter.

Yours faith?tily,

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Leonard Tale?

A copy of this letter referred to and a copy of the receipt issued by the Corporation is attached and marked as Exhibit ?100? in the Appendices to this report.

From the PEIL Final Corporate Managers Report on the Corporation to IPBC dated May 2004, (a copy is marked and attached as Exhibit to the Appendices to this report) at page 6 I noted that:

?The Corporation disposed of its four (4) leased motor vehicles for a total consideration of during 2002 where proceeds of [080,000 was received. The balance of the proceeds of K5 0, 0000 was received in early 2003. The sale of these vehicles was approved by the ICPNG Board following Public Expressions ofNieresi in the local newspapers

From the evidence before me, I ?nd that was received from Leonard Tale as part payment for the subject vehicle. But I have no evidence to verify if Mr. Tale in fact paid the balance of or not.

There is no further record in this Commission?s possession to con?rm this uncertainty. Hence, the issue of whether or not Mr. Leonard Tale completed payment for the tender of Toyota VX BBF 717 is a grey area that remains unresolved.

For purposes of con?rming if pr0per tender procedures were followed in the diSposal of this subject vehicle, I ?nd that the Board did approve the disposal of this vehicle for in its meeting number 141 142 of 2002. I also ?nd that public tender was called for the disposal of this vehicle of which Mr. Leonard Tale was the successful bidder who ?rst came up with the funds by way of a deposit to purchase the Toyota VX.

I ?nd also that the amount approved by the Board was Within its ?nancial limit and there was no breach of public tender procedures under the PFM Act.

Sale of 3 Units of Toyota Hilux

The evidence from Mr. Ruimb, Transcript page number 412) show that the three units of Toyota Hilux were purchased sometime in 2001 as replacement ?eet and not in or around June 1999 as stated in the Those vehicles were sold through public tender with the Board?s approval sometime in September 2002.

The three units of Toyota Hilux referred to are not speci?ed by classifying them under their registration numbers which made my task dif?cult, as there were a number of Toyota hilux vehicles comprising the Corporation?s ?eet which were sold through public tender as shown in the Board Meeting Minute 140/2002 held on the 8th March 2002. A copy of this minute is attached and marked as Exhibit ?101? in the Appendices to this report.

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The Board submission prepared by the Corporation?s Corporate Services dated 5th

March 2002 and for purpose of this TOR, agenda item: 140/02/2(i) refers to the sale of Motor Vehicles.

1.

PURPOSE

inform the Corporation's Board on the progress of selling the motor vehicle fleet.

BACK GROUND

The Corporation has a fleet of eight (8) motor vehicles comprising:

a) One Toyota Landcruiser s/wagon

b) Four Toyota Hilux 4wd utes

c) One Toyota Hilux 2 wd ute

d) One Toyota Carina Sedan

e) One Toyota 15 seater bus

The landcruiser and three (3) white hilux 4wd are currently under lease financing with Credit Corporation at repayments of K18, 300.00 per month for the remainder of the term of twenty (20) months to June 2003.

The rest of the vehicles are now owned by the Corporation having been bought through leasing arrangements with various financiers.

STATUS

The four (4) Corporation owned vehicles were valued and sold by tender to outgoing staff of the Corporation early this year. The maroon Toyota hilux 4wd ute was sold for K20, 000. The Carina sedan was to have been transferred to the new owner on 7th February 2002 but was discovered missing from the Pacific Place carpark. The loss is now the subject of an insurance claim.

The Toyota ute 2wd will be sold for K3, 000 while the bus is being transferred to the Fund for K9, 000.00. Market valuations are appended.

Tenders were called for the four leased vehicles and the short listed bids form part of this paper for the Board's deliberations.

TENDER

Tender notices were published in the two daily newspapers for three (3)

days from 27th February to 15: March. Fifty (55) bids were received of

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which six (6) have been selected as genuine bids on the basis that the prices are close to the payout price quoted by Credit Corporation.

As of this month, the payout price for the four vehicles will be broken down at landcruiser two hilux utes at K68, 000. 00 each and the last one at 72,000. 00.

5. GENUINE BIDS

Six bidders appear to be genuine are listed hereunder:?

Mdej Landcruiser 1117M

Sir Pato Kalcaraya K190, 000.00 K70, 000 each for all

Amon Nelson K190, 000. 00 K70, 000 each for all

Robert Enga 70, 000. 00

Waimen Kwale 70, 000. 00

Jim Kendi - K65, 000 each for two only

Chris Kopyoto K65, 000 each for all

6. RECOMMENDATION

That the Board note this paper and authorize the Corporate Manager to sell the four (4) leased motor vehicles at the best price obtainable to whoever that comes up with the finance first

A copy of the submission is attached and marked as Exhibit '107' in the Appendices to this report.

The following may be the registration of the three Toyota Hilux utes referred to the unavailability of records, I am unable to ascertain or confirm information as to the registration of the vehicles or as to which persons the three Toyota utes were sold to, or if public tender procedures were observed. However in general, I have heard evidence from John Ruimb and Chris Gideon that the vehicles referred to in this TOR were sold through public tender with Board approval.

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4.5.9

In the absence of any evidence to the contrary, I find that proper public tender procedures were followed in the sale of the three Toyota Hilux Utilities.

Sale of Properties

Whether there was any failure to comply with prescribed tender procedures in connection with

Sale and disposal of properties including those commonly known as Sea Park Apartments, Credit House, Monian House and Ilirno Farm.

The sale of properties and Ilimo are covered under Chapters 4.6 and 4.7 respectively of my Report.

4.5.10 Other Cases of Tender Procedures not followed

4.5.10.1 The Engagement of Property Managers: Port Moresby First National Real Estate.

By the time Mr Ruimb was re-appointed as Managing Director of the Corporation in August 1999, the Corporation had disposed of all its major investment properties while the Fund retained four (4) of its major properties.

A Board submission dated September 2000 was prepared by the Deputy Managing Director regarding contracts on property management awarded to revealed that this real estate company was also contracted to manage other properties belonging to the Fund and the Corporation and that due process was not followed in most cases. The submission read as follows:-

BACKGROUND

As at the end of 1997, the Investment Corporation of Papua New Guinea (ICPNG) and the Investment Corporation Fund of Papua New Guinea (the Fund) owned the following commercial and residential investment properties either directly or through wholly owned subsidiary companies:

a) Investment Corporation of Papua New Guinea

Property Description Owned By
ANG House 12 Level Office Complex ICPNG
(ii) Cascade Apts 6 Level 15 Unit Apts Cascade Apts

Investment House 10 Level Office Complex ICPNG

b) Investment Corporation Fund of Papua New Guinea

Property Description Owned By

(2) Mana Matana Apts 12 Level Off Complex

(ii) Pacific Building Office Complex Nowra No.8 rd

Sea Park Apartments Residential Sea Park rd

(iv) Sunset Apartments Residential Sunset Apts

Yandama Townhouses Residential Yandama dg
Co.

During the year 1998 and first half of 1999, all of the properties listed under above as owned by ICPNG were sold.

Only one(?) property listed under is owned directly by the Fund being Mana Matana Apartments, which was sold in April 2000.

The Corporation has no major investment property in its portfolio now whilst the Fund has four (4) investment properties.

PROPERTY MANA GEMEN CONTRA

Prior to the sale of some properties, the property management contracts of all properties listed above under (1) were awarded to Port Moresby First National Real Estate Limited.

The tendering procedure and selection appears highly questionable. All of the remaining commercial investment properties are managed by Pom First National Real Estate Limited. These properties are

1. Pacific Building
2. Sea Park Apartments
3. Sunset Apartments

4. Yandama Townhouses

Pacific MMI and Sea Park Apartments have separate property management Agreements between the respective property owning subsidiary companies and Pom First National Real Estate Limited.

The Agreements are for a term of three (3) years commencing in May 1999. The ICPNG executed another Agreement on 26th May 1999 between itself and Pom First National Real Estate Limited in an effort to consolidate and strengthen the respective Agreements between the

respective property owning subsidiary companies and Pom First National Real Estate Limited.

ICPNG was required under that Agreement to cause its subsidiaries to observe the terms of the Agreement as if they themselves had executed it.

Sunset Apartments Limited and Yandama Trading Limited do not have separate property management Agreements as the other two mentioned above. They are not even specifically mentioned in the Agreement with ICPNG.

There however, exists a one (1) page endorsement, which purports to give management rights to Pom First National Real Estate Limited.

On the basis of that endorsement, Pom First National Real Estate Limited manages the two (2) properties.

LEGAL AD VISE

Following the change of Board and Management at ICPNG in September 1999, a legal review of the contracts were sought from Blake Dawson Waldron Lawyers. Refer copy of Acting Managing Directors letter of 26th November attached herewith

Blake Dawson Waldron Lawyers provided the review advise through their letter of 9m December 1999 to be tendered separately A copy of which is attached herewith.

In summary, Blake Dawson Waldron Lawyers advise that:

Property Management Contracts relating to pacific MMI Building and Sea Park Apartments may be legally binding.

(ii) The endorsement for the Management of Yandama and Sunset Apartments is no; effective (void).

There is therefore no Agreement in relation to the Management of Sunset and Yandama.

CON CL USION

The awarding of all property management contracts to only one property management company is without proper justifiable basis.

The tendering procedure and selection remains questionable. The process

appears to have been rushed and contracts executed prior to the eminent change of Government in July 1999.

Whilst the review of the Agreements were undertaken in December 1999, Management opted to shelve his matter for a while in view of ongoing investigations and considering the high number of legal matters being run by ICPN at that time. The ICPN Board was advised accordingly.

The Board at its meeting held on Wednesday 19th July 2000 resolved to consider the legal review on the property management contracts at its next meeting, hence this paper discusses the review.

Since the contracts relating to Pacific Building and Sea Park Apartments may be legally binding, they should remain as is.

However, legal advise is that the endorsement for the management of Sunset and Yandama is n_ot e?ective.

ICPNG has two (2) options:

Option 1 Advise Pom First National Real Estate Limited that the endorsement for the management of Sunset and Yandama is n_ot e?ective (void) and that there is no contract, hence they should cease providing property management services and vacate premises.

Option 2Initiate legal proceedings to get the Court to declare the endorsement not e?ective (void) and that there is no contract.

RE OMMENDATION

It is recommended that the Board consider and resolve to approve either of the above two (2) Optional course of action

A copy of Board Submission dated 1St September 2000 is attached and marked as Exhibit ?102? in the Appendices to this report.

In board meeting number 136/2000 held on the 8th September 2000 (Exhibit the Board noted that legal advise was obtained advising that the property management contract awarded to for the management of Sunset and Yandama Apartments were void and could be terminated. The Board then resolved to terminate the service of as the property manager from Yandama and Sunset Apartments.

On the 1311? December 2001 the Board met again in meeting number 137/2000 (Exhibit in which the minutes capture the following:

?13 7/00/3 Property Management Contracts

Investment Manager presented the paper where he informed the Board that

based on legal advice, Management has since mid November, 2000 terminated

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the services of the contract property manager for the Fund's four (4) properties. This function is now brought in-house and Management is now recruiting a Building Manager for the Pacific MMI Building. The three (3) residential properties will continue to be managed

Accordingly I find that the following properties, prior to their disposal between 1998 and 2000, were managed by

Investment Haus 10 level office complex
ANG Haus 12 level office complex
Cascade Apartments 6 level unit apartments

Mana Matana Apartments 12 level office complex

I have found that public tender procedures were not followed in awarding the management contract of these properties to

The following investment properties of the Fund were also managed by as evidenced from a Property Management Agreement.

NIC Haus

Sea Park Apartments
Sunset Apartments

Yandama Apartments

On the 26th May 1990, the Corporation executed a Management Agreement with That agreement was for the management of Sea Park Apartments and NIC Haus for a term of three years respectively. The same agreement also had an endorsement for the agreement to cover Sunset Apartments and Yandama Apartments

which was to be effective as of 15th of August 1999. However, there appears to be serious legal implications in regard to the applicability and the validity of the endorsement.

No proper tender procedures were followed by the Management and Board of the Corporation in calling for public tenders and screening of bids for the management of the four (4) Fund properties.

There is no record of a Board Submission recommending the engagement of There are also no Board minutes in relation to awarding of management contracts to I find therefore that there was no Board approval for the engagement of

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A copy of the Property Management Agreement referred to which was executed on the 26th May 1990 between the Corporation and the Corporation is attached and marked as Exhibit ?103? in the Appendices to this report.

An amount of was paid as commission to for the purported sale of Ilimo. However, I have noted in my report on Ilimo that was not involved in the negotiation and there was no sale of Ilimo. Therefore I have found that the payment made to be improper and illegal. I recommend that the IPBC should pursue recovery. For further details refer to Chapter 4.7 of my Report.

4. 5.10.2 The Engagement of Kincorp

During the restructuring phase of the Corporation, the Board resolved to abolish the Finance and Personnel Administration Division and retrenched all staff in that division. The management and Board opted to outsource the Corporation?s accounting functions. This resulted in the idea of the forming of Kincorp. This was ?rst considered by the Board in meeting number 130/99 (Exhibit held on the 18th March 1999. The Board made a resolution to refer the outsourcing of the accounting function as a matter for the sub-committee to consider with the intention to create a subsidiary company called Kincorp.

The establishment of Kincorp was purposely to takeover the accounting functions of the Corporation and the Fund which was initially performed by the Corporation?s finance division.

Kincorp commenced operations in May 1999 by subleasing of?ce space within the Corporation?s of?ce. The contracted cost of the outsourcing was per annum for three (3) years with the option to renew. The decision to outsource was considered sound in view of the annual cost of envisaged to be saved. A copy of the Board Submission containing the information paper on Kincorp dated 22? June 1999 is attached and marked as Exhibit ?104? in the Appendices to this report.

The report ?om PEIL Final Corporate Managers Report on the Corporation to IPBC dated in May 2004 (Exhibit at page 13) reports that:

?Kincorp was appointed by the Wandu Yamana management team in 1999 to provide accounting services to the Corporation following the outsourcing of the in?house accounting ?mctions.

The decision to outsource the ICPNG accounting ?mction was part of the Corporation?s rationalization programme. However, the appointment of Kincorp Limited was not done through the normal public tender as required.

Mr. Fred Angoman, former Financial Controller for ICPNG, prepared and submitted a submission to the Board in its meeting No 13 0/99 seeking approval to establish Kincorp Limited to provide accounting services to ICPNG.

The company was set and the shareholders of the company were and are as

follow:

Shareholder #Shares Held
Fred Angoman

Associates 35, 000 35%
Philip Eludeme 35,000 35%
Wandi Yamuna 29,999 29%

I CPN 1

100, 000 100%

A company search at IPA showed that ICPNG holds only 1 share in Kincorp

In the late 1999, the Corporation's board reviewed the appointment and decided to terminate it and appointed Price Waterhouse Coopers to provide the service.

The termination of Kincorp was on the basis that the manner in which it was set was improper and illegal. In fact the former managing Director, Mr. Wandu Yamuna had arranged to incorporate Kincorp and executed a 3 year contract to provide accounting services for ICPNG for a total contract value of K975, 000.00. This was done without the Board and Ministerial approvals.

Kincorp then instituted Court action against the Corporation for its termination claiming K1million in damages.

The case went to trial in 2002 and the National Court dismissed it. Plaintiff has appealed the decision to the Supreme Court and the high Court is yet to make its ruling.

The appeal, however was dismissed by the Court on 29th April 2004 on grounds of failure to obtain the Section 61 approval under the Public Finance Management Act and that the advertisement for tender was a sham.

It is interesting to observe that the Corporation had only 1% shareholding in Kincorp while 99% was held by private individuals. Evidence was given by Mr. Fred

Angoman on the 7th November 2006 that Mr. Wandu Yamuna held shares on behalf of the Corporation in trust and that trust instruments were drawn and executed. Mr. Yamuna also gave evidence that he held shares in trust for the Corporation and

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that he had signed instruments (Transcript page 1011). However, I have not found documentary evidence of the trust instruments to support the evidence of Mr. Yamuna and Mr. Angoman.

The engagement of Kincorp was terminated almost three (3) months after it was set up when there was a change in the management with John Ruimb as the new acting Managing Director. The termination of Kincorp was primarily based on the ground that the three principals of Kincorp Ltd: Fred Angoman; Mr Yamuna; and Philip Eludeme were non-registered practicing public accountants at the time as required under the Accountants Registration Act of PNG.

Thereafter, the Board in meeting number 132/99 held on the 28th October 1999 (Exhibit noted the termination of Kincorp's services and resolved to accept the management's recommendation to award the Accountancy Support Services Tender

to Pricewaterhouse Coopers for an initial term of twelve (12) months from November 1999, for a fee of K187, 000.00.

The engagement of Kincorp was for a three year period and for an annual retainer fee of K305, 000.00 bringing the value of that contract in excess of 900,000.00. This amount was beyond the Board's approval limit under section 61 of the PFM Act and therefore required mandatory approval from the Minister. The Board overlooked this aspect and consequently no ministerial approval was obtained prior to Kincorp's engagement.

I therefore find that proper tender procedures were not followed in the engagement of Kincorp and as such the engagement was improper and unlawful. There was also no ministerial approval. The engagement of Kincorp was in all the circumstances unlawful and improper.

I have reviewed accounting work performed by Kincorp under Chapter 6.2 of my report. Refer to this section for further details.

4.5.11 Summary of Findings in respect of Terms of Reference 1(e)

I would like to point out that official records of the Corporation were not fully available to assist me to fully address and make findings on some of the TOR under This was attributed by the fact that some of the records summonsed by this Commission of Inquiry were not legible or were not properly kept to be presented to the Commission.

Consequently, I find that the management of the Corporation's failure to cause to keep proper records breaches section 62(1) of the PFM Act, which among other things provides that: .. a public body or a subsidiary corporation to which this Act applies shall cause to be kept proper accounts and records of its transactions and

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The members of the Corporation's Board of Directors under the management of both Wandu Yamuna and John Ruimb were not strictly appointed following the criteria set out under section 12 of the Act, hence the composition of directors on the Board was unlawful.

The Board and Management under Mr Yamuna failed to exercise prudent management practice in the disposal of assets and engagement of services. There was failure to observe the general policy under section 10(1) of the Act to ensure that performance of functions of the Corporation were in accordance with sound business principles which included the strict compliance of tender procedures under the PFM Act and the Corporation's

Accounting Policies and Procedures Manual.

In general I find that tender procedures were followed during the term of John Ruimb apart from the payment of 700,755.00 to the Bank of Papua New Guinea which was not approved by the Treasury Minister.

The IPBC consider engaging experienced professionals such as lawyers to investigate and take recovery action to recover the properties that were sold unlawfully.

IPBC take action against Mr Yamuna and recover the fees paid to

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4.6

Sale of Properties

4.6.1 Introduction

This section of my report considers 1(e) (V) where I am obligated to inquire into and report on whether there was any failure to comply with prescribed tender procedures in connection with the sale and disposal of properties between 1998 and 2002, including those commonly known as Sea Park Apartments, Credit Haus (AN Haus), Monian Haus (Monian Tower) and Ilimo Farm.

The sale of Ilimo farm has been considered under Chapter 4.7 of my report.

It would appear that reference to Credit Haus relates to AN Haus. Monian Haus refers to Monian Tower in downtown Port Moresby and was previously called

Invesmen Haus when the Corporation was the owner.

As at the beginning of 1998 the Corporation either directly or through its wholly owned subsidiaries owned four commercial properties. These properties were all located in or within the surrounds of the Port Moresby central business district. By 31 December 2002 these properties were all sold except for the old Papua Hotel land.

The Corporation also owned institutional houses. As at the beginning of 1998 the Corporation owned institutional housing comprising about 20 houses and 6 duplexes.

It appears that most of these properties were disposed to staff under the Corporations Home Ownership Scheme (HOS) by 31 December 2002.

The Fund on the other hand owned no institutional houses. As at the beginning of 1998 the Fund owned either directly or through its wholly owned subsidiaries a total of five commercial properties. By 31 December 2002 all Fund properties were sold except for Yandama Apartments.

This section of my report considers the manner in which the prOerties of the Corporation and Fund were disposed in the period 1 January 1998 to 31 December 2002 as required by 1(e) (V).

In particular I consider a number of key issues as follows:?

I Whether there was any professional advice sought in respect of the disposal of a property?

Was adequate assessment of the decision to dispose made?

I Was an open and transparent tender procedure applied?

. Was there adequate disclosure of professional advice, management

assessment of the decision to dispose, and were tender results disclosed to the Board of the Corporation for their assessment?

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I Was Board approval for the sale obtained?

I Was PFM Act approval obtained?

I Was the price offered re?ective of the market?

I Was the proceeds from the sale received?

I Did the Board of the Corporation properly discharge its responsibilities and ?duciary duty? Was there any lack of ?good faith??

I Was there any indication of conflict of interest?

I Did any entity or person breach any regulations?

4.6.2 Commercial Properties

4. 6.2.1 The Corporation's Commercial Properties

According to the records available to me as at the beginning of 1998 the Corporation had the following commercial properties:-

I Cascade Apartments on Port Road, Port Moresby. Cascade Apartments was owned by the Corporation's wholly owned subsidiary, Cascade Apartments Limited

I ANG Haus on the corner of Douglas and Hunter Street, Port Moresby described as Section 8 Allotment 8 Granville.

I Invesrnen Haus on Douglas Street, Port Moresby described as Section 3 Allotment 4 Granville

I Old Papua Hotel land located opposite former Port Moresby on the corner of Douglas and Musgrave Street consists of a number of allotments.

By 31 December 2002 all the above properties were sold except for the old Papua Hotel land.

There were a number of attempts made in the period covered by the to sell the Old Papua Hotel land. The records available to me indicate that the prospective buyers did not meet the price sought by the Corporation. The Old Papua Hotel land is as of today still owned by the Corporation. Given that this property has not been sold it is not worth the effort to investigate into the attempted sales.

What follows is a review and assessment of properties that have been sold

concentrating mainly on the important questions raised earlier in the introductory section of this report.

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Cascade Apartments Ptj/ Limited

Cascade Apartments is a 3ve storey building housing ten three bedroom units situated on Allotment 17 Section 18, Port Road Granville, Port Moresby. According to the copy of titles obtained from the Department of Lands Physical Planning, the land was granted to Cascade Apartments Limited under a 99 year lease in August 1981. A

00py of the title of this property is attached and marked as Exhibit '108' in the Appendices to this report.

According to the property profile maintained by the Corporation, Cascade Apartments was recorded at a cost of A valuation by The

Professionals in June 1996 placed the value of the property at The historical performance of the property is not pleasing where profits for the years 1992

to 1996 was below 20% of gross income. The reason for the poor returns appears to be high upkeep and maintenance costs and low tenancy rates. A copy of the property

profile of Cascade Apartments is attached and marked as Exhibit ?109? in the Appendices to this report.

The records available to me indicate that the Board and management were contemplating the sale of the property as opposed to the sale of the company. The records available to me do not show the approval of the Board of the change.

It is not clear from the records available to me the basis for the decision to sell Cascade Apartments. The only record available to me is a memo dated 11 March 1998 from Mr Fred Angoman (Financial Controller) to Mr Yamuna setting out his concerns and assessment of the cash generated from the properties. In his memo Mr

Angoman recommended for the Investment Division of the Corporation to evaluate the properties and based on this produce a Board paper for the meeting which was scheduled on 25 March 1998. A copy of Mr Angoman?s memo is attached and marked as Exhibit ?110? in the Appendices to this report.

A handwritten note on the memo, believed to have been authored by Mr Yamuna, indicates that the Investment Manager was tasked to consider the memo of Mr Angoman.

At Board meeting number 126 held on 25 March 1998 the Investment Division prepared a Board submission for the Board to consider an offer of purchase of the Cascade Apartments by Lease Rite Real Estate Limited for a sum of K1, 810,000.00. Lease Rite Real Estate Limited appears to be owned by Mr Johnson Tia, a businessman from Tari in the Southern Highlands Province. The letter of offer dated 16 December 1997 addressed to Mr Ruimb attached to the Board paper indicates that Lease Rite Real Estate Limited had earlier made an offer of which Mr Ruimb declined.

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The Board paper indicated the following:-

I The property was performing poorly due to high operational costs and low tenancy. It appears that only in 1997, tenancy improved after improvements in services such as security services, standby generator and reserve water.

I The offer of was below the valuation of
On the basis of earnings the management attributed a value of

I The Investment Division considered that the offer was reasonable and given

the poor performance of the property recommended the Board sell the property at a price of and above to interested parties including Lease Rite Real Estate Limited.

A copy of the Board paper is attached and marked as Exhibit ?111? in the Appendices to this report.

The minutes of the Board meeting of 25 March 1998 record that the Board resolved to sell the Cascade Apartments at or above through public tender. A copy of the Board Minutes is attached and marked as Exhibit ?112? in the Appendices to this report.

On 30 March 1998 the Investment Analyst wrote a memo to Mr Yamuna seeking approval to obtain quotes for valuation of all properties identified for sale in the Board meeting of 25 March 1998. A hand written note dated 8 April 1998 on the memo believed to be penned by Mr Yamuna, reminded the Investment Manager not to drag on and to proceed with sale of the properties. A copy of the memo is attached and marked as Exhibit ?113? in the Appendices to this report.

A valuation of the properties identified for sale was never conducted. In my view the increase in the property prices in Port Moresby require that fresh valuations were necessary. Instead, it appears that on Mr Yamuna?s directions the valuation of June 1996 was relied on to assess the offers made. Mr Yamuna?s action was imprudent and not in the interest of the Corporation and Fund.

On 1 April 1998 Mr Yamuna sought Ministerial approval for the sale of Cascade Apartments, Invesmen Haus and ANG Haus via two page letter to the Honourable Iaro Lasaro, Minister for Treasury. A copy of the letter is attached and marked as Exhibit ?114? in the Appendices to this report.

Mr Yamuna gave the following reasons for the sale of these properties:-
I Low returns and high maintenance costs and further upkeep costs required due

to old age and competition from the NPF Tower (Deloitte Tower) which was under construction.

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. The need to add liquidity and to venture into more profitable investments.
I Plan to pay dividend to the State in 1998.

In my View the information set out in the letter to the Minister was deficient and inappropriate for an informed decision. A proper submission would have included a detailed analysis of the performance of the properties, copies of recent valuations, analysis of expected major repair and upkeep costs, and a detailed submission setting out the specific profitable investments the Corporation was considering from the proceeds of the property sales.

The Department of Treasury files available to me indicate that no proper

assessment

by the Commercial Investments Division of the Department of Treasury was done nor

is there any evidence of receipt of Mr Yamuna's letter. There are also no records of Ministerial approval for the sale of Cascade Apartments, Invesmen Hans and ANG Haus. I find that the Board and management especially Mr Yamuna acted improperly in this respect.

On 4 May 1998, Mr Maurice Sullivan of Port Moresby First National Real Estate Limited wrote to Mr Gerald Senapili of the Corporation thanking the Corporation for appointment as sole agents for the disposal of the Corporation's properties. A copy of Mr Sullivan's letter is attached and marked as Exhibit ?115? in the Appendices to this report. According to the records available to me, invitations for sole agency were also made to Century 21 Real Estate and The Professionals.

The signed sole agency agreement dated 7 May 1998 indicates that a sale commission of 2% was agreed between and the Corporation. A copy of the signed agency agreement is attached and marked as Exhibit ?116? in the Appendices to this report.

According to the records available to me, it appears that the sale of Cascade Apartments, Invesmen Hans and ANG Haus were advertised in the two daily newspapers. A copy of the advertisement in the Post Courier dated 1 June 1998 is attached and marked as Exhibit ?117? in the Appendices to this report.

On 10 June 1998, in response to the newspaper advertisements, Mr Tia of Lease Rite Real Estate wrote to Mr Yamuna expressing an offer of K1.8 million for Cascade Apartments. A copy of Mr Tia's letter is attached and marked as Exhibit ?118? in the Appendices to this report.

On 12 June 1998, the tenders for the properties were opened and considered by the Board of the Corporation. It is not clear whether strict administration of the tender was followed.

The minutes of the Board meeting of 12 June 1998 record that in respect of Cascade Apartments, Balimore Pty Limited offered the highest at K2025 million. The next

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was Sek no. 35 Pty Limited with K138 million followed by Constatinou Group with K1046 million. The Board resolved to accept the tender by Balimore Pty Limited (Exhibit 61).

On 18 June 1998, Mr Sinepali wrote to informing of the results of the tender and the decision of the Board and directed to inform the prospective

buyers of the Board's decision. A copy of Mr Sinepali's letter is attached and marked as Exhibit ?119? in the Appendices to this report.

