



## **THE DUBAI WORLD EXPO AND THE CAYMAN ISLANDS OVERSEAS OFFICES - EXAMINATION OF POTENTIAL BREACHES OF LEGISLATION**

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**November 2021**

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# INTRODUCTION

## BACKGROUND TO THE ESTABLISHMENT OF NEW OVERSEAS OFFICES AND PARTICIPATION IN WORLD EXPO

1. On 12<sup>th</sup> January 2021, the Cabinet approved the establishment of three new Cayman Islands Government ("the Government") overseas offices in Asia, Europe and North America. It also approved the Government's participation in the Dubai World Expo from October 2021 to March 2022, through a partnership between the Ministry of International Trade Investment, Aviation and Maritime Affairs ("MITIAMA" or the "Ministry") and the UK Government's Department of International Trade (UK DIT).
2. The total estimated cost of these two projects was \$5 million. Exhibit 1 sets out the budgeted costs and funding for the two projects.

**Exhibit 1 – Budgeted costs associated with the establishment of the Cayman Islands Government overseas offices and Dubai World Expo and sources of funding**

Period covered	Supporting legislation funding is requested under	Budget
<b>Overseas Offices:</b>		
First 3 months of 2021	Section 11(5) & (6) of PMFA	\$500,000
Remaining 9 months of 2021	Section 12 of PMFA	\$2,000,000
<b>Total overseas offices cost</b>		<b>\$2,500,000</b>
<b>Dubai World Expo:</b>		
2021 financial year	Section 12 of PMFA	\$1,600,000
Commitment for 2022 budget period	2022 budget exercise	\$600,000
Subtotal		\$2,200,000
Savings from 2020/2021 budgeted expenditure		\$300,000
<b>Total Dubai World Expo cost</b>		<b>\$2,500,000</b>
<b>Total cost of both projects</b>		<b>\$5,000,000</b>

*Source: Office of the Auditor General ("OAG") analysis of Cabinet papers*



## BACKGROUND TO THE COMMISSION AND PURPOSE OF THIS REPORT

3. After the election in April 2021, the new Government raised concerns regarding the timing of the establishment of the new overseas offices and participation in the World Expo given the proximity to the 2021 Election and potential non-compliance with the *Public Finance and Management Act* (PFMA) and the *Public Service Management Act* (PSMA). They also raised concerns about the rationale for undertaking these projects, including the business cases and assessment of value for money.
4. As a result of these concerns, I was asked by the Governor to carry out an independent review of the past Government activities and processes in relation to the following matters:
  - establishing the proposed Cayman Islands overseas offices in Asia, Europe, and North America; and
  - entering into contractual arrangements to establish a presence at the upcoming Dubai World Expo.

## SCOPE OF THIS REPORT

5. The scope of my examination covered all activities and processes related to the establishment of the three new overseas offices and participation in Dubai World Expo. My office conducted interviews, collected and reviewed documents and took legal advice to obtain evidence to support the findings in this report.
6. The audit was solely limited to addressing the following ten objectives provided to me by the Deputy Governor:
  - 1) To determine if, in the conduct of activities for the above noted projects, breaches to applicable sections of the PSMA and, by extension section 55 (1) (d) of the Cayman Islands constitution, occurred.
  - 2) To determine if the processes used for the above noted activities were in accordance with sections 11 and 12 of the PFMA.<sup>1</sup>
  - 3) To determine the materiality of any breaches.
  - 4) To determine if activities conducted during the 2021 election period, and post-election government formation process immediately thereafter, has resulted in the establishment of binding commitments to the new government and, if so, how early upon taking office should the Responsible Minister have been fully briefed on the same with suggested options of redress or adjustments.

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<sup>1</sup> The Auditor General added Section 11 of the PFMA to the objective for completeness.

- 5) To determine if, in the conduct of activities for the above noted projects, breaches to the PSMA occurred (particular attention to be given to Section 6 of the Act when read together with section 55(1)(d) of the Cayman Islands Constitution.
- 6) To determine the extent to which business cases were developed for the above noted projects and the governance processes related to the vetting and approval of such business cases.
- 7) To determine the governance processes surrounding the adherence to any such developed business cases.
- 8) To determine the extent to which the recruitment process for the overseas offices was fundamentally sound in view of the stated business case for the overseas offices.
- 9) To identify any future risk from the above that may have a legal or financial liability to the Cayman Islands Government.
- 10) To identify opportunities for improvement (whether through primary or secondary legislation) and best practices related to the expenditure and/or commitment of public funds during an election period and post-election government formation process.

