



CAYMAN ISLANDS

**GOVERNMENT OF THE CAYMAN ISLANDS SUBMISSION TO
THE FOREIGN AFFAIRS COMMITTEE INQUIRY ON OVERSEAS TERRITORIES**

16 OCTOBER 2007

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Introduction

1. This submission is made by the Government of the Cayman Islands further to an announcement dated 5 July 2007¹ by the Foreign Affairs Committee (the Committee). This announcement outlined plans for an inquiry (the Inquiry) into the exercise by the Foreign and Commonwealth Office (FCO) of its responsibilities in relation to the Overseas Territories and the FCO's achievements against its Strategic Priority No. 10, being the security and good governance of the Overseas Territories.
2. The written evidence contained herein responds to each of the stated areas of focus of the Inquiry. It is hoped that this information will assist the Committee in its deliberations by providing an understanding of the Cayman Islands' substantial investments in good governance and associated standards of practice.
3. The written evidence is produced under the authority of the Leader of Government Business and the Cabinet Office. Contributors include:
 - The Cabinet Office
 - The Constitutional Review Secretariat
 - The Portfolio of Finance & Economics
 - The Attorney General's Chambers
 - The Human Rights Committee
 - The Cayman Islands Government Representative in the United Kingdom
4. The Cayman Islands appreciates the opportunity to make this submission and would like to reserve our position in respect of the ability to provide additional or supplementary oral evidence on the matters set out in the written evidence.

¹ PN 31 (06-07).

Executive Summary

5. The Cayman Islands submission is presented in nine sections and covers each of the headings referred to in the Inquiry. A summary of key points and any recommendations from each section is provided below.

Section One – Standards of governance

6. The Cayman Islands governance framework has the traditional three basic constituent elements: the executive, the legislature and the judiciary and the separation of powers principle pertains.
7. The current administration has made a specific, express commitment to good governance. This is reflected most recently in the passage of the Freedom of Information Law, 2007 and in the tabling of comprehensive anti-corruption legislation designed to give domestic effect to the UN Convention against Corruption and the OECD Convention on the Bribery of Foreign Public Officials.
8. The Cayman Islands' ranking for 2006 under the World Bank Institute (WBI) governance indicators (at the 95% reliability level) is in the 50th-75th percentile for voice and accountability; the 90th-100th percentile for political stability, and the 75th-90th percentile for government effectiveness, regulatory quality, rule of law and control of corruption.

Section Two – The role of the Governor and other office-holders appointed by or on the recommendation of the United Kingdom Government

9. It is the desire of the Cayman Islands Government, in the context of the constitutional review process, to negotiate with the United Kingdom a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands.

Section Three – The work of the Overseas Territories Consultative Council

10. Attendance at OTCC meetings is costly and time-consuming for OT ministers generally. To improve the value of the forum and capitalise on its potential, the Cayman Islands recommends that:
 - a. more/alternative opportunities be afforded for bilateral meetings with UK ministers on topics of special interest to individual OTs;
 - b. a more collegial approach to OT development concerns be adopted;
 - c. the OTCC, with UK assistance, seek to clarify the definition of its associate membership in international organizations; and
 - d. UK ministers, the FCO and OT ministers provide feedback on subjects covered at OTCC meetings that require additional coverage at subsequent OTCC meetings, in advance of such meetings.
 11. It is further suggested that there be more frequent high-level ministerial visits by the UK to the Overseas Territories. The Cayman Islands would recommend at least one such visit per year.
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Section Four – Transparency and accountability

12. Over the past several years, the government has brought to fruition two major initiatives, driven by the objective of increasing transparency and accountability in government operations. These initiatives are reflected in the Public Management and Finance Law (PMFL), first enacted in 2001, the successor to the Public Finance and Audit Law, and the Public Service Management Law, (PSML) enacted in 2005. Running complementary to this is the governing party's manifesto, in which the commitment to transparency and accountability is an explicit and implicit theme.
13. The PMFL and the subsidiary Financial Regulations set the standards for government budgeting, financial management and associated reporting to the legislature. While some elements of implementation are still in the transitional phase, the Law is a comprehensive and demanding piece of legislation that enables the Cayman Islands fiscal system to correlate strongly with the *IMF Code of Good Practices on Fiscal Transparency (2007)*
14. The PMFL establishes statutory principles of responsible financial management. There has been full compliance with the principles of responsible financial management for each of the periods ended 30 June 2005, 30 June 2006 and 30 June 2007.
15. The accountability framework for the civil service was significantly overhauled with the advent of the PSML. All civil servants are required to execute performance agreements that specify the outputs that they are responsible for delivering and to comply with a statutory code of conduct.

Section Five – Regulation of the financial sector

16. Stability, integrity and quality are important to Cayman as a global provider of financial services. The government fully associates itself with the statement in the 1999 White Paper that, "[i]n the long run, it is the quality jurisdictions that will prosper best. There must be no weak links which can help to undermine the international financial system." As concluded by *The Economist*, "well-run jurisdictions of all sorts, whether nominally on- or offshore, are good for the global financial system."
17. The Cayman Islands Monetary Authority (CIMA) was established in 1996 as the successor to the line government department of Financial Services Supervision. It is the primary financial services regulator and enjoys full operational independence, being responsible for all licensing, supervision and enforcement activity. Key features of the regulatory regime include:
 - *Observance of recognized and relevant international standards* – Basel Core Principles for Effective Banking Supervision, International Association of Insurance Supervisors (IAIA) Core Principles; International Organisation of Securities Commissions (IOSCO) core principles, and the Financial Action Task Force 40 recommendations on money laundering and nine special recommendations on terrorist financing (FATF 40+9)
 - *Application of statutory 'fit and proper' criteria to market participants* – at entry and as an ongoing activity, CIMA performs due diligence on all directors, major shareholders, and senior officers of licensees
 - *International cooperation* – The Authority has a statutory obligation to provide assistance to overseas counterparts.
18. The Cayman Islands is fully committed to supporting global efforts to fight financial crime and has progressively reinforced the international cooperation regime to deliver on this commitment, through statutory law enforcement and regulatory gateways. These gateways, by design, are not inhibited by Cayman's confidentiality regime.

19. The Cayman Islands has undergone three anti-money laundering/counter financing of terrorism (AML/CFT) peer evaluations by the Caribbean Financial Action Task Force (CFATF): in 1995, 2002 and 2007 (report not yet published) in addition to external evaluations on standards of financial regulation (including AML/CFT standards) by KPMG (2000) and the IMF (report published in 2005). These evaluations confirm Cayman's commitment to and implementation of regulatory and AML/CFT standards and in general provide a useful third-party 'health-check'.
20. In a number of respects, the anti-money laundering regime in the Cayman Islands outpaced international standards, for example, in the breadth of activity coverage ('gatekeepers' providing trust, company and other services and real estate transaction were in scope before this was the international standard); in the undertaking of retrospective due diligence on all clients existing prior to the implementation in 2000 of upgraded AML legislation; the breadth of the statutory obligation to report suspicious activity under the AML legislation; and the immobilization of bearer shares.
21. The Cayman Islands considers that there is scope to develop the following in cooperation with the UK Government:
 - In the context of achieved standards, greater public recognition of the UK for same and support for commensurate EU recognition (formal and otherwise); and
 - Ensuring that the international standard setters adhere to level playing field principles (equity, fair competition, transparency and non-discrimination).

Section Six – Procedure for amendment of the constitution

22. The Cayman Islands is currently engaged in a constitutional modernization exercise, re-launched in February 2007. To facilitate this national exercise, a Constitutional Review Secretariat (CRS) was established in March 2007 under the Cabinet Office. The function of the CRS is to facilitate a national consensus on areas of constitutional reform upon which the Cayman Islands Government may negotiate a new constitution for the Islands with the UK Government.
23. Guidance on the procedures to be followed in amending the Cayman Islands Constitution Order may be found in the FCO 1999 White Paper, Partnership for Progress and Prosperity and the constitutional checklist issued by the Governor's office in 2001. The constitutional modernization initiative is designed to accord with the guidance provided in the White Paper and the checklist. The initiative is structured in four phases. The first three phases are expected to occur over a period of 24 months, starting 1 March 2007, although there is no fixed end date.
24. As noted in section one, one of the objectives in the review process is a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands. It is also anticipated that a significant outcome of the review process will be the promulgation of a Bill of Rights for the Islands that will be compatible with the rights contained in the European Convention.

Section Seven – The application of international treaties, conventions and other agreements

25. There are a good number of conventions applicable to the Cayman Islands, in the areas of the environment, maritime and aviation matters; telecommunications and postal union; crime; human rights; and others. The Cayman Islands submits periodic reports to highlight its compliance with its international obligations and to identify areas in which further action may be required.

26. Both from an innate disposition and recognition of UK Government expectations, the Cayman Islands takes its international obligations seriously. In fact, in critical areas, Cayman has moved to enact domestic legislation in advance of treaty extension, examples of this being domestic legislation to give effect to the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention) and to the 1999 UN International Convention on the Suppression of the Financing of Terrorism, both of which, together with the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the Cayman Islands considers vital to upholding its obligations as a significant international financial services centre. The Cayman Islands has requested extension of both the former treaties, for which requests are still pending with the FCO.
27. With respect to the implementation of the mechanisms required to satisfy these important international treaties and conventions, the FCO has offered useful technical assistance and guidance on protocol and procedure.
28. The Office of the Attorney General recently established a Treaties and Conventions Unit and has dedicated a crown counsel to deal with, *inter alia*, all human rights matters within Chambers and to work closely with the FCO for the compilation of periodic reports and monitoring compliance with international obligations.

Section Eight – Human rights

29. Although the Cayman Islands is one of the few jurisdictions in the world that does not currently enshrine at least some human rights in its constitution, the long existence of representative government in the Cayman Islands (since 1831), along with a free and independent media, and a legal system which recognises individual liberty as one of its key features, all serve to demonstrate how Caymanian society embodies the ideals of human rights, notwithstanding the absence of fundamental rights in the constitution.
30. There is clear and consistent historical evidence of the Cayman Islands' respect for and protection of fundamental human rights. However, it is recognised that it is necessary that such fundamental rights be enshrined in the Constitution of the Cayman Islands, and the Human Rights Committee (HRC) has made this one of its primary goals. The creation of the HRC in 2003, a non-aligned body committed to impartiality and objectivity, and the ratification of its terms of reference in January 2006 have provided further impetus for the promotion and protection of human rights throughout the Cayman Islands. Although not a formal remedy, the HRC is able to receive and seek remedies to complaints. The HRC is an active contributor to the constitutional modernization process currently underway in the Cayman Islands.
31. The domestic arrangements for the protection of human rights are supplemented by a number of major international human rights treaties, some of which have extended to the Cayman Islands for many years. Whilst these international human rights may be persuasive in local courts, they are not directly enforceable unless or until they are incorporated into domestic law.
32. The annexes to this section set out the applicability of international human rights treaties in the Cayman Islands' courts and provide a summary of final case reports decided by the HRC.

