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Investment Funds

Papua New Guinea
Leahy Lewin Lowing Sullivan Lawyers

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Law and Practice

Contributed by Leahy Lewin Lowing Sullivan Lawyers

Contents

Leahy Lewin Lowing Sullivan Lawyers is an independent commercial law firm that advises the government and a wide range of investors and institutions in Papua New Guinea (PNG). The firm, which has its office in Port Moresby, commenced operations in 2003 and has agents and relationships with legal and accounting firms in various parts of the world. The firm's major areas of practice are aviation; banking and finance; competition and market regulation; construction and infrastructure projects; corporate and commercial advisory; employee relations; energy and resources; environment and planning; financial and commercial services, including superannuation; foreign investment in PNG; government law, including corporatisation and privatisation; insolvency and reconstruction; insurance, reinsurance and corporate risk; litigation and dispute resolution; property development, including hotels; shipping; taxation, including stamp duty and goods and services tax.

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Michael Sullivan is a partner whose main areas of practice are oil and gas, mining, securities, public companies and banking and finance. His work has included the negotiating, drafting and settling of complex documents used in the oil and gas industry. Michael has worked extensively with the Bank of Papua New Guinea and a variety of other financial institutions and on every major oil and gas project in PNG over the last fifteen years. He is a member of the International Bar Association, the Law Society of New South Wales, the Law Society of England & Wales, and the Law Society of Papua New Guinea. Prior to joining the firm, Michael spent 12 years working as General Counsel and Group Secretary for Oil Search Limited, the largest oil and gas company in Papua New Guinea, and twelve months with Lihir Gold Limited as its General Cousel. He has a Master of Laws degree from the University of Sydney and is currently completing a Master's degree in accounting and international finance at Deakin University. He is President of the PNG European Union Business Council and he is the manufacturers' representative on PNG's peak science and technology body, the Science and Technology Council.

1. Fund Formation

1.1 Formation of Investment Funds

To date, Papua New Guinea (PNG) has not been frequently used by advisers and managers for the formation of investment funds.

There are few investment fund-type opportunities for investors in PNG other than one open-ended investment fund (Pacific Balance Fund (PBF)) and one closed-end fund (Kina Asset Management Limited Fund (KAML)).

The absence of more of these funds in PNG is a significant gap in the investment landscape and means that most retail and corporate investors have access only to equities, term deposits and government bonds.

PBF is an open-ended unit trust with assets of about PGK530 million, currently managed by Melanesian Trustees Services Limited (MTSL). PBF was set up in 1973 within the public sector, but its administration was passed to a private sector entity, MTSL, in 2002 in order to better safeguard the interests of unit-holders. As at December 2016, PBF held PGK381 million in financial assets, of which almost all (PGK380 million) was held in unlisted equities of a wide range of well-known and consolidated PNG businesses. PBF also held PGK57 million in cash and deposits and loans to PNG corporates of PGK70 million. Currently, all trades in PBF units have been suspended pending resolution of outstanding queries from the Securities Commission of PNG (Securities Commission) concerning dividend payments for prior years. PBF has stopped accepting contributions from new members and will not resume doing so until those issues are resolved.

KAML is a listed investment company. KAML administers assets of PGK63 million, including PGK50 million in financial investments and its focus is equity investments (36% domestic, 64% international at December 2017). At the same date, KAML also held about PGK2 million in government inscribed stock (GIS) and PGK12 million in cash and term deposits. KAML is closed to new investors, who can only participate (or exit) through secondary market purchases on the Port Moresby Stock Exchange (POMSOX).

1.2 Raising Capital from Investors

Traditionally, PNG has not been used for the raising of capital from international investors. Domestically, capital has been provided by 'plain vanilla' lending by local banks. In addition, some capital has been raised in PNG through POMSOX (there are 14 listed companies with an estimated market capitalisation of approximately PGK50 billion).

The national government raises considerable capital through the use of treasury bills and GIS. PNG government domestic bonds of approximately PGK17.4 billion were in circulation as at December 2017 made up of short-term government treasury bills and longer-term GIS. The largest holders of these government securities are the commercial banks, superannuation funds and the central bank – Bank of Papua New Guinea (BPNG) – itself. There is no secondary market and investors generally hold to maturity.

There are four licensed superannuation funds in PNG, holding assets as at December 2017 of PGK12.3 billion (USD3.7 billion). Saving for retirement is compulsory for employees of companies with more than 15 persons, with contributions from employees (6% of salary) and from employers (8.4 %). Two funds dominate the industry – Nambawan Super and Nasfund – with combined assets of over PGK11 billion, serving an aggregate 720,000 members. Each of the superannuation funds has its own strategic asset allocation policies and are presently focused on government debt, unlisted domestic equities and property.

There is no significant corporate debt market in PNG. One ten-year convertible note was issued by a local PNG bank in 2009 and no further private sector listed bonds have been issued since then. There is also no private placement market for private sector bonds.

There is no active interbank money market in PNG.

A technical assistance team from International Finance Corporation (IFC) visited PNG in July 2018 and again in December 2018 to consider actions necessary to promote a corporate debt market.

IFC also recommended that PNG initiate a separate market consultation on unit trusts, including calling a workshop with market intermediaries and fund managers on actions necessary to offer open ended funds or unit trusts.

1.3 Common Process for Setting Up Investment Funds

Given that there are only two managed funds (apart from Nambawan Super and Nasfund) in PNG currently, there is no 'common process' as such for setting up investment funds.

PBF is structured as a unit trust with a trust deed. A prospectus was also prepared and issued in connection with the initial offering of units in PBF. PBF is managed by a licensed funds manager, MTSL.

KAML is structured as a company with its shares quoted on POMSOX. A prospectus was prepared and issued in connection with the IPO of KAML shares. KAML is managed by its own inhouse team of investment managers.

1.4 Regulation of Fund Structures

PNG's two investment funds are managed from within PNG.

Currently, there is no restriction on an investment fund established in PNG being managed from outside PNG.