On 19 June 1998, having received notice of success of its tender, Mr Garth of Balimore Pty limited wrote to informing inability to proceed with the purchase. A copy of Mr letter is attached and marked as Exhibit ?120? in the Appendices to this report.

On 29 June 1998, Balimore Pty Limited made a revised offer of K1.4 million. This was refused by the Corporation. On 7 July 1998, a circulation resolution of the Board was arranged for Cascade Apartments to be sold to the next highest bidder, Lease Rite Real Estate Limited. A copy of the circular resolution and the covering letter written to the Chairman of the Board of the Corporation is attached and marked as Exhibit ?121? in the Appendices to this report.

On 13 July 1998, Mr Tia was informed by Mr Yamuna of the Corporation's acceptance of Lease Rite Real Estate's tender. A copy of Mr Yamuna's letter is attached and marked as Exhibit ?122? in the Appendices to this report.

Following instructions from Mr Yamuna, on 23 July 1998 Mr Senapili wrote to Mai Lawyers to undertake all legal requirements for the transfer of the property. A copy of Mr Senapili's letter is attached and marked as Exhibit ?123? in the Appendices to this report. The records available to me indicate that no tenders were sought in respect of the engagement of Mai Lawyers. It also appears that the terms, including fees for the engagement of Mai Lawyers was not agreed.

A letter dated 28 July 1998 from Mr Tia to Mr Yamuna indicates that Mr Yamuna and Mr Tia had discussed the change from the sale of the property to that of the sale of the company, Cascade Apartments Limited. A copy of Mr Tia's letter is attached and marked as Exhibit ?124? in the Appendices to this report.

This arrangement took effect leading to Mai Lawyers preparing a contract of sale of shares from the Corporation to Mr Tia.

On 17 August 1998, the Corporation and Mr Tia signed the contract of sale of shares.

Mr Yamuna signed on behalf of the Corporation. On the same day Mr Yamuna and Mr Tia signed a deed of indemnity between the Corporation and Mr Tia which indemnified Mr Tia for a period of one year after the completion of the contract of sale of shares against all liabilities and claims. A copy of the contract of sale of shares and deed of indemnity is attached and marked as Exhibit ?125? and ?126? respectively in the Appendices to this report respectively.

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The purchase price according to the signed agreement indicates an amount of K928,625 representing issued shares of 143,750 at a price per share of K645.86. The records available to me show that there were no subsequent adjustments to the contract to reflect the agreed amount of The contract of sale is silent

on the difference.

A stamp duty of was paid to the Internal Revenue Commission on 17 August 1998 representing 1% of the agreed purchase price. A copy of the cheque paid to the IRC and supporting letter is attached and marked as Exhibit ?127? in the Appendices to this report. Correspondence from Mai Lawyers indicates that the share transfer form furnished to the IRC contained the purchase price of on which the stamp duty was assessed.

It is not clear whether a due diligence was carried out by the purchaser. The latest audited ?nancial statement at the time of the sale appears to be that for the year ended 31 December 2005. Given that an indemnity was issued by the Corporation it would have been prudent to have the accounts audited to the time of sale and the quantum of liabilities determined.

The audited ?nancial statements for the year ended 31 December 1997 recorded net assets of The major asset was Cascade Apartments which was recorded at Its major liabilities were the loans received from the Corporation.

The sale of company and sale of property are two different matters and would have required the Board?s approval for the change. There is no evidence that such approval was obtained.

Mr Yamuna and the management of the Corporation failed to carry out the duties required of them where the following occurred:-

Board approval was not sought for the change in the item sold from that of the property, Cascade Apartments to shares in Cascade Apartments Limited.

I An indemnity was issued to the purchaser without any assessment of the quantum of liabilities of Cascade Apartments Limited.

I The contract of sale was de?cient in that the correct purchase price of was not recorded.

On 31 August 1998 sent its invoice for sales commission of 141.37.080.00 to Mai Lawyers representing 2% plus sales tax of A copy of the invoice is attached and marked as Exhibit ?128? in the Appendices to this report.

On 8 September 1998 Mai Lawyers raised an invoice for the sum of for the engagement. A copy of Mai Lawyers invoice is attached and marked as Exhibit ?129? in the Appendices to this report.

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On 8 September 1998 a Bank of South Paci?c bank cheque for the sum of

was paid to Mai Lawyers Trust Account representing the balance of the purchase price. A copy of the bank cheque is attached and marked as Exhibit ?130? in the Appendices to this report.

On 8 September 1998 settlement occurred. The proceeds of the was disbursed as follows:?

Investment Corporation 1,528,041.23
Mai Lawyers 93,850.00
Lease Rite Real Estate Limited 41,028.77
37,080.00
Balanced withheld for completion costs 100 000.00
Total 1 800 000.00

On 9 September 1998 Mai Lawyers wrote to Mr Yamuna informing of the settlement and the disbursement of the proceeds. It appears that the disbursements to external parties was completed via bank cheques. The Corporation?s cheque of was paid through ANZ Port Moresby Bank cheque on 9 September 1998. A copy of Mr Mai?s letter including the copies of the bank cheque raised is attached and marked as Exhibit ?131? in the Appendices to this report.

On 11 September 1998 at the Board meeting of the Corporation the management presented a Board paper on the status of the sale of the commercial properties. It was reported in the paper that Cascade Apartments was sold to Mr Tia through the transfer of shares for the sum of A copy of the Board paper is attached and marked as Exhibit ?132? in the Appendices to this report. The minutes of this meeting record that the Board took note of the Board paper (Exhibit

I am unable to determine from the records available how the withheld

by Mai Lawyers was utilised. I recommend that the IPBC should investigate the

On 28 December 2000, just over two years later Cascade Apartments was sold to Kwila Insurance Corporation Limited for a sum of A copy of the transfer is attached and marked as Exhibit ?133? in the Appendices to this report.

Invesmen Haas

Invesmen Haus is a nine storey of?ce complex situated on Allotment 4 Section 3, Douglas Street Granville, Port Moresby.

According to the property profile produced by the Corporation, Invesmen Haus was recorded in the accounts at a cost of A valuation by The Professionals in June 1996 placed the value of the property at The historical performance of Invesmen Haus compared to the other properties of the Corporation is pleasing where the profit for the years 1992 to 1996 were more than 40% of gross income and occupancy was at the 80 to 90% level. The Management assessed this property as a very good investment and recommended that the Corporation retain the property. A copy of the property profile of Invesmen Haus is attached and marked as Exhibit ?134? in the Appendices to this report.

Again it is not clear from the records available to me the basis for the decision to sell the ANG Haus except for Mr Angoman's memo of 11 March 1998 to Mr Yamuna concerning the poor cash flow generated from the properties (Exhibit The sworn statement of Mr Pokarop for the Suba Mawa investigation indicates that Mr Yamuna initiated the sale. A copy of Mr Pokarop's statement is attached and marked as Exhibit ?135? in the Appendices to this report.

It appears that Mr Ruimb was looking to sell the Invesmen Haus in 1997. Two letters from Ray White Real Estate dated 17 and 20 November 1997 addressed to Mr Ruimb indicates that Monian Holdings Limited had made an offer of K65 million for the Invesmen Hans. A copy of the two letters are attached and marked as Exhibits ? 136? and ?137? in the Appendices to this report respectively.

It appears that Ray White was persistent in its offer until on 16 March 1998 a letter refusing the offer was sent by Mr Yamuna. A copy of this letter is attached and marked as Exhibit ?138? in the Appendices to this report.

At Board meeting number 126 held on 25 March 1998 the Investment Division presented a Board paper for the Board to consider the sales of the Invesmen Hans and ANG Haus.

In respect of the Invesmen Haus there were no credible arguments presented by the management for the property to be sold. The Board paper presented contained information which revealed that the property was in a very good condition with high tenancy and very profitable. The only reason given was that the Corporation needed to divest its property investment and use the proceeds to invest in other good investment opportunities. The board papers did not contain any information as to what these more profitable investments were, nor were there specific details as to the application of the proceeds of the sale of the properties.

The investment division's recommendation was that the Board approve the sale of the properties at no less than the prevailing market valuations.

A copy of the Board paper is attached and marked as Exhibit ?139? in the Appendices to this report.

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The minutes of the Board meeting of 25 March 1998 record that the Board resolved as the Investment Division recommended (Exhibit

On 30 March 1998 the Investment Division sought Mr Yamuna?s approval to obtain quotation for the valuation of the properties designated for disposal (Exhibit

According to the records available to me, it appears that no valuation of Invesmen Haus was carried. For the reason stated earlier, in my View fresh valuations of the property were necessary. Instead, it appears that on Mr Yamuna?s directions the valuation of June 1996 was utilised to assess the offers made. Mr Yamuna?s action was highly imprudent and not in the interest of the Corporation and Fund.

As set out earlier, Ministerial approval for the sale of Cascade Apartments, Invesmen Haus and AN Haus was sought at the same time through Mr Yamuna?s two page letter dated 1 April 1998 (Exhibit The deficiency in the information provided to the Minister for Section 61 approval and the failure in seeking that approval has been documented in my assessment of the sale of Cascade Apartment.

On 7 May 1998 a sole agency agreement for the sale of the Invesmen Haus was also signed between the Corporation and for a commission of 2% of the gross sales price. A copy of the Agency agreement is attached and marked as Exhibit ?140? in the Appendices to this report.

On 29 May 1998, Mr Taru communicated his concerns to Mr Yamuna through a memo pointing out the urgent need for review of the cost structure of the Corporation as the sale of the properties, especially Invesmen Haus would result in cash deficiency of This memo is indicative of the adhoc, unplanned and unilateral manner in which the Management of the Corporation was conducted under the stewardship of Sir Dennis Young and Mr Yamuna. A copy of Mr Taru?s memo is attached and marked as Exhibit ?141? in the Appendices to this report.

The public tender for the sale of Invesmen Haus was published in the daily newspapers on 1 June 1998 along with Cascade Apartments, ANG Hans, and the old Papua Hotel site land (Exhibit

At the 12 June 1998 Board meeting, the Management reported that Credit Corporation and Monian Group were the only bidders with an offer of K5.025 million and K605 million respectively. The minutes of this meeting indicate that the Board resolved to refuse both tenders and directed Management to ask the bidders to increase the bid to at least K65 million (Exhibit

were informed of the Board?s decision on 18 June 1998 to take appropriate

action (Exhibit

On 23 June 1998, wrote to the Corporation upon receipt of a letter from

Monian Group increasing their offer to K655 million. In the same letter PMFNE informed that Credit Corporation would not increase its bid. A copy of

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letter and Monian Group's letter is attached and marked as Exhibit ?142? in the Appendices to this report.

On 24 July 1998, the Corporation and the purchaser, Nusaum Holdings Limited signed the contract for the sale of Invesmen Haus for a sum of Mr Yamuna signed on behalf of the Corporation. A copy of the contract of sale is attached and marked as Exhibit ?143? in the Appendices to this report.

On 31 July 1998 a court order was obtained by the Papua Club (who were located on the 9th floor of the Invesmen Haus) restraining the Corporation from proceeding with the sale of Invesmen Haus. A copy of the court order and related documents are attached and marked as Exhibit ?144? in the Appendices to this report.

According to the records available to me, the Papua Club owned the land on which the Invesmen Hans was built. As part of the sale agreement the Corporation agreed to lease the entire 9th ?oor to the Papua Club at nil rental. As to legal proceedings that ensued, they fall beyond the scope of my investigations. Nonetheless, the settlement of the sale proceeded.

On the same day the court order was obtained, settlement occurred. According to the settlement statement, after allowing for rental bonds of KI36,080.32, Eda Ranu bills of and payment to carter Newell Trust account of an amount of and purchasers allowance of for land rentals paid, the Corporation would have been paid an amount of A copy of the settlement statement is attached and marked as Exhibit ?145? in the Appendices to this report.

On the day of settlement, an ANZ Bank cheque for the sum of was raised in favour of the Corporation, and an AGC Paci?c Limited cheque for the sum of was raised in favour of the Fund. Copies of the cheques are attached and marked as Exhibit ?146? in the Appendices to this report.

The two cheques with a combined value of were deposited on the same day into the Corporations? bank account number 600226 held at the Port Moresby branch. A copy of the bank statements showing the deposit is attached and marked as Exhibit ?147? to the Appendices to this report. The shortfall in the amounts paid to the Corporation was the deposit of

The deposit plus the withheld by Carter Newell were in the control of Carter Newell. Though the records of Carter Newell were summonsed through its successor firm Pacific Legal Group, the files were not furnished.

On the basis of the agency agreement, PMFN RE would have been paid from the monies withheld by Carter Newell. A letter from Carter Newell to the Corporation dated 28 July 1998 indicates that Carter Newell's fees would not exceed

On the basis of this information, after allowing for the sale commission and legal fees, was required to be paid to the Corporation. A copy of the

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Carter Newell's letter dated 28 July 1998 setting out their estimated fees is attached and marked as Exhibit 148 in the Appendices to this report.

On 21 August 1998 Mr Yamuna wrote to Carter Newell approving the payment of their fees from the funds held in trust and for the balance of funds to be paid to the Corporation. A copy of Mr Yamuna's letter is attached and marked as Exhibit 149 in the Appendices to this report.

The Board was informed of the sale of Invesmen Hans for the sum of on 11 September 1998 (Exhibit -

I am unable to determine whether or not the deposit of K65 5,000 and the withheld by Carter Newell Lawyers were received by the Corporation. I recommend that the IPBC should liaise with Pacific Legal Group to ascertain the position on these funds.

In conclusion, while it appears that proper tender procedures were followed in the sale of Invesmen Haus, there were a number of failures and breaches on the part of the management and Board of the Corporation as follows:?

I A recent valuation of the property was necessary. The Board and management failed to obtain fresh valuation. As a result it is not clear whether the amount received was a fair consideration on the property.

. The sale of the Invesmen Haus was carried out without any proper investment analysis.

I Section 61 of the PFM Act was breached because no Ministerial approval was obtained for the sale of the Invesmen Hans.

ANG Hans

ANG Haus is the twelve storey office complex situated at the corner of Hunter and McGregor Street, Port Moresby. ANG Haus was the first high rise building built in the city of Port Moresby. According to the title of this property, the Corporation purchase it in 1979. By 1997 it was 27 years old. A copy of the title is attached and

marked as Exhibit ?150? in the Appendices to this report.

Expressions of interest to purchase the ANG Haus were received by the Corporation in 1997 during the management of Mr Ruimb. Mr Ruimb rejected the offers on the basis that none of the prospective buyers offered a price equal to or over the value of 101,377,000 determined by The Professionals in October 1996.

Again it is not clear from the records available to me the basis for the decision to sell

ANG Haus except for Mr Angoman?s memo of 11 March 1998 to Mr Yamuna (Exhibit ?110?) concerning the poor cash flow generated from the properties.

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In the Board paper presented by the Investment Division at the 126th Board meeting on 25 March 1998, the historical performance of the ANG Haus for the last ?ve years was very poor with expenses accounting for over 70% of the gross income (Exhibit The Board, as I have noted, along with Cascade Apartments and Invesmen Haus, resolved to sell the ANG Haus at a price no less than market value (Exhibit

Internal workings of the Corporation indicate that the value of AN Haus on an earnings basis was not more than KI million. A copy of the working is attached and marked as Exhibit ?151? to the Appendices to. this report.

As with the sale of Cascade Apartments and Invesmen Haus, a sole agency agreement was signed between and the Corporation on 7 May 1998 for the sale of the ANG Haus.

At the 12 June 1998 Board meeting, the management reported that no tenders were received for ANG Haus (Exhibit

On 27 July 1998, wrote to Mr Yamuna informing that one of their clients who had earlier offered K27 million had increased the offer to K3 million following the rejection of the ?rst offer. A copy of the letter is attached and marked as Exhibit ?152? in the Appendices to this report.

A handwritten note on the letter from believed to have been authored by Mr Yamuna expressed that the offer of K3 million should be accepted to develop stage II of the NIC Haus. That is the land between the Paci?c MMI Building and Port Moresby Fire Station.

The disposal of AN Haus at a time when high interest rates were prevalent, and the position of the Corporation then meant serious ?nancial rami?cations. This was again brought to the attention of Mr Yamuna by Mr Taru in a memo dated 13 August 1998. Mr Taru?s memo is worth noting and is as follows:-

?Reference is made to a letter from Port Moreshy First National Real Estate Pty dated 29 July 1998 justifying an offer from a client to purchase the

ANG Haus for K3 million.

Whilst you may have your own views, I am strongly of the view that we should not dispose of this property for the time being because of the following

reasons.??

1. the management has not made any definite decision to move to an alternative office accommodation;

2. it is very expensive or costly to put up an office building at this time because of the very high interest rates;

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3. they will spend about K270,000 per year in rental if it is to look for the similar office space. This is the average rentals it is forgoing per year for occupying AN Haus;

4. high risk of getting locked out from rented premises for non-payment of rentals thereby disrupting services to shareholders; and,

5. a ball park valuation using the annual rental income from ANG Haus of and capitalised by gross and net capitalisation rates of 15% and 12% respectively gives a value of:?

a) K4,389,907

b) K5,487,383

Conclusion

It is my considered view that the ICPNG defer considering any offers for the time being and consider options when the market improves?.

A copy of Mr Tara's memo is attached and marked as Exhibit ?153? in the Appendices to this report.

It is obvious that given the problems at Ilimo, cash flow concerns of the Corporation, and very high interest rates, the construction of the second stage of NIC Haus was something which was unachievable.

On 21 August 1998 Mr Taru again raised with Mr Yamuna the need to invest the proceeds from the sale of properties in well thought out and high return investments, or risk running into serious financial problems. A copy of Mr Taru's memo is attached and marked as Exhibit ?154? in the Appendices to this report.

It appears that Mr Yamuna did not take any notice of Mr Taru's concerns.

At the Board meeting of 11 September 1998 the management reported that no serious offers were received for the AN Haus. The Board paper recorded that verbal

enquiries and some interest was shown by both Travelodge PNG Group of companies and Motor Vehicles Insurance Trust (Exhibit

On 30 October 1998 a special Board meeting was held where a total of six directors were present. The directors present were; Sir Dennis Young, Mr Yamuna, late Mete Kahona, Mr Seeto, Mr Tari and Mr Kumgal. The Board resolved at this meeting to accept an offer by Lease Rite Real Estate of K33 million, which was supported by the Bank of South Pacific (Exhibit

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On the same day Mr Yamuna informed Lease Rite Real Estate of the acceptance of its offer. A copy of the letter is attached and marked as Exhibit 155 in the Appendices to this report.

On 4 November 1998, Mr Kumgal wrote to Mr Yamuna expressing his objection to certain resolutions regarding investment and divestment proposals including the sale of ANG Haus. Mr Kumgal expressed that the full Board should decide on these transactions in the next Board meeting. The letter was copied to the Board and senior management. It is not clear why Mr Kumgal, who voted for the proposal to sell ANG Haus at the Special meeting of 30 October 1998, wrote this letter. A copy of Mr Kumgal's letter is attached and marked as Exhibit 156 in the Appendices to this report.

On 25 November 1998, again without any tender process, Mr Yamuna engaged Mai Lawyers for the sale of the ANG Haus. A copy of the Mr Yamuna's letter to Mai Lawyers is attached and marked as Exhibit 157 in the Appendices to this report.

On 15 December 1998 Mr Tia of Cascade Apartments Limited (the vendor) paid the 10% deposit of K330, 000.00 to A copy of both the letter to and the cheque is attached and marked as Exhibit 158 in the Appendices to this report.

On 28 December 1998, the contract of sale of the ANG Haus was signed by both parties. Mr Yamuna signed on behalf of the Corporation. A copy of the sale agreement is attached and marked as Exhibit 159 in the Appendices to this report.

During the negotiation for the sale Mr Yamuna and Mr Tia had verbally agreed to the inclusion of certain clauses in the contract which allowed for the incurring of additional expenditures by the Corporation prior to settlement.

Mr Tia then requested that the relevant repair and maintenance work be carried out. Unbeknown to the verbal agreement, Mr Taru maintained an 'as is where is' basis position. This difference led to the deferral of the settlement twice. On 4 February 1999, the parties agreed that the sales price would be reduced by to cater for these expenditures.

On 15 February 1999 Mr Yamuna wrote to Mai Lawyers informing that he was under pressure from Sir Dennis to settle immediately. He instructed Mai Lawyers to serve notice on the vendor to settle immediately or risk losing the deposit. A copy of this letter is attached and marked as Exhibit ?160? in the Appendices to this report.

On 25 February 1999, Mr Yamuna forwarded to an authority to release security documents letter signed by him for the discharge of a charge over the ANG Haus property. The letter of authority also contained details of overdraft accounts including debt arising from the limo guarantee to be cleared from the proceeds of the sales of ANG Haus. A copy of this release letter is attached and marked as Exhibit ?161? in the Appendices to this report.

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The discharge of the mortgage form for the purposes of the Lands Department was signed on 26 February 1999.

On 1 March 1999, Mai Lawyers wrote to Mr Yamuna that settlement took place at the office of on that date and included in his letter details of the disbursement of the proceeds as follows:-

Mai Lawyers Trust account 1,815,977.12
929,707.00
Cascade Apartments Limited 176,359.75
National Capital District Commission 56,740.71
Eda Ranu 948.30

2,979,732.88
Sales Price
Difference - 10% deposit with 320,267.12

The difference should be exactly representing the 10% deposit with
According to the settlement statement, the purchaser should have allowed an amount of K9, 732.88 for Eda Rana bills paid in advance by the Corporation. This was not deducted from the amount paid to Cascade Apartment Limited.

A copy of the letter from Mai Lawyers, including the settlement statement and the copies of the cheques raised at settlement are attached and marked as Exhibit ?162? in the Appendices to this report.

Also on 1 March 1999 Mai Lawyers raised an ANZ bank cheque of in favour of the Corporation after deducting its fee of and a sum of for further costs' associated with the sale. A copy of the bank cheque is attached and marked as Exhibit ?163? in the Appendices to this report.

On 2 March 1999, Mr Yamuna wrote to acknowledging receipt of representing the 10% deposit less sales commission. Based on the agreed sales commission of 2% and after including a sales tax of the commission

would have been This meant that would have paid the Corporation It would appear that had improperly obtained an amount of from the sales.

A copy of Mr Yamuna's acknowledgement letter is attached and marked as Exhibit ?164? in the Appendices to this report.

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4. 6.2.2

The bank statements of the Corporation's account number 600226 show that the and were deposited on 2 March and 3 March 1999 respectively.

The records available to me do not indicate how the retained by Mai Lawyers was disbursed. Furthermore, there is no record to indicate that Cascade Apartments Limited and returned the monies owed to the Corporation.

Again as with the sale of the Invesmen Hans and Cascade Apartments, there were a number of failures and breaches on the part of the Management and Board of the Corporation in the sale of the ANG Hans as follows:?

I A recent valuation of the prOperty was necessary. The Board and management failed to obtain a fresh valuation. As a result it is not clear whether the amount received was a fair consideration on the property.

I The sale of the ANG Hans was carried out without any proper investment analysis.

I Section 61 of the PFM Act was breached were no Ministerial approval was obtained for the sale of Invesmen Haus.

I The Management did no raise any concern, nor did they attempt to obtain the monies owed by Cascade Apartments Limited of and of

Unless evidence to the contrary is provided, it would also appear that Cascade Apartments and actions would amount to theft of the funds of the Corporation.

Fund Commercial Properties

The Fund had the following commercial properties at the start of 1998:-

I Mana Matana Apartments Le Hunter Road, Port Moresby which was owned by the Corporation.

I Sea Park Apartments on Portion 2030, Ela Beach, Port Moresby which was

owned by the Fund's wholly owned subsidiary, Sea Park Limited

I Sunset Apartments on Port Road, Port Moresby which was owned by the Fund's wholly owned subsidiary, Sunset Apartments Limited

I NIC Haus on Champion Parade, Port Moresby which is now called the Pacific MMI Building. The building was owned by the Fund's wholly owned subsidiary, Nowra No 8 Limited. In 2003 the property was sold to the Pacific Property Trust in exchange for units in the trust.

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I Yandarna Apartments on Korobosea Drive, Korobosea which was owned by the Fund's wholly owned subsidiary, Yandama Trading Company Limited.

By 31 December 2002 only the Yandama Apartments remained.

According to the financial statements, the Fund was in a healthy financial position with investments in a number of very well established and solid companies in PNG. According to the evidence available to me, the major expenditure of the Fund was the management fee charged by the Corporation and the redemption of units.

The sale of the properties generally was necessitated by the need to pay for the redemption of the shares.

Marta Matana Apartments

Mana Matana Apartments was the first of the Fund's properties to be sold. Mana Matana Apartments is a seven storey building consisting of twenty four apartments on land area described as Section 32 Allotment 18 situated on Le Hunter Road, Koki Point in Port Moresby.

According to the title of this property, the Fund purchased it in December 1977. A copy of the title is attached and marked as Exhibit 165 in the Appendices to this report.

According to the property profile maintained by the Fund, the property showed reasonable results and with major refurbishment the returns could be increased. A copy of the profile is attached and marked as Exhibit 166 in the Appendices to this report.

A valuation report dated 14 December 1998 by Graeme Dunnage Associates placed the Mana Matana Apartments at a market value of A copy of the valuation report is attached and marked as Exhibit 167 in the Appendices to this report.

Again it is not clear from the records available the reason for the sale of Mana Matana

Apartments. On 7 January 1999 Mr Yamuna wrote to following a meeting with a representative of for to start advertising the sale of Mana Matana Apartments, Yandama Apartments and Sea Park Apartments. Mr Yamuna indicated in that letter that there was an urgent need for the Fund to sell these properties. Mr Yamuna stated further in the letter that the sales commission would be an increase of

A copy of the letter is attached and marked as Exhibit ?168? in the Appendices to this report.

it would appear that the need for the redemption of the units would have pressured the Fund into selling these properties.

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I am unable to determine whether the Fund Trust Committee authorised the Management of the Corporation to sell these properties.

A letter dated 12 January 1999 from indicates that sole agency agreements for the sale of Mana Matana Apartments, Yandama Apartments and Sea Park Apartments was signed on or before 12 January 1999. stated in that letter that sale by auction was scheduled on 23 February 1999 at the Port Moresby Travelodge. requested a sum of per property for advertisement. A handwritten notation by Mr Yamuna on the letter indicated direction to the Financial Controller to arrange payment.

There are no records of minutes indicating the approval to sell the three apartments. A copy of the letter from is attached and marked as Exhibit ?169? in the Appendices to this report.

On the same day Mr Yamuna replied with a letter of acknowledgement to In that letter Mr Yamuna stated that the current rate of commission increase of 1.5% was proper and fair. There are no records to indicate that had requested an increase. It would appear improper of Mr Yamuna to increase the commission unilaterally and without any justifi?cation. Mr Yamuna?s action was not in the interest of the Fund. A copy of the letter to is attached and marked as Exhibit ?170? in the Appendices to this report.

A memo dated 8 February 1999 from the Corporation?s Property Manager to Mr Yamuna indicates that the Corporation had informed to use the valuations as the reserve prices for the sale of the Fund?s properties. A copy of the memo is attached and marked as Exhibit ?171? in the Appendices to this report.

A letter from Mr Yarnuna to Mr Ken Baker of dated 26 February 1999 indicates that the two top bids for the Mana Matana and Sea Park Apartments were below the reserve price and were to be referred to the Board of the Corporation for deliberation. Mr Yamuna?s letter indicated that the sale of Yandama Apartments was to be referred to the Corporation?s sub committee for assessment prior to the Board?s approval. . A copy of the letter is attached and marked as Exhibit ?172? in the

Appendices to this report.

011 31 May 1999 Mr Yamuna wrote a one page letter to the Minister for Public Enterprises, Dr Fabian Pok seeking ministerial approval as the Minister responsible for the Corporation. The only reason given by Mr Yamuna in seeking the approval was that these properties were earning below the required rate of return of 12% and that an investment in treasury bills at the prevailing rate of 24% would be sound. A copy of this letter is attached and marked as Exhibit ?173? in the Appendices to this report.

An informed, careful and independent assessment of the request would have revealed the following:?

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I Mr Yamuna?s letter indicated lack of understanding of short term to long term investments, the risks and returns associated with such, and the concept of mix of portfolio. As time has proven, the high treasury bills rates which are short term and volatile no longer exist today, whereas returns on property investment has been constant or on the rise.

I The Department of Treasury ?les do not contain any other information in respect of the sale of these properties. The information set out in the letter to the Minister was de?cient and inappropriate for an informed decision. A proper submission would have included a detailed analysis of the performance of the properties, copies of recent valuations, analysis of expected major repair and upkeep costs and a detailed submission setting out the speci?c profitable investments the Fund was considering from the proceeds of the prOperty sales. Such a detailed examination would have indicated that in a youth?il real estate market such as Port Moresby with limited land available, real estate provided a safer and assured long term growth.

