

Governance in the Cayman Islands Government
Describing the Framework



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EXECUTIVE SUMMARY

Governance of a public sector entity is critical to its ability to operate effectively and to achieve results. As part of our programme of audit work we have undertaken a broad ranging audit of how the governance framework has operated across the Cayman Islands Government. However before audit work can be done to determine how well the governance framework is operating, it must be understood how it works.

The purpose of this report is to describe the governance framework of the Cayman Islands Government. It describes the governance framework as reflected in the Constitution, the Public Management and Finance Law (PMFL) and the Public Service Management Law (PSML) without commenting on its effectiveness, relevance and appropriateness.

This report provides the basis for the other audit work we have carried out to determine the extent to which management policies, practices and procedures have been developed and implemented to fulfill the intent of the framework. In other words are all legislated responsibilities being followed and is the accountability framework operating as intended?

Following on from this report we have issued three other reports which examine the: operational effectiveness of governance in core government; operational effectiveness of governance related to the relationship core government has with Statutory Authorities and Government Companies (SAGCs); and a survey of the state of governance in SAGCs.

The first report focuses on core government and has sought to determine whether the core government governance framework is being applied in practice and whether it meets good governance principles for public organizations as appropriate for the Cayman Islands.

The other two reports relate to Statutory Authorities and Government Companies. The first looks to determine whether statutory authorities and government companies are meeting the constitutional and legislative requirements for accountability to core government and whether these arrangements meet good governance standards, as appropriate for the Cayman Islands. The second focuses on the governance frameworks within statutory authorities and government companies and used a self-assessment approach to determine the extent to which their governance frameworks meet good governance standards and support the achievement of their strategic goals and objectives, and the fulfilment of their legislative mandate.

I hope that the description of the governance framework contained in this report, and the findings from the other three reports on how the framework is operating in practice, will be useful to members of the Legislative Assembly and enable the Government to drive forward ongoing improvements in how it undertakes its activities and manages resources.

GOOD GOVERNANCE LEADS TO GOOD RESULTS

1. Governance refers to how an organization is structured and the processes and procedures it follows to fulfill its mission or purpose and achieve positive results and outcomes. A governance framework in the public sector should be focused on achieving positive results and outcomes for the people and organizations that use government services, as well as good value for the people and organizations that fund them.
2. Studies have shown that there is a correlation between the quality of governance and the quality of results. The Independent Commission on Good Governance¹ in Public Services that examined governance in the United Kingdom in 2004 reports that, *“Good governance leads to good management, good performance, good stewardship of public money, good public engagement, and ultimately, good outcomes.”*
3. Good management, good performance and good stewardship of public money are all related to value-for-money and it is why the Office of the Auditor General is interested in reviewing the current governance framework in the Cayman Islands. “Well managed public services” is one of the four strategic objectives adopted by the Office and it is in this context that a Governance Audit has been undertaken.
4. The former Governor, Mr. Duncan Taylor CBE, identified the promotion of good governance as one of his key objectives for the Cayman Islands during his first speech in January, 2010. At that time he said,

“What is good governance and why does it matter? There are many definitions but the core elements are consistent: the key and interlinked components include respect for the rule of law, underpinned by an independent judiciary; transparency, with decisions taken and seen to be taken in line with defined and agreed rules and regulations; and accountability, with institutions, the legislature but also the private sector and civil society accountable to the public and to their institutional shareholders for their actions. Good governance matters because it is the basic foundation for a successful, prosperous, well-ordered and sustainable society”.

¹ The Independent Commission on Good Governance was a UK Commission, established by the Office for Public Management and the Chartered Institute of Public Finance and Accountancy in partnership with the Joseph Roundtree Foundation. The role of the Commission was to develop a common code and set of principles for good governance across public services. The Commission work was undertaken in 2004 when it was recognized that public expenditures in the UK would soon exceed 500 billion pounds annually and “there is no common code for public service governance to provide guidance across the complex and diverse world of public services”.

5. Planning is the first phase of any audit. During this phase time is spent understanding the system that will be the subject of the audit. A good understanding of the system or process is necessary to properly plan for the audit work to be conducted. Our audit reports always set out in a background section a description of the system to be reviewed so the reader will have a good understanding of the area we are about to examine.
6. A key decision arising from the planning phase of the audit was to exclude from our work the operations of the Legislative Assembly, the judiciary and the police. Our work concentrated on core government and in particular the Governor in Cabinet, ministries, portfolios, statutory authorities and government companies. We also looked at the accountability role played by the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Office of the Auditor General.
7. We concluded that there would be value in commencing our work by preparing a separate report that explains the governance framework of core government in the Cayman Islands. This report includes the information that would normally appear in the background section of an audit report. We reached the conclusion to have a separate report for a couple of reasons.
8. The first reason is that due to the complexity of the governance framework, a proper explanation could not be achieved in any meaningful way in the background section of an audit report. Secondly we believe there is merit in having the governance framework explained in a separate standalone report, which over time may be found useful as a reference document for Legislators and others who need to understand the governance framework of the Cayman Islands Government.

FOUNDATION FOR THE GOVERNANCE FRAMEWORK IN THE CAYMAN ISLANDS

9. The foundation for the governance framework in the Cayman Islands has been established by the Public Management and Finance Law (PMFL) and the Financial Regulations, the Public Service Management Law (PSML) and the Personnel Regulations, the Constitution and the Framework for Fiscal Responsibility (as incorporated into the PMFL in November 2012).

THE PUBLIC MANAGEMENT AND FINANCE LAW (PMFL)

10. The PMFL came into effect in 2004 to improve financial management in the Cayman Islands government. The need for improvement was identified in the late 1990's when it was realized that separate initiatives for change had not been successful and a more holistic approach was necessary. At that time a number of problems were identified, with the central one being that the management system was not focused on performance. Furthermore the strategic policy priorities of government were not clear, the budget process was poor and there were no top down direction given to departments. There was little fiscal discipline and supplementary appropriations were common place.

11. It was also recognized that the roles of ministers, chief officers and the heads of departments were not defined and unclear. There was confusion as to who was responsible for what in the day to day operations of government.
12. Performance expectations for civil servants were based more on behaviors than being linked to the priorities of government. Due to many services being centralized, managers at the time were not able to appoint or discipline staff which created difficulties in holding them accountable for entity performance. There was no annual reporting that linked back to performance expectations.
13. In response to these problems and others identified at the time, the PMFL was enacted. In summary the Law had four main objectives:
 - a) redefine performance to focus on results;
 - b) develop stronger strategic processes linked to the budget;
 - c) clarify roles; and
 - d) establish effective accountability mechanisms.

THE PUBLIC SERVICE MANAGEMENT LAW (PSML)

14. The PSML was enacted in 2005 and it delegated greater personnel authority to chief officers in order for them to fulfill the duties they had been given under the PMFL. This represented a significant move away from centrally controlled recruitment and appointment processes. The legislation was designed to complement the financial management reforms so that the government management system would operate as a single integrated system.
15. By establishing a statement of values to govern the operation of the public service and a code of conduct to specify personal behaviors, the legislation set out to encourage civil servants to behave and perform in an effective manner.
16. The position of Head of the Civil Service was created to be responsible for overseeing all matters internal to the operation of the Civil Service. This position would be the senior civil servant of government, report directly to the Governor, and have statutory independence from political influence. The legislation also provided for new performance arrangements for chief officers, heads of departments and other civil servants to encourage and reward good performance.

THE CONSTITUTION

17. Most of the Cayman Islands current Constitution came into effect in 2009. Certain parts of the Constitution unrelated to this document, came into effect at later dates. The process for making changes to the Constitution started in 2008 when the government of the day presented its vision and proposals for constitutional reform. In its “Summary of Proposals” the government was looking to accomplish the following:

- modernize the relationship between the Cayman Islands and the United Kingdom based on principles of mutual respect and greater self-determination;
 - make the Cayman Islands more democratic by placing greater responsibility on elected representatives and making the electoral system fairer;
 - be able to conduct some external affairs and international agreements;
 - be able to show the world that future governments will always respect everyone’s fundamental rights and freedoms by enshrining a Caymanian Bill of Rights, reflecting Caymanian heritage and values; and
 - by setting up checks and balances in order to prevent abuse of power and to safeguard the country’s reputation for honesty, integrity, efficiency and responsibility.
18. The Summary of Proposals was used to engage the people in all the islands and to hear their views, and became the basis of negotiations between the United Kingdom and the Cayman governments. The negotiated agreement led to a Draft Constitution which was supported by the electors in a referendum on May 20, 2009.
19. The new Constitution has a Preamble which proclaims the historical context, fundamental values and aspirations of Caymanians. It also has a Bill of Rights, Freedoms and Responsibilities. There are also a large number of provisions related to the “checks and balances” in order to prevent abuse of power. The position of Deputy Governor was created, the roles of the Attorney General and Cabinet Secretary were clarified and the public service’s independence from politics was to be preserved by keeping the responsibility for hiring personnel and other related matters with the Governor or Deputy Governor.

THE FRAMEWORK FOR FISCAL RESPONSIBILITY (FFR)

20. The Framework for Fiscal Responsibility (FFR) was initially an agreement signed by the Premier on behalf of the Cayman Islands and by the Minister for Overseas Territories of the United Kingdom Government. The contents of the agreement were approved by the Legislative Assembly on November 15, 2012 and became an Appendix to the PMFL.
21. The cornerstone of the agreement, and now new provisions in the PMFL, was the commitment of Cayman Islands Government to four principles:
- a) effective medium-term planning to ensure that the full impact of fiscal decisions is understood;
 - b) putting value for money considerations at the heart of the decision making process;
 - c) effective management of risk; and
 - d) delivering improved accountability in all public sector operations.

22. To determine if there is compliance with the provisions of the Framework, the Cayman Islands Government is required to provide information to the United Kingdom Government for monitoring purposes. In the event of non-compliance the approval of the Secretary State of the UK Government will be necessary for the following:
- finalizing the Strategic Policy Statement,
 - any public borrowing or refinancing of public borrowing;
 - proceeding with any project with a lifetime value of more than CI\$10 million;
 - using public assets as collateral as part of any arrangement with a party external to the Cayman Islands Government;
 - the hypothecation of any revenue stream; or
 - the divestment of public assets.
23. The Constitution and the PMFL has created a governance structure that can be best understood by examining the organizational chart available on the Government’s website. (http://www.gov.ky/portal/page?_pageid=1142,1481310&_dad=portal&_schema=PORTAL).

THE STRUCTURE OF OUR REPORT

24. The outcome of the work performed by the UK Commission on Good Governance (the “Commission”) was a report titled, The Good Governance Standard for Public Service. The highlight of the report was the identification of the following six principles of good governance:
- focusing on results;
 - performing effectively in clearly defined functions and roles;
 - promoting values and ethics and ensuring they are being followed;
 - making informed transparent decisions and managing risk;
 - developing capacity and capability of the governing body; and
 - engaging stakeholders and making accountability real.
25. The Commission concluded that the Standard would apply to many types of organizations including central government and public sector organizations. It recognized that some governing bodies would be elected and others would be appointed,
26. We believe it would be useful to explain the governance framework of the Cayman Islands within the context of each of the principles set out in the Standard. We realize that the framework was not necessarily put together with a focus on these principles, but setting out what has been established within this structure may have more meaning.