Section Nine – Relations between the Cayman Islands and the United Kingdom Parliament

33. The existing routes for building relations between the Cayman Islands and the United Kingdom Parliament are the All Party Parliamentary Group (APPG) for the Cayman Islands; the UK Overseas Territories APPG; the UK Overseas Territories Association; visits to the Cayman Islands by UK parliamentarians with support from the Cayman Islands Government and the Commonwealth Parliamentary Association; and interaction between individual parliamentarians and the Cayman Islands Government Representative in the UK. The Cayman Islands Government has extended an invitation to the APPG to send a delegation to the Cayman Islands in July of 2008, and plans are currently underway for this visit.

SECTION ONE – STANDARDS OF GOVERNANCE

34. The Cayman Islands governance framework has the traditional three basic constituent elements: the executive, the legislature and the judiciary (*see organization chart on p. 12*) and the separation of powers principle pertains.
35. The executive powers are vested in the Governor and Cabinet, with the chief minister equivalent in the Cayman Islands' context being the Leader of Government Business (LoGB). The Cabinet is composed of the Governor as president plus three official members and five elected ministers (including the LoGB). The official members (the chief secretary, the attorney general and the financial secretary) are appointed by the Governor in accordance with Her Majesty's instructions and have seats in the Legislative Assembly. The five ministers of Cabinet are voted into office by the 15 elected members of the Legislative Assembly, in quadrennial general elections. Each member of Cabinet is allocated a portfolio of responsibilities by the Governor. All members and ministers of Cabinet are bound by the principle of collective responsibility unless the Governor has given prior approval to act otherwise.
36. There is an independent civil service, headed by the chief secretary under delegated authority from the Governor. Each ministry (or portfolio, in the case of the official members) is supported by a Chief Officer, a senior civil servant who serves as principal policy advisor and executive.
37. The business of government is executed by a combination of line government departments and statutory bodies. The operations of both types of entity are governed by the Public Management and Finance Law (PMFL) and the Public Service Management Law (PSML). The PMFL establishes standards for financial management and reporting obligations² and the PSML establishes, *inter alia*, standards of conduct for the public service.³
38. The Auditor General and the Complaints Commissioner are independently founded and report to the legislature. The Office of the Complaints Commissioner (OCC) was created in July 2004 pursuant to the Complaints Commissioner Law, 2003. The Commissioner is an ombudsman, and the Law confers him with the same powers as the Grand Court in respect to the attendance and examination of witnesses and the production of documents. The remit of the Office is "*to investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.*"⁴
39. The current administration has made a specific, express commitment to good governance. This is reflected most recently in the passage of the Freedom of Information Law, 2007 and in the tabling of comprehensive anti-corruption legislation designed to give domestic effect to the UN Convention against Corruption and the OECD Convention on the Bribery of Foreign Public Officials.⁵

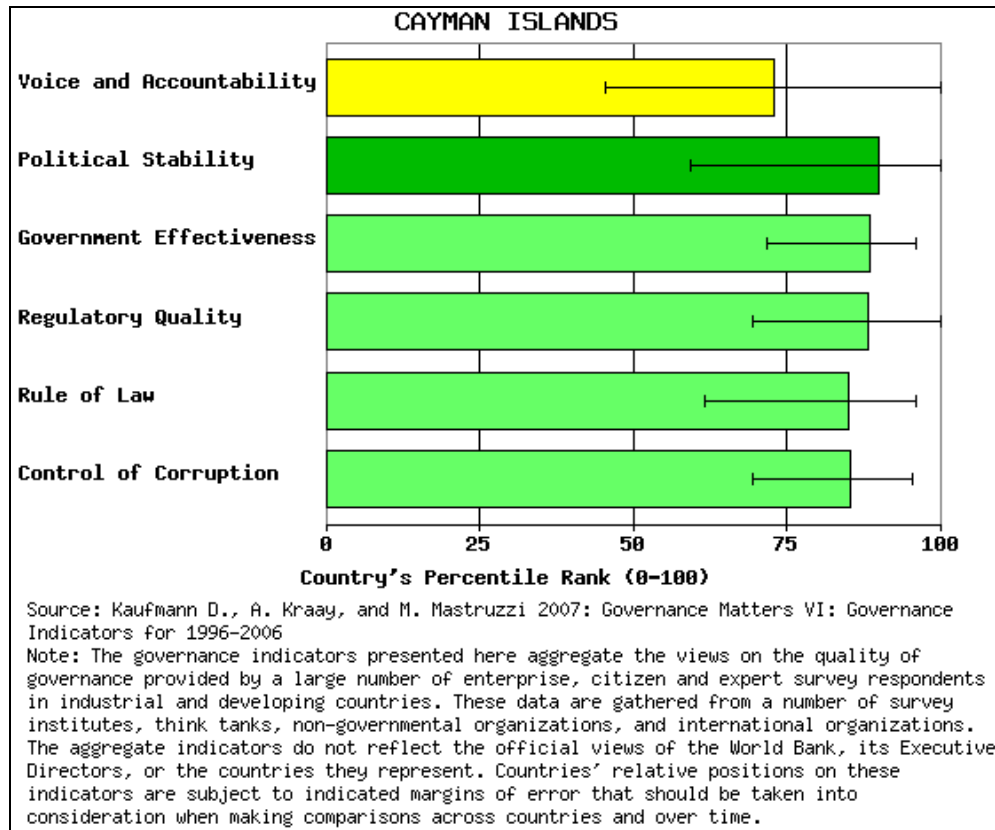
² For instance, all entities are required to enter into formal performance and/or ownership agreements with cabinet as part of the annual budget process, which capture the agreed outputs to be provided to cabinet for the fiscal year and agreed performance in relation to capital investment, risk management, financial ratios etc.

³ See public servant's code of conduct in the annex to this section.

⁴ Office of the Complaints Commissioner website – www.occ.gov.ky.

⁵ All forms of official corruption are currently offences under the Penal Code.

40. The Cayman Islands' ranking for 2006 under the World Bank Institute (WBI) governance indicators (at the 95% reliability level) is provided below. The WBI ranks the Cayman Islands in the 50th-75th percentile for voice and accountability; the 90th-100th percentile for political stability, and the 75th-90th percentile for government effectiveness, regulatory quality, rule of law and control of corruption.⁶

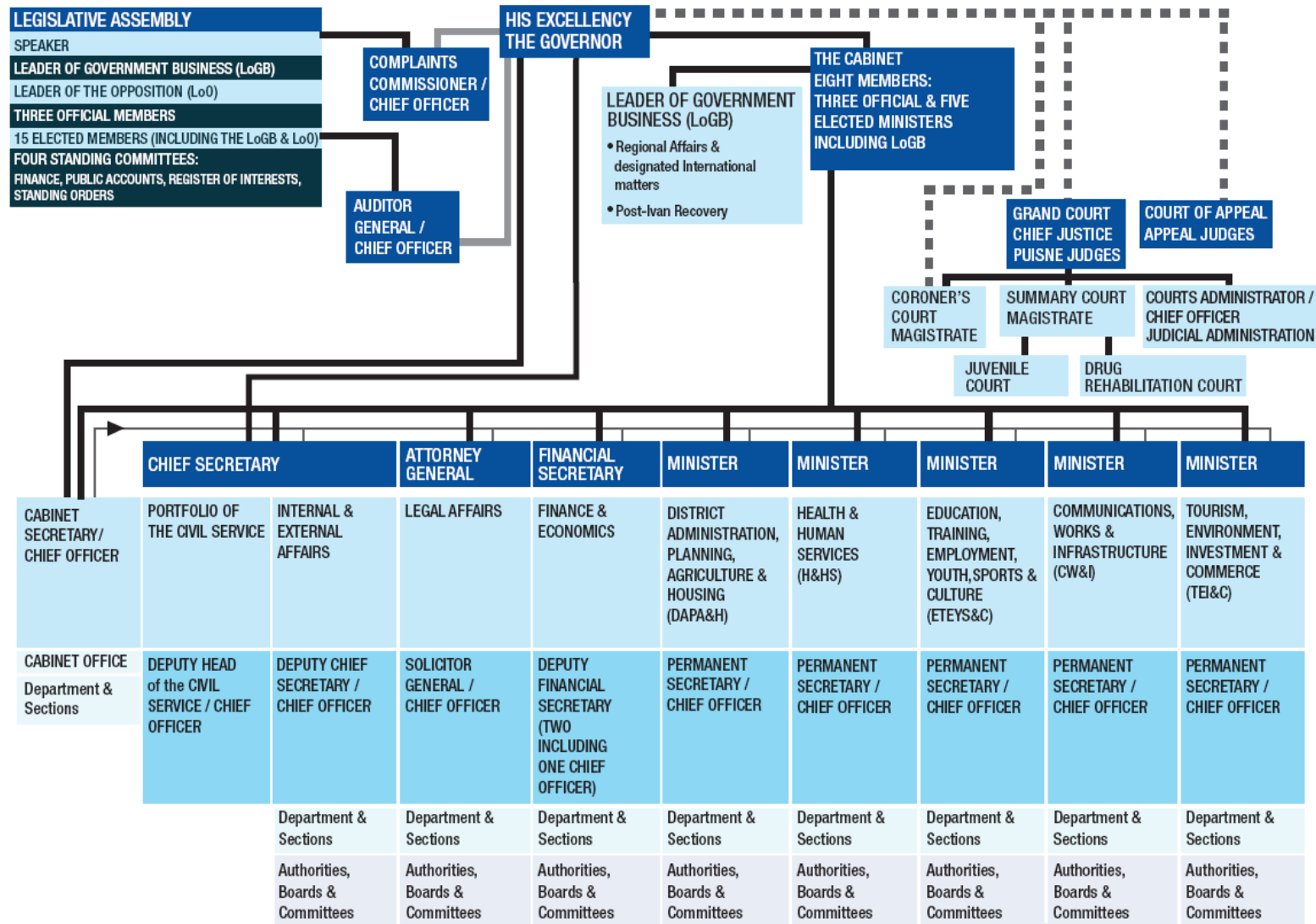


⁶ Under the WBI methodology, percentile rank indicates the percentage of countries worldwide that rate below the selected country. Higher percentile values indicate better governance ratings. Please refer to www.worldbank.org/wbi/governance for complete information on the WBI governance indicators.

