


Governance in the Cayman Islands Government
**The Accountability of Statutory
Authorities and Government Companies**



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EXECUTIVE SUMMARY

The nineteen statutory authorities and seven government companies (SAGCs) of the Cayman Islands Government deliver a wide range of services and programs. From providing health care, to managing an airline and operating tourist attractions, these entities are critical to the daily lives of the residents and visitors.

The Public Management and Finance Law (PMFL) sets out the framework for SAGCs to be accountable to core government for their activities and use of public funds. This framework, if implemented appropriately, would provide a good means to ensure that there were clear expectations for the kind of results expected by Government and good accountability for the results achieved.

Our audit found that the accountability framework is not working as well as it should; resulting in little accountability for the activities of most of the SAGCs. Without the accountability in place required by the PMFL, there is little assurance that the SAGCs are operating effectively and achieving the results expected by Government. The main findings from our audit were:

The results expected to be delivered by SAGCs are not clearly stated. The results to be achieved by SAGCs, as set out in their ownership agreements, are focused more on the activities to be delivered rather than the results to be achieved, and are not clearly aligned to the objectives of the Government. The ownership agreements at present do not provide a sound framework for SAGCs to report the results of their work or demonstrate how they achieved value for money for the funding provided by government.

There is general confusion around the roles and responsibilities within the accountability framework. The roles of the Governor in Cabinet, Ministers, Chief Officers, and the board and officers of the SAGCs companies provided for in the PMFL and their enabling legislation or articles of association are not always clearly understood and respected in practice. This confusion led, we believe, to the roles not being carried out effectively.

Very few SAGCs produce an annual report describing their activities and providing information about their results. Whilst there have been improvements with SAGCs financial statement reporting in recent years, annual reports on ownership performance and audited financial statements are still not delivered on a timely basis and there remain concerns about the ability of some SAGCs to provide credible financial and non-financial performance information. With more timely and credible reporting, the result should be improved relationships between core government and the SAGCs.

There are five recommendations in the report that we believe will improve the relationships of SAGCs with Government, leading to more effective management and the achievement of better results.

BACKGROUND

WHY STATUTORY AUTHORITIES AND GOVERNMENT COMPANIES EXIST

1. Over the years, government has created 19 statutory authorities (SA) and 7 government companies (GC) that deliver a wide range of activities and services (See Appendix 3). These organizations can be heavily dependent on government for their financing or not dependent at all. They have different governance arrangements from those organizations that make up core government even though the government’s equity investment in them is considered a part of core government. SAGCs most distinct difference with the ministries and portfolios that deliver most of core government responsibilities is that SAGCs have their own governing body, usually called a board of directors, which is appointed by Governor in Cabinet (GIC). The board of directors is provided with overall responsibility for directing and controlling the SAGC. So by their very establishment, SAGCs have a level of independence from core government to deliver the mandate they have been given. However, SAGCs are ultimately accountable to the GIC and the Legislative Assembly in their role as the sole shareholder.

Core government is defined in the Public Management and Finance Law *“as the Legislative Assembly, the Governor in Cabinet, ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, and includes the equity investment in statutory authorities and government companies.”*

2. A statutory authority (SA) is an entity that is established under its own enabling legislation to carry out specified mandates or activities. The enabling legislation also provides for the establishment of governance responsibilities, such as the establishment of the board of directors. SA governance responsibilities are also set out in the Public Management and Finance Law (the “PMFL”) and Financial Regulations. SAs may be totally dependent on government for their funding or they may not require any funding when they are established with mandates that provide for the direct recovery of funds from third parties. SAs currently deliver a wide variety of services to all residents of the Cayman Islands, for example health care, electricity regulation, economic development and port management.

Definition of a statutory authority under the PMFL *“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 Governor in Cabinet, and for which the Governor or the Governor in Cabinet has the power to appoint or dismiss the majority of the Board or other governing body.”*

3. A government company (GC) is a company in which the Cayman Islands Government has a controlling interest and which is created under the Cayman Islands Companies Law. A GC's purpose and other governance arrangements are set out in its Memorandum and Articles of Association, requirements under the Companies Law. However, just like an SA, a GC is also subject to the PMFL and Financial Regulations. Typically, a GC is engaged in some form of commercial activity or service that is being delivered to third parties under separate financial arrangements. While these are commercial activities, government views these activities as having a "public good" component. However, a GC can also provide services on behalf of the GIC. The seven GCs that currently exist provide services such as commercial aviation, health insurance, and turtle farming and related tours.

Definition of a government company under the PMFL *"a company in which the core government has a controlling interest; and in respect of each such company, includes all subsidiary entities of the company."*

GOVERNANCE ARRANGEMENTS FOR SAGCs

4. The mandate or purpose of each SA is set out in its enabling legislation while for each GC the source is the incorporating documents. Reference to these documents is necessary to have a clear understanding of their respective roles and responsibilities. It is not the purpose of this audit to examine specific mandates or specific governance responsibilities internal to the functioning of a SAGC. Rather, we focused on the accountability relationship between core government and SAGCs.
5. The PMFL sets out how SAGCs fit within the overall Cayman Islands governance framework and provides for specific roles for the Legislative Assembly, GIC, ministers, and ministries and portfolios in SAGC governance. Part V of the PMFL provides the SAGC board with responsibility for performance against the organizations mandate, including the delivery of any services to government or any performance objectives that it has agreed to with the GIC. The board is responsible for appointing and monitoring the performance of a chief officer who manages the SAGC under terms and conditions established by the board. Exhibit 1 provides a summary of the roles of the key players in the governance of SAGCs.