FOCUSING ON RESULTS

27. In explaining the relevance of this principle, the Commission emphasized the importance of focusing on the organization's purpose and on results for citizens and service users. When the purpose and objectives are communicated effectively it can guide people's actions and decisions at all levels.
28. As mentioned earlier one of the main objectives of the PMFL was to redefine performance to focus on results. We will now look at the governance framework in the Cayman Islands with respect to focusing on results.

THREE YEAR STRATEGIC PLAN FOCUSES ON RESULTS

29. Each year the Cabinet² is required under Section 18 of the PMFL to prepare a strategic plan. This is an extremely important responsibility for any governing body because this is where the priorities are set and the decisions made as to what is to be accomplished over the term of the plan. Under the PMFL this is called the Strategic Phase and it is to cover the next financial year and the two following years.
30. During this Strategic Phase the GIC decides, on a number of things including the following:
 - a) broad outcome objectives;
 - b) specific outcome objectives;
 - c) the forecast of executive revenue and expenses for each of the three years; and
 - d) the forecast amount of executive expenses to be allocated to each Minister and Official Member, for each of the next three years.
31. This is definitely a top down approach and recognizes the responsibility of the government of the day to set the overall direction for the next three years. The process starts by deciding on broad outcomes, which are the positive results the government hopes to realize for the citizens of the Cayman Islands. For instance, it is at this stage that the government would decide on the positive impacts it would like to make in areas such as health, education, agriculture and the environment. In the 2013-14³ strategic planning phase the government had nineteen broad outcome objectives, two of which were "Improving Health Care" and "Enhancing Agriculture". A listing of the nineteen broad outcomes can be seen at Appendix 1.

² As set out in the Constitution, the Cabinet consists of the Premier, six ministers and two ex officio members being the Deputy Governor and the Attorney General.

³ The 2013-14 strategic planning phase was conducted in late 2012.

- 32. The GIC then decides on specific outcome objectives which it intends to target in order to achieve the broad outcome objectives. In the 2013-14 strategic planning phase the government had one-hundred and forty-five specific outcome objectives. The specific outcomes are put forward by the ministries and portfolios as their initiatives to assist government in achieving the broad outcomes. Two specific outcome objectives to support the broad “Improving Health Care” outcome are, “Expanding Health Care Coverage” and “Developing a National Strategic Health Plan”.
- 33. The Strategic Phase concludes with the preparation of the Strategic Policy Statement (SPS) under section 23(2) of the PMFL. In addition to the items listed above, the SPS is also to include economic forecasts and financial targets for the core government for each of the next three years. For a complete list of what the PMFL requires to be included in the SPS see Appendix 2.
- 34. The FFR makes reference to the SPS in a number of situations and requires a significant amount of disclosure, some of which is already required by the PMFL, but in other instances it is new. Under section 19, the government is now required to disclose in the SPS all capital projects with an expected lifetime value of CI\$10 million or more. Section 27 requires the government to set out in the SPS its strategy of managing contingent and actual liabilities and to report on its progress in delivering on the strategy. In Section 15 of the Annex of the FFR is a complete list of the information that should be included in the SPS.
- 35. The SPS for the next financial year must be presented in the Legislative Assembly before December 1st. The Legislative Assembly has two months to approve, amend or reject the statement.

Governance Highlight

The process set out in legislation requires government to set the strategic direction for the next three years. This is an important first step in being able to focus on results.

Taking the SPS to the Legislative Assembly makes it a public document so it is transparent to citizens as to what the government is setting out to accomplish.

MINISTERS AND OFFICIAL MEMBERS IDENTIFY WHAT THEY CAN DO TO INFLUENCE THE SPECIFIC OUTCOMES

- 36. After the approval of the SPS by the Legislative Assembly, each Minister and Official Member, in conjunction with his ministry or portfolio, must determine what can be done to make a positive contribution towards achieving the specific outcome objectives. Section 19(a) of the PMFL indicates that ministries and portfolios can “influence the specific outcomes” by introducing new policies through legislative changes, making transfer payments or equity investments, changing fees for government services or identifying outputs. Outputs are the goods or services produced by a ministry, portfolio, statutory authority, government company or non-governmental output supplier. For instance, offering more doctor clinics would be seen as an increase in a service that would have a positive influence on the specific outcome, “Expanding Health Care Coverage”.

37. This phase is called the detailed planning and budgeting phase. The outcome of this phase is set out in Section 19 of the PMFL and includes the following:
- a) a draft annual budget for the ministry or portfolio, which would include the outputs to be provided by that ministry or portfolio;
 - b) a draft purchase agreement with those statutory authorities (SA), government companies (GC) or non-governmental output suppliers from which the minister or official member intends to purchase outputs; and
 - c) draft ownership agreements that have been prepared for every SAGC for which the minister or official member is responsible. The ownership agreement contains, among other things, the strategic goals and objectives of the authority or company for the next three years and performance targets for the upcoming financial year.

Governance Highlight

The focus on results continues in the detailed planning and budgeting phase. In this phase the ministries, portfolios, statutory authorities and government companies are required to identify what they can do to achieve the outcomes that have been tabled with the Legislative Assembly. Having the SAGCs involved in the process at this stage enables Ministers and Official Members to develop a good two way communication and understanding with their SAGCs as to what they will be able to contribute towards achieving the specific outcomes

APPROVAL BY GIC AND LEGISLATIVE ASSEMBLY

- 38. All the documentation from the detailed planning and budgeting phase is presented to the Governor in Cabinet (GIC) where amendments may be made before the annual plan and estimates are forwarded to the Legislative Assembly.
- 39. An important step required by legislation (Section 20(d) of the PMFL), is for GIC to ensure that the annual plan and estimates is consistent with the SPS that had been previously approved by the Legislative Assembly.
- 40. After the Legislative Assembly reviews the annual plan and estimates it authorizes the GIC to give effect to the plan (amended as required by the Legislative Assembly) by authorizing the expenses and borrowings by an Appropriation Law. It will also authorize by law, changes to types and rates of coercive revenue and by resolution, the giving of any guarantees by the government.

Governance Highlight

The GIC continues the focus on results by ensuring that the annual plan and estimates is consistent with the SPS that had been approved by the Legislative Assembly. Approval by the Legislative Assembly of an Appropriation Law, laws to support changes in coercive revenue and of resolutions in support of guarantees provides for transparency and sets the stage for accountability. After approval is obtained from the Legislative Assembly it is clear what the government will be accountable for in the next financial year.

FOCUS ON RESULTS CONTINUES WITH THE CIVIL SERVICE⁴, SAGCs

41. After the annual plan and estimates has been approved by the Legislative Assembly, the GIC then looks to the civil service, SAGCs and non-governmental output suppliers to fulfill its wishes. This is accomplished under Section 22 of the PMFL, by the GIC agreeing an annual budget statement with the chief officer of each ministry or portfolio, a finalized purchase agreement with each SAGC and non-governmental output supplier from which the GIC will purchase outputs, and a finalized ownership agreement with each SAGC.
42. Under Section 38 (1) of the PMFL the chief officer has the responsibility to ensure that his ministry or portfolio *“delivers the outputs specified in his annual budget statement ... and achieves the ownership performance”* specified in the same document. It is because of this responsibility that the chief officer signs the annual budget statement with the GIC. In executing the annual budget statement with the GIC the chief officer is agreeing to a number of other undertakings all of which are set out in Appendix 3.
43. Under Section 49 of the PMFL each SAGC that is delivering outputs to the GIC must prepare and execute an annual purchase agreement. This reflects their responsibility to deliver the outputs that are being purchased by the GIC. Under section 50 of the PMFL each SAGC must prepare an annual ownership agreement for the authority or company that contains its strategic goals and objectives for the next three years and its ownership performance targets for the financial year.
44. The purchase and ownership agreements are signed by a member of the GIC, on behalf of the GIC, and by the chairman on behalf of each SAGC board. Under section 46 of the PMFL *“a statutory authority or government company shall supply outputs that the GIC has agreed that it will purchase...and achieve the ownership performance that it has agreed with the GIC that it will achieve during the year”*.

⁴ Civil service is defined in PSML. It is referred to in the PFML but not defined.

- 45. The board of an SAGC is responsible, under Section 47 of the PMFL, for the performance of the authority and company including ensuring that it delivers the outputs specified in the Purchase Agreement and achieves the ownership performance specified in the ownership agreement.
- 46. There will also be signed purchase agreements between the GIC and any non-governmental output suppliers that will be delivering outputs.
- 47. By signing these agreements the GIC clearly communicates its wishes to the chief officers, SAGCs and non-governmental output suppliers. Under legislation the Chief Officers, SAGCs have the responsibility to deliver what has been asked of them by the GIC.
- 48. Provision is made in the PMFL for amendments to be made during the year to annual budget statements provided the price to be paid for each output is sufficient to deliver the revised expectations. Amendments can also be made to purchase and ownership agreements provided there is agreement between the SAGC and the GIC.

Governance Highlight

This framework requires the GIC to give serious consideration on an annual basis to what exactly it would like to see ministries, portfolios, SAGCs and non-departmental output suppliers accomplish during the upcoming financial year. Once these decisions are made and the agreements are signed the responsibility for implementation transfers to the Chief Officers and governing boards.

PERFORMANCE OVERSIGHT BY DEPUTY GOVERNOR

- 49. The Deputy Governor is the Head of the Civil Service. Under section 16(1) of the PSML, the Head of the Civil Service is to enter into a performance agreement with each chief officer for each financial year. The performance expected of the Chief Officer will reference the performance specified in the annual budget statement of the ministry or portfolio for that financial year, including the outputs to be purchased by the Cabinet and ownership performance expected of the ministry or portfolio. Section 30(2) of the PSML sets out what is to be included in the Chief Officer performance agreement.
- 50. These performance agreements are to be used as the basis for the annual performance assessments of the Chief Officers by the Head of the Civil Service.

Governance Highlight

Integrating the wishes of the GIC into the annual performance appraisal of the Chief Officers is an important step to ensure that the civil service continues to be focused on achieving positive results throughout the year.

PERFORMANCE IS MONITORED AND GIC HAS AUTHORITY TO WITHHOLD PAYMENT FOR NON-PERFORMANCE

51. Each ministry and portfolio, the ministry responsible for finance and the GIC have responsibilities during the year to ensure that the planned results are being achieved.
52. Under section 37(1) a ministry and portfolio has been given the responsibility of monitoring the purchase and ownership agreements they have with SAGCs and non-governmental output suppliers. Section 38 gives the chief officer the responsibility of ensuring that this monitoring takes place.
53. Under Section 54(m) of the PMFL, the ministry responsible for finance *“shall monitor the output delivery and the ownership performance of ministries, portfolios.....statutory authorities and companies.”*
54. The GIC is also to monitor the delivery of outputs under Section 30(6) of the PMFL and, *“may only authorize payment for those outputs when it is satisfied that the specified outputs have been satisfactorily delivered.”* This would require on-going monitoring at the administrative level in order for the GIC to be given timely information to make these decisions.
55. Under section 31(2) the GIC is to also monitor the ownership performance of the entity and take appropriate action if at any time it appears that the ownership performance specified in the relevant document will not be achieved.

Governance Highlight

To keep a focus on results it is important that the governing body receive timely information during the year to ensure performance is satisfactory or to identify where corrective action may be required. The provision that the GIC will only pay for outputs when they have been satisfactorily delivered provides the ultimate incentive for entities to keep focused on achieving the results they have undertaken to deliver.