SECTION ONE – STANDARDS OF GOVERNANCE
ANNEX OF DOCUMENTS

*Government of the Cayman Islands Organisational Chart
Excerpt from the Public Service Management Law, 2005 Outlining Workplace Values
and Civil Servant Code of Conduct
World Bank Institute Governance Data Comparing the Cayman Islands
with the Caribbean and with the United Kingdom*

ORGANISATION CHART FOR THE GOVERNMENT OF THE CAYMAN ISLANDS



EXCERPT FROM THE PUBLIC SERVICE MANAGEMENT LAW, 2005

PART II – Public Services Values and Code of Conduct

4. The values to which the public service shall aspire and which shall govern its management and operation are as follows - **Public Service Values**

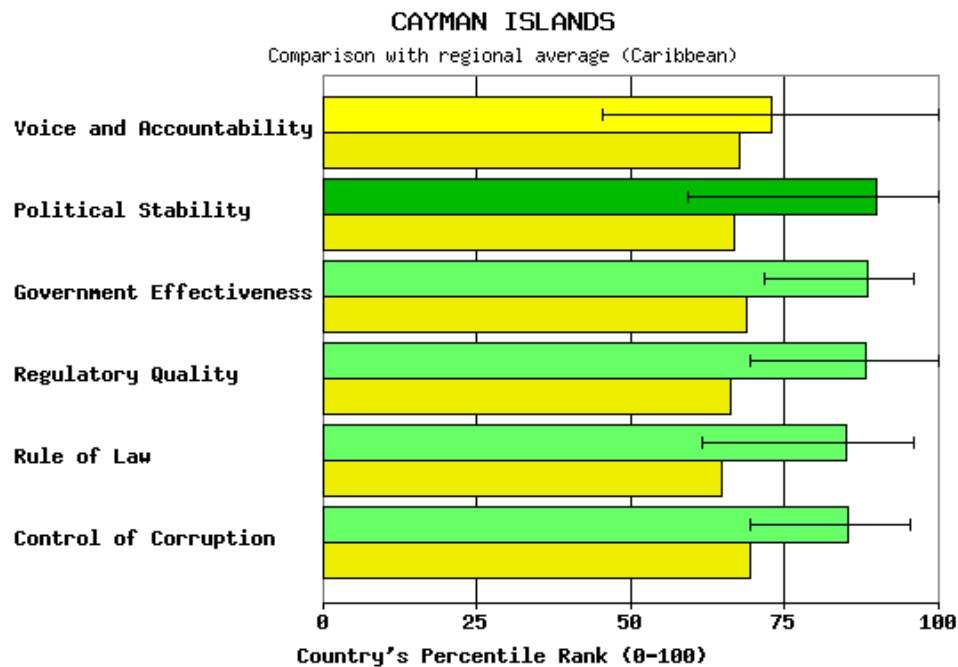
- (a) to serve diligently the government of the day, the Legislative Assembly and the public in an apolitical, impartial and courteous manner and to deliver high- quality policy advice and services;
- (b) to uphold the proper administration of justice and the principles of natural justice, and to support public participation in the democratic process;
- (c) to strive continually for efficiency, effectiveness and value for money in all government activities;
- (d) to adhere to the highest ethical, moral and professional standards at all times;
- (e) to encourage creativity and innovation, and recognise the achievement of results;
- (f) to be an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit, and recognises the aims and aspirations of its employees, regardless of gender or physical disabilities;
- (g) to be an employer that encourages workplace relations that value communication, consultation, co-operation and input from employees (either individually or collectively) on matters that affect their workplace and conditions of service;
- (h) to provide a safe and healthy working environment.

5. (1) In the course of employment, a public servant must comply with the Public Servant's Code of Conduct specified in subsection (2) and failure to do so in a significant way shall be grounds for discipline or dismissal. **Public Servant's Code of Conduct**

(2) The Public Servant's Code of Conduct is as follows -

- (a) A public servant must behave honestly and conscientiously, and fulfil his duties with professionalism, integrity and care;
- (b) A public servant must be courteous and respectful to the Governor, the Speaker and Deputy Speaker, Official Members, Ministers, Members of the Legislative Assembly, other public servants and members of the public, and treat everyone with impartiality and without harassment of any kind;
- (c) A public servant must be politically neutral in his work and solve the government of the day in a way that ensures that he maintains the confidence of the government, while also ensuring that he is able to establish the same professional and impartial relationship with future governments;
- (d) A public servant, as a member of the public, has the right to be politically informed but must ensure that his participation in political mailers or public debate or discussions, does not conflict with his obligation as a public servant to be politically neutral;
- (e) A public servant must not at any time engage in any activity that brings his ministry, portfolio, statutory authority, government company, the public service or the government into disrepute;
- (f) A public servant must obey the law and comply with all lawful and reasonable directions, including work place rules established by his chief officer or a person with delegated authority from the chief officer;
- (g) A public servant must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) with his duties as a public servant, and must not use his official position for personal or familial gain;
- (h) A public servant must treat all official information and any dealings with the Governor, an Official Member or Minister as confidential, and, unless authorised to do so, must not give or disclose, directly or indirectly, any information about official business or anything of which he has official knowledge;
- (i) A public servant must not use official resources, including electronic or technological resources, offensively or for other than very limited private purposes.

**WORLD BANK INSTITUTE GOVERNANCE INDICATORS 2006:
THE CAYMAN ISLANDS AND THE CARIBBEAN***

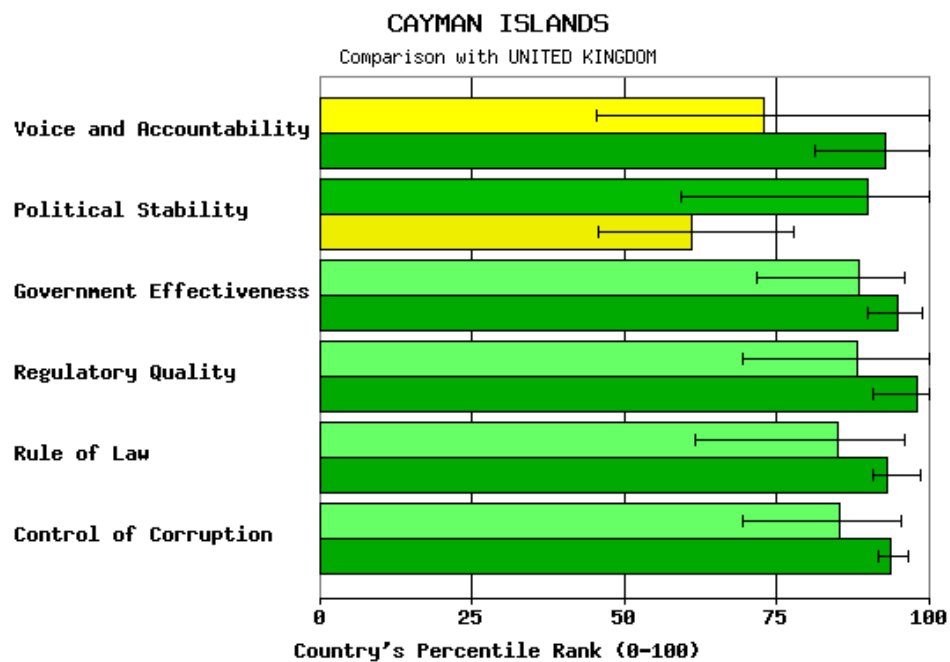


Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2007: Governance Matters VI: Governance Indicators for 1996-2006

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The aggregate indicators do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. Countries' relative positions on these indicators are subject to indicated margins of error that should be taken into consideration when making comparisons across countries and over time.

* *Caribbean average is the bottom bar*

WORLD BANK INSTITUTE GOVERNANCE INDICATORS 2006: THE CAYMAN ISLANDS AND THE UNITED KINGDOM*



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2007: Governance Matters VI: Governance Indicators for 1996-2006

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The aggregate indicators do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. Countries' relative positions on these indicators are subject to indicated margins of error that should be taken into consideration when making comparisons across countries and over time.

* *United Kingdom average is the bottom bar*

**SECTION TWO – THE ROLE OF THE GOVERNOR AND OTHER OFFICE-HOLDERS APPOINTED BY
OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT**

41. *The Cayman Islands (Constitution) Order, 1972* is the main document which establishes the role of the Governor. Constitutionally, the primary role of the Governor is to administer the Government of the Cayman Islands on behalf of Her Majesty.
42. The Governor retains substantial control over the executive and legislative arms of the Government. His powers include presiding over Cabinet and setting the Cabinet agenda, summoning Cabinet members and reserving the right not to consult with Cabinet on matters concerning the administration of Government.
43. Although the Governor is no longer the presiding officer of the Legislative Assembly⁷, he continues to be responsible for assent to, or disallowance of, laws, and for proroguing or dissolving the Assembly or recalling the Assembly in cases of emergency.
44. The Governor is also constitutionally vested with reserved powers. These powers allow the Governor if he finds it expedient, to propose bills and declare them to have effect if they are in the interest of public order, public faith or good government or to secure detailed control of the finance of the Islands as a result of the receipt of financial assistance from Her Majesty's Exchequer in the UK for the purpose of balancing the annual budget.
45. Separate and apart from exercising his constitutional powers, the Governor is also vested with special responsibilities that may not be reassigned or delegated to ministers. These special responsibilities include defence, external affairs, internal security, the police and the employment to persons to the public service or high public office. At present, Cabinet views on these issues are not sought nor is Cabinet consulted in relation to any of these matters.
46. The majority party within the Government is in favour of the Government as a whole having greater autonomy over domestic issues than that currently enjoyed. Therefore, pursuant to the commitment of the FCO to engage overseas territories towards ensuring good government and sustainable political development⁸, in February 2007, the Leader of Government Business announced that the constitutional reform process would be re-started for the Cayman Islands.⁹
47. In the context of the constitutional modernization process, it is the desire of the Cayman Islands Government to negotiate with the United Kingdom a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands.

⁷ There is a Speaker of the House who so presides, currently one of the elected members of the Legislative Assembly.

⁸ Partnership for Progress and Prosperity, Britain and the Overseas Territories, March 1999.

⁹ Constitutional Modernization, Government Information Services press briefing, February 16, 2007; see further in section six.

SECTION THREE – THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL

48. The United Kingdom Overseas Territories Consultative Council (OTCC) is a traditional forum for exchange between Cayman Islands ministers and UK ministers. The OTCC is hosted at the Foreign and Commonwealth Office in the fourth quarter of the year. Costs of attending the annual event are borne by Overseas Territories (OTs) Governments. In addition to being costly, meetings are time-consuming and can take a week out of ministers' schedules. Despite this, actual contact time with UK ministers and the opportunity for in-depth dialogue afforded by the OTCC is limited.
49. In 2004 and 2007 the Cayman Islands Leader of Government Business hosted a meeting of Caribbean OT Heads of Government, for pre-OTCC discussions. In general the meetings between OT Ministers/Heads of Government are very productive, not only from the standpoint of planning for the OTCC, but for sharing approaches and in some cases tangible products and services. The pre-OTCC meeting results in agreement on important items, which are conveyed to London for inclusion into the UK OTCC agenda. The Foreign and Commonwealth Office largely decides what items are ultimately included on the OTCC agenda.
50. Based on past experience, it is recommended that more time be allocated to certain subjects as well as more/alternative opportunities for bilateral meetings with UK ministers on topics of special interest to individual OTs. Additionally, a more collegial approach to development concerns should be promoted, and the OTCC with UK assistance should seek to clarify the definition of associate membership in international organizations. It is also important for UK ministers, the FCO and OT ministers to provide feedback on subjects that need further coverage in advance of the following OTCC meeting.
51. Regular high-level ministerial visits to the Overseas Territories would also be beneficial. The Cayman Islands would welcome at least one visit per year by a UK minister.