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#### PREFACE TO FINDINGS

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7. I believe that it is critical to the understanding of this report to be familiar with the relevant sections of the PFMA (i.e. 11 and 12), the PSMA (6 and 7) and the Constitution (55, 109). For ease of reference these are as follows:

*PFMA:*

- Section 11(5) of the PMFA (2020 Revision) states that “where an exceptional circumstance has occurred during a financial year, the Cabinet may authorize executive financial transactions for which no appropriation exists if —
  - (a) the executive financial transactions directly relate to, and attempt to remedy the effects of, the exceptional circumstance; and
  - (b) the total amount authorized is no more than five per cent of budgeted executive revenue for the financial year.”
- Section 11(6) references the PMFA definition of “exceptional circumstance” given in section 2 as an event that occurs during a financial year and which:
  - (c) is beyond the control of the Cabinet;
  - (d) could not have been reasonably anticipated at the time of enactment of the Appropriation Act for that financial year;
  - (e) has an economic or social impact that is significant enough to necessitate executive financial transactions different from those planned for that financial year; and
  - (f) requires the executive financial transactions to be entered into in a timescale that makes compliance with the procedure established by section 12 impractical.



- Section 12 states that:
  - (1) Subject to subsection (2), the Cabinet may authorize:
    - (a) executive expenses for an output group, category of transfer payment or category of other executive expense; and
    - (b) the acquisition or creation of executive assets, the making of loans or the making of equity investments,
 

that are not included in an Appropriation Bill for a financial year.
  - (1) Before an executive expense is incurred, an executive asset acquired or created or a loan or equity investment made in accordance with an authority granted under subsection (1), the approval of the Finance Committee of the Legislative Assembly is to be obtained.
  - (2) The executive expenses incurred, executive asset acquired or created, or a loan or equity investment made in accordance with subsection (1) are to be included in a supplementary Appropriation Bill, which Bill shall be introduced in the Legislative Assembly by the 31st day of March following the financial year to which the executive expenses relate.

*PSMA:*

- Section 6 (1) states that in accordance with section 55(1)(d) of the Constitution, the power to employ all civil servants rests with the Governor acting in his discretion.
- Section 7 (1) states that in accordance with section 109(2) of the Constitution, the Governor may in writing delegate to -
  - (a) the Head of the Civil Service -
    - (i) the power to oversee all matters relating to the operation of the civil service, which powers are to be exercised in accordance with Part V; and
    - (ii) powers relating to the personnel arrangements for chief officers of ministries and portfolios, which powers are to be exercised in accordance with Part VI;
- Section 7 (3) states that a delegation issued by the Governor under subsection (1) shall include the requirement that financial provision must already exist for any action taken under the authority of the delegation, in accordance with section 55(1)(d) of the Constitution.

*CONSTITUTION*

- Section 55 (1) states that The Governor shall be responsible for the conduct, subject to this Constitution and any other law, of any business of the Government with respect to the following matters—
  - (a) defence;
  - (b) external affairs, subject to subsections (3) and (4);
  - (c) internal security including the police, without prejudice to section 58;
  - (d) the appointment (including the appointment on promotion or transfer, appointment

on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages and pensions) for which financial provision has been made, and the organisation of the public service to the extent that it does not involve new financial provision.

- Section 109 states:

- (1) Power to make appointments to public offices, and to transfer, remove or exercise disciplinary control over persons holding or acting in such offices, is, subject to this Constitution, vested in the Governor acting in his or her discretion.
- (2) Subject to subsections (3) and (4), the Governor, acting in his or her discretion, may by regulations delegate, to such extent and subject to such conditions as may be specified in the regulations, the powers vested in him or her by subsection (1) to such public officers as may be specified.

8. The report references dates throughout when decisions were made. For ease of reference, key dates are summarized in Exhibit 2 below.

