

ROYAL COMMISSION OF INQUIRY INTO PROCESSES AND PROCEDURES FOLLOWED BY THE
GOVERNMENT OF PAPUA NEW GUINEA INTO OBTAINING THE OFF-SHORE LOAN FROM THE
UNION BANK OF SWITZERLAND AND RELATED TRANSACTIONS

Document Handling Protocol and Hearing Guidelines

Last updated 21 May 2021

1. Introduction

- 1.1 This Protocol establishes guidelines on how the electronic hearing for the Royal Commission of Inquiry into processes and procedures followed by the Government of Papua New Guinea into obtaining the off-shore loan from the Union Bank of Switzerland and related transactions will be conducted (**Commission of Inquiry**).
- 1.2 The Protocol should be read together with the Commission of Inquiry's **Document Production Guideline** and **Document Production Protocol**.
- 1.3 Please note that the Commission of Inquiry may update or replace this Protocol at any time.

2. Communicating with the Commission of Inquiry

- 2.1 Refer to the Contact details section at the end of this document.

3. Providing expert reports, witness statement and post-hearing submissions

- 3.1 Where the Commission of Inquiry requires an expert report, witness statement or post-hearing submissions in written form, a notice will be issued. A person who receives a notice is to address the matters detailed in the Schedule of the notice by the time and date specified in the notice.
- 3.2 The Commission of Inquiry requests that all submissions be produced electronically. Please contact the Commission of Inquiry if a producing party cannot produce a submission electronically.
- 3.3 Each document referred to within an expert report or witness statement or post-hearing submission will be assigned a Document ID in accordance with the Document Production Protocol, and must be referenced in the report or statement by use of this Document ID. If exhibit numbers are used (e.g. Exhibit AK-1, Exhibit AK-2) these must be used in conjunction with the Document ID in parentheses.
- 3.4 An expert report or witness statement or post-hearing submission shall not be assigned a Document ID by the person producing the document.
- 3.5 Witness statements or expert reports are required to be produced by way of electronic format. The Commission of Inquiry prefers that such documents be produced in accordance with the Document Production Protocol or Document Production Guideline. The following items or subfolders should be included:
- (a) a copy of the signed statement in PDF format;
 - (b) a copy of the finalised (but not signed) statement in its native electronic format (or example in Microsoft Word format); and
 - (c) a subfolder named "Exhibits" containing all documents referenced within the statement in a format that complies with the Document Production Protocol with an accompanying load file or in a file that complies with the Document Production Guidelines.
- 3.6 The Commission of Inquiry prefers that an expert report, witness statement or post-hearing submission not be provided as an attachment to an email as a means of production.

4. Confidentially

- 4.1 Claims of confidentiality over documents or parts of documents provided to the Commission of Inquiry should follow the steps outlined below.
- (a) Clearly identify the document(s), the page(s), or part(s) of the page(s), containing the confidential information in the following way (as applicable):

- (b) If being produced in accordance with the Document Production Protocol, a person claiming confidentiality should follow the procedures set out in that Protocol for the identification of confidential information.
- (c) In all other cases:
 - (i) where confidentiality is claimed over an entire document, the document should be marked clearly with the word 'Confidential' on the first page of the document and all following pages;
 - (ii) where confidentiality is claimed over particular pages in a document, those pages should be marked clearly with the word 'Confidential'; and
 - (iii) where confidentiality is claimed over part of a page or particular words or phrases in a document, the relevant parts of the page or words or phrases in the document should be highlighted in light blue highlight, and any page containing confidential information should be marked clearly with the words 'Contains confidential information'.

4.2 The person should provide an accompanying note stating with particularity:

- (a) the basis for the claim of confidentiality and the direction sought; and
- (b) to whom confidentiality is said to be owed.

4.3 The Commission of Inquiry will:

- (a) maintain confidentiality over the subject matter of the application pending the determination of the application;
- (b) decide the application on the papers or notify the person or their representative if a hearing is required prior to such a decision being made; and
- (c) notify the person or their representative in writing of the Commissioner's decision.

4.4 Nothing in this Protocol should be understood as limiting the Commission of Inquiry's powers, whether at the request of any person or on its own initiative, to treat any submission, information or document as confidential, and to take any steps to keep such submissions, information or documents confidential.

5. Legal Professional Privilege

5.1 Where a person¹ is required to produce a document under s 6(1) of the *Commissions of Inquiry Act 1951* (Chapter 30) (**Act**) the procedure for making a claim of legal professional privilege in respect of any such document is outlined below.

5.2 The effect of a s 9(2) of the Act is that, at prosecution, an assertion that a document is subject to legal professional privilege will not be a defence for refusing or failing to produce the document without reasonable excuse, unless a person producing the document can establish to the Commission of Inquiry that the document is not relevant to the inquiry.

