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Addendum to Port Authority 2017 – Potential Abuses/Fraud Report

Subject: Meeting with Clement Reid, Port Director, Port Authority of the Cayman Islands

Date: 29 January 2018

Location: Large Board room – OAG premises

Attendants:

OAG: Patrick Smith; Director of Financial Audit

OAG: Audit Project Leader

PACI: Mr. clement Reid; Port Director

Mr. Mr. Reid's lawyer

Background

On Friday January 26, 2018, the OAG received the responses to our report, "Re: Port Authority 2017 – Potential Abuses/Fraud Report" from Clement Reid, Port Director (PD) via the Port Chairman Mr. Bush. We reviewed his responses and met with Mr. Reid to seek further clarification on some of his responses. Below is a summary of our clarification questions and his responses.

- redacted in accordance with Sections 20(1)(d) and 23 (1) of the FOI Law.

Addendum to Port Authority 2017 – Potential Abuses/Fraud Report

Breach/Non-compliance Act #1 -The HR Manager being excluded from New Hires process is a departure from the PACI employee hand book and (effective 1 June 2017) is also a breach of the Public Authorities Law.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 4	What do you consider to be the 'general supervision' of the Authority? If the hand book is sanctioned by the PACI Board would you consider it to be a 'general supervision' document?	<p>The PD noted that he uses 2 books as reference for general supervision, the Employee Manual and the Port Authority Law.</p> <p>He noted further that there are certain sections in the employee manual that may no longer be applicable or relevant however there is a plan currently in progress to update the manual to reflect and make it compliant with current laws and regulations.</p> <p>The PD also pointed out that the HR manager was not competent to carry out some of the strategic HR requirements, so these things fell to him to undertake.</p> <p>The PD was unable to identify which specific sections of the employee handbook he deemed to be not applicable.</p>
Para 5 & 6	<p>What was the objective and scope of the work done by Deloitte?</p> <p>As at October 2015 was the Deloitte report considered finalized? Was there a board resolution for its contents to be enacted?</p>	<p>The PD discussed that the scope of the Deloitte work was designed in Jan 2015 prior to him been appointed as PD.</p> <p>The scope of work included making updates for job descriptions and providing guidance on the organization restructuring of the Port. The PD noted that there was a subcommittee which consisted of board member who over saw the work being done by Deloitte; he further noted that all decisions were made with the knowledge of the Board.</p>

Act #1 - OAG synopsis: The PD responses do not remove our concerns that the Public Authority Law and the Port Employee Handbook were not appropriately followed in the recruitment processes.

Breach/Non-compliance Act #2 – Contracting of salary in excess of advertised salary range.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 18	What does the Deloitte report state regarding the salary bands for an office manager? Are there some elements of the advice from Deloitte that you have accepted and acted upon, and some that you have rejected and opted to revert to historical guidance?	In regards to [REDACTED] recruitment, the PD noted that there were challenges faced in recruiting for the post and with the assistance of Deloitte, [REDACTED] was recruited using a vacancy advertisement with a salary range that was comparable to the Cayman Government salary bands. However in negotiations with [REDACTED] he opted to increase [REDACTED] salary to a higher amount but which still fell within the PACI existing salary bands for a manager.

Act #2 - OAG synopsis: The PD responses do not remove our concern that the officer manager was paid more than the maximum advertised. We further noted our concern that by advertising a post with a maximum salary range but then agreeing to pay one applicant an amount in excess of the maximum advertised creates a situation where other potential applicants may have been excluded and the PACI may not have hired the best possible candidate for the post.

Breach/Non-compliance Act #3 – Not including the HR Manager in the recruitment process is in contravention of the PACI employee handbook. The hiring of new staff by the Port Director without allowing other applicants to be considered was done in contravention of the PACI employee handbook.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 27	<p><i>With specific reference to the changing of the job description of office manager to operations manager when [REDACTED] was hired, and the increase in annual salary for the post to \$[REDACTED] from the originally advertised range of \$42,564 to \$63,912 the following question was asked:</i></p> <p>Considering the expanded remit and the increase of the salary for the operation manager, which would have potentially made the post more appealing, how did you</p>	<p>The PD discussed his rationale for hiring by stating:</p> <p>Following the departure of [REDACTED] he was not inclined to have another recruitment process considering the challenges faced in the past. Therefore he took the recommendation of his peer ([REDACTED]) at the MACI and proceeded with the recruitment of [REDACTED] instead of advertising it internally and externally. He noted that he deemed [REDACTED] to be highly qualified for the job due to [REDACTED] educational qualification (master's degree, etc.). He noted that he requested for the</p>

	determine that there were no suitable candidates for this 'new' position?	<p>HR manager to be involved but [REDACTED] declined on the basis that it seemed that he had already made up his mind.</p> <p>The PD noted that he widen the role and thought it necessary to change the title and increase the salary.</p> <p>He agreed with the OAG that these changes created a new position and by not advertising was a departure for the employee hand book.</p>
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Act #3 - OAG synopsis: The PD responses do not remove our concern that the hiring of [REDACTED] contravened the PACI employee handbook. His acknowledgement that he changed the job description, job title and significantly increased the salary supports our position that this was a new hire and should have been done in a manner that ensured an open and fair process.