Exhibit 1 - Summary of the roles of the key players in the governance of SAGCs

Key Player	Role
<p>Legislative Assembly <i>The ultimate governing body</i></p>	<p>Approve statutory authority’s enabling legislation and the Public Management and Finance Law.</p> <p>Approve appropriation of funds for statutory authority or government company.</p> <p>Ownership and purchase agreements, and annual reports on ownership performance are to be tabled with the Legislative Assembly.</p> <p>Can call hearings on statutory authority or government company’s funding requests.</p>
<p>Governor in Cabinet <i>Key governing body that acts as “shareholder” and key policy developer</i></p>	<p>Propose to the Legislative Assembly legislation that establishes statutory authorities or which establishes the governance arrangements for statutory authorities or government companies.</p> <p>Recommend establishment of government companies under Cayman Island Company Law.</p> <p>Appoint board members of statutory authorities or government companies.</p> <p>Agree to purchase outputs from statutory authority or government company by signing a purchase agreement.</p> <p>Agree, with the assistance of a ministry or portfolio, to statutory authority or government company’s ownership performance by signing ownership agreement.</p> <p>Monitor, with the assistance of a ministry or portfolio, the performance under a purchase or ownership agreement.</p> <p>Can take whatever action is appropriate, including withholding of payments under the purchase or ownership agreement, should it believe that the promised output or performance has not been achieved.</p> <p>Responsible for ensuring that the Legislative Assembly is provided all documents required under law to be tabled before it.</p>
<p>Minister <i>Leads on behalf of the Governor in Cabinet</i></p>	<p>Responsible for individual ministry or portfolio, and statutory authority or government company on behalf of the Governor in Cabinet.</p> <p>Has few official responsibilities under the Public Management and Finance Law but is influential as the Governor in Cabinet representative.</p> <p>Some enabling legislation allows ministers to provide specific policy direction to a statutory authority.</p>

Key Player	Role
Chief Officer/Ministry or Portfolio <i>Administrative and policy support to Minister and Governor in Cabinet</i>	Negotiating, agreeing and monitoring of purchase and ownership agreements on behalf of the Governor in Cabinet and individual ministers. Providing policy development support to Governor in Cabinet. Chief Officers are often ex-officio members of the board of directors.
Board of directors, statutory authority or government company <i>Governing body</i>	Establish the organisation's strategic direction and aims, in conjunction with the executive, based on enabling legislation and strategic direction coming from the Governor in Cabinet. Under the Public Management and Finance Law is responsible for the performance of the statutory authority or government company. Ensure accountability to the public for the organisation's performance through annual reports on ownership performance, including financial statements, which are to be forwarded to the Governor in Cabinet. Assure that the organisation is managed with probity and integrity. Appoint, in most cases, and monitor the performance of the chief officer of the statutory authority or government company.
Chairman, statutory authority or government company <i>Leader of the Board of Directors</i>	Lead the Board of Directors, ensuring that the Board makes an effective contribution to the governance of the statutory authority or government company.
Chief Officer, statutory authority or government company <i>Executive or management lead</i>	Lead the statutory authority or government company in implementing strategy and managing the delivery of services or outputs. Prepare for approval of the Board all annual purchase agreements and the ownership agreement. Execute the finalized annual purchase agreements and the ownership agreement. Ensure accountability to the Board of Directors for the organisation's performance through preparation of an annual report on ownership performance.

- Part V of the PMFL establishes the accountability relationship between core government and the SAGCs. Under Part V, all SAGCs are required to prepare an annual ownership agreement and for those that are also delivering services or activities on behalf of the GIC, an annual purchase agreement. The ownership agreement largely sets out the ownership performance expectations. For each SAGC, the annual ownership agreement is to contain a description of the nature and scope of activities, its strategic goals and objectives for the next three years, performance targets and forecast financial statements.

Ownership performance expectations defined in the PMFL as “the performance that an ordinary person who was the owner of that entity would expect of that entity.”

7. The annual purchase agreement sets out all of the services and activities or outputs which the SAGC is delivering on behalf of the GIC. The PMFL requires that the outputs produced by the SAGCs tie into the outcome objectives of the government. This means that the SAGC should be making a positive contribution towards issues that matter most to government.

Outcome is defined in the PMFL as “the impacts on, or the consequences for, the community of the outputs or activities of the entire public sector, the core government, an entity or other person.”

