



Cayman Islands  
Anti-Corruption Commission  
*integrity is non-negotiable*

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# Annual Report

1 July, 2011 – 30 June, 2012



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## Statement from the Chairman

Corruption takes multiple forms including minor use of influence to institutionalized bribery. For this reason, corruption can be generally described as the abuse of entrusted power for private gain, including financial rewards as well as non-financial advantages.

Corruption is clearly recognized as a global challenge; indeed the Cayman Islands are not immune from its wrath. Corruption is a major hindrance to sustainable development and corrosive on the fabric of our society. Corruption undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes quality of life and carries the potential to allow organized crime, terrorism and other threats to human security to flourish.

In parallel to the rapid development of rules of good governance, the Anti-Corruption Commission urges the public sector and private sector to focus a significant degree of energy on anti-corruption measures as part of the mechanisms employed to protect their reputations and the interests of their stakeholders. In this regard, internal controls are increasingly being extended, rightfully-so, to a range of ethics and integrity issues. As such, private sector growth and the public's trust in the Government both depend on evidence of good business practices including transparency, accountability, and a commitment to ethically-sound operations.

Simply speaking, corruption is inherently wrong. It is a misuse of power and position; an intolerable myriad of acts. Corruption undoubtedly undermines the integrity of all involved and damages the core value system of the organizations to which they belong. Persons whom the public entrust with authority have an obligation to serve their constituents with integrity and honor. Greed and self-interest have no place in Cayman's public service, and violations of the Anti-Corruption Law will be thoroughly investigated and prosecuted.

It is absolutely clear that corruption plays a major part in undermining the world's social, economic and environmental development. As a result, the ACC will continue to combat corruption through a combination of approaches including raising public awareness, encouraging public confidence in reporting corruption, and strengthening law enforcement capacities to detect and prosecute offences under the Anti-Corruption Law. We look forward to joining with members of the concerned public, Government, the private sector, non-governmental organizations, and the media in bringing to justice those who seek to line their own pockets at the expense of the public's trust.

**David Baines**  
**Chairman, Anti-Corruption Commission**

# Section 1

## The Anti-Corruption Commission Islands (“ACC”)

### 1.1 ACC Membership

In accordance with the Anti-Corruption law (2008), the Commission consists of the Commissioner of Police, the Complaints Commissioner, and the Auditor General, and two additional members appointed by His Excellency the Governor, namely Sir Peter Allen and Mr. Leonard Ebanks.

### 1.2 Role of the Commission

The Anti-Corruption Commission (ACC) was created in accordance with Section 3 of Cayman's Anti-Corruption Law (2008) which came into effect on 1 January 2010 and the Commission is responsible for the administration of the said law.

### 1.3 Functions and Duties

Under the Anti-Corruption Law (2008), the primary functions and duties of the ACC are to:

- (a) receive and consider any report of the commission of a corruption offence and, subject to this Law, investigate such report;
- (b) receive and (as permitted) request, analyse and disseminate disclosures of any information-
  - i. concerning corruption offences under this Law or suspected offences; or
  - ii. required by any law in order to counter corruption;
- (c) detect and investigate-
  - i. any suspected offence under this Law;
  - ii. any suspected attempt to commit an offence under this Law; and
  - iii. any suspected conspiracy to commit any offence under this Law; and
- (d) do anything else that it is required or authorised to do under this Law or any other law or which is necessary to do for achieving the purpose of this Law.

### 1.4 Powers

In accordance with the Anti-Corruption Law (2008), the ACC:

- (a) shall receive all disclosures of information (including information from any overseas anti-corruption authorities) which-
  - i. concern any corruption offences;
  - ii. are relevant to its responsibilities as an anti-corruption authority;
- (b) may, upon gaining an Order of the Grand Court-
  - i. where information is disclosed to it under this Law; or
  - ii. upon receipt of a request from an overseas anti-corruption authority, order any person to refrain from dealing with a person's bank account or other property for a period not exceeding twenty-

one day if it is satisfied that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or the suspected proceeds of a corruption offence;

- (c) may, in writing, require the provision by any person of information (excluding information coming to a professional legal adviser in privileged circumstances) for the purpose of clarifying or amplifying information disclosed to it under this Law. Any person who, without reasonable excuse, fails or refuses to provide such information as is required by this subsection is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or to both;
- (d) shall retain a record for a minimum of five years of-
  - i. all information received or disseminated by it; and
  - ii. any agreement entered into under paragraph (e); and
- (e) may, with the consent of the Director of Public Prosecutions, enter into any agreement or arrangement, in writing, with an overseas anticorruption authority which it considers necessary or desirable for the discharge or performance of its responsibilities and functions.

### **1.5 Control, Oversight and Policy Directions**

The Governor has the power to give directions to the Commission with respect to policy followed in the performance of its functions in matters that concern the public interest. He is also responsible for:-

- (a) the general oversight of the anti-corruption policy of the Government;
- (b) overseeing and inspecting the work of the Commission;
- (c) reviewing annual reports submitted by the Commission;
- (d) promoting effective collaboration between regulators and law enforcement agencies; and
- (e) monitoring interaction and co-operation with overseas anticorruption authorities.

The Governor, in his discretion, may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor to concern the public interest and the Commission shall give effect to any such directions.

## Section 2

# Work of the Anti-Corruption Commission

### 2.1 Research

Starting from its inception, the Anti-Corruption Commission has pledged a commitment to advocate for the continuous development of the Commission, which includes enhancing the necessary resources and strategies to combat corruption and improprieties in the Cayman Islands. In focusing on such goals the Commission continues to keep informed of, and embrace when necessary, wide-ranging preventive and corrective measures, albeit with very limited resources.

### 2.2 Royal Cayman Islands Police Service – Anti-Corruption Unit

The Royal Cayman Islands Police Service's Anti-Corruption Unit (ACU) works in conjunction with the Commission to investigate alleged breaches of the Anti-Corruption Law (2008). As such, the ACU provides regular operational updates to the Commission regarding the status of all on-going investigations. The ACU is an exceptionally small team comprised of experienced specialist police detectives; the Detective Inspector in charge of the ACU reports directly to the Commissioner of Police / Chairman of the Anti-Corruption Commission.

### 2.3 Confidential Reporting Hot Line

★ Confidential Reporting Line ★



345.928.1747

The Anti-Corruption Commission maintains a confidential reporting line through which the public can provide information directly to the Anti-Corruption Unit pertaining to actual or suspected breaches of the

Anti-Corruption Law. The phone number has been established to encourage members of the public to report instances of corruption with the protection of confidentiality.

