



**THE EIGHTH REPORT OF
THE COMMISSION FOR STANDARDS IN PUBLIC LIFE**

20 AUGUST 2013 – 15 FEBRUARY 2014

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FOREWARD

The Commission for Standards in Public Life (“the Commission”) was established as an institution supporting democracy under the Cayman Islands Constitution Order 2009 (“the Constitution”); a fulfilment of the 1999 White Paper requirements for the UK’s British Overseas Territories. It reinforced the need for the Cayman Islands to have regard for ethics and transparency as important elements of a democratic society and the necessary protection of the rights and freedoms of the people in the Cayman Islands.

As the inaugural Commission for Standards in Public Life, the Commission has navigated through what may be said to be relatively uncharted territory in the field of creating and instilling standards and ethics in the Cayman Islands. Looking back at the last four years, it is the view of the Commission that every effort has been made to ensure the Commission gained a strong foundation supported by the fundamental statutory framework upon which to carry out its remit in s.117 of the Constitution.

Often described by the media as “a toothless body”, it is undoubtedly the direct result of the lack of enabling legislation that the Commission is unable to achieve all that the constitutional mandate requires such as the supervision of the operation of the registers of interests and the investigation of breaches of established standards. It is with great pleasure that the Commission acknowledges that the Standards in Public Life Law (“the Law”), the pinnacle of our achievements, was unanimously passed in the Legislative Assembly on 31 January 2014.

As Chairperson of the Commission since January 2010 I wish to take this opportunity to thank the Chairman of the Anti-Corruption Commission, the Auditor General and his staff, and the Investigators of the Anti-Corruption Unit for their hard work, dedication and cooperation over the past four years. Additionally, I cannot impress enough my thanks to my fellow members of the Commission who have served diligently alongside me. It is with a heavy heart that we, the outgoing members of the Commission, lay down our mantle. It is nevertheless with much pride, satisfaction and hope that we look to the incoming members to continue the invaluable role of supporting democracy in the Cayman Islands.

Karin M. Thompson, MBE
Chairperson, Commission for Standards in Public Life

SECTION ONE – INTRODUCTION

1. During the current reporting period of 20 August 2013 and 15 February 2014 the Commission reiterated its desire to see reports of its Commission laid before the House as soon as practically possible; continued to reaffirm its undertaking to uphold, promote and apply the seven core principles which form the basis of a universal standard of good governance; awaited the publication of the Working Group on Procurement's Report to Cabinet; and witnessed the unanimous passing in the Legislative Assembly of the Standards in Public Life Law, 2014. The Commission has also spent a considerable amount of time reviewing the matter of conflicts of interest with respect to public officials, participating in discussions and reviewing best practices as it relates to procedures for appointing members to public authorities, and the terms of those appointments.

2. In this, our eighth, report the Commission will outline the progress made and the key issues arising from the work completed by the Commission over the last four years in line with each of the constitutional mandates found in s.117(9) which are:
 - (a) to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;
 - (b) to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;
 - (c) to supervise the operation of registers of interest and to investigate breaches of established standards;
 - (d) to review and establish procedures for awarding public contracts;
 - (e) to review and establish procedures for appointing members to public authorities, and the terms of their appointment;
 - (f) to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;
 - (g) to report to the Legislative Assembly at regular intervals, and at least every six months; and
 - (h) to exercise such other functions as may be prescribed by a law enacted by the Legislature.

SECTION TWO – ASSIST IN THE SETTING OF HIGHEST STANDARDS OF INTEGRITY AND COMPETENCE

3. Public service requires public trust. Prohibitions and guidelines on the conduct of public servants are necessary to preserve the trust placed in them by the people of the Cayman Islands. Such prohibitions and guidelines are also needed to promote citizen's confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.
4. Conflicts of interest on the part of public officials continue to be an area of concern for the Commission. With the passage of the Law the Commission will be provided with an avenue in which to properly assert its authority and thoroughly exercise the powers that are being sought. In so doing it will give effect to the underlying function of the Commission as mandated by s.117(9)(a) of the 2009 Constitution Order namely, to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest.
5. In order to prevent unethical behaviour it is necessary for government bodies created by statute to embrace a transparent process with regards to their procedures and decision-making. This will allow members of the public to audit their decisions and ensure that an ethical procedure was followed. Education also plays a key role in prevention. Although cumbersome, the benefits will be numerous if it is an obligation for persons in public life to be provided with clear guidance and training that covers the central role of standards, the specific code of conduct and what they can expect if they breach these established standards.
6. While the long awaited enabling legislation has built in provisions to prevent unethical behaviour and subsequent consequences for breaches arising therefrom, it is unrealistic to form the belief that legislation alone will serve to prevent persons in public life from having to deal with conflicts of interest. Oftentimes, undoubtedly, these conflicts will arise from the need of a particular entity which requires persons in public life to have skills and knowledge of that entity's functions.
7. The Commission continues to affirm its belief that requiring all persons in public life to declare their interests and to take appropriate steps, such as not participating in the discussion or decision making process and leaving the meeting during such conflicts, when a conflict arises will bring much needed transparency to the real and perceived conflicts of interest that currently exist in respect to a number of persons in public life.
8. On that basis it is important that all persons in public life, including Board members must be properly appointed and must be held accountable for their actions and decisions.

9. As detailed in the Fifth Report the Commission created a Code of Conduct which was forwarded to the Honourable Deputy Governor Franz Manderson on the basis that it be forwarded to all Chief Officers for use with their Board Members; and to Former Governor Duncan Taylor, CBE with a request that he endorse the document for use by all Boards and Committees associated with Government's Statutory Authorities. This document incorporates the universal standard of conduct governing public life which was established under the Nolan Principles and is meant to serve as an addition to and not override or conflict with any legal or professional requirements specific to the remit of the Bodies who choose to use it. The said Code of Conduct is attached to this document as Appendix VI.

SECTION THREE – MONITOR STANDARDS OF ETHICAL CONDUCT

10. The Commission is mandated pursuant to s.117(9)(b) of the Cayman Islands Constitution Order 2009 to *monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers.*

Unethical Behaviour of Public Officials

11. During the lifetime of the Commission the Cayman Islands have seen a number of persons in public life being investigated for various reasons under the provisions of the Anti-Corruption Law, 2008 and the Penal Code (2010 Revision). The Commission has also received information from members of the public expressing their concerns regarding the unethical behaviour of public officials. It will be noted, however, that no complaints of a formal nature have been received by the Commission in this regard. Furthermore, based on the information provided, it would appear that most, if not all, of the incidents referred to relates to behaviour of a personal nature and does not fall within their capacity as public officials.
12. Nevertheless, behaviour of the nature referred to by the media, and informally by members of the public, is an area that the Commission understands causes great concern for our community regarding the ability of the Commission to conduct an investigation arising from matters of this nature. In this regard it is noted that the Law does not in itself address matters pertaining to the private life of public officials
13. Having formed the preliminary view that the powers conferred upon the Commission by s.117(9) do not provide the requisite authority on the part of the Commission to initiate disciplinary proceedings over persons in public life who face criminal or civil investigations into their private lives, the Commission was nevertheless mindful of the concerns that have continued to be expressed by members of the public. As such, the Commission sought and obtained clarification from Sir Jeffrey Jowell, who played a pivotal role in providing guidance and advice during the drafting stages of the Constitution, as to the extent of its remit as to whether the Commission is empowered to investigate cases of alleged unethical conduct on the part of public officials in their private lives.
14. Based on the advice received, the Commission accepts that at present it does not possess the power to investigate individual cases, outside of an investigation into the breach of an established standard in respect of the operation of registers of interest.
15. Members were thus reminded that the functions of the Commission, as set out in s.117(9) of the 2009 Constitution Order relate primarily to the setting of standards of “integrity and competence in

public life in order to ensure the prevention of corruption or conflict of interest". Unlike the powers set out in the Anti-Corruption Law, 2008, there is no constitutional mandate that provides for any investigative or enforcement powers on the part of this Commission.

16. It is also recognised and agreed, in accordance with the advice provided by one of the leading constitutional lawyers, that the Commission's powers do not extend to engagement with a public official's private life or dealings except where the circumstances raise a reasonable inference of lack of integrity, incompetence, corruption, conflict of interest or lack of standards of ethical conduct in the conduct of that official's public functions.
17. Having so agreed, the Commission nevertheless recognises and accepts that there may be instances where the lack of integrity or ethical standards in an individual's life could either lead or reasonably be expected to lead to an allegation of corruption on the part of that individual in the exercise of his or her duties in public life. Similarly, there may be such instances that give rise to an inference of lack of competence or conflict of interest whereby the Commission would be charged with taking the necessary steps to prevent those situations from occurring (subsection 9(a)).
18. It is therefore the position of the Commission that until such time as the requisite statutory powers are conferred upon the Commission, any reasonable allegations of lapses of standards in public life will be referred for the attention and if necessary, appropriate action on the part of the relevant authority including the Anti-Corruption Commission

Ministerial Code of Conduct

19. The Commission received a request from the Deputy Governor's Office to review the Draft Ministerial Code of Conduct which was written by the Cabinet Office, assisted by the Office of the Deputy Governor. The Commission was pleased to have been approached for comments which were provided in a letter from the Chairman dated 10th May 2013.
20. Overall, the Commission embraced the desire of the Cabinet Office and the Office of the Deputy Governor to produce such a code and looks forward to sight of the final version that extends to the conduct of Ministers not only in their Ministerial capacity but also in a personal and political capacity as elected members of the Legislative Assembly representing a constituency or particular community interest.

SECTION FOUR – SUPERVISE THE OPERATION OF REGISTERS OF INTEREST

21. It will be noted that s.117(9)(c) mandates the Commission to “supervise the operation of registers of interest and to investigate breaches of established standards”. Whilst s.117 does not state how this is to be done, s.121 does provide some guidance.
22. S.121 of the Constitution provides as follows:
- (1) There shall be for the Cayman Islands a Register of Interests, which shall be maintained by the Commission for Standards in Public Life.*
 - (2) It shall be the duty of any person to whom this section applies to declare to the Commission for Standards in Public Life, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him or her, as may be prescribed by law.*
 - (3) A person shall make a declaration under subsection (2) upon assuming the functions of his or her office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.*
 - (4) This section applies to all members of the Legislative Assembly and the holders of such other offices (except that of the Governor) as may be prescribed by law.*
 - (5) A law enacted by the Legislature shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with subsection (2) or (3) and, notwithstanding any provision of Part IV of this Constitution, the sanctions which may be imposed may include the suspension of a member of the Legislative Assembly from sitting in it for such period as may be prescribed in such a law.*
23. To effectively assume responsibility for the supervision of registers of interest as mandated by s.117 and s.121 of the Constitution, the Commission initially sought the legal advice of the Honourable Attorney General with a view to seeking clarification regarding its role and mandate as laid down in s.117 as read in conjunction with s.121.
24. The Commission also had the benefit of the advice which was provided by the Cayman Islands Government Legal Department on the 17th August 2009 to the Constitutional Review Secretariat insofar as the same relates to the meaning of a “holder of public office” as defined in s.124 of the Constitution.
25. S.121(1) makes express provisions for a Register of Interests “which shall be maintained by the Commission for Standards in Public Life”. S.121(2) goes on to state that “it shall be the duty of any person to whom this section applies to declare to the Commission for Standards in Public

Life, for entry in the Register of Interests, such interests, assets, income and liabilities of that person *or any other person connected with him or her* as may be prescribed by law”.