8. The annual ownership and purchase agreements, where applicable, are signed by a member of the GIC and by the Chairman of the Board of the SAGC indicating a mutual understanding as to what is to be accomplished over the term of the agreement. It is recognized that there will be a need for negotiations in order to arrive at a purchase agreement that would be agreeable to both the GIC and the SAGC. Negotiations are also contemplated in reaching a mutual understanding on the terms of the ownership agreement. The need to negotiate and agree on the various undertakings of an SAGC means that there will be a mutual understanding, at the beginning of the year, as to what is to be accomplished.
9. Under Section 30(6) of the PMFL, accountability for achieving results on the part of an SAGC has been set at a very high level in that payment approval can be withheld unless outputs have been delivered to the GIC’s satisfaction. Where the GIC itself does not have the resources to monitor these arrangements, Section 37 of the PMFL provides for the GIC or individual Ministers to rely on prescribed ministries or portfolios to negotiate, agree to and monitor the SAGCs purchase and ownership agreements. Chief Officers of the ministries or portfolios are responsible to ensure that this happens.
10. The SAGC is responsible for producing an annual report and financial statements that provide information about its actual performance compared to that agreed to in the ownership agreement. The annual report and financial statements are required to be provided to the GIC and to be tabled in the Legislative Assembly within a specific timeframe that fosters good accountability.
11. Finally, the GIC can, through a written notice, direct that a SAGC pay a dividend for an amount and at a time specified, and provide information to the GIC as specified.
12. Exhibit 2 provides a summary description of the SAGCs key responsibilities under the PMFL as it relates to the accountability relationship with core government.

Exhibit 2 – Descriptions of SAGCs’ responsibilities under the PMFL as it relates to the accountability relationship with core government

PMFL – Sections relevant to the accountability relationships between core government and the SAGCs	Description of the statutory authority or government company responsibility
46(1)	Shall supply the outputs that the GIC has agreed to purchase and shall achieve the ownership performance it has agreed with the GIC.
46(2)	Shall not produce an output during a financial year unless the output is within the nature and scope of the activities that are set out in the annual ownership agreement and the GIC or another entity or person has agreed to pay the full cost of the output produced.
49(1 through 7)	Shall prepare and execute an annual purchase agreement in the prescribed form and within the timetable established for government budgeting. Provides for approval by the Legislative Assembly and for access by the public.
50(1 through 7)	Shall prepare an ownership agreement in the prescribed form and within the timetable established for government budgeting. Provides for approval by the Legislative Assembly and for access by the public.
52(1 through 6)	<p>Shall demonstrate accountability for its actions by preparing an annual report on its performance and compare it with what was proposed in the ownership agreement for the financial year. Also the annual report shall:</p> <ul style="list-style-type: none"> • include the audited financial statements which must be prepared within 2 months of the end of the financial year and submitted to the Auditor General for auditing; • be presented to GIC within 4 months of the end of the financial year; • be tabled in the Legislative Assembly within 4 months and two weeks; and • made available to the public.
Financial Regulations	Provide specific directions related to the maintenance of a reliable and appropriate system for allocating input costs to the statutory authority or government company’s outputs, and direction to follow specific procedures related to procurement and capital investment.

PRINCIPLES THAT SUPPORT STRONG ACCOUNTABILITY RELATIONSHIPS

13. Accountability is a relationship based on obligations to demonstrate, review, and take responsibility for performance, both for the results achieved in light of agreed expectations and the means used. Clearly, this definition would include the accountability relationship between core government and SAGCs as set out in the Public Management and Finance Law.
14. Accountability in government is important in that it serves to:
 - control abuse or misuse of power;
 - provide confidence that activities were completed as intended and with attention to fairness and good stewardship; and
 - promote improvement in the performance of government policies and programs.
15. It is important to look at the underlying principles that need to be addressed in order to develop strong accountability relationships:
 - a) Clear roles and responsibilities – Those in the accountability relationship should have a good understanding of and have agreed to their respective roles and responsibilities.
 - b) Clear performance expectations – The objectives being pursued, the results expected, and the constraints to be expected should be clear, understood and agreed upon.
 - c) Expectations balanced with capacity – Results expectations should be in line with and fully respect the capacity of the organization to deliver.
 - d) Credible reporting – Credible and timely information should be reported that shows what results have been achieved, how that was done, and what lessons have been learned.
 - e) Reasonable adjustment and review – After a process of fair and balanced review has taken place, policies and programs should be adjusted to reflect lessons learned, where appropriate.

ABOUT THE AUDIT

16. The audit objective was to determine whether statutory authorities and government companies are meeting the constitutional and legislative requirements for accountability to core government and whether these arrangements meet good governance standards, as appropriate for the Cayman Islands.
17. This audit focuses on the accountability relationship between core government – the Legislative Assembly, Governor in Cabinet, ministers, ministries and portfolios - and the nineteen SAs and seven GC. The audit did not include the numerous boards, committees and other small organizations that are listed on the government organization chart but which have different governance arrangements than the SAGCs.
18. The audit looked specifically at three aspects of governance that are important to any accountability relationship:
 - setting clear performance expectations;
 - establishing clear roles and responsibilities; and
 - developing credible and timely reporting of performance.
19. Concurrent with this audit, I conducted an audit of the governance arrangements covering core government. There is some overlap between aspects of governance for core government and that for SAGCs. Those overlapping areas are more fully covered in the report on that audit.
20. More information “About the audit” including the scope and criteria can be found in Appendix 1.

