

CAYMAN ISLANDS



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**A BILL FOR A LAW TO ESTABLISH AN OVERARCHING SYSTEM OF
GOVERNANCE, ACCOUNTABILITY AND MANAGEMENT FOR
PUBLIC AUTHORITIES; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE PUBLIC AUTHORITIES BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide uniform regulation for the management and control of all public authorities in the Islands. Its main objectives are to provide standard management arrangements and to bring such management of the authorities in line with the principles of the Public Management and Finance Law (2013 Revision) and thereby make the authorities more efficient and effective.

PART 1 – INTRODUCTORY

Clause 1 contains the short title and the commencement provision.

Clause 2 is the interpretation clause.

Clause 3 clarifies how inconsistencies with this legislation and other laws are to be addressed. This legislation will prevail over any other law in the event of any inconsistency.

PART 2 – PURPOSE AND OBJECTIVES OF PUBLIC AUTHORITIES

Clause 4 provides that the purpose of a public authority is to assist the Government in achieving its policy objectives where such objectives would be more effectively achieved through the use of a separate legal entity rather than through the use of the civil service.

Clause 5 states that public authorities are part of the public service and, as such, shall operate in a manner which best serves the public interest.

Clause 6 gives the principal objectives of a public authority and states, among other things, that it is the duty of a public authority to conduct its affairs in a responsible financial manner and, unless its ownership agreement provides otherwise, to operate as a profitable business.

**PART 3 – APPOINTMENT, RESPONSIBILITIES AND PROCEDURES
OF THE BOARDS OF PUBLIC AUTHORITIES**

Clause 7 requires that every public authority shall have a board consisting of a chairperson and not less than four other members. A board shall be responsible for the governance of the public authority in accordance with this legislation and any other law.

Clause 8 provides for the appointment of board members. Board members are to be appointed by the Cabinet and one of those board members will be appointed as chairperson by the Cabinet. The Cabinet must be satisfied that a person is suitably qualified to fill each position and that there are no conflicts of interest issues. When appointing board members the Cabinet shall ensure that between them the board members should be experienced in -

- (a) corporate governance;
- (b) strategic and financial management; and
- (c) the nature and scope of activities, outputs and operations of the public authority concerned.

The Cabinet may appoint a public or civil servant to a board but no more than forty per cent of the members shall be civil or public servants. A civil or public servant cannot be appointed as chairperson.

Clause 9 provides that a member of the Legislative Assembly or the judiciary cannot be a board member.

Clause 10 outlines the terms of service for board members and deals with length of service, resignation and termination.

Clause 11 provides for the Cabinet to appoint board members to fill vacancies where a member has ceased to be a member before the expiry of his or her term.

Clause 12 provides for the remuneration which shall be determined by the Cabinet. A determination by the Cabinet cannot exceed limits set by the Governor in accordance with section 18 of the Public Service Management Law (2013 Revision). Any remuneration shall be at the expense of the public authority.

Clause 13 provides that a board member who is a civil or public servant shall not be entitled to any remuneration for such appointment but is entitled to claim travel and subsistence expenses in accordance with the policy of the public authority.

Clause 14 provides that a board shall generally be responsible for the performance of the public authority including all of its subsidiary entities. The board shall ensure, among other things, that the authority-

- (a) delivers outputs specified in its purchase agreement; and
- (b) achieves the ownership performance specified in its ownership agreement.

Clause 15 sets out the specific responsibilities of a board of a public authority.

Clause 16 deals with the meetings of a board and provides for the frequency of such meetings and the composition of a meeting. This clause provides procedures for calling meetings where either the chairperson refuses to convene a meeting or is not present at a properly convened meeting.

Clause 17 provides for a board to appoint a person who is not a member of the board to be the recording secretary to the board. The clause also deals with the remuneration and duties of the recording secretary.

Clause 18 provides for the preparation and distribution of minutes.

Clause 19 deals with the authentication of documents. The chairperson, another board member or an authorized employee of the public authority may sign all contracts or other documents issued by the public authority, including those required to be issued by law under the seal of the public authority.

Clause 20 provides for the disclosure of the interests of board members which shall be in accordance with the Standards in Public Life Law, 2014.

Clause 21 allows a board to determine its own procedures subject to clauses 16 to 20.

Clause 22 provides that neither a board nor any board member shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was negligent or done in bad faith.

PART 4 – APPOINTMENT AND RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICERS OF PUBLIC AUTHORITIES

Clause 23 provides for the appointment of a chief executive officer by a board. A chief executive officer shall, notwithstanding any other law,

- (a) be appointed by the board after consultation with the responsible Minister or Official Member; and
- (b) be a non-voting member of the board.

Clause 24 provides for the process of advertising for a chief executive officer.

Clause 25 deals with the process of selecting a chief executive officer.

Clause 26 deals with the appointment of a chief executive officer.

Clause 27 provides for the terms and conditions of employment of a chief executive officer.

Clause 28 provides that a chief executive officer must, prior to assuming duties of the post, make a declaration to the board of his or her interests. While in the post the chief executive officer must also declare any conflict of interest in any matter being dealt with by the board.

Clause 29 provides for the discipline or dismissal of the chief officer.

Clause 30 provides that the chief executive officer shall be accountable to the board in the management of the public authority and it sets out the responsibilities of a chief executive officer.

Clause 31 provides that a chief executive officer may delegate his or her responsibilities under clause 30 to a staff member.

PART 5 – PUBLIC AUTHORITY FINANCIAL MANAGEMENT REQUIREMENTS

Clause 32 states that the provisions of Part V of the Public Management and Finance Law (2013 Revision) shall apply to all public authorities.

Clause 33 provides that the financial year for a public authority shall be the financial year established by the Public Management and Finance Law (2013 Revision).

Clause 34 provides that the budget documents of a public authority shall include an ownership agreement, and, where relevant, a purchase agreement, prepared in accordance with the Public Management and Finance Law (2013 Revision).

Clause 35 provides for the payment of a capital charge to the Government for each financial year for the use of the equity invested by the Government in the entity. Clause 2 defines a capital charge as the cost to a public authority of

borrowing money to buy or improve the buildings, equipment, etc. that it uses to produce products or provide services.

Clause 36 provides that, subject to any other law, a public authority may not borrow without the approval of the Cabinet.

Clause 37 prohibits a public authority from issuing additional capital to any person or entity without the approval of the Cabinet.

