



No. \_\_ of 2015

A Bill

Entitled

***CAPITAL MARKET BILL 2015***

## **EXPLANATORY NOTES**

### **A. INTRODUCTION**

These explanatory notes contain:-

- (a) an outline of the purposes of the Bill, which will amend the *Securities Act 1997* and reform the law relating to the establishment of securities and derivatives markets in Papua New Guinea;
- (b) a description of the framework under which the Bill will be administered;  
and
- (c) a summary of the principal features of the Bill.

### **B. PURPOSES OF THE BILL**

The proposed bill is intended to compliment the *Securities Commission Bill 2015* and the *Central Depository Bill 2015*. The Securities Commission Bill is to establish the Securities Commission of Papua New Guinea. The *Central Depository Bill* is to improve the efficiency and transparency of the market infrastructure and the Capital Market Bill provides for the establishment of the market infrastructure including the stock and derivatives markets, issuance of licenses to market intermediaries, regulation of issue of securities to public, the draft and formulation of the takeovers & mergers code, among others.

The rules of operation regarding the trading in the capital market have been modified significantly globally, regionally including Australia and New Zealand. If PNG is to attract more and bigger investors it needs to reform its investment laws including the *Securities Act*. New rules have been developed and are now being implemented worldwide to: (1) protect investors; (2) ensure that the markets are fair, efficient and transparent; and (3) reduce systematic risks.

The proposed *Capital Market Act 2015* addresses many issues evolved as a result of the 2008 global financial crises.

## **C. CURRENT STATUS OF THE PORT MORESBY STOCK MARKET**

These reforms are intended to address ongoing challenges and issues faced by the Commission in the regulation of the capital market and issues and challenges faced on the capital market, by investors and market participants alike.

To address the challenges and issues and put things into perspective, it is appropriate to look at the current status of the Port Moresby Stock Exchange and the Stock Market.