SECTION FOUR – TRANSPARENCY AND ACCOUNTABILITY

52. Over the past several years, the government has brought to fruition two major initiatives, driven by the objective of increasing transparency and accountability in government operations. These initiatives are reflected in the Public Management and Finance Law (PMFL), first enacted in 2001, the successor to the Public Finance and Audit Law, and the Public Service Management Law, (PSML) enacted in 2005. Running complementary to this is the governing party's manifesto, in which the commitment to transparency and accountability is an explicit and implicit theme.
53. The Cayman Islands Government has to date essentially remained financially independent from the UK exchequer. The PMFL and the subsidiary Financial Regulations set the standards for government budgeting, financial management and associated reporting to the legislature. While some elements of implementation are still in the transitional phase, the Law is a comprehensive and demanding piece of legislation that enables the Cayman Islands fiscal system to correlate strongly with the *IMF Code of Good Practices on Fiscal Transparency (2007)*. In summary, the code calls for:
- **Clarity of roles and responsibilities**
 - ~ Distinguishing of the government sector from the rest of the public sector and from the rest of the economy, and clear, disclosed policy and management roles within the public sector
 - ~ Clear and open legal, regulatory and administrative framework for fiscal management
 - **Open budget processes**
 - ~ Established timetable and well-defined macroeconomic and fiscal policy objectives for budget preparation
 - ~ Clear procedures for budget execution, monitoring and reporting
 - **Public availability of information**
 - ~ Provision to the public of comprehensive information on past, current and projected fiscal activity and on major fiscal risks
 - ~ Presentation of fiscal information in a way that facilitates policy analysis and promotes accountability
 - ~ Commitment to the timely publication of fiscal information
 - **Assurances of integrity**
 - ~ Fiscal data to meet accepted data quality standards
 - ~ Effective internal oversight and safeguards for fiscal activity
 - ~ External scrutiny of fiscal information
54. The PMFL provided the underpinning for the move from cash to accrual accounting and for budgeting on an output basis. It sets out in detail the government budgeting process and deadlines; the appropriation functions of the Legislative Assembly; the powers and duties of Cabinet, the Financial Secretary and the Portfolio of Finance & Economics, Ministries and Portfolios, and Statutory Authorities and Government Companies; accountability framework (performance and ownership agreements); and reporting requirements; and provides for the independence, powers and duties and accountability arrangements for the Auditor General. It also expressly preserves the independence of the Governor and the constitutional independence of the Attorney General, the judiciary and the office of the complaints commissioner.
55. The PMFL establishes statutory principles of responsible financial management, including borrowing limits, maintenance of positive balances for revenue and assets, debt ratios; level of cash reserves, and prudent management of financial risks.

56. There has been full compliance with the principles of responsible financial management for each of the periods ended 30 June 2005, 30 June 2006 and 30 June 2007 (see table below). Government recognizes that a major part of the Cayman Islands' economic success has been due to prudent economic management. The Government remains committed to the principles of responsible financial management and understands that this underpins investor confidence.

PRINCIPLES OF RESPONSIBLE FINANCIAL MANAGEMENT	DEGREE OF COMPLIANCE
Operating surplus should be positive <i>(operating surplus equals core government operating revenue minus core government operating expenses)</i>	Compliant in all years 2004/5..... \$91.0 million* 2005/6..... \$77.9 million* 2006/7..... \$68.3 million*
Net worth should be positive <i>(net worth equals core government assets minus core government liabilities)</i>	Compliant in all years 2004/5..... \$545.0 million* 2005/6..... \$442.8 million* 2006/7..... \$545.6 million*
Net worth should be positive <i>(Net worth equals core government assets minus core government liabilities)</i>	Compliant in all years 2004/5..... 4.8% 2005/6..... 5.4% 2006/7..... 4.6%
Net Debt should be no more than 80 per cent of core government revenue <i>(Net debt equals outstanding balance of core government debt plus outstanding balance of self financing loans plus weighted outstanding balance of public authorities guaranteed debt minus core government liquid assets)</i>	Compliant in all years 2004/5..... 105 days 2005/6..... 95 days 2006/7..... 93 days
Cash Reserves should be no less than estimated executive expenses for: 1. 30 days 2004/5 2. 45 days 2005/6 3. 60 days 2006/7 <i>(Cash reserves equal core government cash and other liquid assets)</i>	Compliant in all years 2004/5..... 105 days 2005/6..... 95 days 2006/7..... 93 days
Financial risks should be managed prudently so as to minimise risk	Compliant in all years <ul style="list-style-type: none"> ▪ Insurance cover exists for key assets and major potential liabilities ▪ Hurricane preparedness strategy in place

* Figures in Cayman Islands dollars – CI\$1.00 equals £0.585

57. The Law requires the annual budget to be based on an advance strategic policy statement that is presented to the legislature for approval and is thereafter a public document. In fact, all budget documentation is public and the proceedings of the legislature's finance committee are publicly broadcast by radio. The Law also requires that within a specified period of a general election, a pre-election economic and financial update including specified information be gazetted by the Financial Secretary.

58. The Auditor General reports directly to the full legislature and to the legislature's public accounts committee. There is a central tenders committee chaired by the Portfolio of Finance & Economics that award of contracts valued at \$250,000 or over; amounts below that threshold are to be dealt with by internal departmental tender committee.

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59. The accountability framework for the civil service was significantly overhauled with the advent of the PSML. All civil servants are required to execute performance agreements that specify the outputs that they are responsible for delivering and to comply with a statutory code of conduct.
60. The Law also allows for the Governor, by instruction from the Secretary of State under the constitution, to delegate employment powers to the head of the civil service (the chief secretary) and to chief officers of ministries/portfolios. This has been done, with the objective of improving personnel management by decentralization. The Civil Service Appeals Commission is a quasi-judicial body appointed under the PSML charged with hearing appeals from civil servants about personnel-related decisions of chief officers of civil service entities. In terms of other aspects that promote transparency and accountability, these include:
- A regular programme of press briefings by Cabinet ministers.
 - The adoption of a Freedom of Information Law, to come into effect in 2008.
 - An independent Office of the Complaints Commissioner (OCC) (see section one).
 - The establishment of a Civil Service College, in partnership with the University College of the Cayman Islands, to promote high levels of public sector performance in support of good governance.

SECTION FIVE – REGULATION OF THE FINANCIAL SECTOR

61. While the financial services chapter of Cayman's history dates back 40 years, the seeds of it were sown as early as the 1700s: two important legacies of history remain from that era – English common law and tax neutrality¹⁰. The Cayman Islands has always been an open, free market, economy, and from the 1960s onwards, successfully invested its "historic capital" to the benefit of the financial services sector.
62. In the space of 40 years, the Cayman Islands has established itself as a mature, sophisticated international financial services centre, providing institutionally-focused, specialised services to a global client base. Cayman's main industry sectors include banking, investment funds, captive insurance, companies and partnerships, trusts, structured finance, vessel and aircraft registration and the Cayman Islands Stock Exchange, and has significant market share in a number of these areas. The sector currently accounts for approximately 30% of GDP and 21% of the labour force. Many of the market participants are branches or subsidiaries of established international institutions.¹¹
63. The Cayman Islands' competitive strength in global financial services lies in its ability to provide an effective and cost-efficient tax neutral platform for international capital flows. Cayman offers a 'one-stop-shop' for clients, supported by an excellent professional infrastructure in an environment of economic and political stability.
64. Stability, integrity and quality are important to Cayman as a global provider of financial services. The government fully associates itself with the statement in the 1999 White Paper that '[i]n the long run, it is the quality jurisdictions that will prosper best. There must be no weak links which can help to undermine the international financial system'.¹² As concluded by *The Economist*, 'well-run jurisdictions of all sorts, whether nominally on- or offshore, are good for the global financial system.'¹³
65. Thus, the Cayman Islands, in concert with the other Caribbean OTs and Bermuda, fully supported the FCO's initiative in the wake of the White Paper for an independent review (conducted by KPMG in 1999/2000) of financial regulation in the six territories and continues to share the FCO's commitment to maintaining appropriate standards, out of regard for both the UK Government's reputation and our own.

General approach to regulation of the financial services industry

66. It has been decidedly Cayman's experience that adherence to recognised and relevant international standards – **not** absence of regulation – fuels sustainable growth of the sector. Like the City of London, we put a premium on promoting commercial certainty for clients around the world.
67. The government takes a principled and pragmatic approach to maintaining Cayman's position as a leading financial services center. In terms of principle, the 'operating manual' is based on adherence to relevant international standards; respect for the rule of law, due process and the right to privacy; progressive reinforcement of Cayman's international cooperation channels; and constructive engagement on international issues affecting the provision of cross-border financial services, based on a level playing field.

¹⁰ Cayman has never had a system of direct taxation and instead employs an indirect, consumption-based taxation system.

¹¹ This is particularly the case in the banking sector; and all such banks are required to obtain approval of their home regulator for their Cayman operations, as well as confirmation of consolidated supervision arrangements.

¹² *Partnership for Progress and Prosperity-Britain and the Overseas Territories*, p.23.

¹³ Survey on Offshore Financial Centres, *The Economist*, February 24, 2007.

68. The pragmatic angle on these principles is that they promote commercial certainty and control reputation risk for global clients. The Cayman Islands fully understands and accepts that in operating a financial services centre involves serious obligations, such as doing our part in the fight against international financial crime – recognizing that these obligations are not static due to evolution of international standards and the business itself.

The Cayman Islands Monetary Authority



69. Approximately 25% of the licensing/registration revenue collected is re-invested into the Authority's operations, equating to CI\$15 million in the 06/07 fiscal year, demonstrating the importance with which the Authority's functions are regarded. Key features of the regulatory regime include:

- *Observance of recognized and relevant international standards* – Basel, IAIS and IOSCO core principles; FATF 40+9.
- *Application of statutory 'fit and proper' criteria*¹⁴ to market participants – at entry and as an ongoing activity, CIMA performs due diligence on all directors, major shareholders, and senior officers of licensees.
- *International cooperation* – The Authority has a statutory obligation to provide assistance to overseas counterparts. From 2000 to 2006, 633 requests were handled, with assistance provided in approximately 98% of cases. While not a prerequisite to the provision of assistance, CIMA has memoranda of understanding and similar arrangements providing for mutual cooperation with 10 overseas regulatory authorities (in Jersey, Canada, Brazil, the U.S., Isle of Man, Bermuda, Jamaica, Panama; and a multilateral MOU with 8 Caribbean regulators); and others are in negotiation.

70. The IMF assessment of financial regulation in the Cayman Islands published in 2005 found as follows:

- *Overall* – "...[A]n extensive program of legislative, rule and guideline development has introduced an increasingly effective system of regulation, both formalizing earlier practices, and introducing enhanced procedures."
- *Banking*¹⁵ – "The laws, rules and statements of guidance governing prudential supervision are up-to-date and generally meet international standards. The licensing process for new entrants is sound and comprehensive. Off-site monitoring and on-site inspection are well-developed and integrated..."
- *Insurance*¹⁶ – "The measures and policies in place for insurance supervision are sound..."
- *Securities*¹⁷ – "In broad terms, the supervisory regime reflects those of developed countries... A sound legal, taxation and accounting system appears to be in place... Regulation in accordance with the IOSCO Principles is well-implemented except in the mutual funds area."¹⁸

¹⁴ This requires regard to a) honesty, integrity and reputation, b) competence and capability, and c) financial soundness.