SUMMARY - FOCUSING ON RESULTS

56. The framework related to focusing on results starts with the government clearly establishing what it would like to accomplish over the next three years. This includes positive results for its citizens, economic forecasts and financial targets. All the relevant information is tabled in the Legislative Assembly and in this way is transparent.
57. There is a clear transfer of responsibility for achieving results to the civil service by the GIC. Results are to be monitored by the ministry of finance and the GIC. The performance of the Chief Officers in fulfilling their commitment to deliver on outputs is to be evaluated on an annual basis by the Deputy Governor.

PERFORMING EFFECTIVELY IN CLEARLY DEFINED FUNCTIONS AND ROLES

58. The UK Independent Commission on Good Governance in Public Services had this to say about Roles and Responsibilities.

“Good governance requires all concerned to be clear about the functions of governance and their own roles and responsibilities and those of others, and to behave in ways that are consistent with those roles. Being clear about one’s own role, and how it relates to that of others, increases the chance of performing the role well.”

59. The Constitution, PMFL and PSML set out the roles and responsibilities of a number of key positions and bodies in establishing the governance framework for the citizens of the Cayman Islands. In this section we will document the key aspects of those positions and bodies and the role they play in achieving the results desired by government.

60. There are a number of components to the governance framework. Each component has relationships with one or more other components and understanding these relationships is important to appreciate the responsibilities of the specific positions and bodies.

61. The relationship between the Legislative Assembly and Cabinet recognizes that Cabinet requires the approval of the Legislative Assembly to;

- enact legislation;
- to approve new coercive revenue or change existing revenue rates;
- to receive annual appropriations to implement the government’s annual plan and estimates;
- to receive supplementary appropriations when required; and
- to authorize any guarantee which the government wishes to give.

62. The Cabinet is accountable to the Legislative Assembly and this is reflected in the requirement for the Cabinet to table a Government annual report with the Legislative Assembly.

63. The relationship between the Cabinet, and the ministries and portfolios recognizes that Cabinet approves their annual budgets and monitors progress during the year. The accountability of ministries and portfolios to the Cabinet is reflected in the requirement for them to submit annual reports. The chief officers of the ministries and portfolios are required to work together in providing policy advice to the Cabinet.

64. The relationship between the Cabinet and the SAGCs recognizes that the Cabinet approves their annual ownership and purchase agreements and monitors progress during the year. The accountability of SAGCs to the Cabinet is reflected in the requirement for them to submit annual reports.
65. The relationship between ministries and portfolios and their assigned SAGCs reflects the responsibility of the ministries and portfolios to be satisfied with the outputs to be provided and the strategic goals and objectives to be achieved by the SAGCs. The chief officers are responsible for ensuring that this happens and also for monitoring progress during the year.
66. The Governor has relationships with the Legislative Assembly, Cabinet and the ministries and portfolios. With respect to the Legislative Assembly, the Governor is responsible for appointing three positions that report to the Assembly and fulfill important accountability responsibilities; the Auditor General, the Complaints Commissioner and the Information Commissioner. The Governor has numerous other responsibilities with respect to the Legislative Assembly which will not be highlighted due to the Legislative Assembly being scoped out of our work.
67. The Governor is the chair of Cabinet and in consultation with the Premier sets the agenda for each meeting. Her relationship with Cabinet includes the appointment of two non-voting members, the Deputy Governor and the Attorney General. She also appoints the Cabinet Secretary who has specific duties related to serving and supporting the Cabinet.
68. The Governor appoints the Premier. In the situation where a political party gains a majority of seats in the Legislative Assembly, the Governor is required to appoint as Premier the elected member who has the support of a majority of the elected members of that party.
69. With respect to ministries and portfolios the Governor makes a number of appointments. She appoints all ministers, on the recommendation of the premier, and she appoints the head of two portfolios. The Portfolio of the Civil Service is assigned to the Deputy Governor, and the Portfolio of Legal Affairs is assigned to the Attorney General. Under the Constitution, the Governor is responsible for the civil service, a responsibility which she has delegated to the Deputy Governor. The civil service includes all the employees in the ministries and portfolios.

70. The roles and responsibilities of the various positions and bodies will be explained under the following headings:

<p>Political - Policy Makers</p> <ul style="list-style-type: none"> • The Governor in Cabinet • The Premier and ministers, including the Minister of Finance <p>The Governor</p>	<p>Public Service - Policy Implementers</p> <ul style="list-style-type: none"> • Ministries and portfolios • Ministry responsible for finance • Portfolio of Civil Service • Head of the Civil Service • Attorney General • Cabinet Secretary • Statutory Authorities and Government Companies <p>Other Public Service Providers</p> <ul style="list-style-type: none"> • Financial Secretary • The Director of Internal Audit
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71. The Auditor General, Complaints Commissioner and the Information Commissioner provide independent information to the Legislative Assembly and in this way play an important role in holding government accountable for their actions. The roles and responsibilities of these positions are set out in the Accountability section.

GOVERNOR IN CABINET (GIC)

72. The GIC is responsible for the financial performance of the entire public sector, setting the outcome priorities of the government, preparing the annual plan and estimates, approving performance and ownership agreements and monitoring in-year results with what was proposed at the beginning of the year.

RESPONSIBILITY FOR FINANCIAL PERFORMANCE

73. Section 14 of the PMFL requires the GIC to make financial decisions in a manner consistent with a set of “principles of responsible financial management”. These are:

- ensuring that total government revenue exceeds total government expenses;
- ensuring that total government assets exceed total government liabilities;
- ensuring that debt servicing cost is not more than 10% of revenue;
- ensuring that net debt is no more than 80% of revenue;
- ensuring that cash reserves are maintained at a level no less than the estimated executive expenses for the following 90 days; and
- prudently managing financial risks, including contingent liabilities.

RESPONSIBILITY FOR SETTING OUTCOME PRIORITIES AND PREPARING THE ANNUAL PLAN AND ESTIMATES

74. Sections 17 to 23 of the PMFL set out five distinct phases of the annual budget process that require input and decisions by the GIC. Two of these phases, the strategic planning phase and the annual plan and estimates, result in public documents.
75. The strategic policy statement outlines the government's broad and specific outcomes, financial targets for the next three years and comprehensive economic forecasts. The statement is to be presented to the Legislative Assembly no later than December 1st of each year.
76. The annual plan and estimates is to be presented to the Legislative Assembly no later than May 1st of each year, and is to include the following:
- the specific outcomes which the GIC is seeking to influence;
 - the specific output groups, transfer payment categories, legislative measures and other policy actions the government is intending to use to achieve those outcomes;
 - an explanation as to how the specific outcomes being presented accord with the Legislative Assembly resolution approving the strategic policy statement;
 - forecast financial statements;
 - an explanation as to how the forecast financial statements accord with the financial targets set out in the strategic policy statement and the principles of responsible financial management; and
 - a schedule of appropriations to be approved by the Legislative Assembly.

ENSURING AGENCY PLANS ARE CONSISTENT WITH OUTCOMES AND MONITORING IN-YEAR RESULTS

77. Sections 30 and 31 of the PMFL requires the GIC to agree with each ministry, portfolio, statutory authority or government company the performance it expects the entity to deliver in the financial year. The sections require that this take the following form:
- in the case of the ministries and portfolios, an annual budget statement documenting both the outputs to be delivered and the ownership performance to be achieved;
 - in the case of statutory authorities and government companies, an annual ownership agreement documenting the ownership performance to be achieved, and where the GIC is funding any of their outputs, a purchase agreement documenting those outputs; and
 - in the case of non-government output suppliers (organizations not owned by the government but which are providing outputs) a purchase agreement specifying the outputs to be delivered with the funding from government.
78. The annual budget statements, purchase agreements and ownership agreements establish expectations at the beginning of the year.

79. Under section 30(6) of the PMFL the GIC monitors the delivery of outputs during the year under the relevant annual budget statement or purchase agreement and will only authorize payment for those outputs when it is satisfied that “they have been satisfactorily delivered”. Under section 31(2), the GIC monitors the ownership performance of ministries, portfolios, SAGCs and will take appropriate action if it appears that the performance specified at the beginning of the year will not be achieved.

ANNUAL REPORTING

80. No later than five months and two weeks after the end of each financial year, the GIC is required to publish a Government annual report for that financial year. The annual report is to review the performance of the government and compare it to what was proposed in the annual plan and estimates for that year. Audited financial statements and an audited annual schedule of appropriations are also to be included.
81. At the earliest possible date after publishing the annual report it is presented to the Legislative Assembly.

COMPLIANCE WITH THE FRAMEWORK FOR FISCAL RESPONSIBILITY

82. The Cabinet must be satisfied that the Cayman Islands Government is in compliance with the terms and conditions of the FFR. In the event of non-compliance, the government loses the ability to conclude on the following matters without the written approval of the Secretary of State of the United Kingdom Government:
- finalizing the Strategic Policy Statement;
 - any public borrowing or refinancing of public borrowing;
 - proceeding with any project with a lifetime value of more than CI \$10 million;
 - using public assets as collateral as part of any arrangement with a party external to the Cayman Islands Government;
 - the hypothecation of any revenue stream; or
 - the divestment of public assets.

Governance Highlight

The GIC is responsible for informing the Legislative Assembly and the public what the government plans to do during the next financial year, monitors results during the year and completes the accountability cycle by publishing a Government annual report after the end of the year.

There are a number of principles of financial management that are referenced in legislation. It is the responsibility of the GIC to ensure they are met.

THE PREMIER

83. Under Section 50 of the Constitution, *“The Premier shall have such functions as are conferred on him or her by or under this Constitution, and shall exercise those functions in accordance with this Constitution and any other law and in the best interests of the Cayman Islands.”*
84. The Constitution gives authority to the Premier to decide on how to allocate responsibilities to Ministers, *“including responsibility for the administration of any department of government.”* The Constitution gives the Premier the ability to choose his or her Ministers.
85. The Premier is also required to keep the Governor fully informed about the policies of government and the public affairs of the Cayman Islands.

Governance Highlight

With the authority to select the members of cabinet and assign responsibilities for departments to them, the Premier is in a position to put together the team which he believes can best fulfill the responsibility of governing the Cayman Islands.

MINISTERS AND OFFICIAL MEMBERS

86. Under Section 54(7) of the Constitution a Minister who has been given the responsibility for the administration of a department *“shall (subject to the constitution and any other law) exercise general direction and control over the department”*. The PMFL explains how the Minister exercises this *“general direction and control”*. The PMFL also distinguishes the role of a minister and official member from that of his or her chief officer.
87. Section 19 of the PMFL gives the minister and official member the responsibility, *“in conjunction with the ministry or portfolio for which he is responsible”*, to propose a number of things to influence the outcomes of the government. For instance he can recommend outputs, transfer payments, equity investments, and changes to service fees or legislative measures.
88. Section 39 of the PMFL places the direct responsibility on the minister or official member to recommend to the Governor in Council the outputs to be purchased from their ministries or portfolios and goes on to say that no outputs may be produced by a ministry or portfolio unless they have been agreed to by the GIC. Since outputs are the goods and services produced by the ministry or portfolio, the minister or official member can have an impact on the achievement of government outcomes by the nature and quantity of outputs he or she recommends.