1.5 Limited Liability

PNG law recognises the concept of limited liability in relation to companies. As a general rule, a shareholder is not liable for the debts of the company and the shareholder's only liability is to pay the issue price of the shares which it holds. Accordingly, individuals who invest in a managed fund through a company will not be liable for the debts of that company, except to the extent that their shares are not fully paid.

1.6 Common Tax Regimes

There is no established pattern for the tax regime given the small number of investment funds in PNG. Apart from superannuation funds which have their own rules derived in part from their role in providing income security for retirees, the main regime specific to investment funds is that applying to unit trusts and property unit trusts respectively – please see greater detail in **5.1 Tax Framework**. Essentially, the regime provides for the 'unit trust' to be treated as if it were a company, albeit that the dividends are exempt in contrast to the position that applies to companies generally which are subject to a further layer of tax under the classical system of company taxation that operates in PNG.

1.7 Investment Sponsors

Traditionally, investors from Australia, New Zealand and the United Kingdom have been the largest investors in PNG. In recent years, however, investment from China and Malaysia has increased dramatically.

PNG is a member of the Melanesian Spearhead Group (MSG) of countries and one of MSG's aims is to promote trade and investment between group countries. MSG is an inter-governmental organisation, composed of the four Melanesian states of Fiji, PNG, Solomon Islands, Vanuatu and the Kanak and Socialist National Liberation Front of New Caledonia. In June 2015, Indonesia was recognised as an associate member.

PNG companies and individuals have relatively few investments outside PNG, other than housing. In recent years, however, two PNG companies – Oil Search Limited and Bank of South Pacific Limited – have invested heavily outside PNG; the former in oil and gas exploration and development in the Middle East and Alaska and the latter in banking and financial services in Asia and elsewhere in the Pacific.

1.8 Disclosure Requirements

Except as noted below, the initial disclosure requirement is the requirement to have a prospectus approved by the Securities Commission of Papua New Guinea (Securities Commission) and lodged with the Registrar of Companies. The prospectus must contain all information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of:

- the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme, of the scheme;
- the rights attaching to the securities; and
- the merits of investing in the securities and the extent of the risk involved in doing so (Capital Markets Act 2015 (CM Act), section 132).

A supplementary prospectus must be submitted to the Securities Commission for approval and registered with the Registrar of Companies where, after the prospectus has been approved but before the issue of securities, the issuer becomes aware that:

- a matter has arisen and information in respect of that matter would have been required to be disclosed at the time the prospectus was prepared;
- there has been a significant change affecting a matter disclosed in the prospectus;
- the prospectus contains a material statement or information which is false or misleading; and
- the prospectus contains a statement or information from which there is a material omission (CM Act, Section 134(1)).

A supplementary or replacement prospectus is regarded as replacing the prospectus previously registered under Section 129.

Where a supplementary prospectus has been approved by the Securities Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

There is no obligation to register a prospectus or a supplementary prospectus in respect of an offer or invitation to subscribe for or purchase securities (this term includes units in a unit trust scheme or prescribed investments and includes any right, option or interest in respect of units in a unit trust scheme or prescribed investments but does not include derivatives) where the offer or invitation qualifies as an excluded offer or excluded invitation (as described in the CM Act, Schedule 6) or for an issue of securities where the issue qualifies as an excluded issue (as described in the CM Act, Schedule 7) (CM Act, Section 127).

It would be possible to structure an investment fund so that it involved an excluded offer or invitation to subscribe for or purchase securities or an excluded issue of securities. In those circumstances, no prospectus would be required.

Where an offer, invitation or issue is an excluded offer or excluded invitation or excluded issue, this firm would expect an information memorandum to be issued in lieu of a prospectus. Currently, this information memorandum does not need to be approved by the Securities Commission or lodged with the Registrar of Companies.

1.9 Legal Forms

To date only one open-ended investment fund and one closed-end investment fund have been established in PNG. Legally, there is no reason why more open-ended funds or more closed-end funds may not be established in PNG. The PBF fund is structured as a unit trust. The KAML fund is structured as an investment company with its shares listed on POMSoX.

1.10 Regulatory Status

Investment funds are in their infancy in PNG. The CM Act is only newly enacted and there have been no applications for the approval of new investment funds since the CM Act came into force. The CM Act does not distinguish between open-ended funds and closed funds.

In these circumstances it is difficult to say what is the current regulatory status of investment funds in PNG.

For the time being at least, the Securities Commission seems likely to deal with investment funds in the same way as it would any other offer or invitation to subscribe for or purchase securities or any issue of securities, including units in a unit trust.

1.11 Legal, Regulatory or Tax Legislative Changes

The CM Act is poorly drafted and will likely require substantial amendment. None of the regulations that are supposed to support the CM Act have been made yet. Moreover, the Securities Commission has not issued any guidelines or practice notes.

Those matters will need to be addressed before the operation of the CM Act becomes completely clear.

2. Fund Investment

2.1 Types of Investors

There is definitely a market for investment funds in PNG.

A growing middle class has relatively few options regarding investment of its surplus funds. Currently, that money is generally placed on fixed term deposit with the local banks or invested in housing or vacant land (real property). Most Papua New Guineans do not hold shares and, as a result, trades on POMSOX only average about 50 trades per month. Managed investment funds would provide a much-needed investment alternative for middle class Papua New Guineans with surplus funds.

There is also a large expatriate work force in PNG that may also find local investment funds attractive.

Depending on the nature of the investment funds, PNG superannuation funds and corporations might also be persuaded to invest some of their funds.

Middle class individuals, however, are the most obvious potential investors.

2.2 Legal, Regulatory and Investment Structures

Currently, given the absence of any operating open-ended investment funds (PBF is an open-ended fund but trades have been suspended and are likely to remain suspended for some time), most individuals invest their surplus funds in real property or place the funds on fixed term deposit with the local banks.

The local banks invest their surplus funds in PNG government treasury bills and GIS and in direct purchases of shares in local and international companies. There is no corporate bond market.