26. The governing legislation as set out in the Register of Interests Law 1996 was enacted to give effect to s.53A of the 1972 Constitution Order. However the introduction of s.121 of the 2009 Constitution gave rise to consideration of the compatibility between the obligations regarding the register of interests set forth therein and those regulations provided by the Register of Interests Law 1996 which is understood will be the subject of repeal upon the enactment of the Law.
27. There can be no doubt that in order to perform its functions the Commission requires a clear and unequivocal means of ascertaining the persons or holders of such offices who are to fall within the scope of section 121(2) as read in conjunction with s.117 of the Constitution.
28. The lack of supporting and enforceable legislation has, up until this point, rendered maintenance of the register of interests (as proposed in s.121) a hollow exercise without any real grounds for sanctioning those persons who may fail to comply with the duty of disclosure as mandated by s.121 of the Constitution.
29. Until such time as the Law is brought into effect, the Register of Interests Law 1996 (ROIL) will continue to govern the powers conferred thereunder and the responsible authority for maintaining the Register of Interests will remain the Clerk of the Legislative Assembly.
30. S.3 of the Register of Interest Law 1996 (ROIL) provides as follows:
 - (1) *The Registrar shall keep a register of interests in accordance with this Law.*
 - (2) *The register shall contain-*
 - a. *a list of the offices and occupations specified in schedule 1 the holders of which are required to make a declaration of interests to the Registrar under this Law;*
 - b. *the names and addresses of the declarants; and*
 - c. *the details of declarations of interests made in accordance with this Law.*
 - (3) *The register shall be open for public inspection at the office of the Legislative Assembly at all times during normal business hours.*
31. The declarants i.e. the holders of the offices and occupations referred to in s.3 of the ROIL are expressly set out in the schedule referred to therein and are as follows:
 - (1) *The elected members of the Legislative Assembly*
 - (2) *The Speaker*
 - (3) *The Chief Secretary*
 - (4) *The Attorney-General*

- (5) *The Financial Secretary*
- (6) *The Registrar of Interests*
- (7) *Candidates nominated for election to the Legislative Assembly*
- (8) *Any person appointed to assume for the time being the functions of an office referred to in paragraphs 2 – 6 of this schedule during the absence or incapacity of the holder of the office*
- (9) *Any person having received permission to attend a meeting of the Legislative Assembly, or a meeting of any of its committees, for the purposes of reporting in any newspaper or periodical, or in any radio or television broadcast, the meeting or any matter related to the meeting*

32. S.4 of the ROIL goes on to state:

- (1) *A declaration of interests under this section –*
 - a. *shall be made in respect of interests held on the date on which the duty to make the declaration arose; and*
 - b. *shall, where required by the registration form, include a declaration in respect of the interests held on that date by a child or spouse of the declarant.*
- (2) *A declarant, other than the holder of an occupation specified in paragraph 9 of schedule 1, shall make a declaration of interests in the form set out in schedule 2 to this Law –*
 - a. *on the date on which he assumes the functions of his office; and*
 - b. *on each subsequent anniversary of that date.*
- (3) *A declarant who is the holder of an occupation specified in paragraph 9 of schedule 1 shall make a declaration of interests in the form set out in schedule 3.*
- (4) a. *A declarant holding the office specified in paragraph 7 of schedule 1 shall not be required to make a subsequent declaration if he is not elected to be a member of the Legislative Assembly.*
 - b. *Where a person has made a declaration on the date of his acceptance of a nomination as an election candidate, he shall not be required, if elected, to make a further declaration on the date that he makes an oath of allegiance in accordance with section 44 of the Constitution.*
- (5) *Where a declarant other than a declarant referred to in subsection 4(a) has made a declaration of interests and he subsequently acquires a beneficial interest in property additional to that referred to in his previous declaration or declarations he shall within 28 days of the acquisition make a further declaration of interests in respect of his interest in that additional property.*
- (6) *If any person, being a declarant other than a member, makes a declaration containing particulars which he knows, or ought to know, are false, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.*

33. The duties of the Registrar are outlined in s.5 of the ROIL and s.7 goes on to provide as follows:

Where a member –

- (a) fails to make a declaration of interests under section 4 within a period of 3 months from the date on which the duty to make that declaration accrued; or*
- (b) fails to comply with a notice given by the Registrar under section 5(4) and has not within the period allowed for compliance with the notice, shown that he has reasonable grounds for not complying with it; or*
- (c) has failed to comply with a notice given by the Registrar under section 6(1) and has not, before the end of the period allowed for compliance with the notice, shown to the satisfaction of the Registrar that he has reasonable grounds for not complying with it; or*
- (d) has made a statement which the Registrar is satisfied is false or misleading in a material particular,*

the member shall be in breach of the provisions of this Law, and the Registrar shall, within 14 days of the knowledge of such breach, submit a report of such breach to the Committee, which shall meet to consider the report within 21 days of its submission.

34. On the 24th February 2010 a request to be provided with information on the current operation of the register of interests was made by the Commission to the Clerk of the Legislative Assembly, Mrs. Zena Merren, in her capacity as the Registrar of Interests. Mrs. Merren was asked to also provide details of the Registrar's last report (relating to the failure on the part of any member to comply with the provisions of the ROIL). In an email dated 15th March 2010, Mrs. Merren advised as follows:

"We don't prepare reports on the registrar of interest. We have a Select Committee which deals with any issues that may arise under the Register of Interest Law. Mr. Solomon is Chair of the Committee. All procedures are governed by the Register of Interest Law. As of today all persons required to fill a register of interest form has done so".

35. In light of this correspondence and subsequent efforts on the part of the Commission to review the relevant documentation forming the basis of the registers of interests the Chairman was unable to find the necessary records that would allow for an accurate analysis regarding the maintenance of existing registers under the ROIL 1996. The enactment of the Law will facilitate the necessary legislative reform required to cure the resultant conflict and inconsistency between the powers and mandate laid down by the Register of Interest Law 1996 and the mandate of the Commission as set out in s.117 and s.121 of the Constitution.

36. During its review of matters related to the supervision of the register of interests the Chairman met with a number of stakeholders. The details of the meetings are outlined below:

(a) Meeting with the former Governor Duncan Taylor (31st March 2010)

The Chair met with former Governor Taylor to discuss the role and work of the Commission. The Governor pledged his support to the work of the Commission and kindly agreed to provide information on how the U.K. manages its Register of Interests and any other supporting documents useful to the Commission in the exercise of its functions under s.121. The information provided shortly thereafter, revealed that in the U.K. the Register of Interests is published under the authority of the Committee on Standards and Privileges. It is maintained by the Registrar of Members' Financial Interests. The Commission was advised that the Register in the U.K. applies to all Members of Parliament whether or not they have anything to declare. It does not apply to members of the Civil Service. There also exists a Register of Interests of Members' Secretaries and Research Assistants.

(b) Meeting with the Chair to the Standing Committee for the Register of Interests in the Legislative Assembly (30th March 2010)

As part of its continuing efforts to be provided with relevant information on the supervision and maintenance of the register of interest which is mandated by the Register of Interests Law 1996, the Chair of the Commission met with the then Chair to the Standing Committee for the Register of Interest. Mr. Solomon advised that the declaration forms for the current period were in the process of being sent out to coincide with the twelve month anniversary of the last general election. Mr. Solomon was not in a position to provide any additional information save that which was contained in the email received from Mrs. Merren on the 24th February 2010.

(c) Meeting with the Registrar of Interests (the Clerk of the Legislative Assembly) (13th May 2010)

To facilitate the final portion of its review of the Register of Interests Law 1996 (ROIL) and the Register of Interests maintained thereunder, the Chair of the Commission attended at the offices of the Clerk of the Legislative Assembly (Mrs. Zena Merren) who in her capacity as the Registrar of Interests is charged with the responsibility for the maintenance of the register in accordance with the mandate laid down in s.5 of the ROIL. The Chairperson requested a viewing of the available Registers of Interest which, as mandated by the ROIL shall be open for public inspection at the office of the Legislative Assembly at all times during normal business hours.

The declaration forms contained in the Register of Interests which were available for inspection on the 13th May 2010 were completed and lodged during the period March through April 2010.

The previous Registers were however not readily available for inspection at the time. Mrs. Merren stated that she would endeavour to make the Registers (which would have been maintained by her predecessor) available for inspection at a future date. The Chairperson of the Commission was also advised by Mrs. Merren that to the best of her knowledge, information and belief, the Standing Committee for the Register of Interests in the Legislative Assembly had, as at that date, not yet held its first meeting following the May 2009 General Election. The Commission was therefore unable to ascertain whether there were any perceived conflicts of interests and/or anomalies in relation to any of the declarations mandated by the ROIL, past or present. The Commission, as a result, not in a position to ascertain whether or not such registers were compliant with the Register of Interests Law 1996.

(d) Meeting with the Registrar of Interests (the Clerk of the Legislative Assembly) (17th December 2013)

Following an interview, requested by Brent Fuller of the Cayman Compass, the Chairman again met with the Clerk of the Legislative Assembly (Mrs. Zena Merren). This meeting was to glean clarification on the compliance, or lack thereof, with the declarations; and why the declarations of those persons who ran in the General Election were combined with those serving members of the Legislative Assembly.

SECTION FIVE – REVIEW AND ESTABLISH PROCEDURES FOR AWARDING PUBLIC CONTRACTS

Legislative Framework

37. The current statutory framework for public contracts is that which is governed by the Public Management and Finance Law under Part IX and Part XII of the Financial Regulations (2010 Revision).

Part IX - Procurement provides as follows:

36. *Subject to an overriding requirement –*

(a) to ensure value for money; and

(b) to ensure that the price and quality of goods and services is no more than overseas procurement,

a prescribed entity, statutory authority or government company shall give preference to procuring goods and services from suppliers trading, carrying on business or operating within the Islands.

37.(1) *Subject to paragraphs (2), (3) and (4), a prescribed entity, statutory authority or government company is required to offer for public tender –*

(a) any contract for the purchase of supplies, services and assets over fifty thousand dollars; and

(b) the sale of assets with a book value of fifty thousand dollars or more.