**Exhibit 2 – Key dates in relation to overseas offices and Expo**

<u>Overseas Offices</u>	<u>Date</u>	<u>Expo</u>
Submission of Cabinet paper to consider Hong Kong office	<b>21 Sep 2018</b>	UK Government contact CIG UK office to discuss participation in Dubai Expo
Letter of entrustment for Hong Kong office received	<b>6 Dec 2018</b>	
Former Premier announces establishment of overseas offices	<b>17 Dec 2018</b>	
	<b>18 Nov 2020</b>	Cabinet paper proposing participation in Dubai Expo drafted
Stakeholder meeting to discuss location of overseas offices	<b>1 Dec 2020</b>	
Submission of Cabinet paper to consider Brussels office	<b>5 Jan 2021</b>	Cabinet approve participation in Expo
Cabinet approves three overseas offices	<b>12 Jan 2021</b>	
	<b>21 Jan 2021</b>	PPC approve business case for direct contract award for participation in Expo
Job adverts for overseas representatives	<b>1 Feb 2021</b>	

	<b>10 Feb 2021</b> <i>H.E. The Governor announces new date for election</i>	
Request made for letters of entrustment for Brussels and Washington DC offices	<b>11 Feb 2021</b>	
	<b>12 Feb 2021</b>	Approval for direct hire of Commissioner of Expo and Commissioner of Expo hired
	<b>3 March 2021</b>	Dubai World Expo contract signed with UK Government
	<b>14 April 2021</b> <i>Revised election date</i>	
Contracts of employment for overseas representatives and deputy representatives signed	<b>9 – 20 Apr 2021</b>	
Letter of entrustment for Brussels office received	<b>15 Apr 2021</b>	
	<b>21 Apr 2021</b> <i>New Government sworn in</i>	
	<b>26 May 2021</b> <i>Original election date</i>	
Letter of entrustment for Washington DC office received (subject to USA Government approval)	<b>2 Jun 2021</b>	
	<b>19 Jul 2021</b> <i>Finance Committee sitting</i>	
US Government approval for opening of office in Washington DC	<b>7 October 2021</b>	

Source: OAG analysis of documents



## FINDINGS

9. In preparing this report I present my conclusions and findings against each of the objectives set.

### OBJECTIVE 1 - DID BREACHES TO THE PSMA AND, BY EXTENSION SECTION 55(1) (D) OF THE CAYMAN ISLANDS CONSTITUTION, OCCUR IN THE CONDUCT OF ACTIVITIES IN RELATION TO THE PROJECTS?

10. Yes. Section 55(1) (d) of the Cayman Island Constitution (the "Constitution") states that H.E. the Governor ("the Governor") is responsible for all personnel management activities in the public service including the appointment, suspension, dismissal or retirement of any public officer. Section 6(1) of the PSMA reaffirms the power of the Governor to employ all civil servants as stipulated in the Constitution. However, section 109(2) of the Constitution and section 7(1) of the PSMA state that the Governor's powers may be delegated to the head of the civil service and chief officers. This delegation is subject to the requirement that a financial provision must already exist for any action taken, in accordance with section 7(3) of the PSMA and by extension section 55(1) (d) of the Constitution. Whether financial provision existed prior to the appointment of staff or the signing of the Dubai World Expo partnership agreement is therefore the key consideration.
11. I have concluded that breaches did occur. There was no, or at least insufficient, existing budget provision at the time staff contracts for both projects were entered in to, and so a breach of section 7(3) of the PSMA and by extension section 55 (1) (d) of the Constitution occurred. This presumes that additional funding requests made were both necessary and made in good faith. My findings to inform this conclusion are set out below.

### OVERSEAS OFFICES

12. The Cabinet agreed funding of \$2.5 million for the overseas offices on 12<sup>th</sup> January 2021. This funding was approved using two different sections of the PMFA; \$500,000 to cover costs for the first three months of 2021 was approved under section 11(5), and \$2 million for the latter nine months of 2021 was agreed by Cabinet under section 12(2) of the PMFA. Section 12 approvals are subject to approval of the Finance Committee of Parliament before any expenditure can be incurred.
13. My interpretation, supported by specific legal advice, is that the \$500,000 for the first three months of 2021, approved under section 11(5), does not meet the definition of an 'exceptional circumstance' as there is evidence of previous discussions about establishing overseas offices dating back to 2018.
14. I also conclude that the Government breached section 12(2) of the PMFA as the Government requires Parliamentary approval (via the Finance Committee) prior to any expenditure being incurred. Five staff were appointed in April 2021; three were appointed on 5-year and two on open-

ended contracts signed between 9<sup>th</sup> April and 20<sup>th</sup> April 2021. However, these appointments were made and contracts signed before the Parliament had approved the \$2 million funding for the remainder of 2021 (see findings for objective 2 for more details). The Finance Committee did not sit to consider any section 12 appropriation changes until 19<sup>th</sup> July 2021.

