



PO Box 1358, Harbour Drive, Grand Cayman, KY1-1108, Cayman Islands
(345) 949 2055, Fax (345) 949 5820

Minutes of the 377th Extra- Ordinary Meeting of the Members of the Port Authority of the Cayman Islands to discuss the Draft Public Authorities Bill 2015 held at the Port Authority office on 45 Harbour Drive, George Town, Grand Cayman at 1300 hours on Wednesday April 8th, 2015.

Member Present:

Mr. Errol Bush MBE – Chairman
Mr. Gerald Kirkconnell – Deputy Chairman
Mr. James C. Parsons, Jr – Secretary
Mr. Ashton Bodden, JP
Mr. Woodward DaCosta
Mr. Robert Foster
Mr. Arek Joseph
Mr. Michael Nixon
Ms. Jacqueline Scott
Mr. Randy Whittaker

Apologies:

Mr. Stran Bodden, JP

Notice and Quorum:

The Chairman noted that due notice of the meeting had been given to all Members and a quorum existed. Accordingly, the Meeting could proceed.

Welcome and call to order:

The Chairman welcomed Members in attendance and called the meeting to order at 1310.

Review of the Draft Public Authorities Bill 2015:

Summation of Members' thoughts of the subject Bill

The Members submit that having perused the subject Bill, they understand what Cabinet is endeavouring to accomplish. Generally, much of the Bill creates the mechanism sought for the implementation of best practice for the efficient and effective operation of the public sector. However, several sections of the Bill raise concerns once it becomes enacted. These concerns and their suggestive adjustments are outlined below in paragraph's I to XII.



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Concerns and Suggestions

- I. **Sections 48 and 49.** - Our chief concerns are with Sections 48 and 49. The Members submit that in operation they may not be reasonable and or practicable. We believe that there must be clear and distinguishable roles for the Cabinet, and the Minister whom we understand is responsible for the functions of Board, and thus he is responsible to the Cabinet for the oversight of those functions.

The Members hold the opinion that the above-mentioned sections will create certain confusion by causing Boards and their Chief Executive to wonder from whom do they take direction and or answer to, is the Cabinet or the Minister?

Consequently, we respectfully suggest deletion of both Sections 48 and 49 and replace with following **Suggestion**.

Role of the Cabinet

48. The Board of a Public Authority is accountable to the Cabinet for the performance of the public authority and the Cabinet is responsible to the Legislative Assembly for the performance of the public entity.

Powers of the Cabinet

49. The Cabinet has the power to –
- (a) appoint board members in accordance with the provisions of Part III (appointment & remuneration of boards);
 - (b) agree the ownership performance required of each public authority with the Board of the authority and to monitor the achievement of that performance in accordance with the provisions of the Public Management and Finance Law (2012 Revision);
 - (c) where relevant, agree the outputs to be delivered by public authorities and funded by the Cabinet with the Board of those authorities and monitor the delivery of those outputs in accordance with the provisions of the Public Management and Finance Law (2012 Revision); and
 - (d) to order an investigation into compliance of the law as outlined in section 54(2) of this law;



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The Role of the Minister

50. The Board of a Public Authority is accountable to the relevant Minister for the exercise of the public authority's functions and the Minister is responsible to the Cabinet for the oversight of those functions.

Powers of the Minister

51. The relevant Minister has the power to:

- (a) establish policy ensuring there are a clear division between policy and operation;
- (b) give directions and request information;
- (c) to initiate a review of the public authority's management systems, structures or processes;
- (c) to extend policies that apply to the civil service to the public authorities as and when necessary to ensure good governance; and
- (d) to appoint the Chief Officer of the Ministry, as oversight and liaison officer between the board, Chief Executive Officer and the responsible Minister or Official Member.

Concern and suggestion

- II. Section 3.** - The definition of "voting member" and its insertion must be completed in Section 3. Considering the *Port Authority Law (1999 Revision)* does not identify whom is or is not a voting member, we submit that for avoidance of misunderstanding a clear definition must be underfoot.