### 2.4 Scope Sub-Committee

During the reporting period a Scope Sub-Committee was tasked with reviewing the intricacies of the Anti-Corruption Law (2008). The exercise served various purposes, including identifying the roles and responsibilities of parties concerned within the law, including the Commission. The results of this exercise will be the formulation of protocols for the development of the Commission's policies and procedures manual inclusive of protocols for a complaints management process.

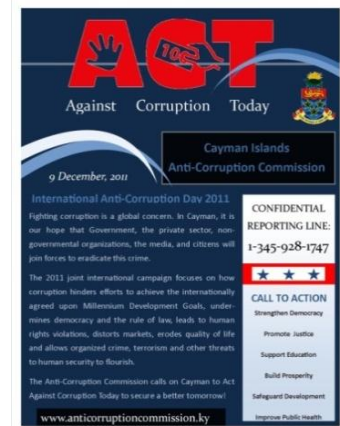
### 2.5 ACC Website

The Commission hosts a website ([www.anticorruptioncommission.ky](http://www.anticorruptioncommission.ky)) with the goal of increasing public awareness as to the work of the ACC. The intent of the website is to allow the public access to information on commission members, functions and powers of the Commission, ACC meeting minutes, relevant legislation updates, published reports, and press releases. In the future the Commission intends to publish its policies and procedures manual online, and provide a secure forum through which members of the public can make confidential online reports of corruption.

## 2.6 International Anti-Corruption Day Awareness

11 December, 2011 marked Anti-Corruption Day, to which the Commission issued a 'Call to Action' to the Cayman Islands public. The ACC issued a publication through the media informing the public of the dangers of corruption, and calling for a cooperative approach to combating corruption in the country through a process of reporting corruption as a means in which to strengthen democracy, promote justice, and support public education / awareness.

The 2011 joint international campaign focused on how corruption hinders efforts to achieve the internationally agreed upon Millennium Development Goals, undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes quality of life and allows organized crime, terrorism and other threats to human security to flourish.



## 2.7 Print Media

Public education and awareness are amongst the cornerstones of combating corruption. As such, the Commission has devised a detailed brochure with information to better equip the public with knowledge of the ACC, the law, the potential damages caused by corruption, and some of the responsibilities to which public officials are held accountable. The purpose is to disseminate and expand anti-corruption awareness among the general public. The Commission intends to distribute the brochure through various channels including within the civil service e-mail system, and through the Commission's website.

## 2.8 Public Education

The ACC has embarked on a public education initiative with the creation of a monthly newsletter entitled Focus. The aim of Focus is to inform the community on emerging trends in the area of corruption and offer best practices with regards to identifying, managing, and preventing corruption risks. Additionally, the newsletter will feature general information on the topic of corruption as a means in which to raise awareness across all sectors of the community and assist persons to better understand the dynamics that drive corruption. A copy of Focus (Issue 1- Conflict of Issues) is attached to this report as Appendix 3.

## 2.9 Conferences and Training

On 12 September, 2011 Mr. David Baines, Commissioner of Police, attended the Cayman Islands Compliance Association Conference at the Westin Causuarina Resort in his capacity as Chairman of the Anti-Corruption Commission. The Chairman made a presentation to the attendees communicating the functions of the Commission and providing an opportunity for a brief discussion on the relevancy of the anti-corruption law. The Cayman Islands Compliance Association ("CICA") has been in existence since October 2000 as a not for profit organization. The formal objectives of CICA include providing:



- members with information to assist in implementing and maintaining effective compliance and anti-money laundering programmes in their respective financial services organisation;
- a forum to discuss new legislation or best practice for the Cayman Islands financial services industry; and
- an interface between financial services organisations and regulators and law enforcement agencies.

## Section 3

### Breaches of the Law

#### 3.1 General Overview

The Commission receives reports of alleged breaches as identified in the legislation through direct communication to members of the Commission; requests for mutual assistance from overseas; and those reported directly to the Police or other law enforcement agencies, either overtly or covertly. In each case the allegation will be fully recorded and a decision taken as to what, if any, further investigation or action is appropriate. Each allegation is assessed on its own merits, however consideration is given as to whether the issue constitutes a breach of the legislation; and if so, is the matter in the public interest to investigate and / or prosecute. No prosecution is undertaken without the express authority of the Attorney General in accordance with the Anti-Corruption Law (2008) Part 2, Section 7.

Any alleged breach occurring prior to the commencement of the Law and not forming an on-going sequence would be investigated and prosecuted, if appropriate, under the existing legislation available at the time.

#### 3.2 Accessibility of the Anti-Corruption Commission

The ACC may be contacted through the Commissions Secretariat in the following ways:

*Telephone:* 244-3685 or 928-1747

*Facsimile:* 945-8649

*Mailing Address:* P.O. Box 391, Grand Cayman KY1-1106, Cayman Islands

*Physical Address:* 1<sup>st</sup> Floor Cayman Corporate Centre, George Town, Grand Cayman



### 3.3 Corruption Offences in the Cayman Islands

Corruption can be described as abusing a position of trust to gain an undue advantage. Corruption, therefore, means that decisions are not taken for public benefit, but rather to serve private interests.

In accordance with The Anti-Corruption Law of the Cayman Islands the Anti-Corruption Commission may receive reports of allegations of the following offences:

Bribery of public officers and members of the Legislative Assembly	Contractor subscribing to election fund	Influencing or negotiating appointments or dealing in offices
Breach of trust by public officer or by a member of the Legislative Assembly	Frauds on the Government	Selling or purchasing office
Abuse of office	False claims by public officers	False certificates by public officers or by members of the Legislative Assembly
False statements to the Commission	Facilitation payments	Bribing a foreign public officer
Secret commissions	Failure of a public officer and member of the Legislative Assembly to whom a bribe is offered to report such offerings	Conflict of interests

### 3.4 Offences under Part 3 of the Anti-Corruption Law (2008)

- **Bribery of public officers and members of the Legislative Assembly**

- directly or indirectly-
  - a) solicits;
  - (b) accepts or obtains; or
  - (c) agrees to accept or obtain,for himself or any other person, any loan, reward, advantage or other benefit with intent-
  - (d) to interfere with the administration of justice;
  - (e) to procure or facilitate the commission of an offence; or
  - (f) to protect from detection or punishment a person who has committed or who intends to commit an offence,
- Gives or offers any loan, reward, advantage or other benefit, with intent that the public officer should do anything mentioned above.

