

ASX: BFL | PNGX: BSP

13 July 2021

## Response to Bank of Papua New Guinea media release dated 12 July 2021

BSP Financial Group Limited (**BFL**) provides information supplementing its previous announcement dated 18 June 2021 regarding regulatory matters. BFL has received correspondence from the Financial Analysis and Supervision Unit (**FASU**) concerning anti-money laundering (**AML**) allegations made against BFL. BFL is also aware that FASU issued the attached media release entitled "Regulatory Action Against the Bank of South Pacific" on 12 July 2021 (**FASU Media Release**).

Both the additional correspondence from FASU, and the FASU Media Release, refer to 3 sanctions imposed by FASU on BFL, which are as follows:

1. Issue by FASU of a formal warning to BFL based on FASU's belief that BFL has contravened Papua New Guinea's AML laws. The formal warning also directs BFL to undertake remedial action, namely training, updating of BFL's AML/CTF policy and enhanced customer due diligence where required.
2. A notice that requires BFL to appoint an external auditor to conduct an independent audit of BFL's risk assessment and AML / CTF program, and to report on this to FASU. This appointment is to occur within 21 days and to continue for an initial 6 month period, with cessation to be dependent on progress made towards compliance with AML laws.
3. A request that BFL commence the process to replace the Group Chief Executive Officer.

BFL remains of the view that it has at all times complied with its AML/CTF obligations. BFL will consider its legal options in relation to the sanctions which have been imposed. However BFL notes that FASU has not sought to impose financial penalties or determined to commence criminal proceedings against BFL.

*This announcement was authorised for release by Sir Kostas Constantinou OBE, Chairman of BSP Financial Group Limited.*

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**BANK OF PAPUA NEW GUINEA**

**Financial Analysis and Supervision Unit (FASU)**

## **MEDIA RELEASE**

### **Regulatory Action Against the Bank of South Pacific**

**Release Date 12 July 2021**

The Financial Analysis and Supervision Unit (FASU) within the Bank of Papua New Guinea is issuing this media release in relation to the regulatory actions it is taking against the BSP Financial Group Limited (referred to as **BSP**). FASU is Papua New Guinea (**PNG**)'s Financial Intelligence Unit (**FIU**) and Anti-Money Laundering and Counter-Terrorist Financing (**AML/CTF**) regulator<sup>1</sup>.

On 23 October 2019, FASU conducted an onsite inspection of BSP. This inspection tested (1) BSP's level of compliance with various sections of the *Anti-Money Laundering and Counter Terrorist Financing Act 2015 (AML/CTF Act)* and its own AML/CTF program, and (2) BSP's effectiveness in implementing its procedures, policies and/or controls to complying with its Enhanced Customer Due Diligence (**ECDD**) obligations particularly when dealing with high-risk customers. It did so by examining the customer files pertaining to eight (8) 'high-risk' BSP customers.

In addition to an offsite desktop review inspection in January 2019, this was the second onsite inspection of BSP by FASU. On this occasion, the inspection was intelligence-led and targeted at specific areas where FASU's intelligence-holdings indicated apparent non-compliance with the AML/CTF Act.

Also as indicated by BSP's Market Announcement, this matter has been unresolved for an extended period and this has, in part, been due to the impact of COVID 19 on the operations of FASU.

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<sup>1</sup> FASU's functions and powers are described in Section 72 of the AML/CTF Act 2015. They include the collection, analysis and dissemination of financial intelligence concerning suspected money laundering and associated predicate offences, terrorist financing and proceeds of crime; and the monitoring and enforcement of compliance with the AML/CTF Act, including through the supervision of financial institutions and co-operation with domestic agencies and regulatory authorities. The enforcement measures available to FASU are detailed in sections 99-106 of the AML/CTF Act 2015. FASU is PNG's FIU and AML/CTF Regulator.

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On 17 June 2020, BSP was issued a 'show cause' notice requiring it to explain why FASU should not impose enforcement actions. After granting two consecutive extensions of time to respond, FASU received BSP's response to that notice on 6 April 2021.

FASU has done all it can to ensure BSP has been afforded natural justice in this very serious matter during these difficult times. FASU has granted BSP additional time to respond on two consecutive occasions and, while FASU would have preferred this matter be resolved earlier, it is appreciated that procedural-fairness and due-process require that BSP was/is given sufficient time to review and consider the findings fully and obtain legal advice.

In its Final Determination of BSP's full response in April 2021 to FASU's Targeted Onsite Inspection Report, the following are the three regulatory actions that FASU is taking against BSP.

At 3:15pm on 12 July 2021, FASU issued BSP a Formal Warning under Section 100 of the AML/CTF Act 2015. The nature of BSP's non-compliance is serious enough for FASU to have issued an Infringement Notice, however, FASU has chosen to apply a Formal Warning instead making this the first occasion of regulatory action undertaken by FASU against BSP. Consistent with the application of Section 100 of the Act, FASU believes that there are reasonable grounds to determine that BSP has engaged in conduct that contravened requirements of the Act.

Secondly, in conjunction with the Formal Warning issued under Section 100 of the Act and its basis, FASU is also seeking from BSP an Enforceable Undertaking that it will remove and replace certain executive management staff pursuant to Section 102 of the Act.