¹⁵ The IMF assessed Cayman's banking supervision as "compliant" or "largely compliant" with all 30 recommendations included in the 25 Basel Core Principles for Effective Banking Supervision.

¹⁶ Of the 17 IAIS Core Principles, the IMF assessed 11 as "observed" or "largely observed" and 6 as "materially non-observed". The latter assessments were based on either a lack of staff to implement [Insurance Division was only at 60 per cent strength at the time of the assessment] or a lack of **documentation** of rules or practices.

¹⁷ Of the 30 IOSCO Principles, the IMF assessed securities regulation as "implemented" or "broadly implemented" for 17 principles, "partly implemented" for 8 and "not implemented" for 1, with 4 "not applicable."

¹⁸ The exception largely relates to a) absence of certain provisions relating to public funds, which the report acknowledges do not make up the majority of Cayman funds, and since addressed and b) supervisory provisions that the assessors consider should be in the Mutual Funds Law itself, instead of in the Monetary Authority Law.

71. Since the assessment, CIMA in cooperation with government as necessary has made significant strides in addressing the IMF recommendations. The full IMF report can be accessed from www.imf.org.

The Cayman Islands commitment to the global fight against financial crime

72. While it is generally acknowledged as impossible to completely prevent financial crime, the Cayman Islands has put a compensatory strong focus on being able to deal with it effectively when it is found. The Cayman Islands adheres to international anti-money laundering and combating the financing of terrorism (AML/CFT) standards and as noted above, applies statutory requirements for fitness and probity to the full range of financial services sector participants covered by the regulatory regime. This coverage is broad, and encompasses sectors not commonly regulated in many jurisdictions, such as trust service providers, fund administration, company service providers and money transmitters. The AML regime also covers all investment funds under the Mutual Funds Law, including hedge funds.

CIMA Memberships in Regulatory and Standard-Setting Bodies

- Offshore Group of Banking Supervisors (OGBS)
- Caribbean Group of Banking Supervisors (CGBS)
- Association of Supervisors of Banks of the Americas (ASBA)
- International Association of Insurance Supervisors (IAIS)
- Offshore Group of Insurance Supervisors (OGIS)

International Standards Observed

- Financial Action Task Force 40 Recommendations on Money Laundering and IX Special Recommendations on Terrorist Financing
- Basel Core Principles for Effective Banking Supervision
- Trust and Company Service Providers Working Group Statement of Best Practice (OGBS)
- Core Principles of Insurance Regulation (IAIS)
- Core Principles for Securities Regulation (IOSCO)

73. The Cayman Islands is fully committed to supporting global efforts to fight financial crime and has progressively reinforced the international cooperation regime to deliver on this commitment, through statutory law enforcement and regulatory gateways. These gateways, by design, are not inhibited by Cayman's confidentiality regime¹⁹.

74. For example, since the Mutual Legal Assistance Treaty (MLAT) with the U.S. came into effect in 1990, the two governments have cooperated in some 230 requests for assistance under the Treaty, resulting in successful law enforcement actions. Assets seized under such actions have been both shared by the U.S. and the Cayman Islands under an asset-sharing agreement as well as returned to the U.S. for restitution to victims of fraud and other crimes.

75. For countries other than the U.S. (although the U.S. is covered as well under this legislation), the Criminal Justice (International Cooperation) Law (CJICL) provides for comprehensive mutual legal assistance to be given in the context of a broad range of criminal offences. The purposes for which mutual legal assistance is available are also broad, and include executing searches and seizures; providing information and items of evidence; identifying or tracing proceeds, property, instruments or such other things for the purposes of evidence; immobilising criminally obtained assets; and assisting in proceedings related to forfeiture and restitution.²⁰ Assistance is available, including at the investigative stage, to all 146 Vienna Convention countries. The CJICL also contains "ship riding" powers.

¹⁹ The Confidential Relationships (Preservation) Law codifies Tournier. On the international cooperation elements under the various international standards, the IMF assessment found the Cayman Islands 'compliant' or 'largely compliant' (Basel Core Principles); the standards 'implemented' and 'partly implemented' (IOSCO Principles) and 'largely observed' (IAIS Principles); and 'compliant' or 'largely compliant' (FATF Recommendations).

²⁰ Immobilising criminally obtained assets and assisting in proceedings related to forfeiture and restitution are not in Vienna Convention, but were included in the CJICL for completeness.

76. Further, there are a number of treaties that allow for extradition between the Cayman Islands and a wide range of countries. Extradition is available for any offence that would be regarded as a serious crime carrying punishment of more than one year either in the Cayman Islands or in the requesting state. The European Convention on Extradition has applied to the Cayman Islands since 1996.
77. With the support of the FCO, the Cayman Islands was the first regionally, and among the first worldwide, to criminalise the laundering of the proceeds of all serious crimes, with the 1996 Proceeds of Criminal Conduct Law (PCCL), extending such legislation beyond the ambit of drug-money laundering.
78. As required by international standards, the Cayman Islands has criminalized money laundering in accordance with the UN Vienna (1988) and Palermo (2000) Conventions (via the PCCL and the Misuse of Drugs Law) and terrorist financing in accordance with the UN International Convention on the Suppression of the Financing of Terrorism (1999), via the Terrorism Law, 2003 (in addition to various prior Orders in Council promulgated by the UK on behalf of its OTs, pursuant to UN S/RES 1373 and S/RES 1267).
79. The Money Laundering Regulations under the PCCL apply comprehensive statutory AML/CFT obligations on relevant financial business in relation to customer due diligence measures, recordkeeping, systems of internal control and suspicious activity reporting; and training. With the recent addition of dealers in precious metals and stones, the activity coverage complies with the FATF 40+9. CIMA has also issued comprehensive Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands, enforceable industry guidance on the interpretation and application of the Money Laundering Regulations.
80. The Cayman Islands is a founding member of the Caribbean Financial Action Task Force (CFATF), established in 1990, and has undergone three peer evaluations by that body (1995, 2002 and 2007 [report not yet published]) in addition to external evaluations on standards of financial regulation (including AML/CFT standards) by KPMG (2000; AML only, as predated FATF CFT recommendations) and the IMF (2003, report published in 2005). These evaluations confirm Cayman's commitment to and implementation of regulatory and AML/CFT standards and in general provide a useful third-party 'health-check', as constant vigilance and regular review of measures is required to combat financial crime.²¹ In fact, as part of the self-assessment exercise in relation to the 2007 CFATF AML/CFT evaluation, in addition to making dealers in precious metal/stones subject to the AML/CFT regime, Cayman undertook a number of upgrades, including introducing cash courier requirements to comply with FATF SR IX and statutory wire transfer requirements (based on the EU Regulation) to comply with FATF SR VII.

“Efforts to achieve compliance with international standards have been top priority in the Cayman Islands...and there is an intense awareness of anti money-laundering and combating of financing of terrorism in the business community. The Cayman Islands authorities have devoted substantial attention and resources to improving the country's anti money-laundering, legal and institutional framework...An extensive program of legislative, rule and guideline development has introduced an increasingly effective system of regulation, both formalising earlier practices and introducing enhanced procedures” – **International Monetary Fund Report on Supervision of Financial Services Regulation in the Cayman Islands (2005)**

²¹ On AML/CFT standards, the IMF assessed the Cayman Islands as “compliant” or “largely compliant” for all FATF recommendations rated, with the exception of FATF 17 and FATF 20, which were rated as “materially non-compliant.” FATF 17 related to tipping off – the assessors found that the tipping off offence under the Misuse of Drugs Law only related to restraint and production orders, and not SARs. FATF 20 related to the application of home AML/CFT rules to domestic branches and subsidiaries located abroad; the assessors acknowledge that there are few of these. What was then FATF 17 is being addressed in upcoming amendments to the PCCL; FATF 20 has been addressed in the Guidance Notes, as recommended.

81. In a number of respects, the anti-money laundering regime in the Cayman Islands outpaced international standards, for example, in the breadth of activity coverage ('gatekeepers' providing trust, company and other services and real estate transaction were in scope before this was the international standard); in the undertaking of retrospective due diligence on all clients existing prior to the implementation in 2000 of upgraded AML legislation; the breadth of the statutory obligation to report suspicious activity under the AML legislation; and the immobilization of bearer shares.
82. The Cayman Islands' AML/CFT enforcement regime operates through a partnership of institutions and authorities, including CIMA, the Financial Reporting Authority (a member of the Egmont Group since 2001)²², the Financial Crime Unit of the Royal Cayman Islands Police, the MLAT Central Authority, Customs, the Portfolio of Finance & Economics and the Attorney General's Chambers. The Cayman Islands has also established an Anti-Money Laundering Steering Group, a statutory body charged with policy and implementation oversight in relation to the AML/CFT regime.

Additional areas of international cooperation – tax information assistance

83. The Cayman Islands signed a tax information exchange agreement with the U.S. in 2001 and it is in force. The Cayman Islands established the Tax Information Authority which operates under a statutory framework for dealing with requests made under any international agreements entered into that provide for sharing information on tax matters. This includes the legislation passed in 2005 pursuant to bilateral agreements with EU member states following the EU Savings Directive.
84. The Cayman Islands has been an active participant in the Organisation for Economic Development and Cooperation (OECD) Global Forum on Taxation, having been one of the first non-OECD jurisdictions to adopt (in 2000) the principles of transparency and exchange of information on tax matters, based on a level playing field.
85. The Cayman Islands considers that there is scope to develop the following in cooperation with the UK Government:
- In the context of achieved standards, greater public recognition of the UK for same and support for commensurate EU recognition (formal and otherwise); and
 - Ensuring that the international standard setters adhere to level playing field principles (equity, fair competition, transparency and non-discrimination)

²² The PCCL enables the Financial Reporting Authority to pass suspicious activity reports (SARs) to foreign counterparts in order to report the possible commission of an offence, initiate a criminal investigation respecting the matter disclosed, or assist with any investigation or criminal proceedings. During the 05/06 reporting period, the FRA onwardly disclosed SARs to 26 countries.

SECTION SIX – PROCEDURES FOR AMENDMENT OF THE CONSTITUTION

86. The Cayman Islands is currently engaged in a constitutional modernization exercise, re-launched in February 2007. To facilitate this national exercise, a Constitutional Review Secretariat (CRS) was established in March 2007 under the Cabinet Office.²³

The Director of the CRS is a senior crown counsel seconded from the Attorney General's Chambers. The services of an eminent constitutional advisor have also been retained. The function of the CRS is to facilitate a national consensus on areas of constitutional reform upon which the Cayman Islands Government may negotiate a new constitution for the Islands with the UK Government.



