



28 January 2014

FREQUENTLY ASKED QUESTIONS (FAQs)
ON DIRECTORS' AND OFFICERS' LIABILITY INSURANCE (DOLI) AND THE
DIRECTORS' AND OFFICERS' LIABILITY FUND (DOLF)

Note: The answers provided herein are intended merely for the guidance of the general public and are not intended as a ruling or opinion since actual controversies would necessarily involve additional facts and circumstances which may change the application of the answers below.

Q: On the GCG MC on DOLI, there is a statement on Item IV, 10 (Proper Structuring of Reimbursement Mechanism) which we quote as follows:

"If final judgment exonerates the Directors/Trustees and/or Officers from allegation of fraud or breach of fiduciary duties, the advances are closed on the DOLI account. Whereas, if final judgment indicates clearly that the Directors/Trustee and/or Officers were guilty of fraud or were in breach of his fiduciary duties, then the advances shall remain a personal loan which they must pay-off."

May it be stated that when the Directors/Trustees/Officers are not exonerated, the advances shall remain a personal loan which must be paid off? Does the use of the term "clearly" meant that even if the final judgment is a finding of guilt but the dispositive portion does not indicate that there was fraud or breach of fiduciary duties, then the advances are closed on the DOLI account? What if the case against the director or officer was dismissed based on a technicality?

A: The queries are being raised under the premise that there are pending suits or litigation involving the GOCC, its directors/trustees or officers, who are being sued for alleged breach of duties, fraud or perhaps corruption (criminal offence). It means therefore that it is the final decision of the court or tribunal that is the basis for determining the guilt or innocence of the respondents:

- (a) If the final judgment is a finding of guilt on the part of the director/trustee or officer, but the dispositive portion does not indicate that there was fraud or breach of fiduciary duties (which is difficult to imagine with a finding of guilt), nonetheless, the advances shall remain a personal loan which must be paid off because essentially the director/trustee or officer has been adjudged personally guilty of an offence, and public funds cannot be used to support the litigation costs of a public officer who is guilty of a public offence.
- (b) If the final judgment finds the director/trustee or officer not guilty, whether based on the merits or based on technicality, then legally speaking there has been an exoneration by the courts that would allow the expenses incurred to be closed to the DOLI account. This is further supported by the constitutional precept that every accused is presumed guilty unless proven otherwise. Therefore, if the State (prosecutor) failed to prove the guilt, whether on the merits or because they botched up their job (technicality), it means that the accused director/trustee or officer remains innocent.