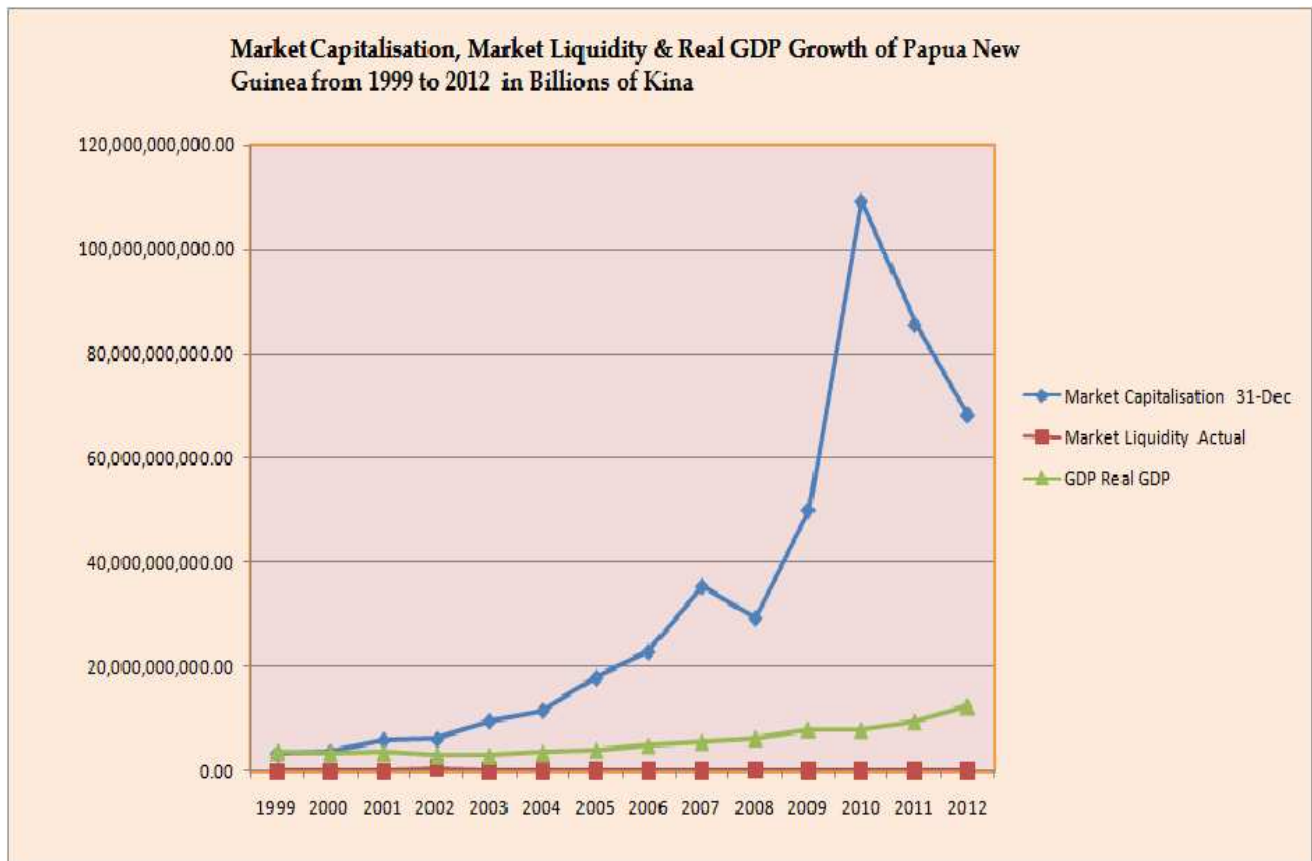
### **1. Establishment**

The Port Moresby Stock Exchange (POMSoX) was established in 1998, with an initial listing of 8 companies and a market capitalization of K3.4billion. The market liquidity or cash available for trading or buying and selling of securities at that time was K1.2million. At the moment are over 19 Companies listed with 20 stocks and a market capitalization of over K65billion.

In 1998, when the Port Moresby Stock Exchange was established, the total real GDP of the country was K3.76billion. As per the 2015 National Budget, the real GDP of the country currently stands over K16billion, an annual average growth of K3.3billion annually.

However, the liquidity on the market or money circulated within the investors on the Port Moresby Stock Market has not changed significantly. Though the Market Capitalisation is currently over **K65billion**, the money or cash available or currently being circulated with investors to trade or buy and sell on the Port Moresby Stock Market is K1.29billion. This indicates that over the 17 years since the establishment of the Port Moresby Stock Exchange, the market has not grown as expected. The graph below compares the growth of the Port Moresby Stock Exchange and the GDP growth of the country within the same period.

**Figure 1. Comparison of the Market Capitalisation Market Liquidity, and the GDP Growth from 1999 – 2012.**



The above graph shows the huge potential the Port Moresby Stock Exchange, should the necessary market infrastructures are put in place to untapped some of the K65billion and convert same into cash.

## 2. Market Infrastructure

The *Capital Market Act 2015* is intended to achieve the above outcome. It is intended to establish a proper market infrastructure including, opening up the market for more stock brokers, investment advisors, trustees fund managers, underwriters and at the same time issuing licenses for them to operate. It will also provide the avenue for new securities to be listed on the market. The infrastructure will also provide the framework

for new financial products to be developed and listed on the Market. It will also provide a transparent, conducive and risk free environment for investors to invest in the market.

### **3. Derivatives Market**

Through the reforms, it will allow new products to be listed on the market as well as establishment of a derivatives market. (Airlines PNG have already issued derivatives products which are listed on the market but technically are listed on the wrong market. We also intent to establish a derivative market.

### **4. Government Bonds**

The market infrastructure, once established will also allow for the creation of a secondary market for the government to list its bonds, Treasury Bills and other securities for the retail investors.

### **5. SOEs**

The market will also provide the necessary infrastructure for the National Government to list SOE's on the market, should it considers appropriate.

## **D. FRAMEWORK OF ADMINISTRATION**

The Bill will continue to be administered by Securities Commission of Papua New Guinea.