- **Frauds on the Government**

- Demands, accepts, offers or agrees to accept a loan, reward, advantage or other benefit for cooperation, assistance, exercise of influence etc. in connection with the transaction of business relating to the Government.
- Pays a commission or reward or confers an advantage or benefit on a member of the Legislative Assembly or a public officer of a government entity or to any member of the family of a member of the Legislative Assembly or a public officer, unless he has the consent in writing of the Chief Officer of the government entity.
- Demands, accepts or offers or agrees to accept from a person who has dealings with the Government a loan, reward, advantage or other benefit directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the Chief Officer of the government entity that employs him or of which he is an official.

- **Breach of trust by public officer or by a member of the Legislative Assembly**

- In connection with the duties of a public office, commits fraud or a breach of trust;
- Liable on conviction to imprisonment for a term of five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

- **Selling or Purchasing Office**

- Sell or agrees to sell an appointment to or a resignation from a public office, or a consent to any such appointment or resignation, or
- Purchase or give a loan, reward, advantage or other benefit for the purchase of any such appointment, resignation or consent, or agrees or promises to do so.

- **Influencing or negotiating appointments or dealing in offices**
  - Receives, agrees to receive, gives or procures to be given, directly or indirectly, a loan, reward, advantage or other benefit as consideration for cooperation, assistance or exercise of influence to secure the appointment of any other person to a public office;
  - Solicits, recommends or negotiates an appointment to or resignation from a public office, in expectation of a direct or indirect loan, reward, advantage or other benefit
- **False claims by Public Officers**
  - Knowingly make false claims on accounting statements or returns relating to money payable to himself or any other person for services, delivery of goods, etc.
- **Abuse of Office**
  - Doing or directing to be done, in abuse of the authority of a public office, any arbitrary act prejudicial to the rights of another person.
- **False certificates by public officers or by members of the Legislative Assembly**
  - Knowingly giving a false certificate when authorised or required by law to give such a certificate wherein the rights of any person may be prejudicially affected.
- **Conflict of Interest**
  - Direct or indirect interests in deals with companies, partnerships or other undertaking relating to:
    - (a) the public officer;
    - (b) the member of the Legislative Assembly; or
    - (c) a member of the family or an associate of either the public officer or member of the Legislative Assembly,
  - The public officer, the member of the Legislative Assembly, the member of the family or the associate holds more than ten per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,
  - Personal interest in a decision which a government entity, of which the public officer or the member of the Legislative Assembly is a member, director or employee, is to take,
  - Shall forthwith disclose, in writing, to the government entity the nature of that personal interest.
- **Duty in relation to Bribery**
  - A public officer or MLA to whom any loan, reward, advantage or other benefit is given, promised or offered, in contravention of the Anti-Corruption Law, shall report such to the ACC or any RCIPS police constable together with the name, if known, of the person who gave, promised, or offered such load, reward, advantage or other benefit to him.
  - A public officer or MLA who has reasonable cause, to believe that another public officer or MLA has solicited, obtained, or agreed to accept or obtain any loan, reward, advantage or other

benefit, in contravention of the Anti-Corruption Law, shall report the name of the public officer or MLA to the ACC or any RCIPS police constable.

- **Secret Commissions**

- gives, offers or agrees to give or offer to an agent any loan, reward, advantage or other benefit relating to the affairs or business of his principal or for favour or disfavour to any person with relation to the affairs or business of his principal; or
- being an agent, demands, accepts or offers or agrees to accept from any person any loan, reward, advantage or other benefit relating to the affairs or business of his principal or for showing favour or disfavour to any person with relation to the affairs or business of his principal; or

- **Bribing a Foreign Public Officer**

- Obtain or retain an advantage in the course of business, directly or indirectly promises, gives, offers or agrees to give or offer a loan, reward, advantage, or benefit of any kind to a foreign public officer for his benefit or for the benefit of another person or to person for the benefit of a foreign public officer-
  - (a) as consideration for an act or omission by the foreign public officer in connection with the performance of the officer's duties or functions; or
  - (b) to induce the foreign public officer to use his position to influence any acts or decisions of the foreign country or public international organisation for which the officer performs duties or functions.

- **False Statements to the ACC**

- Makes or causes any other person to make false or misleading statements to the ACC or to a police constable.
- Makes an initial statement to the ACC or RCIPS, and then wilfully makes a subsequent inconsistent statement to the ACC or RCIPS.

- **Inchoate Offences**

- Unless expressly provided otherwise the following are offences under this Law-
  - (a) an attempt, conspiracy or incitement to commit an offence under this Law; and
  - (b) aiding, abetting, counselling or procuring the commission of an offence under this Law.

## Section 4

### Causes and Responses to Corruption

#### 4.1 Snapshot Framework for Understanding and Mitigating Corruption

Institutional Causes		Institutional Responses	
Wide authority	→	<b>Limit authority</b> E.g., privatization, liberalization, competitive procurement, competition in public services, clear communication lines for public officials	
Minimal accountability	→	Improve accountability through:	
	→	<b>Transparency</b> , e.g., freedom of information, financial disclosure, open budget process, financial management systems	
	→	<b>Oversight</b> , e.g., independent audit offices, anti-corruption commission, legislative oversight, internal control testing, confidential reporting hot lines, and whistle-blower & witness protection legislation	
	→	<b>Sanctions</b> , e.g., electoral, criminal, and administrative sanctions, judicial reform	
Perverse incentives	→	<b>Realign incentives</b> , e.g., living wage, performance-based incentives, professionalization, ethics / codes of conduct, training opportunities, identifying and reducing redundant and/or ghost workers	
Societal Causes		Societal Responses	
Anti-system attitudes	→	<b>Raise awareness</b> about costs of corruption and mobilize political will for reform, e.g., through surveys, public education campaigns, responsible investigative journalism, civic advocacy organizations, workshops, regional and international cooperation	

Although brief, and basic, the information outlined above demonstrates that there is not a 'one-size-fits-all' or singular response to corruption that will work in every instance. In the same sense that corruption originates from a variety of institutional failings and societal predispositions, responses to corruption must vary to address particular causes. Furthermore, responses must conform to a politically and financially constrained reality, adapting to the opportunities and constraints for fighting corruption at a given time. While the variety of intervention mechanisms will vary, use of societal measures to build and maintain awareness and sustain political will is a key to solidifying a cohesive effort to resist corruption in all facets of society. Indeed, where corruption is pervasive, the fight against it must be a public and technocratic affair.