15. It is also worth noting that the letter of entrustment for the establishment of the Washington DC office (see objective 4) was subject to the condition that the US Government must grant permission to set up an office in the USA. The Ministry proceeded with the appointment and relocation of the representative to the USA without any certainty that the permission would be granted by the US Government. The approval from the US Government was only received on 7<sup>th</sup> October 2021.

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#### DUBAI WORLD EXPO

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16. The total estimated cost of participating in the Expo was \$2.5 million. The Ministry had \$300,000 of existing budget that it planned to put towards this and a further \$2.2 million funding needed to be approved by Cabinet and then Parliament. Of this \$2.2 million new funding, \$1.6 million was to be funded through PMFA section 12(1) and (2) and the remaining \$600,000 was to be sought through a supplement to the 2022 budget. However, neither of these sums were agreed by the Parliament.
17. MITIAMA appointed the Commissioner for the World Expo in February 2021, and on 3<sup>rd</sup> March 2021 it also committed to the sponsoring partnership with the UK DIT for the Dubai World Expo. Both of these were done without the necessary Finance Committee approval for the expenditure.
18. Whilst the \$300,000 could fund the staff members in 2021 (the Commissioner post and one secondee), it was insufficient to also cover the World Expo contractual costs. The Parliament has yet to approve the additional budget for 2021 or 2022.

#### OBJECTIVE 2 - WERE THE PROCESSES USED FOR THE ACTIVITIES IN COMPLIANCE WITH THE PMFA?

19. No. As reported previously in objective 1, the use of funding was not in compliance with the PMFA because the basis for the request for funding under section 11(5) did not meet the definition of an 'exceptional circumstance' as defined in section 2 of the PMFA. Also, the request for funding under section 12 did not get the approval of the Finance committee before expenditures were incurred or commitments were entered into.
20. The PMFA outlines the powers and duties of the Minister of Finance, the ministries, portfolios and chief officers with respect to responsible financial management including budgeting, reporting and delivery of value for money in procurement that will ensure the appropriate use of public funds.



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## OVERSEAS OFFICES

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21. The establishment of the new overseas offices did not meet the definition of “exceptional circumstances”.<sup>2</sup> The plan to establish overseas offices was based on a government policy presented to the Parliament in late 2018. The former Premier made a speech to the Parliament on 17<sup>th</sup> December 2018 that laid out the case to open an overseas office in Hong Kong. At this point a letter of entrustment, dated 6<sup>th</sup> December 2018, which approved the opening of the Hong Kong office had been provided by the UK, subject to receiving the necessary approvals from Hong Kong. The Governor also indicated his support for this initiative in an email to the former Premier on 7<sup>th</sup> December 2018.
22. The Cabinet approved the establishment of all three overseas offices on 12<sup>th</sup> January 2021. The offices in Hong Kong and Brussels were determined to be the locations for Asia and Europe respectively. However, the office in Washington DC was identified as the most advantageous location for North America only after consultation with key stakeholders in the private sector. The establishment of the Hong Kong office was the most advanced before the 2021 election because it had been agreed in December 2018. However, most of the key activities for the opening of the Washington D.C and Brussels offices took place from January 2021 through to April 2021. The request for the letters of entrustment to allow the establishment of the Brussels and Washington DC offices were sent out on 11<sup>th</sup> February 2021, the day after the new date for the general election was announced. The two requests were approved in letters dated 15<sup>th</sup> April 2021 and 2<sup>nd</sup> June 2021 respectively.
23. The \$2 million funding for the overseas offices, approved by the Cabinet under section 12 was not approved by Finance Committee of Parliament and so using it was contrary to the PMFA. The \$500,000 to fund the establishment of the overseas offices approved by Cabinet under section 11(5) of the PMFA did not meet the definition of “exceptional”.<sup>3</sup>
24. This is not the first time I have reported on the inappropriate use of section 11(5). My Office highlighted this issue in our December 2020 report, *Improving Financial Accountability and Transparency: Budgeting*.<sup>4</sup> In that report we found that of 16 Ministerial statements made for section 11 budget increases relating to “exceptional circumstances” for the 2016-17 and 2018 financial years, only one satisfactorily justified why the changes met the definition of “exceptional circumstances” as stipulated in the PMFA.