## **E. PRINCIPLE FEATURES**

The Minister for Trade, Commerce and Industry, the Department of Trade, Commerce and Industry and the Investment Promotion Authority through a series stakeholder consultations with the industry, as well as other government and non government agencies, including the Department of Justice & Attorney General, Independent Consumer Competition Commission (ICCC), The Independent Public Business Corporation (IPBC), Asian Development Bank (ADB), International Financial Corporation (IFC), the National Research Institute (NRI), among others have established that it is necessary to draft the *Capital Market Bill 2015* to compliment the *Securities Commission Bill 2015*.

The draft Capital Market Bill generally provide for the following matters:

- Licensing of market intermediaries; and
- Regulation of the stock market; and
- Setting out clear trading rules; and
- Effective and transparent reporting and disclosure rules; and
- A link between the law and IOSCO principles; and
- A clear link between the regulator, the market and players.

The following are the specific arrangements summary of the proposed bills as drafted.

## **PART I                      PRELIMINARY.**

The following proposed provision covers the Preliminary Part of the Bill. This part contains a provision on Constitutional compliance, application of the law and interpretation. Compliance with Constitutional Requirements.

- Interpretation.
- Associated person.
- Interest in securities.
- Prescription of securities and derivatives.
- Conversion of agreements to derivatives contracts.

## **PART II                      CAPITAL MARKETS.**

The provisions under this part provides for the creation of the capital market exchanges (stock and derivative markets). These provisions will enable the creating of market infrastructure including licensing of the Exchanges, the board and shareholding structures of the exchanges and their conducts and the establishing and operations of the market. The following are summary of the provisions of this Part-

### *Markets*

- Limitations on stock and derivatives markets.

### *Market Institutions.*

- Stock Exchange and Derivatives Exchange.
- Approval of stock exchange or derivatives exchange.
- Membership of Stock Exchange and Affiliation of Derivatives Exchange.
- Commission to approve amendment of rules.

- Appointment of directors of stock exchange and derivatives exchange.
- Duties of exchange.
- Revocation of approval of exchange.
- Effect of revocation of approval of an exchange.
- Annual Regulatory Report on compliance with ongoing requirements.
- Quarterly, Report.
- Disposal and acquisition of assets.
- Power to issue directions.
- Closure of stock or derivatives exchange.
- Power of Commission in to prohibit trading in a particular security.
- Provision of assistance to Commission.
- Suspension order.

*Registered facilities.*

- Registered electronic facilities.
- Application for registration.
- Revocation of registration.

*Approval of clearing house.*

- Establishing or operating a clearing facility.
- Power of Commission to approve clearing house.
- Revocation of approval.
- Effect of revocation of approval.

### **PART III                      CAPITAL MARKETS REGULATION.**

This part provides for the regulations of the capital market, issuance of licenses to brokers, dealers, investment advisors, fund managers, trustees, and other market intermediaries. The following are summary of the provisions of this Part-

*Licensing and Regulation.*

- Requirement for Capital Market License.
- Requirement for Capital Market Representative's Licence.
- Application for grant or renewal of licence.
- Grant or Renewal of license.
- Power of Commission to impose conditions or restrictions on licenses.
- Fees.
- Grounds for refusal for the grant or renewal of Capital Market License.
- Grounds for refusal for the grant or renewal of Capital Market.
- Representative's License.
- Power of Commission to enquire into transactions.
- Minimum financial requirements.

- Period of license.
- Variation or transfer of license.
- Deposit to be lodged in respect of Capital Market License.
- False statements in relation to application for grant or variation of license.
- Revocation and suspension of license.
- Effect of revocation, suspension or cessation of license.
- Notification of disqualifying event.
- Appointment, election and nomination of directors and Chief executive of licensed person.
- Registered persons.
- Register of license holders.
- Notification of change of particulars.
- Publication of names and addresses.
- Appeals.
- Surrender of license.

