

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL  
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## COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

CHIEF COMMISSIONER  
& CHAIRMAN

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TOP FLOOR, MURUK HAUS, WAIGANI, THURSDAY 20 OCTOBER 2011  
AT 11.04 A.M.  
(Continued from Tuesday 18 October 2011)

COMMISSIONER JEREWAI: Yes, Mr Bokomi?

MR BOKOMI: Good morning, Commissioner.

COMMISSIONER JEREWAI: Good morning, everyone. Counsel.

MR BOKOMI: Commissioner, you would know that this matter had been adjourned from Thursday til today for the Registrar of Companies to provide additional documentations that we requested. He has done so. Registrar of Companies, Mr Alex Tongayu, is here and he is still under oath. He has done so by way of an affidavit dated 20 October 2011. That is the affidavit that he will basically be taking your good self Commissioner through for record  
10 purposes; for purposes of the hearing this morning. Mr Tongayu, could you take the witness box?

**MR ALEX TONGAYU, Recalled:**

**XN: MR BOKOMI**

COMMISSIONER JEREWAI: Mr Tongayu, you are still on oath so we will proceed with the affidavit which you have prepared and thank you for coming this morning to continue your part of the evidence.

MR BOKOMI: Mr Tongayu, I note that you have exactly the same copy of the  
20 affidavit as I have here but for record purposes – Mr Tongayu, could you recognise the document? What is it?

A: Thank you Commissioner. This is an affidavit sworn by myself 20<sup>th</sup> October 2011 containing about seven pages with annexures A to H containing certain documents attached as part of this affidavit.

Q: Could you go to the first page of that affidavit and whose signature is at the bottom left-hand corner? Whose signature, sorry?

A: On the right hand is my signature and on the left hand is the Commissioner of Oath.

Q: Very well. Commissioner---

30 COMMISSIONER JEREWAI: Yes, Counsel?

MR BOKOMI: I seek to tender that affidavit and have it marked as Exhibit ---

COMMISSIONER JEREWAI: Exhibit E - Portion 1C Tumu Timbers, Western Province.

MR BOKOMI: That is correct, Commissioner.

COMMISSIONER JEREWAI: Alright, you may help the witness tender that affidavit. The tendered affidavit is hereby marked as – accepted as tendered, as an exhibit; marked as Exhibit E - Portion 1C, Tumu Timbers, Western Province.

10 **[EXHIBIT E - PORTION 1C, TUMU TIMBERS, WESTERN PROVINCE – SWORN AFFIDAVIT OF MR ALEX TONGAYU]**

MR BOKOMI: Exhibit “E” or Exhibit “F”? I note from the last hearing the exhibit ---

COMMISSIONER JEREWAI: You are quite right, exhibit ---

MR BOKOMI: “F”.

[1.09 a.m.] COMMISSIONER JEREWAI: Exhibit “E” is the certificate permitting of foreign enterprise to carry on business in an activity.

MR BOKOMI: That is correct.

COMMISSIONER JEREWAI: So this one shall be identified as Exhibit F, Portion 1C, Tumu Timbers, Western Province.

20 **[EXHIBIT F - PORTION 1C, TUMU TIMBERS, WESTERN PROVINCE – SWORN AFFIDAVIT OF MR ALEX TONGAYU]**

COMMISSIONER JEREWAI: Thank you Counsel, proceed.

MR BOKOMI: Thank you Commissioner. Mr Tongayu, I note that you have basically set out the requirements and the processes involved in the application for and certification of foreign companies to operate in Papua New Guinea in a particular specified location within the country. I would ask you to read the contents of your affidavit for record purposes of the proceedings today of the Commission of Inquiry into SABLs. Thank you.

COMMISSIONER JEREWAI: Yes, proceed, Mr Tongayu.

