



# **Annual Report**

**01 January 2010 – 30 June 2011**

## **Cayman Islands Anti-Corruption Commission**

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## Statement from the Chairman

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The Anti Corruption Commission (ACC) has been formally created, in accordance with Part 2, Section 3 of the Cayman Islands Anti corruption Law (2008), to take responsibility for the administration of the said law. The ACC is considered a vital body for investigating reports of corruption to stimulate accountability and public confidence. The establishment of the Anti-Corruption Law shows the Cayman Islands' Government's commitment to recognising the existence of corruption and the necessity of legislative support to foster accountability and deter its continuance. The ACC is authorized by law, and prepared as a Commission, to work diligently with partner agencies at the local and international level as a means in which to facilitate the goals of the Anti Corruption Law (2008), the OECD Convention against Bribery, and the United Nations Convention against Corruption.

There remains is a significant degree of work ahead; work that is envisaged as continually evolving according to the development of the ACC and the intake of diverse reports of corruption. For this reason, I remain cognizant that training of the ACC membership is pertinent to sustaining an efficient and effective operation for detection, investigation, and organizational development.

It should be noted that the content of this report covers our work from 1 January, 2010 to 30 June, 2011.

On behalf of the Commission I would like to thank those persons in the community who commit to an ethical, moral, and professional approach throughout the private sector and public sector; I encourage all to continue to do so. I would also like to take this opportunity to personally thank my fellow Commission members for their dedication to the ACC.

**David Baines**  
**Chairman, Anti Corruption Commission**

# Chapter 1

## The Cayman Islands Anti Corruption Commission (“ACC”)

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### 1.1 Role

The Anti-Corruption Commission (ACC) was created in accordance with Section 3 of Cayman's Anti-Corruption Law (2008) which came into effect on 1 January 2010 and the Commission is responsible for the administration of the said law.

### 1.2 Functions and Duties

Under the Anti-Corruption Law (2008), the primary functions and duties of the ACC are to:

- (a) receive and consider any report of the commission of a corruption offence and, subject to this Law, investigate such report;
- (b) receive and (as permitted) request, analyse and disseminate disclosures of any information-
  - (i) concerning corruption offences under this Law or suspected offences; or
  - (ii) required by any law in order to counter corruption;
- (c) detect and investigate-
  - (i) any suspected offence under this Law;
  - (ii) any suspected attempt to commit an offence under this Law; and
  - (iii) any suspected conspiracy to commit any offence under this Law; and
- (d) do anything else that it is required or authorised to do under this Law or any other law or which is necessary to do for achieving the purpose of this Law.

### 1.3 Powers

In accordance with the Anti-Corruption Law (2008), the ACC:

- (a) shall receive all disclosures of information (including information from any overseas anti-corruption authorities) which-
  - (i) concern any corruption offences;
  - (ii) are relevant to its responsibilities as an anti-corruption authority;
- (b) may, upon gaining an Order of the Grand Court-
  - (i) where information is disclosed to it under this Law; or
  - (ii) upon receipt of a request from an overseas anti-corruption authority,order any person to refrain from dealing with a person's bank account or other property for a period not exceeding twenty-one days if it is satisfied that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or the suspected proceeds of a corruption offence;

(c) may, in writing, require the provision by any person of information (excluding information coming to a professional legal adviser in privileged circumstances) for the purpose of clarifying or amplifying information disclosed to it under this Law. Any person who, without reasonable excuse, fails or refuses to provide such information as is required by this subsection is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or to both.;

(d) shall retain a record for a minimum of five years of-

(i) all information received or disseminated by it; and

(ii) any agreement entered into under paragraph (e); and

(e) may, with the consent of the Director of Public Prosecutions, enter into any agreement or arrangement, in writing, with an overseas anticorruption authority which it considers necessary or desirable for the discharge or performance of its responsibilities and functions.

#### **1.4 Control, Oversight and Policy Directions**

The Governor has the power to give directions to the Commission with respect to policy followed in the performance of its functions in matters that concern the public interest. He is also responsible for:-

(a) the general oversight of the anti-corruption policy of the Government;

(b) overseeing and inspecting the work of the Commission;

(c) reviewing annual reports submitted by the Commission;

(d) promoting effective collaboration between regulators and law enforcement agencies; and

(e) monitoring interaction and co-operation with overseas anticorruption authorities.

The Governor, in his discretion, may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor to concern the public interest and the Commission shall give effect to any such directions.