87. Guidance on the procedures to be followed in amending the Cayman Islands Constitution Order may be found in the FCO 1999 White Paper, Partnership for Progress and Prosperity and the constitutional checklist issued by the Governor's office in 2001. The information contained therein explains generally the expected benchmarks to be met by OTs in any constitutional review exercise.

88. The 1999 White Paper summarizes the obligations and expectations to be considered by overseas territories when reviewing their constitutions, including:

- Measures promoting more transparent and accountable government;
- Improvements to the composition of legislatures and their operation;
- Improving the effectiveness, efficiency, accountability and impartiality of the public service;
- The role of Overseas Territory Ministers and Executive Councils and their exercise of collective responsibility for government policy and decisions;
- Respect for the rule of law and the constitution;
- The promotion of representative and participative government;
- Freedom of speech and information;
- The provision of high standards of justice; and
- Adoption of modern standards of respect for human rights.

89. Likewise, the 2001 constitutional checklist echoes the above elements and is based on the concept of a participatory constitutional reform process. Specific checklist items include that:

- Any changes to the constitution should have the support of the majority of the population and that there should be evidence of that support;
- There should be extensive public consultation on the issues ; and
- There should be a debate in the Legislature, in which the suggested changes are approved by motion.

90. The Foreign and Commonwealth Office has also recently confirmed to the Cayman Islands Government that the position it has taken with other Overseas Territories that recently completed constitutional reviews is that the process is one of discussion and agreement. This means that the status quo will remain until everything is acceptable to both the Cayman Islands and the United Kingdom.

²³ The CRS website is www.constitution.gov.ky.

91. The position of the United Kingdom Government is that the Cayman Islands would be under an obligation to demonstrate to the United Kingdom Government that the constitutional changes sought have the support of the people of the Islands. An accepted minimum level of acceptance may be demonstrated through the endorsement of the recommendations by the Cayman Islands Legislative Assembly.
92. The Cayman Islands Government's constitutional modernization initiative is designed to accord with the guidance provided in the White Paper and the checklist. The initiative is structured in four phases. The first three phases are expected to occur over a period of 24 months, starting 1 March 2007, although there is no fixed end date. The CRS has a website²⁴ with resources, events and information to facilitate public engagement in the process. The phases are as follows:

PHASE 1 – RESEARCH

- Identify viable areas of constitutional reform
- Publication and distribution of a public discussion paper

PHASE 2 – CONSULTATION

- Public education on constitutional issues raised in public discussion paper
- Public consultation period

PHASE 3 – REFERENDUM

- National referendum on constitutional reform

PHASE 4 – NEGOTIATION

- Negotiations between the Cayman Islands and the United Kingdom for modernization of the Cayman Islands Constitution

93. Phase 1 is approaching its end, and the Public Discussion Paper will be published in the next few months. As noted in section one, one of the objectives in the review process is a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands. It is also anticipated that a significant outcome of the review process will be the promulgation of a Bill of Rights for the Islands that will be compatible with the rights contained in the European Convention.

²⁴ www.constitution.gov.ky.

**SECTION SEVEN – APPLICATION OF INTERNATIONAL TREATIES,
CONVENTIONS AND OTHER AGREEMENTS**

94. Due to the constitutional status of the Cayman Islands as an Overseas Territory, international treaties or conventions generally apply by extension thereof to the Islands by the United Kingdom. Current practice is that extension is at the request of the Cayman Islands, with the UK requiring to be satisfied that domestic legislation has been enacted to give effect to, and ensure compliance with, any obligation arising thereunder.
95. There are a good number of conventions applicable to the Cayman Islands, in the areas of the environment, shipping and air transport; telecommunications and postal union; crime; human rights; and others. The Cayman Islands submits periodic reports to highlight its compliance with its international obligations and to identify areas in which further action may be required.
96. Both from an innate disposition and recognition of UK Government expectations, the Cayman Islands takes its international obligations seriously. In fact, in critical areas Cayman has moved to enact domestic legislation in advance of treaty extension, examples of this being domestic legislation to give effect to the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention) and to the 1999 UN International Convention on the Suppression of the Financing of Terrorism, both of which, together with the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the Cayman Islands considers vital to upholding its obligations as a significant international financial services centre. The Cayman Islands has requested extension of both the former treaties, which requests are still pending with the FCO.
97. With respect to the implementation of mechanisms to satisfy the requirements of treaties and conventions, the FCO continues to play an integral role by offering technical and other assistance and guidance as to the steps that can be taken to achieve this objective. Quite recently, for example, the Human Rights, Democracy and Governance Group of the FCO offered to share its knowledge of the UK's experience in implementing mechanisms for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to enable the Cayman Islands to take the necessary measures to give full effect to the Protocol within the existing statutory framework.
98. The Office of the Attorney General recently established a Treaties and Conventions Unit and has dedicated a crown counsel to deal with, *inter alia*, all human rights matters within Chambers and to work closely with the FCO for the compilation of periodic reports and monitoring compliance with international obligations.
99. In relation to human rights, which is dealt with in detail in section 8, the existing constitution of the Cayman Islands does not contain a Bill of Rights, and there is no comparable legislation to the UK Human Rights Act 1998. However, notwithstanding this, human rights and related issues have gained widespread prominence and recognition at diverse levels within the Islands.

100. Human rights matters are ventilated before the local courts even in the absence of a Bill of Rights or human rights legislation. In recent cases, for example, legislation (such as that setting out mandatory minimum sentences for certain offences) has been challenged on the basis of a possible human rights violation. In another case, the right to religious freedom has been subjected to the scrutiny of both the Grand Court and Court of Appeal. In addition, the vires of the actions of public authorities and the enforcement of civil liberties are all issues which have been raised in both the civil and criminal courts. It is therefore clear that the local courts are mindful of the importance of human rights and their duty to enforce them within the ambit of the existing laws of the Islands.
101. The ongoing efforts of the Cayman Islands to develop and protect human rights have been consistently supported by the FCO. Such support has included identifying training in various aspects of human rights, providing invaluable advice on issues which have arisen in the Islands, whether in legislation or policy or, as in a recent case, the manner in which EU law is to be applied to the Overseas Territories.

SECTION EIGHT – HUMAN RIGHTS

102. As the national institution vested with competence to promote and protect human rights in the Cayman Islands, the Cayman Islands Human Rights Committee (HRC) is best placed to provide an independent and impartial appraisal of the status of human rights in the Cayman Islands.



103. Whilst the Cayman Islands is one of the few jurisdictions in the world that does not enshrine at least some human rights in its constitution – a fundamental fact that the HRC is actively seeking to alter – this does not mean that human rights are alien to the Cayman Islands.
104. The long existence of representative government in the Cayman Islands (established in 1831), along with a free and independent media, and a legal system which recognises individual liberty as one of its key features, all serve to demonstrate how Caymanian society embodies the ideals of human rights in spite of the absence of fundamental rights in the constitution.
105. The principles that underpin human rights are in fact evident throughout the history of the Cayman Islands and remain to this day among the core values upheld by the people of Cayman. As is characteristic in any progressive democratic society, citizens of the Cayman Islands expect the rights to association and expression; to liberty and privacy; to religious freedom and a fair trial; and perhaps most fundamental of all, the right to life itself.
106. Notwithstanding the important historical landmarks for human rights in the Cayman Islands, the fact is that there is still much room for improving the protection of these rights. With the current constitutional arrangements, where so much is dependent upon the responsiveness of the democratically elected legislature and the receptiveness of the independent judiciary, there are times when human rights remain vulnerable. In times of emergency or when a particular fear or prejudice emerges, there are relatively few constitutional restraints on the will of the Legislative Assembly; and in such circumstances, the courts are obliged to follow the law, even if it is adopted in breach of human rights.
107. It is therefore necessary to enshrine the realisation of human rights in the Constitution of the Cayman Islands, and the HRC has made this one of its primary goals. The HRC is an active contributor to the constitutional modernisation process currently underway in the Cayman Islands.

108. The domestic arrangements for the protection of human rights are supplemented by a number of major international human rights treaties, some of which have extended to the Cayman Islands for many years. Whilst these international human rights may be persuasive in local courts, they are not directly enforceable unless or until they are incorporated into domestic law.²⁵ The following international human rights treaties have been extended to the Cayman Islands:
- International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - Convention on the Rights of the Child
 - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Convention Relating to the Status of Refugees
 - European Convention for the Protection of Human Rights and Fundamental Freedoms
109. Particularly noteworthy by its absence from the above list is the Convention on the Elimination of All Forms of Discrimination Against Women. The Caymanian authorities have indicated that they would like the United Kingdom to extend this important treaty; but Her Majesty's Government has apparently indicated that this would first require domestic legislation to give full effect to the full range of guarantees identified in this Convention.
110. The re-extension to the Cayman Islands, in early 2006, of the right of individual petition to the European Court of Human Rights is a significant addition to the range of remedies available to people in the Cayman Islands, although even this does not empower local judges to enforce the human rights contained in that Convention.
111. The creation of the HRC in 2003 and the ratification of its terms of reference²⁶ in January 2006 have provided further impetus for the promotion and protection of human rights throughout the Cayman Islands
112. The HRC is a non-aligned body committed to impartiality and objectivity and although not a formal remedy, the HRC is able to receive and seek remedies to complaints. In absence of constitutional protection, the HRC therefore provides an important local opportunity for the resolution of issues where human rights are under threat.
113. There are currently 14 members of the HRC, with more than two-thirds of the membership drawn from the private sector. Although the HRC was appointed by Cabinet, its members are not accountable to Cabinet. The independence and the impartiality of the HRC is expressly preserved in its terms of reference, which Cabinet has accepted. All Members of the HRC, including the civil servants, voluntarily serve in their personal capacities. HRC members do not represent any particular interests or organisation and are entirely free to adopt positions that are contrary to governmental policy.
114. One of the HRC's primary functions is to facilitate education on human rights, to which end the HRC has recently embarked upon a two-month public awareness campaign, supported by the FCO's Overseas Territories Fund.²⁷

²⁵ For a detailed analysis of the applicability of international human rights in the Cayman Islands' courts, see Annex 1 of this section.

²⁶ The HRC's full terms of reference are available at www.humanrights.ky.

²⁷ The print and television versions of the six executions of the campaign's theme can be viewed at www.humanrights.ky.