- 89. While this provision enables the minister or official member to have influence over the outputs to be purchased from their ministry or portfolio the responsibility for the delivery of these outputs rests with the chief officer. Section 39(2) states that *“it is the responsibility of the chief officer to determine and acquire the inputs required to produce the outputs....”* Inputs refers to labor, capital or any other resource that must be acquired to produce the outputs.
- 90. During the annual budget preparation process it is the minister or official member under section 19 of the PMFL who ensures that the draft annual budget statement for his ministry or portfolio has been prepared in accordance with legislation and so has any purchase or ownership agreements with SAGCs.
- 91. Under the PMFL it is the minister or official member who is responsible for presenting the draft annual budget statement for his ministry or portfolio to the Legislative Assembly. When the annual budget statement is approved section 24 of the PMFL provides for the chief officer to sign on behalf of the ministry or portfolio.
- 92. The minister or official member is also responsible under sections 49 and 50 of the PMFL for presenting the draft and finalized purchase and ownership agreements to the Legislative Assembly for any SAGCs that have been assigned to his ministry or portfolio.
- 93. Under section 44 it is the minister or official member who presents the annual report of his ministry or portfolio to the Legislative Assembly. The annual report *“shall set out the performance of the ministry or portfolio and compare it with that set out in the annual budget statement for that financial year.”* The annual report is also to include audited financial statements, *“consistent with the forecast financial statement in the annual budget statement for that financial year”*.
- 94. To assist a Minister in the discharge of his or her duties, Section 54(6) of the Constitution has granted authority to a minister to create *“a board, committee or similar body consisting wholly or partly of persons who are not public officers”*. Such bodies shall have *“advisory, consultative and administrative functions as may be conferred on it by law”* or by directions given in writing by the Minister.

Governance Highlight

A Minister or Official Member is responsible for taking to the GIC the initiatives he or she would like to see undertaken by his ministry or portfolio that would contribute to government achieving its outcomes. With respect to outputs, a minister need not be concerned with how his chief officer goes about delivering the outputs and is in fact by law prevented from becoming involved.

By presenting purchase and ownership agreements to the GIC and Legislative Assembly, of the SAGCs that have been assigned to his ministry or portfolio, the Minister or Official Member has the responsibility to ensure that the SAGCs are operating within their mandates and are planning to make positive contributions towards government’s stated outcomes.

MINISTER OF FINANCE

95. Under the constitution the Minister of Finance is required to provide the Legislative Assembly with a recommendation before it proceeds “upon any Bill (including any amendment to a Bill) which in the opinion of the Speaker, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Cayman Islands”. The Constitution also requires the Minister of Finance to chair the Finance Committee of the Legislative Assembly. The Finance Committee consists of all the elected members of the Legislative Assembly and is mandated to consider in detail the annual estimates of revenue and expenditure and to examine and consider all financial bills.
96. Sections 32, 33 and 34 of the PMFL (as amended in 2010) set out the powers and duties of the Minister of Finance, and they are as follows;
- Oversee the management of the finances of the core government and the entire public sector;
 - Advise the Governor in Cabinet on the budget process for the following financial year;
 - Ensure that the forecast financial statements that are required by law are prepared by the ministry responsible for finance;
 - Bring to the Legislative Assembly’s attention any divergence between the fiscal policy of the core government and the principles of responsible financial management.
 - Ensure that the reporting requirements for Government to publish an annual report within five months and two weeks of each financial year is complied with;
 - Borrow money on behalf of the GIC, provided it has been authorized by an appropriation from the Legislative Assembly and is consistent with the statement of borrowings included in the annual plan and estimates or supplementary annual plan and estimates for that financial year. Approval is also necessary by the Foreign and Commonwealth Office when any of the principles of responsible financial management have not been met.
 - Make a loan provided it has been authorized by an appropriation and be consistent with the statement of loans included in the annual plan and estimates or supplementary annual plan and estimates for that financial year.
 - Give a guarantee provided it has been authorized by resolution of the Legislative Assembly.
 - On behalf of the GIC, and subject to such terms and conditions as the GIC may determine, enter into financial transactions in order to avoid or reduce an adverse impact on executive assets, liabilities, revenue or expenses, that may be caused by currency or interest rate fluctuations, or by credit, liquidity or funding risks.

Governance Highlight

While the GIC under section 14 of the PMFL is responsible for managing the financial position of the core government in accordance with the principles of responsible financial management, the Minister of Finance is required to oversee the management of the finances of the core government and the entire public service.

The Minister of Finance has an important responsibility to the Legislative Assembly to report any situation where the fiscal policy of his government differs from the principles of responsible financial management.

The Minister of Finance can borrow money, make a loan or give a guarantee, but only with the required support of the GIC or Legislative Assembly.

THE GOVERNOR

97. Under Section 31(3) of the Constitution the Governor *“shall endeavor to promote good governance and to act in the best interests of the Cayman Islands so far as such interests are consistent with the interests of the UK”*.
98. With the Governor being responsible for the civil service, being responsible for the appointments to key positions in the governance framework and being the chair of the Governor in Cabinet, there are plenty of opportunities to *“promote good governance.”*

RESPONSIBILITY FOR THE CIVIL SERVICE

99. Under Section 55 of the Constitution the Governor is responsible for defense, external affairs, internal security including the police, and the civil service. The responsibility for the civil service is set out in section 55(1) (d) which states that the Governor is responsible for *“the organization of the public service”* and the hiring of all government employees and related human resource issues including setting salary scales. This responsibility is also set out in section 6(1) of the PSML where it states that *“the power to employ all civil servants rests with the Governor acting in his discretion”*. There is one limitation on the Governor’s authority with respect to the Civil Service and that is financial provision must already exist in the budget.

REQUIREMENT TO CONSULT WITH CABINET

100. Under section 32(1) of the Constitution the Governor *“shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or any other law.....”*

Governance Highlight

By giving the Governor legislated responsibility for the civil service, the Constitution is attempting to ensure that the Cayman Islands will have a non-partisan public service.

It also means that she has the authority to create new departments, amalgamate departments, realign ministries or create new positions to more effectively achieve the outputs agreed to by Cabinet. To implement her plans provision must be made in the budget. The requirement for the Governor to consult with Cabinet in fulfilling her responsibilities will ensure there is timely communications and transparency between the Governor and Cabinet.

RESPONSIBILITY FOR APPOINTING OFFICIAL MEMBERS AND THE CABINET SECRETARY

101. The Governor is required to make a number of appointments that have important responsibilities under the governance framework of the Cayman Islands. This includes Official Members and the Cabinet Secretary.

102. Under Section 9(1) of the PSML the Governor is to appoint the :

- the Deputy Governor, who has been delegated responsibility for the entire civil service and is a non-voting member of Cabinet and the Legislative Assembly; and
- the Attorney General, who is responsible for Legal Affairs and is a non-voting member of Cabinet and the Legislative Assembly; and
- the Financial Secretary, who is the principal advisor to the Minister of Finance

103. In making these appointments the Governor must be satisfied under section 9(2) of the PSML *“that the person to be appointed has the necessary skills, knowledge and integrity to carry out the duties required of the position in a highly competent and politically neutral manner”*. The Governor is to have annual performance agreements with each of these officials and is required to review their performance at the end of each financial year.

104. The Governor has the authority under section 12 to dismiss these officials on the basis of gross or serious misconduct or as a result of *“significant inadequate performance over a reasonable period of time”*.

105. Section 48 (b) of the Constitution provides for the Cabinet Secretary to be appointed by the Governor, after consulting with the premier. The Governor is to have a performance agreement with the Cabinet Secretary at the commencement of each financial year and to review performance at the end of the year.

106. The duties of each of these four officials and the role they play in the governance framework will be explained later in the report.

Governance Highlight

By appointing two non-voting members to the Cabinet and Legislative Assembly the Governor is in a position to provide the Elected Policy Makers with two professional and independent advisors. With the Deputy Governor and Attorney General, along with the Financial Secretary and Cabinet Secretary performing important roles within the civil service, the Governor by making these appointments can have a positive impact on the administration of the civil service.

RESPONSIBILITY FOR APPOINTING THREE OVERSIGHT POSITIONS

107. There are three positions that are appointed by the Governor that play important roles in the accountability aspects of governance. They are the Auditor General, the Complaints Commissioner and the Information Commissioner.
108. Section 114(1) of the Constitution gives the Governor the authority to appoint the Auditor General, and “to remove or exercise disciplinary control over any person holding or acting in that office”. Under Section 120(1), The Complaints Commissioner is to be appointed by the Governor, “after consultation with the Premier and the Leader of the Opposition”. Section 6 of the PSML also refers to the Governor’s responsibility for appointing these two positions, as well as her responsibility for appointing the Information Commissioner.
109. The Governor is to have annual performance agreements and undertake annual performance assessments with the individuals in these three positions. The Governor has the authority under the Constitution to dismiss an Auditor General or Complaints Commissioner. The Cabinet, under the Freedom of Information Act, has authority to dismiss the Information Commissioner.
110. The roles played by these positions are explained later in the accountability section of the report.

Governance Highlight

The Governor’s responsibilities with respect to the Auditor General and Complaints Officer gives both positions independence from government and the freedom to perform their work without influence. The position of Information Officer lacks this level of independence in that the appointment to office can be terminated by the Cabinet.

OTHER RESPONSIBILITIES OF THE GOVERNOR

111. Under Sections 22, 23 and 24 of the PSML the Governor has a role to play whenever the Head of the Civil Service has not been able to resolve an issue where *“political pressure is being exerted on a chief officer, or a person with delegated authority from a chief officer”* by a Minister, Official Member or Member of the Legislative Assembly. In such instances the Governor, once she has investigated the matter may issue an instruction to desist and the effected party *“shall do so”*.
112. The Governor is responsible under Section 117(2) of the Constitution for appointing the members to the Commission of Standards in Public Life. The terms of reference of the Commission are set out in the section on Values and Ethics. Under the Constitution the Governor is also responsible for appointing the members of the Human Rights Commission, the Constitutional Commission and the Judicial and Legal Services Commission.
113. Section 46(3) of the Constitution requires the Governor along with the Premier to set the agenda for Cabinet meetings and that according to section 46(1) *“The Governor shall, so far as is practicable, attend and preside at meetings of Cabinet”*.
114. Section 54(1) of the Constitution states that the Governor, *“acting on the advice of the Premier shall charge any Minister with the responsibility for the conduct of any business including the responsibility for the administration of any department of government”*.
115. Under Section 49 (2) of the Constitution the Governor *“shall appoint as Premier the elected member of the Assembly recommended by a majority of the elected members who are members of that party”*. If there is not majority party other rules apply.
116. Under Section 68 of the Constitution there are provisions which the Governor must follow in appointing the Leader of the Opposition.
117. Under Section 71 (1) of the Constitution the Governor is to sign all Standing Orders and under Section 78, A Bill *“shall not become a law until the Governor has assented to it in Her Majesty’s name.”* The Constitution sets out the process to be followed when the Governor refuses assent to a Bill.

MINISTRIES, PORTFOLIOS AND CHIEF OFFICERS

118. The relationship between a ministry or portfolio and its Chief Officer is established by sections 37 and 38 of the PMFL.
119. Under section 37 a ministry or portfolio is responsible for supplying the outputs and achieving the ownership performance that it has agreed in its annual budget statement with the GIC. Under Section 38, it is the Chief Officer of the ministry or portfolio who is responsible for ensuring that his ministry or portfolio fulfills its undertakings under section 37 and delivers the specified outputs and ownership performance.

