



The Government Minute

The Government's Responses to the Reports of the Standing Public Accounts
Committee on the Reports of the Auditor General

June 2020

BACKGROUND

Section 77(7) of the Legislative Assembly Standing Orders (2006 Revision) states that the Government Minute shall be laid on the Table of the House within three months of laying of the report of the Standing Public Accounts Committee and of the report of the Auditor General to which it relates.

The Government Minute constitutes the Government's response to the Reports of the Standing Public Accounts Committee, tabled in the Legislative Assembly on 13 November 2019, on the following Reports prepared by the Auditor General:

1. Fighting Corruption in the Cayman Islands

Fighting Corruption in the Cayman Islands - November 2018

The Public Accounts Committee (“the Committee”) noted that corruption has been identified as one of the most important problems facing the world today, and addressing it has become increasingly urgent. The Committee also noted that corruption is a problem that affects both advanced and developing countries, and exists in both the public and private sectors.

In their report, the Committee endorsed the recommendations of the Office of the Auditor General (“OAG”):

OAG Recommendation 1 – The Government should bring into force the *Standards for Public Life Law 2014* urgently. (Responsibility – The Cabinet)

Government Update:

This has been completed. On 25 February 2020, His Excellency the Governor Martyn Roper, OBE, signed the Commencement Order for the Standards in Public Life Law, 2014 and the Standards in Public Life (Amendment) Law, 2016, as well as the Standards in Public Life Regulations, 2020.

OAG Recommendation 2 – The Government should consider extending the list of designated authorities to whom whistle-blowers can turn. (Responsibility – Deputy Governor)

Government Update:

This is in progress. Consultations held with key stakeholders agencies, including the OAG, Ombudsman and the IAS, identified that there is no current restriction on where an individual can go to make a disclosure of improper conduct, and that a non-designated authority can ensure whistle-blower protections for an individual by arranging for the whistle-blower to make the disclosure to the Ombudsman. The stakeholders agreed that while the proposal to expand the number of designated authorities has merits, there are also potential drawbacks that would require further consideration/mitigation. They recommended that the stakeholder feedback and final decision on any changes should be incorporated within the wider review of the Whistle-Blower Protection Law being planned for 2020, by the Office of the Ombudsman. The Deputy Governor accepts this recommendation.

OAG Recommendation 3 – The Anti-Corruption Commission should extend its performance indicators to include efficiency and effectiveness measures and report these annually in its annual report. (Responsibility – Anti-Corruption Commission)

Government / Anti-Corruption Commission Update:

While the Anti-Corruption Commission (ACC) did not accept this recommendation as presented, they have made an effort to provide more statistics in their annual report while balancing the need to maintain the integrity and confidentiality of evidence, information, and witnesses. This was demonstrated in their 2018/2019 Annual Report. The ACC has made a commitment to continue to look for ways to inform the public about its work while maintaining the necessary

safeguards.

OAG Recommendation 4 – The Cayman Islands Government should identify a single owner of the Anti-Fraud Policy who is responsible for ensuring that it is regularly updated and communicated to staff. (Responsibility – Deputy Governor)

Government Update:

This has been completed. The Accountant General has been appointed as the owner of the Anti-Fraud Policy and has been given the responsibility to ensure that the Policy is regularly updated and updates are communicated to Civil Servants.

OAG Recommendation 5 – Statutory Authorities and Government Companies should ensure that they have fit-for-purpose fraud and corruption policies or clearly state why one is not necessary. They could adopt the CIG policy or adapt it to suite their individual needs. (Responsibility – Deputy Governor)

Government Update:

This has been completed. On 18 January, 2019, Cabinet approved the extension of the CI Government Anti-Fraud Policy to SAGCs and Government Companies pursuant to Section 49(d) of the Public Authorities Law, effective Jan 2019 and subject to the following provisions:

- a) The Cayman Islands Government Anti-Fraud Policy may be adopted, as is, or adapted by the public authorities to suit their individual needs.*
- b) Any public authority wishing to assert that such a policy is not necessary is required to provide a clear statement of justification to their respective Chief Officer, within 30 days of receipt of the policy.*
- c) Any public authority with an existing fit-for purpose fraud and corruption policy can be exempted from this requirements, upon submission of the policy to their respective Chief Officer with 30 days of receipt of the policy.*

OAG Recommendation 6 - The Cayman Islands Government should ensure that all civil servants have completed the fraud awareness training and that updated training is completed regularly. (Responsibility – Deputy Governor, Chief Officers, and the Accountant General)

Government Update:

This is in progress. The Ministry of Finance and the Portfolio of the Civil Service will endeavor to have all existing Civil Servants complete the fraud awareness training by 31 December 2020.

OAG Recommendation 7 - The Cayman Islands Government should establish an audit committee for the core government to act as a driver for continuous improvement in internal control, financial management and financial reporting across government and, through a process of constructive challenge, to provide the Deputy Governor with the required assurance on the arrangements in place. (Responsibility – Deputy Governor)

Government Update:

This has been completed. The Audit and Risk Assurance Committee (“ARAC”) has been established by the Deputy Governor to provide him with independent and objective advice on the comprehensiveness, reliability, and integrity of assurances on governance, risk management and control for the Cayman Islands Core Government. The ARAC held two quarterly meetings in 2019.

OAG Recommendation 8 - The membership of the CPA and DCB should be balanced to include members representing sectors beyond the building and development industry. (Responsibility – Cabinet)

Government Update:

In August 2019, the Ministry of Commerce, Planning and Infrastructure received Cabinet approval to appoint new members to the CPA board in an effort to bring diversification and balance.