## **4.2 Corruption and the Principles of Good Governance**

Corruption is a global concern and an issue that will not disappear by its own accord. Moreover, corruption cannot be ignored. In fact, it is possible to confront corruption by changing the conditions that allow it to flourish. Efforts to tackle corruption must translate the main principles of good governance (information, transparency, integrity, accountability, participation) into long-term action plans that are executed, reviewed, and advanced for maximum effectiveness. From this perspective, the Commission believes that it is particularly important to shut down opportunities for corruption by encouraging public officials to create mechanisms for transparency and ensure accountability for results. However, reducing opportunities for corruption will not prove sufficient enough; government entities must also increase the likelihood of detection through developing, testing, and updating internal controls in addition to supporting appropriate enforceable sanctions when corruption occurs, be they criminal, social, or administrative.

## **4.3 Patterns of Corrupt Practices**

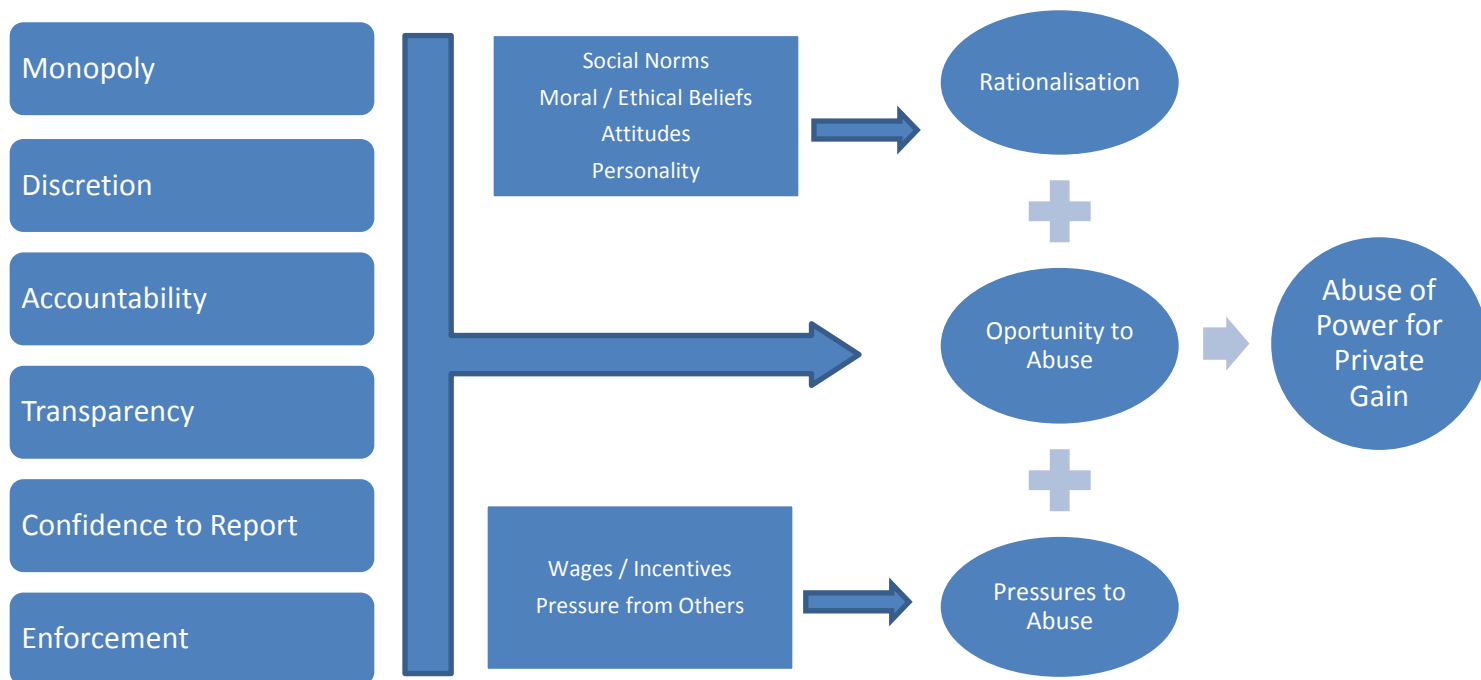
For the purpose of devising strategies to prevent or control corruption, it is important to understand the factors that explain patterns of corrupt practices. For example, people generally cross the line between honest and corrupt behaviour when they have an opportunity to misuse their entrusted power and when they feel pressured to do so. In turn, such individuals formulate rationalisations to justify their behaviour.

Typically, opportunities for corruption are greater in circumstances wherein the government entity has monopoly powers (the only provider of a particular service); where officials have discretion without sufficient control of this decision-making authority; where there is a lack of accountability for decisions or results (including measurement of results and punishment for non-performance or corruption); where transparency (active disclosure of and access to information) is lacking and individuals do not have confidence to report actual or suspected corrupt practices; and where corruption is not detected or punished (enforcement).

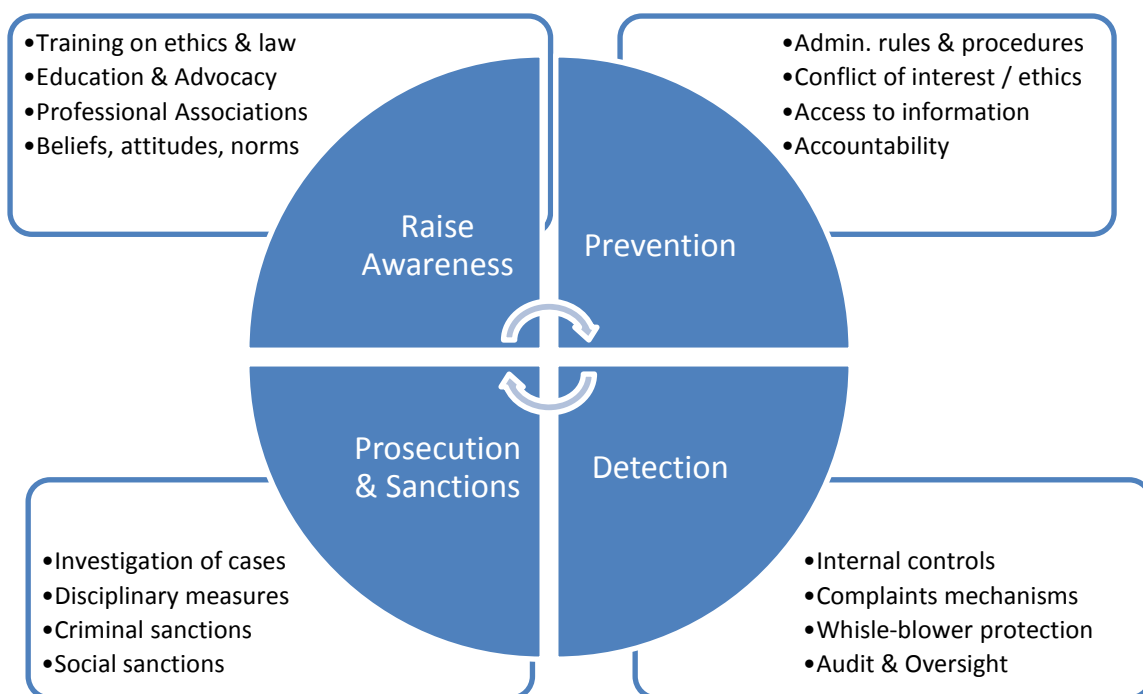
Individual beliefs, attitudes, and social value systems, therefore, influence corruption and provide the basis for how those engaged in corrupt practices rationalize or justify their behaviour. Finally, public officials may feel pressured to engage in corruption. These pressures can be political, financial or social and need to be considered in anticorruption measures.