120. Appendix 3 sets out the information which is to be included in the annual budget statement for each output and the details of the ownership performance to be achieved during the year. A key component of ownership performance is the strategic goals and objectives of the ministry or portfolio for the next three financial years and specific performance targets for the upcoming financial year.
121. The finalized annual budget statement for a ministry or portfolio is agreed between the GIC and the Chief Officer.
122. The relationship between a ministry and portfolio and its statutory authorities, government companies and non-governmental output suppliers is also set out in section 37 by requiring the ministry or portfolio to negotiate, agree and monitor the relevant purchase agreements and ownership agreements with these entities. The Chief Officer, under section 38, must ensure this is done.
123. Each ministry and portfolio is to present an annual report to the Cabinet, within four months after the end of the financial year, that sets out the performance for the year and compare it with what was set out in the annual budget statement. The annual report is to also include audited financial statements.
124. Under section 44(4) of the PMFL each ministry and portfolio is to also have an audit by the Auditor General of all executive financial transactions administered by the ministry or portfolio.
125. The PMFL and PSML provide additional guidance as to the responsibility of a Chief Officer with respect to his ministry or portfolio. Under Section 39(2) of the PMFL it is the chief officer alone who has the responsibility to *“determine and acquire the inputs to produce the outputs specified in his finalized annual budget statement”*. *“Inputs”* refer to the labor, capital or any other resource needed to produce the outputs, which means that the hiring of staff or entering into contracts is solely under the control of the chief officer. Section 39(2) also states that no decision or action is to be taken with respect to the inputs of a ministry or portfolio unless agreed to by the Chief Officer.
126. By a delegation in writing from the Deputy Governor, Chief Officers have the authority to appoint, promote and transfer staff to positions within their ministry or portfolio.
127. The ability of a Chief Officer to perform his duties with respect to acquiring inputs, and making staff appointments, promotions and transfers without any interference is set out in section 22 of the PMFL. In that section Chief Officers and staff that report to Chief Officers are to perform their duties without political pressure. If there is evidence that political pressure is being applied by a Minister, Official Member or Member of the Legislative Assembly, on a Chief Officer or a person with delegated authority from a Chief Officer, there is a legislated process involving the Head of the Civil Service and, in some instances, the Governor to resolve the matter.

128. Perhaps the most important legal responsibility of a Chief Officer with respect to his ministry or portfolio is found in section 38(1) (d), which states that the Chief Officer must ensure that his ministry or portfolio complies with all of the provisions of the PMFL.

OTHER RESPONSIBILITIES OF A CHIEF OFFICER ARE AS FOLLOWS

129. Throughout the PMFL and PSML there are a number of other responsibilities assigned to Chief Officers and they are as follows.

- Annual Performance Agreements: The Chief Officer is required to have annual performance agreements with each head of a department or any other staff member that reports directly to the Chief Officer. The performance of these staff members is to be reviewed at the end each financial year. Under Section 44(1) of the PSML, a Chief Officer may discipline staff, dismiss staff and retire staff to improve the organization.
- Policy advice: Under Section 38(1) of the PFML, chief officers are required to work together to provide coordinated policy advice to the GIC.
- Procurement:
 - For any contract with a value over \$50,000 the Chief Officer is to establish a tender evaluation committee (Section 41(1) of PMFL Regulations).
 - For any contract with a value greater than \$250,000 the tenders are also to be evaluated by the Central Tenders Committee. (Section 41(1) of PMFL Regulations)
 - The Chief Officer is to ensure that all capital projects that are greater than \$300,000 are submitted to the Public Sector Investment Committee (PSIC). (Section 45 of the PMFL Regulations)
- Internal Controls: Chief Officers are to ensure there is an appropriate system of internal controls operating within their ministry or portfolio to safeguard the resources for which it is responsible. (Section 29 of the PMFL Regulations)
- Risk Management: Chief Officers are to identify the risks to which their ministry or portfolio may be exposed, establish strategies to mitigate or manage those risks and ensure the necessary strategies are implemented. (Section 31(1) of the PMFL Regulations)
- Personnel Obligations: Chief Officers are to have a personnel policy that provides for among other things, *“the impartial selection of suitably qualified persons for appointments”* and *“the recognition of the need for the advancement of Caymanians in all parts of the civil service.”*(Section 55 of the PSML)
- Values and Ethics: The chief officer is to uphold and promote the Public Service Values and publish and promote the Public Servant’s Code of Conduct

Governance Highlight

Every ministry and portfolio has a number of responsibilities under legislation and it is the role of the chief officers to ensure there is compliance. In addition the Chief Officers has a number of specific duties assigned by legislation with respect to performance agreements, procurement, internal control, risk management, personnel obligations, and values and ethics.

MINISTRY RESPONSIBLE FOR FINANCE

130. The ministry responsible for finance has been given specific duties in Part VI of the PMFL. These duties are related to budget preparation, the centralized accounting system, the government’s banking system and bank accounts, setting accounting policies, monitoring the delivery of outputs, monitoring ownership performance and the preparation of annual financial statements. The ministry is also responsible for reviewing the management systems operating throughout government and has been assigned responsibility for the government’s internal audit.
131. With respect to budget preparation, the ministry is responsible for coordinating the entire process from the strategic planning phase to the preparation of the annual plan and estimates. The ministry is required to prepare the economic forecasts and the forecast financial statements.
132. The monitoring of outputs and ownership performance covers the entire public sector, including ministries, portfolios, statutory authorities and government companies. The GIC relies on the monitoring performed by the ministry to hold entities accountable for results and to authorize payments for the delivery of outputs.
133. The responsibility for fulfilling the duties assigned to the Ministry of Finance rests with the Chief Officer, who reports to the Head of the Civil Service.

Governance Highlight

The budget preparation process is set out in legislation and involves five distinct phases with prescribed objectives and in some cases completion deadlines. The budget process was explained in the “Focusing on Results” section of this study. Overseeing this process is a very important responsibility of the Ministry of Finance.

The monitoring of in-year results in relation to what was planned in budgets, performance agreements and ownership agreements is a very significant oversight and accountability process. The results of this work are critical to the GIC. This is another very important responsibility of the Ministry of Finance.

The accountability of government to the Legislative Assembly and the public requires the publishing of an annual report, including audited financial statements, within five months and two weeks after the financial year end. The Ministry of Finance is responsible for ensuring this requirement is met.

PORTFOLIO OF THE CIVIL SERVICE

134. The responsibility for human resources has been decentralized in the Cayman Islands Government and this is reflected in a number of the duties that have been assigned to the Portfolio in section 24 of the PSML. Some of the assigned duties are as follows:

- promoting the Public Service Values and the Public Servants Code of Conduct that are set out in the PSML;
- undertaking periodic audits of personnel systems in ministries, portfolios, and other civil service entities, to establish the extent of compliance with the PSML and Regulations;
- providing advice and technical assistance on human resources issues;
- inquiring into alleged breaches of the Code of Conduct by a Chief Officer and reporting to the Head of the Civil Service; and
- providing assistance, administrative support and technical advice to the Head of the Civil Service and the Governor in undertaking their duties under the PSML;

135. For a complete list of responsibilities for of the Portfolio of Civil Service, see section 24 of the PSML.

136. The responsibility for fulfilling the duties assigned to the portfolio rests with the Chief Officer, who reports to the Head of the Civil Service.

Governance Highlight

The PSML and the Personnel Regulations are prescriptive on a large number of human resource issues from the process for hiring employees, to sick leave entitlements and succession planning. With the responsibility for these matters having been delegated to the ministries and portfolios it is important that a structure be put in place to monitor and evaluate compliance. The Portfolio of Civil Service has been given the legislative responsibility to fulfill this role.

THE HEAD OF THE CIVIL SERVICE (HOCS)

137. Section 34 of the Constitution makes provision for a Deputy Governor who “*shall have such functions as may be delegated to him or her by the Governor, acting in his or her discretion*” and “*under the authority of the Governor, the Deputy Governor shall be head of the civil service.*”

138. The Governor has given the Deputy Governor the written delegation to be the Head of the Civil Service (HOCS).

139. With this delegation, the HOCS has the power under section 7(1) (a) of the PSML “*to oversee all matters relating to the operation of the civil service*”. This includes:

- transferring civil servants to give effect to the administrative re-arrangement of a ministry or portfolio;
- having annual performance agreements with all chief officers ;
- evaluating the performance of each chief officer on an annual basis; and
- dismissing a chief officer under section 29(1) of the PSML on the basis of gross or serious misconduct or “*significant inadequate performance over a reasonable period of time*”

140. For a complete list of the HOSC’s duties and responsibilities with respect to the Civil Service see section 15(2) of the PSML. While the HOSC has power to oversee all matters related to the civil service, section 7(3) of the PSML requires that financial provision must already exist in the budget.

141. The HOSC has important responsibilities under section 22 of the PSML in dealing with situations where political pressure has been exerted, by a Minister, Official Member or Member of the Legislative Assembly on a chief officer or other specified employees. In such situations the HOCS is to investigate the matter and attempt to resolve it. If the political pressure continues, the HOCS is to involve the Governor.

142. The HOSC has been given two other responsibilities under the PSML. The first is to monitor human resource policies to ensure they are in compliance with Legislation. The other is to advise the Cabinet on any personnel regulations that should be in place to cover matters such as procedures for appointing, disciplining and dismissing civil servants.

143. Under the Constitution the Deputy Governor is a non-voting member of the Cabinet and the Legislative Assembly.

Governance Highlight

The Deputy Governor is the top civil servant who has authority to make organizational changes provided financial provision has been made in the budget. He is responsible for the performance of the civil service and oversees this by having performance agreements and conducting performance assessments with all chief officers. As head of the Portfolio of Civil Service he has resources available to assist in fulfilling his responsibilities.

As a member of Cabinet he is in a position to see and evaluate the quality of policy advice given by his chief officers to Cabinet.

THE ATTORNEY GENERAL

144. The position of Attorney General is provided for under Section 56 of the Constitution and “*shall be the principal legal advisor to the Government and the Legislative Assembly*”. The Constitution also provides for the Attorney General to be a non-voting member of the GIC and the Legislative Assembly.

145. The Attorney General is appointed by the Governor under section 9(1) of the PSML and should have the necessary skills, knowledge and integrity to carry out the duties of the position in a *“highly competent and politically neutral manner”*.
146. The Governor, who under Section (55)(2) has the authority to assign or delegate to any member of Cabinet responsibility for any business of government related to defense, external affairs, internal security or the civil service has assigned the responsibility of Legal Affairs to the Attorney General.
147. The Attorney General is one of the two officials appointed by the Governor under Section 9 of the PSML. Under the PSML the Attorney General is to have a performance agreement with the Governor for each financial year which is to set out performance expectations. The performance of the Attorney General is to be reviewed by the Governor at the end of each financial year.

Governance Highlight

It is important that government and the Legislative Assembly receive independent legal advice to ensure that their decisions are in compliance with legislation. The Attorney General is assigned this responsibility and his ability to be independent, and seen to independent, is established by being appointed by the Governor.

THE CABINET SECRETARY

148. The position of Cabinet Secretary is provided for under Section 115 of the Constitution and is mandated by Section 48 to provide *“frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy.”*
149. The Cabinet Secretary also has the responsibility to *“coordinate the development and implementation of policy between departments and ministerial portfolios to ensure that Government Policy is developed coherently.”* The Cabinet Secretary provides administrative and secretarial support for the Cabinet and the Premier *“in order to allow high quality and effective government.”*
150. Under the PSML, section 6, the Governor is *“personally responsible for the employment of the Cabinet Secretary”*. In this regard he is to have a performance agreement with the Cabinet Secretary for each financial year which is to set out performance expectations. The performance of the Cabinet Secretary is to be reviewed by the Governor at the end of each financial year.