OAG Recommendation 9 - The Central Planning Authority and Development Control Board should continue to improve the transparency of their operations, including demonstrating that technical advice has been obtained and how this was used in decision making. (Responsibility – Chairs of the CPA and DCB, Ministry of CPI and the Director of Planning)

Government Update:

The Central Planning Authority (“the Authority”, “CPA”) and the Development Control Board (“the Board”, “DCB”) continue to support and encourage members of the public being informed of and involved in the planning process. To date, the Authority and the Board, with the support of the Department of Planning (“DoP”), have implemented several initiatives to further these aims. First, steps have been implemented (through the OPS) that allow the CPA/DoP to ensure that appropriate technical advice is sought/received from the requisite agencies (e.g. National Roads Authority/Department of Environment). Internal procedures then allow any such advice to be carefully considered. Publication of the meeting agenda on the departmental website one week before the meeting date, the publication of meeting minutes (for several years) on the department website, and the content of meeting minutes, including steps to better articulate the reasons supporting the decisions taken (including the various factors considered in making the determination, and the provision of sufficient reason(s) for its determination to adopt or reject the technical advice provided by commenting agencies) round out the efforts to enhance the transparency of the process.

OAG Recommendation 10 - The Department of Planning should establish corruption risk management programmes in line with the Anti-Fraud Policy. (Responsibility – Director of Planning)

Government Update:

The Department of Planning has adopted the CIG Anti-Fraud Policy and requires all employees to file a Declaration of Interest via the Ministry's electronic portal.

OAG Recommendation 11 - The Department of Planning should ensure that notice of interest forms are completed regularly by all staff and used to effectively manage any potential conflicts. (Responsibility – Director of Planning)

Government Update:

This recommendation has been implemented and all Department of Planning employees are required to file on an annual basis, with updates submitted as necessary, via the Ministry's electronic portal.

OAG Recommendation 12 - The Central Planning Authority and Development Control Board should adopt anti-fraud policies that are in line with the Cayman Islands Government's policy. (Responsibility – Chairs of the CPA and DCB, Ministry of CPI and the Director of Planning)

Government Update:

Members of the Central Planning Authority and the Development Control are required to file a Declaration of Interest annually. These declarations are available for public inspection via the Department of Planning's website.

The Committee further recommends that Government should:

PAC Recommendation 1 – The Public Authorities Law ("PAL") should be amended to include the Central Planning Authority (CPA), the Development Control Board (DCB) and other boards in Government or Legislation passed to provide similar provisions to allow Ministries proper oversight.

Government Response:

The agencies that are currently governed by Public Authorities Law ("PAL") are either Statutory Authorities or Government Companies ("SAGCs") of very different organizational structures and purposes compared to the regulatory boards such as the Central Planning Authority (CPA) and the Development Control Board (DCB). As a result of these differences, many of the provisions of the PAL would not be applicable or serve to enhance Ministries' oversight of the non-SAGC regulatory boards. For example, the regulatory boards do not have responsibilities in the areas of organizational governance, human resources and financial management for the entities they serve, so the provisions in the PAL for those areas (e.g. Part 3 sections 8, 15, 16, Part 4, Part 5, Part 6, and Part 8 sections 54 and 55) would not be applicable to regulatory boards.

The PAC's concern that Ministries have statutory authority to provide proper oversight to the regulatory boards like the CPA and DCB is noted. The Ministries' authority for oversight and / or to provide direction to a regulatory board is generally outlined in the legislation that creates each regulatory board. Each Ministry will be encouraged to review the legislation governing their non-SAGC boards that are not captured under the PAL to ensure there are adequate legislative provisions for the oversight of those boards.

PAC Recommendation 2 - All future legislation that carries a clause to bring the law into effect by order in Cabinet to have a date by which the law should come into effect.

Government Response:

There are a number of factors that will determine when legislation with a deferred commencement clause will be brought into force. The importance of the subject matter and the complexity and amount of work required for implementation of the legislation, such as accompanying regulations, getting resources in place for implementation, and getting governance structures finalized, will vary greatly between different pieces of legislation and influence how quickly the law can be commenced. As a result, Government is not in a position to give an undertaking to implement this, but does note the PAC's concerns and will endeavor to bring future legislation with deferred commencement clauses into force as expeditiously as possible.

PAC Recommendation 3 – The Cayman Islands Government should make fraud training a part of every new employee induction programme.

Government Response:

This recommendation is accepted. The Portfolio of the Civil Service undertakes periodic reviews and updates of their orientation sessions, which are mandatory for new hires, and are working to incorporate the anti-fraud training as part of these mandatory orientation sessions no later than end of June 2020.

PAC Recommendation 4 – The Director of Planning should ensure that any potential conflicts by Board members' with agenda items should be declared at the start of each meeting of the CPA and DCB.

Government Response:

This recommendation has been implemented.

PAC Recommendation 5 – The Director of Planning should audit Board members’ declaration of interest along with their declared conflicts; with agenda items at Board meetings.

Government Response:

The Director of Planning accepts the need to ensure that processes exist to ensure compliance with the spirit and intent of members filing a declaration of interest, and that declared conflicts are appropriately recorded in meeting minutes.

PAC Recommendation 6 - The Government should consider amending the Development and Planning Law and Regulations to ensure that developers put in place reasonable traffic management devices such as speed bumps.

Government Response:

The Department of Planning undertakes to ensure the inclusion of traffic management considerations during the review of the regulatory provisions related to Subdivisions and large-scale developments; such as multi-unit apartment complexes.