#### *Records.*

- Application of this Division.
- Register of securities.
- Notice of particulars to Commission.
- Defence to a prosecution
- Production of register
- Particulars of financial journalists
- Commission may supply copy of the extract of a register

#### *Conduct of Business*

- Securities.
- Over-the-counter-derivatives.

#### *Books, Client's Assets Protection and Audit*

- Keeping of books and furnishing of returns
- Treatment of client's assets in respect of securities
- Treatment of client's assets in respect of derivatives contracts
- Treatment of client's assets in respect of fund management
- Range of actions the Commission may take to protect clients under certain circumstances
- Audit

#### *Vesting*

- Application to court to facilitate agreement or arrangement for transfer of whole or part of business of licensed person

## **PART IV ISSUES OF SECURITIES**

This proposed Part deals with issue of securities to the public the initial public offering (IPO). The following provisions are the summary of this Part-

Listed and Unlisted Capital Market Product

- Requirement for approval, registration, authorization or recognition
- Application for Approval
- Grant of approval
- Refusal of an application

### *Prospectus*

- Offer for subscription or purchase
- Excluded offers and invitations
- Excluded issues
- Exceptions
- Requirement to register prospectus in relation to securities
- Approval of prospectus
- Requirement to lodge prospectus with Registrar
- Contents of prospectus
- General duty of disclosure in prospectus
- Abridged prospectus for renounceable rights issues
- Supplementary or replacement prospectus
- Consequences of approval of a supplementary or replacement prospectus
- Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements
- Restrictions in advertising
- Document containing offer of securities for purchase deemed to be a prospectus
- Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made
- Consent from person to issue of prospectus containing statement by him
- Stop order
- Criminal liability for false statements, in prospectus
- Persons not to be taken to have authorized or caused issue of prospectus
- Right to recover for loss or damage resulting from false or misleading Statement in prospectus
- Civil liability for misleading or deceptive acts
- Due diligence defence
- Reliance on statement and information in respect of false or misleading Statement
- Reliance on statement and information in respect of misleading or deceptive act
- Reliance on public official statement in respect of false and misleading statement



- Defence of withdrawal of consent
- Restriction on offering securities for subscription or purchase
- Agreements to exclude or restrict liability void

### *Debentures*

- Requirement for trust deed and trustee
- Form and contents of trust deeds
- Persons who can be trustees
- Existing trustee to continue to act until new trustee takes office
- Replacement of trustee
- Duties of the borrower
- Duty of borrower to replace trustee
- Duty of borrower to inform trustee about charge
- Duty of borrower to give trustee and Commission quarterly reports
- Duty of borrower to inform trustee and Commission of occurrence of material event
- Duty of borrower where prospectus states purpose or project for which monies are to be applied
- Obligations of directors of borrower to deliver financial statements
- Borrower to issue document evidencing indebtedness
- Duties of guarantors
- Obligations of directors of guarantor to deliver financial statements
- Duties of trustees
- Exemptions and indemnification of trustee from liability
- Indemnity of trustee
- Duty of auditor to trustee for debenture holders
- Duty of borrower to call a meeting
- Power of trustee to call a meeting
- Court may order a meeting of debenture holders
- Powers of Commission to protect interests of debenture holders
- General power of court to give directions and determine questions
- Specific power of the court
- Register of debenture holders
- Specific performance
- Perpetual debentures
- Reissue of redeemed debentures

## **PART V UNIT TRUST AND MANAGED INVESTMENT SCHEMES**

This part provides for Unit Trusts and managed investment schemes and their regulations. This part was drafted as a result of the experiences the Securities Commission had faced in the past regarding the Pacific Balance Fund (PBF) issues. These provisions were drafted so that similar incidents never happen again. The following are the summary of this Part-

