



GOVERNMENT OF BERMUDA
Ministry of Legal Affairs

**“TOWARDS A CORRUPTION-FREE CARIBBEAN:
ETHICS, VALUES, TRUST AND MORALITY”**

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by

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Hon. Premier, Hon. Attorney General, Mr. Williams, Other Dignitaries, Distinguished Ladies and Gentlemen, I am pleased to have this opportunity as the representative of the Premier of Bermuda, The Honorable Craig Cannonier, JP MP and the Bermuda Government, to share with you regarding Bermuda’s work to address bribery and corruption

and to provide information on the comprehensive regime that we have developed. However, let me first of all congratulate President Roy Bodden, the University College of Cayman Islands team and all those who have been involved in the organization of this conference, for their work in bringing together so many key people to discuss such an important and timely subject for all of our jurisdictions, viz. Towards a Corruption-Free Caribbean – Ethics, Values, Trust and Morality. Thanks also to the Governor and the Government of the Cayman Islands for the courtesies and assistance extended to us.

Bermuda has over the years taken steps in many areas to demonstrate its strong commitment to a high level of compliance with international standards and to play its role in the global fight against crime. As a result, Bermuda has developed a reputation for being a quality international financial centre with a long history of “knowing its client” and strong legislative provisions in key areas that have contributed to Bermuda’s success in this regard. In relation to bribery and corruption, relevant legislative provisions were inserted into a number of different Acts over the years, which it was hoped would act as a deterrent to such types of behavior. These Acts include the Parliament Act 1957, the Parliamentary Election Act 1978, the Rehabilitation of Offenders 1977, the Quarantine Act 1946 and the Criminal Code 1907.

The various provisions were intended to impact the conduct of Members of Parliament, persons in the public sector as well as the general public. In relation to Members of Parliament, offences in this area include asking, receiving, obtaining; or even attempting or agreeing to receive or obtain a bribe or other such type of compensation. In addition, there were relevant offences relating to the Election Process, which would also bring into scope persons who form part of the Legislature. Further, a Ministerial Code of Conduct was developed in 2002, which was expected to govern the actions of members of Cabinet and prevent corrupt activities.

In regard to persons in the public sector, key provisions were enshrined in the Criminal Code 1907. This Act also addressed offences relating to judicial corruption. There were also other legislative and legally binding restrictions which were intended to define the activities of employees in public service and impose penalties for failure to comply. Corruption related offences that were created over the years that are applicable to any persons, regardless of their role or status, included offering and giving of a bribe to members of Parliament or workers in the public sector; corruption or attempted corruption of jurors/ the judiciary/witnesses and other such persons, as well as a number of offences falling under the heading of corrupt practices detailed in the Criminal Code.

As noted earlier, Bermuda has had a long history of "knowing its client" with legislative provisions dating back to 1939 requiring persons to provide

information relating to beneficial ownership. These provisions have been updated and enhanced over time. Therefore, persons wishing to incorporate a company in Bermuda must submit relevant details on the ultimate beneficial owner(s), which is subject to vetting before a decision is made on approval of the application. This is supported by a comprehensive and effective regulatory regime for the supervision of financial institutions (which includes trust and corporate service providers); and a strong and robust framework to combat money laundering and terrorist financing, all of which have been updated and strengthened over the years.

The various requirements which I have outlined to you, along with other relevant provisions that are in place in Bermuda, have for many years provided the basis for the regime to combat bribery and corruption in Bermuda and to assist in the global fight in this regard. However, more recently, the Bermuda Government has taken further steps to reinforce the legislative framework for corruption, particularly as it related to the public sector, as part of an enhanced commitment to fairness, openness and transparency. As a result there have been a number of developments, legislative and operational, to ensure greater accountability and to further encourage and reinforce ethical and fair behavior in the public sector. The Office of the Ombudsman (an independent agency) was established in 2005 to investigate complaints about any Government Department or public authority, and to address issues related to maladministration. Then

in 2010, the Office of Internal Audit was set up as an additional level of oversight, particularly in relation to financial operations and controls of a Department, Ministry or a Quasi- Governmental Organisation. Public Access to Information legislation was enacted by Parliament to enhance transparency and work is ongoing to appropriately implement it. Bermuda has been actively involved in tax transparency initiatives, both at the policy and practice development levels, and has signed over 40 Tax Information Exchange Agreements while also being a signatory to the Multilateral Convention. (It should be noted that Bermuda was given an overall rating of Largely Compliant in the peer review carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes).

In 2011, even greater emphasis was placed on addressing financial accountability and governance matters (including high standards of ethical behavior) with the introduction and passage of the Good Governance Act 2011. This Act made a number of amendments to the Public Treasury (Administration and Payments) Act 1969, the Audit Act 1990, and the Internal Audit Act 2010, while also providing protection for businesses in their dealing with Government and for employees in their companies, by embedding in the Employment Act provisions relating to whistleblowing.

This Act was put in place to achieve the following:

(1) to give increased legislative “teeth” to Financial Instructions (the mechanism governing the administration, use and accounting of government assets by public sector employees) and to procurement activities;

(2) to outlaw non-compliance with Financial Instructions and procurement best practice;

(3) to strengthen the authority of Internal Audit; and

(4) to protect “whistleblowers”.