#### **1.5 Membership**

In accordance with the law, the Commission consists of the Commissioner of Police, the Complaints Commissioner, and the Auditor General, and two additional members appointed His Excellency the Governor. Currently, the members are as follows:

❖ **Mr. David Baines, Commissioner of Police** (Chairman - Ex-Officio Member)



Mr. Baines joined Lancashire Constabulary in 1976, rising to the rank of Chief Inspector before moving through promotion to Greater Manchester Police (GMP). During his tenure with GMP, Commissioner Baines served in various posts including; Head of Corporate Performance with responsibility for raising standards throughout the force; Divisional Commander for Oldham; and Divisional Commander for Salford. After completing the

Strategic Command Course, Commissioner Baines was appointed Assistant Chief Constable in the Cheshire



Constabulary, where he held control of Operations Support. Mr. Baines took up the Post of RCIPS Commissioner of Police in 2009.

Commissioner Baines is a graduate of Cambridge University where he has studied International Relations and was awarded a Masters Degree.

❖ **Ms Nicola Williams, Complaints Commissioner (Ex-Officio Member)**



Ms. Williams heads Cayman's only independent authority for tackling complaints against the public sector with a jurisdiction that covers government entities and statutory authorities. She also sits as a part-time Crown Court judge in the UK, having been appointed to the judiciary of England and Wales in October 2009. She is also Vice-President of the Caribbean Ombudsman's Association (CAROA).

Until March 2009, she was one of 15 commissioners with the UK's Independent Police Complaints Commission whereby she investigated, mediated and resolved complaints about police misconduct, ranging from swearing and improper investigations to brutality and deaths in custody, including terrorism cases. She also has 16 years experience as a barrister in private practice, has worked on several public inquiries and served for three years as a Board Member with the UK's Police Complaints Authority. She is also a Fellow of the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce) and a former Chair of the BBC Regional Advisory Committee for London.

❖ **Mr. Alastair Swarbrick, Auditor General (Ex-Officio Member)**



Mr. Swarbrick took up the post of Auditor General in July 2010 and is responsible for the independent audit of government and its related entities.

Mr Swarbrick has over 20 years experience in public auditing. He began his career in the Scottish Office before moving to the Accounts Commission for Scotland where he completed his professional accountancy training in 1996, becoming a member of the Chartered Institute of Public Finance and Accountancy. Mr Swarbrick subsequently moved to the UK National Audit Office in London taking on various roles before returning to Scotland to work for Audit Scotland as a Senior Audit Manager, leading the audit of the Scottish Government, as well as a number of its agencies and health service bodies. Following promotion to Assistant Director of Audit, aside from his audit management responsibilities, he also led the Business Improvement Unit and was responsible for developing and managing projects to improve the way that Audit Scotland delivered its work.

Mr. Swarbrick obtained his Master of Arts, Honours Degree in Economics at the University of Dundee and was awarded the Bowie Memorial Prize for the Most Distinguished Student in Economics.

❖ **Mr. Leonard N. Ebanks**



Mr. Leonard N. Ebanks had a distinguished banking career spanning 40 years, retiring in 2004. During his career he held senior banking positions in Jamaica, St. Lucia and the Cayman Islands, and served as President and Chief Executive Officer of Fidelity Bank (Cayman) Ltd. for over 23 years.

Mr. Ebanks has served on numerous government boards, including as chairman of Cayman Airways Ltd and The National Housing Development Trust. In May 2001 he became one of three Constitutional Review Commissioners. Presently, he is a trustee of the Public Service Pensions Board, serving as a member on the Human Resources and Investment committees, and Chairman of the Audit Committee. He was appointed as a Justice of the Peace in 1987 and has served as president of the Association. Prior to his appointment to the Anti-Corruption Commission, he sat regularly on the Juvenile Court Bench and also served in the Youth and Summary Court.

❖ **Sir Peter Allen**



Sir Peter Allen has been a permanent resident of Cayman for the past 20 years, served for eight years in the British Royal Artillery before joining Uganda's British Colonial Police, where he served for eight years as Assistant Superintendent. Following this, Sir Peter taught at the Uganda Law School, eventually serving as the school's principal.

In 1970 Sir Peter became the Uganda Judiciary's Chief Magistrate and was later appointed as judge. In 1985, Sir Peter was appointed Chief Justice of Uganda. He was knighted in the New Year's Honours of 1987 before he retired to Grand Cayman, where he has acted several times as a judge and chaired two commissions of inquiry.