- Registration of managed investment or unit trust schemes
- Establishing or operating a unit trust or managed investment scheme
- Applying for registration
- Registration of unit trust or a managed investment scheme
- The Trustee
- Responsibilities and powers
- Changing the Trustee
- Consequences of change of Trustee
- Trust Deed
- Approval and Registration of the Trust Deed
- Meetings of members of registered unit trust or registered managed Investment schemes
- Who may call meetings of members
- How to call meetings of members
- Members' rights to put resolutions at meetings of members
- Holding meetings of members
- Proxies and body corporate representatives
- Voting at meetings of members
- Minutes and members' access to minutes
- Register of Unit of Holders of Members
- Members' rights to withdraw from a scheme
- Effect of contraventions (civil liability and voidable contracts)
- Winding up
- Deregistration
- Exemptions and modifications

## **PART VI TAKE-OVERS AND MERGERS**

This part provides for the formulations of the Takeovers and Mergers Code, the takeovers process and compulsory acquisitions. This part was drafted as result of many challenges faced by the Commission through or during a number of takeovers, including Lihir Gold Limited by Newcrest Mining, Ramu Agri Industries by NBPOL, NBPOL by Kulim, NBPOL by Sime Darby and Airlines of PNG by MRCD and NASFUND, among others. The following are the summary of this Part-0

- Takeovers Code
- Compliance with Code and rulings
- Exemptions
- Enforcement for non-compliance
- Compulsory Acquisition
- Right of minority shareholder
- Other general provisions

## **PART VII MARKET MISCONDUCT AND OTHER PROHIBITED CONDUCT**

This part provides for market misconduct by market players, intermediaries and participants. The following are summary of provisions under this –Part-

- Prohibited Conduct – Securities
- Insider trading
- Prohibited Conduct – Derivatives
- Civil remedies

## **PART VIII MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET**

This provide for provisions where the issues of systemic risk on the market is addressed. This part provides for the powers of the Commission to intervene on the market should there arise issues or risks that may lead to a financial crises similar to the 2008 global financial crisis. The following are the summary of the provisions of this Part-

- Interpretation
- Information for purpose of systemic risk
- Power of Commission to issue directive for systemic risk
- Arrangements with other supervisory authorities

## **PART IX COMPENSATION FUND AND FIDELITY FUND**

This part provides for the establishment of a compensation fund and a fidelity fund. The funds are basically to set up to compensate investors if they suffer a loss on their investments as a result of a license holder (a broker or fund manager). The compensation fund is a fund established to be contributed by holders of license issued by the Commission to trade on the Port Moresby Stock Exchange to mitigate or compensate investors who may loss their investments as a result conducts of license holders. The fidelity fund is contributed by licensed affiliate of a derivatives market to compensate any person who suffers from the conduct of the licensed affiliates.

The following are the summary of the provisions of this Part-

### *Compensation Fund*

- Establishment of compensation fund
- Monies constituting compensation fund
- Compensation fund to be kept in separate account
- Payments out of compensation fund
- Other general provisions

### *Fidelity Fund*

- Establishment of fidelity fund
- Monies constituting fidelity fund
- Fidelity fund to be kept in separate account
- Payments out of fidelity fund
- Other general provisions

## **PART X      DISCLOSURE OF INTEREST BY CEO AND DIRECTORS OF LISTED CORPORATIONS**

This part provides for the disclosure of interest in securities and derivatives by the Chief Executive Officer, senior managers and directors of listed corporations. This is to avoid conflict of interests, insider trading and other fraudulent activities by the senior officers of listed companies. The following are the summary of provisions of this Part-

- Duty of chief executive and directors of listed corporation to disclose interests in securities
- Disclosure of interests and dealings in interests in relation to specified derivatives
- Prohibited conduct of director or officer of a listed corporation
- Disqualification of Chief Executive or director of listed corporations
- Submission of information
- Duties of auditor of listed corporations
- False or misleading financial statements of a listed corporation
- Protection for persons against retaliation for reporting
- Other general provisions

## **PART XI      DISCLOSURE OF INFORMATION**

This part provides for the disclosure of information by securities holders to the Commission. It also provides provisions for the Commission require books and information from license holders, auditors and others. The following are the summary of the proposed provisions of this Part-