(2) In the case of a contract for the purchase of supplies, services and assets over twenty thousand dollars, where, in the opinion of the chief officer of a prescribed entity, statutory authority or government company, only one supplier can provide the supplies, services or assets, the chief officer is not required to offer for public tender such contract but –

(a) he shall comply with regulation 41; and

(b) he shall be subject to an overriding requirement to ensure value for money.

(3) Without prejudice to paragraph (2), where a state of emergency is proclaimed under the Emergency Powers Law (2006 Revision) or an exceptional circumstance occurs, a prescribed entity, where it is impractical to do so, is not required to offer for public tender –

(a) any contract for the purchase of supplies, services or assets; or

(b) the sale of any assets,

and the chief officer of a prescribed entity may enter into any contract for the purpose of the restoration of the Islands, using rates established by him subject to an overriding requirement to ensure value for money.

(4) Where a chief officer enters into a contract pursuant to paragraph (3), a copy of the contract shall be provided to the Director of Internal Audit and the Auditor General.

38. *The requirement to use a public tender applies to both entity financial transactions and executive financial transactions.*

39.(1) *A pre-qualifying tender process shall not be commenced except with the approval of the Central Tenders Committee.*

(2) *For the purposes of an approval under subregulation (1), application shall be made to the Committee in accordance with a practice manual published by the Committee.*

(3) *Tenders in the pre-qualifying tender process shall be evaluated by the purchasing prescribed entity, statutory authority or government company, which shall furnish the Committee with a report, prepared in accordance with the manual referred to in subregulation (2), specifying the evaluation criteria used in that process and the respective identities of the qualifying bidders selected.*

(4) *Notice of the qualifying bidders selected by the prescribed entity, statutory authority or government company shall not be given to participants in the pre-qualification process, nor shall a prescribed tendering process for the award of a contract be commenced until, in accordance with subregulation (5), the Committee gives its approval in relation to –*

(a) the qualifying bidders; and

(b) the commencement of the prescribed tendering process.

(5) *On receipt of a report under subregulation (3), and after making such enquiries, if any, as it sees fit to make, the Committee, if it is satisfied –*

(a) that the evaluation criteria used in the pre-qualifying tender process conform to its original approval under subregulation (2); and

(b) that those criteria were correctly and regularly applied,

Shall give its approval for the purposes of subregulation (4), but otherwise may notify the prescribed entity, statutory authority or government company that it declines to do so, whereupon the pre-qualifying tender process shall be void and of no effect.

(6) *Notwithstanding that an application or report under this regulation has been duly prepared in accordance with the manual referred to in subregulation (2), the Committee shall retain the right to be provided with such supplementary information, in a particular case as it see fit to require, concerning –*

(a) the evaluation criteria that are proposed to be used, or that were used, in any pre-qualifying tender process; or

(b) any other aspect of the pre-qualifying tender process.

(7) *An approval of the Central Tenders Committee under subregulation (1) may be granted unconditionally or may be granted unconditionally or may be granted subject to conditions, and where it is granted subject to conditions, the prescribed entity, statutory authority or*

government company shall not conduct a pre-qualifying tender process otherwise than in accordance with those conditions.

40.(1) The prescribed tendering process shall be used in respect of any contract required by this Part to be offered for public tender.

(2) A pre-qualifying tender process shall not be used in respect of a contract with a value of less than two hundred and fifty thousand dollars.

(3) A pre-qualifying tender process may be used for a contract with a value of two hundred and fifty thousand dollars or more.

(4) In the evaluation of a tender, whether in the prescribed tendering process or a pre-qualifying tender process, any price quoted or indicated in the tender shall be considered, but the least expensive tender is not, by virtue of that fact alone, entitled to succeed.

41.(1) Tenders submitted for any contract with a value of less than two hundred and fifty thousand dollars shall be evaluated by a tenders committee established by the chief officer of the purchasing prescribed entity, statutory authority or government company.

(2) Tenders submitted for any contract with a value of two hundred and fifty thousand dollars or more shall be evaluated by a Central Tenders Committee comprising –

(a) the chief officer (Public Finance) of the Ministry (or his nominee) as chairman; and

(b) such other persons as may be appointed, from time to time, by the Financial Secretary.

(3) Subregulation (2) shall not apply to a pre-qualifying tender process, but applies to a prescribed tendering process to which any such pre-qualifying tender process was a preliminary.

PART XII – Capital Project Appraisal

45. The chief officer of a prescribed entity shall ensure that all capital projects (whether entity or executive) that are three hundred thousand dollars and above are submitted to the PSIC [Public Sector Investment Committee] for review.

46. A chief officer is required to submit the following documentation to the PSIC using the formats for the Project Profile and Project Report set out in the Fifth Schedule –

(a) in relation to projects between three hundred thousand dollars and one million dollars, Project Profile; and

(b) in relation to projects over one million dollars, Project Profile and Project Report.

47. All completed Project Profiles and Project Reports are to be submitted to the PSIC at least two weeks in advance of its monthly meeting.

48. The PSIC shall submit recommendations on the viability of capital projects to the Governor in Cabinet, through the Minister of Finance.

49. In this Part –

“capital project” means any item that will be capitalized on the balance sheet in accordance with generally accepted accounting practice and the Third Schedule, and includes the construction or purchase of physical assets and the purchase or development of computer hardware or software.

Awarding of Contracts

38. As a first step in its endeavours to introduce measures to enhance the practice and procedures governing public contracts, the Commission commenced its work by engaging in an in-depth review of the policies and procedures that were in place for public contracts with a value of CI\$250,000.00 or more. The Commission then completed its review of the existing policies and procedures applying to those contracts falling below CI\$250,000.00.

39. Regulation 41(1) of the *Financial Regulations (2010 Revision)* requires that tenders submitted for any contract with a value of less than CI\$250,000.00 shall be evaluated by a Departmental Tenders Committee (DTC) established by the Chief Officer of the purchasing entity, statutory body or government company. Pursuant to regulation 41(2) all tenders submitted with a value of CI\$250,000.00 or more must be evaluated by a Central Tenders Committee (CTC) comprising of the Chief Officer (Public Finance) of the Ministry (or his nominee) who is mandated to serve as Chairman and “such other persons as may be appointed from time to time by the Financial Secretary”.

Central Tenders Committee (CTC) and Departmental Tenders Committee (DTC)

40. As an integral part of its general overview of the strengths and weaknesses that may be attributed to the current statutory framework and guidelines governing the awarding of public contracts the Commission sought to gain a clear understanding of the roles of the CTC and the DTC who are the two key entities charged with the oversight and preservation of the integrity of the procedures regulating the awarding of public contracts. As part of this exercise the Chairman met various stakeholders to discuss procurement related matters. The details of the meeting are outlined below:

Meeting with the Chairman of the Central Tenders Committee (CTC) (17th March 2010)

As part of its mandate the Commission sought to review the procedures and policies used by the CTC when awarding public contracts. On the 17th March 2010 the Chair of the Commission met with the Chair of the CTC, Mr. Ronnie Dunn who very kindly took valuable time out of his busy schedule to provide a brief overview of the process and procedures applied by the CTC in accordance with the statutory framework set out in the Public Management Finance Law and Financial Regulations (2005 Revision). With the benefit of Mr. Dunn's information, the Commission was better placed to consider and evaluate the effectiveness and safeguards provided by the existing legislative framework so as to ensure that the CTC fulfils its overall purpose, achieves its intended objectives and operates in an effective, efficient and ethical manner.

Meeting with the Solicitor General of the Foreign Commonwealth Office (FCO) (12 October 2011)
Commission members availed themselves of the opportunity they were afforded by the Governor's office to meet with the Solicitor General of the Foreign Commonwealth Office, Mr. Colin Roberts. The Commission discussed, amongst other things, the need for improvements to the current procurement process in the Cayman Islands and the role of the Commission in this regard.

Meetings with Primary Stakeholders

Over the course of the Commission's lifetime the Chairman has held a series of separate meetings with various primary stakeholders who play a primary role in the procurement process. The meetings were of a fact finding nature and in some instances provided an independent correlation of the views expressed by the Auditor General in his report.

41. Additionally it took into account the pivotal role conferred upon Chief Officers under Part IX of the *Financial Regulations (2010 Revision)* and Part XII of the aforesaid regulations) as hereinbefore set out.
42. In addition to being the entity charged with the oversight of all public contracts over the value of CI\$250,000.00, regulation 39(2) of the *Financial Regulations (2010 Revision)* suggests that the CTC is the entity charged with the responsibility for the creation and publishing of the guidelines governing the integrity of the DTC and its functions.
43. The relevant guideline produced by the CTC states that "*The integrity of the public sector relies on all bids being evaluated fairly and impartially against the eligibility and evaluation criteria stated in the advertisement and tender documents. The entity DTC is responsible and held*

accountable for ensuring that the process of bid evaluation is carried out in an ethical, fair, consistent and transparent manner and that the tender award recommendation provides value-for-money over the full procurement life-cycle whilst adhering to Cayman Islands and Government legal requirements.”

44. The existing framework therefore makes it equally clear that the DTC is the entity that is charged with the responsibility for ensuring that process is carried out in an “ethical, fair, consistent and transparent manner”.
45. As part of its review process the Commission focused its attention on the role of the CTC as a recommendation making body with particular emphasis being placed on the following:
- i. The current practices and procedures and whether they meet the standards set out in the governing legislation;
 - ii. whether these practices and procedures achieve the best value for money as envisaged by the law itself;
 - iii. whether procurement practices promote open and effective competition by ensuring the highest degree of transparency in all areas;
 - iv. whether the provision of a register of interests (completed by all CTC members) could be useful in providing an additional safeguard to compliment this process and prevent the rise of any potential conflicts of interest on behalf of its members;
 - v. whether the public tender bidding system ensures that there is approved capital and/or a recurring operating budget for a project; and if is there scope for improvement in this area;
 - vi. the duality that may exist between the role of the CTC as a recommendation making body charged with providing information and advice to the Government on contracts put out to public tender and the relationship with the Minister of Finance who is charged constitutionally with ensuring best practices for all government expenditures on services and to whom the Chairman of the CTC reports;
 - vii. the relationship between the blanket powers conferred on the Minister of Finance constitutionally and the guidelines given to the CTC on the regulations surrounding the bidding process as set out in Part IX of the Financial Regulations that have been issued under the authority of the Public Management and Finance Law (2010 Revision) (PMFL);
 - viii. whether any amendments need to be made to the PMFL 2010 and its related regulations to clarify these dual roles and blanket powers; and
 - ix. identifying any additional strengths and weaknesses of the procurement system not addressed in the Commission’s initial findings.