Clause 38 provides for the regulation of the reserves of a public authority which is a financial institution and for the regulation of dividends issued by a public authority.

Clause 39 provides that all financial information provided by public authorities to the Government or the Legislative Assembly shall be prepared on an accrual accounting basis and shall comply with the generally accepted accounting practice provided by the Public Management and Finance Law (2013 Revision).

PART 6 – PUBLIC AUTHORITY PERSONNEL MANAGEMENT REQUIREMENTS

Clause 40 provides that all personnel management decisions of a public authority are to be taken without patronage, favouritism or consideration of political factors.

Clause 41 sets out the way in which a public authority shall recruit and employ staff and provides that the process is to be fair and open.

Clause 42 deals with the declaration of interests by all senior staff of a public authority.

Clause 43 states that a public employer is to act as a good employer at all times. It defines a good employer as one which operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment.

Clause 44 provides that a public authority shall ensure that its management systems and operations accord with the Public Service Values detailed in the Public Service Management Law (2013 Revision).

Clause 45 provides that an employee of a public authority shall comply with the Public Servant's Code of Conduct specified in the Public Service Management Law (2013 Revision). An employee who fails to comply significantly with the Public Servant's Code of Conduct may be disciplined or dismissed by the public authority.

Clause 46 provides that, subject to the existing terms and conditions of employees employed by a public authority at the date of the commencement of the legislation the terms and conditions of service of an employee of a public authority shall be the same as those of a civil servant in a similar post.

Clause 47 prohibits a public authority from giving salary increases or bonuses to all staff without permission from Cabinet. The salary however of an individual staff member can be increased without such permission.

PART 7 - RESPONSIBILITIES OF CABINET AND CHIEF OFFICERS IN RELATION TO PUBLIC AUTHORITIES

Clause 48 sets out the role of the Cabinet in relation to public authorities. For example the Cabinet shall exercise, on the public's behalf, the duties and functions of the owner, or where relevant, the shareholder of a public authority.

Clause 49 sets out the duties of the Cabinet in relation to a public authority. Such duties include appointing board members and agreeing ownership performance of a public authority with a board.

Clause 50 sets out the duties of a Chief Officer in relation to a public authority.

Clause 51 deals with the ownership arrangements of a public authority. All capital held in a public authority by the Government shall be held in the name "the Government of the Cayman Islands".

Clause 52 provides for the funding of outputs. If the Cabinet requires that a public authority provide any outputs at a price that is less than the full cost of producing those outputs, the Cabinet shall purchase those outputs, or contribute to the purchase of those outputs, in accordance with the provisions of the Public Management and Finance Law (2013 Revision).

PART 8 - MISCELLANEOUS

Clause 53 deals with the liability for actions of employees of a public authority.

Clause 54 provides that the Labour Law (2011 Revision), the Immigration Law (2015 Revision), the National Pensions Law (2012 Revision) and the Health Insurance Law (2016 Revision) shall apply to all public authorities except where there is a conflict with the legislation. The legislation will prevail to the extent of any inconsistency.

Clause 55 provides for the monitoring by the relevant Chief Officer of a public authority's compliance with the legislation.

Clause 56 provides that the provisions of the Whistleblower Protection Law, 2015 shall apply to the legislation.

Clause 57 deals with transitional provisions for persons employed by a public authority who are employees at the date of commencement of this legislation. This clause ensures the continuation of existing terms and conditions of employment which are more generous than the provisions of this legislation (in clause 27 for chief officers and clause 47 for other employees) would allow.

Clause 58 provides for the making of regulation by Cabinet to give effect to this Law.

Clause 59 provides that in the event of any inconsistency between this Law and the operation of any other law, this Law shall prevail to the extent of the inconsistency.

THE PUBLIC AUTHORITIES BILL, 2016

ARRANGEMENT OF CLAUSES

PART 1 – INTRODUCTORY

1. Short title and commencement
2. Interpretation
3. Interpreting inconsistencies with other laws

PART 2 – PURPOSE AND OBJECTIVES OF PUBLIC AUTHORITIES

4. Purpose of public authorities
5. Public authorities part of the public service
6. Principal objectives of public authorities

**PART 3 – APPOINTMENT, RESPONSIBILITIES AND PROCEDURES
OF THE BOARDS OF PUBLIC AUTHORITIES**

7. Requirement to have a board
8. Appointment of board members
9. Members of the Legislative Assembly and Judiciary not to be board members
10. Term of appointment
11. Appointment to fill board vacancy
12. Remuneration of board members
13. No board remuneration for civil servants
14. General responsibilities
15. Specific responsibilities
16. Meetings of the board
17. Recording secretary
18. Board minutes
19. Authentication of documents
20. Disclosure of interests
21. Power to establish own procedures
22. No personal liability except for negligence or bad faith

PART 4 – APPOINTMENT AND RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICERS OF PUBLIC AUTHORITIES

23. Requirement for chief executive officer
24. Advertising for a chief executive officer
25. Interviewing for the selection of a chief executive officer
26. Appointment of a chief executive officer
27. Terms and conditions and remuneration of chief executive officer
28. Conflicts of interest of a chief executive officer
29. Discipline or dismissal of a chief executive officer
30. Responsibilities of chief executive officer
31. Power of chief executive officer to delegate

PART 5 – PUBLIC AUTHORITY FINANCIAL MANAGEMENT REQUIREMENTS

32. General application
33. Financial year
34. Budget documents
35. Capital charge
36. Borrowing
37. Issuing of capital
38. Investing and reserves
39. Compliance with generally accepted accounting practice

PART 6 – PUBLIC AUTHORITY PERSONNEL MANAGEMENT REQUIREMENTS

40. Open and fair processes in personnel management decisions
41. Recruitment and appointment of staff of a public authority
42. Conflicts of interest of senior staff
43. Good employer obligations
44. Public Service Values
45. Public Servant's Code of Conduct
46. Terms and conditions and remuneration of staff
47. Salary increases

**PART 7- RESPONSIBILITIES OF CABINET AND CHIEF OFFICERS IN
RELATION TO PUBLIC AUTHORITIES**

48. Role of the Cabinet
49. Duties of Cabinet
50. Duties of the Chief Officer
51. Ownership arrangements
52. Funding of outputs

PART 8 - MISCELLANEOUS

53. Liability of employees
54. Application of the Labour Law, Immigration Law, National Pensions Law and Health Insurance Law to public authorities
55. Monitoring compliance of public authorities
56. Whistleblowers
57. Transitional Provisions
58. Regulations
59. Inconsistency with other laws

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**A BILL FOR A LAW TO ESTABLISH AN OVERARCHING SYSTEM OF
GOVERNANCE, ACCOUNTABILITY AND MANAGEMENT FOR
PUBLIC AUTHORITIES; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1- INTRODUCTORY

Short title and
commencement

1. (1) This Law may be cited as the Public Authorities Law, 2016.