A: Thank you Commissioner. On this day the 20<sup>th</sup> day of October 2011, I Alex Tongayu, P O Box 1218, Port Moresby NCD on oath:

1. Except where it is stated to be an information and belief, I have personal knowledge of the facts to in this my affidavit where so stated and I believe such facts to be true.
2. I am the Registrar of Companies and the Director for Business Registration & Regulation Division of the Investment Promotion Authority. I am also the Chairman of the Accounting Standard Board and the Chairman of Securities Commission of PNG
- 10 3. My duties as the Registrar of Companies are to keep the records of all registered entities in Papua New Guinea. Registered entities include companies, business names, business groups incorporated and associations incorporated, under various legislations administered by the Registrar of Companies.
4. As the director, I am one of the five senior managers which support the Managing Director with the daily operations of the Investment Promotion Authority.

Management Certificate Committee.

- 20 5. The Management Certificate Committee is a delegated Board Committee established pursuant to Section 17 of the Investment Promotion Act 1992. The function of the Committee is to screen and recommend to the Board of the authority to approve a foreign company to be certified to conduct in a specific business at a specific location.
- 30 6. The Certificate Committee oversees the Foreign Certificate Secretariat within the Business Information Facilitation Division of the authority. The committee in its meetings perform due diligence check on the company, the directors, shareholders and other relevant informant on the company. Wide consultation with stakeholders including, Department of Labour, Immigration, Foreign Affairs, Internal Revenue Commission, Customs, et cetera, and special sector agencies such as Forest Authority, Mineral Resources Authority, Department of Agriculture, and the like are done before a certificate is issued to a foreign company.

7. After the Committee is satisfied with all procedures – that is a typo error there ---

COMMISSIONER JEREWAI: Yes.

A: That all procedures and process under law are followed, name of the company is forwarded to the IPA Board for approval of the location and the register office for a certificate to be issued for the approved location.

8. All foreign companies are required to file six monthly report of its operations. If the company decided to change certain aspect of the business operations, they have to apply to the Authority seeking to vary the original certificate to include the latest activities under section 33 of the Investment Promotion Act.
9. A foreign company once certified is only expected to operate within the operation area that has been certified and for the specific business that has been certified. Every specific business is identified and certified using the International Standard Industrial Classification published by the Department of All Economic and Social Affairs, Statistical Office of the United Nations as amended from time to time.

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[1.14 a.m.] Types of Foreign Companies that are certified.

10. There are about, Commissioner, supposed to be four---

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COMMISSIONER JEREWAI: That is paragraph 10 now?

A: That is paragraph 10.

COMMISSIONER JEREWAI: Right.

A: Supposed to be four there, not three. For different categories of companies that are identified by the Authority;

- A. Overseas Companies registered under Section 386 of the Companies Act 1997. These category of companies are companies registered in foreign jurisdictions and set an operating office or a branch in Papua New Guinea as opposed to a subsidiary of a foreign company.

30

B. Papua New Guinea registered wholly owned foreign companies. This category of companies are registered under Section 13 of the Companies Act. This category covers two types of foreign companies.

(1) Wholly owned subsidiary of a foreign company. This is wholly owned by a foreign company registered in another jurisdiction or a foreign - another jurisdiction. Yes, "another jurisdiction." Commissioner, a little typo there. It should be, "proposed of another jurisdiction."

10

(2) Second category of companies under this is the company which is usually registered by individual foreigners who are residing in the country. These are PNG registered foreign companies.

C. The third group of foreign companies are majority foreign owned company. These category of companies are companies where a foreigner has a major interest or ownership stake in the company. For example, 51/49 shareholding structure, where a foreigner may hold 51 percent shareholding interest and a national has 49 percent shareholding interest - ownership in the company.

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D. Where a foreigner has management and control in a 100 percent national company. These category of companies are companies where national owned or appears to be owned 100 percent shareholding ownership of the company, however the management and control, including the control of the bank accounts, are with a foreigner.

#### Foreign Certification Process.

11. For any foreign company to operate in Papua New Guinea in any sector of the economy, it must have foreign certificate to operate issued by the Investment Promotion Authority. If a foreign company operate without obtaining foreign certificate, it therefore is operating illegally and is liable for a K100,000 penalty.