Breach/Non-compliance Act #4 – Increasing the salary of [REDACTED] without an evaluation and prior to the end of the fiscal year end contravenes the PACI employee handbook and the terms of the contract

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 30	<p><i>With reference to the PD assertion regarding the subjective opinion and discretion of the Port Director, the following questions were asked:</i></p> <p>As the PACI is a public authority and you are charged with the management of public resources do you believe that your discretion should be objective and substantiated?</p> <p>What would be your basis for making your decisions and rendering your opinion?</p>	The PD advised that we put these in context bearing in mind that the Port did not have structure/resources to handle a lot of the key operational processes. That meant he had to perform some of these HR functions, though he did not have the requisite experience and the employee manual does not provide guidelines for certain specific situations.
Para 31	<p>Who prepared the Job description for the Post of Chief Operating Officer (COO)?</p> <p>Explain the difference in</p>	<p>The PD stated that he prepared the job description for the post of COO.</p> <p>He noted that the variation in the qualification and experience requirements</p>

	<p>qualification and experience requirements for the COO and the Deputy Director Commercial Customer Services (CCS) The key difference highlighted to the PD by the OAG was that the CCS post had a mandatory requirement for 7 years of experience where in the COO job description this was in effect an optional requirement.</p> <p>What was the basis used in determine that [redacted] merited an increase in salary following [redacted] promotion?</p>	<p>of two positions of the same level (COO and CCS) was mainly due to his lack of HR experience and the fact that he had to create some of these job descriptions from scratch since he had no reference for guidance.</p> <p>The PD stated that the email that was sent to the HR manager directing that [redacted] pay be increased from \$ [redacted] to \$ [redacted] was sent in error and retracted as \$ [redacted] was not the amount he had intended to increase her salary to.</p> <p>The PD was unable to provide the salary amount he had actually intended for the increase.</p>
Para 31	<p>How was [redacted] performance assessed in order for you to determine that [redacted] merited a promotion?</p>	<p>The PD noted that in terms of promotions, no formal assessment is done before an employee is promoted. In regards to [redacted] performance over the previous 6 months was used as the basis for [redacted] promotion.</p> <p>There is no formal documentation to demonstrate the nature or extent of the assessment.</p>
<p>Act #4 - OAG synopsis: The PD responses do not remove our concerns regarding his directive to increase [redacted] salary without a proper assessment process.</p>		
<p>Breach/Non-compliance Act #5 The Port Director promotion of [redacted] was in direction contravention of the Public Authorities Law, and his actions occurred following formal notification from the CO via email on 1 June 2017 of the law being in effect, and 1 day after the implementation of the Law was discussed at a PACI Board meeting, at which he was present.</p>		
Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 37	<p><i>In his written response the PD referenced only a portion of the relevant section of the Public Authorities Law.</i></p> <p>With regards to the rest of Section 41 (1) of the PAL, how did you ensure that an open</p>	<p>The PD noted that the challenges or limited resources at his disposal such as having no executive team to work with and assist him in the running of the Port resulted in "compromising" situations where he had to take executive decisions in regards to aspects of the hiring process</p>