The graphic charts below illustrate the interconnection of different variables with corruption and initiatives to reduce drivers of corruption.

### Patterns of Corrupt Practices



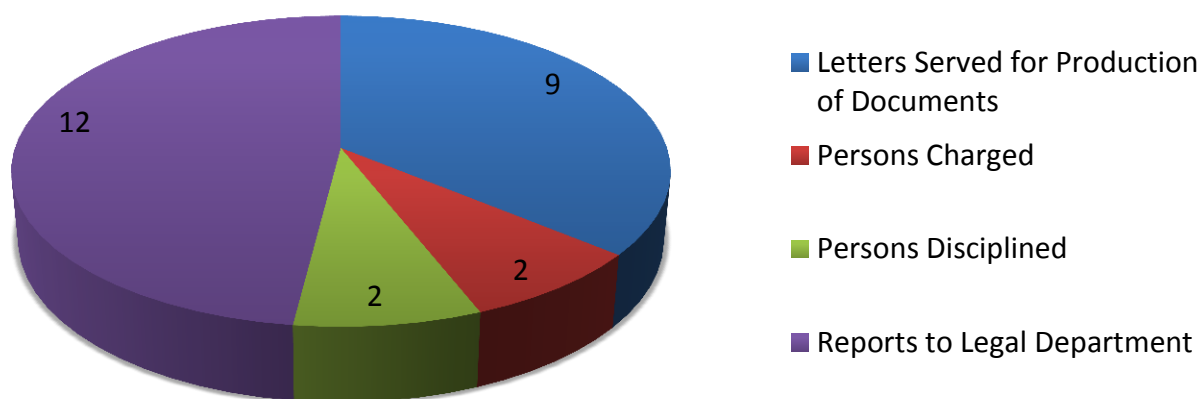
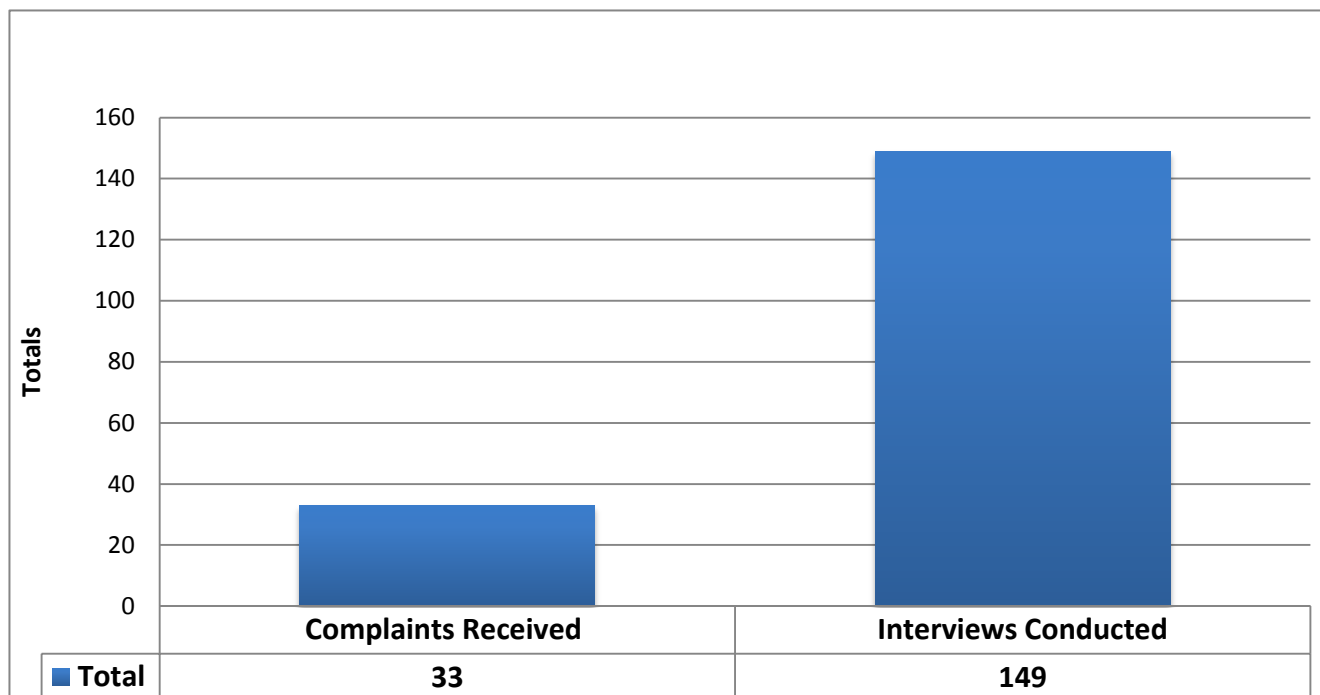
### International Initiatives to Mitigate Drivers of Corruption



## Section 5

### Statistical Information

#### Performance Indicators for ACC: 1 July, 2011 – 30 June, 2012



## Section 6

### Moving Forward

#### 6.1 Support Human Rights



There are at least three ways that public entities can effectively promote human rights while strengthening anti-corruption measures:

- Through core business activities in support of the Anti-Corruption Law and the Bill of Rights;
- Strategic social investment and community partnerships; and
- Advocacy and public policy engagement to promote lawful, rational, proportionate and procedurally fair operations and decision-making processes.

#### 6.2 Reduce Complicity in Corruption

Essentially, complicity involves an individual or entity being implicated in corruption that another entity or individual is causing. Resisting corruption, therefore, includes avoiding complicity. The risk of complicity in corruption may be particularly high in areas with weak governance and/or where corruption is widespread. However, the risk of complicity exists in every sector of the community. The risk of an allegation of complicity is reduced if a government entity, through its public officials, becomes aware of, prevents, and mitigates risks of complicity through adopting a systematic management approach to corruption.