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12. Once a foreign company is issued with a certificate of incorporation by the Registrar of Companies under Section 386 or Section 13 of the Companies Act, the Company within one month of the conducting or starting to carry on business in Papua New Guinea must apply for

foreign certification – sorry, let me rephrase that. Once a foreign company is issued with a certificate of incorporation by the Registrar of Companies under Section 386 or Section 13 of the Companies Act 1997, the Company within one month of the conducting or starting to carry on business in Papua New Guinea must apply for foreign certification. Section 3 of the Investment Promotion Act defines “Carrying on business in Papua New Guinea.”

13. The foreign company through their agents submits Foreign Certification Form 3 with all relevant information to the Authority. Once a Form 3 is submitted the processes under section 28 of the Investment Promotion takes effect.
- [11.19 am] 14. If all the relevant information required by the authority is provided, the file is then submitted to senior management committee to deliberate. Once the committee is satisfied that every requirements under section 28 has been complied with, the committee recommends to the Investment Promotion Authority Board to approve a foreign company to operate in Papua New Guinea. Once approval of the Board is received, a foreign certification is issued to the company.
15. Once the company issued with the certificate, it must operate within the present location that is certified on the certificate. If it wants to expand the business to a new location or relocate to a new location, the company must apply to the Authority for variation of the Certificate under section 33 of the Act to include a new location. If the company also changes its shareholding structure it must apply to the Authority for certificate under section 28 as well.
16. Independent Timbers and Stevedoring Limited. Independent Timbers and Stevedoring Limited is a foreign company registered and located in the United States of America. It registered in Papua New Guinea on 7 November 2003 as an operational branch office under section 386 of the Companies Act.
17. The company is fully owned by Independent Timbers and Stevedoring, USA. Now, annexure A is the current extract dated 28 October 2011 showing ownership of the company.

18. The directors of the company are Mr Neville John Harsley and Mr Clifford Ian Fraser, both are Australian citizens.
19. The company applied for foreign certification under the Investment Authority had on or about 11 July 2006. Marked "B" is the true copy of the application dated 11 July 2006.
20. The application was deliberated by the certificate committee on or about 3 August 2006 and was approved. Annexure hereto and marked annexure "C" is the true discussion paper of the management committee dated 3 August 2006.
- 10 21. As a result of the above, a foreign certificate with certification number 91629 with the terms and conditions were issued to the Independent Timbers and Stevedoring Limited on or about August 11, 2006. Annexure "D" is the true copy of a foreign certification dated 11 August 2006 and annexure "E" is the terms and conditions that were attached with the certificate.
22. The company was certified to carry business in the activities of; IC4520, the infrastructure and the construction development; IC 0200, harvesting of forest products; IC 2010, processing of forest products; and a division 51, buyers and exporters of sawn timber.
- [11.230am] 23. The company submitted a variation application to delete the former registered officer to the current registered office. The application was considered on 2 February 2011 and certificate issued on 18 February, 2011. Annexure "F" is the true copy of the varied foreign certificate dated 18 February 2011, with conditions attached to it.
24. That new registered office is located at section 72, allotment 31, Korobosea Drive, National Capital District and its operating location is to conduct the above business is on the certificate it shows Drimgas to Duna, Commissioner, I guess that is a typing error in the name there, to "Dekena", Western Province. So in other words, the company is only certified to operate in this particular operating location.
- 30 25. The company, during the application, submitted as part of the application its work plan titled, "Project Executive Work Plan signed



and certified on 4 November 2005. Annexure “G” is the copy of the Project Executive Work Plan.

26. The project work plan shows that the company intends to work with the landowner company called North East West Investment Limited. Annexure “H” is the current copy of the extract of North East West Limited dated 20 October 2011.

10 27. The above information are correct information on procedures and processes under the Investment Promotion Act and in relation to issuance of foreign certification to foreign companies to conduct business in Papua New Guinea. It also contains the correct information on Independent Timbers and Stevedoring Limited.