2.3 Legal, Regulatory or Tax Themes/Issues

PNG is an under-regulated economy and regulatory impediments to investment are relatively few.

In recent years, a weak local currency (ie, the PNG kina or PGK), a country-wide shortage of foreign exchange and the imposition of strict foreign exchange controls have impeded investment outside PNG. Surplus funds must be invested locally and this has helped underpin the local property market.

Remittance of monies from PNG is subject to PNG's foreign exchange control and may require a tax clearance certificate.

A tax clearance certificate issued by PNG's Internal Revenue Commission is required for the transfer of any money from PNG to any of the following countries: Bahamas, Bermuda, British Channel Islands, British Virgin Islands, Cook Islands, Gibraltar, Grenada, Hong Kong, Isle of Man, Liberia, Liechtenstein, Luxembourg, Nauru, Netherlands Antilles, Norfolk Island, Panama, Switzerland, Tonga and Vanuatu.

Except as noted in the immediately preceding paragraph, a tax clearance certificate will only be required if a PNG resident wants to transfer from PNG to another country more than PGK500,000 in any calendar year.

As already noted, PNG is currently facing a serious shortage of foreign currency and, as a result, there is a waiting period for the commercial banks to convert PG kina to foreign currencies (particularly USD, GBP and AUD) and transfer those funds offshore. The larger the PG kina amount involved, the more difficult it is to convert and transfer the proceeds offshore.

There is no capital gains tax currently in PNG, with the result that capital gains made on the sale of most investments (including units in a unit trust and shares) are income tax free.

2.4 Restrictions on Investors

As noted above, PNG's current foreign exchange shortage and associated foreign exchange controls effectively restrict investment by PNG companies and individuals in investment funds located outside PNG.

This aside, however, there are no real restrictions on PNG investors investing in any type of investment fund. Lack of knowledge and limited opportunity are the main restrictions.

The small number of open-ended and closed-end funds currently operating here, coupled with a general lack of knowledge about how investment funds operate (including the risks and benefits of those funds), rather than the absence of a desire to do so, has resulted in very limited investment in investment funds in PNG.

PNG is a wealthy country with vast natural resources. As the middle class grows there will inevitably be an increased demand for investment alternatives, including managed investment funds.

2.5 Marketing Restrictions

The CM Act regulates both advertising (Advertising Restrictions) and other marketing activities (Marketing Restrictions) in relation to the subscription for and the purchasing and offering of securities. Those restrictions will apply to investment funds.

As already noted, the term 'securities' includes units in a unit trust scheme or prescribed investments, and includes any right, option or interest in respect of units in a unit trust scheme or prescribed investments, but does not include derivatives.

The Advertising Restrictions are not unduly onerous.

Subject to what is noted below, the advertising restrictions prohibit a person from publishing a 'notice (this term includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas) which (i) issues, or offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities and (ii) refers whether directly or indirectly to:

- a prospectus in respect of securities of a corporation (including a corporation yet to be formed);
- in the case of a unit trust scheme or a managed investment scheme (including a unit trust scheme or a managed investment scheme yet to be formed), a prospectus in respect of any unit of the unit trust scheme or a managed investment scheme as the case may be;
- an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; and
- another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities (CM Act, Section 137(1) and (2)).

The Advertising Restrictions do not apply to a notice that is issued or published before the approval of a prospectus (i) with the consent of the Securities Commission and subject to the terms and conditions as it may impose, and (ii) which does not contain any information or matter other than the following:

- the name of the issuer of securities;
- in the case of a unit trust scheme or a managed investment scheme, the name of the unit trust scheme managed investment, as the case may be;
- a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;
- the names, addresses and, where appropriate, occupations of the directors or proposed directors;
- the names and addresses of stockbrokers, underwriters and principal advisers in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- in the case of debentures, the name and address of the trustee for debenture holders;
- a brief description of the listing status of the corporation, unit trust scheme or a managed investment permission to list the corporation, unit trust scheme or a managed investment on any stock exchange or a managed investment will be listed;
- the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;
- in the case of a unit trust scheme or a managed investment, a description of the persons from whom the units are available for purchase or subscription; and
- other information or matters which the Securities Commission may specify in writing (CM Act, Section 137(4)).

Just as importantly, the Advertising Restrictions do not apply to a notice that is issued or published after the approval of a prospectus that:

- states that a prospectus in relation to any securities has been approved;
- specifies the date of the prospectus;
- specifies where a copy of the prospectus can be obtained;
- states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and
- states the other information or matters which the Securities Commission may specify in writing (CM Act, Section 137(5)).

The Advertising Restrictions also do not apply to a preliminary prospectus where certain prescribed and fairly obvious conditions are satisfied.

Further, the Advertising Restrictions do not apply to the issuing or publishing of all or any of the following reports:

- a report that relates to the affairs of a corporation, unit trust scheme or a managed investment that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or a managed investment;
- a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit-holders of a unit trust scheme or a managed investment where the body corporate, unit trust scheme or a managed investment is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting; and
- a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to (i) a prospectus that has been approved or information that is contained in this prospectus and (ii) a report referred to in the two previous paragraphs, if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:
  (a) the person making the report or comment;
  (b) an agent or employee of the person making the report or comment;
  (c) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; and
  (d) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published (CM Act, section 137(7)).
- Where it appears to the Securities Commission that a notice, preliminary prospectus or report (i) contravenes the Advertising Restrictions, (ii) contains a statement or information that is false or misleading, (iii) contains a statement or information from which there is a material omission, or (iv) contains a material misrepresentation, the Securities Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report: (i) direct the person to cease issuing or publishing the notice, preliminary prospectus or report, or (ii) direct the person to take other action as may be specified in the order (CM Act, Section 137(10)).

A person who (i) issues or publishes a notice in contravention of the Advertising Restrictions or the CM Act, Section 137(3) or (4), issues a preliminary prospectus in contravention of the CM Act, Section 137(6) or issues or publishes a report in contravention of the CM Act, Section 137(7), commits an offence and must be liable to a fine not exceeding PGK10 million or imprisonment for a term not exceeding ten years, or both (CM Act, Section 137(12)).