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<sup>2</sup> Independent legal opinion obtained supports these conclusions.

<sup>3</sup> See footnote 2.

<sup>4</sup> *Improving Financial Accountability and Transparency: Budgeting*, Office of the Auditor General, December 2020.



25. As previously reported, \$1.6 million was sought under section 12(1) and (2) of the PMFA to fund the participation in the Dubai World Expo and associated costs, and a further budget of \$600,000 was needed in 2022, which was not approved by Parliament. MITIAMA budget savings of \$300,000 from 2020 covered some of the estimated costs. The Cabinet paper stated that the existing MITIAMA funding would be used for the first contract payment to the UK DIT of \$250,000. Section 12(2) of the PMFA requires the approval of the Finance Committee before expenses can be incurred or assets acquired in accordance with the authority granted under subsection (1). We found through our review of the Dubai World Expo sponsorship agreement between MITIAMA and the UK DIT that MITIAMA had committed to the sponsoring partnership on 3<sup>rd</sup> March 2021. These commitments or expenditures were incurred before the Finance Committee considered these requests on 19<sup>th</sup> July 2021. I therefore consider this action to be non-compliant with the PMFA. Independent legal opinion obtained supports this view.

### **OBJECTIVE 3 – MATERIALITY OF BREACHES**

26. According to the 2020-2021 Budget Address presented to the Parliament on 8th November 2019, the total budgeted operating and financing expenses for the 2021 financial year was \$774.4 million. The 2020-2021 budget statement included total budgeted expenses of \$4.5 million for MITIAMA for the 2021 financial year. The total annual cost of the two projects was estimated to be more than \$1.8 million, which required additional budgetary approval as described earlier. This sum is equivalent to 0.24% of the total government expenditure and represents a 41% increase in the total budgeted expenses of MITIAMA for the 2021 financial year. Exhibit 3 summaries the estimated annual and longer-term costs of the two projects.

**Exhibit 3 – Costs of the new overseas offices and World Expo.**

Estimated Total Cost - Overseas Offices								
Position	Annual Salary	Annual Housing Allowance	Annual Pension	Motor Car Upkeep/yr	Children School Fees/yr	Total Annual Cost	Term of Contract	Total Cost for 5 yr Term
Overseas Rep - North America	134,652.00	60,000.00	16,158.24	1500	N/A	212,310.24	5 years	1,061,551.20
Overseas Rep - Hong Kong	134,652.00	96,000.00	16,158.24	1500	N/A	248,310.24	5 years	1,241,551.20
Overseas Rep - Brussels	134,652.00	60,000.00	16,158.24	1500	44,726.00	257,036.24	Indefinite	1,285,181.20
Deputy Overseas Rep - North America	100,872.00	42,000.00	12,104.64	1500	N/A	156,476.64	Indefinite	782,383.20
Deputy Overseas Rep - Hong Kong	100,872.00	67,200.00	12,104.64	1500	N/A	181,676.64	5 years	908,383.20
Estimated Total Cost - Overseas Offices						1,055,810.00		5,279,050.00
Estimated Total Cost - Dubai Expo								
						Annual Cost	Expected Total Cost	
Event Manager - 2020 Dubai Exp (1 May 2021 - 30 April 2022)						41,025.78	90,132.00	
Estimated Total Cost - Commissioner 2020 Dubai Expo (15 February 2021 - 30 April 2022)						137,043.84	171,304.80	
Estimated Expo Partnership (with UK DIT) Cost						600,000.00	900,000.00	
Total Estimate Cost of the Expo						778,069.62	1,161,436.80	
Total Estimated Cost of the Overseas Office and Expo						1,833,879.62	6,440,486.80	

Source: OAG Analysis – Employment Agreements and Expo Contract

27. The effect of the breach was not only financial. Upon assuming office, the new government made changes to the organisational structure of MITIAMA and renamed it the Ministry of Investment, Innovation and Social Development (MIISD). As part of this change, which reflected a change in government policies, responsibility for overseas offices including the representative posts moved to the Ministry of Financial Services and Commerce (MFSC). This was because the new Government felt the synergies were with MFSC and their policy focus on the financial services sector rather than the policy objectives of MIISD. When the Finance Committee met on 19<sup>th</sup> July 2021, it decided to appropriate the \$2 million initially requested for the overseas offices to fund micro and small business grants instead of overseas offices.