(2) This Law shall come into force on such date as may be appointed by order made by the Cabinet.

Interpretation

2. In this Law -

“asset” means an item of economic value that is expected to yield a benefit to its owner in the future;

“board” means the board of a public authority established pursuant to section 7;

“board member” means member of a board appointed pursuant to section 8;

“borrowing”, means any borrowing of money or other receipt of credit, whether secured or unsecured, and includes any hire purchase agreement or finance lease, but does not include the purchase of goods or services on credit for a period of ninety days or less;

“capital charge” means the cost to a public authority of borrowing money to buy or improve the buildings, equipment, or other capital assets that it uses to produce products or provide services;

“Caymanian” means a person who possesses Caymanian status under the Immigration Law (2003 Revision) or any earlier law providing for the same or similar rights and a person who acquired that status under Part III of the Immigration Law (2015 Revision); (2003 Revision)
(2015 Revision)

“chief executive officer” means the head of a public authority;

“chief officer” means the person appointed as chief officer in a Ministry or Portfolio which has responsibility for a public authority;

“civil servant” means a person employed by the government, but does not include a Member of the Legislative Assembly other than an Official Member, and is a public officer for the purposes of the Constitution;

“core government” means the Legislative Assembly, the Cabinet, ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office and includes the equity investment in statutory authorities and government companies;

“entity” means any body and includes a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office;

“financial year” means such date as the Cabinet may determine;

“government company” means -

- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company;

“gross misconduct” means misconduct that is of such a serious nature or magnitude that, in the opinion of the appointing officer, the employee should be dismissed with immediate effect;

“outputs” means the goods or services that are produced by an entity or other person;

(2013 Revision)

“ownership agreement” means an agreement which specifies the ownership performance to be achieved by a public authority and which is prepared in accordance with section 49 of the Public Management and Finance Law (2013 Revision);

“ownership performance” means, in relation to an entity, the performance that an ordinary person who was the owner of that entity would expect of that entity;

“public authority” means a statutory authority or government company;

“public servant” means a member of the public service;

“public service” means Ministries, Portfolios, the Judiciary, the Legislative Assembly, agencies reporting directly to the Legislative Assembly, Governmental committees, statutory authorities and government companies;

(2013 Revision)

“purchase agreement” means an agreement which specifies all the outputs the Cabinet intends to purchase from a public authority and which is prepared in accordance with section 48 of the Public Management and Finance Law (2013 Revision);

“remuneration” means salary, wages, allowances and any benefits received by a person as a result of that person’s employment;

“senior staff” means -

- (a) chief financial officers and deputy chief financial officers of public authorities; and
- (b) heads of departments, sections or units of public authorities and their deputies;

“serious misconduct” means misconduct that is serious in nature or magnitude but is not so severe as to be gross misconduct; and

“statutory authority” means an entity established by a law to carry out functions which are capable under that law, of being funded, partly or entirely, by money provided by the Cabinet, and for which the Governor or the Cabinet has the power to appoint or dismiss the majority of the board or other governing body.

3. In the event of any inconsistency between the provisions of this Law and the operation of any other law, the provisions of this Law shall prevail to the extent of the inconsistency.

Interpreting inconsistencies with other laws

PART 2 - PURPOSE AND OBJECTIVES OF PUBLIC AUTHORITIES

4. The purpose of a public authority is to help the Government to achieve its policy objectives when those objectives are more effectively accomplished through the use of separate legal entities rather than through the civil service.

Purpose of public authorities

5. Public authorities are not part of the civil service but are part of the public service and, as such, shall operate in a manner which best serves the public interest.

Public authorities part of the public service

6. (1) The principal objectives of a public authority are to -

- (a) deliver the outcomes specified by Cabinet;
- (b) supply outputs that the Cabinet has agreed that it will purchase from the public authority;
- (c) supply outputs to entities or individuals other than the Cabinet for payment on a break-even basis or preferably at a profit, and in accordance with agreements with those entities or individuals; and
- (d) achieve the ownership performance that it has agreed with the Cabinet that it will achieve during a year.

Principal objectives of public authorities

(2) It is the duty of a public authority to conduct its affairs in a responsible financial manner and accordingly, a public authority shall operate as a profitable and efficient business and contribute to the revenue of core government or, at least, break even in its operations.

PART 3 – APPOINTMENT, RESPONSIBILITIES AND PROCEDURES OF THE BOARDS OF PUBLIC AUTHORITIES

7. (1) Notwithstanding any other law, a public authority shall have a board, by whatever name called, consisting of a chairperson and not less than four other members.

Requirement to have a board

(2) A board shall be responsible for the governance of the public authority, including the general administration and oversight of its affairs and business, in accordance with the provisions of this Law and any other Law.

8. (1) Notwithstanding the provisions of any other law -

Appointment of board members

- (a) board members of a public authority shall be appointed by the Cabinet;
- (b) all new board members shall undertake an orientation session and training provided by the public authority to which they have been appointed as soon as practicable after their appointment; and
- (c) one of the appointed board members shall be appointed by the Cabinet to be the chairperson of the board.

(2) A letter of appointment of a board member shall set out -

- (a) the terms and conditions of the appointment;
- (b) the policies and procedures relating to public authorities; and
- (c) the duties and responsibilities of the public authority to which the member is appointed.

(3) The Cabinet shall cause a notice of the appointment of board members to be published in the Gazette.

(4) Notwithstanding the provisions of any other Law, prior to appointing any person to be a board member, the Cabinet shall satisfy itself that -

- (a) the person has the skills, knowledge, and integrity to carry out the duties required in a highly competent and politically neutral manner; and
- (b) the person has no financial or other interest likely to prejudicially affect the exercise of that person's functions as a board member,

(2016 Revision)

and the Cabinet shall require a person it proposes to appoint to give a full disclosure of that person's interests to establish that no conflict of interest exists as required by the Standards in Public Life Law, 2014 and the Anti-Corruption Law (2016 Revision).