Governance Highlight

With the Cabinet Secretary being appointed by and accountable to the Governor, the ability to give “frank and politically neutral advice” to Cabinet and the Premier on matter of policy is established. A large and varied civil service providing numerous programs and services within various departments and ministries requires government wide policies to guide consistent and appropriate behavior. The Cabinet Secretary has been assigned this important responsibility.

STATUTORY AUTHORITIES AND GOVERNMENT COMPANIES

151. Over the years government has created 26 Statutory Authorities and Government Companies to deliver a wide range of government services. A Statutory Authority (SA) is an entity established by its own legislation to carry out certain functions and its funding comes either partly or entirely from the GIC. The GIC has the power to appoint or dismiss the majority of the board. A Government Company (GC) is a company created under the Cayman Islands Companies Law in which the government has a controlling interest.
152. The mandate or purpose of each SAGC is set out in their legislation or incorporating documents and reference to these documents is necessary to have a clear understanding of their respective roles and responsibilities. It is not the purpose of this study to examine specific mandates, but we will look at the roles and responsibilities of SA’s and GC’s that are set out in Part V of the PMFL. We will also look at how the relationship is established between the SAGCs, and government.
153. All SAGCs are required to prepare an annual ownership agreement and for those that are also delivering outputs to the GIC, an annual purchase agreement. For each SAGC, the annual ownership agreement is to contain a description of the nature and scope of activities, its strategic goals and objectives for the next three years, performance targets and forecast financial statements.
154. The annual purchase agreement will set all the outputs which the SAGC is delivering to the GIC. These outputs could be a good or service that will have a positive impact on one or more of the government’s outcomes.
155. The annual ownership and purchase agreements are signed by a member of the GIC, on behalf of the GIC and by the Chairman of the Board of the SAGC, indicating a mutual understanding as to what is to be accomplished over the term of the agreement.
156. Under Section 46(1) of the PMFL SAGCs are required to supply the outputs that the GIC has agreed to purchase and are required to achieve the ownership performance.

- 157. Section 46(2) also restricts the activities of an SAGC, by stating that an SAGC *“shall not produce an output during a financial year unless the output is within the nature and scope of the activities that are set out in the annual ownership agreement of the authority or company”* and the GIC or another entity or person has agreed to pay the full cost of the output produced.
- 158. Each ministry and portfolio is required to negotiate, agree and monitor the purchase and ownership agreements with each SAGC and the responsibility rests with the respective Chief Officer, under section 38(1), to ensure that this happens.
- 159. Under Section 30(6) the SAGC does not get paid during the year for delivering outputs until the GIC *“is satisfied that the specified outputs have been satisfactorily delivered”*. In this way the GIC is ensuring that value has been received before making any payments.
- 160. Each SAGC is to demonstrate accountability for its actions by preparing an annual report on its performance and compare it with what was proposed in the ownership agreement for the financial year. For a complete listing of what is to be included in the annual report see section 49 (2) of the PMFL.
- 161. The annual report is to be presented to the GIC by the relevant minister or official member *“no later than four months after the end of the financial year”*.
- 162. SAGCs also have procurement responsibilities under the Financial Regulations. Section 37 requires SAGCs *“to offer for public tender any contract for the purchase of supplies, services and assets over fifty thousand dollars; and the sale of assets with a book value of fifty thousand dollars or more”*. There are two exceptions to the public tender rule, one for when it is believed only one supplier exists and the other when there is a state of emergency or exceptional circumstances proclaimed under the Emergency Powers Law (2006 Revision)
- 163. Under Section 41(2) of the Financial Regulations, tenders submitted for any contract in excess of \$250,000 shall be evaluated by the Central Tenders Committee. Section 41(1) requires the SAGC to establish its own tender committee to evaluate any tenders under \$250,000.

Governance Highlight

The PMFL requires that the outputs produced by the SAGCs tie into the outcome objectives of the government. This means that the SAGC should be making a positive contribution towards issues that matter most to the government.

It is recognized that there will be a need for negotiations in order to arrive at a purchase agreement that would be agreeable to both the ministry or portfolio and the authority or company. Negotiations are also contemplated in reaching a mutual understanding on the terms of the ownership agreement. The need to negotiate and agree on the various undertakings of an SAGC means that there will be a mutual understanding, at the beginning of the year, as to what is to be accomplished.

Accountability for achieving results on the part of an SAGC has been set at a very high level in that unless outputs have been satisfactorily delivered, payments will not be approved by the GIC

THE FINANCIAL SECRETARY

164. The position of Financial Secretary is provided for under Section 115 of the Constitution and he *“shall be the principal advisor to the Minister responsible for finance”*.
165. The Financial Secretary has been given additional responsibilities under the PMFL including establishing the Public Sector Investment Committee and appointing members to the Central Tenders Committee. The terms of reference of the Public Sector Investment Committee is set out below under the section on Decision Making.
166. The Central Tenders Committee is responsible under Section 41(2) (b) of the Financial Regulations for evaluating *“Tenders submitted for any contract with a value of two hundred and fifty thousand dollars.”* This provision includes tenders issued by SAGCs.
167. The Financial Secretary is the one to declare that certain assets, liabilities, revenue and expenses are *“executive”* or *“entity”*. This is set out in the Definition section of the PMFL.
168. The Financial Secretary is appointed by the Governor under section 9(1) of the PSML and should have the necessary skills, knowledge and integrity to carry out the duties of the position in a *“highly competent and politically neutral manner”*.
169. Under the PSML the Financial Secretary is to have a performance agreement with the Governor for each financial year which is to set out performance expectations. The performance of the Financial Secretary is to be reviewed by the Governor at the end of each financial year.

Governance Highlight

By being the principal advisor to the Minister of Finance and accountable to the Governor, the Financial Secretary is in a position to provide independent and professional advice to a ministry who has a number of important responsibilities under the PMFL. The Financial Secretary is in a position to have a positive impact on the quality of procurement decisions in making appointments to the Public Sector Investment Committee and Central Tenders Committee.

DIRECTOR OF INTERNAL AUDIT

170. The Director of Internal Audit has been given specific authority under Section 57 of the PMFL to review the financial management systems operated by ministries, portfolios, statutory authorities and government companies. The authority also includes the Office of the Complaints Commissioner, the Office of the Auditor General and the Office of the Information Commissioner. In order to review the financial management systems the Director has access to all necessary information, to require explanations from officers or employees of entities being reviewed and access to the premises of any entity being reviewed.

171. The Director of Internal Audit may also direct in writing that a public officer or employee of a statutory authority or government company, that is subject to a review, to provide information in a specified format and within a specified period of time.

PROMOTING VALUES AND ETHICS AND ENSURING THEY ARE BEING FOLLOWED

172. The Independent Commission on Good Governance in Public Service has this to say about values and ethics.

“A hallmark of good governance is the development of shared values, which become part of the organization’s culture, underpinning policy and behavior throughout the organization, from the governing body to all staff.

The governing body should take the lead in establishing and promoting values for the organization and its staff. These values should reflect public expectations about the conduct and behavior of individuals and groups who control public services.

Individual behavior is a major factor in the effectiveness of the governing body, and also has an influence on the reputation of the organization.”

173. The Constitution and the PSML have provisions which specifically address the culture of values and ethics in the Cayman Islands.

174. The Constitution presents a number of measures to deal with conflicts of interest. As an example, section 121 of the Constitution specifically makes reference to all members of the Legislative Assembly making a declaration of interests, assets, income and liabilities upon assuming the functions of his or her office. The provision also applies to the *“holders of such other offices (except that of the Governor) as may be prescribed by law”*. These declarations are to be entered into a Register of Interests. Section 121(5) anticipated a law being enacted by the Legislative Assembly which would give effect to the provisions in the previous paragraph and include *“the sanctions which may be imposed for failure to comply”*.

175. The Constitution also called for the creation of the Commission for Standards in Public Life. These Commission members are appointed by the Governor and have been given functions designed to foster a government and civil service that operates with high values and in an ethical manner. Here is complete listing of the functions assigned to the Commission:

- to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;
- to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;
- to supervise the operation of registers of interest and to investigate breaches of established standards;

- to review and establish procedures for awarding public contracts;
- to review and establish procedures for appointing members to public authorities, and the terms of their appointment;
- to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;
- to report to the Legislative Assembly at regular intervals, and at least every six months; and
- to exercise such other functions as may be prescribed by a law enacted by the Legislature.

176. The PSML sets out specific public service values and a public servant’s code of conduct. The public service includes the civil service, and employees of statutory authorities and government companies.

177. Section 4 of the Law sets out “*the values to which the public service shall aspire and which shall govern its management and operation*”. This includes:

- serving the government, Legislative Assembly and the public in an apolitical, impartial and courteous manner;
- striving continually for efficiency, effectiveness and value for money; and
- adhering to the highest ethical, moral and professional standards.

178. Section 5 of the Law sets out the code of conduct to which a public servant must comply. This includes (to see the complete Code of Conduct go to section 5 of the PSML):

- behaving honestly and conscientiously and fulfilling his duties with professionalism, integrity and care;
- being courteous and respectful to everyone in government and members of the public;
- being politically neutral in performing his work; and
- disclosing and taking reasonable steps to avoid any conflict of interest.

179. Chief Officers have a very important role to play with respect to the values and the code of conduct. With respect to the values they are to uphold and promote them and to “*operate management systems that reflect those values*”. They are also to publish and promote the Public Servant’s Code of Conduct “*to all staff members and encourage them to comply at all times*”.

180. One of the duties of the Portfolio of Civil Service is to promote the Values and the Public Servant’s Code of Conduct. This is set out in Section 24 of the PSML.

Governance Highlight

The governance framework has provided a very solid foundation for values and ethics.

For the public service, the values and Code of Conduct are legislated and clear responsibility has been given to chief officers to ensure they are known throughout the public service and are being followed. In recognition of their importance to good governance, the Portfolio of Civil Service has also been a responsibility to promote them.

As for the political component of government, the work assigned to the Commission for Standards in Public Life, and the creation of the Register of Interests, will set a very high standard of ethical behavior for the leaders of the country

MAKING INFORMED DECISIONS AND MANAGING RISKS

181. The Independent Commission on Good Governance in Public Services has this to say about decision making and managing risks.

“Decision making in governance is complex and challenging. The governing body should draw up a formal statement that specifies the types of decisions that are delegated to the executive and those that are reserved for the governing body. To make decisions, governors (i.e. Cabinet) must be well informed.

Good quality information and clear, objective advice can significantly reduce the risk of taking decisions that fail to achieve their objectives or have serious unintended consequences. The governors (i.e. Cabinet) need to receive rigorous analyses of comprehensive background information and evidence, and of the options for action. As governance decisions are complex and can have significant consequences governors (i.e. Cabinet) also need professional advice.

Risk management is important to the successful delivery of public services. An effective risk management system identifies and assesses risks, decides on appropriate responses and then provides assurance that the chosen responses are effective.”