Concern and suggestion

- III. Section 9 (2) (b)** the words "*such as but not limited to close familial ties to The Minister, other Board Members, the Chief Executive and or the Chief Officer, which may*" should be inserted immediately after the word "interest" and before the word, "likely". In addition, delete the word "to" immediately after the word "likely".



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Concern and suggestion

- IV. Section 9 (4) (a) – deleted the word “two” and replaced with the word “three”.

The Members submit that in operation in our specific context, we have found it invaluable to have three full time public/civil servants as board members.

- The Chief Officer for the Ministry, whom has instant insight of policy and other pertinent information.
- The Finance Minister’s proxy whom assist tremendously with instant knowledge of budgetary expectations, operational policy of government with regard to finance among other valuable resourceful information.
- The Collector of Customs or his proxy, whom is a key user of Port facilities, not to mention a strategic partner with the clearing of imported cargo and people unto our shores.

To lose, a well-configured synergistic Membership may be detrimental to the positive direction the Port is heading in. This sub-section appears to be far too focused on the sum of the individual effects, than total overall greater good of our islands in this respect.

Concern and suggestion

- V. Section 13 – Considering sections 26 and 46, which seeks to create consistency of remuneration for all jobs, the same must be of the SAGC’s.

Concern and suggestion

- VI. Section 16 (9) conflicts with section 25 (d). Section 16 (9) legislates that a succession plan for senior management must be underfoot. Yet under section 25 (d) it calls for publically advertising for suitable qualified persons to apply for the position of Chief Executive Officer. We submit that Section 25 (d) will have an adverse affect on the morale of Senior Management, which could translate down throughout the entire staff because the impression is that there is no genuine succession plan.

The Members suggest that the open recruitment mandate in Section 25(d) be deleted considering Section 16 (9) coupled with our concerns of contending with low staff morale as expressed above.

Two handwritten signatures in black ink, one appearing to be 'JH' and the other 'JP'.



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Concern and suggestion

- VII. Section 17 (4) -** The Members believe that this sub-section poses a great risk to maintaining good governance of the Board. This provision heightens the concern of the Board for possible abuse especially when it is coupled with sub-section 8 even though section 23 expresses it does not condone malicious acts.

The Members submit that this mechanism creates an opportunity for as little as three Members to call, hold and pass a Board directive at a meeting not to mention allow for the undermining of its Chairman.

The Members suggest deletion of sub-section (4). Recourse through the Cabinet or the Minister is available if the Chairman acts unreasonably as outlined in sub-section (4).

Concern and suggestion

- VIII. Section 17 (5) –** This sub-section will now be sub-section (4). In addition, the word “and” and the number expression “(4)” must be deleted.

Concern and suggestion

- IX. Section 17 (7) –** The word “simple” should be replaced with the hyphenated words “two-thirds” and the numerical expression in parentheses “(2/3)”.

Concern and suggestion

- X. Section 26 (2) –** The Members suggest the deletion of the words “private sector”.

Having to benchmark against private sector will be futile; a waste of time and resources especially considering Section 25 (1) (b) establishes that the remuneration package will be based on the civil service scheme.

Concern and suggestion

- XI. Section 28 (1) –** The Members suggest the insertion of the following Sub-sub-section:

“(c) misconduct pursuant to Section 52 (1) of the Labour Law (2011 Revision).”



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Concern and suggestion

- XII. Section 28 (2)** – The words “in consultation” be deleted and replaced with the word “advise”.

Adjournment:

There being no further business the meeting was adjourned at 1610 hours until the next regular meeting.

Handwritten signature of Errol Bush in black ink.

Errol Bush - Chairman

Handwritten signature of James C. Parsons, Jr. in black ink, featuring a large loop.

James C. Parsons, Jr. - Secretary