## Chapter 2

### Work of the Anti-Corruption Commission

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#### **2.1 International Anti-Corruption Academy**

In order to benefit from the experience and skills of other international agencies, contact has been established with the 'International Anti-Corruption Academy' (IACA), located at the HOFBURG, Vienna, which has recently held its inaugural conference. The conference was attended by representatives from 120 United Nations countries and 35 other agencies and organisations, who participated in the programme entitled "From vision to reality- A new holistic approach to fighting corruption." It is anticipated that the Academy will be fully functional in 2011, however having registered interest in the programme, the Cayman Islands Anti-Corruption Commission will receive notice and invitations to participate in future events offering the opportunity to share learning and experience with other practitioners within the Anti-Corruption arena.

The IACA is a joint initiative by the United Nations Office on Drugs and Crime (UNODC), the Republic of Austria, the European Anti-Fraud Office (OLAF), and other stakeholders. IACA is a pioneering institution that aims to overcome current shortcomings in knowledge and practice in the field of anti-corruption. In pursuing this aim, the Academy will function as an independent centre of excellence in the field of anti-corruption education, training, networking and cooperation, as well as academic research. The academy takes a holistic and inter-disciplinary, inter-regional, inter-cultural and inter-sectorial approach to its operation, which the ACC is foresees as a valuable resource for enhancing the capacity of commission members.

#### **2.2. Declaration of Pecuniary and Business Interests**

The issue of conflicts of interest has become a key issue in public debate worldwide. With the breaking down of barriers between public and private sectors – through the privatisation of services, public/private partnerships and exchanges of personnel – opportunities for corruption have been created. The Commission is well aware of the opportunities which exist in today's society for public officials to take advantage of their public position for personal benefit. There is increasing recognition that conflict-of-interest situations that are not properly dealt with can lead to corruption.

In recognition of the preceding, and in keeping with the principles of transparency, the Commission requires each member to complete Declaration of Pecuniary and Business Interests Form.

#### **2.3 Gift Register**

The Commission has adopted a Gift Register in which all gifts received are documented. This registry will be maintained by the Commission in order to promote transparency within the Commission. In keeping with its commitment to transparency, the ACC Gift Register is available on the Commission's website for public access. The registry will be updated as necessary.



## **2.4 Research**

Research has been undertaken in relation to the interpretation placed upon Anti-Corruption legislation in other jurisdictions, in order to determine the most suitable framework to be adopted. Whilst there is much assistance to be gained from this approach it is apparent that response and interpretation vary considerably and are governed largely by resource implications and organizational structure. As a means of enhancing research, analytical, and administrative resources for the Commission, the Commission has been supported by the Commissions Secretariat since February 2011.

## **2.5 Partner Agencies**

Liaison with other agencies located within the Cayman Islands and overseas is identified as a priority and an integral facet in promoting and encouraging learning and interchange of ideas and experience. A close working relationship has already been established with the Commission for Standards in Public Life, and it is anticipated that significant information sharing and cooperation between the two commissions will greatly benefit both agencies. In addition it is proposed to enhance working relationships with identified partner agencies, such as the International Anti-Corruption Academy in the future.

The ACC has partnered with the Legal Department in the development of a policy and procedure manual aimed at efficiently, effectively, and with a framework capable of enabling good governance practices, guiding the Commission in achieving its statutory mandate. Dedicated counsel has been provided through the Legal Department to meet the preceding objective as well as to address any concerns related to the administration of the Anti Corruption Law.

## **2.6 Confidential Reporting Phone Number**

In May, 2011 the Anti-Corruption Commission launched a confidential reporting line through the media. The phone number has been established to provide members of the public with an alternative way to report an allegation of corruption.

## **2.7 ACC Website**

The Commission has recently launched its website ([www.anticorruptioncommission.ky](http://www.anticorruptioncommission.ky)) which aims to provide the public with information relating to the Commission including information on members, function and powers of the Commission, minutes, legislation, reports, policies/procedures, press releases and access to the gift registry. Members of the public may also gain access to a copy of the Anti-Corruption legislation and submit a report of corruption on line.

## Chapter 3

### Alleged Breaches

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The Commission will receive reports of alleged breaches as identified in the legislation through direct communication to members of the Commission; requests for mutual assistance from overseas; and those reported directly to the Police or other law enforcement agencies, either overtly or covertly. In each case the allegation will be fully recorded and a decision taken as to what, if any, further investigation or action is appropriate.

Clearly, each allegation will be assessed on its own merits, however consideration will have to be given as to whether the issue constitutes a breach of the legislation; and if so, is the matter in the public interest to investigate and / or prosecute. No prosecution may be undertaken without the express authority of the Attorney General in accordance with the Anti Corruption Law (2008) Part 2, Section 7.