AUDIT FINDINGS AND RECOMMENDATIONS

RESULTS EXPECTATIONS ARE NOT CLEARLY ESTABLISHED

21. The setting of clear organisational purpose and objectives is a sign of good governance. Where the objectives being pursued and the results expected are communicated effectively, it can guide the actions and decisions at all levels in an organisation. Results expectations should be in line with and fully respect the capacity of an organization to deliver with the expectations being understood and agreed upon.
22. The SAGCs governance framework calls for results expectations to be established with input from two sources. Firstly, the board of directors and management working together to interpret the organizations mandate set out in the enabling legislation that has been passed by the Legislative Assembly or articles of association. Secondly, the PMFL establishes a process whereby government sets out its strategic direction for all government entities in the annual Strategic Policy Statement, including for SAGCs. The PMFL provides for these two sources of results expectations to be incorporated into key accountability documents, the ownership and purchase agreements, which ultimately are tabled with the Legislative Assembly, and form the key input into the Legislative Assembly's consideration of appropriations of funds. The PMFL anticipates that the GIC and the board of directors will develop an understanding about what results are expected from each SAGC through the process that leads to the signing of the ownership and purchase agreements.
23. Therefore, we would have expected that SAGCs' legislative mandate, articles of association, and the Government's Strategic Policy Statement and Purchase Agreements were the source for the results expectations in their ownership agreement. Further we would have expected that the Governor in Cabinet, Ministers, Chief Officers, boards and chief officers of SAGC would have actively communicated with each other to ensure that all are in agreement with the results expectation that are selected and that they are the ones that best support the Government's strategic outcomes. In the ownership agreement, the SAGC have shown their acceptance of and capacity to deliver on the results expectations established in the agreements.

GOVERNANCE ARRANGEMENTS FOCUS ON ACTIVITIES AND FUNDING

24. The PMFL requires that the ownership agreement set out the strategic goals and objectives for the upcoming and two following financial years, and the ownership performance targets for the upcoming financial year. While the PMFL requires certain specific financial information be included in the ownership agreement, it provides the SAGC the flexibility to provide the information in its own way. We examined the processes and analyzed the key supporting documents that were used to establish the results expectations set out in the ownership agreement of three SA and three GC for 2011-12.
25. We found that the results expectations information included in the ownership agreements of the 6 organizations that we examined were in accordance with their enabling legislation or incorporating documents. However, for the 6 cases examined, the results expectations were largely not clearly stated. Most of the strategic goals and objectives were stated in terms of planned activities rather than as results that were planned to be achieved. Further, only one organization provided performance targets other than those financial statement based targets required by the PMFL. None of the 6 cases examined provided strategic goals and objectives beyond the current planning financial year although this is required under PMFL Section 42(2)(b)(ii).
26. We found that the Government's Strategic Policy Statement (SPS) did not provide specific strategic direction that could be linked directly to any of the 6 organizations examined. While all 6 organizations mandates and planned activities could fit within the SPS' high level statements of intent, or broad outcomes, the SPS' specific outcomes were more activity rather than result-focused. Further, these SPS specific outcomes could not be directly linked to the 6 cases that we examined. None of the SAGC board Chairman or management who were interviewed had played any role in the input to the SPS. They did not feel that the SPS was important to the development of the results expectations set out in their ownership agreement. In our view, the governance requirements associated with the development of ownership and purchase agreements have not resulted in the establishment of clear results expectations.
27. Of the six cases examined during the audit, we found that the Cayman Turtle Farm (1983) Limited, a GC, was the only one that has made considerable progress in identifying specific performance targets that highlight what the organization is intending to do within any given year. Exhibit 3 provides a Case Study of the key performance results expectations in the Cayman Turtle Farm (1983) Limited's ownership agreement and the reporting on the results achieved in its annual report.

Exhibit 3 - Case Study of the ownership performance or results expectations included in the Cayman Turtle Farm (1983) Limited's 2011-12 ownership agreement and subsequent reporting in its annual report

The Cayman Turtle Farm (1983) Limited (the Turtle Farm) started in 1968 as a private venture to raise Green Sea Turtles commercially. It was subsequently taken over by government. Its activities now include the raising of sea turtles for both conservation reasons, as well as the supply of turtle meat to the resident population. In addition, the Turtle Farm operates as tourist attraction.

The Turtle Farm's vision is

To be the Cayman Islands' premier tourism attraction where visitors and residents enjoy a world class experience, showcasing Caymanian wildlife and heritage while hosting an internationally renowned research and conservation centre for sea turtles.

Ownership Performance

In its 2010-2011 ownership agreement and related annual report on ownership performance, the Turtle Farm reported the following key strategic goals with the actual performance reported:

Turtle Herd

- Increase hatchlings by 230%:

For the complete 2011 nesting and hatching season, we put 2514 hatchlings to water, an increase of 74% over 2010

- Reduce hatchling mortality rate by 20%:

The hatchling mortality rate for the 2011 nesting season year-to-date up to 31 August 2011 is 6.8%, compared against 12% for the same period in 2010, a reduction of 43%.