Complicity is generally made up of 2 elements:

1. An act or omission (failure to act) by a company, government entity, or individual representing a company or government entity, that “helps” (facilitates, legitimizes, assists, encourages, etc.) another, in some way, to carry out corruption , and
2. The knowledge by the company, government body, or individual that its act or omission could provide such help.

### **6.3 Public Education / Awareness and Media Engagement**

Public relations campaigns work to increase understanding within the Cayman Islands about the harm caused by corruption and the ways in which it can be fought. Using a combination of the mass media, community activities, and anti-corruption programming, our goal is to highlight the link between corruption and poorer public services, lower investment, smaller growth rates, and higher levels of inequality. Through public education the ACC intends to emphasize citizens’ rights to services. At the same time, these campaigns are envisioned to articulate procedures for reporting corrupt practices and advocating for reform. Ultimately, through an increased awareness amongst the general population, it is anticipated that people of the Cayman Islands will develop a sense of ownership with respect to assisting in the fight against corruption.

### **6.4 Exposing and Working to Prevent Corruption**

The ACC takes a firm stance against corruption in the Cayman Islands. The reason for our position is not solely a legislative mandate, but also a realisation by all members of the ACC that undetected and unchecked corruption in the public sector can cause serious damage including:


- undermining public trust in government and wasting public resources;
- causing injustice through advantaging some at the expense of others;
- inefficiencies in operations, services, and decision-making; and/or
- reputational damage that makes it difficult to recruit and retain quality staff or obtain best value in tender processes, and difficulty attracting business investment, adversely affecting prosperity.

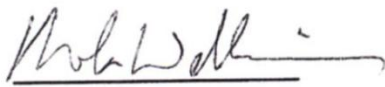
In the Cayman Islands, the ACC will continue to work closely in conjunction with the RCIPS Anti-Corruption Unit to detect and expose corruption, employ strategies that raise awareness, and prevent corruption before it occurs. In this regard, the ACC is open to providing guidance and advice on steps that public officials can do to prevent corruption.

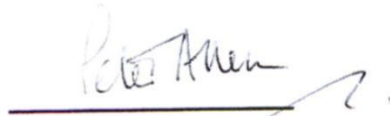
### **6.5 Levels of Support Staff**


Legislation provides His Excellency with authority to provide additional staff and other resources to the Commission. In February 2011 the Commission began receiving analytical, research, and administrative support from the Commissions Secretariat. Additionally, the RCIPS ACU is staffed with specialist detectives who maintain a close working relationship with the Commission. However, even with the aforementioned support, the ACC still does not have the desired level of support due to financial constraints. Increasing the number of ACU police detectives will be necessary as the complexity of cases inevitably increases, investigations become more time-consuming, and investigative resources encompass emerging technologies and techniques.

Dated this 3<sup>rd</sup> day of July, 2012.

  
Mr. David Baines (Chairman)

  
Miss Nicola Williams

  
Sir Peter Allen

  
Mr. Alastair Swarbrick

  
Mr. Leonard Ebanks

# Appendix 1

## General Information

### What is Corruption?

- Corruption means abusing a position of trust to gain an undue advantage. This involves the conduct of both sides; that of the person who abuses their position of trust as well as that of the person who seeks to gain an undue advantage by this abuse.
- Corruption occurs in relation to public officials and private parties.

### What is the impact of corruption?

- Corruption undermines democracy and the rule of law;
- leads to human rights violations;
- distorts markets;
- erodes quality of life; and
- allows organized crime, terrorism and other threats to human security to flourish.

### Purpose of the Anti-Corruption Law (2008)

- A law to repeal the provisions of the penal code relating to corrupt practices;
- give effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997; and to the United Nations Convention against Corruption

### Administration of the Anti-Corruption Law

- The ACC is responsible for the Administration of the Law
- The ACC has broad powers including:
  - investigate suspected and alleged corrupt conduct in conjunction with RCIPS (ACU);
  - recommend prosecution if necessary;
  - liaise with overseas anti-corruption authorities;
  - obtain search warrants and court orders to freeze the assets of those suspects of committing corruption offences.
- The ACC is Comprised of:
  - The Commissioner of Police (Chair)
  - • The Complaints Commissioner
  - • The Auditor General
  - • Two other persons, appointed by the Governor; each of whom shall be retired judges of the Grand Court or Court of Appeal; retired police officers; retired justices of the peace or magistrates; or retired attorneys-at-law.

### **The Role of Governor under the Law**

- the general oversight of the anti-corruption policy of the Government;
- overseeing and inspecting the work of the Commission;
- reviewing annual reports submitted by the Commission under section 9;
- promoting effective collaboration between regulators and law enforcement agencies; and
- monitoring interaction and co-operation with overseas anti-corruption authorities.
- The Governor, in his discretion, may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor to concern the public interest and the Commission shall give effect to any such directions.

### **Definition of “Chief Officer” under the law**

- “Chief Officer” means-
  - (a) in the case of a Ministry, the Permanent Secretary (Chief Officer) of that Ministry;
  - (b)
    - (i) Portfolio of Internal and External Affairs → public officer in the Portfolio as may be designated by the Governor;
    - (ii) Portfolio of Legal Affairs → public officer in the Portfolio as may be designated by the Governor;
    - (iii) Portfolio of Finance and Economic Developments → public officer as may be designated by the Governor; and
    - (iv) Portfolio of the Civil Service → public officer as may be designated by the Governor;
  - (c) Statutory Authority or a Government Company → the person appointed as Chief Officer (by whatever name called) by the board of that authority or company;
  - (d) Audit Office → the Auditor-General;
  - (e) Judicial Administration → the Court Administrator or such other suitable person as may be designated by the Chief Justice;
  - (f) Office of the Complaints Commissioner → the Complaints Commissioner;

### **Definition of “Public Office” and “Public Officer” under the law means-**

- “Public Office” means –  
Subject to the next following definition, an office of emolument in the public service
- “Public Officer” means –
  - (a) a person holding public office whether temporarily or permanently by appointment, or by the operation of any law;
  - (b) a judge, a magistrate, an arbitrator, an umpire, an assessor, a member of a jury or a referee in any proceeding or matter with the sanction of any court or in pursuance of any law;
  - (c) a Justice of the Peace; and

(d) a member of any statutory body, a tribunal or a commission of inquiry in pursuance of any law; but does not include a member of the Legislative Assembly;

### **Duty of A Public Officer**

(1) A public officer or a member of the Legislative Assembly to whom Legislative Assembly to any loan, reward, advantage or other benefit is given, promised, or offered, inwhom a bribe is offered, contravention of any provision of this Law shall report to the Commission or a etc. constable such loan, reward, advantage or other benefit together with the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to him.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both.