(5) When appointing board members, the Cabinet shall ensure that, among them, the board members have adequate knowledge, experience and understanding of the following areas -

- (a) corporate governance;
- (b) strategic and financial management; and
- (c) the scope of business, outputs and operations of the public authority concerned.

(6) The Cabinet may appoint a public or civil servant to a board however -

- (a) notwithstanding any other law, the membership of a board shall not be comprised of more than forty percent public or civil servants;

- (b) the chairperson shall not be a public or civil servant; and
- (c) public or civil servant board members shall not be entitled to vote.

9. Notwithstanding section 8 and any other law, a member of the Legislative Assembly or the Judiciary, or a bankrupt, shall not be eligible for appointment as a board member.

Members of the Legislative Assembly and Judiciary not to be board members

10. (1) Board members shall hold and vacate office in accordance with the terms of their appointment, subject to subsections (2) to (4) and the provisions of any other relevant Law.

Term of appointment

(2) Board members shall serve for a term specified by the Cabinet, however, to ensure continuity of a board, no more than two-thirds of the board members shall be replaced at any one time unless special circumstances arise.

(3) A board member may, at any time, by notice in writing addressed to the relevant Minister or Official member, resign office.

(4) The Cabinet may terminate a person's appointment as a board member at any time if it is satisfied that -

- (a) the member is not fulfilling the mandate of the public authority set by Cabinet;
- (b) the member has, in the opinion of the Cabinet, an unacceptable conflict of interest;
- (c) the member's conduct is detrimental to the effective governance of the board;
- (d) the member has been absent from three consecutive meetings of the board without the consent of the chairperson of the board;
- (e) the member's conduct brings the public authority into disrepute;
- (f) the member becomes bankrupt; or
- (g) the member is convicted of an offence for which he is sentenced by a court to a term of imprisonment.

11. Where a board member ceases to be a board member before the expiration date of his or her appointment, the Cabinet may appoint another person to hold that office for a term specified by Cabinet.

Appointment to fill board vacancy

12. (1) Subject to section 13, board members shall be paid such remuneration which may include salaries, fees or other benefits, and such reasonable allowances in respect of expenses properly incurred by them in the performance of their duties, as the Cabinet shall determine.

Remuneration of board members

(2013 Revision) (2) The remuneration and expense allowances set by the Cabinet in accordance with subsection (1) shall not exceed any limits set by the Governor in accordance with section 18 of the Public Service Management Law (2013 Revision).

(3) The remuneration and expense allowances of all board members shall be published in such media as the Cabinet determines.

(4) An appointment letter from the Cabinet shall set out all of the remuneration to be paid to the board member for the duration of the member's appointment.

(5) Any remuneration or allowances paid to a board member shall be an expense of the relevant public authority.

No board remuneration for civil servants

13. A board member who is a public or civil servant appointed in accordance with section 8(6) shall not be entitled to any remuneration but is entitled to claim travel and subsistence expenses in accordance with the policy of the public authority.

General responsibilities

14. A board shall be responsible for the performance of the public authority, including the performance of all of its subsidiary entities and shall ensure that the public authority -

(2013 Revision)

- (a) delivers the outputs specified in the purchase agreement of the authority prepared in accordance with the Public Management and Finance Law (2013 Revision);
- (b) achieves the ownership performance specified in the ownership agreement of the public authority prepared in accordance with the Public Management and Finance Law (2013 Revision);
- (c) complies with this Law and all other laws that are relevant to a public authority; and
- (d) acts with fiduciary responsibility, ensuring that no conflicts of interest exist and that the public authority acts in the public interest.

Specific responsibilities

15. A board shall have the following specific responsibilities -

- (a) to exercise leadership, enterprise, integrity and good judgment in directing a public authority so as to act in the best interest of the public authority, and in so doing, act in a manner based on transparency, accountability and responsibility;

- (b) to determine the strategy to achieve the purpose of the public authority as determined by a strategic plan;
- (c) to implement the Public Service Values of the public authority in order to ensure the survival and viability of the authority;
- (d) to ensure that procedures and practices are in place that protect the public authority's assets and reputation;
- (e) to monitor and evaluate the implementation of strategies, policies, management performance and business plans;
- (f) to ensure that the public authority complies with all relevant laws, regulations and codes of best practice;
- (g) to ensure that the public authority communicates with Ministers, Members of Cabinet and other stakeholders effectively;
- (h) to identify the public authority's internal and external stakeholders and to agree to a policy on how the authority should communicate with them;
- (i) to regularly review processes and procedures to ensure the effectiveness of the public authority's internal systems of control in order to ensure that its decision-making capability and the accuracy of its reporting and financial results are maintained at high levels at all times;
- (j) to regularly assess the board's own performance and effectiveness as a whole, and that of individual members and the chief executive officer;
- (k) to appoint the chief executive officer and to ensure that there is adequate training for management and employees and a succession plan for senior management;
- (l) to ensure that all technology and systems used in the public authority are adequate to properly operate the business of the authority;
- (m) to identify key risk areas and key performance indicators of the authority's performance and to monitor these factors;
- (n) to ensure that audited financial statements are submitted to the relevant ministry or portfolio in the timeframe specified in the Public Management and Finance Law (2013 Revision);
- (o) to ensure there is a proper framework for procurement established by the public authority that is in line with the Public Finance Management Law (2013 Revision) or any other procurement legislation; and (2013 Revision)
- (p) to comply with all instructions issued by Cabinet.

16. (1) Subject to any other law, or where relevant, a public authority's articles of association, the following shall apply to meetings of a board- Meetings of the board

- (a) a board shall meet at least once every three months and at such other times as may be necessary or expedient for the governance of the public authority; and such meetings shall be held at such place and time and on such days as the chairperson may from time to time determine;
- (b) a secretary of the board should circulate the agenda and accompanying documents for the board meeting to members at least five working days prior to the meeting or within such shorter period as the chairperson may direct;
- (c) a chairperson shall call a meeting of the board if requested to do so in writing by three board members and such request shall include a statement of the agenda proposed for the meeting;
- (d) if the chairperson refuses or neglects to convene a meeting of the board upon request, a meeting of the board may be convened by the board members making the request;
- (e) subject to paragraph (f), the chairperson shall preside at all meetings of a board;
- (f) in the absence of a chairperson, the deputy chairperson, if there is one, or, in the absence of the deputy chairperson, a board member, who is entitled to vote and who is elected by the board members present, shall preside and perform the functions of the chairperson of the meeting provided there is a quorum;
- (g) the quorum of a board shall be a simple majority of the board members who are entitled to vote;
- (h) where a member has a conflict of interest and is required to recuse himself or herself from the meeting, the quorum will be a simple majority of the other members;
- (i) decisions of a board shall be determined by a simple majority of those board members who are entitled to vote and who are present at the board meeting, except that in the case of an equality of votes at any meeting, a chairperson at that meeting shall have a second or casting vote;
- (j) where a chairperson has given his or her approval, a board member may attend meetings via telephonic or electronic media; and
- (k) all board meetings shall be held in the Islands unless agreed otherwise by the Minister responsible for the public authority.