	and fair processed was applied to this promotion? ([redacted] to COO)	
Para 37	<ol style="list-style-type: none"> 1. How does the role of COO align with the Deloitte report? 2. Who prepared the JD for the post of COO? 3. How was section 42 of the PAL applied in the filling of the COO position? 4. Were there any other persons in the PACI with an interest and/or capability to take on the role of COO? How was that determined? 	<ol style="list-style-type: none"> 1. The PD noted that the COO position was not in the Deloitte report due the fact that: <ol style="list-style-type: none"> a. Deloitte did not have the industry expertise in terms of the resources required to effectively run the Port Authority. b. A lot of things have changed in the industry since the scope of work required was provided to the Deloitte in January 2015. c. With his almost 20 years of experience (since 1999) working at the Port and knowledge in the industry he deemed the COO position as required and appropriate position for the effective operation of the Port. 2. The PD noted that he prepared the job descriptions of the COO position himself after only research of similar positions and job descriptions of similar positions. 3. The PD did not provide a response that showed how the process he utilized met the requirements of the PAL. 4. The PD noted that he was the only executive so there was no one else who could fill the role of a COO
<p>Act #5 - OAG synopsis: The PD responses do not remove our concerns that the actions taken by the PD to promote [redacted] to a 'new' position was in direct contravention of the Public Authorities Law.</p> <p>Breach/Non-compliance Act #6 - The Port Director hiring of [redacted] was in direction contravention of the Public Authorities Law, and his actions occurred following formal notification from the CO via email on 1 June 2017 of the law being in effect, and after the implementation of the Law was discussed at a PACI Board meeting, at which he was present. The Port Director's directive that a medical examination and references were not required is a breach of the PACI employee hand book and the Public Authorities Law (2017).</p>		
Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 47.1	<ol style="list-style-type: none"> 1. What was the date of [redacted] most 	<ol style="list-style-type: none"> 1. The PD noted that he was not sure of the exact date of [redacted] most

	<p>recent background check?</p> <p>2. Do you consider the security profile of the PACI to be the same as that of MACI?</p>	<p>recent background check and agreed that it could have been many years ago and therefore required a new background check.</p> <p>2. He noted further, however, that the security clearance required at MACI and (for Maritime functions) are much more higher/stricter than that of the Port, therefore he was confident that [redacted] coming from another public sector entity with a much stricter security clearance requirements will not pose any security threat to the Port.</p> <p>With regards to compliance with the PAL the PD in response to both matters surrounding the hiring of [redacted] and [redacted] stated that as it was a new legislation we was not clear on it and would have required training, which was not provided until December 2017, after the acts noted had already occurred.</p>
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Act #6 - OAG synopsis: The OAG in its report provide for the Board's information evidence that the PD was aware of the implementation of the Public Authorities Law (PAL) at the time decisions/directives were made by the PD in direct contravention. In our discussion with the PD we queried what specific content of the PAL section 41 and 42 (which speak to recruitment and promotion) did the PD find to be unclear or outside the expected understanding of a senior government official, to which he did not provide a concise response beyond noting that he was faced with compromising situations due to limited resources.

We therefore maintain our view that his actions in hiring [redacted] and [redacted] and subsequently 'promoting' [redacted] contravened the PAL.

Breach/Non-compliance Act #7 – Contracting of salary in excess of advertised salary range and the PACI 2016/17 budget

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 53	<i>In his written response the PD noted that as [redacted] had experience in Occupational Safety that was added to his responsibilities removing the need for a deputy director for Security, Safety and Crisis Management.</i>	The PD noted that [redacted] had enormous experience in occupational safety from [redacted] previous position and therefore decided to "add a few more money" to [redacted] salary to carry out that role instead of spending a huge amount of money to bring in another person. He said this approach was taken with the intention of saving money or cutting down cost for

	<p>Can you please clarify if you're asserting that as [REDACTED] had [REDACTED] experience [REDACTED] for occupational safety you no longer saw a need for a DD to direct areas of security, safety and crisis management as recommended by Deloitte? If so how these areas are adequately addressed?</p> <p>OAG highlighted our concern, that as was the case with the recruiting of [REDACTED], the PACI had, following the recruitment process made decision regarding the nature of a job, that other potential applicants would not have been privy too, so as a result it was not possible to ascertain if the best candidate was hired for the post.</p>	<p>the Port. In addition to the safety, [REDACTED] [REDACTED] also took on the responsibility for crisis management. Security is the responsibility of a security manager.</p> <p>The PD concurred with the concerns noted by the OAG regarding the manner in which the recruitment was conducted.</p>
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Act #7 - OAG synopsis: The OAG appreciated the intent of the PD to consolidate responsibilities in order to reduce cost, we however noted our concern that by advertising a post with a maximum salary range but then agreeing to pay one applicant an amount in excess of the maximum advertised creates a situation where other potential applicants may have been excluded and the PACI may not have hired the best possible candidate for the post. As recruitment occurred after the 1 June 2017, there are further concerns that the actions taken depart from the requirements of section 41(1) which requires that an open and fair process is adhered to in making personnel management decisions.

Breach/Non-compliance Act #8 – Contracting of salary in excess of the PACI 2016/17 budget.

Act#8 – OAG believes the PD responses did not require any additional clarification.