**OBJECTIVE 4 - HAVE THE ACTIVITIES CONDUCTED DURING THE ELECTION PERIOD RESULTED IN THE ESTABLISHMENT OF BINDING COMMITMENTS TO THE NEW GOVERNMENT? IF SO, HOW EARLY UPON TAKING OFFICE SHOULD THE RESPONSIBLE MINISTER HAVE BEEN FULLY BRIEFED ON THE SAME WITH SUGGESTED OPTIONS OF REDRESS OR ADJUSTMENTS?**

28. In response to the first question – the answer is Yes. On the face of it and based on our findings for Objective 2, the Expo contractual commitment and the various new employee contracts entered into (for the various overseas offices and Expo) appear to be binding on the new government. However, a detailed legal review of all relevant contracts will be necessary to confirm this and this has not been undertaken as part of this work.



29. On 10<sup>th</sup> February 2021 the previous government changed the date for the general election, bringing it forward to 14<sup>th</sup> April 2021.
30. Global best practice during pre-election periods limits civil servants from implementing new policies or making novel or contentious expenditures. However, the Cayman Islands does not have formal pre-election rules that align with this good practice.
31. The creation of new overseas offices and participation in the Dubai World Expo and its associated costs could be considered “new policy or novel or contentious expenditure”. The fact that the new Government has amended the plans around these matters also supports that view. It is worth noting that the signing of the contracts for the overseas offices and World Expo are not isolated examples of contracts being entered into during the pre-election period. The previous government also signed the contract for the Integrated Solid Waste Management System (now Regen) on 26<sup>th</sup> March 2021; less than three weeks before the election. However, in that case, there was a fall back date after the election given for finalising the contract terms.
32. In relation to the second question – while there is no formal guidance, one would expect that the responsible minister should be briefed upon taking office as soon as possible. Some of the employment contracts for overseas offices’ staff were not signed until after the election. Signing these contracts commits the government to ongoing new expenditure and so it is reasonable to expect that the Minister should have been briefed before this happened to afford the new Government an opportunity to amend the policy direction if required.

**OBJECTIVE 5 - IN THE CONDUCT OF THE ACTIVITIES, DID BREACHES TO THE PSMA OCCUR (PARTICULAR ATTENTION TO BE GIVEN TO SECTION 6 OF THE ACT WHEN READ TOGETHER WITH SECTION 55(1) (D) OF THE CONSTITUTION)?**

33. Yes - See findings on Objective 1.

**OBJECTIVE 6 - THE EXTENT TO WHICH BUSINESS CASES WERE DEVELOPED FOR THE ABOVE PROJECTS AND THE GOVERNANCE PROCESSES RELATED TO THE VETTING AND APPROVAL OF SUCH BUSINESS CASES.**

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**OVERSEAS OFFICES**

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34. Business cases for the North American and Asian offices and Dubai World Expo were developed. However, these could have been stronger in content, particularly with regards to the assessed benefits of opening the offices and participating in the Expo, to better demonstrate value for money.
35. Our review of the business case for the North America office found that the summary of options appraisal (prepared in accordance with the UK “Green Book”) rated “Do Nothing” as the most



advantageous option with 21 points. This was followed by New York (20 points) and then Washington DC (19 points).

36. The former Premier, the former Minister of Financial Services and the Chief Officer arranged a meeting with key stakeholders in the private sector for 1<sup>st</sup> December 2020 to discuss the benefits and risks of establishing the overseas offices. At this meeting, stakeholders recommended the establishment of an office in Brussels as a priority and advised that in their view Washington DC would be the best location for the North American office. In a letter dated 10<sup>th</sup> December 2020, Cayman Finance provided some analysis and a formal recommendation about opening the Brussels office and North American office in Washington DC and confirmed the conclusion reached at the discussion, that the order of priority for opening the overseas offices should be 1) Brussels, 2) Washington D.C and 3) Hong Kong.