(3) A person from whom any loan, reward, advantage or other benefit has been solicited or obtained, or an attempt has been made to obtain such loan, reward, advantage or other benefit, in contravention of any provision of this Law shall, at the earliest opportunity thereafter, report such soliciting or obtaining of, or attempt to obtain, the loan, reward, advantage or other benefit together with the full and true description and, if known, the name of the person who solicited, or obtained, or attempted to obtain, the loan, reward, advantage or other benefit from him to the Commission or to a constable.

(4) A person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(5) A public officer or a member of the Legislative Assembly who has reasonable cause to believe that another public officer or a member of the Legislative Assembly has-

- (a) solicited;
- (b) accepted or obtained; or
- (c) agreed to accept or obtain;

any loan, reward, advantage or other benefit in contravention of any provision of this Law, shall report such belief to the Commission or a constable and shall provide the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to the public officer or the member of the Legislative Assembly.

(6) A person who fails, without reasonable excuse, to comply with subsection (5) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(7) A person who commits an act of victimisation against a person who has made a disclosure under subsection (1), (3) or (5) commits an offence and is liable on summary conviction to imprisonment for a term of two years.

(8) In this section, “victimisation” means an act-

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or
- (d) amounting to threats of reprisals.

**Definition of “member of a family”, in relation to a person, means-**

- a spouse of the person;
- a brother or sister of the person (including half and step-brother or half and step-sister);
- a brother or sister of the spouse of the person (including half and step brother or half and step-sister);
- any child of the person (including adopted and step-child);
- any parent or grandparent of the person (including step and adopted parent and grandparent);
- an aunt or uncle of the person; and
- niece or nephew of the person;

**Prosecution for Offences**

- Proceedings for a corruption offence must have the consent of the Attorney-General.

**Criteria for Committing an Offence**

- A person does not commit a corruption offence unless-
  - (a) the conduct constituting the alleged offence occurs-
    - wholly or partly in the Islands; or
    - wholly or partly on board a Caymanian aircraft or a Caymanian ship; or
  - (b) the conduct constituting the alleged offence occurs wholly outside the Islands and-
    - at the time of the alleged offence, the person is –
      - a person having Caymanian status in accordance with the Immigration Law (2007 Revision); or
      - a resident of the Islands; or
      - a body corporate incorporated by or under a law of the Islands.

## Appendix 2

### Members' Biographies

#### Membership of the Anti-Corruption Commission

In accordance with the law, the Commission consists of the Commissioner of Police, the Complaints Commissioner, and the Auditor General, and two additional members appointed His Excellency the Governor. Currently, the members are as follows:

#### Mr. David Baines, Commissioner of Police (Chairman - Ex-Officio Member)



Mr. Baines joined Lancashire Constabulary in 1976, rising to the rank of Chief Inspector before moving through promotion to Greater Manchester Police (GMP). During his tenure with GMP, Commissioner Baines served in various posts including; Head of Corporate Performance with responsibility for raising standards throughout the force; Divisional Commander for Oldham; and Divisional Commander for Salford. After completing the Strategic Command Course, Commissioner Baines was appointed Assistant Chief Constable in the Cheshire Constabulary, where he held control of Operations Support. Mr.

Baines took up the Post of RCIPS Commissioner of Police in 2009. Commissioner Baines holds a Master's Degree from the University of Cambridge where he studied International Relations.

#### Sir Peter Allen



Sir Peter Allen has been a permanent resident of Cayman for the past 20 years, served for eight years in the British Royal Artillery before joining Uganda's British Colonial Police, where he served for eight years as Assistant Superintendent. Following this, Sir Peter taught at the Uganda Law School, eventually serving as the school's principal.

In 1970 Sir Peter became the Uganda Judiciary's Chief Magistrate and was later appointed as judge. In 1985, Sir Peter was appointed Chief Justice of Uganda. He was knighted in the New Year's Honours of 1987 before he retired to Grand Cayman, where he has acted several times as a judge and chaired two commissions of inquiry.

#### Mr. Leonard N. Ebanks



Mr. Leonard N. Ebanks had a distinguished banking career spanning 40 years, retiring in 2004. During his career he held senior banking positions in Jamaica, St. Lucia and the Cayman Islands, and served as President and Chief Executive Officer of Fidelity Bank (Cayman) Ltd. for over 23 years.

Mr. Ebanks has served on numerous government boards, including as chairman of Cayman Airways Ltd and The National Housing Development Trust. In May 2001 he became one of three Constitutional Review Commissioners. Presently, he is a trustee of the Public Service Pensions Board, serving as

a member on the Human Resources and Investment committees, and Chairman of the Audit Committee. He was appointed as a Justice of the Peace in 1987 and has served as president of the Association. Prior to his appointment to the Anti-Corruption Commission, he sat regularly on the Juvenile Court Bench and also served in the Youth and Summary Court.

**Mr. Alastair Swarbrick, Auditor General (Ex-Officio Member)**



Mr. Swarbrick took up the post of Auditor General in July 2010 and is responsible for the independent audit of government and its related entities.

Mr Swarbrick has over 20 years of experience in public auditing. He began his career in the Scottish Office before moving to the Accounts Commission for Scotland where he completed his professional accountancy training in 1996, becoming a member of the Chartered Institute of Public Finance and Accountancy. Mr Swarbrick subsequently moved to the UK National Audit Office in London taking on various roles before returning to Scotland to work for Audit Scotland as a Senior Audit Manager, leading the audit of the Scottish Government, as well as a number of its agencies and health service bodies. Following promotion to Assistant Director of Audit, aside from his audit management responsibilities, he also led the Business Improvement Unit and was responsible for developing and managing projects to improve the way that Audit Scotland delivered its work.

Mr. Swarbrick obtained his Master of Arts, Honours Degree in Economics at the University of Dundee and was awarded the Bowie Memorial Prize for the Most Distinguished Student in Economics.

**Ms Nicola Williams, Complaints Commissioner (Ex-Officio Member)**



Ms Williams heads Cayman's only independent authority for tackling complaints against the public sector with a jurisdiction that covers government entities and statutory authorities. She also sits as a part-time Crown Court judge in the UK, having been appointed to the judiciary of England and Wales in October 2009. She is also Vice-President of the Caribbean Ombudsman's Association (CAROA).