182. The PMFL and the Framework for Fiscal Responsibility has a lot to say about decision making and risk management.

DECISION MAKING

183. With respect to a formal delegation of decision making, this has been done in section 39 of the PMFL, where chief officers have been given legislative responsibility to make all decisions with respect to the operation of their ministry or portfolio. This includes all matters related to human resources, acquiring goods and services and entering into contracts. Contracts over a certain limit must go to the Central Tenders Committee for approval.

184. Section 39 also specifies that it is the minister or official member who recommends to Cabinet what he would like his ministry or portfolio to do in the way of delivering outputs to help fulfill the broad and specific outcomes of the government. In essence what section 39 has done is given the ministers and official members the responsibility to decide what is to be done and the chief officers are given the responsibility to decide how things are to be done.

185. As for policy decisions, the Cabinet Secretary under section 48 of the Constitution is required to provide *“frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy.”*

186. Policy recommendations are also given to Cabinet by ministries and portfolios and for these submissions the Cabinet Secretary has put in place a prescribed format that requires preparers to provide relevant background information, a general discussion on the topic and to specifically consider financial, legal and public service implications. The format requires a specific recommendation to cabinet.

187. With respect to ensuring that Cabinet has good information for decision making, the regulations to the PMFL is very specific as to what is to happen in making decisions of a capital nature that are \$300,000 and above. In these situations the Cabinet is to receive a recommendation, from the Public Sector Investment Committee (PSIC), through the Minister of Finance, on the viability of such capital projects. The members of the PSIC are to be appointed by the Financial Secretary and they receive the necessary information they need to make recommendations to Cabinet from the appropriate chief officer. For projects between \$300,000 and \$1,000,000 the chief officer is to provide a “Project Profile”, which includes among other things, the following:

- an explanation of the “core” problem which the project will address;
- a justification for the project;
- a financial summary which gives a breakdown of capital costs;
- a summary which shows operating costs for the next five years;
- an explanation of risks and assumptions; and
- major inputs required to complete the project.

188. The Chief Officer is required to provide additional information for projects in excess of \$1,000,000.

189. The FFR sets out important steps which must be followed to ensure there is effective medium-term planning and that value for money considerations are at the heart of the decision making process. Section 7 requires the Government to assess the impact of all proposals and decisions on expenditure, revenues and borrowing in the context of the Strategic Planning Statement, covering a period of at least three fiscal years. Section 13 recognizes that there are five key stages in the planning, development and execution of a project and gives extensive guidance as to what steps are to be followed. The five steps are:

- appraisal and business case;
- procurement;
- contract management;
- delivery; and
- evaluation.

RISK MANAGEMENT

190. Section 31(1) of the PSML gives the responsibility to Chief Officers to identify the risks to which their ministry or portfolio may be exposed. The Chief Officers are to establish strategies to mitigate or manage the risks and ensure that the necessary strategies are implemented.
191. In managing the financial performance and financial position of the core government, the Cabinet, under section 14(3) of the PMFL is required to identify the financial risks, including contingent liabilities, facing core government. These risks should then be managed to minimize the chances that any such risk will result in an expense or liability.
192. The FFR includes a number of provisions with respect to managing risks. Section 26 requires that the government have actuarial assessments at least every three years for contingent and actual liabilities such as pensions and healthcare programs. With respect to debt, the government is only to borrow to fund capital expenditures where the proposed project will yield sufficient revenues to fund the additional debt service costs, or the government can demonstrate that it has sufficient surplus cash to fund the additional debt service costs.
193. In addition, to ensure that the level of debt is affordable and there is fiscal sustainability and financial stability in the short, medium and long term, the Government according to Section 30 must comply with borrowing limits set out in Annex A to the FFR,

Governance Highlight

The legislation is clear that it is the responsibility of the ministers and official members to decide what is to be done and the responsibility of the chief officers to decide how things are to be done.

The format for making policy recommendations, which have been prescribed by the Cabinet Secretary, is designed to provide relevant information and to assist Cabinet in making good decisions. The Chief Officers play an important role in providing the Cabinet, through the Public Sector Investment Committee, with relevant information for making decisions on capital projects.

The Chief Officers and Cabinet have very clear and specific responsibilities with respect to risk management.

The provisions in the Framework for Fiscal Responsibility with respect to value for money and medium term planning will contribute to a stronger decision making process at Cabinet.

DEVELOPING CAPACITY AND CAPABILITY OF THE GOVERNING BODY

194. The Independent Commission on Good Governance in Public Service had this to say about developing capacity and capability of the governing body.

“Governors need both skills and knowledge to do their jobs well. Skills need to be developed continually to improve performance in the functions of the governing body. The necessary skills include the ability to scrutinize and challenge information received from the executive, including skills in financial management and the ability to recognize when outside expert advice is needed. Knowledge also needs to be updated regularly to equip governors for changing circumstances.

New governors should receive a thorough induction that is tailored to their role in the organization.

A governing body with elected members should commit itself to developing the skills that it has decided its members need, so that they can carry out their roles more effectively”.

195. There are two types of governing bodies in the governance framework of the Cayman Islands, elected and appointed. The elected governing body is Cabinet and the appointed bodies are the boards of statutory authorities and government companies.

196. There is nothing mentioned in the Constitution, PMFL or PSML with respect to capacity development for elected or appointed governors. Nor is there any reference to capacity development for Chief Officers and their staff.

ENGAGING STAKEHOLDERS AND MAKING ACCOUNTABILITY REAL

197. The Independent Commission on Good Governance in Public Services had this to say about accountability,

“Each year, the governing body should publish the organization’s purpose, strategy, plans and financial statements, as well as information about the organization’s outcomes, achievements and the satisfaction of service users in the previous period”.

198. The Commission had this to say about engaging stakeholders,

“Real accountability is concerned not only with reporting on or discussing actions already completed, but also with engaging with stakeholders to understand and respond to their views as the organization plans and carries out its activities”.

199. The governance framework in the Cayman Islands has identified two significant accountability relationships for government, one related to financial and non-financial performance and one related to the spending of public money. The framework also provides for a Public Accounts Committee and three independent offices that have specified responsibilities to assist the Legislative Assembly hold the government accountable.

200. There is nothing in the Constitution, PMFL or PSML that sets out a framework for engaging stakeholders, either with the electorate who vote or the users who pay for specific services.

201. In this section we look at accountability under three headings:

- Government’s accountability to the Legislative Assembly for financial and non-financial performance;
- Government’s accountability to the Legislative Assembly for Appropriation Authority; and
- Legislative Oversight that supports accountability
 - Public Accounts Committee and Auditor General
 - Commissioner of Complaints
 - Information Commissioner.

GOVERNMENT'S ACCOUNTABILITY TO THE LEGISLATIVE ASSEMBLY FOR FINANCIAL AND NON-FINANCIAL PERFORMANCE

202. The stage is set for an accountability framework with the government having its Strategic Policy Statement (SPS) approved by the Legislative Assembly at the beginning of the annual budgeting process. This statement sets out what the government intends to accomplish by setting out broad and specific outcomes, forecasting revenue and expenses, and setting financial targets for each of the next three years. The SPS is a public document.
203. The annual budget process concludes with the government presenting the Annual Plan and Estimates to the Legislative Assembly. The Annual Plan and Estimates will summarize the specific outcomes that the government will be seeking to influence during the year, outputs that will be delivered by ministries and portfolios, and forecast financial statements for the budget year. There must also be an explanation as to how the forecast financial statements will accord with the financial targets set out in the SPS that was approved by the Legislative Assembly and with the principles of responsible financial management set out in section 14 of the PMFL.
204. Accountability for financial and non-financial performance is complete when government reports its actual results at the end of the financial year. This is a requirement under section 29(1) of the PMFL. The results are to appear in annual report that covers *“the performance of the core government and the entire public sector and compare it with that proposed in the annual plan and estimates for that financial year”*. The government’s audited financial statements are to be included.
205. This annual report of government is to be tabled, as a public document, within five months and two weeks after the end of the financial year, and presented to the Legislative Assembly by a member of the GIC. Section 112 of the Constitution also makes reference to an annual report, *“At least one report annually shall be made to the Legislative Assembly on the Government’s performance and fiscal position”*.
206. Section 32 of the FFR reflects the government’s commitment to improved accountability mechanisms and ensuring that the public accounts *“will be prepared on a timely basis”* in accordance with recognized accounting standards. The same section indicates that the public accounts will be audited, *“the results of which will be subject to the Public Accounts Committee scrutiny and publications.”*

Governance Highlight

The accountability framework for financial and non-financial performance is clearly established by requiring government to explain at the beginning of the year what it plans to accomplish and then requiring an annual report at the end of the year to explain what had happened.

GOVERNMENT'S ACCOUNTABILITY TO THE LEGISLATIVE ASSEMBLY FOR APPROPRIATION AUTHORITY

207. Appropriation is defined in the PMFL as *“a power given by an Appropriation Law to the Cabinet to incur executive expenses, make an equity investment, acquire or create executive assets, or lend or borrow money for a particular purpose”*. The majority of appropriations are related to Cabinet being given the power to incur executive expenses. The most common executive expenses are related to the outputs that Cabinet purchases from ministries and portfolios. For instance in the fiscal year ending June 30, 2012 four such appropriations were:

• Medical services in Cayman Brac and Little Cayman	\$3,854,224
• Management of Pedro St. James National Historic Site	\$905,548
• Environmental services and research	\$2,493,169
• Facilities management and procurement for all schools and other educational facilities	\$14,095,759

208. Executive expenses also include transfer payments, which refers to benefits or payments given by government for which no output or consideration is received in return. Examples of transfer payments included in the 2011-2012 appropriations are follows:

• Tourism scholarships	\$713,310
• Local, overseas scholarships and bursaries	\$7,500,000
• Promotion of nation building and church based support	\$3,069,492

209. When Cabinet presents the annual plan and estimates to the Legislature, under section 21 of the PMFL, it will include a schedule of appropriations, such as the examples above, to be approved by the Legislative Assembly. At the same time the Minister of Finance under section 24(4) of the PMFL introduces an Appropriation Law which sets out appropriations consistent with the annual plan and estimates.

210. Without an Appropriation Law the Cabinet does not have the necessary authority to conduct government business. With an Appropriation Law the Cabinet has the authority to operate, but only within the dollar limits provided by the specific appropriations. If an appropriation has been granted for a particular purpose, according to section 9(4) it can only be used for that purpose.

211. Having the Legislative Assembly approve appropriations is the first step in the accountability process for the allocation of resources. The next step is for government to follow the legislative provisions set out in the PMFL should circumstances change during the financial year.
212. There are three different circumstances that could arise, and the first one is related to government exceeding an appropriation or becoming involved in a new activity. This situation is covered by Section 12 of the PMFL. The section gives Cabinet the power to authorize executive expenses for an output group or category of transfer payment, the acquisition or creation of executive assets and the making of loans or equity investments that were not included in the Appropriation Bill. However in such situations, the approval of the Finance Committee of the Legislative Assembly (which includes all elected members) is required before any such expenses can be incurred, asset acquired or loan made. Section 12(3) requires that a supplementary Appropriation Bill, covering these revisions, be taken to the Legislative Assembly.
213. The general principle is that the government must have specific authority from the Legislative Assembly to undertake any new initiative. There are two very narrow exceptions where this may not be possible; exceptional circumstances and a State of Emergency.