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#### WORLD EXPO

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37. The discussions of co-sponsorship at the Dubai World Expo (originally planned for 2020) started in 2018 following the Great Festival of Innovation in Hong Kong in March 2018. After years of discussions and correspondence confirming details of the partnership, a Cabinet paper making the case for the Cayman Islands' participation, and proposing a partnership with the UK, was presented to the Cabinet for approval on 5<sup>th</sup> January 2021.
38. Following the Cabinet's approval, a request for a direct contract award, stating the case for the partnership with the UK, was submitted to the Public Procurement Committee (PPC) on 7<sup>th</sup> January 2021 and approval from the PPC was given on 21<sup>st</sup> January 2021. The PPC does not consider funding as part of its responsibilities. However, MITIAMA confirmed that existing budget provision was in place, which is a requirement of the PPC's standard request template. The recruitment to the position of the Commissioner of the Expo was done through a direct hire. An approval request for the direct hire was submitted to the Deputy Governor on 28<sup>th</sup> January 2021 and approved on 12<sup>th</sup> February 2021.

#### **OBJECTIVE 7 - THE GOVERNANCE PROCESSES SURROUNDING THE ADHERENCE TO ANY SUCH DEVELOPED BUSINESS CASES.**

39. See findings on Objective 6 above.

**OBJECTIVE 8 - THE EXTENT TO WHICH THE RECRUITMENT PROCESS FOR THE OVERSEAS OFFICES WERE FUNDAMENTALLY SOUND IN VIEW OF THE STATED BUSINESS CASES.**

**OVERSEAS OFFICES**

40. The jobs were advertised on 1st February 2021. The job descriptions included a clear specification of the educational and experience requirements for the positions of Representative and Deputy Representative of the overseas offices, and these were used for the adverts. However, the job descriptions were generic in relation to other aspects. For example, there was no essential or even desirable requirements for a relevant additional language for either the Brussels or Hong Kong positions even though English is not the primary language in use in those countries. The job descriptions ask for either financial services or civil service experience, but did not state that if applicants did not have both, that experience in the other one of these was desirable. Appendix 1 includes extracts from the job descriptions.
41. MITIAMA hired an independent recruitment agency to do the initial screening and shortlisting of candidates; they were asked to sift using the essential criteria stated on the job descriptions. The recruitment agency assessed candidates and provided a list of those recommended for interview to senior management of MITIAMA. However, we found the following:
- The Ministry decided that one candidate, that did not meet the sift criteria, should be added to the interview schedule. This person ended up being offered a position as a CIG Overseas Representative ahead of a Caymanian candidate who met all of the essential criteria.
  - Another candidate, who did not meet the minimum educational requirement, was also shortlisted for interview. This person was also offered a job ahead of other qualified candidates, including Caymanians. The inclusion of this candidate in the shortlist for interview appears to have been an error on the part of the recruitment agency during the initial screening. However, it is evidenced on the candidate's resume and the interview panel report that the candidate did not have the required educational qualification specified in the job description.
42. MITIAMA appointed five people to positions for the overseas offices; contracts were signed between 9<sup>th</sup> April and 20<sup>th</sup> April 2021. Exhibit 4 provides a summary of the five positions filled for the Overseas Representatives and Deputy Representatives, the date contracts were signed and the length of employment contract.



**Exhibit 4 – Overseas offices positions filled and contract details**

Position	Term of Contract	Contract Signing Date
Overseas Representative - North America	1 July 2021 - 30 June 2026	15-Apr-21
Overseas Representative - Hong Kong	1 May 2021 - 30 June 2026	19-Apr-21
Overseas Representative - Brussels	1 May 2021 - Indefinite period	9-Apr-21
Deputy Overseas Representative - North America	1 June 2021 - Indefinite period	13-Apr-21
Deputy Overseas Representative - Hong Kong	1 June 2021 - 31 May 2026	20-Apr-21

Source: OAG Analysis – Employment agreements

43. Further to undertaking our analysis, we asked the Internal Audit Service to undertake their routine suite of HR audit checks that they do every 6 months for senior Government appointments to verify our conclusions. Their assessment and range of checks is broader than those we had undertaken. Their report confirmed all our earlier findings and highlighted other issues of serious concern including:

- The job advertisements for the Overseas Representatives and Deputy Representatives being placed before the job evaluation results were received;
- The Deputy Representative roles were advertised at grade G but the job evaluation came back at grade H (one grade lower than advertised). Those hired were also appointed at grade G and not even at any of the spinal points that overlapped with grade H but higher up;
- No “conflict of interest” declarations were made by the recruitment panels; and
- No due diligence checks on qualifications or requirements for medical or police clearances were made for any positions recruited.

