

## 1. Mandate

**Establishing of body/bodies to prevent corruption through implementing policies increasing and disseminating knowledge about the prevention of corruption;**

Section 117 (9) CI Constitution –sets out the Commission’s functions.

Functions constitute clear mandate for corruption prevention. See, too *section 5 SPL Law*.

Investigative powers but no prosecutorial powers.

**Ensure the existence of one or more bodies specializing in combating corruption through law enforcement**

**Must have necessary independence to discharge mandates**

Though silent on the issues of education and awareness, these are vital for the fulfillment of its role.

Mandate given to Anti-Corruption Commission – section 3 to administer the AC Law (2019 R); powers, duties and functions are set out under s4.

ACC has authority to investigate through investigating officers – s 3C AC Law and powers of arrest - s3D ACL

In addition, RCIPS, has authority to investigate and prosecute corruption Offences (Criminal Procedure Code (“CPC”) and Penal Code (“PC:”)

## 2. Collaboration

**Fostering of good working relations**

s22 and 24 SPL allow for collaboration with the RCIPS and the DPP upon satisfaction after inquiry that a breach of Law or offence committed.

Otherwise, no direct mention of collaboration; however, given the mandate of the Commission – s117 CI Constitution as set out under s5 SPL Law, there is scope for the Commission to collaborate with other government departments/statutory authorities, etc.

S8 CI Constitution – Commission is not subject to direction/control of any other person/authority.

SPL Law is not in effect with the result that there have been no investigations conducted under the Law. Nonetheless, where inquiries have been made into certain matters arising in the public forum, relevant authorities have responded accordingly.

ACC – s 4(2) and 4(5) provide the legal framework for collaboration with other bodies including overseas agencies.

### **3. Permanence**

**Must be established by proper and stable legal framework, e.g., the Constitution or a special law**

The Commission is established under s117 CI Constitution as one of the institutions supporting democracy.

S121 (5) CI Constitution also requires the enactment of a law for giving effect to the establishment and maintenance by the Commission of a Register of Interests.

The SPL Law was passed by Members of the Legislative Assembly in 2014 and amended in 2016 but to date has not been brought into effect.

The ACC is not a creature of the CI Constitution but is firmly established by the ACL. Based on its work as reported, the ACC is effective in executing its mandate.

### **4. Appointment**

**Process of appointment of AC heads to ensure his/her apolitical stance, impartiality neutrality, integrity and competence**

s117 (1) – (5) CI Constitution as set out under s4 (1)-(3) SPL Law: persons of “high integrity and with experience in public or private sector”; comprising 1 Accountant (Chartered/Certified) with 10 yrs experience; legal practitioner 10 years practice in Commonwealth.

Appointment by Governor after consultation with the Premier and Leader of Opposition.

Excluded – member of LA, holder of public Office or having held public office in the 3 preceding years; held office in a political party in 5 preceding years; non-Caymanian.

Appointment by Governor.

ACL – Schedule (s 1-4) for qualifications

Previously, there was no public call for ACC or SPL Commission. This process is now being rolled out for the first time.

## 5. Continuity

**Requirement for delegation by Law of powers of ACA head to appropriate official in the ACA within reasonable time in event of suspension, dismissal, resignation, retirement or end of tenure – pending appointment of new head**

s117(9)(7) CI Constitution allows Governor to appoint member where vacancy arises. In that case, newly appointed member serves until expiration of term.

s4(4) SPL Law reflects same.

No specific provision for replacement of Chairman/head.

Powers granted to Commission; not exclusively to the Chairman. No automatic delegation of powers in absence of Chairman.

No maximum timeframe in Law/Constitution for any post to remain vacant.

s8 Schedule to ACL – addresses vacancies.

No specific provision for replacement of Chairman/head of ACL.

S4 Schedule allows for members present and forming quorum to elect person to preside in absence of Chairman.

No maximum timeframe in Law for any post to remain vacant.

## 6. Removal

**ACA Heads to have security of tenure; removal only through legally established procedure for removal of key independent authority (e.g., Chief Justice).**

s117(6) CI Constitution and s4(3) SPL Law treat vacancies and removal from office arising from:- term expiry; absences from 3 consecutive meetings without Governor's approval; resignation of member; removal from office by Governor for inability to discharge functions of Office (arising from infirmity of body or mind or any other cause) or misbehavior; or if nominated for election to LA (with consent); or if appointment to public office.

Term of appointment is 4 years s117(6)(a) CI Constitution.

S4(3) SPL Law.

No provision for Chairman/member defending its position against removal. No established process for removal.

ACL Schedule s 6- allows for resignation of member; s7- revocation of appointment after consultation with the AG.

Term of Office – 3 years or less s1(2) Schedule for Chairman; same term provided in s2 of Schedule for members.

## 7. Ethical Conduct

**ACA's to adopt codes of conduct requiring highest standards of ethical conduct from staff and strong compliance regime**

No specific codes established for Commission.

Schedule 2 SPL Law sets out "Principles to be adhered to", i.e., Nolan Principles.

## 8. Immunity

**ACA heads and employees to have immunity from civil and criminal proceedings for acts committed within the performance of their mandate; to be protected from malicious civil and criminal proceedings.**

s34 SPL Law – no liability for damages for the Commission or any of its members for act/ omission in the discharge of functions under the Law, unless “shown that act or omission was in bad faith”.