The Department of Treasury ?les available to me indicate no assessment by the Commercial Investments Division of the Department of Treasury.

On 1 June 1999, Dr Pok as Minister responsible for the Corporation gave approval. A cepy of the letter from Dr Pok is attached and marked as Exhibit ?174? in the Appendices to this report.

On the same day Honourable Iaro Lasaro, Treasurer and Minister for Flaming wrote to Mr Yamuna approving the sale of Mana Matana and the Yandarna Apartments. A copy of Honourable Lasaro?s letter is attached and marked as Exhibit ?175? in the Appendices to this report.

It appears that the Mr Yamuna was remiss of his duties where he failed to ?rrnish relevant and appropriate information to both Ministers for an informed decision. It also appears that both Minister Pok and Minister Lasaro were remiss of their duties where they failed to seek a detailed and relevant submission, including appropriate assessment by the Department prior to issuing the approval.

On 23 June 1999 a contract of sale of land between the Corporation and Bluehaven No 42 Limited was signed for the sale of the Mana Matana Apartments for a sum of A copy of the contract of sale is attached and marked as Exhibit ?176? in the Appendices to this report.

It is not clear from the records how Bluehaven No.42 limited offered the property. The records available to me indicate that Bluehaven No 42 Limited was not selected through a competitive tender process. Bluehaven No.42 Limited is believed to be owned by relatives of Mr Peter O?Neil.

On 6 July 1999, the Secretary of Treasury Planning Mr Brown Bai wrote a brief to his Minister setting out widespread allegations of malpractice at the Corporation and

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reported that he was setting up an investigation into the allegations as required by the PFM Act. The allegations included among others, the sale of the investment properties and the appointment of as the sole sales agent. A COpy of the minister?s brief is attached and marked as Exhibit ?177? in the Appendices to this report.

In August 1999, Sir Mekere Morauta became the Prime Minister and Mr Yamuna was suspended as a result of the allegations of malpractice.

On 8 September 1999, Mr Pokarop as the Investment Manager wrote to Fiocco Posman Kua Lawyers and sought legal opinion to rescind the contract of sale on the basis that the suspended management initiated the sale at a price below valuation. A copy of the Mr PokarOp?s letter is attached and marked as Exhibit ?178? in the Appendices to this report.

On 9 September 1999, Fiocco Posman Kua Lawyers provided advice to the effect that the contract can only be rescinded by agreement of both the Corporation and Bluehaven No 42 Limited. A copy of the legal advice is attached and marked as Exhibit ?179? to the Appendices to this report.

Bluehaven No 42 Limited?s lawyers, Young William continuously wrote to the Corporation to have the contract concluded. A completion date of 17 November 1999 was issued by the purchaser but this was not honoured by the Corporation.

On 1 March 2000 Mr Wilson Nelson, as acting Investment Manager, wrote a two page memo to Mr Ruimb, setting out the background and the possible consequences of the Corporation not honouring the contract of sale. Mr Ruimb agreed to the recommendation to honour the contract on the basis that the contract was binding, the sales price of K2 million was within the valuation range and court proceedings would only erode the sales proceeds. A copy of this memo is attached

and marked as Exhibit ?180? in the Appendices to this report.

Settlement was delayed due to issue over the applicability of Value Added Tax. On 13 April 2000 settlement occurred. had 10% of the sales proceeds. This meant that an amount of K1 ,800,000.00 was to be paid by the purchaser at settlement.

After an allowance by the purchase of an amount of for land rentals and Eda Ranu bills paid in advance by the vendor, an amount of KI,810,076.97 was paid at settlement to the Fund. A copy of the settlement statement is attached and marked as Exhibit ?181? in the Appendices to this report.

An amount of 10,076.97 was deposited into the Fund?s account number 600365. A COpy of the bank statement showing the deposit is attached and marked as Exhibit ?182? in the Appendices to this report".

paid the 10% deposit less its commission of This was deposited to the Fund?s account on 3 May 2000. A copy of the bank

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statement showing the deposit is attached and marked as Exhibit ?183? in the Appendices to this report.

Sea Park Apartments

Sea Park Apartments is a seven split level building consisting of 28 units situated on Portion 2030, Ela Beach, Port Moresby. Sea Park Apartments is owned by the Fund?s wholly owned subsidiary, Sea Park Limited

According to the title of this property, Sea Park Limited was granted a 99 year residential lease on 28 September 1985. A cOpy of the title is attached and marked as Exhibit ?184? in the Appendices to this report.

According to the property pro?le maintained by the Fund, the property commands high demand because of its location and has consistently achieved high returns. The property was recorded in the accounts at a cost of K4.4 million. The Fund?s internal valuations placed the property at about K4 million. A valuation by Lokoloko Realty on 10 December 1998 placed a value of K6.7 million. A copy of the pro?le is attached and marked as Exhibit ?185? in the Appendices to this report.

Despite that was paid to in January 1999 for the advertisement for the sale of Mana Matana, Sea Park and Yandama apartments, by the time of change of management in August 1999, only a contract of sale for Mana Matana was completed.

While offers were received for the purchase of the Sea Park Apartments in the period after Mr Yamuna?s term, these were rejected mainly for failure to meet the valuation ?gure.

At the special board meeting of the Corporation on 9 February 2001, the Management proposed to the Board to sell the Sea Park Apartments at the valuation of K6.7 million by public tender, auction or both. The justification for the disposal as contained in the board paper was as follows:-

- Pressure was placed on the Fund by POSF for the redemption of their shares which at the prevailing buyback price amounted to K35 million.

The Operating account of the Fund had a balance of less than K113 million. Management anticipated that MV IL which at that time was in liquidation could require redemption of their shares. This required an amount of K113 million.

A copy of the board paper is attached and marked as Exhibit 186 in the Appendices to this report.

The Board considered the proposal and resolved for two updated valuations for an appropriate price to be determined (Exhibit

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At the next special board meeting held on 23 February 2001, the Management presented the valuation from The Professionals of The Management reported that Greame Dunnage Associates were yet to provide a valuation. The Board resolved that once the Greame Dunnage Associates valuation was received a circular resolution should be arranged for the Directors to approve a price (Exhibit 187). A copy of the valuation report of The Professionals is attached and marked as Exhibit 187 in the Appendices to this report.

The valuation of Greame Dunnage Associates was received subsequently and a value of was attributed. A copy of the valuation report is attached and marked as Exhibit 188 in the Appendices to this report.

It appears from a letter dated 2 March 2001 to late Kahona from Mr Ruimb that the circular resolution required by the Board was sent into motion. The letter to late Kahona indicates that the two valuation reports were attached. A copy of the letter is attached and marked as Exhibit 189 in the Appendices to this report.

After seeking comments from the Commercial Investment Division of the Department of Treasury, on 14 March 2001 late Kahona signed the circular resolution. The Board resolved via the circular resolution as follows:-

. to accept the higher of the two valuations of
to sell at a price not less than and,

to authorise Management to make necessary arrangements to sell, subject to ministerial approval.

A copy of the circular resolution of late Kahona and advice from the Commercial Investment Division is attached and marked as Exhibit ?190? in the Appendices to this report.

On 2 April 2001, Mr Ruimb forwarded a submission to the Department of Treasury seeking ministerial approval under Section 61 of the PFM Act. The submission was assessed by late Kahona of the Commercial Investment Division of the Department of Treasury. On 5 April 2001 late Kahona?s brief to the Secretary recommended that the Department to advise the Corporation to comply with tender requirements prior to seeking ministerial approval. A copy of late Kahona?s brief to the Secretary is attached and marked as Exhibit ?191? in the Appendices to this report.

On 9 April 2001, the Secretary of Department of Treasury, Koiari Tarata prepared a brief in the similar terms to the Treasurer. On the same day the Treasurer and Prime Minister, Sir Mekere Morauta wrote a letter to Mr Ruimb relaying his approval for the Fund to sell the Sea Park Apartments at a price not less than K53 million. Sir Mekere directed the Corporation to resubmit the request for ministerial approval after a potential buyer was identi?ed through a competitive bidding process. A copy of Mr

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Tarata?s brief and Sir Mekere?s letter is attached and marked as Exhibit ?192? in the Appendices to this report.

On 8 May 2001, the Senior Investment Analyst sent an internal memo to the Corporation?s tender committee chairman setting out the results of the tenders received. The memo indicated that four tenders were received. The Senior Investment Analyst proposed that the tender committee recommend one of the top two offers to Management for consideration. The highest bidder was Kwila Insurance Corporation Limited with followed by Tan Investments Limited with The next bidder was Nusuarn Holdings Limited with and the fourth was Three Goerges Investment Group with A copy of the memo is attached and marked as Exhibit ?193? in the Appendices to this report.

The memo of 8 May 2001 indicates that the tender was advertised in the Post Courier and National over a period of two weeks.

It appears that the Management accepted Kwila Insurance Corporation Limited?s tender of and on 8 June 2001 the contract for sale of land was signed. From the records available to me, there is no evidence that ministerial approval was sought after the potential buyer was chosen. It is not clear whether PFM Act is applicable to the Fund and its subsidiaries. A copy of the contract of sale is attached and marked as Exhibit ?194? in the Appendices to this report.

The settlement of the contract occurred on 18 June 2001 at the of?ce of the

Corporation. At settlement the balance of of the purchase price after 10% deposit of K570, 000 was distributed. w-After allowances by the vendor and purchaser, the amount distributable, excluding the 10% deposit, was Of this was paid to Sea Park Limited, was paid to National Capital District Commission (NCDC) and the balance of was paid to Eda Ranu. A COpy of the settlement statement is attached and marked as Exhibit ?195? in the Appendices to this report. A copy of the cheque of 17 paid to Sea Park Limited is attached and marked as Exhibit ?196? in the Appendices to this report.

On 27 June 2001, Rageau Elemi Kikira Lawyers forwarded a cheque of to the Corporation representing the balance of the 10% deposit after payment of sales commission to Budget Real Estate of and fees. A copy of Rageau Elemi Kikira Lawyers letter is attached and marked as Exhibit ?197? in the Appendices to this report.

It appears that the sale of Sea Park Apartments would be one of the few where proper processes were followed.

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Sunset Apartments

Sunset Apartments is a ?ve level building consisting of 15 residential units situated on Allotment 7 Section 9, Port Road, Granville, Port Moresby. Sunset Apartments is owned by the Fund?s wholly owned subsidiary, Sunset Apartments Limited.

The title of this property was transferred to Sunset Apartments Limited in July 1985. A cepy of the title is attached and marked as Exhibit ?198? in the Appendices to this report.

According to the pr0perty pro?le maintained by the Fund, the property commands high demand because of its location and has consistently achieved reasonable returns.

The property was recorded in the accounts at a cost of K21 million. The Fund?s internal valuations placed the property at about K135 million. An external valuation on 10 December 1998 placed a value of K3.17 million. A cepy of the pro?le is attached and marked as Exhibit ?199? in the Appendices to this report.

The property report presented at the Board meeting of 8 September 2000 showed that occupancy had increased to almost 90%. The estimated annual rental was around the mark. It was reported that improvement in electricity recovery and reduction in expense was required to achieve the potential of the property. A copy of the report is attached and marked as Exhibit ?200? in the Appendices to this report.

The acceptable return in 2002 for a good property was about 7 years or 14%. Assuming proper cost control, costs can be kept to a level of 35 to 30% of gross

income. On the basis of annual rentals of a rough valuation would produce an amount just about K2 million.

On 12 February 2002 a contract of sale was signed between Sunset Apartments Limited and Kwila Insurance Corporation Limited for the sale of Sunset Apartments for a sum of Mr Gideon of the Corporation signed on behalf of Sunset Apartments Limited. A copy of the contract of sale is attached and marked as Exhibit ?201? in the Appendices to this report.

On the same day the shareholders resolution under Section 110 of the Companies Act

was also signed by Mr Gideon. A copy of the shareholders? resolution is attached and

marked as Exhibit ?202? in the Appendices to this report.

For the sale to take place the following should have happened:-

. The Board of Sunset Apartments Limited should have approved the sale. In order for Board approval to be granted, a detailed analysis justifying the sale

should have been presented by the Management.

I The shareholder approval under Section 110 of the Companies Act should have been authorised by the Fund Trust Committee.

I At the least, two recent valuations should have been obtained.

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I A competitive tender process should have occurred leading to the selection of the buyer.

Unless evidence to the contrary is produced, the information available to me indicates

that no such process was followed and required approvals were not obtained. To the extent that there is no evidence to the contrary, I find that the Management and Board

of Sunset Apartments Limited and the Corporation acted improperly in allowing the sale.

On 20 January 2002 settlement occurred. At settlement the balance of of the purchase price after 10% deposit of was distributed. After allowances by the vendor and purchaser, the amount distributable excluding the 10% deposit was

Of this, was paid to Sunset Apartments Limited,

K24,912.38 was paid to NCDC, and the balance of K1,071.84 was paid to Eda Ranu.

A copy of the letter to the Corporation informing completion by Rageau Elemi Kikira Lawyers and settlement statement is attached and marked as Exhibit ?203? in the Appendices to this report.

An ANZ bank cheque of was raised in favour of Sunset Apartments Limited on 20 February 2002. A copy of the cheque is attached and marked as

Exhibit ?204? in the Appendices to this report.

On 22 February 2002, Rageau Elemi Kikira Lawyers forwarded a cheque of to Sunset Limited from Budget Real Estate representing the deposit less their sales commission of 167,500.00.

The bank statement of Sunset Apartments Limited indicates that the funds ?'om Budget Real Estate and the from settlement were deposited. A copy of the bank statements of Sunset Apartments is attached and marked as Exhibit ?205? in the Appendices to this report.

Conclusion on Sale of Commercial Properties

On the basis of the evidence available, except for ANG Hans, I find that the sales of the Corporations commercial properties were not justifi?ed. It is also clear that proceeds of the sales of the Corporation?s commercial prOerties may not have re?ected the value of the properties because in all cases fresh valuations were not obtained. The PFM Act approvals given would be defective given the fact that relevant and full disclosure necessary for a proper assessment of the approval was not furnished by the Board of the Corporation.

Perhaps the important question that needs to be answered is why were the Corporation?s commercial properties sold to ?nance Ilimo Poultry Products Limited? As explained in detail in Chapter 4.7 of my report, Ilimo Poultry Products Limited was insolvent. I strongly recommend that appropriate authorities should investigate the use of the funds advanced to Ilimo Poultry Products Limited during the term of Sir DennisYoung and Mr Yamuna.

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On the other hand, except for Mana Matana Apartments, the sale of the Fund?s commercial properties were done out of the urgent need to ?nance looming redemptions. The sale of Mana Matana Apartments was not justifi?ed.

4.6.3 Institutional Houses

As at the beginning of 1998 the Corporation owned institutional housing comprising about 20 houses and 6 duplexes.

It appears that most of these properties were

disposed to staff under the Corporations Home Ownership Scheme (HOS) by 31 December 2002. Except for a few of preproperties, the evidence available to me indicates that the properties were properly disposed.

A summary of the status of the institutional houses as reported by an investigation by Mr Tarn for the IPBC dated July 2005 (Exhibit indicates the following.

Sec Lot Location Description Sold to Buyer details Price

Bagara Place, Low covenant 3 bedroom
 139 54 Tokarara house Tom Yanda ICPNG Staff 27,450
 Gabodubu Street, Low covenant 3 bedroom
 139 97 Tokarara house James Narisa ICPNG Staff 30,600
 Medium covenant 3
 Parani Crescent, bedroom house study Ex Member
 146 27 Tokarara room Jimson Sauk of Parliament 60.000
 Rakatani Street, Low covenant 3 bed room
 148 110 Tokarara house Mark Ipuimu Staff 26,550
 Dikagari Street, Low covenant 3 bedroom
 238 57 Tokarara house Peter Pea Staff 26,100
 Iarogaha Street, Low covenant 3 bedroom Former
 231 18 Tokarara house John Paria Staff 10,000
 Low covenant 3 bedroom Isaac
 40 1 Gull Street, Waigani house McNerbai Staff 24,750
 High covenant 5
 21 6 Pine Street, Hohola bedroom house Not sold yet -
 Low covenant 2
 Sandpiper Street, bedroom, concrete
 103 22 Gordons construction Tony Hamule Staff 20,000
 Vaivai Avenue, East Medium covenant 3
 21 37 Boroko bedroom house Mr. Taru ICPNG Staff 102,000
 Vaivai Avenue, East Medium covenant 3
 21 38 Boroko bedroom house Kris Bongare ICPNG Staff 7
 Medium covenant 3
 10 6(1) Port Road, Granville bedroom house
 Medium covenant 3
 10 6(2) Port Road, Granville bedroom house John Ruimb Staff 117,000
 Gahunagaudi Drive, Medium covenant 2 External
 225 24 Gerehu bedroom house Pauline Kurum party 45,000
 Rainbow Estate, Medium covenant 4
 484 25 Gerehu bedroom house Ezekiel Isaac Staff 45,000
 Geboso Place, Medium covenant 3
 85 4 Korobosea bedroom house 60.000

High covenant Executive

Eta Makana. House 3 bedroom Wendi

33 3 Granville upstairsf2 downstairs Yamunai ICPNG Staff 90,000

Executive residence, 3

bedrooms, guest house, Baledonna

Chesterfield Street, swimming pool staff Holdings

24 11 Ela Beach quarters Limited 305,000

Korobosea Drive. 4 Bedroom house for

91 1 Korobosea executives Joyce Pato 120.000

4 Bedroom executive

14 18 Gordons 5 house Vincent Auali Vincent Auali 200,000

Parani Crescent,

146 29 Tokarara 2x2 bedroom duplex -

Hibiscus Street, George

35 28 Hohola 2x2 bedroom duplex Maraga Staff 36,000

Spornbill Street, Stanley

112 3 Gordons 5 2x2 bedroom duplex Moypoela Staff 46,500

Maignai Cresent,

258 15 Gerehu 2x2 bedroom duplex Lahui Rigana ICPNG Staff 38,250

House 1x2 bedroom

Mavaru Street, East upstairs | 2x2 bedroom

21 2 Boroko downstairs Joseph Kiks Staff 79,650

Gari Avenue,

139 14 Tokarara 2x2 bedroom duplex Mack Pakao ICPNG Staff 40.500
Title issued on 141098-
25 484 Hohola no records in ICPNG

The Taru report indicated that while majority of the properties were properly disposed a few required closer assessment. The property with the most concern is the property located on Section 24 Allotment 11, Chesterfield Street, Ela Beach. This property was sold to a company alleged to be associated with Minister Pok called Baledonna Limited in late 1998. It was also alleged that no such company exists and no payment was received for the purchase of the property.

According to the records available to the Commission the contract of sale was signed on 25 June 1998. The contract was between the Corporation and Baledonna Limited.

A copy of the contract of sale is attached and marked as Exhibit ?206? in the Appendices to this report. Baledonna Limited changed its name to Murang Consultancy Limited on 3 April 1998. A copy of the certificate of incorporation of change of name of company is attached and marked as Exhibit ?207? in the Appendices to this report.

It appears that Baledonna Limited borrowed funds from to pay for the property as indicated by the mortgage registered on the title of the property. The settlement statement indicates that an amount of was paid to the Corporation. A copy of the settlement statement is attached and marked as Exhibit ?208? in the Appendices to this report.

This was deposited into the staff Home Ownership Scheme bank account of the

Corporation on 22 October 1998. A copy of the deposit slip indicating the deposit is attached and marked as Exhibit ?209? in the Appendices to this report. The bank

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statement of the staff Home Ownership Scheme confirms the deposit on 22 October 1998. A copy of the bank statement is attached and marked as Exhibit ?210? in the Appendices to this report.

The records produced by Bank of South Pacific Limited indicate the loan was given in the name of Baledonna and the mortgage on the property was discharged in May 1999. A copy of the title of the property is attached and marked as Exhibit ?211? in the Appendices to this report.

4.6.4 Summary of findings and recommendations

The following provides a summary of my findings and recommendations relative to the terms of reference concerning the sale of the Corporation's and Fund's properties.

In particular 1(6) (V) which requires my assessment of whether there was any failure to comply with the prescribed tender procedures are general and concerns all matters covered under to 8. As a result my findings in respect of these TOR in respect of the sale of the properties are covered herein.

4. 6. Terms of Reference 1(a) - Whether established administrative and financial management procedures were followed generally in the management of the Investment Corporation Fund, the sale of institutional assets and investment properties of both the Investment Corporation and the Investment Corporation Fund and the receipt of the sale proceeds

In order to sell ANG Hans, Invesmen Hans and Cascade Apartments, fresh valuations were necessary. Mr Yamuna acted imprudently and not in the interest of the Corporation when he failed to obtain valuations of ANG Haus, Invesmen Hans and Cascade Apartments.

Mr Yamuna failed to carry out the duties required of him when he engaged Mai Lawyers in the sale of Cascade Apartments Limited and ANG Haus without any tenders and an opened ended fee arrangement.

Mr Yamuna failed to carry out the duties required of him where he engaged Carter Newell Lawyers in the sale of Invesmen Haus without any tenders and an opened ended fee arrangement.

Mr Yamuna and the Management of the Corporation failed to carry out the duties required of them in the sale of Cascade Apartments Limited where the

following occurred:?

- Board approval was not sought for the change in the sale of Cascade Apartments to that of the sale of shares in Cascade Apartments Limited.

- An indemnity was issued to the purchaser without any assessment of the quantum of liabilities of Cascade Apartments Limited.

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The contract of sale was deficient in that the correct price purchase of was not recorded.

Mr Yamuna was remiss of his duties when he failed to furnish relevant and appropriate information to the Minister for Public Enterprise and the Minister

for Treasury Flaming for seeking relevant approval for the sale of the Fund's properties

Minister Pok and Minister Lasaro were remiss of their duties where they failed to seek a detailed submission including appropriate assessment by the Department prior to issuing the approval for the sale of properties belonging to the Fund.

The Management acted imprudently when they did not raise any concern nor did they attempt to obtain the monies owed by Cascade Apartments Limited of 10,732.88 and of in respect of the sale of the ANG Haus.

The Board and the Management of the Corporation and Sunset Apartments Limited failed to carry out the duties required of them in the sale of Sunset Apartments where the following occurred:?

- The Sunset Apartment Limited Board did not approve the sale of the property

The shareholder approval under Section 110 of the Companies Act required the approval and endorsement of the Fund Trust Committee. This was not done.

Two recent valuations of the property were not obtained

- There is no record of the buyer being selected through a competitive tender process

4. 6.4.2 Terms of Reference 1(c) Whether there was any inappropriate intervention, imprudent, illegal or improper conduct by any person, company, business, legal entity or other agency in relation to the expenditures or illegal or unsuitable investments or other improper or unauthorised action

The Board and Management of the Corporation acted illegally when they did not obtain Ministerial approval in the sale of Cascade Apartments Limited, Invesmen Haus and ANG Haus.

acted improperly in paying themselves sales commission in excess of in respect of the sale of the ANG Haus.

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Mr Yamuna acted improperly when he increased the sales commission to from 2% to 3.5% unilaterally and without any justification.

The Board and Management of the Corporation acted illegally to the extent that the sale of Mana Matana Apartments occurred without the Fund Trust Committee's approval.

Unless evidence to the contrary is produced by Carter Newell Lawyers and Mr Yamuna, it would appear that of the proceeds from the sale of the Invesmen Haus deposited into the trust account of Carter Newell Lawyers were not accounted properly. Investigation into these monies by IPBC is

Unless evidence to the contrary is produced by Mai Lawyers and Mr Yamuna, it would appear that of the proceeds from the sale of the Cascade Apartments Limited deposited into the trust account of Mail Layers were not accounted properly. Investigation into these monies by IPBC is recommended.

4. 6.4.3 Terms of Reference 1 - Whether there was any failure to comply with prescribed tender procedures in connection with the sale and disposal of properties including those commonly known as Sea Park Apartments, ANG ans, Monian Tower and Ilimo Farm

The Board and Management failed to carry out the duties required of them Where Mana Matana Apartments were sold without any competitive tender process.

The Board and Management of Sunset Apartments Limited and the Corporation failed to carry out the duties required of them where Sunset Apartments was sold without any competitive tender process.

4.6.4.4 Terms of Reference 9 - Whether, in relation to the Investment Corporation, Investment Corporation Fund and Pacific Balanced Fund, the responsible Government agencies, including the Department of Finance, the Bank of Papua New Guinea and the Auditor General, failed to carry out their regulatory, supervisory or reporting responsibilities under any applicable Act, and what was the extent of this failure

Department of Finance

The Department of Treasury and the Minister failed to perform the duties

required of them when having knowledge of the sale of Cascade Apartments, Invesmen Haus and ANG Haus, did not seek from the Corporation appropriate submissions for the purposes of Section 61 approval.

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4.6.4.5 Terms of Reference 11 - Whether any person or corporate party should be referred to relevant authorities for investigation with the view of criminal prosecution or other action.

Referrals to the Royal Papua New Guinea Constabulary

I The non repayment of of the funds held in deposit with in

respect of the sale of the ANG Hans warrants referral of to the Police for investigation for misuse of ?mds.

4.7

4.7.1

Sale of Ilimo Poultry Products Limited

Introduction

This report covers TOR where I am tasked to assess whether there was any irregularity and illegality in the disposal of Ilimo Farm (Ilimo).

TOR reads as follows;

Whether, in the performance of its functions and the exercise of its powers, particularly in the management of the Investment Corporation Fund, the Investment Corporation failed to comply with the provisions of the Investment Corporation Act (Chapter 140), the Public Finances (Management) Act 1995 or any other Act and with relevant policies and directions from the National Executive Council between the years 1998 and 2002 concerning but not limited to the following:

whether there was any failure to comply with prescribed tender procedures in connection with

the sale and disposal of properties including those commonly known as Sea Park Apartments, Credit House, Monian House and Ilimo Farm

In this report I will look at Ilimo, speci?cally the circumstances surrounding its ?nancial position and eventual disposal. In the ?rst part of this report I will look at the loans obtained by Ilimo and in the second part I will look at the diSposal of its assets.

In particular I will consider the following issues;

- a)
- b)
- C)
- d)

Who were the directors and managers tasked with prudent management of Ilimo?

What were the trading results of Ilimo from 1998 to the point of disposal of its assets?

What due diligence was performed by the Corporation when it continued to lend and solicit loans on behalf of Ilimo from Papua New Guinea Banking Corporation

Did the Corporation seek Ministerial approval regarding the advances to Ilimo?

Whether Ilimo was insolvent when it continued to trade?

What offers for purchase of Ilimo was received and what happened to these offers?

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4.7.2

g) Why was paid a sales commission of when there was no sale?

h) What were the circumstances that forced to exercise its rights to dispose the farm's land and buildings?

Background on Ilimo Poultry Products Limited

Information contained in this section will help one to understand the poor performance of Ilimo over many years resulting in eventual disposal of company properties in particular the farm, land, and buildings.

According to company records maintained by the Registrar of Companies, Ilimo had 5,600,000 shares in issue. The Corporation owned 1 share while another 100% owned subsidiary of the Corporation, Toutu No. 37 Limited owned 5,599,999 shares. The ultimate holding entity of Ilimo was the Corporation.

A copy of the records maintained by the Registrar of Companies is attached and marked as Exhibit 254 in the Appendices to this report.

Ilimo owned the following subsidiary companies;

Egg Wholesalers Pty Limited

Ilimo Park Service Station Pty Limited

Stock Poultry Feeds Pty Limited

Ilimo Pastoral Company Pty Limited

Pacific Panels Pty Limited.

Apart from the Service Station, there is no evidence available to the Commission to

suggest that that the other subsidiaries commenced operations. By January 1998 these subsidiaries were dormant.

According to an Information Memorandum on Capital Raising dated April 1997 prepared by Coopers Lybrand, Ilimo operated a farm at 14 1/2 mile Sogeri Road in the Central Province.

A copy of the Information Memorandum on Capital Raising is attached and marked Exhibit ?212? in the Appendices to this report.

Ilimo was incorporated on 5 April 1966 and commenced operations thereafter. The company has been owned by the Corporation since 1973. The company?s principle activity was breeding chickens for meat and eggs. In addition to that, Ilimo operated a feed mill to manufacture feed meals for its own livestock. The company at its peak produced 80-90 tonnes of chicken meat per week.

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4.7.3

Ilimo was managed over the years by various management teams including two management companies.

Since the ?re on 11 August 1996, Ilimo has not been able to operate at its capacity. Various interim general managers managed Ilimo while the shareholder tried to raise capital to re?build the processing plant.