Breach/Non-compliance Act #9 – The recruitments approved and in some instances initiated by the Port Director has increased the PACI annual payroll cost by \$1.7 million per annum. This amount exceeds the budgeted annual increase by \$400,000 per year.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 69	The assessment was focused on the PACI recurrent cost for staff. Based on the 2017 budget (annualized) the expected increase in payroll	The PD noted that the budget schedule were a bit confusing and needed some clarification. He mentioned that he did not receive any advice or clarification from the CFO who prepared the budget schedule

	<p>cost was 1.3million. Based on contracts entered into that amount was 1.7million as at the time of the report. And all budgeted posts were not filled.</p> <p>OAG agrees that within the fiscal period ending 31 December 2017 there were cash savings as all contracts were not signed at the beginning of the fiscal period and there was also a freeze in August 2017,</p> <p>But what will the impact of these new hires have on the PACI projected payroll cost for the next two budget cycles?</p> <p>Has the increase in contracted payroll cost been considered and appropriately addressed?</p>	<p>before presenting it to the Board.</p> <p>He acknowledged that the increase in the following years was not considered in his decisions and if he had been so advised by the CFO he would have made different decisions.</p>
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Act #9 - OAG synopsis: The PD responses does not remove our concerns that the contracts entered into by the PD has committed to PACI to annual payroll cost in excess of what was originally budgeted.

Breach/Non-compliance Act #10 – The granting of paid leave for 63 days by the Port Director contravenes the PACI Employee Handbook.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 74	In making the decision to grant this leave did you consult with the PACI Employee Hand Book? What category of special leave outlined in the handbook did you use as the basis for approving the leave?	The PD said he made that decision to grant [redacted] the 63 days paid leave because there was no other recourse (thus, no policies, guidelines, regulation) that he could refer to, to seek guidance and make an informed decision
	At what point did you bring this matter to the PACI Board's attention?	He stated that it was after the 63 days had already been granted that he notified the PACI Board.

Act #10 - OAG synopsis: The PD could not align the nature of the leave he granted to leave defined in the handbook. Although in his response he noted that there was no recourse, we highlight that had this matter been brought to the Board's attention at the initial stage the excessive paid leave could have been avoided.

The PD responses do not remove our concerns that the granting of paid leave for 63 days by the Port Director contravenes the PACI Employee Handbook.

Breach/Non-compliance Act #11 – Release of wrecked vessel to Port Authority employee without proper & clear evidence of rights to owner of vessel.

Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 93	<ol style="list-style-type: none"> 1. What is the determining consideration for the receiver of wrecks in deciding on who should be given a wrecked vessel? Who found it or who towed it to shore?(<i>The PD did not directly answer this question, but the Merchant law speaks to who has found a vessel rather than who towed it in</i>) 2. What information did you receive that [redacted] had found the vessel? 3. How did you factor in the information provided to you by [redacted] in November 2016 regarding the conflicting claims? 4. What steps did you take subsequently that provided you with comfort that [redacted] [redacted] claims did not merit consideration prior to your decision to release the vessel? 5. Did you consult with [redacted] [redacted] to determine if the conflict had been resolved prior to deciding to release the vessel? 	<p>To these questions the PD discussed the criteria and basis of his decision 18 months after the incidence saying that it was based on email correspondence from 2 senior officers at the police one of whom he knew personally and spoke to on the matter.</p> <p>The PD pointed out that he had not received a copy of the log report from [redacted] [redacted] even after requesting all of the related information on the matter.</p> <p>The PD summarized that he did not have all the evidence available to make the correct decision, including the official police report. And He noted that the final decision would have been different had he been presented with all the evidence/information available.</p> <p>He however conceded that he did not consult with [redacted] to determine if the conflict had been resolved.</p>

Act #11 - OAG synopsis: The PD did not explicitly respond to all of the questions, but acknowledge that he made the decision without having procured all of the information. The PD responses do not remove our concerns that the release of wrecked vessel to Port Authority employee was done without proper & clear evidence of rights to owner of vessel.

Breach/Non-compliance Act #12 - Ongoing

Act#12 – OAG believes the PD responses did not require any additional clarification.		
<u>Breach/Non-compliance Act #13 – Incurrence of expenditures in excess of \$100,000 on renovations with no evidence provided of business case and tendering.</u>		
Reference (to PD Response)	OAG Follow up Questions/Comments	PD clarification/further responses
Para 102	Was a business case put together for the renovation of the 2 nd floor for the new hires?	The PD admitted that no business case was prepared nor was the renovation submitted for public tender
Act #10 - OAG synopsis: -The PD response does not remove our concern that expenditures in excess of \$100,000 on renovations with no evidence provided of business case and tendering.		