ACL – s14 and 15 Schedule – similar provision as under s34 SPL, except in s14, reference made in addition to “purported discharge” of functions and s15 provides indemnity by the Commission to its members

## 9. Remuneration

**ACA employees to be remunerated at level to allow employment of sufficient number of qualified staff**

Remuneration of “staff” is dealt with by s7 SPL Law.

s7(1) speaks to “allowances” of Commission members – set by Governor.

S7(2) speaks to the provision by Government of “adequate staff” for the prompt discharge or duties.

Currently, Commissions Secretariat **comprises** a Manager; 2 assistants and 1 executive secretarial post holder.

The Secretariat services 5 Commissions.

The Commission has no direct involvement with budget.

S7(3) expenses incurred by Commission, members and staff are to paid from the revenue of the CI.

S19 SPL allows the Commission to appoint an “investigating officer” to conduct an inquiry into alleged/suspected breaches of the Law.

The issue of funding/budgeting will become more critical for the Commission in the event of an investigation when the Law comes into effect.

ACL – s10 Schedule – remuneration of Commission to be paid from revenue of CI.

Sections 3A and 3B of the ACL allow the Governor to employ staff and to approve secondment of public officers (including investigators) to ACC.

Section 4 - the ACC’s manager, with the approval of the ACC has the power to employ experts/consultants at remuneration to be approved by Governor and paid from revenue of CI.

## **10. Authority over HR**

**ACAs to have power to recruit and dismiss staff according to clear and transparent procedures**

Commissions Secretariat comprises Government employees who are subject to Public Service Management Law and Personnel Regulations.

Other than set out above, the CSPL has no other power/control over staff.

No specific procedures set out under Law.

## **11. Adequate and Reliable**

### **Resources**

**ACAs to have sufficient financial resources to carry out tasks, taking into account country’s budgetary resources, population size and land area.**

**To be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA’s operations and fulfillment of mandates.**

Save for the provision of s7 SPL Law there are no other provisions dealing with resources for the SPL Commission.

Currently, budget exists for all Commissions which rely on the resources of the Secretariat.

Budget cycle is now 2 years.

[Self-assessment questions-?]

## **12. Financial Autonomy**

**ACAs to receive budgetary allocation over which ACAs have full management and control without prejudice to appropriate accounting standards and accounting requirements.**

Currently, the Manager Commissions Secretariat handles budgetary matters.

Commissions Secretariat is required to comply with national accounting and audit requirements (and international?)

## **13. Internal Accountability**

**ACAs to develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimize misconduct and abuse of power by ACAs**

No specific rules and standard operating procedures established by Commission to self-regulate itself.

s16(2) SPL Law – prosecution under this Law can only be instituted with written consent of DPP.

S21SPL Law – Person in public life must be given reasonable time and opportunity to make representations in person or by attorney prior to Commission concluding that the person has breached Law.

S22 SPL – where Commission finds breach of Law or commission of an offence, to refer the matter forthwith to RCIPS and DPP.

ACL – s17 and s 18 establish procedure for disclosure of members' interests and s19 allows the ACC to regulate its own procedures.

## 14. External Accountability

### **ACAs to strictly adhere to rule of law and be accountable to mechanisms established to prevent abuse of power**

s18- 25 SPL deal with Powers of Investigation. Commission has power to require production of “books, records, accounts, reports, data, stored electronically or otherwise or any other documents relating to the functions of any public or private body”; to require persons in public life to answer questions; to verify declarations; cause witnesses to be summoned and examined on oath, etc.

As indicated above, however, in cases of breach/commission of an offence, matters are referred to RCIPS and the DPP with “certified copy of declaration in question and a report” of Commissions’ findings.

ACC – has powers under section 4 ACL to, *inter alia*, detect and investigate corruption and other offences. It also has powers of search and seizure.

The office of the DPP prosecutes.

The Governor has oversight of the ACC.

## 15. Public Reporting

### **ACCs to formally report to Public at least once per Annum**

s117(9)(g) – the CSPL is required to report twice annually (at least).

s 5((1)(g) SPL Law –reflects this requirement and s8(1) speaks to the manner in which reporting shall take place and be deemed to be in the public domain.

S9 ACL – the ACC is required to report to the Governor once annually; however, s8 ACL restricts the provision of information.

S53 ACL – requires the production of an annual Report within each month of each financial year by the AG and the Deputy Governor on the enforcement of the ACL which is to be tabled before the LA.

## **16. Public Communication and Engagement**

### **ACAs to communicate and engage with public regularly to ensure public confidence in its independence, fairness and effectiveness**

Due to the delay in commencement in the SPL L, the Commission has not been as actively engaged with the public as desired for optimum effectiveness.

The Commission has, however, over the past year, been actively involved in introducing the UNODC's Education for Justice Programme E4J; to universities, primary and secondary schools.

The Commission has also participated over the past year in a training workshop for Board Members and members of statutory authorities.

The SPL Commission has a website which is frequently updated and which contains minutes of all Commission meetings.

The Chairman for the Commission also appeared before the Public Accounts Committee to respond to questions regarding the findings of the Auditor General in her Report released in January 2019 titled "Fighting Corruption in the Cayman Islands".