5.3 Claims that a document or part of a document is subject to legal professional privilege should be made to the Commission of Inquiry within the following timeframes:

- (a) within the time that the Commission of Inquiry, in requiring production of the document, allowed for its production; or
- (b) within such further time as the Commission of Inquiry allowed for the production of the document.

Failure to make applications for legal professional privilege within the specified timeframes may be taken by the Commission of Inquiry to be an implied waiver of any further claims.

¹ A reference to a "person" in this Protocol includes a body politic or corporate as well as an individual.

- 5.4 For the purpose of deciding whether to accept or reject a claim of legal professional privilege made in accordance with paragraph 5.3 above, the Commissioners may:
- (a) by written notice served on a person, require the person to produce the document the subject of the claim for inspection; and
 - (b) exercise their powers to summon witnesses and take evidence under s 6(1) of the Act.
- 5.5 Where a document has been produced for inspection in accordance with sub-paragraph 5.4(a) above:
- (a) if the Commissioners decide to accept the claim, the Commissioners will return the document to the person and will disregard the whole, or the relevant part, of the document for the purposes of any report or decision that the Commission of Inquiry makes; and
 - (b) if the Commissioners decide to reject the claim, the Commissioners may retain the document and use it for the purposes of the inquiry.
- 5.6 A person will commit an offence under the Act in respect of a claim of legal professional privilege where the person refused or failed to produce a document required to be produced by a summons or notice issued under s 6(1) of the Act, and the Commissioner has decided to reject a claim of legal professional privilege, and, after that decision, the person refuses or fails to produce the document as the Commissioners require under s 6(1) of the Act.

6. Transcripts

- 6.1 A transcript of each public hearing will be placed on the Commission of Inquiry's website.

7. Electronic Evidence Presentation during hearings

- 7.1 To present a document for parties and the hearing, the document needs to be requested by its Document ID, eg XYZ.0001.0001.0001. The electronic hearing operator will take the necessary steps for the document to be presented on the screens.
- 7.2 A particular page of a document should be requested by its Document ID followed by the last four digits of the stamped page eg, XYZ.0001.0001.0001 at 0039 as opposed to requesting the stamped page. This enables the electronic hearing operator to locate the right page at the right document quickly.
- 7.3 Native documents are presented using their native application eg Microsoft Excel is used to present spreadsheets created in Microsoft Excel.

8. Tendering Documents

- 8.1 Subject to direction by the Commission of Inquiry, Counsel Assisting will decide:
- (a) which documents will be tendered; and
 - (b) when those documents will be tendered.
- 8.2 Before the opening of a hearing, the Commission of Inquiry may decide to give confidential access to particular relevant documents to persons with leave to appear. The Commission of Inquiry will generally make a direction prohibiting these documents from being disclosed by parties who have been granted access to those documents, until they have been tendered. Copies of documents that are likely to be tendered will generally not be provided to any other person before they are tendered.
- 8.3 Parties with leave to appear who have been provided with access to documents that are likely to be tendered should consider whether they want to seek a direction from the Commission of Inquiry restricting the publication of a document, or any part of a document.
- 8.4 Counsel Assisting may also tender other documents during the course of a hearing.
- 8.5 Persons wishing to provide a document to the Commission of Inquiry during a hearing must, as soon as possible, notify the Technical Assistants and International Solicitors Assisting and provide

a copy of the document to the Technical Assistants and International Solicitors Assisting. Counsel Assisting will decide whether or not the document(s) will be tendered.

Contact Details

Please quote the Notice reference on the first page of correspondence from the Commission of Inquiry when contacting us.

- **Producing electronic media or hard copy documents to the Commission of Inquiry:**

Commission of Inquiry
Ground Floor, Apec Haus, Paga Ring Road
Port Moresby, PNG

Technical Assistants and International Solicitors Assisting the COI
coisolicitorsassisting@minterellison.com

cc: secretary@coiubsl.com

Telephone no: +675 301 9364

- **Emailing the Commission of Inquiry requesting a secure file transfer link:**

Technical Assistants and International Solicitors Assisting the COI
coisolicitorsassisting@minterellison.com

cc: secretary@coiubsl.com

Telephone no: +675 301 9364

- **Emailing the Commission of Inquiry in relation to a Notice to Produce or queries regarding Privilege:**

Technical Assistants and International Solicitors Assisting the COI
coisolicitorsassisting@minterellison.com

cc: secretary@coiubsl.com

Telephone no: +675 301 9364

- **Emailing the Commission of Inquiry regarding this *Document Production Guideline* or the *Document Production Protocol*, including if a party is unable to comply with either document:**

Technical Assistants and International Solicitors Assisting the COI
coisolicitorsassisting@minterellison.com

cc: secretary@coiubsl.com

Telephone no: +675 301 9364