(2) Where there is a possible or perceived conflict of interest with respect to any matter that comes up for discussion or decision by a board, the relevant board member shall disclose the interest of that board member and -

- (a) shall, as soon as the matter comes up on the agenda of the board, immediately leave the place in which the deliberations are taking

place and shall not participate, directly or indirectly, in the deliberations and shall not return while the matter is under discussion until a decision has been taken by the board; and

- (b) shall otherwise comply with laws and regulations which deal with conflicts of interest.

(3) A declaration of a conflict of interest and the absence of the board member concerned shall be recorded in the minutes of the meeting.

(4) Where a conflict of interest arises in a matter where the board member has power to take a decision without approval or participation by the board, the board member shall recuse himself or herself at the earliest opportunity and shall not express any opinion on the matter.

17. (1) Notwithstanding any other law, a board may appoint a person, not Recording secretary to be the recording secretary of the board.

(2) A recording secretary shall be responsible for preparing and distributing the agenda for board meetings and the taking of board minutes in accordance with section 18.

(3) The remuneration and expenses of a recording secretary shall be an expense of the public authority except that, where the recording secretary is also a civil servant, the recording secretary shall not receive any remuneration or allowances and the entity which employs the recording secretary shall be reimbursed by the authority for the costs of providing the board with secretarial services.

18. (1) A recording secretary shall keep minutes of each meeting of a board in such form as the board determines; and the minutes shall be confirmed Board minutes as soon as practicable at the next meeting of the board and signed by the chairperson or by any other person who presided at the meeting at which the minutes were taken.

(2) As soon as the minutes of a meeting have been confirmed by a board in accordance with subsection (1) they shall be considered a public document and a copy of the minutes shall be made available by the public authority concerned to any person who makes a request for such minutes.

(3) If there is no officer of the Ministry or Portfolio, which has responsibility for the board, who is a board member, the public authority shall provide the responsible Ministry or Portfolio with a copy of the minutes as soon as the minutes of a meeting have been confirmed by the board.

- Authentication of documents 19. All documents issued by a public authority that are required by law to be issued under the seal of the public authority, shall be signed by the chairperson, another board member or an officer of the public authority authorised by the board to do so.
- Disclosure of interests 20. (1) A board member, prior to assuming the functions of a board member shall make a declaration of his or her interests in accordance with the Standards in Public Life Law, 2014.
- (2) Where a board member has any actual or potential personal or commercial financial interest, either directly or indirectly, in a transaction or decision being considered by the board, the member shall disclose the nature of his or her interest at a meeting of the board as soon as possible after the relevant circumstances have come to his or her knowledge.
- (3) A disclosure by a board member under this section shall be treated in accordance with section 16(2).
- Power to establish own procedures 21. Subject to sections 16 to 20 and the provisions of any other law, a board may establish its own meeting rules and procedures, and establish committees of the board, as it thinks fit.
- No personal liability except for negligence or bad faith 22. Neither a board nor any board member shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was negligent or in bad faith.

PART 4 – APPOINTMENT AND RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICERS OF PUBLIC AUTHORITIES

- Requirement for chief executive officer 23. A public authority shall have a chief executive officer, by whatever name called, who, notwithstanding any other law, shall -
- (a) be appointed by the board after consultation with the responsible Minister or Official Member; and
 - (b) be a non-voting member of the board.
- Advertising for a chief executive officer 24. Where there is a vacancy or an impending vacancy in the position of a chief executive officer, a board shall -
- (a) prior to recruitment, inform the Minister or Official Member who has responsibility for the public authority of the vacancy;
 - (b) before advertising the vacancy, prepare a job description which shall set out the duties and responsibilities of the post, the

attributes and skills required for the position and the remuneration for the post;

- (c) submit the job description to the Portfolio of the Civil Service which shall evaluate the job description using the same job evaluation scheme used for the civil service and allocate a salary range for the post;
- (d) operate an open and fair appointment process; and
- (e) publicly advertise in any media the vacancy in such manner as enables suitably qualified persons to apply for the position and -
 - (i) the advertisements shall include -
 - (A) a summary of the duties, the skills and attributes required of applicants,
 - (B) the salary range, including any performance bonuses;
 - (C) the conditions of service;
 - (D) the information to be provided by applicants;
 - (E) the authority to which applications are to be submitted; and
 - (F) the closing date and time of applications; and
 - (ii) the period between the date of the first advertisement and the closing date for applications shall be no less than fourteen days.

25. (1) Where an interview panel compiles a shortlist for a chief executive officer and a Caymanian and a non-Caymanian are found to rank broadly at the same level, the Caymanian shall be given preference for the short list.

Interviewing for the selection of a chief executive officer

(2) A shortlist shall contain a minimum of two applicants.

(3) An interview panel shall include the Chief Officer of the Ministry or Portfolio concerned or the appointed representative of the Chief Officer.

(4) A board, when establishing an interview panel, shall ensure that the panel consists of not less than three and no more than five persons who -

- (a) have an understanding of the duties, skills and attributes of the position;
- (b) have no conflict of interest; and
- (c) are able to act in an independent and unbiased manner in relation to the appointment concerned.

(5) An interview panel shall be chaired by the chairperson of the relevant board or the nominee of the chairperson and assisted by a human resource professional.

(6) An interview panel shall use a comparable interviewing approach for each applicant interviewed by it.

Appointment of a chief executive officer

26. (1) A board shall appoint the applicant who, in its opinion, has the best skills, knowledge and integrity to carry out the duties of a chief executive officer required in a highly competent manner and the appointment shall be made solely on the basis of the best mix of qualifications, skills, knowledge and experience for the position.

(2) Where two or more persons are ranked broadly similarly on the basis of merit and one of those persons is a Caymanian, the Caymanian shall be given preference for the post.

