

**Board of Directors Meeting of the
Utility Regulation and Competition Office ("OfReg")
held on Monday, 20 August 2018,
at its Offices, 3rd Floor Alissta Towers
Special Meeting 2 of 2018**

Minutes

In attendance:

Dr. the Hon. Linford Pierson, Chair (Chair)
Mr. Ronnie Dunn, Deputy Chair (RD) (departed at 2.10 pm)
Mr. Frank Balderamos, Non-executive Director (FB)
Ms. Melissa Lim, Non-executive Director (ML)
Mr. Rudy Ebanks, Non-executive Director (RE)
Mr. Alee Fa'amoe, Executive Director ICT, Deputy CEO (DCEO/EDICT)
Mr. Duke Munroe, Chief Fuels Inspector/Director Fuels Markets (CFI)
Mr. Gregg Anderson, Executive Director Energy & Utilities (EDEU)
Dr. John Epp, General Counsel/ Secretary (GC/S)

Start: 1:05PM End: 3.00PM

1. General

1.1 Welcome, Prayer, Chair's Remarks

The Chair welcomed the attendees and inquired about the whereabouts of AGC/AS. GC/S noted that EDEU had objected to her attendance on the basis that the law does not recognize the position of Assistant Secretary. This will be further considered. CFI offered the opening prayer.

The Chair remarked that all matters are on the record today and:

1.1.1 attendance of individuals and interests

All members of the Board had the right to attend the commencement of a meeting. If a member had an interest, he/she would declare it and would leave the meeting for the appropriate period. The Chair stated that he and DCEO/EDICT had no personal interest into the matters on the agenda and remained in the meeting.

1.1.2 colleagues

The members of the board were his colleagues and not his friends. He had respect for each of them and believed that he had their respect also. The NEDs must not again appoint a spokesman to telephone the Chair and to express a concern as was done by RE on 18 August 2018. Each NED

should have individually sent an email expressing their concerns so a record could be established, the potential for misinterpretation be reduced and a full response be given. The Chair stated that he had lost some confidence in the NEDs and that he must have members that he can work with. The NEDs should be mindful that NEDs do not control the Board.

1.1.3 Sabbath

Saturday was recognised by the Chair as the Sabbath, and he should not be disturbed with OfReg business on that day.

1.1.4 recruitment process

The CEO recruitment process was not terminated. It was paused as important matters were discussed and it was to be continued.

1.2 Reply to comments

RE replied that the NEDs were acting in good faith, and the collective concern was that the law and its process be followed.

1.3 Approval of Agenda

Motion RE, seconded by ML: The draft agenda as circulated be approved as the agenda for this meeting. CARRIED

2. Declaration of Interest

EDEU and CFI declared a willingness to serve as Acting CEO and recused themselves by leaving the meeting during discussion of items 3.1 and 3.2.

3. Board Matters

3.1 Appointment of Acting CEO

DCEO/EDICT stated he would not serve as Acting CEO. He was not pleased with the allegations made against OfReg by government thru the Chair, some of which seemed to have been directed onto him. He had addressed some of the points in the report found in the board papers.

RD noted that the Job Description of the DCEO/EDICT required him to serve as Acting CEO.

ML noted that the Outgoing CEO JP Morgan had delegated his powers to the DCEO/EDICT under section 32 of PAL and that such delegation continues in force notwithstanding that the CEO has ceased to hold office.

Chair encouraged the DCEO/EDICT to reconsider, but to no avail.

Chair noted that qualified non-staff members could be nominated to serve.

As noted above, EDED and CFI had declared a willingness to serve as Acting CEO. Both people were known to be qualified. A full discussion occurred, including scheduled annual leave and first task priorities.

Motion FB, seconded by ML: CFI to serve as CEO (Acting) from today and through to September 20, 2018, and thereafter for the next month EDEU to serve as CEO (Acting). The decision to be communicated by Secretary forthwith to Captain Echard McLaughlin for communication to the staff, and presentation of appropriate paper work. CARRIED

The Chair asked the GC/S to record that it was the 4 NEDs who voted in approval for the CFI to be appointed as the acting CEO, and that he would abstain from voting on the motion. RD asked if the Chair could clarify his decision to abstain from the vote, and to state whether he was conflicted on the matter. The Chair did not provide an explanation, he then stated that he would vote in favour of the motion to make the vote unanimous.

3.2 Recruitment of CEO

The process was to continue as the schedules of the five people on the selection committee allowed.

RD raised the Anti-Corruption Law section 15 and asked if it applied to matters around and in Special Meeting 1 of 2018. He alleged that the actions of the Chair in and around that meeting violated that section, and he read it aloud.

15. A person who - (a) 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; (b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from a public office, in expectation of a direct or indirect loan, reward, advantage or other benefit; or (c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to- (i) the filling of vacancies in public offices; (ii) the sale or purchase of public offices; or (iii) appointments to or resignations from public offices, commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

He recounted his recollection of Special Meeting 1 of 2018, saying that the Chair had suggested that the Chair would resign the chairmanship of the Board if the Chair was appointed as Interim CEO for at least one year.