In relation to procurement matters, the legislation achieved its objectives through:

- a. the establishment of an Office of Project Management and Procurement as the authority to have oversight of all procurement functions in Government;
- b. establishing regulations to define a code of practice for procurement;
- c. establishing penalties for non-compliance; and
- d. embedding in the framework provisions to satisfy key principles relating to transparency; consistency, objectivity and promoting equal treatment to all participants in the tendering process.

When this Act was brought into effect, the result was greater rigour in many key practices and procedures undertaken by public sector

employees, accompanied by strong penalties to encourage compliance. As the then Premier said in the Brief introducing the Bill “We wish to communicate a strong and clear message to the public that Government has zero tolerance for behaviour and practices that do not accord with the highest standards of good governance”.

In 2012, the project to enhance the standards and culture of governance resulted in yet another “Good Governance” Bill being brought to Parliament and ultimately brought into effect, viz the Good Governance Act 2012. The former Premier, in introducing the Bill in Parliament highlighted that "the principle of Good Governance is a goal shared by jurisdictions worldwide", and referred listeners to work done by Transparency International in assessing standards of governance.

This Act has established a procedure for a Minister to consider an application or appeal on behalf of another Minister in certain circumstances; created criminal offences of terminating a contract with, or withholding payment from, certain whistle-blowers; and created criminal offences in relation to collusion in the awarding of government contracts. Further, it has increased the time limit in the Public Treasury (Administration and Payments) Act 1969; the Audit Act 1990; and the Internal Audit Act 2010, to provide that a prosecution for an offence under either Act, be brought within three years. This allowed for an override of Section 452 of the Criminal Code (time limits for commencement of

proceedings for summary offences) which provides that summary offences must be brought within six months and no more than a maximum of twelve months.

All of these new provisions were put in place to help strengthen accountability and integrity and increase transparency and oversight in government operations. Further, the inclusion of integrity provisions in all government contracts (anti-collusion provisions) only served to strengthen the framework to combat corruption in our country.

In conjunction with the changes to the legislative framework, there were structural and operational enhancements to ensure continued increases and improvements in the levels of controls and accountability. The Internal Audit Department expanded its workload, and was very active in performing audits of a variety of government departments and quasi-governmental organisations. As the Internal Audit Act only provided for their reports to be shared internally or with the Auditor General, a new unit was established within the Cabinet Office, known as the Performance and Service Delivery Unit, to review the Internal Audit reports and follow up with the relevant Permanent Secretary and Department Head as necessary. The expectation is that addressing deficiencies identified in Internal Audit reports is the responsibility of the Permanent Secretary, Department Head or Head of the Quasi-Governmental Organisation, as appropriate. However, where timely or required action is not taken, then

the Cabinet Office can bring its authority to bear through the work of the Performance and Service Delivery Unit.

Although the actions mentioned thus far in this presentation are significant in addressing the risks and vulnerabilities relating to bribery and corruption, Bermuda is not “resting on its laurels” in this regard. Currently work is ongoing to review and update the Ministerial Code of Conduct; the Financial Instructions; the Civil Service Code of Conduct; and the Procurement Code of Practice to ensure that Good Governance is applied consistently in all of the documents that govern conduct in the public service. A joint team consisting of staff from the Cabinet Office and the Office of the National Anti-Money Laundering Committee is reviewing the provisions of the United Nations Convention against Corruption and the OECD Anti-Bribery Convention, to determine what additional gaps still exist in Bermuda’s extensive arsenal to fight corruption and bribery. The legislative provisions relating to actions of the general public in relation to bribery and corruption are also being reviewed, to ensure that Bermuda is appropriately playing its role in the global fight in this area. In particular, it has already been noted that the offence of bribery of a foreign public official will have to be incorporated into the legislative framework. Once the existing gaps in relation to the international conventions are addressed, then application will be made to the UK Government to seek extension and application of these international treaties.

Notwithstanding the comprehensive regime in place to prevent and deter corrupt activities, there have been instances where persons have acted outside of the relevant laws. As a result action has been taken, which has included public prosecution of individuals. We recognise that it is not enough that laws be put in place to require ethical behaviour, but there must also be enforcement action taken to penalise non-compliance. This can only serve to reinforce the effectiveness of the regime and create a culture of compliance and integrity.

In closing I would state that, as noted at the outset of this presentation, Bermuda's commitment to a high level of compliance with international standards is strong. We have spent decades building our positive reputation and becoming a respected participant in the international financial community. I have highlighted in this presentation the significant work that has already been done to enhance and update our governance structure and build a strong and robust regime to combat bribery and corruption; and to reinforce high standards of integrity and ethics. However, we recognise that corruption impacts all sectors of society and participation at all levels is required to effectively prevent and fight this scourge. We will therefore continue to promote integrity and accountability in the management of public affairs and public property; and good and credible private sector governance. We pledge to work with all the members of the Caribbean family as we move towards building a

‘Corruption-Free Caribbean”, based on Strong Ethics, Good Values, Well-founded Trust and a Commitment to Morality.

Thank you.