The shareholder failed to raise the required capital and has since pursued the Option to sell Ilimo.

The creditors placed Ilimo into liquidation and the land and buildings were eventually taken over by who had registered mortgage over it.

I will look in detail at what had transpired against this backdrOp to answer the

Requirements of Companies Act

As a company incorporated under the Companies Act, Ilimo?s conduct and operations must be carried out within the rules and con?nes set out by the Companies Act and its constitution. The directors are responsible for the business and affairs of Ilimo. The responsibilities and actions of the Board of Ilimo are governed by the Companies Act and its constitution.

Ilimo has borrowed signi?cant sums of money over the years from the Corporation and and has been unable to repay these monies.

Therefore it is important that the Board and shareholders of Ilimo complied with the requirements of the Companies Act in their conduct of company business of particular concern are trading while insolvent and whether appropriate approvals were obtained in respect of major transactions.

4. 7.3.1 Solvency Test

The solvency test will clearly indicate whether Ilimo was solvent when the Corporation and its Board continued to lend monies as well as soliciting loans on behalf of Ilimo from

Section 4 of the Companies Act defines solvency test as follows;

For the purpose of this Act, a company satisfies the solvency test where; the company is able to pay its debts as they become due in the ordinary course of business; and the value of the company's assets is greater than the value of its liabilities including contingent liabilities.

(2) Without limiting Section 50 and 53(3), in determining for the purposes of this Act (other than Section 234 and 235 which relate to amalgamations) whether the value of a company's assets is greater than the value of its liabilities including contingent, the directors:

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shall have regard to

the most recent financial statements of the company that comply with Section 179

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of its liabilities including its contingent liabilities; and

may rely on valuation of assets or estimate of liabilities that are reasonable in the circumstances.

The Companies Act is also quite clear with respect to directors' responsibilities in ensuring that their company can pass a solvency test.

4. 7.3.2 Liability where failure to prevent insolvent trading

Section 348 of the Companies Act is quite clear in respect of penalties prescribed for Directors for their failure to prevent insolvent trading. The Act provides for directors to be personally responsible for debts incurred by the company while insolvent.

4. 7.3.3 Liability of company for insolvent trading of the subsidiary

Section 349 of the Companies Act also prescribes penalties for holding company that

permits its subsidiary to trade while insolvent. The penalty provided is assumption of debts incurred by the subsidiary while insolvent. While the Corporation is not a company, this may apply if it is found that the Corporation deliberately allowed Ilimo to trade insolvent.

4. 7.3.4 Directors to act in good faith and in the interest of the company

4.7.4

Section 112 of the Companies Act requires the directors to act in good faith and in the best interest of the company.

In each year under review, I will not only apply the solvency test, but also determine whether the directors acted in good faith and in the best interest of the company.

Board of directors of the Corporation, Ilimo Toutu No. 37

In any commercial organisation especially companies, the shareholders appoint a Board of Directors to manage the company on their behalf. The Board then reports to them on a yearly basis through the annual general meeting. The shareholders expect the Board to manage their investment in a prudent manner to enhance their investment value either by way of increased dividends or share price.

The Board then delegates these day-to-day powers to management to manage the business on their behalf and report to them on a periodic basis, usually The Board would then consider the performance of management, review the results and set appropriate direction for management to pursue.

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In respect to Ilimo, one needs to understand who the individuals that constituted the Board as well as the Boards of the two shareholder companies, namely the Corporation and Toutu 37 at the relevant times.

It is important to bear in mind that Section 10 of the Act requires the affairs of the Corporation to be conducted on sound business principles and this extends to both Toutu No. 37 and Ilimo.

4. 7.4.1 Board of the Corporation

The Board of Directors of the Corporation has been covered in Chapter 4 of my Report. It is worth pointing out that the Board of Sir Dennis Young loaned more money to Ilimo than any other Board of the Corporation.

4. 7.4.2 Board of Ilimo

According to records maintained by the Registrar of Companies the Directors of

Ilimo and the Corporation in of?ce between the years 1998 to 2001 are crucial given that during that period more funds were borrowed and also the company went into liquidation and eventually began disposing its? assets.

The directors in 1998 were as follows

I John Ruimb
I Alu Tongia
Eno Daera
I Leo Hannett

I Shankar Mahadavan

After Mr. Ruimb was removed as managing director of the Corporation he ceased to be a director of Ilimo as of 26 March 1998.

When Mr. Yamuna replaced Mr. Ruimb as Managing Director of the Corporation, a new board came into existence. The Board comprised of the following individuals;

I Sir Dennis Young

I Wandu Yamuna

I Fred Agoman

I Vai Reva

I John Nilkare

I Meakoro Opa

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After the Board of Sir Dennis Young was removed and Mr. Yamuna terminated as Managing Director of the Corporation, another new Board came into existence. The new Board comprised of;

I John Ruimb
I Enock Pakarop

I Lincoln Taru

Mr. Ruimb was then back at the helm of the Corporation as Managing Director. These Board members remained in of?ce until the company went into liquidation around September 2001.

A copy of records maintained by the Registrar of Companies of Directors of Ilimo from 1998 to 2001 is attached and marked as Exhibit ?255? in the Appendices to this report.

4. 7.4.3 Board of Toutu No. 3 7

According to the records maintained by the Registrar of Companies, the directors were as follows;

I Leo Hannett 18/12/85 10/04/91
I John Linsley 18/12/85 10/04/91
I Evelyn Rapola 14/06/85 10/04/91
I Miria Ikupu 19/07/93 10/04/96
I Lincoln Taru 10/04/91 10/04/95
I Vai Reva 19/04/95 to date
I John Ruimb 10/04/96 to date
I A111 Tongia 10/ 04/ 96 to date

There are no records available to indicate whether there were any changes in the respect of the above directors.

4. 7.4.4 Controlling Board The Board of the Corporation

It is worth pointing out that although there were separate Board for Ilimo and Toutu, the actual Board that controlled activities of Ilimo was the Corporation Board. This is evident from Board papers and other information available to the Commission.

Many decisions in reSpect of Ilimo were deliberated on by the Corporation Board which does not comply with the Companies Act. Even though the Corporation was the ultimate shareholder, its Board did not have any legal right to deliberate on decisions relating to Ilimo.

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4.7.5

Except for those provided by the constitution of Ilimo and the Companies Act, all decisions relating to operations of Ilimo should have been deliberated by the Ilimo Board, instead of the Corporation Board.

Management of Ilimo Poultry Products Limited

Ilimo at various stages was managed by management companies or individual general managers over the years.

According to a chronology of events since January 1994 compiled by Mr. Enoch Pokarop, the following were the managers of Ilimo;

Manager Start Period i End Period
Broker Tate International unknown 31/12/93
Agridev (Israel based) 01/04/94 09/08/96

Mr. David Compton 09/08/96 23/03/98

Mr. Peter Blake 24/03/98 25/05/1999
Peak Performance Feeds Pty 25/05/99 27/09/2001

Rob Southwell of KPMG 27/09/01 In liquidation

A copy of Mr. Pokarop's chronology of events since January 1994 is attached and marked as Exhibit "256" in the Appendices to this report.

It appears that Broker Tate managed the business up to end of 1993. The Corporation Board then appointed Agridev of Israel to manage the business.

Agridev management contract was prematurely terminated in early August 1996 amid allegations of mismanagement. The reasons cited for the termination of management contract according to Mr. Pakarop's chronology of events were as follows;

I Bad management

I Capital expenditure of K2.5million without Board approval

I Excessive and unauthorised advances to Agridev staff.

A copy of Mr. Pokarop's chronology of events is attached and marked as Exhibit

?257? in the Appendices to this report.

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A letter written by the Managing Director of Agridev gives some indication of the circumstances surrounding the termination of the contract and the rates paid to Agridev. The letter is as follows;

refer to your letter of 29? July 1996 concerning the termination of the Management Agreement between Ilimo Poultry Products Pty {?Ilimo and A gridev.

For the sake of good order, please permit me to make the following observations.

(61)

(C)

The rating of the quality of the management rendered by our team is a matter of opinion. I will therefore merely state that I strongly reject the conclusion of your outside consultant that the performance standard of our team was below par. However, in view of Agridev?s agreement in principle to comply with your apparent wish to end the Management Agreement and to amicably end our relationship, no practical bene?t may be derived from ?trther debating this subject.

I think other reasons then ?Imprudent ?nancial management by the Management team? may properly and justly be attributable to the loss in 1995, but again at this point it is impractical to further discuss the point.

I have been acting as Agridev?s Managing Director for many years. I do not recall any occurrence even remotely similar to the position Agridev finds itself in the wake of your letter which took us by utter surprise we have never received notice by Ilimo of any material dissatisfaction with the services rendered by our team and even the Investment Corporation?s letter of 2? July 1 996 failed to alert us to the magnitude of your unfavourable estimate of our services. Needless to say, we very much regret the unhappy circumstances which gave rise to your letter.

Formally speaking, your reliance on clause 19(b) of the Agreement seems wrong: under that clause, the party giving notice must specifv in full and in detail the purported default and to allow 21 days for correction. This has not been done. It therefore follows that termination by you can only be effected under clause 19(a) of the contract by 6 months? prior written notice, even if we overlook the fact that the Investment Corporation itself is not a direct party to the Agreement.

However, as a matter of policy, Agridev wishes to invest e??ort and expertise only

where the same are fully appreciated. Accordingly Agridev will not dispute your attempt to terminate the Agreement provided of course that Agridev is paid in full all amounts due it as follows:

(1) Agridev must pay its experts the amounts due to them under the respective contracts between them and Agridev for the 30 days period immediately following the 20th August, 1996.

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(2) To date, there is due Agridev payment for the months of May, June, July, August and the first 20 days of September, 1996 i.e. a total amount of

(3) Under clause 13(a) of the Agreement there is due Agridev a bonus for the year 1994. Ilimo's books reflect K60, 087 as Agridev's commission for 1994. Out of this amount, K12, 724 were paid to Messrs Recanati Bregman and Farhat. The balance of K47,363 is due Agridev in accordance with the rate of exchange between the Kina and the US Dollar prescribed under Clause 13(c) of the Agreement, namely the rate of exchange prevailing on 31 December, 1994.

Agridev has been debited with respect to a "private leave" of Dr. Koerner. Dr. Koerner indeed took a special leave, the reasons for which was a sad family event, but this was within the framework of the annual leave due Dr. Koerner under the employment contract between him and Agridev, and under clause of the Agreement between Agridev and Ilimo. Accordingly, Agridev should never been debited with the said

You are therefore kindly requested to see to the prompt payment to Agridev of the aforesaid plus (2) the aforesaid with which Agridev was wrongly debited, plus (3) the aforesaid amount in US Dollars of the balance of Agridev's bonus for the year 1994.

Agridev's acceptance of what Agridev regard as obviously an ill-founded termination of Agridev's Agreement with Ilimo, is motivated by Agridev's desire to circumvent a potential issue between the respective Governments of Papua New Guinea and Israel concerning the rights on Agridev, which as you know is an Israel government company and is also based on the assumption that payment to Agridev of the aforesaid amounts due it, is effected prior to the departure of Dr. Koerner from Papua New Guinea.

A copy of the above letter is attached and marked as Exhibit "233" in the Appendices to this report.

It is worth pointing out at this juncture, two days after the Agridev contract was terminated, at around 2am on the morning of 11 August 1996, a "re swept through the processing plant, blast freezer and the sales office, completely destroying these

facilities.

Ilimo did not recover from that despite millions of Kina being injected by way of loans from direct funding and on-lent loans by the Corporation.

After Agridev, Mr. David Compton was appointed General Manager and thereafter Mr. Peter Blake.

On 10 June 1999, Mr. Yamuna executed the contract to sell Ilimo to Athmaize and as part of that sales process, appointed a subsidiary company of Athmaize to manage Ilimo. A letter written by Mr. Yamuna to Athmaize is as follows;

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confirm my discussion with you regarding the Investment Corporation of Papua New Guinea (ICPNG) Board of Directors decision to approve Peak Performance Feeds (PPF) bid to acquire 85% of the assets of Ilimo Poultry Products Pty Ltd.

We would like PPF to take control and manage Ilimo for a period of three (3) months during the transitional period, where both ICPNG and PPF discuss details of the share purchase and finalising the purchase agreement.

As agreed PPF will take management control of Ilimo effective 31 March 1999.

A copy of the above letter is attached and marked as Exhibit 235 in the Appendices to this report.

Peak Performance Feeds managed Ilimo until the liquidation of the company; based on the understanding the company would eventually buy Ilimo. This appears to have been part of the sale agreement. During their management, a significant amount of money was advanced and this is discussed later in this section of my report.

Mr. Robert Southwell of KPMG was appointed after a creditor petitioned the National Court under the Companies Act to liquidate Ilimo when Ilimo failed to meet its commitment when it fell due. Mr. Southwell sold the plant and equipment, except, the land and buildings which were mortgaged to

4. 7.5.1 Management of Ilimo by Peak Performance Feed

Peak Performance Feeds was part of the Athmaize group of Australia who were negotiating with the Corporation to buy Ilimo. It appears that as part of the sales agreement they were allowed to manage Ilimo. Their presence at Ilimo was during the time of Sir Dennis Young as Board Chairman and Mr. Yamuna as Managing Director of the Corporation.

It appears that Peak Performance Feeds managed Ilimo at the invitation of Mr.

Yamuna without Board approval based on a letter written by MLYamuna dated 22 March 1999.

A copy of the letter by Mr Yarnuna is attached and marked as Exhibit 236 in the Appendices to this report.

An extract of a letter written by Mr. John Ruimb dated 12 February 2001 commenting on the validity of the management agreement is as follows;

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?Management Agreement

maintains that the executed Share Sale Purchase Agreement dated

10 June 1999 is invalid. Furthermore, the Management Agreement dated 25 May 1999 is in valid.

Mr. Yamuna acted beyond his ?nancial powers when he executed the Management Agreement. [limo was/is a separate legal entity and had/has its own Board; ICPNG was/is only a shareholder.

We have allowed management to continue in view of attempted negotiated settlement. This has taken much longer then anticipated. There has been no Ilimo Board meeting since June 1999.

Athmaize has failed in its capacity as Manager of [limo to furnish management reports and other operational and financial reports to ICPNG over the last eighteen (18) months.

I have directed the Company Secretazy to convene a Board Meeting soon to consider the above reports and review the management arrangement.

A copy of the above letter is attached and marked as Exhibit ?241? in the Appendices to this report.

Mr. Ruimb alleges that Mr. Yamuna signed a contract which was beyond his powers. I have not been able to locate that contract, however for my purpose I have established that Mr. Yamuna acted illegally without Board approval. At the time he was not a member of the Ilimo Board.

A further letter written by Mr. Ruimb dated 22 March 2001 provides a status report of Ilimo under the management of Peak Performance Feeds which states as follows;

OFILIMO LIMITED

I write to you as the Chairman of Ilimo Poultry Products Ltd, with reference to your operations and Ilimo ?s ?nancial reports presented at the Board of Directors meeting on February 2001.

Following the site visit, the Board wish to express its concern on the following:

I. General Status of the Farm

The general status of the Farm appears to be very deteriorated despite the upgrading of a few poultry sheds.

Please provide the funding details (cost) of asset upgrade since July 1999.

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2. Financial Report

Whilst the Board appreciated the improvement in the loss situation, the net balance sheet position has not improved.

The Board is particularly concerned on the overall overseas creditors totalling K6.588 million. A large portion of this amount would obviously be the feed cost supplied by Athmaize. Thus loss appears to be excessive within the period of one (1) year without proper approval by the Board.

Please provide a break?up of the following since Athmaize took over Management in July 1999.

Total cost of stock feed supplied by Athmaize to date
Break up of amount of current overseas creditors

Costs of ?tnds spent on asset purchases and upgrade both by Ilimo and Athmaize.

Despite almost K6 million worth of stock feed supplied to Ilimo, this is not reflected on output of production. Indication in the Port Moresby market indicate that Ilimo is only supplying about 10,000 birds or less per week.

This is contrary to your information of Ilimo supplying over 25,000 to 30,000 birds per week, which is indicated, will increase to 50,000 to 70,000 per week.

Sale of Assets

It appears that a lot of unused assets have disappeared. Any sale of unused assets without the Board's approval is illegal. These include:

Unused equipment and machinery
Old motor vehicles

Board approval must be obtained prior to sale of unused or excess assets.
Please provide details of all assets sold since July 1999.

4. Management Agreement

The Board has reviewed the two (2) page Management Agreement signed between Peak Performance Feeds Pty and the former Managing Director of ICPNG, Mr. Wandu Yamuna.

There is a need for a more detailed and defined agreement to be in place. In addition, the terms of the agreement is one sided, one of which is the

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management fee of 7% of sales which is considered for too high given the current cash flow situation at Ilimo.

A revised agreement is to be drawn up in due course.

5. Financial Projections

The Board needs to satisfy itself that Ilimo's future is viable as per the requirements of the Companies Act.

It is disappointing to note that the financial projections for the next three (3) years requested have not been provided.

You are hereby given seven (7) days from the date of this letter to provide the financial projections.

As you will appreciate, the Directors of any company are subject to the penalties of the Companies Act for allowing an insolvent company to continue to trade.

You are hereby directed to respond to the above matters by close of business 20th March 2011.

A copy of the above is attached and marked as Exhibit '242' in the Appendices to this report.

A significant item on this letter is K6 million in stock feed costs which were supplied by Athrniaze itself. The amounts purportedly spent on the stock feed did not translate to the number of birds slaughtered per week. It appears that Peak Performance Feeds did not respond to this letter.

4.7.6 Trading Results of Ilimo Poultry Products Limited

It is important to know how Ilimo performed under the guidance of the directors and management mentioned earlier. I will review the results of the company to determine how effective the Board and management were in managing the affairs of the company.

Section 10 of the Act requires the Board to manage the affairs of the Corporation in a prudent business manner to enhance value of the shares for the shareholders.

The Auditor General's 2003 Report to Parliament on his audit of all State owned entities on 30 August 2004 indicated that Ilimo accounts were not yet audited. An extract of page 107 of this report is as follows;

Ilimo Poultry Products Limited Status of Financial Statements

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At the time of preparing this Report, the audit of accounts and records and the examination of the financial statements of the Company and its subsidiaries for the year ended 31 December 1998, were in progress. The delay in finalising this audit was due to the inability of the Company's management to provide the necessary documentation for the finalisation of the audit.

The financial statement for the year ended 31 December 1999, has been submitted for my inspection and audit and the audit fieldwork associated with the audit of the accounts and records will commence shortly. The financial statements for the years ended 31 December 2000 and 2001 had not been submitted for my inspection and audit.

Since the Company was forced into liquidation by its creditors in 2002, my report on the financial statements for 2002 will be my last report for the Company to the Parliament.

A copy of the above extract is attached and marked as Exhibit 226 in the Appendices to this report.

The Auditor General reported that no audited accounts exist for Ilimo since 1997. The records available to the Commission indicate that no properly prepared statutory financial statements exist for the company in respect of the years 1998 to date.

Given that Ilimo went into liquidation and all its assets disposed, I am not confident that any financial statements would be prepared and audited by the Auditor General.

My analysis of trading results and financial position that follows are based on various management accounts and board information available from files submitted to the Commission by the IPBC.

The accuracy of this information cannot be guaranteed.

4.7.6.1 1997 Trading Results Net Assets Position

1997 seems to be the only year in which proper accounts were prepared and audited.

A set of audited financial statements shows that the company made a net loss of K25 million in that year and the accumulated losses as at end of 1997 were a staggering K8.8 million. The financial statements are as follows;

Profit loss statement

1997 1996

Turnover 7,463 10,466
Operating 1035 (2,525) (3,178)
Losses brought forward (6,323) (3,135)
Accumulated losses (8,837) (6,312)

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Balance sheet

1997 1996

Capital 5,600 5,600
Reserves 2,637 2,637
Accumulated losses (8,837) (6,312)
Total equity (600) 1,924
Fixed assets 9,335 10,258
Current assets
Cash at bank 7 20
Stock on hand 1,494 1,765
Trade debtors 513 379
Other debtors 267 336

	2,280	2,500
Current liabilities		
Bank overdraft	3,393	3,126
Provision	275	299
Trade creditors	914	619
Other creditors	6	6
	5,376	4,647
Net deficit in current assets	(3,096)	(2,147)
Non-current liabilities		
Shareholders loans	3,793	3,139
Bank loan - secured	3,047	3,047
	6,840	6,187
Net assets (600)	1,924	

A copy of 1997 audited financial statements is attached and marked as Exhibit ? 230? in the Appendices to this report.

In 1997 Ilimo had a net current assets deficit of K3 million, which indicates that the company had severe cash flow problems. The actual cash on hand was only and this was insufficient. The company was reliant on the bank overdraft and cash advance from its shareholder, the Corporation.

The company in 1997 had a total net assets deficit of This compounded with the cash flow problem indicates to me that the company was insolvent back in 1997.

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4. 7.6.2 1998 Trading Results Net Assets Position

I have not found any financial statements in respect of the year ended 31 December 1998. I have, however, among the Commission documents identified management accounts for the period ended 30 September 1998.

A copy of management accounts for period ended 30 September 1998 is attached and marked as Exhibit ?222? in the Appendices to this report.

Profit loss statement

1998

Turnover	4,268
Operating loss	(3,498)
Losses brought forward	(8,837)
Accumulated losses	12,335

Balance sheet
1998

Capital 5,600
Reserves 13,799
Accumulated losses (12,335)
Total equity 7,064
Fixed assets 20,164
Current assets
Cash at bank 45
Stock on hand 2,937
Trade debtors 558
Other debtors 123
3,663
Current liabilities
Bank overdraft 3,764
Trade creditors 322
Other creditors 2,536
6,622
Net deficit in current assets (2,959)
Non-current liabilities
Shareholders loans-ICPNG 7,097
Bank loan secured 3,047
10,144
Net assets 7,061

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Ilimo's net assets position in 1998 has improved dramatically compared to the deficit noted in 1997. The main reason for this increase was due to the fact that the directors revalued the fixed assets in October 1996 with an additional value of K11.162 million. This amount is specifically stated in the note 3 of 1997 financial statements. I have not been able to locate the independent valuations of the company assets commissioned by the directors on which they based their valuation.

A copy of Note 3 of the 1997 financial statements is attached and marked as Exhibit 231 in the Appendices to this report.

This valuation has increased the value of fixed assets by K11.162 million, and corresponding increase in capital reserves thus improving the balance sheet of the company. The company, as indicated by the profit and loss statement, continued to make losses in 1998. The accumulated loss at September 1998 was more than K12 million.

Despite Directors' attempts to make the company balance sheet look good, Ilimo still had cash flow problems as indicated by the net current assets deficit of K2959 million.

This financial position has driven Ilimo to borrow to sustain its operations as the company was not able to generate sufficient cash.

In my View Ilimo was insolvent in 1998, however the Board of Directors of the Corporation continued to advance money to Ilimo.

4. 7. 6.3 1999 Trading Results Net Assets Position

I have not been able to obtain any statutory financial statements or management accounts in respect of 1999. I am of the view that the cash flow problem continued and Ilimo was dependent on the Corporation to source funds for its existence.

4. 7. 6.4 2000 Trading Results Net Assets Position

In respect of year 2000, no statutory financial statements exist, however, a set of management accounts for the period ended 31 August 2000 is as follows.

Profit loss statement

2000

Turnover 7,347
Operating loss (2,972)
Losses brought forward (19,330}
Accumulated losses (22,302)

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Balance sheet

1998

Capital 5,600
Reserves 13,799
Accumulated losses (22,108)
Total equity (2,709)*
Fixed assets 19,088
Current assets
Cash at bank 17
Stock on hand 4,047
Trade debtors 1,463
Other debtors 2,328
7,855

Current liabilities

Bank overdraft 5,257
Trade creditors 85 6
Other creditors 7,673

13,786
Net deficit in current assets (5,931
Non-current liabilities
Shareholders loans-ICPNG 12,461
Bank loan secured 3,406

15,867
Net assets (2,710)*

due to rounding up.

A copy of management accounts for the period ended 31 August 2000 is attached and marked as Exhibit 227 in the Appendices to this report.

Based on the above accounts the company was insolvent. The company continued to make losses and this has eroded its capital base.

The company was not able to generate enough cash to settle its debts as and when they fell due resulting in the increase of current creditors balance to over K8 million.

I also note that the company continued to borrow from and the Corporation to sustain its operations.

It appears that the Board of the Ilimo and the Board of the Corporation were oblivious to the insolvency status of the company. Ilimo continued to trade insolvent.

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4. 7.6.5 2001 Trading Results Net Assets Position

As stated earlier there are no statutory financial statements or management accounts available in respect of the year 2001. Therefore I have not been able to perform any analysis.

Ilimo, from the above analysis was insolvent and would have remained insolvent in 2001.

The insolvent status of Ilimo was confirmed in September 2001 when a creditor sued and forced the company into liquidation. The liquidator, Mr. Robert Southwell threatened to sue the directors for trading an insolvent company. An extract of Mr. Ruimb's response letter dated 19 October 2001 is as follows;

The allegations you make against the directors who as you correctly state are nominees of ICPNG are serious and have grave and wide reaching consequences. I note the implication and consequences of Section 348 of the Companies Act.

It appears that the directors knew of the insolvency status of Ilimo and yet they violated the Companies Act by continuing to trade.

4. 7.6.6 2002 Trading Results Net Assets Position

4.7.7

Due to the company being managed by the Liquidator and instituting legal action to recover monies advanced, there was really no management on site, and as a result no accounts have been kept. Therefore I am not able to determine the company's trading results and its net position as at 31 December 2002.

Loans obtained by Ilimo Poultry Products Limited

According to the financial statements set out earlier in this section of my report, the loan balances at the end of each year were as follows;

Loans 1997 1998 1999 2000

ICPNG	3,793	7,097	12,461
Loan	3,647	3,047	3,406
	3,393	4,086	5,257
Total	10,833	14,230	21,124

I note that in 2000 the Corporation loans to the company totalled more than K12 million. Ilimo was not able to settle any of the loans including the increased overdraft facilities.

It begs to reason, why would the Board of the Corporation continue to inject money into an insolvent company when they could have taken necessary steps to reduce the risk the Corporation was exposed to.

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It is important to develop an understanding of the circumstances that led the Corporation Board to continue to support an otherwise insolvent company. I must also determine whether the decisions to advance money were based on appropriate management advice, and whether appropriate Ministerial approvals were obtained under the PFM Act.

4. 7. 7.1 Requirements of Public Finances (Management) Act

The Head of State by notice in the National Gazette on 14 May 1987 declared the Corporation to be a public body to which Section 60(2)(b) of the PFM Act is applicable.

A copy of the above is attached and marked as 'Exhibit 215' in the Appendices to this report.

The Corporation is required to comply with the Act, in particular Section 61 which requires Ministerial approval for transactions of K500, 000 and above, including guarantees given to in respect of Ilimo debts, and its own lending to Ilimo.

4. 7.7.2 Loans

It appears that Ilimo had loan facilities with as far back as 1993. A letter written to by to Ilimo dated 16 January 1996, outlines the credit facilities and loan balances of Ilimo as at the end of December 2005. The letter states as follows;

This letter is issued pursuant to the Facility Agreement dated 22 July 1993 and supersedes our letter dated 10 April 1995.

Unless the context otherwise requires, terms defined in the Facility Agreement shall have the same meaning when used in this letter. This letter also regulates provision of the Facilities set out in the Facility Agreement.

PREAMBLE

Annual review of the company's banking facilities has recently been completed, and Papua New Guinea Banking Corporation has approved, subject to its Board ratification, rearrangement of facilities as set out below.

The annual review revealed that Ilimo's performance over the recent past has been far from satisfactory given the lower than forecast sales and the resultant unsatisfactory profits reports to the end of September 1995 quarter. The substantial investment in the feedmill of K6, 000,000 has proved a considerable financial burden to the company and on present performance, the Bank is not confident that a complete turnaround can be achieved in the short term.

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Consequently, the Bank has decided that no further facilities will be provided to Ilimo and that strategies to reduce the debt must be pursued as a matter of urgency. These strategies include either closure of the feedmill, sale of the feedmill, inclusion of equity partners and/or further injection of equity by Investment Corporation of Papua New Guinea. Should these measures be not achieved by 30th April 1996, the Bank will exercise its rights to protect its position.

Under Clause 14.8 of the Facility Agreement, the payment of dividends by Ilimo is prohibited without its prior written consent, Ilimo and ICPNG have entered into a Deed of Subordination in relation to loan arrangements with Ilimo.