EXCEPTIONAL CIRCUMSTANCE

214. Where an exceptional circumstance occurs during a financial year, the Cabinet may authorize executive financial transactions where no appropriation exists if the executive financial transactions are directly related to and attempt to remedy the effects of the exceptional circumstance. Recognizing the principle that Legislative Authority is needed for the allocation of public funds four criteria must be met under the PMFL in order to establish an exceptional circumstance;
- a) the event must be beyond the control of the Governor in Cabinet;
 - b) the event could not have been reasonably anticipated at the time of enacting the Appropriation Law for that financial year;
 - c) the event has an economic or social impact that is significant enough to necessitate executive financial transactions different from those planned for that year; and
 - d) it requires the executive financial transactions to be entered into in a time frame that prevents approval of the Finance Committee of the Legislative Assembly to be obtained.
215. Where the Cabinet has authorized executive financial transactions related to an exceptional circumstance a member of the Cabinet shall make a full disclosure at the next sitting of the Legislative Assembly, including an explanation as to the how the circumstance complies with the definition of the term “exceptional circumstance”.

216. Where a state of emergency is proclaimed under the Emergency Powers Law (2006 Revision) the Cabinet may approve such executive financial transactions to meet the emergency as it sees fit, whether or not those transactions have been authorized by an appropriation. A statement of these transactions shall be included in the first Government annual report after the transactions have been entered into. As required by section 13 of the PMFL, the cost of the transactions are to be included in the first Appropriation Bill introduced to the Legislative Assembly after those transactions had been entered into.
217. Accountability for appropriations is complete with the publishing the Government Annual Report within 5 months and two weeks after the end of the financial year. As set out in section 29 of the PMFL the report is to include an audited schedule of appropriations used for the year compared with the appropriations granted under the Appropriation Bill at the start of the year and any Supplementary Appropriation Bill during the year. The audit of appropriations is to be performed by the Auditor General.

Governance Highlight

The provisions of the PMFL establish a framework for the Legislative Assembly to hold the Cabinet accountable for the use of the Country's resources. Appropriations are approved at the beginning of the year by the Legislative Assembly and any changes during the year require approval of the Finance Committee of the Legislative Assembly before expenses are incurred, assets acquired or loans made and the passing of a Supplementary Appropriation Law.

Only in those rare situations when the terms of an exceptional circumstance is met or a State of Emergence proclaimed can Cabinet proceed without specific authority.

The audit of appropriations performed by the Auditor General will provide the Legislative Assembly with independent information as to whether or not the Cabinet has complied with the appropriation provisions of the PMFL

LEGISLATIVE ASSEMBLY IS ASSISTED IN HOLDING GOVERNMENT ACCOUNTABLE

218. It is important that the Legislative Assembly receive independent information in fulfilling its responsibility of holding government to account. This requirement is supported by the work of the Auditor General in conjunction with the Legislative Assembly's Public Accounts Committee, the Complaints Commissioner and the Information Commissioner.

PUBLIC ACCOUNTS COMMITTEE AND AUDITOR GENERAL

219. Section 87 of The Constitution provides for the creation of the Public Accounts Committee of the Legislative Assembly *“with power and responsibility to examine the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices and departments of Government, of all courts, and of all Government-owned companies”*.
220. Section 114 provides for the position of Auditor General, with such position being appointed by the Governor. The Auditor General is *“answerable to the Public Accounts Committee of the Legislative Assembly and must attend upon the committee at its request”*. As required by Section 66 of the PMFL, the Auditor General is accountable to the Legislative Assembly for the performance of his office. Section 58 of the PMFL specifies that the Auditor General *“shall not be subject to the direction or control of any person”*.
221. Under section 60 of the PMFL, the Auditor General on his own initiative or at the request of the Legislative Assembly or any of its committees conducts *“investigations or value for money audits”*. Under the same section the Auditor General may be requested by the Legislative Assembly or one of its committees to provide advice and assistance to the Legislative Assembly or to any of its committees. The Governor can also request the Auditor General to *“conduct investigations into the financial management or affairs of persons, companies and bodies”*, if related to the public interest.
222. The Auditor General is also required to conduct financial statement audits of core government and the entire public sector, including every ministry, portfolio and SAGC.
223. The Auditor General is required, by the PMFL, to report to the Legislative Assembly on the results of any financial statement audits, on any investigation that had been requested by the Legislative Assembly or any of its committees and on any matter that he wishes to bring to the attention of the Legislative Assembly. The Constitution requires at least two reports a year from the Auditor General and the PMFL requires one. The Constitution under section 114 requires the Auditor General to *“submit reports on his or her activities to the Public Accounts Committee of the Legislative Assembly”*.

COMPLAINTS COMMISSIONER

224. The Complaints Commissioner is referenced in the Constitution and has her functions and jurisdiction set out in the Complaints Commissioner Law. The Complaints Commissioner is appointed by the Governor, after consultation with the Premier and Leader of the Opposition. Under section 120(6) the Complaints Commissioner *“shall not be subject to the direction or control of any other person or authority”*.

Under the Complaints Commission Law, the Complaints Commissioner undertakes investigations to ascertain if any injustice has been caused by improper, unreasonable or inadequate conduct on the part of a government entity. Investigations may be commenced as a result of receiving a complaint or as a result of the Commissioner being of the opinion that there are *“reasons of special importance which makes investigation by the Commissioner desirable in the public interest”*. The Legislative Assembly can resolve to have an investigation on the same basis.

225. The Complaints Commissioner has a number of reporting responsibilities to the Legislative Assembly. She is required to report whenever she has undertaken an investigation on her own initiative or pursuant to a resolution of the Legislative Assembly. In addition, whenever a recommendation has been made to a government entity as a result of an investigation and no action has been taken within a reasonable time to remedy the injustice she is required to lay before the Legislative Assembly a special report on the case.
226. Lastly, the Complaints Commissioner is required to report to the Legislative Assembly annually on the performance of her functions and may lay before the Assembly such other reports as she thinks fit. For instance the Commissioner could lay before the Legislative Assembly reports on the inequitable or unreasonable nature of operations of any enactment or rule of law.

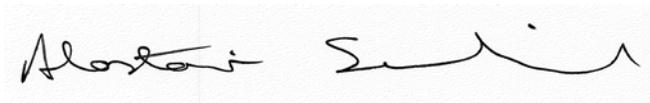
INFORMATION COMMISSIONER

227. The Freedom of Information Law recognizes three fundamental principles underlying the system of constitutional democracy, namely:
- governmental accountability;
 - transparency; and
 - public participation in national decision making.
228. The objects of the Law are to reinforce and give further effect to these principles *“by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest”*
229. The Law created the position of Information Commissioner who is to hear and investigate appeals, monitor and report on compliance by public authorities, make recommendations for reform, refer matters to the appropriate authorities where it appears that a criminal offence has occurred and publicize the requirements of the Law and the rights that individuals have under it.
230. Under section 40(1) of the law the Commissioner is to present an annual report to the Legislative Assembly on the operation of the Law. This report will include among other things information on the number of applications received for access to records and the number granted, deferred, refused or granted subject to deletions being made.

231. The Commissioner is appointed by the Governor under section 35(1) after consultation with the Cabinet, maybe dismissed by the Cabinet under subsection 35(5), and in exercising his or her powers “shall be responsible to the Legislative Assembly” (Section 37)

SUMMARY

232. In describing the governance framework around the administration of public resources in the Cayman Islands Government, I found that there is clear roadmap for the officials involved to carry out their roles and responsibilities. Like most legislative frameworks, there is a clear need for government policy and procedures to be put in place to ensure that the principals and objectives of the governance framework are met.
233. It is my hope that the description of the governance framework will assist Members of the Legislative Assembly and the public to better understand how public resources are to be managed and when making changes to the framework, what impact those changes might have on the objectives and principles envisioned in its creation.
234. Further reports on the governance of public resources in the Cayman Islands Government will focus on the implementation and management of the governance framework.



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20 December 2013

APPENDIX 1: BROAD OUTCOME GOALS

1. Creating a Vibrant yet Stable and Sustainable Economy
2. Setting the Stage for Success in the Tourism Industry
3. Addressing Crime and Policing
4. Developing a World Class Education System to Foster Growth and to Benefit from Development
5. Improving Healthcare
6. Paving a Better Way Forward for Cayman Brac and Little Cayman
7. Developing our Youth
8. Strengthening Families
9. Restoring Prudent Fiscal Management
10. Ensuring Success and Participation of Caymanians in the Financial Services Industry
11. Supporting our Caymanian Small Businesses
12. Preparing our Labour Market for Future Opportunities
13. Improving the Lives of the Elderly and Disabled
14. Reducing Substance Abuse
15. Empowering Women
16. Addressing Energy and the Environment
17. Strengthening our Infrastructure
18. Preserving our Culture
19. Enhancing Agriculture

APPENDIX 2: STRATEGIC POLICY STATEMENT REQUIREMENTS

The strategic policy statement shall include -

- (a) a summary of the broad outcomes, the specific outcomes, and the links between them, that the Governor in Cabinet intends to achieve in the next financial year and for at least the following two financial years;
- (b) economic forecasts for that financial year and for the next two financial years, which shall contain the information set out in the First Schedule;
- (c) the date on which the economic forecasts referred to in paragraph (b) were made;
- (d) a total financial target for the core government for the next financial year and for each of the following two financial years, for each of -
 - (i) operating revenue;
 - (ii) operating expenses;
 - (iii) surplus or deficit, being the difference between total operating revenue and total operating expenses;
 - (iv) borrowings;
 - (v) net worth; and
 - (vi) net cash flows for each of its operating, investing and financing activities;
- (e) an explanation of how the financial targets referred to in paragraph (d) accord with the principles of responsible financial management set out in section 14(3) and, if those targets depart from those principles, the information required by section 14(4);
- (f) the total amount of executive expenses for each financial year;
- (g) the approximate amount of executive expenses allocated to each minister, official member, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office for each financial year; and
- (h) the total amount of core government equity investments, acquisition of other executive assets, and loans for each financial year.

APPENDIX 3: ANNUAL BUDGET STATEMENT

Every annual budget statement shall contain -

- (a) a specification of all the outputs the Governor in Cabinet is to purchase from the ministry or portfolio including, for each output-
 - (i) a description of the output to be purchased;
 - (ii) the quantity of each output to be purchased;
 - (iii) the quality of each output to be purchased;
 - (iv) the delivery dates for each output to be purchased;
 - (v) the place of delivery of each output to be purchased;
 - (vi) the price to be paid for each output to be purchased;
 - (vii) the evidence of delivery to be provided for each output to be purchased; and
 - (viii) the payment schedule;
- (b) details of the ownership performance to be achieved during the year including -
 - (i) a description of the nature and scope of the activities of the ministry or portfolio during that year;
 - (ii) the strategic goals and objectives of the ministry or portfolio for that year and the following two years;
 - (iii) ownership performance targets of the ministry or portfolio for the year, including the targets for those aspects of ownership performance set out in the Fifth Schedule; and
 - (iv) forecast financial statements of the ministry or portfolio for the year, which shall -
 - (I) be consistent with the forecast financial statements in the annual plan and estimates; and
 - (II) contain the statements and information set out in the Second Schedule;
- (c) the amount of any equity investment by the Governor in Cabinet in the ministry or portfolio planned for the year; and
- (d) the amount of any withdrawal of any equity investment in the ministry or portfolio by the Governor in Cabinet planned for the year.

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Complaints

To make a complaint about one of the organisations we audit or about the OAG itself, please contact Garnet Harrison at our address, telephone or fax number or alternatively email: garnet.harrison@oag.gov.ky

Freedom of Information

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