To date, the Commission has been advised by the Portfolio of Legal Affairs in a number of areas, most importantly with regard to 'jurisdiction' of matters reported or coming to the notice of the Commission. The interpretation placed upon this issue revolves upon the date of commission of the alleged breach, together with an assessment as to whether the alleged breach was a single event or part of an on-going series of events. It has been agreed that any alleged breach of the Anti-Corruption Law would only be considered by the Commission if it occurred after 1 January, 2010, unless the alleged breach occurring prior to that date could be argued to be one forming an on-going sequence of breaches continuing after 1 January, 2010.

Any alleged breach occurring prior to the commencement of the Law and not forming an on-going sequence would fall to be investigated and prosecuted, if appropriate, under the existing legislation available at the time.

The Commission has created a Reporting Form and has established numerous ways in which a member of the public can report an allegation of corruption which include the confidential telephone phone number, e-mail access and, website access.

## Chapter 4

### Moving Forward

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#### 4.1 Internal Education

Since its inception, the Commission has recognized the need to obtain consistent legal advice on a range of matters. The Attorney General has undertaken to provide a one-day 'workshop' to provide guidance to the Commission on the interpretation and application of the powers enacted within the Anti-corruption legislation; operational role and oversight. It is anticipated that this guidance will be provided in the near future.

The Commission recently participated in a presentation on "The Way Forward" presented by the Legal Department. Discussions ensued on the role and structure of the Commission as well as the Commission's powers especially as they relate to delegation of duties. The creation of a mission statement, a code of conduct as well as a policies and procedures manual for the Commission were also discussed.

In addition, the commission members will strive to attend those conferences relevant to their work which will provide them with additional skills necessary to fulfil their legislative mandate. From this perspective, the world's criminal justice systems are under pressure as crime becomes increasingly globalized. New types of crime, such as organized and financial crime, are interlinked with corruption and cannot be solved with traditional methods alone. Anti-corruption training has so far lacked specialization; in which case the ACC shall seek to engage in workshops, conferences, and training seminars that provide a holistic approach in tackling corruption from all angles inclusive of international, inter-cultural and inter-disciplinary methodologies. It is noted that while the ACC is desirous of attending conferences and other workshops to engage in training and to fulfil their legislative mandate, there are currently no financial resources available for the commission to do so.

#### 4.2 External Education and Media Engagement

The commission has recognised that the Anti-corruption Law places significant responsibility upon persons working in the public sector to report instances or suspicions of corruption identified within their working environment. Additionally, the law allows for significant penalties to be imposed on persons who fail without reasonable cause to report such suspected or apparent breaches.

Once the Attorney General has provided his advice and guidance to the Commission, it is proposed to promote the existence and work of the Commission publicly in order to encourage members of the public and public sector staff alike, to report instances of suspected corruption.

It is hoped that these promotions will also reduce the instances of non-reporting to the Commission. As a part of the promotions, the Commission would like to design and introduce a learning package as a means of educating public sector employees as to their roles and responsibilities within the law. The package would be designed to

offer advice and guidance intending to "make things simple" for individuals to come forward and report their concerns confidentially.

In a step toward public education, the Commission has recently launched its official website. It is hoped in the near future the website will be developed further to promote the role of the Commission and act as an educational tool providing information on acts of corruption.

#### **4.3 Staffing**

The legislation provides His Excellency with the authority to provide additional staff and other resources to the Commission. Initially the Commission was supported by the administrative staff of the RCIPS however in February 2011 the Commission began receiving analytical, research and administrative support from the Commissions Secretariat. Additionally, the Commission is supported in an investigative capacity through the Royal Cayman Islands Police Service's Anti-Corruption Unit (ACU). The ACU is staffed with specialist detectives who maintain a close working relationship with the Commission on all cases of alleged corruption. The Commission notes that even with the added support they have begun receiving in the last six months; they still do not have their desired level of support due to financial constraints.

#### **4.4 Statistical Information**

It is recognised that there will be a need to maintain records of the number and classification of reports; expenditure; staff and other costs in order to provide an accountable and transparent process. Advice will be sought from various sources in order to determine the most efficient methodology to adopt in order that the Commission's 2011/2012 report will contain the required statistical information. Over the course of the last eighteen months, since the implementation of the Anti-Corruption Law (2008), the Commission has investigated twenty-one (21) reports under the said law.

Dated this 10<sup>th</sup> day of August, 2011.

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Mr. David Baines (Chairman)

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Ms Nicola Williams

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Mr. Alastair Swarbrick

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Sir Peter Allen

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Mr. Leonard Ebanks