Accordingly Ilimo is requested, if circumstances permit, to make principal repayments on Full Drawn Loans in advance of scheduled repayments. Consents to the payment of dividends or loan repayments to ICPNG is also subject to cash flow performance and profitability of Ilimo being to the Bank's satisfaction.

LIMITS

Approved facilities for the time being are:-

a) Trade Finance Facility K2, 700,000 (No change)
Combined Overdraft
Documentary Credit
Bill of Lading Surrendered)

b) Temporary Trade Excess 800,000 (No Change)

c) Bank Guarantee 20,000 (No Change)

Fully Drawn Loan No.1 K1, 734, 839 (No Change)

e) Fully Drawn Loan No.2 (Sheds) [K1,451,421 (No Change)

TOTAL 706,260 (No Change)

Foreign Exchange Dealing Limit K4, 000,000 (No Change)

REPAYMENT ARRANGEMENTS

Trade Finance Facility to be reviewed annually.

b) Temporary Trade Finance Excess to be cleared in full by no later than 30 April 1996.

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The hard-core component of the Trade Finance Facility debt of 500, 000 is to be cleared in full by no later than 30 April 1996.

c) Bank Guarantee to be reviewed as per "Review" heading.

d) Fully Drawn Loan No. 1 being repaid at existing [63,5 00 per month.

Fully Drawn Loan No. 2 being repaid at existing K2 7,000 per month.

The reduction to the Trade Finance Facility debt is to be effected either through provision of additional capital or from sale proceeds of the feedmill. Sale proceeds of

all other properties are to be applied in reduction of the Fully Drawn Loan debts.

Should there be a substantial reduction in the Feedmill Fully Drawn Loan, will consider reduced repayments.

SECURITY

Existing security comprising:-

Registered mortgages over the company's various leasehold properties.

Registered second equitable mortgage by the company over all assets excluding leasehold.

Third part securities as listed hereunder.

[Ilimo Pastoral Company Pty

Registered mortgage in respect of State Lease Volume 4 Folio 824.

Registered mortgage in respect of State Lease Volume 4 Folio 841.

Registered mortgage in respect of State Lease Volume 20 Folio 475].

Registered mortgage in respect of State Lease Volume 28 Folio 6819.

Registered mortgage in respect of State Lease Volume 4 Folio 806.

Registered equitable mortgage by [Ilimo Pastoral Company Pty Ltd, Park Service Station Pty Ltd, Egg Wholesalers Pty and Pacific Panels Pty Ltd.

Deed of Cross Guarantee by [Ilimo Pastoral Company Pty Ltd, [Ilimo Park Service Station Pty Ltd, Egg Wholesalers Pty Ltd, Pacific Panels Pty Ltd, Stock :18: Poultry Feeds Pty and outu No. 37 Pty Ltd.

Stock Poultry Feeds Pty

Registered mortgage in respect of State Lease Volume .28 Folio 6944.

Registered equitable mortgage over all assets other than leasehold.

Deed of Cross Guarantee by Ilimo Pastoral Company Pty Ltd, [Ilimo Park Service Station Pty Ltd, Egg Wholesalers Pty Ltd, Pacific Panels Pty Ltd, Stock Poultry Feeds Pty and outu No. 37 Pty Ltd.

Pacific Panels Pty

Registered mortgage in respect of State Lease Volume 28 Folio 6818-

Deed of Cross Guarantee by [Ilimo Pastoral Company Pty Ltd, [Ilimo Park Service Station Pty Ltd, Egg Wholesalers Pty Ltd, Pacific Panels Pty Ltd, Stock 8: Poultry Feeds Pty and Toutu No. 37 Pty Ltd.

(4) INTEREST RATES

Papua New Guinea Banking Corporation's Indicated Lending Rate (Presently 13.75% per annum and subject to changes) plus a margin of 2% per annum. Changes to the indicator Lending Rate are advertised in major PNG newspapers.

Any drawings in excess of the approved limit, or amounts in default will attract the Bank's penalty interest rate of 5% per annum on the amount of excess or default i.e. indicator Lending Rate plus margin plus penalty interest rate-

(5) FEES

Line Fee of 1% per annum, charged quarterly, applies on total facilities outstanding, excluding the Foreign Exchange Dealing Limit of K4, 000, 000- this fee replaces the unused limit and loan administration fees-

All other fees are charged at standard rates.

(6) NEXT REVIEW DATE

Ilimo's annual review has been carried forward to 31 May 1996. To enable the review process to be completed by this date, please provide the following financial information by no later than 15 April 1996.

Financial statements as at 31 December 1995.

Actual to budget results for the six months period ending 31 December 1996. All variations of over K25, 000 are to be fully explained.

Aged debtors and creditors schedules as at 31 December 1995 and 31 March 1996. Budgets, cash flow projections and projected profit and loss statements for the 12

months period ending 31 December 1996. Budget and cash flow projections must be supported by detailed explanations on how the projections were arrived at.

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(7) CONDITIONS SUBSEQUENT

The non provision of Equitable Mortgage Certificates as at 31 April 1995, as initially agreed to, is viewed with concern and this is despite a number of requests from the Bank. We once again request that the provision of the certificates be commenced as from 31 January 1996 and thereafter without fail. Failure to comply with this requirement will be an event of default on the part of Ilimo.

Quarterly management accounts and actual to budget results to be provided by the 15 of the following month. The first set of accounts to be provided are as at 31 March 1996 which are to be delivered to the Bank by 5 April 1996.

Any variation of over in actual to budget results must be fully explained in writing.

GENERAL

The sale of non performing assets are necessary as this will assist with the reduction in Bank indebtedness and at the same time improve the company's financial position. In addition, it is also necessary that the feedmill be either sold or an equity partner be found. Should the latter be a reality, any such funding will be required as equity before commencement, such funds being applied in reduction of Bank indebtedness.

It is to be noted that the actions to be taken are in the best interest of the company and the Bank. In this regard, please provide us with your plan of action to be achieved by 30 April 1996.

The Bank has the right to cancel the loan/s or demand payment at any time. As a general rule the Bank would not normally do this unless the company's accounts are not being conducted properly or they have defaulted in terms of securities provided to secure the advances.

Any or all of the terms and conditions herein may be varied by the Bank without notice at any time and at the Bank's discretion.

Costs Expenses

may debit all costs (including legal costs between solicitor and client), expenses and other amounts incurred or paid by in respect of this agreement (including those arising from any event of default or the exercise of any of ?5 rights or powers or for the preservation of or in any manner with reference to this agreement, including the reasonable costs of Bank of?cers) and any stamp duty, loan duty or other imposts, duties, taxes ?nes or penalties arising directly or indirectly in respect of this agreement or any transaction contemplated thereby.

Insurance

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Ilimo has not provided evidence of insurance cover over the various assets pledged to the Bank as security despite written and verbal requests. This matter is to be attended to immediately with copies of itemized listings of all assets with their respective sums insured to be provided by 15 February 1996.

Kindly indicate the company ?s acknowledgment and acceptance to the above terms and conditions by signing and returning to this office duplicate copies of this letter enclosed.

A copy of the above is attached and marked as Exhibit ?225? in the Appendices to this report.

The letter indicates that as far back as 1995, Ilimo?s performance was not satisfactory and therefore no more monies were to be advanced. The letter further indicates that Ilimo was asked to reduce the facilities. The total owing to at that point in time was K67 million.

The letter indicates that specifically asked Ilimo to have adequate insurance cover on all its assets, however, Ilimo failed to adequately insure all properties. This came to light some seven months later when the buildings were gutted by fire. The Board and management then realised that they did not adequately insure all assets.

In July 1999 Ilimo applied for a further K1 million overdraft from which was approved. offer letter dated 6 July 1999 indicated that the following facilities were provided;

Facility Amount -Kina

Combines Overdraft Bill of lading surrendered facility account 294? 3,500,108
006-24651}

Documentary letter of credit bill of lading surrendered facility account 1,500,000
294?006?246511

Bank guarantee facility 20,000

Fully drawn loan account 294?016-203722 1,655,136

Fully drawn loan account 294-016-255602 1,392,211

Overdraft facility cheque account 294?006-616594 1,000,000
TOTAL 9,067,455

A copy of offer letter to Ilimo is attached and marked as Exhibit ?228? in the Appendices to this report.

It appears that the K1 million was the last additional advance obtained by Ilimo. This was not repaid by Ilimo which resulted in interest accumulating on a daily basis. It is worth pointing out that 1998 and 1999 were periods of high interest rates and the interest charges would have been damaging to Ilimo?s cash?ow.

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It appears that the Board of the Corporation gave guarantee for the loans, however, there is no evidence to suggest that they obtained Ministerial approval under the PFM Act.

This came to light in December 1999 when Mr. Ruimb sought FPK Lawyers advice

in respect of the guarantee. The advice by FPK dated 20 December 1999 is as follows;

Ilimo Poultry Products Limited Guarantees to

I have reviewed the documents relating to the guarantee documents that ICPNG gave in favour of in support of the various advances made by t0 [lilimo Poultry Products Limited.

Assumption

1 note from your letter of instructions that in relation to the guarantees, the prior approval of the Minister under section 6] of the Public Finances (Management) Act 1995 was not secured by ICPNG.

This letter of advice is given on the assumption that did not secure the prior approval of the Minister under Section 6] Of the Public Finances (Management) Act 1995.

ues

I will restrict my advice on the lack of ministerial approval under Section 6] of the Public Finances (Management) Act 1995 and the extent to which it affects the validity and enforceability of the guarantees. Although the other issues (as per your letter of instructions) are relevant, the fact that they would not have any significant bearing on the validity and enforceability of the guarantees means that they are issues that can be avoided without compromising the outcome of the advice.

Advice

It is my advice that the guarantee documents are invalid and therefore unenforceable against ICPNG. This is because of the lack of ministerial approval being secured in accordance with section 61 of the Public Finances (Management) Act 1995. If not for the lack or absence of the required prior approval of the Minister under section the guarantees would have been valid and enforceable.

Reasons for Advice

The reasons in support of my advice are as follows:

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As you are aware, ICPNG is a 'public body' within the meaning of

(C)

?public body? under the Public Finances (Management) Act 1995. It is in the context of being a ?public body? that ICPNG needed the prior approval of the Minister under section 61 of the Public Finances

(Management) Act 1995 before signing the guarantee documents with

For reasons already stated in our letters of advice regarding Kincorp and Chelsea, the guarantees given by ICPNG in favour of in reSpect of [Ilimo Poultry Product Limited ?s debts (pursuant to the signed guarantee documents) are void as of formation because of the lack of ministerial approval. There is no need to repeat the reasons set out in our letters to you regarding Kincorp and Chelsea, other than to refer you to refer you back to those two letters of advice.

If not for the lack of ministerial approval under Section 61 the guarantees would have been valid and enforceable against ICPNG for the following reasons

the guarantee documents (although not yet executed by given that execution by can be done at any time by without any adverse legal consequence for would have been enforceable against on the basis that they are continuing guarantees, not guarantees that relate to any specific contractual arrangements or liability such that when those contractual arrangements or liability are determined, they also being to an end those guarantees.

(it) what is stated in above of this paragraph is that, if the guarantees were restricted to any one or more of Ilimo Poultry Products Limited ?s contractual arrangements and liabilities are speci?ed, then the continuing validity and enforceability of the guarantees would be subject to the continuing validity and enforceability of those specified contractual arrangements and liabilities. However, it is noted in the guarantee documents that the guarantees are not guarantees that are limited to specified contractual arrangements and liabilities.

Rather, it is noted that the guarantees are continuing guarantees that apply generally to all of the moneys that Ilimo Poultry Product Limited owes at any given time (now or in the future).

continuing guarantees are guarantees that extend to a series of transactions and as such are not exhausted by nor are they con?ned to a specified single or more transaction. As such, the guarantees that has given in favour of for the bene?t of [Ilimo

(V)

Poultry Products Limited continue to subsist and cannot be said to have been brought to an end or terminated on the basis of the invalidity and unenforceability of the Share Sale and Purchase Agreement to which you refer in your letter.

there is no provision in the guarantee documents that says that the guarantees were given in favour of as collateral security documents to the Share Sale and Purchase Agreement.

the wording in the guarantee documents that imply the giving of continuing guarantees are as follows:

to pay to the Bank on demand which may be made at any time and from time to time the moneys hereinafter mentioned or so much thereof as may be specified in each such demand that is to say:

(1) All moneys (including moneys advanced by way of loan for fixed term or provided by way of overdraft) to become owing or payable to the Bank by the Debtor either alone or on joint or partnership account or on any other account whatsoever whether as principal or surety; also.

(2) All moneys which the Bank shall or become liable to pay to for or on account of the Debtor either alone or jointly with any other person and either by direct advances or by reason of the Bank accepting or paying or discounting any order draft cheque promissory note bill of exchange or other engagement whether such order draft cheque promissory note bill of exchange or other engagement shall have matured or not or by entering into any bond indemnity or guarantee or letter of credit or otherwise incurring liabilities for or on behalf of the Debtor;

(3) All moneys whatsoever which the Bank shall lend or pay or become liable to lend or pay or may have advanced or may advance the payment or repayment of which the Debtor has guaranteed or may hereafter guarantee to the Bank: also

(4) All moneys whatsoever which the Bank shall lend pay or advance or become in any way liable to lend pay or advance to for or on the credit or for the accommodation or otherwise on the account of the Debtor or to for or on account of any other person upon the order or request or under the authority of the Debtor' also

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(5)

(6)

(7)

(8)

All moneys with which the Bank shall be at liberty to debit and charge the account of the Debtor under any security now or hereafter held by the Bank from the Debtor or under the conditions or provisions herein contained; also

All monies payable or to become payable to the Bank for discounts stamp duties postages commissions charges exchanges re-exchanges and expenses according to the usage and course business of the Bank; also

Interest on all such moneys as aforesaid or on so much thereof as shall for the time being be due or remain unpaid at the rate or respective rates agreed upon in writing if any and in the absence of any such agreement then without prior or other notice to the Debtor or the Guarantor at and after the prevalent rate charged or chargeable by the Bank for the time being or from time to time to its other customers on the like account such interest to be deemed to accrue from day to day and to be computed from the time or respective times of such moneys being lent provided paid or disbursed or becoming due; and also

Interest on such interest as aforesaid by way of compound interest computed at such time or times and from time to time as the Bank shall think fit at the said rate or respective rates agreed upon if any or if not then at the said rate for the time being or from time to time charged as aforesaid?. (my emphasis)

You will note from (8) above, that the guarantees do not relate to any specified debt, nor to the Share Sale and Purchase Agreement in particular. Clearly, the guarantees relate to all the moneys that Ilimo Poultry Products Limited may owe from time to time to This means that the guarantees are continuing guarantees.

(iv) significantly, the following is noted in clause 1 of the guarantee documents:

?Continuing Security

1.

Subject to clause 2, this Guarantee shall be a continuing guarantee and shall not be considered as wholly or partially discharged by the payment at any time hereafter by the Debtor or by the Guarantor of any of the moneys hereby secured or by any settlement of account or by the death or notice of the death

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of the Guarantor or (in the case of a corporation or company) by the winding up of or by notice of any order decree or resolution for the winding up of the Guarantor or by any other matter or thing whatsoever and shall be enforceable notwithstanding that any negotiable or other instrument security or contract shall be still in circulation or outstanding.
?(my emphasis)?

If there was any doubt, clause 1 of the guarantee documents makes it clear that the guarantees are continuing guarantees.

Concluding Remarks

The guarantees are void as of formation in other words, void as of the signing of the guarantee documents by (ICPNG). If not for the lack of ministerial approval under section 61, the guarantees would have been valid and enforceable against ICPNG O?or reasons set out in paragraph above).

Recommendation

Whilst it is noted that is bank and that in the interest of maintaining a good banker customer relationship ICPNG may wish to take a di?erent approach, it is recommended that ICPNG should pursue the same course of action that was recommended in relation to Chelsea.

Therefore, we wait to hear from you about whether or not we should proceed to apply for a court declaration to the e?ect that the guarantees are void as of formation.

A copy of the above is attached and marked as Exhibit ?251? in the Appendices to this report.

Legal advice from the lawyers is self explanatory in the sense that the Board did not obtain Ministerial approval for the guarantees it gave for Ilimo loans.

I note that the Board and in particular Managing Director Mr. Yamuna failed in their fiduciary duties with respect to the handling of loans to Ilimo.

Ilimo failed to repay the monies resulting in instigating recovery proceedings against the Corporation. A writ of summons dated 22 May 2001 was lodged at the Waigani National Court indicate that Ilimo owed K103 million.

A copy of the summons is attached and marked as Exhibit 213 in the Appendices to this report.

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The Corporation filed a defence on 4 July 2001 at the Waigani National Court. In its defence, the Corporation argued that the guarantee given was not approved by the Minister under the PFM Act and was not enforceable.

Before the matter could proceed to trial, the parties executed a consent order in November 2002. The consent order stated is as follows;

This Court Orders that;

1. The proceedings of any sale of Section 2 Allotment 9, 10, 11, 12, 13a, 13b and 14 Granville, Port Moresby be paid into our Court and subsequently into an IBD account in the joint name of the parties pending the outcome of this action.

1

2. Cost be in the cause.

A copy of the consent order is attached and marked as Exhibit 252 in the Appendices to this report.

It appears that the consent order was basically to secure the proceeds of the sale of Ilimo.

While the Board of the Corporation was attempting to sell the property, Poultry Products Limited, a company owned by Mr. Malcolm Smith took Ilimo to Court. The company won the case and forced Ilimo into liquidation. However the liquidator could not sell the land and properties as had registered mortgage over it.

Based on the Corporation Board minutes of meeting 06/01 held on Friday 26 October 2001 appointed Deloitte to sell the properties. The extract of the minutes is as follows;

Ilimo Poultry Products Limited (In liquidation)

Board was informed of recent developments following the liquidation of the company on 27 September 2001 and difficulties encountered by the liquidator in disposing of assets to satisfy the petitioner, Poultry Products Limited which sought and obtained winding up order.

as the secured creditor holds mortgages over the company's assets and since the petitioner is not the bank, the liquidator is unable to discharge his duties under the liquidation process. Board took note that the has appointed Deloitte Touche Tohmatsu to handle the sale of assets on its behalf

Board also considered the predicaments, and claims by employees of the company and the liquidator to meet ex gratia termination entitlements and costs respectively and drew the following observations.

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Appreciates the commercial reasons for continuing to keep the [limo employee during the period of negotiations up to now for the sale of the company to Athmaize.

Recognises the role played by the [limo employees in providing security to the company assets by virtue of their physical presence on the company

property.

(0) Acknowledges the protection of the company assets by Ilimo employees in the absence of insurance cover being in place and the risk of employee revolt and destruction of the property.

Acknowledges that the corporation is not responsible for the liquidator's costs, as he is the agent of the petitioner, Poultry Products Limited.

The Board also recognises that the corporation is legally not obliged to provide any further financial assistance to the company or its employees and that any assistance given is a gesture of goodwill and not to be taken as admission of liability.

Based on the above understanding, the board resolved.
not to pay the liquidator's costs

to approve an assistance package of [614,874.90 for the purpose of meeting [limo employees ex gratia payments including repatriation costs and superannuation arrears to the National Provident Fund (NPP).

Board further resolved that management review the calculations provided by [limo employees that they are correct.

A copy of the above is attached and marked as Exhibit "232" in the Appendices to this report.

The liquidator Mr. Southwell sold all the plant and equipment whilst Deloitte who were appointed by sold the land and buildings to the Central Provincial Government.

I am not able to determine whether pursued its action against the Corporation for any shortfall in recovery in sale proceeds compared to outstanding loans including interests.

In my view, the Corporation Board breached its fiduciary duties as well as

contravening Section 10 of the Act, which calls for the Board to practice sound business principles when undertaking its business.

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4. 7. 7.3 Loans from the Corporation

The amount advanced by the Corporation since 1996, according to the financial statements, amounted to K12.461 million by the end of 2000.

The Corporation loans to Ilimo date back to periods outside my Terms of Reference. The signed 1996 financial statements indicate that the shareholder loans were K3.1 million. Even as early as 1996, Ilimo was making losses and was unable to generate adequate cash flow to sustain its operations.

A copy of the 1996 financial statements is attached and marked as Exhibit "237" in the Appendices to this report.

Further monies were advanced in the period covered by my Terms of Reference, resulting in shareholder loans amounting to approximately K12 million at the time the Corporation was attempting to sell its shares in Ilimo. An undated brief to the Prime Minister by Mr. Ruimb indicated that Ilimo owed the Corporation K12 million. An extract of the brief is as follows;

's Shareholder Loan to Ilimo K12 million

The nature of this loan relates to funds expended for and on behalf of Ilimo over the years to enable Ilimo to maintain its business operations at the farm. The funds were disbursed on the understanding that Ilimo would repay the Corporation when it realised a profit.

Unfortunately, Ilimo has not been profitable therefore, the loan has not been repaid but has remained in ICPN 's books as a debt owed by Ilimo.

The contractual negotiations have proceeded without specifically addressing the issue of the ICPNG shareholder loan mainly because of Ilimo 's poor business performance and the view that [Ilimo was not able to pay. The debt was essentially not recoverable and although not agreed between the parties, there was an intention to write-off

A copy of the above is attached and marked as Exhibit ?229? in the Appendices to this report.

Due to lack of information, I am not able to determine details of the loans nor am I able to ascertain how the loans from the Corporation increased to K7.097 million in 1997 and thereafter to K12.461 million in 2000.

Based on information available to the Commission, two substantial advances were made during the Chairmanship of Sir Dennis Young. These comprise of K2.5 million in 1998 and a K10 million advance in the same period. These advances require my attention given the circumstances under which the payments were pushed through, and the fact that Ilimo was already insolvent.

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million advance

This advance was administered during the time of Sir Dennis Young as Board Chairman and Mr. Yamuna as Managing Director.

It was alleged that Mr. Yamuna altered the minutes of the Corporation Board Meeting 128 of 1998 to indicate that the Board approved an advance of K25 million to Ilimo. In his evidence to the Commission, Mr. Yamuna re?tted altering the minutes (Transcript page 1005). The original minute of the Corporation Board meeting number 128 of 1998 of is as follows (Exhibit

?The submission was jointly presented by Kris Bogare Investment Manager and Enoch Pokarop Senior Investment Analyst and Peter Blake Interim General Manager of Ilimo Poultry Products.

The half year results showed that the company continued to make a loss of K1 .3 million compared to the budgeted profit of K3. 7 million.

The main reason for the loss is under production of some twenty thousand birds per week. The company currently produces 50,000 birds per week and needs to increase that to 70, 000 birds per week to break even. In order to reach this target, the company would require K29 million in short term and K6 million in the longer term.

Board also considered an o?er from Utia Investments Ltd, a Kutubu Landowner company to acquire the Corporation ?s equity interest for a consideration of 0 million. The Board felt that the Corporation could obtain a better price and

therefore resolved to reject the o?er from Utia Investments.

Board further resolved to renegotiate with Utia Investments and nominated Mr Dennis Young, Mr Robert Seeto and Mr Ted Tara to work with Management.

Options proposed for re-negotiations with Utia Investments are;

sale of blocks of land
divestment of some shareholding
obtain better offer?

The altered minute of meeting 128/98 is as follows (Exhibit

The submission was jointly presented by Kris Bogare Investment Manager and Enoch Pokarop Senior Investment Analyst and Peter Blake Interim General Manager of Ilimo Poultry Products.

The half year results showed that the company continued to make a loss of .3 million compared to the budgeted profit of L3. 7 million.

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The main reason for the loss is under production of some twenty thousand birds per week. The company currently produces 50,000 birds per week and needs to increase that to 70,000 birds per week to break even. In order to reach this target, the company would require million in short term and K6 million in the longer term.

Board also considered an offer from Utia Investments Ltd, a Kutubu Landowner company to acquire the Corporation's equity interest for a consideration of 0 million. The Board felt that the Corporation could obtain a better price and therefore resolved to reject the offer from Utia Investments.

Board further resolved to renegotiate with Utia Investments and nominated Mr Dennis Young, Mr Robert Seeto and Mr Ted aru to work with Management.

In the interim, the Board approved an additional funding of K25 million to Ilimo to assist with the working capital and the completion of processing plant.

Options proposed for re-negotiations with Utia Investments are;

- a) sale of blocks of land
- b) divestment of some shareholding
- c) Obtain better offer?

The bolded paragraph is the alteration purportedly performed by Mr. Pokarop on instructions from Mr. Yamuna.

In order to determine the correct minutes, one needs to understand the normal procedures that the Board would follow to advance such a significant amount.

In normal funding requests, a proposal would be made by the management to the Board seeking funds. Normally the Investment Manager of the Corporation would make a presentation to the Board to help members understand the proposal before

they deliberate.

The Board would then discuss the proposal and take a vote on the proposal. When the proposal is accepted by the Board for amounts of and over, the Board would proceed to seek Ministerial approval under the PFM Act.

In this instance the Board would make a submission to the Minister for his approval. The submission would include a copy of the Board resolution together with evidence of funds available and a statement to the effect that the use of the funds as proposed was in the best interest of the organisation. I note that none of that was done. The Board of Sir Dennis Young convened a Special Board meeting on 30 October 1998 to

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state that Ministerial approval had been obtained for an advancement of K25 million to Ilimo.

The approval as stated by Sir Dennis Young came from Minister Pok who was the Minister for Privatisation.

In that meeting Director Mete Kahona representing the Treasury Department pointed out that the approval obtained from Minister for Privatisation, Fabian Pok was incorrect as the proper Minister from who to obtain approval was the Treasurer.

The Board Chairman Sir Dennis Young brushed this aside and stated that he would check with Mr. Jim Fraser of the Legislative Council's Office for clarification on this issue. There is no evidence in the subsequent minutes that clarification was obtained or a proper approval was obtained from the Treasurer.

Minister Pok's illegal approval to Mr. Yamuna dated 30 September 1998 is as follows
(Exhibit

Reference is made to your letter of 29 September 1998 regarding investment Corporation of Papua New Guinea's request to inject an additional million Poultry Products Limited to assist with working capital and the completion of the processing plant.

In accordance with Section 61 of the Public Finances (Management) Act 1995, I hereby give approval of the Investment Corporation to inject K25 million into Ilimo Poultry Products Pty in order to rescue the company.

I also give a 'blanket approval' for any further funding which may require to inject into Ilimo for time to time in order to protect the Investment Corporation's huge investment exposure

Based on Minister Pok's illegal approval, funds were advanced to Ilimo. A summary by the Financial Controller, Mr. Angoman detailing the payments is as follows;

Cheque No.	Date	Amount
48199	03/09/98	400,000.00
48437	09/10/98	600,000.00
48449	13/10/98	500,000.00
48506	20/10/98	101,024.00
48548	27/10/98	87,507.45
48558	28/10/98	397,000.00
48641	05/11/98	227,651.00
48659	10/11/98	186,817.55

A copy of the summary done by the Financial Controller Mr Angoman is attached and marked as 'Exhibit 238' in the Appendices to this report.

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In the light of Mr. Yamuna obtaining approval from the wrong Minister, it is further noted that Mr. Yamuna attempted to obtain approval from the Treasurer Iairo Lasaro in April 1998 to advance K2 million to Ilimo.

Treasurer stated that no approval would be granted unless he was convinced that there were firm recovery plans and that the investment was still viable. The letter by Treasurer is as follows;

Ministerial Approval to assist Ilimo Poultry Products Pty with K2 million
I refer to your letter of 2 April 1998 requesting approval on the above

After reviewing your submission, I have decided against approving it until I am fully informed of Ilimo's recovery plans and convinced that this is still a viable investment.

Therefore the Corporation needs to convince me on a restructuring plan to revive Ilimo and make it viable, given the company's performance track record.

A copy of the above is attached and marked as Exhibit 216 in the Appendices to this report.

After the Treasurer's refusal for further advances to Ilimo, Mr. Yamuna turned to Minister Pok for approval. Minister Pok gave an illegal approval when he was not the Minister responsible for administering the PFM Act.

Both Mr. Yamuna and Minister Pok cannot deny that they had no knowledge of what they were doing at the time was wrong given their professional background and experience. Mr. Yamuna is a lawyer while Minister Pok is an accountant by profession.

In addition Minister Pok was a former Corporation Board member and as such would have been well versed in PFM Act in terms of obtaining Section 61 approval.

In my view ignorance of the law by two highly qualified Papua New Guineans is no excuse.

In respect of this advance I noted that the Board of the Corporation, Sir Denis Young, Mr. Yamuna and Minister Pok acted improperly to advance monies to Ilimo. I note the following in respect of the advances;

. NO ministerial approval was obtained under the PFM Act.

I Minister Pok acted illegally when he gave approval under Section power to do so.

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I Mr. Yamuna acted improperly when he fabricated the minutes.