- Grow herd number by approximately 5,000 turtles:

A slight decrease of 199 turtles

Turtle Meat production

- Maintain production at 400 lbs live weight per day, 4 days per week (i.e. 1600 lbs live weight per week).

Production averaged 1297 lbs live weight per week (versus 1600 lbs).

- Adjust meat product retail price to achieve desired level of production and to optimise the turtle herd.

This has now been achieved.

Retail & Tours

- Increase Turtle Farm Tour customer arrivals by 2% to 5%.

The numbers of these customers was adversely affected by the drop in cruise arrivals to the island, with a reduction of 4% in “Turtle Farm tour” customers.

- Review commercial viability of different tours / business segments and adopt a long term sustainable option.

Done.

Financial Performance

In addition the following information was provided related to government funding and financial performance:

“Overall: The company remains dependent on Government for subsidies. In the last financial year the subsidy was approximately CI\$9.9 Million, of which CI\$6.0 Million was applied to debt servicing. Revenues totaled CI\$5.0 Million. Operating Expenses before interest, depreciation and amortization was CI\$9.4 Million. The carrying value of the Bond at the financial year end 30 June 2011 was approximately CI\$26.3 Million, down by CI\$2.2 Million from the previous year. Long-term bank Debt was reduced by approximately CI\$1.7 Million. Further details are contained in the audited financial statements.”

Observation

While the information provided by the Turtle Farm falls short of telling a complete and compelling results story, we believe that the Turtle Farm is making progress towards being able to do this in the future. Officials from both the Turtle Farm and core government indicated that improvements in the timeliness and credibility of both financial and non-financial performance information was very important to improved relationships in recent years when discussing the significant funding requirements that the Turtle Farm requires.

Conclusion

The Turtle Farm case provides an important lesson to be learned by other statutory authorities and government companies about the importance of improving their focus on the results expected to be achieved and their ability to produce credible and timely annual reports on their actual performance.

28. The purchase and ownership agreements are prepared by the SAGC after consultation with ministries and portfolios. While the Chief Officers of ministries and portfolios often sit as ex officio board members, some Chief Officers informed us that their staff do not have a great deal of knowledge about individual SAGC nor do they have the resources to ensure that the agreements meet all of the governance requirements.
29. After interviewing ministers, chief officers of ministries and portfolios, and the chairmen and chief officers of SAGCs about the arrangements for setting results expectations, we found that these arrangements are heavily focused on the annual SAGC funding requirements and looking for ways to reduce these funding requirements. While this is one aspect of governance, the existing arrangements have not led to the establishment of clear result expectations for SAGC.
30. While funding issues are being addressed, how an SAGC will achieve value for money in the use of public funds is not addressed. All organisations that spend public money have a duty to strive for economy, efficiency and effectiveness in their work. We did not observe one situation where an SAGC established how it had achieved value for money in its operations.
31. Core government plays a major role in determining policy and resources, and in setting or agreeing to SAGC objectives. We found that there are few clearly stated government policies that SAGC can look to for direction from government. This policy void by core government leads to uncertainty and a governance framework that focuses on activities and funding rather than on expected results. These issues have been examined in more depth by the Office of the Auditor General during a concurrent audit of the governance framework for core government. The findings of that audit are included in our report entitled "Governance in Core Government".

FAILURE TO COMPLY WITH PMFL REQUIREMENTS AND INCONSISTENT FUNDING APPROACHES

32. Section 46 of the PMFL provides that SAGCs can only provide goods and services, or outputs as they are called in the PMFL, to GIC, or to third parties where they will be paid. SAGCs are not to produce outputs unless they are within the nature and scope of the activities set out in its ownership agreement, and the GIC or a third party has agreed to pay the full cost of the output. In this way, SAGCs should never plan to operate with financial deficits.
33. However, we found that SAGC do not always comply with Section 46 of the PMFL in that they provide outputs to:
 - the GIC that cost more than what the GIC is willing to pay for these outputs;
 - the GIC where there is no purchase agreement with the GIC; or
 - third parties for which they are compensated less than the full cost of the output.

34. As a result, some SAGCs are operating with significant financial deficits which ultimately need to be funded by government. In some instances, government provides SAGCs funding in the form of equity injections to cover funding shortfalls. We believe that the PMFL currently does not adequately consider situations where the GIC will not fund outputs or where third parties do not pay the full cost of the outputs provided.
35. We also observed inconsistent use of the funding mechanisms used for SAGCs. For example, we observed situations where
- an SA provided services on behalf of government yet those services were paid for through an equity injection rather than through a purchase agreement with the GIC; and
 - an SA provides services as part of their transactions with third parties but have purchase agreements with the GIC to subsidize a portion of the cost of those services.

Recommendation #1: The Government should consider whether amendments are required to the PMFL to more adequately deal with all the financial scenarios that SAGCs currently confront and which may not be currently considered under the PMFL.