As noted above, the CM Act also imposes other Marketing Restrictions. Except as otherwise expressly provided in the CM Act, a person must not make an unsolicited:

- invitation to subscribe for or purchase any securities;
- offer for subscription or purchase of any securities; and
- recommendation of any securities (CM Act, Section 151(1)).

The Marketing Restrictions do not:

- prohibit a licensed person or any other person allowed in writing by the Securities Commission from making invitations or offers or recommendations (i) in relation to any securities which are listed on a stock market of a stock exchange within PNG or on a stock market of a securities exchange outside PNG which is approved by the Securities Commission and (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied: (a) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Securities Commission, in the twelve months before the making of the invitation or offer or recommendation, and (b) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Securities Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;

- prohibit a trustee from providing further information, notices or recommendations to existing unit-holders in relation to the investments of these unit-holders;

- prohibit a person allowed in writing by the Securities Commission from issuing these notices or recommendations relating to units in a unit trust scheme or managed investment scheme containing the information as may be allowed by the Securities Commission;
- prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with the CM Act;
- prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;
- apply to an invitation or offer to which the provisions of the Companies Act 1997 (Companies Act) apply; or
- apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the National Gazette.

A person who contravenes the Marketing Restrictions commits an offence and is liable to a fine not exceeding PGK10 million or imprisonment for a term not exceeding ten years, or both (CM Act, Section 151(6)).

3. Regulatory Environment

3.1 Regulatory Regime

In PNG, investment funds are regulated under the general provisions of the CM Act dealing with capital markets regulation (CM Act, Part III), the issue of securities (CM Act, Part IV) and unit trusts and managed investment schemes (CM Act, Part V).

There is no specific legislation regulating the establishment or management of or advice provided in respect of investment funds.

The CM Act came into force in January 2018 and replaces the Securities Act 1997.

Requirement for a Capital Markets Licence

A funds manager requires a licence to operate.

In particular, a person must not, whether as a principal or agent, carry on a business of (each a regulated activity) dealing in securities, trading in derivatives, fund management, advising on corporate finance, providing investment advice or financial planning, or hold himself out as carrying on this business unless he is the holder of a capital market licence (Capital Market Licence) or is a registered person (CM Act, Section 34).

A person is a registered person for the purposes of Section 34(1), where this person is

- specified to be a registered person under the CM Act, Schedule 4;
- registered under Section 52 (2) of the CM Act; or
- registered with a body that is approved by the Securities Commission (CM Act, Section 52(1)).

'Fund management' means undertaking on behalf of any other person or persons, whether on a discretionary authority granted by this person or persons or otherwise, the management of a portfolio of securities or derivatives (CM Act, Schedule 2, Part II, Item 3).

'Investment advice' means carrying on a business of advising others concerning securities or derivatives contracts or, as part of a business, issuing or promulgating analyses or reports concerning securities or derivatives (CM Act, Schedule 2, Part II, Item t).

Requirement for a Capital Market Representative's Licence

A person must not act as a representative in respect of a regulated activity or hold himself out as doing so unless he is the holder of a capital market representative's licence (Capital Market Representative's Licence) for that regulated activity or is a registered person with respect to that regulated activity (CM Act, Section 35).

A person who contravenes this requirement commits an offence and is liable to a fine not exceeding PGK5 million or imprisonment for a term not exceeding five years, or both (CM Act, Section 35).

Registration of Managed Investment or Unit Trust Schemes

A person must not establish or operate a unit trust or managed investment scheme unless (i) the person is a licensed trustee under the CM Act and appointed by the members or unit-holders of a managed investment scheme or a unit trust scheme to act as trustee of the scheme and (ii) the unit trust or managed investment scheme is approved and registered by the Securities Commission (CM Act, Section 184(1)).

A person who contravenes this restriction commits an offence and is liable to a fine not exceeding PGK10 million or imprisonment for a term not exceeding ten years, or both (CM Act, Section 184(2)).

For the purposes of the CM Act, 'managed investment scheme' means a scheme to which each of the following applies: (i) the purpose or effect of the scheme is to enable persons taking part in the scheme to contribute money, or to have money contributed on their behalf, to the scheme as consideration to acquire interests in the scheme; (ii) those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme, whether those rights are actual, prospective, or contingent, and whether they are enforceable or not; and (iii) the holders of those interests do not have day-to-day control over the operation of the scheme, whether or not they have the right to be consulted or to give directions, but does not include:

- a scheme under which each participant takes part in the scheme only by holding one or more interests in property if, in respect of each interest, (i) it is an interest in separately identifiable underlying property; and (ii) either the participant holds both the legal and beneficial interest in the property or the legal interest in the property is held on a bare trust for the participant; and (iii) the value of the interest is not substantially dependent on contributions being made by other participants or the use of other participants' contributions;
- a scheme that would be a managed investment scheme only because it involves pure risk contracts of insurance;
- a scheme that would be a managed investment scheme only because it involves life insurance policies under the Banking and Financial Institutions Act 2000; and
- a pure risk contract of insurance means a contract of insurance that does not, and never will, have a value on its cancellation or surrender that is greater than the sum of premiums paid to the insurer.

For the purposes of the CM Act, a 'unit trust scheme' means any arrangement made for the purpose of, or having the effect of, providing facilities for the participation by persons as beneficiaries under a trust on profits or income arising from the acquisition, holding, management, or disposal of:

- equities securities;
- debt securities;
- derivatives; or
- any other property.

To register a unit trust or managed investment scheme, a person must lodge an application with the Commission.

The application must state the name and the address of the registered office, of the proposed trustee of the unit trust or the managed investment scheme.

The following documents must be lodged with the application: a copy of the scheme's trust deed and a statement signed by the directors of the proposed trustee that the trust deed complies with Section 210 (Contents of Trust Deed) of the CM Act (CM Act, Section 185(2) – (3)).