Commissioner, that is basically the ---

COMMISSIONER JEREWAI: That is basically ---

A: Yes.

Q: Your evidence.

A: Evidence, that is correct.

Q: Counsel, you have any further questions following on from the affidavit statements just read out by Mr Tongayu?

11.25 am] MR BOKOMI: I have just a few questions, Commissioner.

20

COMMISSIONER JEREWAI: Yes.

MR BOKOMI: Based on the affidavit, in particular in relation to the area of operations certified by the Investment Promotion Authority pursuant to section 29 of the Investment Promotion Act 1992.

30 According to what you have stated in your affidavit, Mr Tongayu, the company, Independent Timbers and Stevedoring Limited, is not certified to operate within portion 1C, which is described – which is the Special Agricultural and Business Lease area granted to Tumu Timbers Development Limited - It is described as all that piece of land known as Aibolo being portion 1C, Milinch Aramia, Bosavi, Miwa, Aiama, Wawoi, Campbell, Kaim, Soari, Avu, Kotale, Piareme and Samaki, Fourmil Raggi, Murray, Kutubu, Aworra in the Western Province containing an area of 790,800 hectares or thereabouts. Is that correct?

10 A: Thank you, Commissioner. What is on record is that the company is only certified to operate on a location called Dringgas to Tengena - Western Province. Basically, the information on file shows that it is a road construction of some sort called Trans Papuan Highway or something, and it is only certified to conduct constructions of roads and bridges in the construction of that particular road. But on record, it does not show that the company is certified to operate on portion 1C. If the company has to do that, then there has to be a variation of leave under section 33 of which we are not aware of at the moment. Only current record shows that the company is not certified to operate on in portion 1C.

Q: Mr Tongayu, I believe you are referring to the road project agreement designated as Gre-Dringgas Duara Wowoi Falls Trans Highland Highway Stage 2 Road Project Agreement, is it?

A: That is correct, that is the only information that is on file; and that is the – basing on that information - the company was certified and given the forest certification.

20 Q: That is the agreement, I believe, that was done by the State Solicitor's Office?

A: That is correct.

Q: If I show you a copy of the agreement---

A: I think that is correct. This is the agreement. Also annexure "G" of my affidavit also contains the Executive Project Plan by the company as a result of this agreement.

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Q: Is that agreement also annexed to your affidavit?

11.30 am] A: No, I have an annexure "G" which has the same parties and a project execution plan and certified on 4 November 2005, giving details of the work project as a result of the agreement between the office – between the Department of Works and the State and also the Western Province as well, including a company called North East West Limited.

40 Q: Is Tumu Timbers Development Limited a party to that agreement?

A: Commissioner, there is no record on file as parties to this particular agreement.

COMMISSIONER JEREWAI: But on the face of that agreement, is Tumu Timbers a party to that agreement, just looking at that agreement?

A: No.

Q: Who are the signatories?

A: The parties to this agreement are basically the State – Fly River Provincial Government, the North East West Investment Limited and the Independent Timbers. This is especially for the road project.

MR BOKOMI: Thank you, Commissioner. For record purposes, I have gazettal notice number G218 dated 24 September 2010. That relates to two notices of direct grant to NEWIL Investment Limited over portions 1C which is all that land known as Awin Pari and not Aibolo – Awin Pari with a different Milinch and Fourmil description of the land – as well as portion 27C, that is, to NEWIL Investment – North East West Investment Limited; in acronym NEWIL, n-e-w-i-l. As it appears, for purposes of record, it is observed that there may be no certification for Independent Timbers and Stevedoring Limited to operate within the SABL area covered under Portion 1C, as earlier described, issued to Tumu Timbers Development Limited.

COMMISSIONER JEREWAI: All right, that will be for submissions. Are you going to tender too further documents; the agreement that you just referred to in relation to which Independent Timbers and Stevedoring is a party?

MR BOKOMI: Yes.