Recommendation #2: The Government should ensure that the SAGCs ownership and purchase agreements clearly establish intended result expectations.

UNDERSTANDING ABOUT ROLES AND RESPONSIBILITIES COULD BE STRENGTHENED

36. Good governance requires that all players within the governance framework are clear about the functions of governance and their own roles and responsibilities and those of others and they operate in a manner that is consistent with those roles. Understanding your own role, and how it relates to that of others, increases the chance of performing the role well.
37. Therefore, we would have expected that the roles of the Governor in Cabinet, ministers, chief officers of ministries and portfolios, and the board and chief officers of the SAGCs within the governance framework were clearly established, understood and respected in practice.
38. We found that there is often confusion between the roles of a minister, and SAGCs board members about the accountability arrangements and the nature of each other's responsibilities. Ministers felt that SAGCs were directly accountable to them and that they did not always respond to their requests. Board members felt that they had a responsibility to run the organization subject to arrangements established in the ownership and purchase agreements and they did not always understand why and for what they were accountable to a minister.

39. We believe that both positions reflect an incomplete understanding about how the governance framework is supposed to work. The failure by both parties to deliver on their own responsibilities may lead to these misunderstandings. For example, the GIC, as represented by a minister, is responsible for developing and communicating government policy and developing a Strategic Policy Statement that sets out clear strategic direction. If both of these things were being done adequately, the SAGCs boards and management would have a better understanding where their organization fit within the Government's strategic direction and policies. This is the minister's opportunity to have direct input to establishing what it expected from a SAGC. As well, failure of SAGCs to establish clear results expectations in the initial drafts of ownership agreements means that ministers are left to believe that their only input to the discussion about results expectations is in the level of funding required by the organization.
40. Under Section 37 (1) of the PMFL, ministries and portfolios are to provide administrative services to the GIC or ministers to negotiate, agree to and monitor purchase and ownership agreements with SAGCs. However, in most instances ministries and portfolios either have limited knowledge about the SAGC, or they have limited resources to provide this supporting role. The result is that these agreements largely come forward as prepared by the SAGC. We found that these agreements serve largely to focus discussion during the annual planning and budgeting process on the level of funding SAGCs propose and what is eventually approved by the GIC.
41. In speaking to Ministers and board members, we found that the ownership and purchase agreement approach has not served either core government or SAGC community well as both parties are dissatisfied. While both parties sign these documents to show their agreement, the reality is that there is often ongoing, multi and intra-year disagreements over the funding necessary to carry out agreed upon activities.
42. In 2009, the PMFL was amended with one of the changes made relating to the role of the Financial Secretary to align with the Constitution. Previously, the Financial Secretary played a central role regarding all financial management and control issues. With the amendments, the Financial Secretary role became more focused on providing advice to the Minister of Finance. However, the enabling legislation of some SAs still calls for the Financial Secretary to play a central role in their governance, sometimes in contradiction to the PMFL. We observed at least one instance where this ambiguity between the PMFL and enabling legislation has led to confusion over governance roles and responsibilities.

Recommendation 3: The Government should provide training to chief officers of ministries and portfolios, Board members, and chief officers of SAGCs on the governance framework and the roles and responsibilities of all those involved in the relationship between core government and SAGCs.

Recommendation 4: Where necessary, the enabling legislation or articles of association of SAGC should be amended to be consistent with the role the Financial Secretary has been provided for under the PMFL.

PERFORMANCE RESULTS INFORMATION IS INADEQUATE TO SUPPORT ACCOUNTABILITY

43. Strong accountability relationships are supported by the reporting of credible and timely information that shows what results have been achieved, how that was done, and what lessons have been learned.
44. Credible reporting can support a fair and balanced review process that leads to adjustments in policies and programs arising from the lessons learned.
45. I have explained in previous reports the importance of reporting to the accountability process. For example, in my reports on *“Financial and Performance Reporting”* I have provided these introductory comments:

“Timely, accurate and reliable financial information is a fundamental component in ensuring the effective governance and accountability of government and public entities. Without this information, the decision making of the Legislative Assembly, the Government and public bodies is compromised as legislators cannot: make effective and robust decisions regarding the allocation of resources; and, officials cannot effectively manage the resources at their disposal. Furthermore the Government and public bodies cannot be held accountable for how they used public money.”
46. The PMFL establishes clear responsibilities for SAGCs to produce an annual report and financial statements that provide information about their actual performance compared to that agreed to in the ownership agreement. The annual report and financial statements are required to be provided to the GIC and to be tabled in the Legislative Assembly within a specified timeframe that fosters good accountability.
47. Therefore, we would have expected that SAGCs to have fulfilled their accountability reporting responsibilities under the PMFL, and if applicable, under any other relevant legislation by demonstrating how they have delivered on the annual results expectations.
48. I have made ongoing observations about significant problems associated with the late submission of or absent annual reports and audited financial statements by the government as a whole, ministries and portfolios, and SAGCs. I have worked with the Government to address the backlog of financial statements that are ready to be audited.
49. While financial reporting has improved in recent years in many SAGCs, we are concerned that there are still significant financial and management control weaknesses that undermine their ability to produce timely and credible financial statements. At the time we conducted the work in late 2012, for the six SAGC that we examined, none had tabled audited financial statements, either alone or as part of an annual report, with the Legislative Assembly for the financial year ending 30 June 2011. Only one had tabled their audited financial statements for the year ended 30 June 2010.
50. Annual reports on ownership agreements, a PMFL requirement, are not current and, in most instances, lack sufficient information about results expected or delivered to make them

meaningless. For the six SAGC that we examined, none had tabled the required annual reports for recent years with the Legislative Assembly. When we conducted our audit work in late 2012, the most recent was tabled for the financial year ended 30 June 2010.