I Sir Dennis Young acted improperly when he brushed aside director Mete Kohana's concern for approval under PFM Act from the Treasurer.

I No due diligence was performed on Ilimo to determine the return on funds

invested.

Other Board members were ignorant of their fiduciary duties when they failed to raise any queries when Mr. Yamuna altered the minutes to advance money to Ilimo.

It is difficult for me to determine the motive of such malicious fabrication of the minutes from the highest ranking officer of the organisation, supported by his Board Chairman and the Minister for Privatisation.

Most of the payments made by Ilimo were to the Australian companies purportedly associated with the proposed buyer of Ilimo for supplies of stock feeds and fertilised eggs to Ilimo. I am not able to determine whether these transactions were conducted at arms length or not.

The question as to whether the Corporation Board led by the Board Chairman, Sir Dennis Young and its Managing Director Mr. Yamuna supported by the Minister Pok colluded with these suppliers to use Ilimo as a medium to deprive the Corporation of its funds is difficult to prove.

However the behaviour of these individuals raises questions about their fiduciary duties, and in my View they failed to discharge their duties in accordance with the PPM Act Section 61, the Corporation Act and the Companies Act.

million advance

The K1.0 million advanced in this instance was the money the Corporation had declared as dividend to the State. The cheque written to the State was then cancelled and the funds diverted to Ilimo. A copy of the cancelled cheque is attached and marked as Exhibit 217 in the Appendices to this report.

The Board minutes of meeting 127 of 1998 is as follows (Exhibit 20th Anniversary Report)
Directors noted the progress report on preparation to commemorate the 25th anniversary of the Fund and endorsed the budget of K12 7,000 for this event.

This event will be funded from the Fund's 1998 marketing and promotion budget.

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Board resolved to note the report and also resolved that the Corporation pay a dividend of K1 million to the State as a gesture of goodwill following the State's request last year for a dividend payment.

According to Mr. Yamuna's evidence (Transcript pages 1013 to 1015), the Corporation was not really in a financial position to declare any dividend, however the Board decided to put on a show by declaring that dividend given that it was the Twenty Fifth Anniversary of Papua New Guinea's independence. According to Mr.

Yamuna, the Corporation itself was 'in red' or put properly, did not make profit and did not have the cash to declare a dividend at all. .

If Mr. Yamuna stated that the Corporation was not in a position to declare dividends, then by the same token, the Corporation was not in a position to lend any more money to Ilimo.

There is no evidence that the Board authorised this advance and obtained Ministerial approval under the PFM Act. The direction for funding of K1million to Ilimo came from Mr. Yamuna.

The first of this money was advanced on 9 October 1998. A narration on the memo directing payment by Mr. Yamuna to Mr. Angoman is as follows;

Fred Angoman

This is urgent. Please raise the million Kina for Ilimo Farm

A copy of the above memo is attached and marked as Exhibit '218' in the Appendices to the report.

A narration by Fred Angoman on the same memo to Hannah, the financial accountant is as follows;

'Hannah, raise cheque of K600, 000 today . We will raise the K400, 000 on Monday 12/1098

The second portion was drawn on 13 October 1998, however, the actual amount drawn was

A copy of the above narration is attached and marked as Exhibit '219' in the Appendices to this report.

I note that both amounts drawn would have required Ministerial approval under the PFM Act, however, Mr. Yamuna failed to obtain Board and Ministerial approvals.

It appears that Mr. Yamuna acted beyond his powers when he diverted the State's dividend of K1 million to Ilimo.

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My review of the approval files (Exhibits maintained by the Treasury Department indicate that for all the advances made to Ilimo in the period of Mr. Yamuna's term, no Ministerial approvals under the PFM Act were obtained.

4.7.8 Attempted Sale of Ilimo

Numerous approaches were made beginning in 1997 by various entities interested in acquiring Ilimo. It appears that no proper evaluation of Ilimo was made by the Board

of Ilimo and the Corporation. Hence no plan was established to address the future of . Ilimo. Given this background it would appear that offers by prospective buyers could not have been evaluated against any proper basis.

The records available to me indicate that the Corporation Board was looking to diSpose of its shares in the company for as much as K15 million.

4. 7.8.1 Potential buyers

From the information available to the Commission it appears that several entities had shown their interest in acquiring Ilimo. It is also worth pointing out that there is no evidence available to suggest that public tenders were called for in respect of Ilimo sale, nor was a properly organised sale campaign conducted.

According to the records available to me the following organisations showed interest in purchasing shares in Ilimo;

I Public Of?cers Superannuation Fund Board (POSFB) in March 1997

I Grand Collumbia around May 1997

I Athmaize/Peak Performances Feeds PL around December 1997

I Wiko Holding around December 1998

I Utia Investments around November 1998

I Canadian Poultry Company around February 1998

I Goodman Fielder Australia around February 1998

A copy of the above is attached and marked as Exhibit ?258? in the Appendices to the report.

The provisions of the Act on disposal of investments needs to be considered. Section 7 restricts disposal of shares to eligible persons.

In respect of the prospective buyers the eligible entities were POSFB, Wiko Holdings and Utia Investments Limited. The others were ineligible and the Board would have breached Section 7(1) of the Act if it entered into negotiations with a view of disposing the Ilimo shares to them.

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While the Corporation shares in Ilimo were never sold to any of the entities above it is worth commenting brie?y on the entities that entered into negotiations with the Corporation.

POSFB

POSFB would have been an ideal entity for the Corporation to dispose of its shares, however, the offer of K6 million for 75% shareholding in Ilimo appeared to be low and therefore the Corporation rejected the offer.

A copy of POSFB offer letter to Ilimo is attached and marked as Exhibit ?223? in the Appendices to the report.

Wiko Holdings

Wiko Holdings is owned by Sir Wiwa Korowi. Wiko Holdings offered U86 million or equivalent of K14.5 million. This sale was subject to 10% deposit, however, this did not eventuate resulting in the sale not progressing any further.

A copy of Wiko Holding offer letter to Ilimo is attached and marked as Exhibit ?224? in the Appendices to this report.

I am of the view that this offer from Wiko Holding may not have had the ?nance to complete the sales.

Utia Investments

This was an eligible company owned by Kutubu landowners. The ?rst offer of K10 million was rejected by the Corporation Board at its meeting number 128 of 1998.

It appears that Utia returned with a revised offer of K14.151 million for 70% shareholding which was rejected by the Board to pursue interest from Athmaize of Australia.

A copy of Board meeting number 128 of 1998 rejecting Utia Investments offer of K10 million is attached and marked as Exhibit ?220? in the Appendices to this report.

In my view Utia Investments was an eligible company and the offer made was in my view fairly good for 70% shareholding.

It would appear that the Kutubu landowners came with additional funding for working capital which was desperately sought by Ilimo. The inability and indecisiveness of the Board and Management of the Corporation led to a wasted opportunity.

By all comparison this was the best offer and I fail to understand the logic as to why this offer was not accepted. It appears to me that the Board failed to comply with Section 10 of the Corporation by not accepting Utia?s offer.

Peak Performances Feeds Pty

Peak Performance Feeds was part of the Athmaize Group of Australia. The PNG subsidiary of the group was Geilston Limited incorporated for the purpose of buying and holding shares in Ilimo.

Mr. Pokarop timeline of events since 1994 indicated that the first offer from this company was received by the Corporation Board on 23 December 1997.

A copy of Mr. Pokarop's chronology of events is attached and marked as Exhibit 221 in the Appendices to this report.

After negotiations a Sale and Purchase Agreement was signed between the Corporation, Toutu No. 37 and Geilston on 10 June 1999 for sale of 85% shareholding in Ilimo.

A copy of the Contract of Sale is attached and marked as Exhibit 246 in the Appendices to this report.

The Agreement contained two components, of the purchase price, fixed component of K6 million and a deferred component of K95 million for 85% equity in Ilimo. The deferred component is defined as balance of collectible debtors, plus stock value less abnormal items and outgoings.

The completion date is specified as at 10am on the second day after the purchaser gives notice to vendor.

Mr Yamuna signed on behalf of Toutu No. 37 and the Corporation, however, I note that Mr. Yamuna had no power or authority to sign contracts above

I note that Mr. Yamuna again sought and obtained advice from the wrong Minister to dispose of the shares in Ilimo. Minister Pok again acted illegally when he gave approval under Section 61 of the PFM Act. The illegal approval by Minister Pok to Mr. Yamuna dated 22 March 1999 is as follows (Exhibit

[Reference is made to your letter of] 9 March 1999

I, Dr Fabian Pok, Minister for Public Enterprises Communications, hereby grant the approval in terms of Section 61 of the Public Finances (Management) Act 1995, to the Investment Corporation of Papua New Guinea to divest 85% of its shareholding in [Ilimo Poultry Products Pty to Peak Performances Pty for a total consideration of \$5.5 million.

Despite the contract being signed, the sale was never concluded. A sale commission of was paid to Port Moresby First National Real Estate Limited.

The sale was not concluded when Mr. Yamuna and the Board of Sir Dennis Young's appointments were revoked when the late Sir William Skate lost the Prime

Ministership to Sir Mekere Mourata. By then, Minister Pok had lost his Ministry and under Sir Mekere's privatisation policy, a new Ministry known as the Privatisation Ministry was created and Member of Parliament Mr. Vincent Auali became Privatisation Minister.

Minister Auali then re-appointed Mr. Ruimb as Managing Director of the Corporation and Mr. Augwi as Board Chairman.

4. 7.8.2 commission paid to

On my review of tender procedures in Chapter 4 of my Report, I noted that engagement did not comply with tender procedures.

From my inspection of documents available to the Commission, was not involved in the negotiations of the sale agreement relating to Ilirno.

Mr. Yamuna had no authority to appoint an agent or enter contracts valued more than

The commission paid to for work purportedly done was in excess of and would have required Board and Ministerial approval. Mr. Yamuna failed to obtain either Board or Ministerial approval.

Mr. Yamuna in his evidence (Transcript page 1023 to 1024) to the Commission stated a Mr. Baker and a Mr. Sullivan of were involved in the negotiations and accompanied the Corporation negotiation team on trips to Cairns for further negotiations with the buyers. I find no documentary evidence to support that these two individuals were involved in the negotiations. Even if these two individuals were involved, the time and effort expended does not equate to the fee paid.

It appears that on the 29 March 1999, Mr. Yamuna wrote to that they had been appointed sole agent to sell Ilirno.

The reply from dated 29 March 1999 (same day) is as follows:-
?Sole Agency to sell Ilimo Poultry Products Limited (IPPL)

We thank you for your letter dated the March 1999, appointing our Company as Sole selling Agent of

Having regard to the effort and negotiations that are required to achieve a sale of this magnitude (around K16 million), we are of the Opinion that a most reasonable and fair commission would be 3% (three percent) to be calculated as a percentage of the total purchase price.

Please advise in writing your acceptance of the above commission and upon receipt we shall commence to sell IPPL with the resources at our disposal.

We appreciate very much your kind word in relation to our high professional standards and the service we provide.

A copy of the above is attached and marked as Exhibit ?243? in the Appendices to this report.

MI. Yarnuna replied two day later as follows;

?We acknowledge receipt of your letter dated 29 March 1999 and accept your offer of three percent as commission of the total purchase price.

Please liaise with Mr Allister Greaves of Peak Performance Feed Cairns on telephone (07) 4091 301 or facsimile 409] 350]. Mr Greaves will be arriving in Port Moresby on Tuesday 6th April 1999 for visitation to [limo and to meet with our lawyers.

A copy of the above is attached and marked as Exhibit ?244? in the Appendices to the report.

Mr. Yamuna then wrote another letter to Carter Newell Lawyers where Jimmy Maladina was a partner on the 29th March 1999 advising them of the involvement of I do not understand the purpose of this letter to Carter Newell by Mr Yamuna as there is no instruction as to What he expected Carter Newell to undertake.

The letter is as follows;

?The Investment Corporation (ICPNG) is in the process of selling [limo Poultry Products Limited to Peak Performances Feeds (PPF) a company registered in Australia and operating out of Cairns.

We have in principle agreed that the total value of limo is [(15,500 000.00

PPF will pay a deposit of [(3,000 000. 00 and pay the remainder of 00 over a period of six (6) years at an interest rate of 9% per annum, on a vendor finance arrangement.

The above instruction is broad, for detail please contact Mr Sullivans of Port Moresby First National Real Estate, who are our Brokers and Sole Agent on telephone 3212622.

A copy of the above is attached and marked as Exhibit ?450? in the Appendices to this report.

As stated earlier, the ?rst two paragraphs of the letter provide information and do not provide any instruction as such. In the last paragraph Mr. Yamuna clearly stated that the ?above instructions are broad?.

I fail to identify any instructions in this letter other than to deduce that Mr. Yarnuna attempted to make his arrangement with appear formal.

The contract of sale as noted earlier was signed on 10 June 1998 and this contract of sale was never settled. However on 28 June 1999 Mr. Yamuna wrote to and advised them that the sale has been concluded and requested to submit their invoice for payment which is as follows;

?We have finalised the contract of sale of Ilimo Poultry Products and Management Agreement. .

The Sale Commission of 3% as per your letter dated 29 March 1999 is accepted.

Please provide an invoice to the Investment Corporation of Papua New Guinea (ICPNG) to have the matter settled?

A copy of the above is attached and marked as Exhibit ?245? in the Appendices to this report.

By 28 June 1999 the purchaser had not paid the K6 million nor had it performed actions necessary for completion to occur.

responded the same day (28 June 1999) with an invoice letter as follows;

?We are pleased to inform you that the sale has come to a satisfaction) conclusion and that Investment Corporation is to receive the monies directly.

We now supply our memorandum of commission on that sale as per the agreement of your letter dated 3] March 1999.

Sale Price KI 5, 500, 000. 00
Commisson due at 3% 465, 000. 00
NCDC Sales tax 4% 18,600.00
Total due and payable 483, 600.00

We appreciate your business with Port Moresby First National Real Estate and pleased we are able to assist in this matter.

A copy of the above is attached and marked as Exhibit ?247? in the Appendices to this report.

Based on the above, a cheque for was drawn two days later on 1 July 1999 and paid to

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A copy of the cheque for is attached and marked as Exhibit ?248? in the

Appendices to this report.

In a normal sales arrangement, commissions are usually settled from the proceeds of the sale. It goes against prudent business principles for Mr. Yamuna to pay a commission from the Corporation's funds. Mr. Yamuna's actions are highly questionable and improper where he;

- (1) acted beyond authority in agreeing to pay substantial funds in commissions;
- (2) paid without seeking Board and Ministerial approval;
- (3) paid sales commission when there was no sales;

After Mr. Yamuna was terminated and Mr. Ruimb appointed, recovery action was instigated against with Mr. Yamuna as second defendant.

The writs of summons have been issued and the first defendant has filed a Notice of Intention to Defend. According to the Corporation lawyers the writs have also been served on the second defendant, Mr. Yamuna, however there is no evidence to suggest that Mr. Yamuna filed his intention to defend.

A copy of the Summons and Notice of Intention to Defend by 1st Defendant are attached and marked as Exhibits 249 and 250 respectively in the Appendices to this report.

It appears that the matter has not gone to trial and on 6 December 2005 Mr. Glenn Blake of IPBC wrote to the Corporation Lawyers Posman Kua Aisi to return the files in respect of this matter. The letter is as follows;

Return of Court files on ICPN VS Port Moresby First National Real Estate and VS ICPNG.

We wish to advise that Ms Lynette of your accounts section has contacted the as of 5 December 2005 regarding outstanding Invoice Number 251710

We also wish to confirm on the release of K43, 55.45 towards settling the other Invoices from your firm. We approved the payment despite your failure in

answering the queries raised including fees on inactive files through our letters dated 18 and 19 October 2006.

Whilst we prepare settling the outstanding invoices relating to the Papua Club Court case, we wish to ask that you return all our Court files relating to the ICPNG VS Port Moresby First National Real Estate and VS ICPNG (WS No.652 of 2001) cases.

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As we have settled all the outstanding bills relating to the two cases, we wish to ask that you return all our court files immediately.

We thank you for your assistance.

A copy of the above is attached and marked as Exhibit ?253? in the Appendices to this report.

It appears the matter is now with IPBC to pursue.

I find that Mr. Yamuna colluded with to defraud the Corporation to the sum of Therefore, I would recommend that the legal proceeding commenced should be pursued by IPBC to recover the money from Mr. Yamuna.

4. 718.3 Sale of Ilimo under John Ruimb as Managing Director after Mr. Yamuna

When Mr. Ruimb was appointed for his second term as Managing Director in August 1999 he continued to negotiate the sale of Ilimo with Peak Performances Feeds.

Based on Mr. Ruimb's discussions with the buyers, a revised agreement was signed on 6 June 2001.

A copy of the revised agreement is attached and marked as Exhibit ?234? in the Appendices to this report.

The subsequent negotiated price was K11 million for 100% purchase of shares in Ilimo. This price consisted of K6 million up front cash payment and a deferred component of K5 million to be paid in instalments.

A letter dated 14 May 2001 written by Mr. Ruimb to the buyer is as follows:-

?Reference is made to our telephone conversation of today.

I confirm that I have met with the Prime Minister of Papua New Guinea this morning, and he has now formally granted in writing the approval under the Public Finances Management Act.

The approved Agreement is the draft dated 24 April 2001, with Changes to Clause 10.] where the balance payable to the Investment Corporation of Papua New Guinea (ICPNG) is 886?00 as inter-company debt.

The lawyers should now print the final draft, which should not take more than one (1) day.

Let us fix a date for execution and settlement to take place later this week.

A copy of the above is attached and marked as Exhibit ?214? in the Appendices to this report.

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The approval letter by the Prime Minister dated 14 May 2001 is as follows:?

OF 100% SHAREHOLDING IN ILIMO PRODUCTRY PRODUCTION
INVESTMENT CORPORATION OF PAPUA NEW GUINEA LIMITED

Reference is made to your letter of 9 May, 2001 in relation to the above subject matter.

I note that all contentious issues have now been resolved between the Vendor and Purchaser and a draft Share Sale and Purchase Agreement has been finalized, a copy of which was attached to the above referred letter together with the following documents for my consideration.

Mortgage Debenture between Investment Corporation of Papua New Guinea (ICPNG) and Ilimo Poultry Products Limited.

Deed of Assumption and Release between ICPNG, Ilimo Poultry Products and the Papua New Guinea Banking Corporation

I, as Treasury Minister, in accordance with Section 6] and any other relevant provision of the Public Finance Management Act, grant the following approvals:

Approve the Draft Share Sale and Purchase Agreement and the terms contained therein for the sale by the ICPNG of its 100% shareholding in Ilimo to Geilston Limited as submitted to my Office under your above referred cover letter.

(it) approval for ICPNG to convert its shareholder loan of [(12.5 million to Ilimo into ordinary shares of that company as per the terms of the Draft Share Sale and Purchase Agreement, taking note the potential write-off of the residual balance on investment by ICPNG.

Approval for ICPNG to assume the debt of about K10 million owed by Ilimo and pledge any of its assets to as security where required by in respect of the residual balance of K4 million after settlement.

The contents of the approved Contract should not be materially altered or altered in any way prior to its execution without first seeking my approval?

A copy of the above is attached and marked as Exhibit 240 in the Appendices to this report.

Despite the signing of the contract, Peak Performance Feeds Pty Ltd's PNG subsidiary Geilston Limited, was not able to conclude the sale. An extract of a letter

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4.7.9

written by Mr. Ruimb to the liquidator Mr. Rob Southwell provides some indication of what had transpired is as follows;

The negotiations finally concluded with an execution of a contract for sale and

purchase of [limo on 6 June 200]. Geilston/Athmaize were not able to complete settlement of the transactions despite being granted additional time within which to complete.

After the failure of Geilston Athmaize failed to complete the purchase, the [limo Board in mid-August 2001 met and resolved that [limo should go into voluntary liquidation and that the matter should be put to the shareholders for a resolution. A meeting of the Board convened on 5 September 2001 to approve a voluntary liquidation, was directed by Minister for Privatisation to defer discussion of the [limo liquidation until further notice from him.

On 27 September 2001, a petition by Poultry Products Limited (PPL) against [limo for non-payment of a debt of about \$400,000 was granted and [limo was placed in liquidation under yourself

A copy of the above is attached and marked as Exhibit 239 in the Appendices to this report.

The above extract basically states what has happened. The question one needs to ask

is why did the Corporation Board and Management pursued over a period of more than two years a costly negotiation with a buyer which had no capacity to buy.

The buyer initially sought to have the sale funded by the vendor and this alone should

have rung alarm bells. A prudent Board would have requested the buyer's bank to confirm whether the buyer had the capacity to complete the transaction or otherwise. No such assurances were sought. Instead Mr. Yamuna signed a two page contract which enabled the buyer to manage Ilimo and extract available cash from Ilimo for supplying stock feed.

Liquidation of Ilimo

I note that after Peak Performances failed to conclude the sale, the company as stated

earlier went into liquidation and eventual disposal of its farm assets by who had registered mortgage over these assets.

In my View this was a very bad investment whereby the Corporation lost more than K15 million and exposed the Corporation, the State and the Fund for further claims by

My task in respect of the investment in Ilimo has been limited by available information, especially financial data available to me. I have established some common failures including irregularities and illegal acts which are detailed in my summary of findings including appropriate recommendation in respect of these.

4.7.10 Summary of findings and recommendations

The following provides a summary of my findings and recommendations relative to the terms of reference concerning the management and disposal of Ilimo Poultry Products Limited. In particular, TOR which requires my assessment of whether there were any imprudent, improper, or illegal actions taken by any person in relation to the management and disposal of Ilimo Poultry Products Limited.

4. 7.10.1 Terms of Reference 1(5)

Whether the Investment Corporation failed to adhere to prescribed investment guidelines.

I No proper due diligence was performed by either or the Corporation when they continued to lend money to Ilimo.

I The Board of he Corporation and Ilimo continued to borrow funds for Ilimo which exposed the Corporation, the State and the Fund to greater risk.

4. 7.10.2 Terms of Reference 1(c)

Whether there was any inappropriate intervention, imprudent, illegal or unsuitable investments or other improper or unauthorised action.

I The investment in Ilimo was clearly unsuitable; however, the Board of the Corporation and Toutu No. 37 continued to lend money at the expense of the Corporation and the Fund.

I Mr. Yamuna appointment of Peak Performance Feeds Pty as mangers of Ilimo was illegal as he had no authority to do so.

I No Ministerial approval was obtained for the Corporation loans to Ilimo as required under the PFM Act.

I Mr. Yamuna acted improperly when he fabricated the Corporation Board minutes to advance K25 million to Ilimo.

I Privatisation Minister Pok acted illegally when he gave approval under Section K25 million advance to Ilimo when he had no power to do so.

I Privatisation Minster Pok acted illegally when he gave blanket approval for future advances to Ilimo when he had no authority to give such approval under Section 61 of the PFM Act.

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Sir Dennis Young acted improperly when he brushed aside late Director Mete

Kohana's concern regarding the approval from Privatisation Minister Pok in respect to Section 61 of the PFM Act.

Mr. Yamuna acted beyond his powers when he collaborated with and dishonestly paid to an amount of belonging to the Corporation purportedly as commission for sale of Ilimo when no such sale took place.

improperly obtained the sum of belonging. to the Corporation purportedly as commission for sale of Ilimo when there was no sale of Ilimo.

Ilimo was insolvent when directors allowed it to continue to trade.

Ilimo was insolvent when its shareholders the Corporation and Toutu No.37 allowed it to trade.

4. 7.10.3 Term of Reference

Whether there was any failure to comply with prescribed tender procedures in connection with the sale and disposal of Ilimo Farm.

The Board and Management failed to initiate and follow proper tender procedures including due diligence when attempting to sell Ilimo shares.

4. 7.10.4 Terms of Reference 9

Whether in relation to the Investment Corporation, the Investment Corporations Fund and Pacific Balanced Fund, the responsible Government Agencies, including the Department of Finance, the Bank of Papua New Guinea and the Auditor General, failed in the regulatory, supervisory or reporting responsibilities under any applicable Act and what was the extend of this failure.

The Auditor General failed in his responsibilities when he did not advice the Board of the Corporation and the Ilimo Board of his audit requirements and the need maintain proper accounts for the audit and subsequent report to Parliament.

The Finance Department failed its responsibility when it allowed the Corporation to lend and over to Ilimo without approval as required under the PFM Act.

The Registrar of Companies failed to take appropriate actions when Ilimo failed to lodge annual returns as required under the Companies Act.

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The Commissioner General of failed in his responsibilities when he did not to take appropriate action when Ilimo failed to lodge its annual tax returns and training levy returns as required under the Income Act.

4. 7.10.5 Terms of Reference I 1

Whether any person or corporate entity should be referred to relevant authorities for investigation with view of criminal prosecution or other action.

Referrals to the Ombudsman Commission

Mr. Pok should he occupy a leadership position in ?Jture for illegal approvals under the PFM Act.

The Board members of the Corporation and Toutu No. 37 should they hold any leadership positions for failure to obtain Ministerial approval under Section 61 of the PFM Act.

Referral to the Royal Papua New Guinea Constabulary

Mr. Pok for illegal approvals under Section 61 of the PFM Act when it was clear that he was not the Minister responsible for administering that Act.

Mr. Yamuna for knowingly acting beyond his powers to pay a Commission of to when there was no sale of Ilimo, and was not involved with the proposed sale process.

The Directors of for knowingly obtaining commission from the Corporation when they were not involved in the sale of Ilimo and that no sale has taken place in respect of Ilimo.

Referral to Registrar of Companies

The Board of Ilimo and Toutu No.37 for breaches of various provisions of the Companies Act.

No Ministerial approval was obtained for the Corporation loans to Ilimo as required under the PFM Act.

Mr. Yarnuna acted improperly when he fabricated the Corporation Board minutes to advance K25 million to Ilimo.

Privatisation Minister Pok acted illegally when he gave approval under

Section K25 million advance to Ilimo when he had no power to do so.

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I Privatisation Minster Pok acted illegally when he gave blanket approval for future advances to Ilimo when he had no authority to give such approval under Section 61 of the PFM Act.

I Sir Dennis Young acted improperly when he brushed aside the late Director, Mete Kohana's concern for obtaining approval from the Treasurer as opposed to the approval presented from Privatisation Minister Pok.

I Privatisation Minister Fabian Pok acted illegally when he gave approval under Section 30 of the PFM Act in March 1999 for the sale of Ilimo to Peak Performance Feeds Ltd.

I Mr. Yamuna acted illegally when he collaborated with and defrauded the Corporation of purportedly as commission for sale of Ilimo.

I improperly obtained the sum of money belonging to the Corporation purportedly as sales commission for sale of Ilimo shares.

In respect of the above I recommend the following;

I Ilimo Board members namely John Ruirimb, Alu Tongia, Eno Daera, Leo Hannet, Shankar Mahadavan, Sir Dennis Young, Wandu Yamuna, Fred Angoman, Vai Reva, John Nilkare, Meakoro Opa, Enock Pakarop and Lincoln Taru be referred to the Registrar of Companies for appropriate actions to be taken under the Companies Act.

I The Board of the Corporation namely Wandu Yamuna, Ted Taru, Jack Pattersdon, Joseph Kumgal, Demas Kavavu, Robert Seeto, Napoleon Liosi, Michael Varapik, John Ruimb, Toffamo Mionzing, John Tari, Abraham Tahija, John Khallahe and Puliwa Mapikon for breach of PFM Act and the Act.

I Mr. Pok be referred to appropriate authorities for giving illegal approvals under the PFM Act.

I Mr. Yamuna be referred to appropriate authorities for authorising financial transactions which were beyond his authorised financial limit.

I IPBC continue legal proceedings against Mr. Yamuna and to recover the money paid as sales commission.

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4.8

4.8.1

Equity Investments of the Corporation and the Fund

Introduction

This section covers TOR 1 where I am tasked to assess whether there was any irregularity and illegality in equity investments, loans to other entities and receipts of

dividends.

TOR 1 reads as follows;

?Whether, in the performance of its functions and the exercise of its powers, particularly in the management of the Investment Corporation Fund, the Investment Corporation failed to comply with the provisions of the Investment Corporation Act (Chapter 140), the Public Finances (Management) Act 1995 or any other Act and with relevant policies and directions from the National Executive Council between the years 1998 and 2002 concerning but not limited to the following;

whether the Investment Corporation failed to adhere to prescribed investment guidelines.

whether there was any in appropriate intervention, imprudent, illegal or improper conduct by any person, company, business, legal entity or other entity in relation to the expenditure or illegal or unsuitable investments or other improper or unauthorised action.

In particular I will consider a number of issues as follows;

Who were the Board of Directors and Managers tasked with prudent management of the Corporation and the Fund.