(3) Before making an appointment, a board shall consult with the Minister or Official Member responsible for the public authority.

(4) Before making the appointment, a board shall -

- (a) undertake a background check on the appointee in addition to any references obtained;
- (b) obtain from the appointee a medical certificate from a registered medical doctor indicating that the appointee's physical and mental condition is satisfactory for the position; and
- (c) enter into an employment agreement with the appointee which shall contain, a specific remuneration level and other terms and conditions of employment;

(5) A board shall, within seven days of the appointment of a chief executive officer, advise all unsuccessful applicants in writing that the post has been filled.

Terms and conditions and remuneration of chief executive officer

27. (1) Subject to subsections (2), (3) and (4), a chief executive officer may be appointed on an open ended or fixed term contract for such period and on such terms and conditions as shall be determined by the board after it has consulted with the Minister or Official Member and Chief Officer responsible for the public authority.

(2) In establishing the terms and conditions and remuneration of a chief executive officer, a board shall take into consideration the terms and conditions and remuneration of positions with relevant comparable managerial and technical responsibility in the private sector, the public service and the civil service and shall ensure that the terms and conditions and remuneration are consistent with those positions.

(3) Where a chief executive officer's duties and responsibilities are similar to those of an existing or recently recruited position in the civil service, the remuneration of the chief executive officer shall be at a similar level to that applying to the civil service position.

(4) Subject to subsections (2) and (3), the remuneration of a chief executive officer shall be at a level agreed between the chief executive officer and the board; and the board shall consult with the Minister or Official Member and Chief Officer responsible for the public authority prior to entering into such agreement.

(5) When making comparisons as provided in subsection (2), a board shall take into account the value of non-contributory pension and health benefits of civil servants.

28. (1) A chief executive officer shall, prior to assuming the functions of office, make a declaration to the board of his or her interests.

Conflicts of interest of a chief executive officer

(2) Where a chief executive officer has any actual or potential personal or commercial financial interest, either directly or indirectly, in a transaction or decision being considered by the board, the chief executive officer shall disclose the nature of the interest at a meeting of the board as soon as possible after the relevant circumstances have come to his or her knowledge.

29. (1) A board may discipline or dismiss a chief executive officer but may do so only on the basis of -

Discipline or dismissal of a chief executive officer

- (a) the chief executive officer being found guilty of serious or gross misconduct; or
- (b) the inadequate performance of the chief executive officer over a reasonable period of time, provided that the board has given the chief executive officer adequate opportunity to improve his or her performance to the required level.

(2) A board shall determine inadequate performance by evaluating two or more consecutive performance agreements of the chief executive officer.

(3) A chairperson shall consult with the relevant Minister or Official Member prior to dismissing the chief executive officer.

(4) A board may require a chief executive officer to take early retirement where the chief executive officer has a permanent physical or mental disability which prevents the chief executive officer from performing the required duties

and such disability is certified by the Chief Medical Officer of the Health Services Authority.

Responsibilities of chief executive officer

30. (1) A chief executive officer shall be accountable to a board in the management of a public authority.

(2) A chief executive officer shall be responsible for –

- (a) the delivery of outcomes as specified by the board;
- (b) the achievement of the ownership performance, and, where relevant, output delivery performance agreed by the board with the Cabinet shall be set out in budget documents required under section 34;
- (c) the day-to-day management of the public authority including –
 - (i) the hiring, management and dismissal of staff, and other personnel management functions;
 - (ii) the assignment of duties to staff of the public authority as the chief executive officer sees fit, subject to job descriptions relevant to the staff;
 - (iii) output production and delivery management; and
 - (iv) strategic and financial management;
- (d) implementing decisions of the board;
- (e) providing written and verbal technical advice and guidance to the board on matters of policy and strategic direction;
- (f) the preparation of the draft budget, ownership agreement and purchase agreement, where applicable, for consideration by the board;
- (g) procurement in accordance with the policy framework established by the board and the Government's procurement legislation and policies;
- (h) the preparation of financial statements and presentation of annual audited statements to the board in accordance with the Public Management and Finance Law (2013 Revision);
- (i) the submission of the Annual Report in the prescribed form to the relevant Ministry or Portfolio as soon as approved by the board; and
- (j) any other responsibilities as provided in writing by the board.

(2013 Revision)

(3) In the event of the absence or inability to act of the chief executive officer, the board may appoint an acting chief officer to discharge the chief executive officer's duties during the period of his or her absence or inability.

Power of chief executive officer to delegate

31. (1) A chief executive officer may delegate any of the responsibilities under section 30(2) to a staff member in accordance with this section.

(2) Unless the terms and conditions of the delegation otherwise provide, a person to whom duties or powers are delegated by a chief executive officer under this section shall not sub-delegate those duties or powers to another staff member.

(3) Subject to subsection (2), a delegation under this section may be made to a specified person or persons of a specified group or to the holder or holders for the time being of a specified office or offices, and various powers may respectively be delegated to different persons.

(4) A delegation under this section -

- (a) shall be in writing;
- (b) may be made on such terms and conditions as the chief executive officer delegating or sub-delegating thinks fit; and
- (c) may be revoked at any time by written notice from the chief executive officer .

(5) Except to the extent that the terms and conditions of the delegation otherwise provide, a delegate under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the delegate directly and not by delegation.

(6) No delegation under this section shall affect or prevent the exercise of any of the powers of the chief executive officer nor shall any such delegation affect the responsibility of that chief executive officer for the actions of the delegate, and once a decision is made, it shall, for all purposes, be as good as having been made by the chief executive officer.