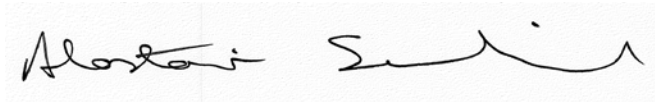
51. We did, however, observe that Cayman Turtle Farm (1983) Limited had produced its annual report for the financial year ended 30 June 2011. While this annual report was submitted to the Minister, it had yet to be tabled in the Legislative Assembly. (Subsequent to undertaking our audit work, annual reports for the year ended 30 June 2011 for five of the six SAGCs examined were tabled in the Legislative Assembly between January and June 2013, over eighteen months after the year end.)
52. This may point to a problem where individual ministers or the GIC do not ensure that these reports are being tabled in the Legislative Assembly. However, we did note that the officials that we met about the Cayman Turtle Farm (1983) Limited felt that there is a strong link between its improved reporting and improvements in the relationship with core government. See Case 1 that provides a summary of the key performance results expectations in the Cayman Turtle Farm (1983) Limited's ownership agreement and the reporting on the results achieved in its annual report.

Recommendation 5: SAGC should comply with the PMFL requirements for reporting to the GIC and the Legislative Assembly.

CONCLUSION

53. Statutory authorities and government companies play an important role in delivering government programs and services, and, in some instances, provide services that are important to the Cayman Islands economy. Overall, statutory authorities and government companies require significant funding from government in order to carry out these activities. The PMFL and the enabling legislation for statutory authorities provide for the governance arrangements for these organizations.
54. Statutory authorities and government companies' mandates, and the Government's Strategic Policy Statements and Purchase Agreements are the source for the results expectations that are included in their annual ownership agreements. However, we found that these results expectations are not clearly stated and focus more on activities being delivered rather than on results that are to be achieved. In addition, the annual ownership agreements do not provide for a results reporting framework that will demonstrate how statutory authorities and government companies plan to achieve value for money for the funding provided by government.
55. In their annual ownership agreements, the statutory authorities and government companies have indicated that they accept and have the capacity to deliver on the results expectations established in the agreements. However, we found that some statutory authorities and government companies do not believe that they are being provided adequate funding to fully deliver on their mandate.
56. The roles of the Governor in Cabinet, Ministers, Chief Officers, and the board and officers of the statutory authorities and government companies provided for in the PMFL and their enabling legislation or articles of association are not always clearly understood and respected in practice. There is a need for improved training and communication about the governance framework for statutory authorities and government companies for all those with governance responsibilities.
57. Statutory authorities and government companies have not fulfilled their accountability reporting responsibilities under the Public Management and Finance Law. Annual reports on ownership performance and audited financial statements are still not delivered on a timely basis and there remain concerns about the ability of some statutory authorities and government companies to provide credible financial and non-financial performance information. However, there have been improvements in statutory authorities and government companies' financial statement reporting in recent years. An important lesson learned is that there is a strong link between more credible reporting and improved relationships between core government and the statutory authorities and government companies.
58. We have noted several areas where Government may need to consider changes to the PMFL in order to strengthen the existing governance arrangements.

59. The PMFL governance arrangements that support the accountability relationship between core government and statutory authorities and government companies covers the establishment of clear results expectations, the definition of roles and responsibilities, and the accounting for results achieved. However, the audit found that the PMFL governance arrangements are not always being fully implemented in practice.

A handwritten signature in black ink, appearing to read 'Alastair Swarbrick', written on a light-colored, textured background.

*Alastair Swarbrick MA(Hons), CPFA
Auditor General
George Town, Grand Cayman
Cayman Islands*

20 December 2013

APPENDIX 1 - ABOUT THE AUDIT

OBJECTIVE

1. The audit objective was to determine whether SAGCs are meeting the constitutional and legislative requirements for accountability to core government and whether these arrangements meet good governance standards, as appropriate for the Cayman Islands.