Until March 2009, she was one of 15 commissioners with the UK's Independent Police Complaints Commission whereby she investigated, mediated and resolved complaints about police misconduct, ranging from swearing and improper investigations to brutality and deaths in custody, including terrorism cases. She also has 16 years of experience as a barrister in private practice, has worked on several public inquiries and served for three years as a Board Member with the UK's Police Complaints Authority. She is also a Fellow of the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce) and a former Chair of the BBC Regional Advisory Committee for London.

## Appendix 3

### ACC Newsletter – Focus

In this issue .....



► What is Corruption?



► Understanding Corruption

**focus** ► Emerging Trends  
Conflicts of Interest

ISSUE 1 | VOLUME 1 | YEAR 2012

# Anti-Corruption Commission

*Integrity is non-negotiable*



INFORMING THE COMMUNITY ON THE EMERGING TRENDS AND BEST PRACTICES IN THE FIELD OF ANTI-CORRUPTION TO PLANT THE SEEDS FOR ANTI-CORRUPTION AWARENESS IN THE CAYMAN ISLANDS.

# focus

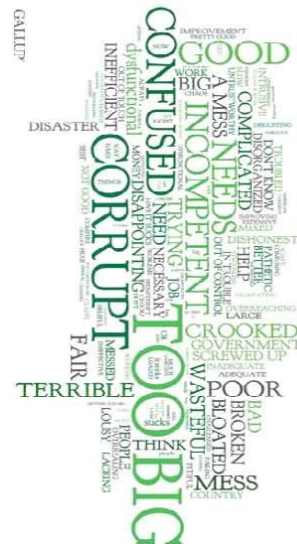
## What is Corruption?

### Conflict of Interests

Where- (a) a government entity of which a public officer or a member of the Legislative Assembly is a member, director or employee, proposes to deal with a company, partnership or other undertaking in which- (i) the public officer; (ii) the member of the Legislative Assembly; or (iii) a member of the family or an associate of either the public officer or member of the Legislative Assembly, has a direct or indirect interest; and

(b) the public officer, the member of the Legislative Assembly, the member of the family or the associate holds more than ten per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

the public officer or the member of the Legislative Assembly shall forthwith disclose, in writing, to that government entity the nature of such interest.



## Helping you to better understand corruption

Corruption means that decisions by public officers are not taken for the public benefit but rather to serve private interests. When corruption involves public officers it wastes the public's resources and public money. In this sense, corruption contributes to the deterioration of democracy and diminishes the community's trust in all sectors of Government.

Corruption is a global challenge, and the Cayman Islands is not immune from its wrath. Corruption is a major hindrance to sustainable development and corrosive on the fabric of our society. Corruption undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes quality of life and carries the potential to allow organized crime, terrorism and other threats to human security to flourish.

Simply speaking, corruption is inherently wrong – It is a misuse of power and position by public officers; an intolerable myriad of acts. Corruption undoubtedly undermines the integrity of all involved and damages the core value system of the organizations to which they belong.

We believe that persons whom the public entrust with authority have an obligation to serve with integrity and honor. Greed and self-interest have no place in Cayman's public service, and violations of the Anti-Corruption Law will be thoroughly investigated and prosecuted. Join us and act against corruption!

In this issue we highlight the emerging trend of conflicts of interest. A conflict of interest occurs when the private interests of a public officer come into conflict with their duty to act in the public interest. Conflicts of interest

are particularly relevant where the public officer has a decision-making role.

The need to manage conflicts of interest is based on two propositions. One is that people in public positions must avoid situations in which private interests can affect their public duties. The other is that situations where there is the appearance of a conflict must also be avoided, if only because protestations of innocence and integrity may be impossible to judge.

As the integrity of public sector officers and processes is fundamental to the rule of law, conflicts of interest are a major risk in all areas of government. It is therefore crucial that they be identified and managed to prevent issues of major misconduct and corruption. Check out the 'focus' section where we discuss the topic in more depth and share best practices with you.

## EMERGING TRENDS

# focus

## Managing External Relationships: Conflicts of Interest



### Taking a look at emerging trends and sharing best practices

*In some instances failure to disclose a conflict of interest in accordance with legislation or public service policy may constitute corrupt conduct as defined by the Anti-Corruption Law (2008).*

#### Conflict of Interests

A conflict of interest is not wrong in and of itself and can happen without anyone being at fault. However, it is vital that they are disclosed and managed effectively so that public officers perform their duties in a fair and unbiased way.

Personal interests that can give rise to conflicts may be pecuniary, involving an actual or potential financial gain, or non-pecuniary without any financial element.

#### Corruption risks

A risk assessment of conflicts of interest in an agency, unit, department, etc. may identify some or all of the following corruption risks:

- An employee not disclosing a private interest and favouring that interest when making decisions.
- An employee exercising their public duties in such a way as to benefit a business interest, property interest or prevent that interest from being adversely affected.
- An employee exercising their public duties in such a way as to benefit a relative, close associate or secondary employer or prevent adverse outcomes.
- An employee exercising their public duties in such a way as to benefit a future employer or potential future employer or prevent them from being adversely affected.

- An employee exercising their public duties in such a way as to adversely affect a person or group that they dislike or are prejudiced against. A person dealing with a public official deliberately cultivating a private connection with the public official (such as a friendship, secondary employment or the offer of future employment) in an attempt to get the public official to perform their public duties partially.

#### Managing corruption risks

As a minimum your agency, unit, department, etc. should aim to:

- Introduce policy and procedures for conflicts of interest that mitigate corruption risks.
- Include in the policy sanctions for any breach of the policy and procedures.
- Review the policy at least every two years.
- Refer to conflicts of interest in all corporate documents such as codes of conduct.
- Train all relevant employees in the policy and procedures to ensure they are aware of their accountabilities.
- Include conflicts of interest as a risk to be assessed in the internal audit and corruption risk management processes.

#### Risk management strategies

Following your corruption risk assessment of conflicts of interest in your agency you should also consider these risk management strategies:

- Including information on processes for managing conflicts of interest in documents aimed at external stakeholders (such as a statement of business ethics, client service charter).
- Ensuring employees complete a statement of private interests (such as secondary employment, business dealings, property, shares) on commencement, annually or at another appropriate time; i.e. Register of Interests.
- Putting processes in place to ensure that statements of interest are updated at regular intervals and published for public consumption.
- Formally recording arrangements for addressing each conflict so that the agency can demonstrate how each conflict of interest was managed.



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