COMMISSIONER JEREWAI: Alongside Fly River Provincial Government and NEWIL Investments in the acronym that you just referred to?

MR BOKOMI: That is correct.

COMMISSIONER JEREWAI: Will you have that tendered through the witness? I take note – I think I will comment that the document had been formally tendered.

[11.35] MR BOKOMI: Very well, I seek to tender that particular agreement.

COMMISSIONER JEREWAI: All right. The agreement entered into between the Independent State of Papua New Guinea, the Fly River Provincial Government, the North East West Investment Limited, Tebogas Investment

Limited, PNG Agency for International Development and Independent Timbers Stevedoring Limited which agreement is dated ---

MR BOKOMI: Sorry Commissioner, it is the one that I handed up. Does it bear the date?

COMMISSIONER JEREWAI: It does not. It shows 2009 but the actual date of execution is not with this copy. I will just refer to it as undated copy.

MR BOKOMI: I undertake to provide the ---

10 COMMISSIONER JEREWAI: Then accept it as Exhibit G, Portion 1C Tumu Timbers Western Province. Would that be a correct Exhibit, the last one being "F"?

MR BOKOMI: Yes, "F".

**[EXHIBIT G – PORTION 1C, TUMU TIMBERS, WESTERN PROVINCE – UNDATED COPY OF AGREEMENT BETWEEN THE STATE, FLY RIVER PROVINCIAL GOVERNMENT, NEWIL, TEBOGAS INVESTMENT LIMITED]**

COMMISSIONER JEREWAI: Will you also seek to tender the Gazettal Notice you just spoke of?

20 MR BOKOMI: Yes. Commissioner, I would ask that the relevant notices of direct grant issued to North East West Investment Limited and published in National Gazette No – Is it G218?

COMMISSIONER JEREWAI: Yes, it is - dated 24 September 2010.

MR BOKOMI: That be marked as Exhibit H.

COMMISSIONER JEREWAI: All right. I accept the Gazettal No G218 dated 24 September 2010 and have it marked as Exhibit H, Portion 1C, Tumu Timbers Western Province.

30 **[EXHIBIT H – PORTION 1C, TUMU TIMBERS WESTERN PROVINCE - COPY OF GAZETTAL NO G218 DATED 24 SEPTEMBER 2010 – RELEVANT NOTICES OF DIRECT GRANT ISSUED TO NEWIL]**

At this juncture, I just want to make a comment with regard to the Exhibit just tendered as Exhibit G, that is the Gre-Dringgas Duara Woiwoi Falls Trans Highland Highway stage 2 road project agreement that I accept it as tendered on the basis that this Commission of Inquiry is not subject to the strict rules of evidence, and that this document may be of relevance, and if so, appropriate considerations will be given to it. And if of no relevance, then, it will not be considered of in terms of wait, evidence will wait et cetera.

[11.35] Counsel, you may proceed.

MR BOKOMI: Yes, I believe there is a signed copy somewhere which once I  
10 get it, I should make that available probably through – later on because we will be calling ---

COMMISSIONER JEREWAI: Counsel, I suggest, if you are able to do that, you produce evidence of that at the substantive hearing of this Commission of Inquiry into this particular SABL.

MR BOKOMI: Very well.

COMMISSIONER JEREWAI: You may proceed with further questions if you have further questions?

MR BOKOMI: Thank you.

Q: Mr Tongayu, just one final question. Apart from the variation to the  
20 registered office of Independent Timbers and Stevedoring Limited as you state in your affidavit, have there been any applications for variation under Section 33 of the Investment Promotion Act in relation to the operational area of Independent Timbers and Stevedoring Limited submitted to your office for consideration and approval to date?

A: Commissioner, the last variation that was submitted is the one for the variation of the registered office. At this point in time, I am not aware of any further variation that are lodged at the moment as yet.