46. As part of the remit to review and establish procedures for awarding public contracts, the Commission examined the manner in which members are appointed to the CTC. In so doing, the Commission sought to obtain copies of the terms of reference and any other written policies which govern the appointment of members to the CTC. By way of response, the Commission was informed that s.41(2) of the Financial Regulations (2010 Revision) is the only documentation which governs the appointment of members to the CTC. This section of the regulations merely states that all tenders submitted with a value of \$250,000 or more must be evaluated by a Central Tenders Committee comprising of *“the Chief Officer (Public Finance) of the Ministry (or his nominee) must serve as chairman and such other persons as may be appointed from time to time by the Financial Secretary”*.
47. The Commission recognizes that the objective of the procedural rules for submission, receipt and opening of tenders is to ensure fairness, equity and transparency in the procurement process and therefore approached its initial review of the policies and procedures currently in place for awarding public contracts with these principles in mind.
48. The Commission strongly believes that the concept of transparency in government has merit but there is a delicate balance and it therefore follows that a thorough review of these processes must be completed on a regular basis. Furthermore, the Commission believes that there is scope for improvement in the tendering process itself as it appears that although on paper the current procurement system appears to be one which is of a relatively sound concept, it lacks comprehensive guidance and there is in fact a wide scope for improvement.
49. The Chairman of the CTC was therefore invited to provide the Commission with any recommendations that in his view may assist the Commission in its examination as to any weaknesses in the system in an attempt to improve and enhance the tendering process on an overall basis.
50. The Commission supports the use of detailed procedural obligations which procuring entities have to fulfil to ensure the efficient application of its basic principles. These provisions serve to effectively codify recognized good practices in the area of government procurement aimed at ensuring efficiency and value for money. These provisions also guarantee that access to procurement is open and that equal opportunity is given to both domestic as well as foreign suppliers and suppliers in competing for government contracts.
51. The Commission believes that the membership of the CTC should comprise individuals who possess the requisite professional aptitudes and skills from which to draw their experiences in making sound decisions. The Commission also believes that appointments to the CTC should be

made on the basis of merit, subject to the need to achieve a balance of relevant skills and backgrounds on the Committee. The principles of good practice in appointments, training, operations, codes of conduct and conflicts of interest should be adjusted. The CTC should seek to enhance good practices by extending its meetings (including the agendas and minutes) to public scrutiny.

52. During the course of its review of the relevant guidelines and statutory provisions the Commission was unable to identify any specific Terms of Reference or provisions for the manner in which members of the DTC are to be appointed or achieve their intended objectives.

53. The Commission was also not able to find any evidence to suggest the existence of a code of conduct to ensure that members perform their duties in the “fair, ethical, consistent and transparent manner” which is clearly envisaged by the existing framework. The Commission believes that all public bodies including the CTC and DTC should be subject to a code of conduct incorporating the seven core principles (“the Nolan Principles”) which have been restated in Section Seven of this report. A code of conduct will ensure that all parties involved are working from the same statement of expectations and to the same commitments. It will further serve to clarify what is acceptable conduct for the members of the entity including the way in which they interact with the general public. The absence of a Code of Conduct, which details issues such as confidentiality of members in relation to any proceedings, leaves the members to subjectively interpret their responsibility of ethical conduct. Specifically, for the CTC, the purpose of a code of conduct is to ensure that members perform their duties in the “fair, ethical, consistent and transparent manner” which is clearly envisaged by the existing yet bare legal framework. Persons across the public service must be required to agree to uphold such standards by signing up to the code.

54. Furthermore the Commission was not able to find any direction for members of the CTC or any DTC relating to handling conflicts of interest.

55. The Commission therefore made recommendations regarding the criteria for the composition of the CTC and manner of appointment of its members as follows:

- (a) the Central Tenders Committee shall consist of at least nine members including a Chairman;
- (b) the Chairman shall be appointed by the Governor after consultation with the Chairman of the Commissions for Standards on Public Life;
- (c) two Vice Chairmen shall be appointed by the Governor after consultation with the Premier and the Leader of the Opposition;

- (d) six other members shall be appointed by the Governor one after consultation with CISPA, Law Society, Contractors Association, Chamber of Commerce, Cayman Society of Architects, Surveyors and Engineers, at least one of whom shall be an experienced lawyer and at least one is a qualified accountant;
- (e) a Secretary who is not allowed to vote;
- (f) Committee members are to be appointed for no more than four years;
- (g) a person shall not be appointed as a member of the Central Tenders Committee if –
 - (i) he or she is a member of the Legislative Assembly;
 - (ii) he or she holds, or has at any time during the preceding three years held, a public office; or
 - (iii) he or she has at any time during the preceding five years held office in a political party.
- (h) the office of a member of the Central Tenders Committee shall become vacant -
 - (i) at the expiration of the date of his or her appointment;
 - (ii) if the member is absent from three consecutive meetings of the Committee, unless the absence is approved by the Governor;
 - (iii) if the member resigns office by writing under his or her hand addressed to the Governor;
 - (iv) if the member is removed from office by the Governor for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour; or
 - (v) if the member with his or her consent is nominated for election to the Legislative Assembly or is appointed to any public office.

56. Further it recommended that the CTC should be provided with secretarial, technical and administrative staff (civil servants appointed in accordance with Public Service Management Law and Personnel Regulations) to support their function but further recommends that the Manager of this Entity be held in the same regard as the Complaints Commissioner and the Auditor General. This person should be appointed by His Excellency the Governor after consultation with the Commission for Standards in Public Life and should report only to the Appointing Officer and the Members of the Legislative Assembly.

57. Subsequent to its review the Commission provided preliminary recommendations regarding the CTC which were contained in the Appendix to its Third Report, namely:

- The Financial Secretary should:
 - develop, and publish, specific Terms of reference or provisions for the manner in which members of both the CTC and the DTC are to be appointed and the way in which they are to achieve their intended objectives;

- develop, and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the CTC and the DTC's operate;
- require each member of the CTC and any DTC to sign a confidentiality agreement before commencing work;
- require each member of the CTC and any DTC to complete a full disclosure of all pecuniary and business interests to the Financial Secretary before commencing work and an update every twelve months thereafter. The Financial Secretary should compile these declarations into a Register of Interest which upon request should be made available for public viewing. The purpose of the Register of Interest is to provide an additional safeguard to compliment the Code of Conduct and the written policies and processes in order to prevent the rise (or perceived rise) of potential conflicts of interests on the part of members;
- develop, and publish, clear direction for members of the CTC and any DTC regarding the handling of conflicts of interests which may arise (or be perceived to arise) during their dealing with the public contracts and the procurement process as a whole. With the benefit of clear and unequivocal guidelines, public servants will be placed in a position whereby they will necessarily be constrained to arrange their private affairs in a manner that will prevent conflicts of interest between their private interests and their public duties;
- put in place a system in which more support, guidance and leadership is given to the DTC's. It is the belief of the Commission that the CTC is the entity charged with the oversight of the entire procurement process and as such needs to play a more active role to ensure consistency and compliance with policies/procedures. This support system should include exercises in which the CTC reviews decisions made by the DTC's; and
- provide training to the existing members of the CTC and all key players in the DTC's on these new changes.
- The Central Tenders Committee should:
 - develop, and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the DTC's operate.

58. At the Chairperson's request the Financial Secretary met with the Chairman to discuss his views on the recommendations made by the Commission in its Third Report. His responses were as follows:

Recommendation 1: The Financial Secretary should develop and publish, specific Terms of Reference or provisions for the manner in which members of both the CTC and DTC are to be appointed and the way in which they are to achieve their intended objectives.

Response: I support this recommendation

Recommendation 2: The Financial Secretary should develop and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the CTC and DTC's operate.

Response: I support this recommendation

Recommendation 3: The Financial Secretary should require each member of the CTC and DTC to sign a confidentiality agreement before commencing work.

Response: I support this recommendation. It should however be noted that I do not appoint members of the DTC, the requirement for a confidentiality agreement would therefore be reflected in the policies and procedures manual which will be developed.

Recommendation 4: The Financial Secretary should require each member of the CTC and any DTC to complete a full disclosure of all pecuniary and business interests to the Financial Secretary before commencing work and an update every twelve months thereafter. The Financial Secretary should compile these declarations into a Register of Interest which upon request should be made available for public viewing.

Response: There is partial support for this recommendation. DTCs are appointed on an ad hoc and as needed basis depending in son the nature of the procurement. I do not appoint these committees and it would be impractical for each member of each DTC to make the recommended declaration to me before starting work.

During the course of a fiscal year, the Government may convene several hundred DTCs which may consist of Civil Servants, members of the public or both. In many instances, a member of the public may be requested to sit on a DTC based on their expertise in that area (i.e. procurement of a Doppler radar) but may never serve on any future Technical Committee. To maintain and update a register of such a person's business and pecuniary interest on an annual basis would be impractical.

I believe a more practical approach would be to develop a form, supported by legislation, which each potential DTC and/or CTC member would sign as a requirement prior to commencing work.

The form would essentially be an affirmation that the potential member is unaware of any existing conflicts of interest regarding the matter he/she is being asked to deliberate on and will declare at the earliest opportunity if any such conflicts come to their attention during the period of

deliberation. The form would also be initialled by the potential member indicating understanding on their part that it would be an offense to either make a false declaration or to deliberate on any matter in which they or their immediate relatives, business associates, employees, etc. have an interest.

Recommendation 5: The Financial Secretary should develop and publish clear direction for members of the CTC and any DTC regarding the handling of conflicts of interests which may arise (or perceived to arise) during their dealing with public contracts and the procurement process as a whole.

Response: I support this recommendation

Recommendation 6: The Financial Secretary should put in place a system in which more support, guidance and leadership is given to the DTCs. This support system should include exercises in which the CTC reviews decisions made by the DTC.

Response: I support this recommendation. The Central Tenders Committee previously had a dedicated Secretary who would be responsible for training programs, public liaison and other administrative matters of the Committee. Due to austerity measures, the Committee now uses an Officer from the Economics and Statistics Office on a part time basis to provide secretarial support. The only other Civil Servant member of the Committee is the Director of the Revenue Unit who serves on the Committee in addition to numerous other functions and responsibilities.

It would certainly be desirable to have the personnel capacity for greater involvement in the workings of the DTC. However, given that the CTC only meets twice per month for an afternoon on each occasion, it would be impractical for that Committee to review the decisions of the DTC which focus mainly on smaller procurements. The DTC's decisions on matters involving procurements greater than \$250K is already reviewed by the CTC as part of its normal operating procedures.

Recommendation 7: The Financial Secretary should provide training to the existing members of the CTC and all key players in the DTC's on these new changes.

Response: I support this recommendation in the context of the response given to recommendation 6.

Recommendation 8: The Central Tenders Committee should develop and public a policies and procedures manual which sets out in writing clear guidelines on the manner in which the DTC's operate.

Response: This was covered in Recommendation 2 and is supported.