What equity investments were held between 1998 and 2004?

What new equity investments were undertaken within the period covered by my

In respect to new investments, whether due diligence were performed, Board approval and Ministerial approval Obtained?

What equity investments were disposed off during the period covered by my

In respect Of disposals of equity investments, whether there were proper analysis, Board approval and Ministerial approval?

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4.8.2

Whether dividends from investments were received and deposited into bank accounts maintained by the Corporation?

I Whether the loans given to other entities were based on proper due diligence, Board approval and Ministerial approval?

. Whether the Board complied with Section 10 of the Investment the Act with

respect to Investments and provision of loans to external entities?

I Whether the investments that remained after the conversion were appropriately held by MTSL in accordance with the Securities Act and Regulations.

The overall attempt is to determine whether the unit holders' funds were properly managed during the period 1998 to 2004 by various Boards and Management of the Corporation.

I am mindful that the Board (except Treasury Department executive director), the Managing Director and Deputy Managing Director are political appointments. As such, there may have been investment decisions based on reasons other than the economic returns to the Corporation and the Fund.

There may be certain degree of expectation whereby I am expected to find conclusively that investments based on reasons other than the economic returns were undertaken. However, I am mindful that in such circumstances, it would be difficult given that discussions in respect of any such investment would normally be verbal and would lack documentation. I will rely on established procedures when reviewing these investments.

Background

Information contained in this section will help one to understand the performance of equity investments including loans given to other entities.

Both the Corporation and the Fund have had significant investments over the years and these comprised from subsidiary companies and investee companies including lending of funds to these companies. Some of the investments performed exceptionally well while others have not performed as expected.

Over the period, new investments were undertaken while some existing investments were disposed off. However, not in all cases these additions and disposals of investments were based on economic returns of these investments.

I will review these investments to determine if established procedures were followed in either addition or disposal of investment including loans given to other companies who may have failed to repay with interests.

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4.8.2.1 Investment Guideline

I have considered the Investment Guidelines in Chapter 3 of my Report. The brief provided here is to enable one to understand the context in which the investments by the Corporation and Fund were undertaken.

I am mindful that there was no formal investments guideline for the Corporation to follow while undertaking investments. However, Section 10 of the Act required the

Board and Management to manage the affairs of the Corporation including the Fund on sound business principles.

Section 10 of the Act required the Board and Management to conduct at all times in the interest of the unit holders. This would ensure that maximum benefit would accrue to unit holders in respect of investments undertaken and investments disposed.

Minimum criteria to be considered in respect of new investment and disposal of existing investments are detailed below.

Entry into New Investments

At minimum the following procedures should be followed;

I Proper due diligence of new investments by management detailing anticipated economic returns.

I Board deliberation, approval or rejection of proposed investment based on due diligence and proper documentation of its decision in the minutes.

I Ministerial approval as required under Section 61 of the PFM Act.

Disposal of Investments

At minimum the following should be followed;

I Proper due diligence including independent valuation of investments considered for disposal.

I Board deliberation of the disposal and documentation of its decisions in the minutes.

I Ministerial approval as required under Section 61 of the PFM Act in respect of investments of values of and over.

I Follow proper tender procedures in respect of any disposal of investment.

4. 8.2.2 Board and Management of the Corporation

The Board of Directors and management responsible for investments at relevant times is set out in Chapter 4 of my Report.

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4.8.3 Equity investments by the Investment Corporation Fund

The Fund over the years? invested in many companies operating in various businesses that existed between 1998 and 2004. My task is to review any disposal or acquisition within the period covered by my TOR.

4.8.3.1 Investments in 1998

The Fund equity investments at the end of 1998 comprised of the following;

Company I Shares Costs Valuation
- Sha?hol-ding Kina

Amalgamated Packaging	30%	210,001	250,132	2,024,578
Associated Mills	26%	610,353	619,325	9,833,153
BHP Steel	20%	132,000	232,003	1,883,983
BHP Titan	20%	200,000	200,000	203,560
BOC Gases	26%	271,700	233,988	4,641,207
Boral Gas/ Origin Energy	33%	1 10,000	222,497	2,677,609
Carrier Air conditioning	20%	10,000	48,766	270,485
Gordon Gotch	Nil	Nil	0	0
Coffee Holding	12	49,495	0	
Highlands Paci?c	0%	3,000,000	3,000,000	1,319,400
Ilimo	4%	225,703	209,994	29,115
Kila Marsh	26%	47,000	47,000	872,846
Lihir Gold	0	700,000	0	0
Markham Culverts	25%	33,335	446,689	1,590,806
Monier	20%	40,0000	210,000	319,168
NG Containers	30%	89,990	74,079	0
Niugini Mining	0%	1,000,000	2,578,300	0
Orogen Minerals	0%	972,000	1,701,000	2,805,386
Pagini Transport	19%	1 19,016	0	0
RBPM Regal	26%	27,170	44,920	117,803

Rothmans	26%	107,380	234,003	1,118,384
SP Holdings	0%	31,192	442,502	96,139
SP Tyres	20%	63,000	61,998	104,302
TGAS	20%	16,000	40,800	0
Kumul Hotels	27%	1,037,850	943,509	1,383,869
Trukai	33%	520,000	468,000	565,188
United Bakery	26%	332,127	191,272	372,247
Matkins	45%	22,500	22,500	0
Total		12,523,277	32,229,228	

A copy of the above is attached and marked as Exhibit ?259? in the Appendices to this report.

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Whether the Board followed proper procedures including Ministerial approval as required under Section 61 of the PFM Act is outside the period covered by my

I have merely stated the fact that these investments existed in 1998, and I will review additions and disposals of investments since 1998. I will also flag bad investments whereby monies have been invested without due consideration for economic returns.

In respect of 1998, I note that the following investments were disposed prior to 1998;

I Lihir Gold Limited

I NG Containers

I Niugini Mining Limited

I am not able to determine the exact amount that was received in respect of these disposals.

The other investments namely Coffee Holdings, Pagini Transport, TGAS and Watkins were all bad investments. There is no evidence to suggest that these companies traded which resulted in the Fund valuing these investments at zero. The unit holders' funds invested in these companies amounted to more than

4. 8.3.2 Investments in 1999

The following were the Fund's investments in 1999.

Enipany I Shares Costs Valuation

Shareholding Kina

Amalgamated Packaging	30%	210,001	250,132	1,404,886
Associated Mills	26%	610,353	619,325	9,833,153
BHP Steel	20%	132,000	232,003	1,414,486
BHP Titan	20%	200,000	200,000	210,660
BOC Gases	26%	271,700	233,988	9,205,739
Boral Gas/Origin Energy	33%	110,000	222,497	3,068,560
Carrier Airconditioning	20%	10,000	48,766	270,485
Gordon Gotch	Nil	Nil	Nil	Nil
Coffee Holding	12%	49,495	49,495	-
Highlands Paci?c	0%	3,000,000	3,000,000	1,791,900
Ilimo	4%	225,703	209,994	-
Kila Marsh	26%	47,000	47,000	1,327,374
Markham Culverts	25%	33,335	446,689	1,470,217
Monier	20%	40,000	210,000	615,672
NG Containers	30%	89,990	74,080	-
Orogen Minerals	0%	972,000	1,701,000	2,937,967
Pagini Transport	19%	1	12,016	98,569
RBPM Regal	26%	27,170	44,920	117,804
	26%	107.380	234,003	5

SP Holdings	0%	31,192	442,502	96,140
SP Tyres	20%	63,000	61,998	57,645
	20%	16,000		40,800
Toyota Tusho		1,059,875	4,228,901	4,139,130
Kumul Hotels	27%	1,037,850	943,509	1,043,558
Trukai	33%	520,000	468,000	990,704
United Bakery	26%	332,127	191,272	372,248
Total		14,299,443	40,368,328	

A copy of the above is attached and marked as Exhibit ?260? in the Appendices to this report.

In respect of Highlands Paci?c, I note that an amount of K3 million was invested, however, the investment had diminished to K17 million. It appears that the Board had invested in a resource company Without proper due diligence of long term prospects of the investment resulting in the diminution of investment.

The new investment in 1999 was the purchase of Toyota Tsusho shares from the Corporation. Further, the Fund disposed investments in Rothmans and Orogen Minerals shares.

Purchase of Toyota Tsusho shares

The Board at its meeting number 131 of 1999, approved the purchase of Toyota Tsusho shares from the Corporation by the Fund. The extract of the minute is as follows (Exhibit

?Board approval was sought for the ICPNG to acquire the Corporation ?3 23.03% shareholding in Toyota Tsusho (PNG) for a total consideration of K7. 779 million to [(8.856 million.

The company is a strong performer paying consistent dividend to shareholders. It continues to dominate a large market share in the automotive industry. It is under sound management and the future prospects look good.

Under current arrangement, ICPNG as the Manager of the Fund is obliged to transfer good performing investments to the Fund after maturity. The

Corporation has not fulfilled this obligation in the case of Toyota Tsusho (PNG) Ltd. It was proposed that the Board approve the acquisition.

The Board resolved to approve the Fund's acquisition of the Corporation's 23.63% 2,119,749 ordinary shares at price of K417 for a total purchase consideration of K8, 85 6,3

The Board further discussed the share sale at its meeting 132 of 1999 which is recorded in the minutes as follow (Exhibit

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Board reviewed the submission and took note of the earlier resolution passed at meeting no [31/99 and the practical difficulties that would arise in implementing that resolution and resolved to accept management's recommendation to reserve only 50% (1,059,875 shares) at the revised price of K3. 99 per share for a total consideration of K4, 228, 901 .25

There is no evidence that Ministerial approval was obtained as required under the PFM Act. The files (Exhibits submitted by the Treasury Department to the Commission do not record this transaction.

Investment Manager Mr. Pokarop's brief to the Acting Managing Director indicated that he was not sure whether Ministerial approval was required. An extract of his analysis is as follows;

am not sure whether any Ministerial approval is required under the reservations process. It should be noted that the K1.6 million has already been drawn without Ministerial approval.

Mr. Pokarop ought to have known that transactions of and over required Ministerial approval. However he choose to cast doubt over the transaction by saying that he was not sure whether Ministerial approval was required in this instance.

A copy of Mr.Pokarop's brief is attached and marked as Exhibit ?261? in the Appendices to this report.

According to 1999 Fund Management accounts, a part payment of K1.4 million was paid to the Corporation for the Toyota Tsusho shares.

A copy of the extract of the 1999 management accounts is attached and marked as Exhibit ?262? in the Appendices to this report.

A further was paid in 2000 according to the 2000 management accounts.

A copy of the extract of the 2000 management accounts is attached and marked as Exhibit ?263? in the Appendices to this report.

According to the 2001 cashbook a further K265 million was paid in 2001 which brought the total amount paid for the Corporation shares in Toyota Tsusho to

I note that the amount paid is more by than what has been resolved at the Board meeting. It appears that the amount of paid was in excess of the agreed price of K42 million. In my View this amount is refundable to the Fund by the Corporation.

A copy of the extract of the 2001 management accounts is attached and marked as Exhibit ?264? in the Appendices to this report.

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I have noted under my review of investments after the conversion that, after the Corporation had obtained the hands from the Fund as payment for these shares, the Corporation never transferred the shares to the Fund. It appears that by 2005, the shares were still held in the name of the Corporation.

I note that K46 million of unit holders? funds were taken out by the Board of the Corporation for which the shares were never transferred to the Fund.

The Corporation continued to receive dividends form Toyota Tsusho since 1999. The dividends received by the-Corporation up to the point of conversion is In my view, half of the total dividends received belonged to the Fund. However, I note that there is no evidence to suggest that the dividend received was shared between the Fund and the Corporation according to their reSpective shareholding.

I find that the Corporation owes the Fund K304,178 in dividends it received from Toyota Tsusho and applied to its own use. The overpayment of on the shares purchase and the dividends not remitted to the Fund of K304,178 total K704,179. In my view this amount is due to the Fund from the Corporation.

I further recommend that the shares currently held under the name of the Corporation be transferred to the Fund for a consideration based on valuation and taking into account money owed to the Fund.

Disposal of shares in Roihmans

The Fund shareholding in Rothmans was disposed in 1999. The Board at its meeting number 130 of 1999 resolved to dispose of the Rothmans shares as follows (Exhibit

?The Board resolved to dispose of its shares in Rorhmaris for the value of million.

There was no analysis of this disposal other then only a narration on the 1999 investment schedule as follows;

Fund was forced to divest on this occasion because of the uncertainty over the merger ofRorhmans International and British American Tobacco and

the implication of that merger on Rothmans of Pall Mall (PNG) Ltd.

In 1998 the investment in Rothmans was valued at K1.1 million. The shares were sold in April 1999 for K26 million.

A copy of the 1999 investment schedule with the above narration is attached and marked as Exhibit ?265? in the Appendices to this report.

I have verified to the bank account of the Fund in 1999 an amount of was received and was deposited.

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A copy of the bank statement is attached and marked as Exhibit ?266? in the Appendices to this report.

A Board resolution paper which required management to obtain Ministerial approval before the sale could proceed is as follows;

?The Board approved the sale of the ICPNG Fund?s 26% holdings in Rothmans of Pall Mall (PNG) Ltd.

Action required: a) Ministerial approval
b) Expedite sale

Action Officer: Mr. P. Mel

A copy of the Board resolution paper is attached and marked as Exhibit ?267? in the Appendices to this report.

There is no evidence to suggest that Ministerial approval as required under Section 6 of the PFM Act was obtained.

In addition there is no evidence in the files submitted by the Treasury Department that such approval was obtained (Exhibit ?63 Therefore, I conclude that no Ministerial approval was obtained under Section 61 of the PF Act in respect of this disposal.

Disposal of Orogen Minerals shares

I have not been able to locate any documents from the documents available to the Commission detailing any Board approval and Ministerial approval as required under Section 61 of the PFM Act. Only a narration on the 1999 investment schedule is as follows (Exhibit

?The investment was divested due to attractive stock price and need to achieve capital gains from favourable exchange rate.

ICPNG purchased 50,000 shares directly on the market at the cost of A\$1.46 per share for total consideration of A\$73,000 from funds held.

The amount received as per the schedule is for the shares and at the same time the Fund bought 50,000 shares from the open market.

The files (Exhibit 763 submitted by the Treasury Department does not contain any evidence that Ministerial approval was obtained as required under Section 61 of the PFM Act.

It appears that no Board and Ministerial approval were obtained in respect of this investment.

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4. 8.3.3 Investments in 2000

The following were the Fund's investments in 2000;

Company 1 1 Shares Costs -- Valtgion
Shareholding Kina

Amalgamated Packaging	30%	210,001	250,132	2,117,566
Associated Mills	26%	610,353	619,325	13,405,366
BHP Steel	20%	132,000	232,003	1,129,814
BHP Titan	20%	200,000	200,000	341,760
BOC Gases	26%	271,700	233,988	9,018,538
Boral Gas/Origin Energy	33%	110,000	222,497	3,136,320
Carrier Air conditioning	20%	10,000	48,766	58,470
Gordon Gotch	Nil	Nil	Nil	Nil
Coffee Holding	12%	49,495	49,495	
Highlands Paci?c	0%	3,000,000	3,000,000	716,100
Ilimo	4%	225,703	209,994	
Kila Marsh	26%	47,000	47,000	1,327,374
Markham Culverts	25%	33,335	446,689	1,470,217
Monier	20%	40,000	210,000	615,672
NG Containers	30%	89,990	74,080	
Orogen Minerals	0%	100,000	175,000	1 230,980
Pagini Transport	19%	119,016	98,569	
RBPM Regal	26%	27,170	44,920	

SP Holdings 0%	31,192	442,502	103,108
SP Tyres 20%	63,000	61,998	112,518
TGAS 20%	16,000	40,800	
Toyota Tusho	1,059,875	4,228,901	1,300,149
Kumul Hotels - 27%	4,471,980	4,065,477	2,932,724
Trukai 33%	520,000	468,000	5,330,104
United Bakery 26%	332,127	191,272	372,248
 Total	15,661,408	43,719,028	

A copy of the above is attached and marked as Exhibit ?268? in the Appendices to this report.

One signi?cant transaction that occurred in 2000 is the acquisition of Travelodge rights issue shares.

Acquisition of TraveZodge Rights Issue

The investment schedule indicated that the Travelodge shares were purchased in 2000, however, the actual transaction took place in 1997. The Board at its meeting number 122 of 1997 approved the purchase of rights issue by Travelodge. The extract of the minute (Exhibit is as follows;

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?Directors discussed the revised submission and resolved to approve that the Fund take up its allocation for a consideration of K34 million subject to ministerial approval being obtained.

Ministerial approval under Section 61 of the PFM Act was obtained dated 22 October 1997 from Treasurer Iairo Lasaro is as follows (Exhibit

refer to the submission from the Investment Corporation Fund of Papua New Guinea dated .26 September 1997 on the above subject.

In accordance with Section 61 of the Public Finances (Management) Act, I hereby grant my approval for I CPNG to take out the ?Rights Issue Equity in the refurbishing Of Travelodge (PNG) Ltd?s group of Hotels (Port Moresby,

Islander and Ela Beach) for a total consideration of [(3.434 million.

Any variation in the rights issue holding should seek my prior approval.

According to a status report by the Investment Analyst, the Fund took up 3,434,000 shares at K100 per share.

A copy of this report is attached and marked as Exhibit ?269? in the Appendices to this report.

As state earlier this transaction appeared to have taken place in 1997, however, the Fund only accounted for it in 2000. My report on the K37 million proposed write?off indicated that no proper accounting records were maintained.

4. 8.3.4 Investments in 2001

The following were the Fund?s investments in 2001;

Company 1 1 Shares 1 Costs?
 Shareholding 1 Kina
 Amalgamated Packaging 30% 210,001 250,132 1,404,886
 Associated Mills 26% 610,353 619,325 9,833,153
 BHP Steel 20% 132,000 232,003 1,414,486
 BHP Titan 20% 200,000 200,000 210,660
 BOC Gases 26% 271,700 233,988 9,205,739
 Boral Gas/ Origin Energy 33% 110,000 222,497 3,068,560
 Carrier Air conditioning 20% 10,000 48,766 270,485
 Gordon Gotch Nil Nil Nil -
 Coffee Holding 12% 49,495 49,495
 Highlands Pacific 0% 3,000,000 3,000,000 1,791,900
 Ilimo 4% 225,703 209,994
 Kila Marsh 26% 47,000 47,000 1,327,374
 Markham Culverts 25% 33,335 446,689 1,470,217
 Monier 20% 40,000 210,000 615,672

NG Containers	30%	89,990	74,080	-
Orogen Minerals	0%	972,000	1,701,000	2,93 7,967
Pagini Transport	19%	119,016	98,569	-
RBPM Regal	26%	27,170	44,920	117,804
Rothmans	26%	_107,380	234,003	
SP Holdings	0%	31,192	442,502	96,140
SP Tyres	20%	63,000	61,998	57,645
TGAS	20%	16,000	40,800	-
Toyota Tusho	23%	1,05 9875	4,228,901	4,139,130
Kumul Hotels	27%	1,03 7,850	943,509	1,043,558
Trukai	33%	520,000	468,000	990,704
United Bakery	26%	332,127	191,272	372,248
Total		14,299,443	40,368,328	

A copy of the above is attached and marked as Exhibit ?270? in the Appendices to this report.

The only investment diSposed in 2001 was BHP.

Disposal of BHP shares

The Board at its meeting number 137 of 2000 approved the disposal of BHP shares. The extract of the minute is as follows (Exhibit

?Board reconsidered the proposal noting that BHP and COM craft would be moving ahead to finalise the transfer of ownership and resolved to approve that the fund divest its shareholding in BHP Steel Buildings Products and BHP

Titan Limited for the same price agreed to buy the two major players.

The management then made a submission to the Treasury Department which reviewed the sale and advised the Minister to give approval under Section 61 of the PFM Act. Ministerial approval by Prime Minister and Treasurer Sir Mekere Mourata is as follows (Exhibit

?1 refer to your letter dated 8 January 2001 on the above.

Please be advised of my approval under Section 61 of the Public Finances (Management) Act 1995 for the investment Corporation Fund of Papua New Guinea to e?ect the sale of its 20% interest each in BHP Building Products PNG and BHP Titan at a totalprice ole,600,000.

Any variation to the above should seek my prior approval.

It appears that the main reason the shares were sold was that BHP was restructuring its business world-Wide to concentrate on its cores business of steel production. The

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BHP shares were valued at K1.6 million in 2001 and the price obtained would appear reasonable.

4.83.5 Investments in 2002

The following were the Fund's 3 investments in 2002;

1 Company Shares 1 Costs 1 Valuation
 Shareholding Kina
 Amalgamated Packaging 30% 210,001 - 250,132 1,404,886
 Associated Mills 26% 610,353 619,325 9,833,153
 BHP Steel 20% 132,000 232,003 1,414,486
 BHP Titan 20% 200,000 200,000 210,660
 BOC Gases 26% 271,700 233,988 9,205,739
 Boral Gas/Origin Energy 33% 110,000 222,497 3,068,560
 Carrier Airconditioning 20% 10,000 48,766 270,485
 Gordon Gotch Nil Nil Nil
 Coffee Holding 12% 49,495 49,495
 Highlands Pacific 0% 3,000,000 3,000,000 1,791,900
 Ilimo 4% 225,703 209,994 0
 Kila Marsh 26% 47,000 47,000 1,327,374
 Markham Culverts 25% 33,335 446,689 1,470,217
 Monier 20% 210,000 615g2
 Metals Refining 37% 58,955,000 6,075,072 18,238,600
 Holdings 1 i l
 MTSL 15% 75,000 75,000 -
 NG Containers 30% 89,990 74,080
 Orogen Minerals 0% 972,000 1,701,000 2,937,967
 Pagini Transport 19% 119,016 98,569 -
 RBPM Regal 26% 27,170 44,920 117,804
 Rothmans 26% 107,380 234,003 -
 SP Holdings 0% 31,192 442,502 96,140
 SP Tyres 20% 63,000 61,998 57,645
 TGAS 20% 16,000 40,800 -
 Toyota Tusho 1,059,875 4,228,901 4,139,130
 Kumul Hotels 27% 1,037,850 943,509 1,043,558
 Trukai 33% 520,000 468,000 990,704
 United Bakery 26% 332,127 191,272 372,248
 Total 14,299,443 40,368,328

A copy of the above is attached and marked as Exhibit
this report.

?271? in the Appendices to

Two investments were purchased in 2002, these being the Metals Re?ning Holdings
(MRH) shares and MTSL shares.

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MTSL

The Fund bought 15% of shares in MTSL for MTSL Board comprising of
the only shareholder and director at the time Mr. John Sanday indicated that
application for the shares was received in October 2000. There is no evidence in the
2000 COIporation Board minutes that this investment was considered. The extract of
MTSL Board minute is as follows;

?The Chairman tabled applications for shares received by the Investment
Corporation Fund of Papua New Guinea for 75,000 shares, the
Defence Force retirement Benefit?s Fund for 75,000 shares and
Melanesian Capital Advisors Limited for 350,000 shares in the

Company:-

IT WAS RESOLVED that the consideration for which the shares will be issued
to and is KI.00 for each share. The consideration for the
issue of shares to MCAL is to be for a consideration other than cash.

IT WAS RESOLVED that in the Board?s opinion, the consideration for and the
terms of issue of the shares are fair and reasonable to the company and to the
existing shareholder.

IT WAS RESOLVED to issue the shares to and MCAL in the
following prOportions:?

75,000.00 ORDINARY SHARES at [(1.00 each

75, 000 ordinary shares at [(1.00 each;

MCAL 350, 000 ordinary shares for consideration other than cash

IT WAS RESOLVED that the Chairman be authorized to sign the Certificate
required by Section 47(2) of the Companies Act and to sign and lodge for

registration, the prescribed form to register the issue of shares at the Registrar of Companies Office.

The Board would have deliberated and approved this investment however there is no evidence to suggest that. Mr. Ruimb was appointed a director of MTSL at that meeting and therefore this investment appear to have been sanction by Mr. Ruimb as
Managing Director of the Corporation.

A copy of the minute is attached and marked as Exhibit ?272? to the Appendices to this report.

Metals Re?ning Holdings Limited

The 99% buyout of the other shareholders in Metals Re?ning Holdings was a major investment undertaken by the new trustee MTSL. However there is no record of any

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due diligence performed by the Trustee and Trustees? Board approval sought for this investment based on due diligence. It appears that the investment was undertaken by
MTSL Executive Chairman Mr. Sanday without any due diligence and Board approval.

4. 8. 3.6 Investments a?er conversion in 2002

All remaining investments after the conversion for both the Fund and the Corporation are discussed under paragraph 4.

4.8.4 Equity investments by Investment Corporation of PNG

The Corporation had the following equity investments at the end of 1997;

Company Shares Costs 1 Valuation

Shareholding Rina

Origen Minerals unknown unknown 3,140 3,140

BPT (PNG) Unknown unknown 2,224,116 2,224,116

ANG Corporation Unknown unknown 55,598

Cascade Shares Unknown unknown 216,065 216,065

Pacific Capital Unknown unknown 31 1,358 31 1,358

Kigabah Plantation Unknown unknown 925,463 193,880

TGAS Unknown unknown 92,208 92,208

Lae Freezers Unknown unknown 300,000 300,000

Mecca Group Unknown unknown 8 8

Ilimo Farm Unknown unknown 2,057,406 197

New Guinea Plantations Unknown unknown 293,772

Jimi River Cattle Unknown unknown 256,868

Radio Taxies Unknown unknown 4,500

National Equity Corp Unknown unknown 5,000

Metals Refining Unknown unknown 1,700,000

Toutu No.37 unknown unknown 99 99

Cascade Apartments unknown unknown 431,250 431,250

c/note

Pacific Capital Pref shares unknown unknown 11,538 11,538

Lalokau Project Land only Land 6,772,154 6,772,154

only

[iota] 15,660,543 10,556,013

A copy of the above is attached and marked as Exhibit 273 in the Appendices to this report.

Many of the investments noted above were bad investments as indicated by the deficit of K5 million noted on valuations over costs of investments.

I have covered Ilimo and the property companies separately. In this analysis I will deal with equity investments that were either disposed or acquired during the period covered by my TOR.

4. 8.4.1 Investments in 1998

The investments in 1998 were as follows;

Orogen Minerals	unknown	unknown	3,140	3,140
unknown	unknown	2,360,116	2,360,116	
AN Corporation	unknown	unknown	55,598	
Pacific Capital	unknown	unknown	31	1,358
Pacific Capital Pref Shares	unknown	unknown	11,538	11,538
Ki gabah Plantation	unknown	unknown	925,463	193,880
TGAS	unknown	unknown	92,208	92,208
Lae Freezers	unknown	unknown	300,000	300,000
New Guinea Plantations	unknown	unknown	293,772	-
Jimi River Cattle	unknown	unknown	256,868	
Radio Taxies	unknown	unknown	4,500	
National Equity Corp	unknown	unknown	5,000	
Metals Refining Holdings	unknown	unknown	1,700,000	
Lalokau Project Land only	Land only	Land only	6,772,154	6,772,154
Total			13,091,715	10,044,394

A copy of the above, is attached and marked as Exhibit 274 in the Appendices to this report.

In respect of the above I have noted that some investments were bad and were valued at zero. These investments include;

ANG Corporation
Jimi River Cattle

National Equity Corp

Metals Refining Holdings

Some notable investments namely Kigabah, Lae Freezers, Gordon Gotch, Negliw No. 94 and TGAS were carried at cost however the investments have not performed to expectation.

I note that there was no disposal or acquisition of investments in 1998.

4.8.4.2 Investments in 1999

No schedule exists in respect of investments in 1999.

Due to limited information available to me, I am not able to determine the movement of investments in 1999. However there is a schedule in February 2000 which is discussed below. I do not think there would have been any material difference between December 1999 and February 2000.

4. 8. 4.3 Investments in 2000

I have not been able to locate any investment schedule as at the end of December 2000 however, there is a schedule pertaining to February 2000 which is as follows;

Company O/o Shares Costs Valuation.
Shareholding Kina

0 0 0

Pacific Capital 14	161,538	161,538	161,538
Pacific Capital Pref shares	161,538	161,538	161,538
Kigabah Plantation 100	87,821	718,314	
TGAS 20	16,000	40,800	
Lae Freezers 300,000	300,000		
Madang Timbers 19	145,959	625,142	-
Madang Timer Pref shares 33,199	33,199	33,199	
Negliw No 94	750,000	750,000	
Jimi River Cattle 51	99,178	736,893	-
Jimi River Cattle 810,552	810,552		-
Kobum Spice Co 250,000			-
Scorpio 74	200,000	200,000	
Lalokau Project 7,121,000		5,950,000	

Total 11,908,976 7,056,275

A copy of the above is attached and marked as Exhibit ?275? in the Appendices to this report.