115. In an effort to offset a relatively widely held perception that human rights conflict with certain aspects of local tradition and culture and thus an external imposition, the Campaign was specifically designed to highlight human rights in a local historical context. Landmark events were therefore focused on, such as the successful fight in 1957 for women's suffrage, which demonstrate how Caymanian individuals and groups have acted to protect and promote their human rights.
116. The campaign has also successfully publicized the HRC. This is evidenced by the significant increase in correspondence received by the HRC following the commencement of the campaign. Previously, the HRC was receiving notice of, on average, 1.3 new human rights concerns per month. However, an average of 4.5 new concerns per month have been brought to the attention of the HRC since the campaign began. Whilst many of these claims are not ultimately substantiated, there is undoubtedly now a greater awareness of the HRC and its work.
117. In addition, the HRC has also produced a series of reports and commentaries that draw attention to specific human rights issues. This work generated by the HRC may take various forms:
- Contributions to International Reports
 - Commentaries on local legislation (both prospective and existing)
 - Final Case Reports
 - Other commentaries

CONTRIBUTIONS TO INTERNATIONAL REPORTS

118. In its 2006 contribution to the Cayman Islands Report for the United Nations *Convention on the Rights of the Child*, the HRC made a number of observations as to how the rights of the child could be improved in the Cayman Islands. These included inter alia:
- a. The enactment of domestic legislation to protect children's rights. Whilst there is already some legislation enacted in the Cayman Islands, this is not currently in force. Furthermore, the HRC identified that the existing legislation may well require amendment and supplement in order for it to fully comply with the Convention on the Rights of the Child.
 - b. A number of deficiencies in the criminal justice system as it relates to the rights of the child. In order to remedy these deficiencies, amendments were proposed to the Bail Law 2006, the Firearms Law 2006 and the Penal Code 2006.
 - c. The improvement of juvenile detention facilities, particularly to ensure that they provide for education and rehabilitation.
 - d. The provision of education and training opportunities to refugee children.
 - e. The adoption of a national action plan to promote the rights of the child.²⁸
119. Thus far, in the intervening year, none of these recommendations have been acted upon. The HRC still therefore considers that arrangements in the Cayman Islands do not fulfill all of the obligations contained in the Convention on the Rights of the Child.

COMMENTARIES ON LOCAL LEGISLATION

120. The HRC has had the opportunity to comment on forthcoming legislative proposals in respect of their compatibility with internationally recognised human rights. This is an important function, which enhances the credibility of the HRC and will, it is hoped, make a positive contribution to the sensitivity that future legislation displays towards human rights. To date, the HRC has published commentaries on:

²⁸ The HRC's full Report for the Convention on the Rights of the Child can be accessed at www.humanrights.ky.

- The Drug Court Bill 2006
- The Alternative Sentencing Bill 2006²⁹

121. In its commentaries, the HRC stressed that it was generally supportive of both the Drug Court Bill and the Alternative Sentencing Bill. It was recognised that both pieces of legislation were innovative and would require a departure from the traditional approach to criminal justice. However, it was also noted that one must be careful to ensure that these innovations in their quest for laudable goals do not compromise human rights in any way.

FINAL CASE REPORTS

122. The HRC can be accessed in three different ways:

- An individual or group of individuals can directly petition the HRC by writing to the Committee;
- An individual or group of individuals can address a petition in writing to a Member of the HRC, who may then formally lodge the petition with the Committee; or
- A Member of the HRC can petition the Committee of his or her own volition, by bringing an individual issue or a matter of general concern, in writing, to the attention of the Committee.

- Following the acceptance of a petition, it is formally registered as a complaint and assigned a case number. Registration does not necessarily indicate that a complaint will ultimately be upheld. Rather, it signifies that the HRC believes that there is a concern that merits further inquiry. In the course of its inquiry, if the parties are amenable, the HRC can operate as a mediator in an effort to broker an amicable settlement between the parties. This settlement must, however, comply with the generally accepted interpretation of the right or rights at issue.

123. If the facts of the complaint, as provided, give rise to a clear breach of any of the rights contained in the international treaties that have been extended to the Cayman Islands, the full HRC itself can adjudicate upon the complaint and publish its findings in a Final Report. The HRC has completed a number of significant final reports, all of which can be found on its website www.humanrights.ky (see annex of this section for a summary of reports).

²⁹ These commentaries can be read in full at www.humanrights.ky.

OTHER COMMENTARIES

124. The HRC has recently returned to the theme of education and human rights, with the publication of a report on human rights education in the Cayman Islands. The report defines what is encompassed by the concept of human rights education, identifies the many positive benefits that such education will provide to Caymanian society and discusses the importance of integrating human rights education across the entire curriculum as opposed to one subject area. The report establishes the appropriate methodology for the delivery of human rights education and recognises that while human rights are in a sense international, they should be connected to the experiences of people in Cayman and should be culturally sensitive. The full report is available at www.humanrights.ky.

HUMAN RIGHTS ISSUES UNDER REVIEW

125. The HRC is presently engaged in a number of investigations on a variety of human rights concerns in the Cayman Islands. These include, *inter alia*:
- The adequacy of the operation of various domestic law so as to prevent a situation of slavery, forced or compulsory labour, or servitude arising.
 - Immigration Law and the right to family life.
 - The detention of juveniles.
 - The detention of mentally ill persons.
 - Delay in the criminal justice system.
 - The extent of the State's responsibility to protect children from abuse.

CONSTITUTIONAL MODERNIZATION AND HUMAN RIGHTS

126. The last, and perhaps most far-reaching, topic that the HRC is working on is the modernization of the constitution of the Cayman Islands. To this end, the HRC has met with representatives of the FCO to discuss options and has established a Working Group to assist with public education and articulating the HRC's perspective on the ensuing debate.
127. The HRC believes that the promotion and protection of human rights in the Cayman Islands would be best served by the inclusion of a chapter on fundamental rights and freedoms in its constitution. This is not a novel idea. The Report of the Constitutional Commissioners in 1991 concluded that, "*there was almost a unanimous request for Fundamental Rights and Freedoms ... to be included in the Constitution*" and similarly, just over ten years later, in 2002, the Report of Cayman's own Constitutional Modernization Review Commissioners found that the inclusion of a Bill of Rights in the constitution was the issue that attracted the most widespread support in the review process.
128. The HRC is of the view that human rights are a central component of any modern constitution and that the constitution should not only identify which particular rights are recognized, but importantly, it should furthermore provide a mechanism through which individuals can enforce these rights. Part of this mechanism ought to include the formal recognition of the national body responsible for the promotion and protection of human rights in the constitution itself. The HRC is also reviewing the possible content of the Chapter of Fundamental Rights in any prospective constitution to assess whether a more expansive and contemporary approach to human rights can be embodied, which exceeds the confines of the civil and political rights orientated model of the European Convention on Human Rights that has been exported to most of the United Kingdom's former and existing territories.

129. Although the constitutional arrangements in the Cayman Islands generally recognise the importance of human rights, the extensive work of the HRC has highlighted that there are a number of areas where significant improvements could be made. The HRC believes that it is ideally placed to assist in making these improvements a reality. This is clearly an important agenda for the HRC, and to this end the HRC is therefore actively assisting the Constitutional Review Secretariat in its work to advance the modernization of the constitution.

SECTION EIGHT – HUMAN RIGHTS
ANNEX OF DOCUMENTS

Applicability of International Human Rights Treaties in Cayman Islands' Courts
Human Rights Committee Summary of Case Reports

APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS TREATIES IN CAYMAN ISLANDS' COURTS

In *Streeter and K Coast Development v Immigration Board and Governor-in-Council*, Smellie CJ analysed how, notwithstanding that it had not been incorporated, he could still employ the International Covenant on Civil and Political Rights:

“The Covenant has neither been extended by Order in Council nor ratified to make it part of domestic Cayman law and so our courts have no power to enforce it directly. However, so long as the Islands are a party to the Covenant it creates obligations which are binding as a matter of international law. It follows that Cayman statutes ought to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligations specified in the Covenant and not to be inconsistent with it. In other words, there is a presumption of statutory interpretation that Parliament intends its legislation to comply with the country’s treaty (here covenanted) obligations.”³⁰

Although Smellie CJ went on to discuss whether there had to be ambiguity in the domestic provision before the international treaty could be utilised as an aid to interpretation, a view articulated in *R v Home Secretary, ex parte Brind*,³¹ he declined to express any preference on the point,³² noting that this position is also subject to mounting criticism in academic and judicial circles.

In addition to aiding statutory interpretation, Smellie CJ has also suggested that international human rights treaties can inform the development of the common law. In *Grant and Chin v Principal of John A Cumber Primary School, Chief Education Officer and Education Council*,³³ the Chief Justice having made reference to the “laudable objectives” contained in the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations International Covenant on Civil and Political Rights, the United Nations Convention Against Discrimination in Education and the United Nations Convention on the Rights of the Child, reiterated that since they were not part of domestic law, they could not be “directly enforced so as to give effect to specific rights or obligations.”³⁴ However, he continued:

“[I]t is none the less permissible for this court to take account of them in determining the reasonableness or otherwise of the decision In the absence of domestic legislation which conflicts with the covenants (and which would have to be enforced none the less) the case law does suggest that there is some room for considering the covenants. I consider that if this court is to avoid regarding the country’s treaty obligations as mere platitudinous exhortations, or as mere ‘window-dressing’³⁵, they must at least be deserving of consideration in such a case as this, in examining the reasonableness or otherwise of the impugned decision.”³⁶

30 1998 CILR 366, 387-8.

31 [1991] 1 AC 696, 761.

32 de Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, Sweet and Maxwell, 5th ed, para 6-051-6-052, at 324-325.

33 1999 CILR 307.

34 *ibid*, at 334.

35 Borrowing a phrase used by a New Zealand court to express a similar concern in *Tavita v Minister of Immigration* [1994] 1 LRC 421, 431.

36 *Grant*, supra n59, 334-5.

APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS TREATIES IN CAYMAN ISLANDS' COURTS
(cont'd)

When the *Grant* case reached the Court of Appeal,³⁷ Collett JA concurred with the Chief Justice to the extent that the international treaties were important as a background to the decision under review. Nevertheless, Collett JA still found time in his judgment to make express reference to a passage from *ex parte Brind*,³⁸ where Lord Bridge observed that “nothing less than an important competing public interest will be sufficient to justify a restriction upon a convention right to freedom of expression”,³⁹ and to the decision of the English Court of Appeal in *R v Ministry of Defence, ex parte Smith*.⁴⁰ Quoting directly from *ex parte Smith*, Collett JA indicated that a court:

“... might interfere with the exercise of an administrative decision if satisfied that it was unreasonable as being ‘beyond the range of responses open to a reasonable decision-maker,’ and in judging whether or not this was so it could take account of the human rights context. ‘The more substantial the interference with [such] rights, the more the court would require by way of justification before being satisfied that the decision was reasonable.’”⁴¹

The relevance of international human rights conventions to judicial review was verified in *Nazary, Hussaini and Yusufi v R*,⁴² where Graham J confirmed the approach of the Cayman Islands Court of Appeal in *Grant* and their English counterparts in *ex parte Smith*. In this case, three asylum seekers from Afghanistan, who had been detained under the Immigration Law (2001 Revision),⁴³ argued that their continued detention offended the 1951 Geneva Convention relating to the Status of Refugees. Although this Convention was not part of domestic law, Graham J found that it, along with the right to liberty, found in both the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, could influence the assessment of the continued decision to detain:

“The deprivation of liberty is the most ‘substantial’ interference with normal human rights which can take place in a democratic society, and the longer it takes place, the more ‘substantial’ it is. If one places the continuing failure to consider release in the context of the obligations imposed by the section and the human rights imperatives, then the nature of the continued detention of the plaintiffs can only be seen as illegal There is nothing in s.52 which offends the general scheme of the Convention. That is not the case with s.53, which contemplates unlimited administrative detention.”⁴⁴

37 2001 CILR 78.