59. At the Commission's request the Financial Secretary provided an up-date as to the progress made in this regard. On 8 March, 2013 the Financial Secretary confirmed that:
- a. a first draft of the Terms of Reference for the Central Tenders Committee was circulated for comments and has been incorporated in the CTC policies and procedures manual;
 - b. the first draft of CTC's policies and procedures manual was produced and a copy subsequently given to the team visiting from the State of Jersey Procurement Office, invited to the Cayman Islands by the Deputy Governor. The team was able to provide guidance in a number of areas which included the provision of developing template documents. Thus the Manual is still in draft form;
 - c. the CTC is currently reviewing the idea of a conflict of interest policy and drafting confidentiality agreements; and
 - d. the CTC is reviewing the guidance and recommended template for a Code of Conduct found in the Commission's Fifth Report and plans to adopt the same in the near future.
60. The Commission continues to be willing to assist the CTC as it is able and welcomes reports on its progress as they become available.

Management of Government Procurement – Report of the Auditor General

61. In conducting one of his audits, the Auditor General reviewed the current procurement framework outlined in the Public Management and Finance Law (2010 Revision) and corresponding Regulations to determine the extent to which it has been implemented and respected. He found that the key missing piece in the current framework is a central procurement leadership role that ensures the consistent and accountable implementation of the policies, procedures and practices for an effective and efficient procurement function in the Government that ensures due regard for value-for-money. The Commission agreed with this finding and addressed it in its recommendations contained as an Appendix in its Third Report, and included above.
62. The Auditor General further cited instances of both inappropriate appointments being made to DTC's, and terms of reference being prescribed, by elected officials.
63. The Commission agrees wholeheartedly that this type of activity undermines the ethics and integrity of the procurement process that the Public Service should be striving to achieve. During

its own review of the procurement process, the Commission flagged this as a concern which requires the CTC to take immediate steps to remedy. Ultimately, the Commission believes that this type of behaviour undermines the confidence of future bidders, suppliers and the public in general. Clearly written policies would prevent this type of activity and would also communicate effective guidance for selecting the membership of the DTC's.

Working Group on Procurement

64. As stated in its Sixth Report the Working Group on Procurement, appointed under the auspices of the office the Honourable Deputy Governor in May 2012, completed its review of the existing framework and various mechanism for procurement including the entities and stakeholders involved, the existing laws and regulations, the policies and practices in place, the fairness and transparency of the process, whether value for money is being obtained and the information systems that support the process. Its Terms of Reference are included in Appendix IV of this document.

65. The final report of the Working Group on Procurement was submitted to the Honourable Deputy Governor for onward submission to the Honourable Ministers and Members of Cabinet on the 20th February 2013.

66. The Commission subsequently learned from the media that the Honourable Deputy Governor had answered a question posed to him during a Public Accounts Committee meeting at the House in which he responded to by indicating the report had been considered and accepted by Cabinet. The Commission continues to be unaware, however, as to whether all of the recommendations were accepted in full or only specific ones. The recommendations were as follows:
 - a. a new governance structure which identifies the various entities involved in procurement and details the reporting structure under which these entities should operate;
 - b. the establishment of a three person central procurement office (CPO) under the auspices of the Deputy Governor's Office to be headed by a suitably qualified and experienced Director of Procurement. The CPO will be responsible for, *inter alia*, establishing procurement policies and procedures, developing and maintaining standard government procurement documentation, procurement oversight, carrying out some centralized procurement, advising government entities on procurement and training of employees involved in procurement. The CPO will also undertake contract and post implementation reviews;
 - c. the CTC continues its current oversight role until such time as the CPO is fully staffed and operational. The oversight function carried out by the CTC should be independent of the executive with the private sector members being appointed by His Excellency the Governor and civil service members being appointed by the Deputy Governor. It is proposed that the Commission nominate one of their members to sit on the CTC. The CTC membership

should consist mainly of civil society representatives with support from suitably qualified civil servants;

- d. when the CPO is fully staffed and operational, with robust procurement policies and procedures established and in use throughout the service, it is recommended that the CTC function is changed. At this time, the PSC recommends that the CTC be renamed the Procurement Committee (Major Projects) (PC) and that the PC report to the CPO. The Director of Procurement will then chair the PC;
- e. an addition of the “*competitive dialogue*” form of procurement to provide appropriate procurement options for complex procurements;
- f. some amendment to the manner in which procurement takes place in the \$50 – 250,000 range to clarify roles and strengthen oversight;
- g. support of the regulations mandating the requirement for business case production in a standard format prior to a project being implemented for all projects over \$250,000. The existing PSIC should be reactivated and the membership should be appointed by the Minister of Finance and should reflect the necessary skills.(economics, finance, human resources etc);
- h. detailed policies and procedures be developed for all areas of procurement to guide Chief Officers, Procurement Committees and civil servants involved in procurement;
- i. policies and procedures be developed to ensure that adequate project management is in place for all significant projects;
- j. CIG reviews how it appropriates and funds capital projects and considers the use of a “Capital Development Reserve Fund” which would ring fence capital funds and prevent unspent capital funds from expiring at the end of the budget year due to the fact that the current system of appropriating and funding capital projects motivates poor procurement practices due to the rush to spend available funds before they are lost at the end of each budget year;
- k. the Director of Procurement be recruited as soon as possible as it will be difficult to advance these procurement recommendations without having this level of expertise available.

67. On 30 September 2013 the Manager provided the members with a copy of the report and as such members were afforded the opportunity to review the report in full, including the recommendations made. Members agreed that with the exception of the recommendation that a member of the Commission sit on the Procurement Committee (to oversee large projects), due to the practicality of the schedule of the members and the independence of the Commission, it accepted the remainder of the Working Group’s Recommendations.

68. The Commission has been advised that the issue of procurement is one that is considered of utmost importance to the new administration. It is therefore expected that the findings and recommendations contained in the final report of the Working Group on Procurement will receive due consideration in the near future and looks forward to working in tandem with the Government in order to assist in the fulfilment of the Commission's constitutional mandate.

SECTION SIX – REVIEW AND ESTABLISH PROCEDURES FOR APPOINTING MEMBERS TO PUBLIC AUTHORITIES

69. As an integral part of its Constitutional remit, the Commission spent a considerable amount of time reviewing and assessing the framework for appointments to statutory boards not only on a local, but also regional and international spectrum. It focused its attention on the current policies and procedures for procurement by the Government with particular emphasis being placed on the following:

- (a) whether the current policies and guidelines meet the criteria outlined in the governing statutory framework under Part IX and Part XII of the *Public Management and Finance Law (2010 Revision)* and the *Financial Regulations (2010 Revision)*;
- (b) whether these policies and procedures promote open and effective competition and ensure the highest degree of probity, ethical behaviour and transparency;
- (c) the need to develop conflict of interest guidelines and whether the provision of a register of interests could prove to be a useful tool in providing an additional safeguard within the overall procurement management framework;
- (d) identifying any additional strengths and weaknesses of the current process governing the award of public contracts; and
- (e) consideration of implementing a new procurement system.

70. Further, it examined the framework currently in place for the appointment of members to statutory boards some of which are governed by law, others by regulations and in some instances, memorandum and articles of association.

71. The Commission subsequently formed the view that there is scope for improvement in the process of appointing persons to statutory boards and that there needs to be a clear and unequivocal set of rules and standards to govern how members of public boards are selected and how they are expected to operate.

72. It indicated that steps must be taken to ensure that individuals who are appointed to public boards do not place themselves in positions where conflicts of interest arise and that each potential member should be required, at the time of their appointment, to disclose, by way of a Personal and Conflict of Interest Form, any obligation, commitment, relationship or interest that could conflict with his or her duties as a member of the public board or other entity upon which he or she has agreed to serve. It is envisaged that whilst there should be no need for the proposed declaration to be unnecessarily invasive, the information contained therein should serve to assist in the prevention of conflicts of interest both of a real and perceived nature.

73. As detailed in the Fifth Report the Commission indicated its desire to see Government enact legislation which requires public officials, as defined under the 2009 Constitution Order (so as to include all persons who serve on a public body, board, etc.), to complete and submit a Declaration of Interests Form at the time of their appointment. The prescribed form should show an awareness of the requirement to disclose current or future conflicts of interests and be held accountable in instances of a breach.
74. Subsequently, the Commission created a Declaration Form which was forwarded to the Honourable Deputy Governor with a request that it be forwarded to all Chief Officers for use with their Board, Committee or Commission Members and to former Governor Taylor with a request that he endorse the document for use by all Boards and Committees associated with Government's Statutory Authorities and forward it to the relevant Chief Executive Officers and Directors of all Statutory Authorities associated with Government. This document requests relevant information meant to ensure conflicts of interest, real or perceived, do not arise during the business of these Board, Committee or Commission meetings. The recommended Declaration Form is contained in Appendix V of this document.

SECTION SEVEN – RECOMMEND CODES OF CONDUCT

75. As an integral part of its first report and in the exercise of its constitutional remit (s.117(9)(f)) to assist in the setting of the highest standards of integrity, competence and behaviour on the part of public officers in order to ensure the prevention of conflict of interests or corruption; the Commission defined and adopted *The Nolan Principles* as the seven core principles which govern standards in public life.

76. The Commission continues to reaffirm its undertaking to uphold, promote and apply these seven core principles which form the basis of a universal standard of good governance, namely:

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

77. The Commission sees these seven principles of good governance as key elements that support accountability, transparency, and ethical decision making processes among public officials. For this reason, the Commission continues to reflect on these principles and discuss avenues for implementation.

SECTION EIGHT – REPORT TO THE LEGISLATIVE ASSEMBLY AT REGULAR INTERVALS

78. The Commission is mandated under s.117(9)(g) of the Cayman Islands Constitution Order 2009 to report to the Legislative Assembly at regular intervals and at least every six months.
79. During its lifetime the Commission has produced reports on:
- a. 12 August, 2010;
 - b. 8 February, 2011;
 - c. 19 August, 2011;
 - d. 17 February, 2012;
 - e. 17 August, 2012;
 - f. 27 February, 2013; and
 - g. 19 August, 2013.
80. In so doing, the Commission has sought to ensure that such reports are tabled as soon as practical so that they may become public documents.
81. During the sixth reporting session the Commission was concerned by the amount of time it was taking for its reports to be tabled in the Legislative Assembly. The Commission maintains the view that there is no reason why the reports should not be submitted directly to the Legislative Assembly in accordance with the mandate laid down by virtue of s.117(9)(g) of the 2009 Cayman Islands Constitution Order which places an obligation upon the Commission to report to the Legislative Assembly at regular intervals and at least every six months.
82. As part of its efforts to ensure that its reports are laid before the House in a timely manner, the Commission took steps to obtain the advice of the Honourable Attorney General and to meet with the former Honourable Speaker of the House querying the necessity for the reports of the Commission to be submitted to the Honourable Deputy Governor who, in turn, has presented the same in a Cabinet note to the Honourable Ministers and Members of Cabinet prior to these reports being laid in the Legislative Assembly.
83. As a result, the Chairman was given an undertaking by the former Speaker of the House and the Honourable Deputy Governor that the Commission's reports will be laid before the House as soon as practically possible.