The Securities Commission must register the scheme within 21 days of lodgment of the application, unless it appears to the Commission that:

- the application does not comply with Section 185 (Applying for Registration) of the CM Act;
- the proposed trustee does not meet the requirements of Section 189 (Trustee to be Responsible Entity) of the CM Act; or
- the scheme's trust deed does not meet the requirements of Section 210 (Contents of Trust Deed) of the CM Act (CM Act, Section 186).

A unit trust scheme or a managed investment scheme must be registered under Section 186 where:

- it has more than 20 members;
- it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting unit trust schemes or a managed investment scheme; or
- a determination under Section 187(2) is in force in relation to the scheme and the total number of members of all of the schemes to which the determination relates exceeds 20 members (CM Act, Section 187).

The Trustee

A person licensed as a trustee under the CM Act must be the principal responsible entity of a unit trust or a managed investment scheme.

The trustee of a registered scheme (that is, a managed investment scheme or a unit trust that is registered under Section 186 of the CM Act) must be a corporation that holds a Capital Market Licence authorising it to operate a unit trust or a managed investment scheme.

The trustee of a registered scheme must operate the scheme and perform the functions conferred on it by the scheme's trust deed and the CM Act. The trustee has power to appoint reasonably qualified persons as agents, or otherwise engage a person, or outsource to a person to perform specific functions for the scheme (CM Act, Section 190). The trustee must hold the scheme property in trust for the unit-holders or members. The trustee has certain statutory duties (CM Act, Section 191) which override any conflicting duty an officer or employee of the trustee has.

A trustee who contravenes any of the above requirements commits an offence and is liable to a fine not exceeding PGK10 million or imprisonment for a term not exceeding ten years, or both (CM Act, Section 191(4)).

The trustee must open and maintain a trust account or accounts for the scheme's assets and must maintain these trust account(s). The trustee must deposit the scheme's assets into the trust account not later than the next bank business day or another day as may be specified by the Securities Commission, following the day on which the holder receives the scheme's assets (CM Act, section 193(1) and (2)).

A trustee must not deal in securities for or on behalf of a member unless, to the extent that the trustee receives the assets:

- the trustee does so on the basis that the assets will be applied solely for specified purposes as provided for in the trust deed and in the best interest of the members;
- pending this application, the assets are deposited in the trust account by the next business day or another day as may be specified by the Securities Commission in a trust account maintained in accordance with this division; and
- a separate book entry must be recorded and maintained for each scheme by the trustee in accordance with this Act or any guidelines issued by the Securities Commission, in relation to scheme's assets.

Where a trustee contravenes this requirement, every director of the trustee is personally liable for a fine not exceeding PGK1 million or imprisonment for a term not exceeding five years, or both (CM Act, Section 194).

Register of Unit-holders or Members
Every trustee must keep a register of unit-holders or members of a scheme and enter into the register, in the case of a member (i) who is an individual, the name and address; or (ii) that is a corporation, the name, registered address and registration number of that corporation, if applicable.

The trustee must also enter into the register (i) the number of units held by each member, (ii) the date on which the name of each person was entered in the register as a member, (iii) the date on which any person ceased to be a member and (iv) any other relevant information or particulars of the member, for a period of seven years (CM Act, Section 250).

Member's Right to Withdraw from a Scheme
The trust deed may make provision for members to withdraw from the scheme, wholly or partly, at any time while the scheme is liquid or not liquid (CM Act, Sections 251 – 252).

The trustee must not allow a member to withdraw from the scheme, if the scheme is (i) liquid, otherwise than in accordance with the trust deed; or (ii) not liquid, otherwise than in accordance with the trust deed and Sections 258 – 261 of the CM Act (CM Act, Section 253).

A registered scheme is liquid if liquid assets account for at least 80% of the value of scheme property. The following are liquid assets, unless it is proved that the trustee cannot reasonably expect to realise them within the period specified in the constitution for satisfying withdrawal requests while the scheme is liquid:

- money in an account or on deposit with a bank;
- bank accepted bills;
- marketable securities; and
- property of a prescribed kind.

Any other property is a liquid asset if the trustee reasonably expects that the property can be realised for its market value within the period specified in the trust deed for satisfying withdrawal requests while the scheme is liquid (CM Act, Section 257).

Deregistration and Winding Up
The trustee of a registered scheme may lodge an application for deregistration of the scheme with the Securities Commission. The trustee may only apply where:

- the scheme (i) has 20 or fewer members (calculated in accordance with Section 187(4) of the CM Act) and all the members agree that the scheme should be deregistered, and (ii) is not required to be registered by Section 187(1)(b) or (c) of the CM Act; or
- because of Section 187(2) of the CM Act, the scheme is not required to be registered and all the members agree that the scheme should be deregistered; or
- the scheme is not a managed investment scheme (CM Act, Section 271).

The Securities Commission may also decide to deregister a registered scheme in certain prescribed circumstances (CM Act, Section 272(1)).

The Securities Commission may reinstate the registration of a unit trust or managed investment scheme if the Commission is satisfied that the scheme should not have been deregistered or if the defect that led to the scheme being deregistered has been remedied (CM Act, Section 273).

3.2 Territorial Reach of Regulators
As a general rule and, subject to various qualifications, PNG legislation (including the powers of a regulator under that legislation) does not extend beyond PNG (Interpretation Act, Section 2A).

The CM Act, however, contains a number of provisions that, arguably, extend the territorial reach of the Securities Commission beyond PNG.

For example, Section 116(3) of the CM Act provides that: "A person who proposes to make available, offer for subscription or purchase or issue an invitation to subscribe for or purchase, outside PNG, securities of a public company or listed corporation, or to list such securities on a securities exchange outside PNG [this firm's emphasis] must seek the approval of the Securities Commission under Part IV Division 4 of the CM Act."

The better view is that this requirement only applies to a person who, in PNG, proposes to make available or offer for subscription or purchase outside PNG securities.