The Chair responded that it was RD who had reminded him in that meeting of the need not to resign before being assured of any new appointment, as in the case of Franklin Smith, a person they had both known. The Chair agreed that he had said in Special Meeting 1 of 2018 that the Chair would not leave the meeting until his appointment of Interim CEO was informally indicated by the board members. He acknowledged that he had said that he had a current health certificate should his health or age have become an issue in his potential appointment. He knew that he would not be considered for the substantive post of CEO due to his age.

RD again put to the Chair that he was in violation of section 15 and that it would be appropriate for RD to report the Chair to the Anti-Corruption Commission. The Chair replied that RD was impugning his reputation and could be sued, and threatened to 'box' RD in the head. RD threatened to return the punch. The



Chair indicated that RD would not be physically able to return the punch as RD would be knocked out by the Chair's punch.

The Chair indicated to RD that he knew of RD's past and that RD had caused trouble everywhere he was employed. The Chair alleged RD had been dismissed from government for being a trouble-maker and not holding his tongue. The Chair stated that he would go straight to government and have RD removed from the Board. RD replied that he had a clean employment record, and that he must do the right thing. The Chair denied any wrongdoing, and that even though he was a Christian man and could turn the other cheek, he would not be trampled over in this instance.

ML and FB called for calm. RE encouraged all present to maintain a professional manner. It was suggested that meeting move forward and the Chair stated that he would decide when it was time to move on.

RD stated that he must leave the meeting to make telephone calls to the Commission and he departed at 2.10 pm. The Chair asked the Secretary to prepare the Minutes of this meeting as soon as possible so that he could take them directly to HE Governor.

The NEDs expressed their views that the recruitment of the CEO must be expedited and finalized as soon as possible. The Chair said that he is unable to give a timeframe on when the CEO recruitment will be completed and that no timeframe can be set by the Board. FB queried why a timeframe could not be set since the appointment of the CEO falls within the powers of the Board. Chair indicated that the CEO recruitment process would move forward as schedules permitted. ML was a member of the Interview Panel and she was away during a portion of September 2018. However, if quorum could be established the Panel would meet in September, 2018.

FB and ML indicated that the Chair should no longer serve as chairman of the Interview Panel as he had been seeking to be appointed to the role of Interim CEO for a year.

The Chair replied that he had made it clear by the end of Special Meeting 1 of 2018 that he was no longer seeking that role.

ML and FB said that the Chair had spent almost all of that meeting seeking the agreement of the members to appoint him to the role of Interim CEO.

RE recalled that the Chair had indicated that the recruitment process of the CEO had been halted. The Chair replied that the Cabinet Secretary had suggested in an email that it should be halted, resulting in the halt of the CEO recruitment process. The NEDs subsequently reviewed the email and determined that such email was not sufficient to be considered a direction from the Cabinet to halt the CEO recruitment process as the email merely stated that a delay was welcomed. ML noted that if the Cabinet wished to halt or terminate

the CEO recruitment process, the Cabinet would need to give a direction in writing. The Chair noted that the process was not in the Cabinet Secretary's power, and that it was a matter for the Board, and that it would continue.

ML asked GC to opine on whether or not the Chair should continue in the role of chair of the Interview Panel. GC advised that he should not. Chair graciously agreed that he would not continue as chair of the Interview Panel. Chair indicated that he would ask the Cabinet Secretary to select a new chair for the Interview Panel.

FB questioned if it would be appropriate to extend the deadline for applications to the CEO position given that some controversy in the process had surfaced and it would only be fair to both the DCEO/EDICT and Chair to be considered, should either still wish to be considered for CEO. The notice of withdrawal of DCEO/EDICT immediately before Special Meeting 1 of 2018 had given him cause for concern as did comments made by him earlier in this meeting.

DCEO/EDICT stated he would not apply again in any event. He did wish a letter from government stating its concerns with OfReg and DCEO/EDICT, if any. RE asked how could OfReg correct the concerns going forward and cautioned against assuming concerns. He also called for a clear statement of concerns from government.

Chair agreed to ask government for a letter stating its concerns with OfReg and DCEO/EDICT, if any.

Chair reported that approximately 14 applications were in place and that was likely sufficient for the purpose of finding a new CEO.

3.3 Announcement of decisions

EDEU and CFI returned and the decisions above were reported. They accepted the role and dates.

Each member pledged their support for the CEO (Acting), and offered to assist as needed with issues, including staff morale.

4. Cabinet's 'Concerns'

The DCEO expressed his alarm and worry about the entire process of how alleged concerns from Cabinet were never officially reported to either executives nor to Board members of OfReg. It appeared that issues were raised verbally with the Chair in secret meetings and none of the accusers had stepped forward with any evidence or documentation, nor even any specific concerns. Yet somehow these undocumented 'concerns' were considered by someone to be so severe so as to warrant the suspension or halting of the CEO recruitment process and an attempt to nominate the Chair as Acting CEO.



DCEO stated that these are not the hallmarks of a democracy and violated the very concepts of fairness, transparency, and independence upon which the Office was established.

DCEO implored all Board members who may at any future time receive any complaint or 'concern' from anyone to have the issues documented and brought to the Board in writing to avoid the turmoil that this most recent process had caused.

5. Adjourn

Motion FB, seconded by RE: The Meeting be adjourned. CARRIED

Chairman

___ August 2018