SECTION NINE – EXERCISE SUCH OTHER FUNCTIONS AS MAY BE PRESCRIBED BY LAW

84. Prior to the passage of the Law, the responsibilities of the Commission under s.117 of the Constitution were rendered meaningless in so far as it related to the Commission's ability to monitor standards in public life and conduct investigations of potential breaches. The Commission's responsibility for reviewing and strengthening procedures for awarding public contracts and making public appointments could also be called into question without a supporting platform for such powers provided by legislation. Without any such statutory provisions, the Commission could only address matters regarding its proposed standards in public life in the broadest terms possible.
85. Since taking office, the new administration has indicated a strong willingness to ensure the SPL Bill is passed into law. The Commission commends the present Government's efforts "to continue to uphold the highest standards of good governance by enacting legislation to give effect to the Commission for Standards in Public Life" as stated in their manifesto.
86. Following the approval of the SPL Bill by the Cabinet the Chairman appeared on Radio Cayman's "Talk Today Show" on 28 November, 2013 and on Roosters' "Morning Cross Talk" on 30 November, 2013 to discuss the Bill and afford the public an opportunity to pose any questions or highlight any concerns during the public consultation phase of the passage of the legislation.
87. The Commission is extremely pleased to note that on the eve of the end of the terms of appointments of the inaugural Commission, the Law was unanimously passed in the Legislative Assembly on 31 January 2014. This Law now provides the Commission with the requisite powers to effectively perform its functions under the Constitution.

SECTION TEN – ADDITIONAL MATTERS

Community Engagements and Public Relations

88. The Commission is always willing to engage with members of the public and the media on topics as they relate to its mandate. Although education is not an explicit part of the Commission's mandate the Commission views it as necessary to assist in fostering an atmosphere of change that is more accepting and knowledgeable of established standards in public life. This in turn aids the Commission's mandate in s.117(9)(a) which states "to assist in the setting of the highest standards or integrity and competence in public life". As such the Chairman has regularly facilitated presentations, attended events, and answered phone calls and emails from members of the media who have posed questions on matters which relate to the remit of the Commission a few of which have been highlighted below.
89. As part of its efforts to formulate positive interaction with the Public, the Commission embraced the opportunity to utilise the local television show, GIS Spotlight as a means of reaching out to the public. The short segment included the primary responsibilities of the Commission and a short introduction to the Nolan Principles. The Commission will continue to seek alternative ways in which to increase their appearance in the public. The segment can be viewed at: <http://www.youtube.com/watch?v=J4ML0gFkPj8>.
90. In October 2011 the Chairman was asked to serve on the Committee to review the 1999 White Paper that was charged with garnering public views and input for the United Kingdom's review of its relationship with the overseas territories. The Report of the Committee which was submitted in November 2011 included the views received regarding the need for codes of conduct for persons in public life and the role of the Commission in relation thereto.
91. The Chairman attended a lecture by Professor Trevor Munroe on the topic of "Political Corruption in the Caribbean" at the UCCI Campus on. All members were encouraged by the Chairman to attend as well. Since 2011, Mr. Munroe has been executive director of Jamaica's National Integrity Action Limited, a not for profit NGO dedicated to the building of integrity and the combat of corruption in Jamaica on a non-partisan basis. Prior to this engagement he directed the National Integrity Action Forum – a coalition of leaders of public sector anti-corruption agencies, a two-year project launched in 2009 and supported by USAID. In 2012, Mr. Munroe was appointed an individual member of Transparency International, the only such person from the Caribbean, one among 27 in the world.

92. Since the tabling of the Commission's Sixth Report, the Chairman accepted a request to be interviewed by a member of Cayman Free Press in relation to articles for both the Chamber Magazine and the Caymanian Compass on the Commission and its role as it relates to various subject areas regarding standards in public life.
93. The Chairman was pleased to have been afforded the opportunity to participate in the week-long Lunch and Learn Series arranged by the Commissions Secretariat on the topic of Good Governance as it relates to Elections and Leadership in Government. The Chairman accepted the invitation to share with civil servants the role of the Commission as it relates directly to them. In addition the Chairman was able to provide those attending with information as it relates to the two roles each attendee played – i.e. the role of a civil servant and the role of a private citizen. The Chairman emphasised the need to remain politically neutral, declare conflicts of interest, ensure transparency and understand the need to be held accountable.
94. The Chairman was also happy to have been invited to participate in the 2013 Good Governance segment of the Leadership Cayman programme in which she was able to provide attendees with information on the role of the Commission and how it interacts with other Commissions and the public service as a whole. During the presentation the Chairman provided attendees with copies of the Constitution and a pamphlet containing information about the role and function of the Commission.
95. The Chairman fulfilled the request by the organisers of the Government Professional Week 2013 to speak (and answer questions) on the Commission, its constitutional mandate, conflicts of interest, and other relevant topics.
96. Since the tabling of the Commission's Seventh Report, the main focus of the Commission has been the preparation of the SPL Bill 2013. As such, the Chairman availed herself to represent the Commission in order to discuss the SPL Bill 2013 on various radio stations as part of the public consultation process. On the 28th of November she participated in Radio Cayman's Talk to Today programme and on the 30th of November the Chairman appeared on Roster's Cross Talk morning show.

Freedom of Information Law

97. As stated on numerous occasions, the application of the FOIL has been the subject of discussion by the Commission since its inception. However, the matter continues to be unresolved.
98. The scope and functions of the Freedom of Information Law 2007 (the FOIL) are expressly contained in s.4 as read in conjunction with s.2 of the FOIL.

99. The stated objects of the FOIL, as outlined in s.4, are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely-
- (a) governmental accountability;*
 - (b) transparency; and*
 - (c) public participation in national decision-making,*
by granting to the public a general right of access to records held by public authorities,
subject to exemptions which balance that right against the public interest in exempting from
disclosure governmental, commercial or personal information.
100. Based on the statutory definition of “public authorities”, as expressed in the FOIL, it would seem that none of the Commissions created under the 2009 Cayman Islands Constitution Order are included in the entities covered by the FOIL.
101. The statutory definition of “public authority” contained in s.2 of the FOIL states as follows:
- “public authority” means:*
 - (a) a ministry, portfolio or department;*
 - (b) a statutory body or authority, whether incorporated or not;*
 - (c) a government company which –*
 - (i) is wholly owned by the Government or in which the Government holds more than 50% of the shares; or*
 - (ii) is specified in an Order under section 3(2);*
 - (d) Any other body or organization specified in an Order under section 3(2).*
102. In respect to sub-paragraphs (c) (i) and (ii) and subparagraph (d) above, it will be seen that the Governor-in-Cabinet may, in accordance with the powers conferred by s.3(2) of the FOIL extend the categories of entities to which the FOIL applies.
103. The Commission is aware that a report outlining the findings and recommendations of the Freedom of Information Law Sub-Committee following their review of the Freedom of Information Law, 2007 and The Freedom of Information (General) Regulations, 2008 was laid before the House during the first quarter in 2013.
104. The Commission noted that there are two recommendations contained therein which are relevant to the role and function of the Commission:

8.3 Recommendation by the Freedom of Information Unit

(vii) Section 20(1)(d): The Unit noted that public authorities have suggested that there should be an exemption afforded boards or committees whose functions are quasi-judicial in nature.

The Sub-Committee also discussed the matter of exemptions for the records of other Tribunals (which include boards and committees) and Commissions and recommended that all Tribunals and Commissions should be subject to the FOI Law but that they should benefit from the relevant exemptions in the Law given the very nature of their work. It was therefore agreed that the adjudicative or operational records of these bodies should be exempted.

and

8.4 Commissions created under the Constitution

The Sub-Committee agrees to recommend that the Law be amended and the records of the Commissions created under the Constitution should be subject to the FOI Law.

105. The Commission would very much have welcomed the opportunity to provide its input insofar as the same relates to its inclusion under FOI as it must ensure that with the impending passage of the long awaited enabling legislation, the relevant corresponding exemptions must be put in place to protect the personal information relating to those individuals in respect to whom the requirements of the proposed enabling legislation, i.e. the SPL Bill and the Register of Interests will apply. To this end, it is the belief of the Commission that the current exemptions in the Law do not adequately cover the needs of the Commission once the SPL Bill is passed into law.
106. There can be no doubt that the Commission, being one of the institutions created by the 2009 Cayman Islands Constitution Order to support democracy, is by its very nature charged with the duty of promoting openness, accountability and transparency on the part of public officers and Government as a whole.
107. The Commission therefore reiterates its position that it is not against being brought under the FOI Law however it has a duty to ensure the personal information gathered by the Commission in line with the SPL Bill will be protected.
108. The Commission remains committed to the stated position taken at its very first meeting to publish all minutes of its meetings and other documentation save for any particular instances where the subject matter is deemed to be of a privileged or sensitive nature or otherwise restricted by law.

SECTION ELEVEN – MOVING FORWARD

As the inaugural membership of the Commission turns the reins over to the newly appointed members we take a moment to reflect on the achievements of the Commission over the past four years. We have been able to:

- Assist in the setting of highest standards of integrity and competence by creating a Code of Conduct which incorporated the Nolan Principles recommended for use by all Boards and Committees associated with Government's Statutory Authorities and all Chief Executive Officers and Directors of the Statutory Authorities associated with Government;
- Monitor standards of ethical conduct by providing guidance on conflicts of interest, sourcing legal clarity on the meaning of the remit, and reviewing the draft Ministerial Code of Conduct;
- Review extensively the existing processes and made in-depth recommendations for awarding public contracts;
- Review existing procedures for appointing members to public authorities and subsequently made numerous recommendations and created a Declaration Form for use by public officials;
- Recommend the Nolan Principles as the seven core principles which govern standards in public life;
- Submit reports every six months to the Legislative Assembly, this report being the eighth of such reports;
- Engage in numerous community engagements and public relations;
- Promote openness and transparency through the posting of minutes and other relevant documentation to our website; and
- Witness the unanimous passage of the Law through the Legislative Assembly.

While the Commission has completed a lot of work in its first four years we recognise that there is a long way to go before the constitutional mandates are fully realised. For instance, as the Law was only recently passed, the Commission was never placed in a position to legally supervise the operation of the Registers of Interest or investigate breaches of establish standards.

We are, however, comforted in knowing that the members to be appointed following our departure from the Commission will now have the necessary legislation to guide and support the Commission in its endeavours to promote the highest standards of integrity and competence in public life and to prevent corruption or conflicts of interests by all employed in public service.

We wish the incoming members strength and courage and we will be watching diligently as you work towards achieving the challenges of the Commission's constitutional mandates. We hope that our work

will provide you with a foundation from which to start and that our reports will provide you with useful points of guidance.