3.3 Regulatory Approval

Subject to what is noted in **3.4 Authorisation of Marketing Activities**, the marketing of investment funds does not of itself require regulatory approval in PNG.

3.4 Authorisation of Marketing Activities

Where the marketing is carried on in PNG by a foreign enterprise or its representative or agent, then the foreign enterprise may be treated as carrying on business in PNG, in which case the foreign enterprise will need to be certified under the Investment Promotion Act 1992 to carry on business in PNG.

Where the marketing in PNG involves, whether as principal or agent, (i) soliciting offers to acquire, dispose of, subscribe for or underwrite securities; or (ii) making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise entering into, or taking an assignment of, derivatives, whether or not on another person's behalf, then this may constitute a regulated activity for which a Capital Market Licence or a Capital Market Representative's Licence is required.

3.5 Investor-Protection Rules

Currently, there are no investor-protection rules which restrict ownership of fund interests to certain classes of investor.

3.6 Approach of the Regulator

The Securities Commission is generally co-operative and open to discuss regulatory questions.

Having said that, the Securities Commission is very much under-staffed and the staff which it does employ often have a very limited understanding of and experience with capital markets transactions. This can make meaningful interaction with the Securities Commission difficult.

In recent times, this lack of experience has been compounded by a dispute between two individuals who both claim to be the Securities Commissioner. This dispute has distracted the Securities Commission's staff from their main task of supervising and regulating capital markets in PNG.

The CM Act specifically authorises the Securities Commission to issue guidelines and practice notes (CM Act, Section 466(1)). To date, however, the Securities Commission has published very limited guidance only on regulatory matters and no practice notes.

The Securities Commission does not have a history of enforcement and tends to reject what it does not understand or have previous experience with.

4. Fund Finance

4.1 Access to Fund Finance

Currently, there are no specific restrictions in PNG on investment funds accessing fund financing for subscription financing and/or leverage.

Given, however, that only two investment funds operate in PNG currently and the general lack of knowledge concerning investment funds, banks and other sources of finance are likely to look very closely at and take their time to assess any applications by an investment fund for finance.

4.2 Borrowing Restrictions/Requirements

The marketing of investment funds does not of itself require regulatory approval in PNG.

4.3 Securing Finance

Where the marketing is carried on in PNG by a foreign enterprise or its representative or agent, then the foreign enterprise may be treated as carrying on business in PNG, in which case the foreign enterprise will need to be certified under the Investment Promotion Act 1992 to carry on business in PNG.

Where the marketing in PNG involves, whether as principal or agent, (i) soliciting offers to acquire, dispose of, subscribe for or underwrite securities; or (ii) making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise entering into, or taking an assignment of, derivatives, whether or not on another person's behalf, then this may constitute a regulated activity for which a Capital Market Licence or a Capital Market Representative's Licence is required.

4.4 Common Issues in Relation to Fund Finance

Currently, there are no investor-protection rules which restrict ownership of fund interests to certain classes of investor.

5. Tax Environment

5.1 Tax Framework

The main options from a taxation perspective when considering establishing an investment fund are as follows:

- a traditional 'common law' trust;
- a 'unit trust' as defined in the Income Tax Act 1959 (Tax Act); and
- a 'property unit trust' as defined in the Tax Act.

PNG has onerous rules applying to trusts, which explains why they are rarely used as a vehicle for carrying on business or investment activities. There are concessional taxation arrangements applying to certain unit trusts. Extreme care is required to ensure that any trust qualifies as a unit trust and the definitions are very restrictive. Outlined below are the rules applying to ordinary trusts, followed by the rules for qualifying unit trusts.

Taxation of Ordinary Trusts

PNG has specific rules dealing with the taxation of trust income. These rules are contained in Division III 6 of the Tax Act. Under Section 130 the trustee of a PNG resident trust is liable to pay income tax on the net income of the trust. The current rate of income tax is 30% of the trust's net income.

Resident beneficiaries of a resident trust estate are taxable on amounts derived by them from the trust, less the amount of taxes paid by the trustee. Resident beneficiaries of a resident trust estate are also taxable on undistributed income of the trust to which they are presently entitled. This means, in effect, income of trusts in PNG is subject to a taxation system with the income being taxed at the trust level even though the trustee has no beneficial interest in the income and again when the income is distributed to the beneficiaries.

Where a beneficiary is taxed on income to which they are presently entitled, the Act appears to contemplate that this income is not distributed and Section 133 of the Tax Act potentially gives a tax credit in respect of the tax paid by the trustee. However, assuming there is a difference between present entitlement and distribution of the income, the credit does not completely eliminate this form of double taxation.

In the case of a resident beneficiary who is presently entitled to income, the trustee is taxed on the net income of say 100, at 30% and the beneficiary is taxed at their marginal rate on their share of the pre-tax income of 100. The beneficiary is then also taxed on their share of the after-tax income of the trust. The credit for the trustee's tax reflects the nil tax position which would apply if the trustee were assessed at the highest marginal rate which is the basis upon which the provisions were originally drafted. The beneficiary is then taxed on the after-tax income at their marginal rate. Assuming a beneficiary is on the highest marginal rate, the potential tax cost is 79.9% (100 x 47% plus 70 x 47%).

This can be contrasted with the position where there is no beneficiary presently entitled to the income in one year and the income is distributed to a beneficiary in the following year. In this case, the trustee is assessed at the rate of 30% on the net income of the trust in the year the income is derived and the beneficiary is assessed on 70 in the following year. Assuming a beneficiary is on the highest marginal rate the potential tax cost is 59.4% (100 x 30% plus 70 x 42%).

It follows, where beneficiaries are residents, it is more tax effective for all trust income to remain in the trust with no beneficiary presently entitled to it and for the income to be distributed in a subsequent year. Nevertheless, it appears the overall tax cost on income distributed to a resident beneficiary who is on the top marginal rate will be at least 59.4%, which has made the use of a trust unattractive as a vehicle for income splitting in the context of resident beneficiaries.