(7) A delegation under this section, until revoked, continues in force, notwithstanding that the chief executive officer has ceased to hold office as such, and shall continue to have effect as if made by the successor of the chief executive officer but without limiting the authorities conferred on the successor by or under this Law

PART 5 – PUBLIC AUTHORITY FINANCIAL MANAGEMENT REQUIREMENTS

32. Notwithstanding any other law, the provisions of Part V of the Public Management and Finance Law (2013 Revision) shall apply to all public authorities. General application
(2013 Revision)

33. The financial year of all public authorities shall be the financial year established by the Public Management and Finance Law (2013 Revision). Financial year
(2013 Revision)

Budget documents (2013 Revision)	34. Notwithstanding any other law, the budget documents of a public authority shall include an ownership agreement, and, where relevant, a purchase agreement, prepared in accordance with the Public Management and Finance Law (2013 Revision).
Capital charge	35. (1) A public authority shall pay to the Government for each financial year a capital charge for the use of the equity invested by the Government in the entity. (2) The public authority shall pay the capital charge on 31 st July and 31 st January in each year. (3) The amount of the capital charge to be paid by a public authority shall be the amount arrived at by applying the capital charge rate determined by the Minister of Finance to the net worth of the public authority reported in the balance sheet of the public authority.
(2013 Revision)	(4) The Minister of Finance shall set annually the capital charge rate for each individual public authority prior to the commencement of the detailed planning and budgeting phase of the budget process provided in section 19 of the Public Management and Finance Law (2013 Revision).
Borrowing	36. Subject to the provisions of any other law, a public authority may not borrow without the approval of the Cabinet.
Issuing of capital	37. A public authority may not issue additional capital including, where applicable, shares, to any person or entity without the approval of Cabinet.
Investing and reserves	38. (1) If a public authority is a financial institution it shall maintain reserves at the specified levels set by the body which regulates it. (2) Where a public authority has surplus cash reserves for a period of more than ninety days, the surplus shall be paid to core government unless otherwise directed by Cabinet. (3) A public authority shall pay dividends in accordance with the formulae established by the Minister of Finance, unless otherwise directed by Cabinet.
Compliance with generally accepted accounting practice (2013 Revision)	39. All financial information provided by public authorities to the Government or the Legislative Assembly shall be prepared on an accrual accounting basis and shall comply with the generally accepted accounting practice provided by the Public Management and Finance Law (2013 Revision).

**PART 6 – PUBLIC AUTHORITY PERSONNEL MANAGEMENT
REQUIREMENTS**

40. A public authority shall make all personnel management decisions without patronage, favouritism or consideration of political factors and, pursuant thereto a public authority shall ensure that open and fair processes apply to all -
- Open and fair processes in personnel management decisions
- (a) appointments;
 - (b) promotions;
 - (c) remunerations;
 - (d) discipline;
 - (e) dismissal; and
 - (f) any other personnel management decisions.
41. (1) A public authority shall -
- Recruitment and appointment of staff of a public authority
- (a) operate an open and fair appointment process for all staff; and
 - (b) publicly advertise in local and, if necessary, international media, all vacancies in such manner as would enable suitably qualified persons to apply for the positions within the public authority.
- (2) All advertisements shall include a summary of the duties, the qualifications, the skills and attributes required of applicants, the remuneration range, the information to be provided by applicants, the authority to which applications are to be submitted, and the closing date and time of applications.
- (3) The period between the publication of the advertisement and the closing date for applications shall be no less than fourteen days.
- (4) Before advertising a vacancy, the chief executive officer or the designate of the chief executive officer shall establish -
- (a) the duties and responsibilities of the post;
 - (b) the attributes and skills required for the post; and
 - (c) the salary range within an established salary grade.
- (5) A chief executive officer shall, when compiling a shortlist, give preference to a Caymanian applicant where the Caymanian and a non-Caymanian are found to rank broadly at the same level.
- (6) When establishing an interview panel, a chief executive officer shall ensure that the panel consists of no less than three persons who -
- (a) have an understanding of the duties, skills and attributes of the position;

- (b) have no conflict of interest; and
- (c) are able to act in an independent and unbiased manner in relation to the appointment concerned.

(7) A chief executive officer, or a staff member to whom the chief officer has delegated the function of appointing other staff, shall, after considering the report of the interview panel, appoint the applicant who, in the opinion of the chief executive officer, has the best skills, knowledge and integrity to carry out the duties required in a highly competent manner and the appointment shall be made solely on the basis of merit.

(8) Where two or more persons are ranked broadly similarly on the basis of merit, a chief executive officer shall give preference to the Caymanian.

(9) For the purposes of subsections (7) and (8), “merit” means the best mix of qualifications, skills, knowledge and experience for the position.

(10) A chief executive officer shall, before making an appointment, undertake a background check on the appointee relevant to the duties of the position and which shall be in addition to any references.

Conflicts of interest of senior staff

42. (1) All senior staff shall, prior to assuming the function of their office, make a declaration to the Commission of Standards in Public Life in accordance with the Standards in Public Life Law, 2014.

(2) Where a member of the senior staff has any actual or potential personal or commercial financial interest, either directly or indirectly, in a transaction or decision being considered by a board, the staff member shall disclose the nature of the interest to the chief executive officer as soon as possible after the relevant circumstances have come to the staff member’s knowledge.

Good employer obligations

43. (1) A public authority shall ensure that it acts as a good employer at all times.

(2) For the purposes of subsection (1), a “good employer” is an employer which operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including -

- (a) good and safe working conditions;
- (b) the impartial selection of suitably qualified persons for appointment;

- (c) recognition of the need for involvement of Caymanians in all aspects of the public service;
- (d) opportunities for the enhancement of the abilities of individual employees;
- (e) recognition of the employment requirements of persons with disabilities; and
- (f) appropriate employment policies and procedures.

44. A public authority shall uphold and promote Public Service Values as detailed in the Public Service Management Law (2013 Revision) and the management systems and operations of public authorities shall reflect those values. Public Service Values
(2013 Revision)

45. (1) An employee of a public authority is part of the public service and, during the course of his or her employment by a public authority, shall comply with any Public Servant's Code of Conduct as detailed in the Public Service Management Law (2013 Revision). Public Servant's Code of
Conduct
(2013 Revision)

(2) An employee who fails to comply with the Public Servant's Code of Conduct in a significant way as determined by the chief executive officer may be disciplined or dismissed.

(3) The Public Servant's Code of Conduct shall form part of every employee's employment agreement.

46. (1) All public authorities shall use the same salary scale as determined by Cabinet and all jobs shall be evaluated by the same job evaluation methodology. Terms and conditions
and remuneration of
staff

(2) Subject to section 57, after the date of the commencement of this Law where there is a difference between the terms and conditions of employment at a public authority and the public service the salary grades for remuneration in the public authority shall be adjusted accordingly to reduce such differences.

(3) A public authority, in order to reduce differences in the terms and conditions of employment in accordance with subsection (2), may -

- (a) provide for employee contribution to health insurance and pensions;
- (b) provide different types of allowances; and
- (c) change working hours, leave entitlements and retirement benefits.

(4) Subject to subsections (5) and (6), staff may be appointed for such period and on such terms and conditions as shall be determined by the public authority.

(5) Subject to subsection (6), the remuneration of a staff member shall be at a level agreed between the staff member and the public authority.