**WORLD EXPO**

44. Although not specifically requested in the objectives given to me, I also looked at the two temporary appointments for the Expo and asked Internal Audit to include these appointments in their review.

45. I found that the Deputy Chief Officer (DCO) of MITIAMA and person hired as the Commissioner of the Dubai Expo are married. It appears that considerable efforts were made to handle this aspect appropriately within MITIAMA with the DCO recusing herself from the hiring process. However, there is no evidence (record or documentation) as to how this conflict was addressed and this same point was confirmed by the Internal Audit review.



46. In addition, the Internal Audit review through its wider set of HR audit checks found that no job evaluations through the Government job evaluation system, JEMS, were ever undertaken for the two temporary posts for the Dubai World Expo which means the post holders could be being over or under paid for their services.

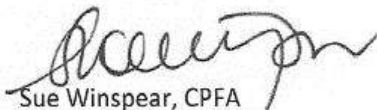
**OBJECTIVE 9 - FUTURE RISK THAT MAY HAVE A LEGAL OR FINANCIAL LIABILITY TO THE CAYMAN ISLANDS GOVERNMENT.**

47. As it stands now, none of the recently created overseas offices are operational and permission to open an office in the USA was only granted on 7<sup>th</sup> October 2021. However, the Government is expected to incur an annual estimated expenditure of almost \$1.1 million as a result of the employment arrangements agreed for the five recruited personnel for the overseas offices (see Exhibit 3 on page 11). This amount includes monthly salaries, pension, motor car upkeep allowance and school fees for those with children.
48. Three of the overseas offices' staff signed 5-year contracts, and the other two staff signed open-ended contracts as they were existing civil servants. The job offer to the Commissioner of the Dubai World Expo was for a period of 15 months. Therefore, failure by the Government to fulfil the terms these employment agreements could have legal implications.
49. Similarly, a contract has been signed with the UK DIT for participation in the Dubai World Expo and this appears to have created an obligation on the Cayman Islands Government.

**OBJECTIVE 10 - OPPORTUNITIES FOR IMPROVEMENT (WHETHER THROUGH PRIMARY OR SECONDARY LEGISLATION) AND BEST PRACTICES RELATED TO THE EXPENDITURE AND/OR COMMITMENT OF PUBLIC FUNDS DURING AN ELECTION PERIOD AND POST-ELECTION GOVERNMENT FORMATION PROCESS.**

50. The purpose of the civil service is to remain politically neutral but serve the Government of the day. International best practice would seek to avoid the introduction of new policies, the signing of major new procurement contracts and any novel and contentious spending including staff appointments during the period between the day an election is called and the day of the election itself. In the UK, there are specific rules that apply to the operation of the civil service during the pre-election period.
51. The previous Government called the election on 10<sup>th</sup> February 2021 and set an election date of 14<sup>th</sup> April 2021. During the period between 10<sup>th</sup> February and 20<sup>th</sup> April 2021, MITIAMA signed employment contracts with the Commissioner of the Expo and five staff for overseas offices. As a result, the incoming Cayman Government has been committed to over \$6 million in potential costs (see Exhibit 3 on page 11) over the terms of the various contracts (subject to legal confirmation). As previously reported, this is not an isolated example.

52. As a UKOT, the Cayman Islands is based on the Westminster system of government. However, it does not have a similar policy that prevents new policies, procurements or commitments to major expenditures in the period running up to an election. In the absence of such an approach I therefore believe that a comprehensive pre-election policy and set of protocols should be put in place to guide the conduct of the civil service before, during and immediately after an election. The policy could set out restrictions around the use of public resources and on the activities of civil servants and ministers in the period between an election being called and the election itself and guide immediate post-election operations as well. The policy should also be clear to existing ministers that they may not initiate new policy, new projects or spend from the point the election is called in order to protect the fairness of the electoral process and avoid the risk of biasing the voting population.



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10<sup>th</sup> November 2021