The taxation of income distributed to a non-resident beneficiary is more favourable. Non-resident beneficiaries of a resident trust estate are also taxable on amounts distributed to them from the trust and undistributed income of the trust to which they are presently entitled. In both cases, the trustee is liable to pay tax at the rate of 10%. Where tax has been paid by the trustee at the time the beneficiary is presently entitled to a share of the net income of the trust, the trustee is not liable to any further taxation when the income is actually distributed to the beneficiary.

The position is unlikely to be assisted by establishing a trust offshore.

PNG law contains a presumption that all trusts are resident in PNG unless certain conditions are satisfied. These are contained in Section 129(2) of the Tax Act, which provides that:

"A trust estate shall be deemed to be resident in the country unless evidence, to the satisfaction of the Commissioner General, is produced that:

- the general administration of the trust estate is ordinarily carried on outside the country;
- the trustees or a majority of them, during the whole of the year of income, are not resident or ordinarily resident in the country;
- the settlor was not, at the time of the creation of the trust, or where the trust arose by testamentary disposition or intestacy or partial intestacy, the person upon whose death the trust arose was not at the date of his death, domiciled or resident or ordinarily resident in the country;
- the beneficiaries or a majority of them are not domiciled or resident or ordinarily resident in the country; and
- in all years of income, more than 50% of the income of the trust estate was derived from sources outside the country."

The effect of Section 129(2) is that all trusts, wherever created, are deemed to be resident in PNG unless they satisfy all of the five conditions in the Subsection. Although it would be possible to establish the trust outside PNG, it seems likely that the trust would be treated as a PNG resident. Thus, a trust established outside PNG, even if it could be argued it was not a PNG resident trust at the time it was established, is likely at some time to become a PNG resident trust and if the trust became a resident as a result of failing the income test, it would remain a PNG resident trust whether or not it subsequently complies with the five conditions. The rules outlined above would therefore apply to it.

Qualifying unit trusts are not subject to the onerous taxation applying to ordinary trusts described above.

In summary, the income tax position of a qualifying unit trust is as follows.

- A qualifying unit trust is essentially taxed in the same manner as a company.
- The tax rate applying to the income of a qualifying unit trust is 30%.
- Interest income received by a qualifying unit trust is subject to interest withholding tax of 15%. As with dividend income, this withholding tax can be claimed as a credit against the 30% income tax payable by the trust.
- Where tax credits in respect of dividend or interest withholding tax are not fully utilised in a particular year they can be carried forward for use in future years or can be refunded to the trust or offset against other liabilities.
- Where a qualifying unit trust acquires an asset as a long-term investment any profits on the eventual sale of the asset will be free from tax.
- Where a qualifying unit trust acquires an investment with the intention of making a profit in the short term on the sale of the investment any profit made on disposal will be subject to tax.
- Losses incurred by a qualifying unit trust in one year can be carried forward and recouped against income derived in any of the following 20 years.

For a qualifying unit trust the income is only subject to tax once at the rate of 30%, when earned by the trust. No further tax is payable on distribution to the investor.

The above tax concession means that it would generally be advantageous for a unit trust established as an investment vehicle to satisfy the qualifying unit trust criteria.

For PNG income tax purposes, there are effectively two types of unit trust, a qualifying unit trust which is eligible for a concessional tax regime and a non-qualifying unit trust which is not eligible for any tax concessions and is taxed in the same manner as a normal trust.

The criteria which must be satisfied before a unit trust can be classified as a qualifying unit trust relating to the investments the unit trust can hold, the dispersal of ownership of units and the ability of unit-holders to exit the trust.

What is a Qualifying Unit Trust?
A qualifying unit trust is defined in the Income Tax Act as follows:

Unit trust means an inter vivos trust where the interest of each beneficiary under which is described by reference to units of the trust, and issued units of the trust include (i) units having conditions attached thereto that include conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid; or (ii) units qualified in accordance with the prescribed conditions relating to the redemption of units by the trust, and the fair market value of the units which have conditions attached thereto that include these conditions or are so qualified, as the case may be, is not less than 95% the fair market value of all the issued units for the trust (determined without any regard to any voting rights attaching to units of the trust); and throughout the relevant year, the trust complied with the following conditions:

- it was resident in PNG;
- its only undertaking was the investing of funds of the trust;
- at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one company or debtor other than the government of PNG; and
- where there were prescribed for the purposes of this definition conditions relating to the number of its unit-holders, dispersal of ownership of its units or public trading of its units all holdings of and transactions in its units accorded with those conditions.

The prescribed regulations which are referred to in the final listed point above with regard to ownership of units in the trust (the Wide Ownership Test) are as follows.

A trust must be deemed not to be a qualifying unit trust if at any time during the year of income (i) 25 or fewer persons in number held or had the right to acquire or become the holders of, a unit or units in the unit trust that entitled the holders thereof to more than 75% of (a) the beneficial interests in the income of the unit trust or (b) the beneficial interests in the property of the unit trust; or (ii) any one person held or had the right to acquire or became the holder of, a unit or units in the unit trust that entitled the holder thereof to more than 20% of:

- the beneficial interests in the income of the unit trust;
- the beneficial interests in the property of the unit trust;
- more than 75% of the total of moneys paid or credited by the trustee of the unit trust during the year of income was paid or credited to 24 or fewer in number of persons as unit-holders;
- more than 20% of the total of moneys paid or credited by the trustee of the unit trust during the year of income was paid or credited to any one person as unit-holder; or

- there are provisions which prevent a unit trust from qualifying if the rules of the trust can be varied to circumvent the restrictions described above.

In addition to the above conditions, the trust must satisfy the following: units in the trust are held by at least 50 persons and (i) the units of the trust were listed for quotation on the official list of a stock exchange or (ii) the units in the unit trust were offered to the public.

For the purposes of this condition, units in the unit trust will be taken to be offered to the public only if (i) the offer is made to the public in PNG to subscribe for or purchase the units, or (ii) the invitation is issued to the public in PNG to make offers to subscribe for or purchase the units.