SCOPE

2. This audit focuses on accountability between core government – the Legislative Assembly, Governor in Cabinet, ministers, ministries and portfolios - and nineteen SA and seven GC. It did not focus on internal governance frameworks of each SAGC.
3. The accountability relationship between core government and the SAGCs is largely established through provisions of the Public Management and Finance Law (PMFL) and Regulations. However, the enabling legislation for the nineteen SA and the incorporating documents for the seven GC establish the mandate and purpose for these organizations. Together, the PMFL and Regulations, and the enabling legislation form the legislative aspect of the SAGC governance framework.
4. The audit looked specifically at three aspects of governance that are important to any accountability relationship:
 - setting clear performance expectations;
 - establish clear roles and responsibilities; and
 - developing credible and timely reporting of performance.
5. The audit did not include the numerous boards, committees and other small organizations that are listed on the government organization chart but which have different governance arrangements from those of the SAGCs.
6. Concurrent with this audit, the Auditor General conducted an audit of the governance arrangements covering core government. There is some overlap between aspects of governance for core government and that for SAGCs. For example, the setting of government strategic direction through the Strategic Policy Statement development. Those overlapping areas are covered in more detail in that audit.

CRITERIA

7. The audit used four criteria against which we evaluated the audit findings. Senior officials, including the Deputy Governor, agreed with our criteria at the outset of our audit:

- a) Statutory authorities and government companies' legislative mandate, and the Government's Strategic Policy Statements and Purchase Agreements are the source for the results expectations in their ownership agreements. Governor in Cabinet, Ministers, Chief Officers, boards and chief executive officers of statutory authorities and government authorities actively communicate with each other to ensure that all are in agreement with the results expectation that are selected and that they are the ones that best support the Government's strategic outcomes.
 - b) In their ownership agreements, the statutory authorities and government companies demonstrate their acceptance of and capacity to deliver on the results expectations established in the agreements.
 - c) The roles of the Governor in Cabinet, Ministers, Chief Officers, and the board and officers of the statutory authorities and government companies are clearly established, understood and respected in practice.
 - d) Statutory authorities and government companies fulfill their accountability reporting responsibilities under the Public Management and Finance Law, and if applicable, under any other relevant legislation by demonstrating how they have delivered on the annual results expectations.
8. The main source for the criteria comes from The Good Governance Standard for Public Services: The Independent Commission on Good Governance (United Kingdom 2004). The good governance standards developed by the Commission are recognized as a reliable source and are in keeping with other similar international guidance. In keeping with the Commission's finding, the criteria were developed with view to an application that is relevant to the context and culture of the Cayman Islands.

AUDIT APPROACH AND METHODOLOGY

9. The audit was conducted in accordance with International Auditing Standards and used performance audit methodology commonly applied by supreme audit institutions. Specifically, we performed the following audit procedures:
- Interviews with the Governor and politicians (Hon. Julianna O'Connor- Connolly and Hon. Mark Scotland);
 - Interviews with the Deputy Governor, Cabinet Secretary, and Financial Secretary,
 - Interviews with most Chief Officers of the ministries and portfolios, and with the Director of Internal Audit.
 - Interviews with the Chairman and Chief Officer of three government companies and three statutory authorities.
 - Review of relevant legislation, regulations, and guidance;
 - Review and analysis of documentation supporting the key governance processes, including the Strategic Policy Statement, ownership and purchase agreements, annual reports, and audited financial statements;

- Prepare a draft audit report including the key findings and recommendations; and
 - Clear the draft audit report for factual accuracy.
10. In effect, the audit focused on reviewing the key governance processes that are central to the accountability relationship between core government and statutory authorities and government companies to determine whether the governance framework met accepted governance principles, as appropriate to the Cayman Islands, and whether it was working as set out in legislation.

TIMING AND AUDIT RESOURCES USED

11. The audit commenced in mid 2012 and was completed in July 2013. The following individuals conducted the audit:
- Martin Ruben, FCGA – Performance Audit Principal
 - Daryl Wilson, FCA – audit consultant
 - Kevin Potter, CMA – audit consultant

APPENDIX 3 – LIST OF SAGCS

Statutory Authorities

Auditor Oversight Authority (1 May 2012)
Cayman Islands Airport Authority
Cayman Islands Development Bank
Cayman Islands Monetary Authority
Cayman Islands National Museum
Cayman National Cultural Foundation
Civil Aviation Authority
Electricity Regulatory Authority
Health Services Authority
Information and Communications Technology Authority
Maritime Authority of the Cayman Islands
National Drug Council
National Gallery of the Cayman Islands
National Roads Authority
Port Authority of the Cayman Islands
Public Service Pensions Board
Tourism Attractions Board
University College of the Cayman Islands
Water Authority of the Cayman Islands

Government Companies

Cayman Airways Limited
Cayman Islands Stock Exchange
Cayman Turtle Farm (1983) Ltd.
Children & Youth Services Foundation
CINICO
National Housing Development Trust
Sister Islands Affordable Housing Development Corporation

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Complaints

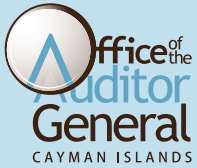
To make a complaint about one of the organisations we audit or about the OAG itself, please contact Garnet Harrison at our address, telephone or fax number or alternatively email: garnet.harrison@oag.gov.ky

Freedom of Information

For freedom of information requests please contact Garnet Harrison at our address, telephone or fax number. Or alternatively email: foi.aud@gov.ky

Media enquiries

For enquiries from journalists please contact Martin Ruben at our phone number or email: Martin.Ruben@oag.gov.ky



December 2013