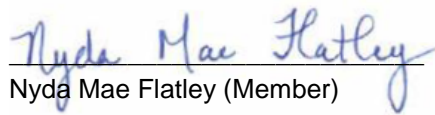
Our final word is to the public officials. Remember that the perception of conflict of interest can be as dangerous as the reality. Embrace transparency and ensure you are mindful of the fine line between your public and private lives.

For more information on the Commission for Standards in Public Life please visit www.standardsinpubliclifecommission.ky, e-mail info@standardsinpubliclifecommission.ky, or call 244-3685.

Dated this 13th day of October 2015.



Karin M. Thompson, MBE (Chairman)



Nyda Mae Flatley (Member)



Hedley Robinson (Member)



Ian Wight (Member)

APPENDIX I – CONSTITUTIONAL PROVISIONS – S.117

- (1) There shall be in and for the Cayman Islands a Commission for Standards in Public Life (referred to in this section as “the Commission”).*
- (2) The Commission shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, and who shall be people of the highest integrity with knowledge of practice in the private or public sector.*
- (3) At least one member of the Commission shall be a chartered or certified accountant of at least ten years’ experience.*
- (4) At least one member of the Commission shall be a legal practitioner who has practised in the Commonwealth for at least ten years.*
- (5) A person shall not be appointed as a member of the Commission if –*
 - a. he or she is a member of the Legislative Assembly;*
 - b. he or she holds, or has at any time during the preceding three years held, a public office;*
 - c. he or she has at any time during the preceding five years held office in a political party; or*
 - d. he or she is not a Caymanian.*
- (6) The office of a member of the Commission shall become vacant –*
 - a. at the expiration of four years from the date of his or her appointment;*
 - b. if the member is absent from three consecutive meetings of the Commission, unless the absence is approved by the Governor;*
 - c. if the member resigns office by writing under his or her hand addressed to the Governor;*
 - d. if the member is removed from office by the Governor for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehavior; or*
 - e. if the member with his or her consent is nominated for election to the Legislative Assembly or is appointed to any public office.*
- (7) If the office of a member of the Commission is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with subsection (2), may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to subsection (6), continue so to act until the expiration of his or her term of office.*
- (8) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.*
- (9) The functions of the Commission shall be –*
 - a. to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;*

- b. to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;*
- c. to supervise the operation of registers of interest and to investigate breaches of established standards;*
- d. to review and establish procedures for awarding public contracts;*
- e. to review and establish procedures for appointing members to public authorities, and the terms of their appointment;*
- f. to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;*
- g. to report to the Legislative Assembly at regular intervals, and at least every six months; and*
- h. to exercise such other functions as may be prescribed by a law enacted by the Legislature.*

APPENDIX II – THE SCOPE AND WORK OF THE COMMISSION

(as agreed in February, 2010 – detailed in part as reported in the First Report)

1. Transparency

It is clear that by its very nature the meetings of the Commission should be as open and accessible to all members of the public as possible.

As a first step in this direction, at its initial meeting which was convened on the 15th February 2010 the Commission made a decision to make the minutes of the meetings available to the public via the Commission's website which should be up and running shortly.

The Commission nevertheless recognises that there will be instances when the subject matter of a particular meeting may be of a privileged or otherwise sensitive or restricted nature which by law must be treated as such.

There are also practical considerations including the current available space and seating arrangements which will have to be taken into account when considering the need and ability of the Commission to accommodate members of the public at its meetings which are generally held on the third Monday of each month and otherwise as often as may be deemed necessary.

2. Method of Working

The first meeting of the Commission was convened on Monday, 15th February 2010 in the Conference Room of the Commissions Secretariat, situated on the 2nd floor, Smith Road Professional Centre Center, George Town. Following commencement, the Commission met regularly on the third Monday of every month.

3. Establishing Policies and Procedures

In order to effectively perform the mandate laid down in s.117 and s.121 of the Constitution and in so doing, fulfil the Commission's commitment to promote the underlying principles of openness and transparency in matters relating to the decisions and use of resources on the part of those who serve in public life, the Commission will necessarily be seeking to ensure that the requisite policies and procedures are clearly established regarding the lodging of a complaint and the manner in which conflicts, breaches or related concerns, real or perceived, are to be addressed.

4. Governing Legislation

The mandate laid down by s.117 as read in conjunction with s.121 of the Constitution clearly envisages the need for the passage of enabling legislation to allow the Commission to effectively perform its primary function and the specific responsibilities arising thereunder.

The Commission must also necessarily consider and place reliance on the relevant existing legislative framework which in effect provides a platform to everyone concerned with the good governance of public services and the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest with specific reference being made to the following:

- The Register of Interests Law 1996
- The Commissions of Enquiries Law (1997)
- The Public Management and Finance (Amendment) (No. 2) Law 2009 and Financial Regulations (2008 Revision)
- The Freedom of Information Law (2007)
- The Penal Code (2007 Revision)
- The Public Service Management (Amendment) Law, 2009
- The Anti-Corruption Law (2008)

As part of its remit, in a letter dated March 15, 2010 to the Deputy Governor, the Commission requested that advance copies of any new or proposed changes to existing legislation that contains implications for the change of standards in public life be provided for review. This will allow the Commission the opportunity to give any necessary feedback so as to ensure that the standards in public life of the people of the Cayman Islands are not negatively affected.

5. Public Service Values and Codes of Conduct

In the exercise of its functions the Commission has undertaken a review of the existing legislation governing codes of conduct on the part of public servants with particular emphasis being placed on the values to which the public service aspires. These values are expressly set out in the Public Service Management (Amendment) Law, 2009. They are as follows:

- a. to serve diligently the government of the day, the Legislative Assembly and the public in an apolitical, impartial and courteous manner and to deliver high-quality policy advice and services;
- b. to uphold the proper administration of justice and the principles of natural justice, and to support public participation in the democratic process;
- c. to strive continually for efficiency, effectiveness and value for money in all government activities;
- d. to adhere to the highest ethical, moral and professional standards at all times;
- e. to encourage creativity and innovation, and recognise the achievement of results;

- f. to be an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit and recognises the aims and aspirations of its employees, regardless of gender or physical disabilities;
- g. to be an employer that encourages workplace relations that value communication, consultation, co-operation and input from employees (either individually or collectively) on matters that affect their workplace and conditions of service; and
- h. to provide a safe and healthy working environment.

In addition to the values hereinbefore set out, each public servant, in the course of his or her employment, is required to comply with the public servant's code of conduct. Failure to do so in a significant way will be grounds for discipline or dismissal.

The public servant's code of conduct reads as follows:

- a. a public servant must behave honestly and conscientiously, and fulfill his duties with professionalism, integrity and care;
- b. a public servant must be courteous and respectful to the Governor, the Speaker and Deputy Speaker, Official Members, Ministers, Members of the Legislative Assembly, other public servants and members of the public, and treat everyone with impartiality and without harassment of any kind;
- c. a public servant must be politically neutral in his work and serve the government of the day in a way that ensures that he maintains the confidence of the government, while also ensuring that he is able to establish the same professional and impartial relationship with future governments;
- d. a public servant, as a member of the public, has the right to be politically informed but must ensure that his participation in political matters or public debate or discussions, does not conflict with his obligation as a public servant to be politically neutral;
- e. a public servant must not, at any time, engage in any activity that brings his ministry, portfolio, statutory authority, government company, the public service or the government into disrepute;
- f. a public servant must obey the law and comply with all lawful and reasonable directions, including work place rules established by his chief officer or a person with delegated authority from the chief officer;
- g. a public servant must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) with his duties as a public servant, and must not use his official position for personal or familial gain;
- h. a public servant must treat all official information and any dealings with the Governor, and Official Member or Minister as confidential, and, unless authorised to do so, must not give or disclose, directly or indirectly, any information about official business or anything of which he has official knowledge; and

- i. a public servant must not use official resources, including electronic or technological resources, offensively or for other than very limited private purposes.

The Commission believes that the Public Service Management (Amendment) Law 2009 (PSML) provides the necessary safeguards, codes of conduct and public service values needed to reinforce those standards for public life proposed and adopted by the Commission. However the Commission is still actively seeks the introduction of the requisite enabling Standards in Public Life Legislation (SPL) to further support these public service standards, values and codes of conduct and ensure that the spirit of s.117 and s.121 of the Constitution is preserved.

The Commission also wishes to establish protocols for monitoring the ethical conduct in the Legislative Assembly, the Cabinet and on the part of public authorities and public officers. This may include establishing channels in which individuals may lodge complaints about the ethical conduct of the members of the aforementioned entities and methods of investigating complaints and producing reports. The proposed SPL legislation would also enable the Commission the means through which to regulate the code and ethics of public officers and the appropriate sanctions for breaches of such established codes hereinbefore referred to.

6. Working Relationships

From the initial meetings of the Commission it was apparent that the Commission would work very closely with both the Anti-Corruption Commission and the Office of Auditor General. As such the Chairman met with representatives of both entities and the details of the meeting are outlined below:

Meeting with the Chair of the Anti-Corruption Commission (the ACC) (15th April 2010)

The Chair of the Commission met with the Chair of the Anti-Corruption Commission, Mr. David Baines, to discuss the respective roles and functions of the Commission and the ACC. The role of the ACC and its functions are governed by the Anti-Corruption Law (2008) pursuant to which the ACC is charged with the oversight of the anti-corruption policy of the Government which includes the power to receive and investigate any reports of the Commission of a corruption offence which may be viewed in conjunction with s.17(9)(c) of the Constitution which gives the Commission the authority to investigate breaches of established standards. The powers of the ACC also extend beyond those conferred to the Commission who does not have any authority to investigate persons that are not public officers as defined by the Constitution.

Meeting with Auditor-General (AG) (6th August 2010)

The Chair of the Commission met with the Auditor General, Mr. Alastair Swarbrick, who as part of his mandate laid down in the Public Management and Finance Law (2007) is charged with ensuring that the fiscal integrity and ethical behaviours of the public service are maintained. It was agreed that the

independence and wide powers conferred upon the office of the Auditor General will play an integral role in assisting the Commission in the discharge of its duties. It was also agreed that an effective working relationship between the Commission and the Auditor General will be mutually beneficial and will also serve to promote and improve ethics and standards in public life.

7. Request for Indemnity

Based on the mandate of the Commission, it is inevitable that from time to time the work of Commission will be seen as controversial by some. The Commission recognises that its findings may also unintentionally upset or give rise to concern by the persons affected. Therefore the Commission has sought to be provided with the appropriate indemnity for its members. This may be addressed in the proposed and supporting legislation, following recommendations made by the Attorney General to the Commission on 21 June 2010. The Commission therefore asks that the members of the Legislative Assembly will make this request for indemnity a priority and assist in facilitating the expedient drafting of the proposed Standards in Public Life Legislation (SPL).