Again, I note that most of the investments are bad investments which have failed to perform and are valued at zero. The total investments cost at the end of 2000 was K119 million however these investments were valued at K70 million, a de?cit of K40 million. The de?cit in investment clearly indicates that the investments undertaken generally failed to perform.

The only investment that was disposed was Toyota Tsusho shares purportedly sold to the Fund. My review of investments after the conversion indicated that the Toyota Tsusho shares were still held by the Corporation. The above schedule in my view is not correct because the Corporation sold half its shares in Toyota Tsusho to the Fund and as such it would still have half of the shares in its books.

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4.8.4.4 Investments in 2001 2002

4.8.5

The accounts of the Corporation were prepared up to 2000 by Guinn PKF and the accounts from 2001 onwards are yet to be prepared.

There is no schedule of investment available for the years 2001, 2002, 2003 and 2004 to review. However, I have analysed the investments that were existing in February 2000. The investments that I have reviewed indicate that most of the investment for both the Fund and the Corporation were bad investments which indicate that the Management and Board over the years have failed to do prOper due diligence before undertaking these investments.

It appears that the Board failed its ?duciary duties with reSpect to investment and as a result, unit holders? funds were lost through bad investments.

Investments after the conversion - 2002 to 2004

After the conversion most of the non-performing investments of both the Fund and Corporation appear to have been disposed. The investments remaining were transferred to the Trustee MTSL to manage on behalf of the Fund. Investments at 30 June 2004 were as follows;

Comp any Shares Costs 1 Valuation?

Shareholding Kina

Amalgamated Packaging	30%	210,001	250,132	5,378,126
Associated Mills	26%	610,353	619,325	8,013,935
BOC Gases	26%	271,700	233,988	8,509,644
Boral Gas/Origin Energy	3 3%	1 10,000	222,497	3,160,3 00
Marsh	26%	47,000	47,000	1,815,610
Markham Culverts	25%	33,335	446,689	2,286,781
MTSL	15%	100,000	75,000	100,000
Metals Re?ning Holdings	79.5%	19,490,005	6,985,072	5,067,401
Monier	20%	40,000	0	72,000
Ramu Sugar		200,000	296,000	
SP Holdings	0%	31,192	442,502	110,420
SP Tyres	20%	63,000	61,998	105,400
Toyota Tusho		2,255,888	8,457,803	2,004,976
Kumul Hotels	27%	4,471,980	4,065,477	2,727,908
Trukai	33%	520,000	468,000	16,548,164
Total		22,573,483	56,196,665	

A copy of the above is attached and marked as Exhibit ?276? in the Appendices to this report.

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The above table summarise the investments that were held at the end of June 2004. There were no new investments, however the following investments were disposed;

I Carrier Air conditioning

. Origen Minerals

Pagini Transport

There is no detail of any Board discussion in the Trustee Board minutes about the disposal of the above investments.

Fund committee meeting number 1 of 2003 provides some indication of the status of some of the investments as follows;

?Sale of Highlands Pacific Limited Shares

Approval was granted for the sale 300,000 shares in Highlands Pacific in July 2002. We have been able to sell 211,399 shares at the price of 38 cents per share. The net proceeds from the sale was K161813443. The balance of 88, 601 shares will be sold when the price pick up

Rama Sugar Limited Shares

The Fund was only allocated 1 0, 000 shares in Rama Sugar Limited at the IPO. The Fund initially offered to purchase 200,000 shares at [(1.26 for a total consideration of K252, 000 in Ramu Sugar Limited.

The Fund has brought additional 90,000 shares on the market at the price range ole.68 to 73 per share.

The Fund now has a total of 200,000 shares in the company. The company has declared 7 toea per share dividends on the ordinary shares to be paid in

December. On the current shareholding, the Fund received K14, 000 (gross).
Sale of Fund 73 shares in Pagini Transport

The Company has proposed to buy back its shares, as follows:

- 66,352 shares 50 toea on September 2002

66,352 shares 50 toea on 30th April 2003

- 66,351 shares 50 toea on 31 October 2003

The first payment of 76 was received on 30th September 2002.

Carrier Air Conditionin

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The Company has now accepted our offer to purchase the Fund 50, 000 shares at K1635 per share, for a consideration of Settlement has taken place on 10th February 2003.

The 0, 000 shares were initially bought at the average price of K48.7 per share and recently sold at 6.35 per share.

SP Tyres Limited

The company has indicated willingness to purchase the shares. However, they are yet to confirm the price of the sale.

Write off of Investments in Ilimo Products

The Investment totalling K225, 703 (at cost) in Ilimo Products was written off in Ilimo Products. The write off is necessitated by the recent actions by the liquidator to sell the assets of the company.

The write-off will have no drastic impact on the Fund's portfolio as the Fund is carrying a Nil valuation in the books. The write-off will also tidy up the portfolio.

Regal Bakery Limited

The Fund's investment totalling K2.70 in Regal Bakery was written off. The company has ceased operations in 1996 and is awaiting the de-registration once IRC has given their approval.

A copy of the above is attached and marked as Exhibit 277 in the Appendices to this report.

In respect to Highlands Pacific, it is mentioned that an approval was granted. I have not been able to establish who granted that approval. Further there is no mention on

the approval in the MTSL Board minutes.

It appears that Carrier Air conditioning and Pagini Transport shares were sold, however there is no mention of the Origen Minerals shares being disposed.

The information available to me is limited and I am not able to determine the proceeds of these investments and whether the proceeds received were deposited into

the account of the Fund.

4. 8. Ownership of Fund ?5 Investments

The investments noted after the conversion include investments belonging to both the Fund and the Corporation. The investments belonging to the Corporation should have

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all been disposed of and those belonging to the Fund should have been transferred to the Trustee to hold in trust for the Fund. -

MTSL is a general trust and as such is required by Securities Act and Regulations to properly identify assets and liabilities of various trusts that it manages. All trust investments held by the Trustee should appropriately noted as held in trust for the respective trusts.

A valuation performed by KPMG on behalf of Nasfund in 2005 detailed the investments and legal ownership of these investments. The valuation indicated that MTSL had breached its ?duciary duties by transferring and maintaining the ownership of some of the best performing investments of the Fund in its own name and not as in trust for the Fund. These investments held in the name of MTSL itself are as follows;

I Associated Mills Limited

I BOC Gases

I Marsh

I rttkaz' Industries

I SP Brewery

I Toyota Tsusho (PNG)

A copy of the valuation performed by KPMG is attached and marked as Exhibit ?278? in the Appendices to this report.

I have reviewed copies of the share certificates and confirmed that the shares were held in the name of MTSL and not as held in trust for the Fund.

A copy of the share certificates in the name of MTSL is attached and marked as Exhibit 279 in the Appendices to this report.

I note on the share certificate (Exhibit 279) of Toyota Tsusho (PNG) that Mr. Ruimb signed as Director of that company for the shares to be transferred to MTSL in its own name and not as in trust for the Fund.

Mr. Ruimb as a former managing director of the Corporation and current manager of the Fund should have insisted that such transfer be held in trust, however he failed when he knowingly signed the share certificate transferring the ownership to MTSL.

The investee companies in my view should have resisted such transfer to own name. However there is no evidence to indicate to me that the Board of the above mentioned companies resisted such transfer without noting the Fund as a beneficiary.

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I note that the directorships of these companies were held by MTSL directors and staff members who appear to have been selected by the Executive Chairman Mr.

anday.

A schedule of investment as at 30 June 2005 from KPMG working file is as follows;

Company No. of Title KPMG
shares Valuation

Ramu Sugar 200,000 Unknown MTSL in trust for 488
BSP 64,419 Unknown MTSL in trust for PBF 202
Amalpack 210,001 30 MTSL in trust for 6,3 00
Associated Mills 610,353 26 MTSL 15,869
BOC Gases 271,700 26 MTSL 15,598
Kumul Hotels 4,471,980 26.92 ICPNG 3,220
Markham 33,335 25 MTSL in trust for ICPNG 2,250
Culverts
MMC 45,771,313 99.21 MTSL in trust for 5,035
MTSL 100,000 20 MTSL in trust for 50
Marsh 47,000 26 MTSL 3,243
Origin Energy 110,000 33 MTSL in trust for 6,333
SP Brewery 31,192 <1 ICPNG 274
SP Tyres 62,000 <1 Not known 419
Toyota Tsusho 2,155,750 24 ICPNG 5,029
Trukai Industries 540,260 34 MTSL 10,940

A copy of the above is attached and marked as Exhibit ?280? in the Appendices to
this report.

I note that the following in respect of the above;

I KPMG have not been able to identify the ownership of Ramu Sugar and BSP

shares. I have not been able to obtain any confirmation in respect of the ownership of these shares from the information available to the Commission. I recommend that the investments are transferred to the Fund.

I note that some investments are wrongly held in the names other than in trust for the Fund. In respect of the investments held in the name of MTSL, the Corporation, and MTSL in trust for I would recommend that these be transferred to MTSL as being held in trust for the Fund.

It appears to me that MTSL deliberately held these performing investments in its own name to obtain benefits for itself and not for the Fund. My review of the K12 million Westpac loan indicated that these investments were pledged by MTSL to

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obtain that loan in its own name. Please refer to my report on Westpac K12 million loan.

I recommend that the above anomalies are corrected so that the investments are accounted for properly in the Fund's name to ensure any benefits derived from these assets accrue to the unit holders.

4.8.6 Examples of Bad Investments

My review of the investments undertaken by both the Fund and the Corporation indicated that many poor investments have been undertaken resulting in loss of funds belonging to the unit holders. It appears that the Board and management over the years failed in their fiduciary duties by not performing proper due diligence before undertaking investments.

My view is that either the Board or management simply lacked the competence required to manage the assets entrusted to them or collaborated with the promoters of these investments to take funds out of the Fund and the Corporation under the guise of investments.

The bad investments are so many and for me to inquire into every one of them is not feasible. However, I have randomly selected some examples of bad investments to understand the process that the Board and management followed in undertaking these investments.

4.8.6.1 Ilimo Poultry Products Limited

Ilimo was an investment in which the Corporation lost in excess of K15.0 million. The poor performance of Ilimo was attributed to political interferences and bad management over the years.

While the investment was not performing as expected as far back as 1995, the Board of the Corporation continued to lend money and solicit loans from to sustain Ilimo's operation. Prudent business principle would have prevailed whereby the Board would have disposed the investment at the earliest than persisting to operate it

by way of lending funds for its continued operations.

The investment was eventually liquidated and its assets sold to settle a creditor. The land and buildings were sold by which had a mortgage over it.

Investment in Ilimo resulted in the Corporation losing more than K15.0 million over the years prompting me to review Ilimo separately. Please refer to my report on Ilimo for detailed analysis.

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4. 8. 6.2 Gordon Gotch (PNG) Negliw No. 94

The promoter of this investment was Mr. Andrian Warupi who was then the Managing Director of MVIL. The proposal was to buy Gordon Gotch, a stationery company, from its Australian owners and requested the following;

I Corporation to acquire 49% shareholding in Gordon Gotch for a consideration of

I Corporation to provide bridging finance of K1 million.
I Provide guarantee of up K15 million.

A copy of Gordon and Gotch proposal is attached and marked as Exhibit 281 in the Appendices to this report.

It appears that Negliw No. 94 was to buy the shares in Gordon Gotch (PNG) Limited and then offer the proposed 49% to the Corporation.

Negliw No. 94 was a company owned 30% by Azerin Limited, 20% by Wilgen Nominees (PNG) and 50% by Airaba Trading (Exhibit

Board members and the approval of this investment

This investment was first promoted to the Corporation around September 1998 when the following were Board members;

_Name Position
Sir Dennis Young Chairman
Wandi Yamuna Managing Director
Ted Taru Director
Jack Petterson Director
Demas Kavavu Director
Robert Seeto Director
Metu Kahona (late) Director
Napoleon Liosi Director
Michael Varapik Director

It appears that the above Board first deliberated on this investment in its meeting number 128 of 1998 held on 11 September 1998. The extract of the minute is as follows (Exhibit

Directors considered the paper which sought the Board's approval to acquire a 49% shareholding in the company for K245, 000 and preference shares worth K1.5 million attracting interest at the rate of 15% pa.

Board resolved to approve the acquisition on 30% shareholding for consideration of 50, 000 plus providing a guarantee up to million subject

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to satisfactory agreement of a guarantee fee. It was further resolved that the three directors nominated for the 11imo Poultry re-negotiation with Utia

Investments assist management to conclude the guarantee arrangement for this approval.?

The Board at its special meeting number 2 of 1998 held on 30 October 1998 further resolved to invest in Gordon Gotch as follows (Exhibit

?Board noted developments that have transpired since the last meeting on 11 September 1998 and resolved to approve an investment of for the purpose of taking up 150,000 convertible notes. The notes are to be converted into ordinary shareholding of 10% Of the company after 5 years.

There is no evidence to suggest that a proper due diligence was undertaken other than the discussions that were undertaken between Mr. Wampi, Mr. Nelson and Mr. Bongare.

The Board further discussed at its Board meeting number 129 Of 1998 which is as follows (Exhibit

?Mr. Mete Kahona reiterated his disapproval of ICPNG guarantee of K15 million. The chairman pointed out that this was in accordance with the resolution of the directors at the Board meeting held at Ilimo on Friday 11 September 1998.

After further clarification from the Investment Manager and Senior Investment Analyst, Mr. Kahona concurred with the recommendation for the guarantee. The directors resolved for Investment Corporation to;?

Acquire 30% shareholding in Gordon Gotch for a consideration of

Give guarantee for a loan of K1.5 million for a fee of K75,000.00
To be held in abeyance pending investigation by the Special Committee.?

Based on the above resolution Mr. Yamuna wrote to Mr. Warupi that the guarantee has been provided by the Corporation Board which is as follows;

?The Board of the Investment Corporation of Papua New Guinea at its meeting of Friday, 28th 1 October 1998 granted its approval to guarantee a loan of

K1,500,000 from any commercial bank towards the purchase of Gordon cf; Gotch (PNG) Pty Ltd.

The guarantee will attract a fee of 5 per annum on the basis of reducing balance of the loan amount. The Investment Corporation of Papua New Guinea

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will execute the necessary guarantee documents with the lending Commercial Bank.

Please keep us informed of progress.

A copy of Mr. Yamuna's letter to Mr. Warupi is attached and marked as Exhibit ?282? in the Appendices to this report.

It appears that Negliw No. 94 did not utilise the above guarantee instead approached the Corporation for a K1.0 million bridging loan while awaiting the bank loan approval. There is no evidence available to indicate that indeed Negliw No. 94 had approached a commercial bank for the loan.

Mr. Nelson wrote a letter to Mr. Warupi dated 19 August 1998 wherein he mentioned a draft proposal. I have not been able to find a copy of that draft proposal. The letter by Mr. Nelson points out many anomalies in that mentioned draft proposal. However the Board submission by Mr. Nelson states otherwise.

A copy of Mr. Nelson's letter to Mr. Wampi is attached and marked as Exhibit ?283? in the Appendices to this report.

The Board submission does point out some weakness especially in relation to the K1 million bridging finance and cautions the Board to wait for the promoters to secure their own funding as opposed to the Corporation giving the bridging loan of K1 million. The recommendation by the management in their submission is as follows;

Given the above consideration and conclusions, the Board has the discretion to conclude a decision on the K1 million bridging finance to Negliw No. 94 Ltd.

A copy of the Board submission is attached and marked as Exhibit ?284? in the Appendices to this report.

The management would have clearly recommended to the Board not to provide the bridging loan of K1 million however instead it left the Board to use its discretion. That was the recommendation made after management was forced to change their recommendation. Details of this are discussed below.

A memo by Mr. Nelson to Deputy Managing Director Mr. Lincoln Taru indicated that a previous proposal was made declining the investment is as follows.

copy of the amended version of the original Board Submission re the request by Mr. Adrian Warupi and Negliw No.94 Pty for bridging finance of K1 million is enclosed for your information and record.

I confirm that as per your verbal instruction, the original recommendation to decline the proposal has been amended accordingly as stated in this version copied to you.

A copy of the above is attached and marked as Exhibit ?285? in the Appendices to this report.

It appears that Mr. Taru verbally instructed Mr. Nelson to amend the proposal to recommend favourably to the Board. Mr. Taru?s conduct in this particular investment proposal was not in the interest of the Corporation.

Mr. Nelson wrote to the acting Managing Director Mr. Ruimb on 21 September 1999 and confirmed that he was forced to change his recommendation against lending the K1.0 million requested by Mr. Warupi. The extract of the memo paragraph 13 is as follows;

?The management did not recognise my recommendations to decline the proposal and further instruct that the recommendation be changed. I was then called by the then Investment Manager (Mr.K.Bogare) and was advised to change the recommendation. An amended proposal was put to the Board, which approved the million bridging finance to Negliw 94. Pacific Management were advised accordingly therea??er.

A copy of Mr. Nelson?s letter to Mr. Ruimb is attached and marked as Exhibit ?286? in the Appendices to this report.

Mr. Nelson states that Mr. Kris Bogare then the Investment Manager had directed him to change the recommendation.

It appears that the directive to change the recommendation came from Mr. Yarnuna and Mr. Ted Taru.

The Board at its meeting number 129 of 1998 held on 14 December 1998 approved the KLO million funding. The extract of the minutes (Exhibit is as follows;

?The Board resolved to approve the request by Pacific Management for bridging ?nance of K1 million to assist with the purchase of Gordon Gotch Pty Ltd.

Investment Corporation will use its loan facilities for Paci?c Management to access KI million for a period of two months for which Pacific Management agrees to pay an annual interest rate of 27%. At the end of two months ICPNG guarantee of K1.5 million will come into effect for which the Corporation will be paid five percent per annum.

I note that at the time the Board resolved to lend money to Negliw No. 94 it was heavily indebted to for loans it was seeking to revive Ilimo from near collapse. Neither the Corporation nor the Fund was in a position to lend money or undertake new investments. It does not make business sense for the Board to resolve

for Corporation to use overdraft facilities to lend to Negliw No. 94 Pty K1.0 million to purchase Gordon Gotch.

There is no evidence (Exhibit that Mr. Yamuna and the Board obtained Ministerial approval as required under Section 61 of the PFM Act. I have noted from the review of Ilimo that Mr. Yamuna and the Board of Sir Dennis Young resorted to obtaining Section 61 approval from Public Enterprises Minister Mr. Pok when Treasurer Lasaro refused their request for further funding to Ilimo.

There was no loan agreement and there was no Ministerial approval however K1.0 million was paid into the trust account of Young Williams in favour of Negliw No. 94 Pty Ltd.

I must point out that there is no evidence to show the historical performance of Gordon Gotch were obtained to determine whether the company had the capacity to generate sufficient cash and repay the money in the event that it did not secure the bank loan. Gordon Gotch from general knowledge was a stationery company.

As stated in the Board minute, the K1.0 million was a bridging loan while awaiting Negliw No. 94 commercial bank loan application to be processed. Negliw No.94 was to repay the loan within two months once it had secured commercial loan. However it appears that commercial bank based on their due diligence refused to lend money to Negliw No. 94 resulting in the Corporation loan not being repaid.

It must be pointed out that Mr. Yamuna and Sir Dennis Young who were instrumental in this investment were still in charge at the Corporation and that may explain why no recovery action was taken when Negliw No. 94 failed to repay the money after two months. Recovery action was initiated only after Mr. Ruimb was reappointed to the Corporation.

In my view this investment was not based on due diligence and when Negliw No. 94 failed to secure the commercial bank loan, the Corporation should have taken measures after two months to recover its money.

Legal advise on the K10 million loan to Negliw N0. 94

After the money was paid to Young Young Williams in favour of Negliw No. 94, the Corporation sought legal advice from their lawyers Fiocco Posman Kua as to how the loan should be treated as the loan money was from the Fund. As stated earlier the Corporation did not have the capacity to undertake any investment at that point in time.

A copy of the legal advice from Fiocco Posman Kua is attached and marked as Exhibit ?287? in the Appendices to this report.

The advice noted many procedures were not followed by the Board and one of the key procedures was that the loan did not have Ministerial approval as required under Section 61 of the PFM Act. The advice by the lawyers recommended that the Corporation take appropriate measures to rectify these anomalies noted.

I note that the Board and management did not implement any of the advices. It would have been awkward for the Board to seek Ministerial advice after the KLO million has been disbursed.

I note with interest the hand written notes by Mr. Taru on the copy of a memo by Mr. Nelson to Mr. Yamuna in respect of the loan;

?It has been my view all along that the Chairman has become Executive Chairman and has not allowed the management to assess the proposal in line with the standard investment guidelines which have been responsible for the growth in the assets of the up to this point in time. There must be some respect where this is due. How long can we go on! The careless attitude of the Chairman will indeed lead us into troubled waters.

Mr. Lincoln Tara?s notes indicate that the Chairman Sir Dennis Young had pushed for the money to be paid without proper assessment.

A COpy of Mr. Taru?s hand written notes is attached and marked as Exhibit ?288? in the Appendices to this report.

1 have noted earlier that Mr. Taru was the one who asked Mr. Nelson to amend the Board submission to recommend the funding. Mr. Taru failed to exercise his duties by ensuring that due process were followed at that point in time and to make such comments after the funds have been disbursed does not make sense. In my view Mr. Taru failed in his duties as deputy Managing Director when he directed the board submission to be altered to recommend the investment.

Negliw No. 94 failed to repay the KLO million

There is no evidence to suggest how Gordon Gotch had fared after being bought by Negliw No.94 with the K1.0 funding from the Corporation.

Negliw No. 94 returned on 9 March 1999 as repayment of principle.

A copy of the above document is attached and marked as Exhibit ?289? in the Appendices to this report.

A further 161,041.10 was paid on 18 March 1999 in respect of the accrued interest.

A copy of the above is attached and marked as Exhibit ?290? in the Appendices to this report.

The balance of was never repaid resulting in the Corporation taking Court action. It must be pointed out that while Mr. Yamuna was the Managing Director, he failed to take appropriate action when Negliw N0. 94 failed to repay the money after the agreed time frame of two months. It was only after Mr. Yamuna was suspended

and Mr. Ruimb was returned to the Corporation as acting Managing Director recovery action commenced.

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The paid to Gordon Gotch was convertible notes to be converted to shares once Negliw No.94 has acquired 100% shares in Gordon Gotch, however that did not eventuate. The amount paid to Gordon Gotch remained as a loan given that no shares were issued.

The Corporation Recovery Action

The Corporation sued Mr. Yarnuna as first dependent, Negliw No.94 as second defendant and Gordon Gotch as third defendant.

A Copy of summons is attached and marked as Exhibit ?291? in the Appendices to this report.

The Court made an order on 29 April 2003 for the Negliw No.94 to be wound up in accordance with the Companies Act. Liquidator Mr. Frank John de Graaf was appointed to liquidate the company.

A copy of the Court order is attached and marked as Exhibit ?292? in the Appendices to this report.

The liquidator upon inspection of the records noted that Gordon Gotch had realisable assets of and liabilities of Negliw No. 94 had no assets and liabilities of 10,853,556.

A copy of the liquidator's report is attached and marked as Exhibit ?293? in the Appendices to this report.

On 7 November 2003 Mr. Philip Isu of PEIL wrote to the liquidator advising him to proceed with the liquidation of Gordon Gotch to realise the assets to fund his costs of liquidating Negliw No. 94.

A copy of the above letter is attached and marked as Exhibit ?294? in the Appendices to this report.

An extract of letter from Posman Kua Aisi Lawyers indicated that the liquidator fee exceed The extract of the letter is as follows;

?'[fyou do not agree to pay the [(5,000 towards the legal costs and Mr. De Graaf is either unable or unwilling to ?rnd the liquidation of Gordon die Gotch then it is likely he will seek 2?0 recover his costs against you. We consider the costs of over 75, 000 to be excessive

It appears from the documents available to the Commission that the liquidation process did not recover any ?Inds as both Negliw No.94 and Gordon Gotch did not have any signi?cant asset to realise any amount.

I note that Mr. Warupi promoted a non viable investment for which the Board Chairman Sir Dennis Young and Mr. Yamuna promoted at the Board level as viable

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investment despite being recommended against by the Investment Division. It would appear that Board members and management collaborated with the promoter to defraud the Corporation of its limited cash resource.

The total amount lost by the Corporation excluding forgone interest and the interest charged by on its loan account is

Negliw No.88 Pty trading as Rouna Hydroponics

While reviewing Gordon Gotch and Negliw No.94, I have come across another company called Negliw No. 88 Pty trading as Rouna Hydroponics which was also promoted by Mr. Warupi at the same time as Negliw No.94 Pty Ltd.

The Board at its special meeting number 2 of 1998 approved both investment in Gordon Gotch for and another be invested in Negliw No.88. The extract of the minutes is as follows (Exhibit

?Board considered and approved an investment of K200,000 for the purpose of taking up 30% equity in the operating company which proposes to farm fresh fruits and vegetables for the Port Moresby markets.

On 5 November 1998 a cheque for paid to Negliw No.88. The cover letter by Mr. Nelson accompanying the cheque is as follows;

?Enclosed herewith is cheque number 04863 7 for K200, 000 payable to Negliw No. 88 Pty Ltd. The payment is for the purchase of 200.000 ordinary shares in the company for 30% ownership.

We look forward to finalising the necessary documents to effect the Investment Corporation's shareholding in Negliw No. 88 Pty Rouna Fresh Fruits Vegetables.

Please keep us informed of the progress.

A copy of the above letter is attached and marked as Exhibit ?295? in the Appendices to this report.

The Board further at its meeting number 131 of 199 noted as follows (Exhibit

total of was invested. Despite repeated for information on the investment, no satisfactory report has been received. Management has been concerned and will follow up.

It appears that apart from the the Corporation paid an additional
There is no documentary evidence available to the Commission to prove that the
additional amount was approved by the Board.

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This loan was handled in the same manner as the Negliw No. 94 and Gordon Gotch
investments. The Chairman of Negliw No.88 was one Hohoa Hohoa who was also
together with Maria Warupi, wife of Mr. Warupi, were directors of Negliw No.
94.

A copy of the legal advice detailing directors of Negliw 88 is attached and marked as
Exhibit ?296? in the Appendices to this report.

To venture into a detailed analysis of this investment would be a waste of time as this
investment was not feasible yet the Board of Sir Dennis Young and the Management
of Mr. Yamuna proceeded to invest. My view is that the investment itself was not
feasible and the decision to invest appears to be based on considerations other the
economic returns of the proposed investment.

4. 8. 6.3 Lae Whole Sale Freezers Pty

The investment was undertaken during the period prior to 1998 therefore I am not
able to determine the process that was followed in respect to investment in this
company.

By August 1998, the company was liquidated for the failing to pay one of its
creditors. It appears that the Corporation only joined the proceeding after the court
case was initiated. A letter of instruction from Mr. Yarnuna to Thirlwall Aisi Koiri
Lawyers dated 4 August 1998 as follows;

?You are hereby to ?le a notice to appear in the National Court of
Justice Waigani on behalf of the Investment Corporation of Papua New Guinea
in the hearing of the petition to wind up the Lae Wholesale Freezers Pty by
the Fletcher International Exporters Pty through their lawyers, the Carter
Newell Lawyers.

ICPNG has a significant interest in the company being 300,000, K100
cumulative preference shares, earning 12% interest per annum. We are also a
creditor in the company and the current petition poses a serious risk to us of
loosing that investment, if the wind up proceedings conclude in Fletcher?s
favour.

Considering our significant interest in the company, it is in our interest
therefore to protect our investment. We advise therefore that the petition for
wind up be opposed.

Please contact us should there be need for further information or assistance.
Our contact is Mr. Wilson Nelson, who can be contacted on the above fax and

address or telephone 3212855

A copy of the above is attached and marked as Exhibit ?297? in the Appendices to this report.

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The above letter by Mr. Yamuna indicate that the Corporation had provided loan to the company in?addition to the equity investment of I am not able to determine exactly how much in total was owed by Lae Freezers both in terms of accrued preferential dividends and other debt as mentioned in Mr. Yamuna?s letter due lack of relevant information.

There is no further information other then an information paper from the Investment Division indicating that the company was put into liquidation. It appears that has ?rst registered mortgage over the company building. It appears that the company was overcommitted as it appears that it had borrowed from Westpac and the Corporation.

A copy of the information paper from the Investment Division is attached and marked as Exhibit ?298? in the Appendices to this report.

I note that the Corporation lost in excess of through it preferential shareholding and advances made to Lae Wholesale Freezers Ltd.