Thirdly, FASU is requiring BSP to engage an external auditor pursuant to Section 10 of the Act. The engagement of an external auditor is deemed necessary to determine the full extent of the underlying good governance and best business practise issues that were identified during the onsite inspection. The external auditor's examination will cover ECDD practises employed by BSP on all of the high risk and Politically Exposed Persons (PEPs) who are customers of BSP.

Those contraventions of the Act are as follows:

- Failure to effectively implement and maintain an AML/CTF program, based on the bank's own risk assessment, to include effective procedures, policies and controls for:
  1. managing and mitigating the risks contrary to Section 7 (3)(a) of the AML/CTF Act;
  2. complying with the due diligence requirements contrary to Section 7 (3) (c) (i), (iv) and (v) of the AML/CTF Act.

3. complying with record keeping requirements contrary to Section 7 (3) (d) (iii) of the AML/CTF Act.

- Failure to conduct ongoing due diligence in respect of all of its business relationships contrary to Section 17 (1) of the AML/CTF Act.
- Failure to ensure that transactions carried out on behalf of its customers are consistent with its knowledge of the customer, the customer's commercial or personal activities and risk profile contrary to Section 17 (2)(b) of the AML/CTF Act.
- Failure to ensure that ongoing enhanced due diligence is conducted with respect to politically exposed persons in accordance with Section 29 (b) of the AML/CTF Act.
- Failure to conduct enhanced customer due diligence in accordance with the requirements of Sections 27 and 28 where it had taken the view that the customer was a politically exposed person contrary to Section 26 (1) (c) of the AML/CTF Act.
- Failure to obtain information relating to the source of the assets or the wealth of the customer when conducting enhanced due diligence contrary to Section 27 (b) of the AML/CTF Act.
- Failure to take reasonable steps to verify information relating to the source of the assets or the wealth of the customer contrary to Section 28 (b) of the AML/CTF Act.
- Failure to take all reasonable steps to identify whether a customer or beneficial owner is a politically exposed person contrary to Section 29 (1) of the AML/CTF Act.

During the onsite inspection FASU obtained detailed and compelling evidence of these contraventions, based on BSP's failure to:

- Identify legitimate sources or reasons for several million Kina in payments by one customer to another customer who is a PEP;
- Conduct any form of ECDD on a customer who was the subject of money laundering charges related to transactions conducted through BSP bank accounts;
- Conduct any form of ECDD on a customer who has credible allegations of money laundering made against them in international media;
- Conduct an examination of Suspicious Matter Reports (issued by BSP) as part of the ECDD process;
- Obtain documentation, or maintain records, in a manner required by the AML/CTF Act.

These regulatory measures seek to address the systemic culture of non-compliance within BSP in the least punitive manners possible and are deemed necessary to protecting the integrity of PNG's financial system.



BSP's response contained a blanket denial of any offences at all, and contained no acknowledgement of the deficiencies that led to the offending. This response provided no indication or evidence that FASU had erred in its interpretation of the evidence obtained during the onsite inspection, or that there were mitigating factors that needed to be considered. The manner in which BSP has responded has also forced FASU to confront the reality that the issues identified during the Onsite Inspection are systemic.

Due to the systemic nature of the offending and BSP's continued denial of culpability, FASU has no choice but to apply regulatory measures.

In deciding on the most appropriate form of regulatory action, FASU has considered the need to ensure that the regulatory response is proportionate to the level of offending and that natural justice and procedural fairness have been considered.

FASU is mandated to protect the interest of the people of PNG by ensuring the integrity of PNG's financial system and FASU has developed its response in the context of the significant levels of financially-motivated crime suffered by PNG. This includes money laundering, corruption, tax evasion/avoidance, organised crime, illegal logging and wildlife trafficking.

FASU's regulatory action has been endorsed by the National Coordinating Committee (NCC) on AML/CTF and is consistent with PNG's National AML/CTF Strategic Plan 2017-2022<sup>2</sup> deliverables.

FASU expects BSP to cooperate with the regulatory measures imposed. If BSP, or persons within BSP, continue to engage in conduct that constitutes offences against the AML/CTF Act, civil or criminal enforcement action may be taken.

Under Section 14 of the Act, individuals who intentionally engage in conduct that contravenes the AML/CTF Program obligations under the Act may be subject to a fine of up to K500,000.00 or imprisonment for a term not exceeding 5 years or both, for each offence or a fine of K1,000,000.00 for a body corporate, for each offence.

FASU enjoys the broad support that it receives from the public including government. Pursuant to Section 94 of the AML/CFT Act, FASU is keen to receive any and all relevant intelligence on offences against the AML/CTF Act; money laundering; or, proceeds of crime, from any source, including current and former employees of any reporting entity and the general public. Such information or any tip-off or whistle-blowing information can be provided confidentially to FASU using the following contact details: [intelsupport@bankpng.gov.pg](mailto:intelsupport@bankpng.gov.pg) or on telephone +675 3227 7147 or you can write to the Director, Financial Analysis and Supervision Unit (FASU), P. O. Box 121, Port Moresby, NCD.

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<sup>2</sup> Approved by the National Executive Council Decision No. 308/2018



Authorized for release by virtue of the powers vested in me under Sections 68 and 69 of the AML/CTF Act.



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