8. Education Initiatives Plans for Standards in Public Life

The Commission discussed the need for public awareness and education in its endeavours to communicate and uphold standards in public life in the Cayman Islands. These discussions resulted with a finding that it is vital to create mechanisms through which to educate the public on standards to be maintained and potential conflicts of interest by persons in public life.

APPENDIX III – COMMISSION FOR STANDARDS IN PUBLIC LIFE OUTGOING MEMBERS



Mrs. Karin Thompson – Chairman

As both a founding and former council member for the Caymanian Bar Association, Mrs. Thompson has always been a strong advocate for law reform, providing much needed legal input and draft legislation to afford legal protections to victims of domestic violence and children. She has served as a member of the Honorary Board for the Young Caymanian Leadership Award Foundation (YCLA) and as Chairperson for its Nominations Sub Committee. Mrs. Thompson has also been a member of the Health Services Authority Board (1990-1992) and served as former Chairperson for the Labour Appeals Tribunal (1990 -1992), the Planning Appeals Tribunal (2000 -2002) and the Labour Tribunal (2002 -2003). A recipient of the CI Business and Professional Women’s Club “Woman of the Year Award for 2002”, Mrs. Thompson brings a wealth of professional legal expertise and experience on government boards to her role as Chair of this newly created Commission mandated by the 2009 Constitution.



Mrs. Nyda Mae Flatley

Prior to becoming a member of the Commission, Mrs. Flatley held the post of Chief Education Officer from 2000 until her retirement in 2007. She also has the landmark achievements of being the first Caymanian and female Principal of the the John Gray High School (JGHS) (1994 -1999) and the first teacher trained in the Quest Drug Prevention programme. Always actively involved in the community, Mrs. Flatley served as a member of the National Drug Council (2002 - 2004); as Deputy Chairman of The Advisory Council on the Misuse of Drugs (1993); Chairman of the National Children’s Festival of the Arts (2000 -2007) and as a member of the Francis Bodden Girls' Home Board (1984 -1986). Throughout her professional career Mrs. Flatley has shown a deep interest in the preservation of Caymanian culture through the development of youth programmes and firmly believes in Christian values as the foundation of our heritage.



Mr. Hedley Robinson

Mr. Robinson is the managing director of Architextura, a local architectural firm with 28 years’ experience. His professional career includes projects in both the public and private sectors. Married to Arlene Robinson, the manager of operations at the Royal Bank of Canada Trust, Hedley actively supports several private groups and organizations, bring a wealth of private and public sector knowledge to his role in the Commission. Mr. Robinson also participates in community work, serving on the elder board and various committees of First Baptist Church and School.



Mr. Ian Wight

Mr. Wight is currently the Senior Partner operating in the firm's Financial Advisory Services department and specializes in complex, cross border insolvency and restructuring engagements. Previously he served as Managing Partner of Deloitte in the Cayman Islands with overall responsibility for the operations of the firm comprising four main service lines: Audit, Tax, Consulting and Financial Advisory. He has more than twenty years of experience in insolvency matters, and has special expertise in the wind up of financial institutions, investment fund companies, and special purpose vehicles companies. Mr. Wight has been an associate member of the Institute of Chartered Accountants in England and Wales since 1974, a member of the Cayman Islands Society of Professional Accountants since 1979 and a fellow of the Institute of Chartered Accountants in England and Wales since 1981.

APPENDIX IV – WORKING GROUP ON PROCUREMENT – TERMS OF REFERENCE

Background:

The procurement process operated by the Cayman Islands Government is set out in Part IX of the Financial Regulations (2010 Revision) under the Public Management and Finance Law and the guidance documents (Pre-qualification and Open Tender Process) issued by the Central Tenders Committee. It is noted that these regulations and policies apply to all public authorities. In addition, in the past two years various reports have been written on the procurement process in the Cayman Islands such as the Keith Luck Report of April 2011; two reports issued by the Office of the Auditor General in July and August 2011; and the Third Report of the Commission for Standards in Public Life (“the Commission”).

The Honourable Deputy Governor presented a note to Cabinet on 24 April, 2012 entitled *A Review of Government’s System of Procurement* in which he informed the Honourable Ministers and Members of Cabinet that a Working Group would be established to develop a new framework for procurement and would be chaired by the Chair for the Commission.

Membership:

Members of the Working Group will include:

- Chairman of Commission for Standards in Public Life – Karin Thompson (Chairman);
- Ministry of Finance – Michael Nixon;
- Deputy Governor’s Office – Peter Gough;
- Attorney General’s Office – Reshma Sharma;
- Cabinet Office – Tim Hubbell;
- Central Tenders Committee Chairman – Nick Freeland;
- Chief Officer/Deputy Chief Officer – Alan Jones;
- members from the Commission – Nyda Mae Flatley and Hedley Robinson;
- any other person nominated by the Chairman – Max Jones (PWD) and Tom Van Zanten (Water Authority); and
- Auditor General – Alastair Swarbrick (acting as an advisor).

Terms of Reference:

- Define the term “procurement”;
- Conduct a review of the existing frameworks and various mechanisms for procurement (including the entities and stakeholders involved, the existing laws and regulations, the policies and practices in place, the fairness and transparency of the process, whether value for money is being obtained, the information systems that support the process) and provide an independent view to the Cayman Islands Government on the issues and problems that are identified;

- Develop the fundamental principles that should be used and Government's overriding policy objectives on procurement; and
- Make recommendations for change that promotes good public sector procurement practice

Reporting:

The Working Group will be expected to provide a report with recommendations to Cabinet via the Deputy Governor by the end of September 2012.

APPENDIX V – RECOMMENDED DECLARATION FORM FOR BOARD, COMMITTEE AND COMMISSION MEMBERS

Register of Interests
RECOMMENDED Declaration Form

FAILURE TO COMPLY FULLY AND TRUTHFULLY WILL GIVE RISE TO SANCTIONS
IMPOSED BY LAW

**PLEASE PROVIDE DOCUMENTARY EVIDENCE TO SUPPORT THE
INFORMATION THAT YOU HAVE LISTED IN THIS FORM.**

Full Name	
Address	
<p>Directorships</p> <p>Here provide particulars of any remunerated or unremunerated directorships in any company or corporate body including names and nature of the business of the company in each case.</p>	
<p>Shareholdings / Investments</p> <p>Provide name and description of any company, partnership or association in which you or your spouse are an investor.</p>	
<p>Income</p> <p>Provide details of any income or other form of remuneration or</p>	

<p>pecuniary interest received from any source including employment, office, trade or vocation.</p>	
<p>Land and Other Holdings</p> <p>Include particulars of any beneficial interest in any land and other holdings, other than home used solely for the personal residential purposes of you or your family (including nature, block and parcel numbers and approximate values).</p>	
<p>Liabilities</p> <p>Here provide details of all liabilities in respect to our or any other person connected to you including your spouse.</p>	
<p>Contracts with Government</p> <p>Here provide details of any contracts made between yourself (or any entity in which you or your spouse may have an interest) with Government.</p>	
<p>Miscellaneous</p> <p>Here include any other substantial</p>	

interest whether of a pecuniary nature or notes which may appear to raise a material conflict between your private interests and your public duties.	
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I declare that the information contained in this declaration is a complete and accurate description of all the interests that I am liable to declare under S. 121 of the Cayman Islands Constitution Order 2009.

Signed: _____

Dated: _____

APPENDIX VI – CODE OF CONDUCT FOR PUBLIC AUTHORITIES



1. PURPOSE AND APPLICATION

The primary role of the Commission for Standards in Public Life (the Commission) is to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interests. In so doing, the Commission adopts, upholds, promotes and undertakes to be bound by the seven core principles, known as the Nolan Principles, which form the basis of a universal standard of good governance. This document is meant to serve as an addition to and not override or conflict with any legal or professional requirements specific to the remit of the [name of agency].

2. NOLAN PRINCIPLES

Leadership

Holders of public office should promote and support these principles by leadership and example.

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

3. ADDITIONAL REQUIREMENTS (DELETE AS APPROPRIATE)

a. Compliance with Laws

Members shall act in accordance with all applicable laws and should comply with the spirit and intent of the law.

Members shall not commit or condone an unethical or illegal act or invoke another to do so.

Members should be familiar with legislation, policies and directives that apply to their work and the work of the public body to which they serve in order to comply with or facilitate others' compliance with applicable laws.

Members should recognize the public interest through consistency and predictability in the exercise of their decision-making authority by considering relevant facts and evidence as well as law and jurisprudence.

b. Objectivity / Impartiality

Members should approach every proceeding and every issue arising in a proceeding with an open mind, and avoid doing or saying anything to cause any person to think otherwise.

Members should be independent in decision-making.

c. Fairness / Courtesy

Members have an obligation to comply with procedural fairness and natural justice requirements and to act impartially in the conduct of proceedings, including in matters of law and Member attitude and demeanour.

Members should treat each person with dignity and respect and in a manner that builds trust.

d. Accessibility

Members should treat those who appear before this Authority fairly, and without favouritism.

Members should be aware and respectful of social and cultural differences. In the course of their duties, they should act in a manner that promotes an appreciation of diversity.

Members must be sensitive to potential barriers to accessibility.

Members should conduct hearings or reviews such that those who appear before the agency understand procedures and practices and can participate equally, whether or not they are represented.

e. Timeliness

Members should take all reasonable steps to ensure that proceedings are concluded in a timely manner, avoiding unnecessary delays and cancellations of proceedings.

Parties are entitled to a decision as soon as possible after the proceeding.

f. Quality and Consistency

Members should be fully prepared for a proceeding and ensure that proceedings are orderly.

g. Optimum Cost

Members should ensure that proceedings are streamlined to the best extent possible without sacrificing fairness.

Members should respect the use and treatment of public funds.

h. Collegiality

Members should foster a collegial working environment and conduct themselves in a manner that reinforces the integrity and professionalism of the [name of agency] among appointees and with support staff.

Members should conduct themselves in a manner that demonstrates respect for the views and opinions of colleagues.

Members should not comment publicly on another member's decision or conduct unless otherwise approved through an established policy.

i. Confidentiality

Members shall consider the privacy interests of individuals in the conduct of hearings and decisions, and act in accordance with applicable laws.

Members must not disclose information that the [name of agency] considers to be confidential.

Members must not take advantage of confidential information obtained through official duties to obtain a personal benefit.

Members should follow agency protocols for communicating in the media and should not communicate with the media regarding a decision unless otherwise established through policy.

4. ACKNOWLEDGEMENT

I _____ acknowledge that I have read and understand the Code of Conduct as set out above.

I agree to adhere to this Code of Conduct and commit to supporting standards set out in all applicable legislation, policies or guidelines conduct myself in accordance with the Code of Conduct.

Signature of Appointee

Signature of Witness

Date

Date