COMMISSIONER JEREWAI: MrTongayu, I have one question - one or two  
30 questions. I am looking at paragraph 22 of your affidavit where you said, “The company was certified to carry on business in the activities of

1. The certificate as approved by the Certificate Committee;
  - ISIC 4520, Infrastructure and Construction Development.

- ISIC 0200, Harvesting of Forest Products
- ISIC 2010, Processing of Forest Products
- DIV 51, Buyers and Exporters of Sawn Timber”

This company, according to paragraph 22 of the evidence is certified to engage in forest harvest and processing of forest products. If it were to be engaged in road construction, there is in Forestry Act what they call, Timber Authorities issued in favour of road construction firms who have to remove forest firms in the path of the proposed road construction projects.

10

Naturally, if the amount of forest is to be cleared in the cost of the road construction is of marginal value, the construction company needs to remove this forest and make commercial use of the forest stock as necessarily being cleared for the path of the road to take its course.

It would appear to me, in accordance with that paragraph of your affidavit evidence that this company would be entitled to remove this forest, if it properly secures Timber Authority from the Papua New Guinea Forest Authority.

20 Would that be a correct statement?

MR TONGAYU: That would ...

TAPE 10

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11.45 am] COMMISSIONER JEREWAI: It would appear to me, in accordance with that paragraph of your affidavit evidence, that this company would be entitled to remove this forest if it properly secures a timber authority from the Papua New Guinea Forest Authority. Would that be correct?

30

A: Commissioner, that would be correct. The activities that you have just mentioned were certified as a result of submissions that were made for them to fell timber to make the road through that area. Prior to felling of timbers, one of the conditions of certification would be that they are required to get the Forest approval first and once they have received that within six months, they must submit the copies of those approvals to our office,

Q: And to date, have they done that?

A: To date, they have submitted copies of those relevant approvals.

Q: For instance, Timber Authority?

A: Authority.

10 Q: Which is permit to clear---

A: Clear.

Q: Forest that is in the part of the proposed road?

A: On the part of the project, proposed road construction only.

Q: Yes.

20 A: Not---

Q: Of course, TAs are restricted to road construction parcel.

A: Construction, yes.

Q: All right, thank you. Counsel will take note that – you may sit down. Whenever you are not required to speak, you may sit down, Counsel. Just take note that it may be necessary to later on during or after the substantive hearing – substantive inquiry into this particular SABL - we  
30 may need to call the relevant officials of the Papua New Guinea Forest Authority to verify if applications for timber authorities for the purposes of a road construction have been sought and have been granted at this particular company and, to a larger degree, because SABLs mainly are characterized by proposed agriculture development.

40 It may cast a light on whether Independent Timbers and Stevedoring, number 1, have sought to be certified in accordance with the relevant provisions of the IPA to engage in agriculture development. If indeed they have entered into a commercial arrangement to exploit the resources found in portion 1C, among others. So, Counsel, take note of that for the purposes of the substantive inquiry into this particular SABL.

If Counsel has no further questions, I do not have any further questions.

MR BOKOMI: Commissioner, I have no further questions as I have indicated earlier.

COMMISSIONER JEREWAI: Thank you. In that case, Mr Alex Tongayu can be excused. In doing so in excusing you from giving further evidence before this inquiry, I just want to take this opportunity to thank you very much for the diligence with which you indicated when you appeared a week ago and having taken the trouble and having made the effort to produce far more detailed information from your organization so that we are more well placed in knowing what these organizations are, particularly Independent Timbers and Stevedoring Limited and its activity within the particular SABL we are inquiring into and, that is, portion 1C, Western Province.

Mr Tongayu, thank you very much. You are excused. You may leave the witness stand.

#### **THE WITNESS WITHDREW**

20

MR BOKOMI: Mr Tongayu, thank you once again. Commissioner, there being no further matters, I ask that this---

COMMISSIONER JEREWAI: You are asking for the matters – this Commission of Inquiry be adjourned?

MR BOKOMI: That is correct.

30 COMMISSIONER JEREWAI: All right. Mr Associate, adjourn the Inquiry.

**AT 11.50 AM, THE COMMISSION OF INQUIRY INTO SABL WAS ADJOURNED.**



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