There are provisions to treat relatives as one person. The Commissioner has a discretion to treat a unit trust as qualifying even though the above conditions (both those relating to diversity of investment and 'wide ownership test' are not satisfied). This discretion requires the Commissioner to have regard to (i) the length of period, or the aggregate of the lengths of periods the trust failed to comply with the preceding conditions; or (ii) any other matters the Chief Collector considers relevant.

Condition (i) is intended to address short-term non–qualifying circumstances; for example, during the period following establishment while the trust builds its investor base or builds the required diversity in its investment portfolio.

There is little in the way of precedent or guidelines to assist in how (ii) might be applied in practice.

There is another type of qualifying unit trust termed a property unit trust. The criteria for a property unit trust are the same as that outlined above except the third condition is replaced by the following: funds invested by the trust must be at least PGK10 million at any time and not less than 80% of funds should be invested in real property.

5.2 Tax Treaty Network

PNG has tax treaties as set out in the following table:

TREATIES	PNG Domestic law	Malaysia	Australia	Canada	China	Fiji	Germany	Singapore	South Korea	UK
Corporate tax rate for resident	30%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Corporate tax rates for non-residents	48%	30%	48%	48%	48%	48%	48%	30%	48%	43%
Foreign contractor withholding tax	12%	7.5%	12%	12%	12%	12%	12%	7.5%	12%	10.75%
Dividends	15%	15%	17%	17%	15%	17%	15%	15%	15%	17%
Interest	15%	15%	10%	10%	10%	10%	10%	10%	10%	10%
Technical fees	12%	10%	N/A	N/A	N/A	15%	10%	10%	10%	10%
Management fees	17%	10%	Nil(a)	Nil(a)	Nil(a)	15%	10%	N/A	Nil(a)	Nil(a)
Royalty	Where paid to an associate – 30%; and where paid to non-associate – lesser of 10% of assessable income or 48% of taxable income.	10%	10%	10%	10%	15%	10%	10%	10%	10%

In a nutshell, with the reduction from 1 January 2017 of the rate of dividend withholding tax under the domestic law to 15%, the treaties (which provide a cap of 15%) do not impact on the rate in a practical sense. Whether tax has been paid at the corporate level has no effect on dividend withholding tax and no deduction is allowed for dividends paid; in other words, it is a classical system and neither an integrated system nor an imputation system.

In the case of interest withholding tax, however, the rate under the domestic law is 15% but capped under tax treaties at 10%.

5.3 FATCA and CRS Regimes

FATCA is US legislation and therefore does not apply in PNG from a PNG law perspective. Corporations subject to US law should seek US law advice. It is, however, noted that the four banks licensed as such in PNG (Australia and New Zealand Banking Group (PNG) Ltd), Bank of South Pacific Ltd, Kina Bank Limited and Westpac–PNG Ltd each have approved FATCA registration as does one licensed financial institution, First Investment Finance Ltd, as per the FATCA website as at 25 January 2019.

As regards CRS, PNG is not a signatory to the Organisation for Economic Co-operation and Development-sponsored multilateral competent authority agreement on automatic exchange of financial account information as of 29 October 2018. Therefore, the CRS requirements do not apply to PNG, although of course there are competent authority exchange of information arrangements among the tax treaty network, as identified above.

5.4 Tax Structuring Preferences of Investors

PNG does not have a capital gains tax, so the potential for a 'common law' trust to make a distribution of capital which retains that character, and therefore is not subject to tax in the investor's hands, exists. However, for other reasons described in some detail in **5.1 Tax Framework**, these common law trusts are not widely used in PNG as investment vehicles.

The position is different, however, for an investor who is trading in investments or acquires investments for the purpose of resale at a profit, in which case it is likely that the distribution would be subject to tax irrespective of its character, in the hands of the trust.

The specific legislation related to unit trusts and property unit trusts provides for distributions of any kind to be free of tax so the character of the distribution from the point of view of the trust is not material from the investor's point of view.

6. Miscellaneous

6.1 Asset Management Industry Bodies

Currently, there are no asset management industry bodies operating in PNG.

6.2 Preference for Courts or Arbitration

Given that only two investment funds currently operate in PNG, there is a very limited reference point for discussing the dispute resolution provisions in fund documents.

There is currently no restriction in PNG on how disputes in relation to fund documents are resolved.

In PNG, contractual disputes have generally been referred to the courts. Arbitration has been used but is often just as expensive and time consuming (if not more so) than litigation in the courts.

Expert determination is an increasingly common means of resolving contractual disputes in PNG.

6.3 Level of Litigation/Arbitration

This firm is not aware of any litigation concerning either of the two investment funds currently operating in PNG.

Recently, however, the Securities Commission expressed severe dissatisfaction with the operations of PBF and this may lead to litigation in future.

6.4 Periodic Reporting Requirements

Investment funds, the shares in which are quoted on POMSOX, must comply with the POMSOX listing rules.

The listing rules include continuous disclosure (POMSOX Listing Rules, Chapter 3) and periodic reporting requirements (POMSOX Listing Rules, Chapter 4).

Periodic disclosure is made to POMSOX. If the Companies Act 1997 applies, and an entity (in the case of a trust, the management company) lodges financial statements with the Registrar of Companies, the same documents must also be given to POMSOX no later than the time that the documents are lodged with the Registrar of Companies.

POMSOX requires an annual report to be sent to holders or ordinary securities and preference securities.

Following the end of the half year of an entity, the entity (in the case of a unit trust, the management company) must complete Appendix 4B and give it to POMSOX. A management company must complete Appendix 4B with any necessary adaptation. The financial statements on which Appendix 4B is based must be audited or subject to review. This may be completed after Appendix 4B is given to POMSOX.

Within 14 days after the end of each month, an investment entity (the term of which includes a managed investment fund) must tell POMSOX the net tangible asset backing of its quoted securities (POMSOX Listing Rules Listing Rule 4.12).

6.5 Powers of Attorney

Investors in PNG may give powers of attorney in favour of fund managers. Currently, there are no limitations on this.

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