(6) In establishing the terms and conditions and remuneration of a staff member, a public authority shall -

- (a) take into consideration the terms and conditions and remuneration of positions with comparable managerial and technical responsibility in both the civil service and in the private sector; and
- (b) ensure that the terms and conditions and remuneration are consistent with those positions mentioned in paragraph (a).

Salary increases

47. (1) A public authority shall not award cost of living adjustments for staff of a public authority unless permitted to do so by the Cabinet.

(2) Subsection (1) does not apply to individual salary changes.

(3) Any cost of living adjustment made by a public authority shall be calculated by the Economics and Statistics Office.

(4) A public authority shall not introduce a bonus or performance payment scheme for staff of the public authority unless the public authority is permitted to do so by the Cabinet.

PART 7 - RESPONSIBILITIES OF CABINET AND CHIEF OFFICERS IN RELATION TO PUBLIC AUTHORITIES

Role of the Cabinet

48. The role of the Cabinet in relation to public authorities is to -

- (a) exercise, on the public's behalf, the duties and functions of the owner, or where relevant, shareholder of the public authority;
- (b) where appropriate, directly intervene in the operation of the public authority where it is in the public interest to do so, by giving general and lawful directions in written form as to the policy to be followed by the public authority in the performance of its duties and functions;
- (c) order an investigation pursuant to section 55(2) into the public authority's compliance with this Law; and

- (d) extend policy that applies to the civil service to the public authorities as and when necessary to ensure good governance and best human resource practice.

49. The duties of the Cabinet, in relation to a public authority, shall be to - Duties of Cabinet

- (a) appoint board members in accordance with the provisions of Part 3;
- (b) agree the ownership performance required of the public authority with the board of the public authority and to monitor the achievement of that performance in accordance with the provisions of the Public Management and Finance Law (2013 Revision); (2013 Revision)
- (c) where relevant, agree the outputs to be delivered by a public authority and funded by the Cabinet with the board and monitor the delivery of those outputs in accordance with the provisions of the Public Management and Finance Law (2013 Revision); (2013 Revision)
- (d) determine a public authority's purpose in the relevant legislation and review such purpose as and when necessary; and
- (e) give the Chief Officer of the relevant Ministry oversight of the public authority, and power act as liaison officer for the board, the Chief Executive Officer and the responsible Minister or Official Member.

50. The duties of a Chief Officer in relation to a public authority are - Duties of the Chief Officer

- (a) to monitor monthly the purchase and ownership agreement of a public authority to ensure that the public authority is complying with those agreements;
- (b) to ensure that the reports and financial statements of a public authority are presented to the Legislative Assembly in the prescribed format and in accordance with the prescribed timetable; and
- (c) to ensure that a public authority identifies measurement criteria to be adopted and the reporting requirements to identify the delivery or non-delivery of the outcomes.

51. (1) In this section "capital" means any instrument of equity or ownership capital including shares, issued capital or notional capital structures. Ownership arrangements

(2) All capital held in a public authority by the Government shall be held in the name "the Government of the Cayman Islands".

(3) All the rights and powers attaching to the capital held by the Government, including the power of sale or disposition, may be exercised on

behalf of the Government by a Minister or Official member appointed for the purpose by the Cabinet.

(4) The Minister or Official member may sell or otherwise dispose of capital only if the Minister or Official member is authorised to do so by the Cabinet and by a resolution of the Legislative Assembly.

(5) The provisions of this section shall apply notwithstanding any other law.

Funding of outputs
(2013 Revision)

52. Notwithstanding any other law, if the Cabinet requires that a public authority provide any outputs to any person at a price that is less than the full cost of producing those outputs, the Cabinet shall purchase those outputs, or contribute to the purchase of those outputs, in accordance with the provisions of the Public Management and Finance Law (2013 Revision).

PART 8 - MISCELLANEOUS

Liability of employees

53. An employee of a public authority shall not be liable in damages for anything done or omitted in the discharge of that employee's functions or duties unless it is shown that the act or omission was negligent or in bad faith.

Application of the
Labour Law,
Immigration Law,
National Pensions Law
and Health Insurance
Law to public authorities

54. The Labour Law (2011 Revision), Immigration Law (2015 Revision), the National Pensions Law (2012 Revision) and the Health Insurance Law (2016 Revision) shall apply to all public authorities except where there is a conflict with this Law, in which case the provisions of this Law shall apply.

Monitoring compliance
of public authorities

55. (1) The Chief Officer in the relevant Ministry or Portfolio is responsible for the implementation of this Law in the public authority that falls under the direction of that Ministry or Portfolio.

(2) The Cabinet may request a Ministry or Portfolio to undertake a review, investigation or audit of the financial management, personnel management or governance practices of a public authority to establish the extent of the public authority's compliance with the requirements of this Law.

(3) For the purposes of undertaking a review, investigation or audit of the financial management, personnel management or governance practices of a public authority, a Ministry or Portfolio requested by Cabinet to undertake such reviews, investigations or audits may request information concerning such matters from public authorities, and the public authorities concerned shall accede to such requests.

(4) Under the direction of the Chief Officer responsible, the Internal Audit Unit and the Human Resources Audit Unit in the Portfolio of the Civil Service shall regularly monitor the role of a public authority in regard to governance, financial and personnel management.

56. The Whistleblower Protection Law, 2016 shall apply for the purposes of this Law.

Whistleblowers

57. The following transitional provisions shall apply to persons who are employees of a public authority at the date of the commencement of this Law -

Transitional Provisions

- (a) notwithstanding section 27, if the terms and conditions or remuneration of a chief executive officer at the commencement of this Law are more generous than the terms and conditions or remuneration that would have been established if section 27 had applied, the existing terms and conditions or remuneration shall continue to apply to that chief executive officer; and
- (b) notwithstanding section 46, if the terms and conditions or remuneration of a staff member at the commencement of this Law are more generous than the terms and conditions or remuneration that would have been established if section 46 had applied, the existing terms and conditions or remuneration shall continue to apply to that staff member.

58. The Cabinet may make regulations to prescribe for all matters that are required to be prescribed by this Law or are necessary to give effect to this Law.

Regulations

59. In the event of any inconsistency between this Law and the operation of any other law, this Law shall prevail to the extent of the inconsistency.

Inconsistency with other laws

Passed by the Legislative Assembly this day of , 2016

Speaker

Clerk of the Legislative Assembly