- Power of Commission to require production of books
- Offences
- Power to specify form and manner of submission
- Privileges
- Disclosure to Commission
- Disclosure of information relating to dealing in securities or trading in derivatives

## **PART XII DISCLOSURE OF SUBSTANTIAL SECURITIES HOLDING**

This part provides for the disclosure of substantial shareholding by securities holders. This disclosure is made by security holders to the Commission when there is an increase or decrease of more than 1% of the securities interests they have in a particular class of securities. This is avoid instance of insider trading and market fraud by securities holders. The following provides for the summary of this Part-

- Meaning of substantial securities holder, substantial holding, and percentage
- Tracing and disclosure of interests in listed corporations
- Relevant interests in Securities (basic rule)
- Extension of basic rule to powers or controls
- Extension of basic rule to interests held by other persons under control or acting jointly
  
- Situations not giving rise to relevant interests

## **PART XIII SELF-REGULATORY ORGANIZATIONS**

This part provisions for the duties and functions of a self regulatory organisation. This provides for provisions of licensed by the Commission of entities such as the Port Moresby Stock Exchange to regulate themselves. The following provisions provides the summary of this Part-

- Recognition of a self-regulatory organization
- Duties of a recognized self-regulatory organization
- Rules of a recognized self-regulatory organization
- Appointment of directors of a recognized self-regulatory organization
- Powers to issue directions to a recognized self-regulatory organization
- Withdrawal of recognition
- Protection for a recognized self-regulatory organization
- Provision of assistance to Commission

## **PART XIV CAPITAL MARKET DEVELOPMENT FUND**

This part provides for the establishment of a capital market development fund. This fund is established for a very specific purpose. Its objective is to educate the general population on the capital markets, its establishment, the market infrastructure, how to participate in the stock market and the like. It will be targeting all Universities in Papua New Guinea and other educational learning institutions. The following is the summary of this Part-

- Establishment of Capital Market Development Fund
- Objectives of the Fund

- Board of the fund and its powers and functions.

## **PART XV ADMINISTRATIVE AND CIVIL ACTIONS**

This part provides for specific administration decision making powers of the Commission. The following are the summary of this Part-

- Powers of Commission to take action
- Power of Commission to take action against a derivatives exchange or approved clearing house
- Powers concerning compliance with conditions of license
- Civil liability of person in contravention of the securities laws
- Commission may recover loss or damage
- Reference to conduct
- Power of Court to make certain orders
- Application for winding up

## **PART XVI GENERAL**

This part provides for the general provisions. The following are the summary of this Part-

- Prohibition of use of certain titles
- Application by aggrieved person for review
- Time for application for review
- Decision of Minister to be final
- Offences by bodies of persons and by employees and agents
- Falsification of records
- False reports to Commission, exchange or approved clearing house
- General penalty
- Compounding of offences
- Convicted persons liable to pay compensation
- Conduct of prosecution
- Indemnity
- Guidelines and practice notes of Commission
- Power to make regulations
- Power to enter into arrangements
- Settlement of disputes
- Power to amend Schedules

## ***Schedules***

The following schedules compliment and expound on the provisions of the proposed bill.

Schedule 1	Exempted Stock Market and Exempted Derivatives Market.
Schedule 2	Regulated Activities
Schedule 3	Specified Persons
Schedule 4	Registered Persons
Schedule 5	Proposal not required approval
Schedule 6	Excluded Offers or Excluded Invitation
Schedule 7	Excluded Issues
Schedule 8	Debenture Issues
Schedule 9	Debenture Issues
Schedule 10	Powers to mark Regulations

## ***Conclusion***

Papua New Guineans deserve to meaningfully participate in the economic activities of this country. This is reflected in the overarching policy framework of the Vision 2050. The intended reforms under this law will ensure that the many of our people can be able to participate in the buying and selling of their shares on the market.

It also gives an opportunity of many small to medium businesses to raise long term finances through the stock market as opposed to the current short term bank loans.