38 *Brind*, supra n57.

39 *Grant* (CICA), supra n63, 85.

40 [1996] 1 All ER 257.

41 *Grant* (CICA), supra n63, 85.

42 2001 CILR 259.

43 Law 12 of 1991, revised 2001.

44 *Nazary*, supra n68, 266.

HUMAN RIGHTS COMMITTEE SUMMARY OF CASE REPORTS

CIHRC Case 1/06 Luarda

Whilst the substantive complaints raised in this case were not, in the most part, upheld by the HRC, the HRC did take the opportunity to make a series of recommendations pertaining to the facts of the Case, which, if adopted, would improve the recognition of human rights in the Cayman Islands, including *inter alia*:

- a. In order to meet fully the aspirations of the Convention relating to the Status of Refugees, persons granted asylum should receive broader guidance and advice on retraining and other skills to assist in finding meaningful employment.
- b. A refugee, who has resided in the Cayman Islands for more than three years, must be treated in the same manner as Caymanians for the purposes of wage-earning employment.
- c. The Public Service job application form, which requires an applicant to state his or her religious denomination created a potential for discrimination and therefore ought to be amended.

Thus far, the Immigration Department has not responded to invitations to enter into dialogue as to how persons granted asylum could be provided with the full range of rights anticipated by the Refugee Convention. Initially the Public Service Commission declined to accept the HRC's recommendation in respect of religious discrimination. However, the HRC has received an indication from His Excellency, The Governor that this will be acted upon and a new form has been drafted. That said, the existing form remains in use.

CIHRC Case 4/06

The Case concerned a contracted employee of an entity that falls under the remit of the Ministry of Health and Human Services. The complainant was aggrieved that a clause had been inserted into his contract, which precluded him from talking about his particular religion in the course of his employment. The HRC concluded that this did constitute discrimination and was able to work positively with the Ministry concerned to alleviate the situation and ensure that the offending clause was removed. Whilst this represented a successful outcome to this particular case, its facts serve to underscore the HRC's finding that religious discrimination was a possibility in Case 1/06.

CIHRC Case 6/06 The "Lifers" Case (Bruce, Dixon B, Dixon L, Powell, Roper & Thomas)

This case was brought by a number of prisoners, who had been sentenced to life imprisonment without the possibility of parole; some of whom had already served in excess of twenty years. In the process of identifying a number of human rights concerns, the HRC recommended that:

- a. Legislation which imposes a mandatory sentence of life imprisonment for all offences of murder, and prevents the court from considering the circumstances of both the offence and the offender is contrary to the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.
- b. Appropriate legislative amendments and the adoption of new legislation to allow the sentencing Judges to review the full circumstances surrounding a crime in order to determine the 'minimum term' that should be set for each individual defendant following a conviction.
- c. Mandatory sentences for crimes other than murder also raise similar human rights concerns.
- d. The lack of statutory framework for the Parole Board should be addressed by Government as a priority.

HUMAN RIGHTS COMMITTEE SUMMARY OF CASE REPORTS (cont'd)

Having subsequently met with the Commissioner of Corrections and Rehabilitation on a number of occasions, the HRC is pleased to hear that the statutory framework for parole, along with a host of other related improvements to the prison service are currently under consideration. The HRC is cognizant of a proposal, which attempts to alleviate some of the problems with certain minimum sentences, although there are some additional human rights concerns associated with this proposal. The HRC has also received assurances that the position of the “Lifers” is to be reviewed, although no action has thus far been taken in this respect.

CIHRC Case 8/06 The “Balseros” Case (Cuban Migrants Arriving by Sea)

This Case concerned the policies in the Cayman Islands for receiving, processing, detaining and repatriating Cuban migrants arriving by sea. In an extensive Final Report, a number of conclusions were drawn:

- a. The rights of Cuban migrants should be fully respected in accordance with international and domestic law.
- b. The Cayman Islands Government does have a legitimate interest in protecting itself from large numbers of economic migrants.
- c. Policies adopted to prevent illegal activities, including, in particular, human trafficking, which may potentially impinge upon other human rights, are appropriate; provided the policies are a proportionate response to the threat identified.
- d. Assisting Cuban migrants in any onward journey is not a viable option for the Cayman Islands Government.
- e. The policy of the Cayman Islands Government for encountering Cuban migrants arriving by boat should be amended to provide that where the vessel is encountered outside Caymanian waters, the local authorities should only become involved if the vessel is in distress and the persons on board are desirous of being rescued. For the purposes of this policy, the definitions contained in the 6th edition of Hill’s “Maritime Law” are applicable. Hence: a vessel in “distress” is one that is “threatened by grave and imminent danger.” Where the vessel is encountered within Caymanian waters and is in distress (threatened by grave and imminent danger), the local authorities ought to rescue and bring ashore all persons on the vessel, even if persons are not desirous of any assistance and force is required. Where the vessel has landed in the Cayman Islands, the local authorities are then in a position to make an assessment of its seaworthiness. “Seaworthy” is defined in the 6th edition of Hill’s “Maritime Law” as the “fitness of a ship to withstand the expected hazards of the contemplated voyage with cargo.” If the local authorities are of the view that the ship is not seaworthy, all persons who travelled on this vessel would be deemed to have landed illegally and should then be processed in the manner outlined later in this Final Report. If however, the vessel is thought to be seaworthy, it will be permitted to continue its journey, provided it does so immediately and without assistance, in the same way as the current policy envisages.
- f. The International Convention on Maritime Search and Rescue should be extended to the Cayman Islands.
- g. The Cayman Islands Government should, in conjunction with the United Kingdom Government, engage with the International Maritime Organisation in an effort to seek an international legal remedy to the problem of refugees travelling in unseaworthy vessels, who may be in distress, but who may not, for whatever reason, wish to be assisted and taken to the first available place of safety.
- h. Repatriation of illegal Cuban migrants does not automatically give rise to a breach of international human rights law.
- i. If a policy of repatriation is maintained; it is, however, incumbent upon the Cayman Islands Government to continually monitor the human rights situation in Cuba generally, and the treatment of those repatriated in particular, in order to ensure that future repatriations do not breach international human rights law.

HUMAN RIGHTS COMMITTEE SUMMARY OF CASE REPORTS (cont'd)

- j. Repatriation should therefore be considered on an on-going case by case basis.
- k. The Cayman Islands Government should, in conjunction with the United Kingdom Government, urge the Cuban Government to formally repeal its illegal exit laws.
- l. The Memorandum of Understanding between the Governments of Cuba and the Cayman Islands ought to be amended to protect the rights of Cuban nationals repatriated to Cuba.
- m. The facilities at the Immigration Detention Centre are adequate for existing requirements.
- n. Any additional provision for detaining Cuban migrants should be of an equivalent standard.

CIHRC Case 8/06 The “Balseros” Case (Cuban Migrants Arriving by Sea) *cont'd*

- o. The management of the Immigration Detention Centre appeared to be both attentive and informed.
- p. The oversight of the Immigration Detention Centre should be as open and transparent as possible.
- q. Periods of detention for Cuban nationals awaiting repatriation do not currently breach any international human rights.
- r. Periods of detention for Cuban nationals awaiting repatriation should, however, be continually monitored to ensure that these are kept to a minimum.
- s. If periods of detention for Cuban nationals awaiting repatriation do increase, a human rights issue could then arise.
- t. The rights of asylum seekers should be fully respected in accordance with international law.
- u. The assistance of the UNHCR should continue to be sought to ensure that the questioning of asylum seekers enables the immigration authorities to effectively distinguish between economic migrants and political refugees.
- v. The interview process for asylum seekers should be as consistent and fair as is possible and would benefit from the following suggestions:
 - Inviting the interviewee to share their story, rather than respond to a series of closed questions;
 - The adoption of standard questions for follow-up; and
 - The recording of all interviews on video.
- w. The interview process for asylum seekers would also benefit from the presence of an independent third party; although if this is not feasible, all interviews should be recorded and made available to the UNHCR.
- x. The establishment of an independent statutory board or an independent asylum adjudicator to deal with asylum applications.
- y. Once an applicant has been identified as having a prima facie claim for asylum, such persons should not be detained unless they have committed a crime other than entering the jurisdiction illegally.

The HRC has received extremely favourable reviews of its finding from the United Nations High Commission for Refugees, who have indicated that the HRC's suggestions would serve as an appropriate starting point for discussions with the Cayman Islands Government on how best to proceed in improving compliance with all of the rights envisaged by the Convention relating to the Status of Refugees. At this point, however, the HRC has not been engaged in any such discussion.

**SECTION NINE – RELATIONS BETWEEN THE CAYMAN ISLANDS AND
THE UNITED KINGDOM PARLIAMENT**

130. The Cayman Islands has maintained a staffed office in London since 1982, and it is primarily through this office that Cayman's relationship with the UK Parliament has been developed. The office was headed until 2000 by Mr. Thomas Russell CMG, CBE who is a former Governor of the Cayman Islands. As of August 2000, the Cayman Islands Government Representative in the United Kingdom (UK Representative) has been Mrs. Jennifer Dilbert MBE, a long term Caymanian civil servant.
131. The UK Representative is the organising officer for the All Party Parliamentary Group for the Cayman Islands (APPG), which is the main forum for contact and discussion with members of parliament, and action on behalf of the Cayman Islands. The Chair of the APPG is Lord Davies of Coity. It is an active group, with meetings held regularly throughout the year. The London Office provides members of the APPG with monthly updates on current issues in the Cayman Islands, and the UK Representative also maintains contact with individual members to address questions or issues as they arise.
132. Visits to the Cayman Islands by UK parliamentarians are encouraged and three such visits have taken place since 2000, two under the auspices of the Commonwealth Parliamentary Association (UK Branch) and one which was sponsored in full by the Cayman Islands Government. The Cayman Islands Government has extended an invitation to the APPG to send a further delegation to Cayman in July of 2008, and plans are currently being made for this visit. All of these visits have proved very successful in informing and engaging members of parliament. It is considered that the APPG has committed members and is a valuable resource for Cayman.
133. Outside of the APPG, the UK Representative is proactive in engaging members of parliament who table questions or express an interest in the Cayman Islands or the Overseas Territories as a whole, particularly in the area of financial services. The UK Representative is competent in this area, having previously been Head of Financial Services supervision in Cayman. She also has experience in the private sector as she headed the Cayman operations of Deutsche Bank for a period.
134. The UK Representative is a member of the United Kingdom Overseas Territories Association (UKOTA) as well as the Overseas Territories APPG, both of which afford further interaction with the UK parliament, particularly on issues which affect all OTs.⁴⁵
135. The UK Representative regularly attends party conferences, which provide opportunities to meet new MPs and interact with existing contacts in parliament. The facilities and programmes provided at the conferences for overseas governments are normally good, including daily briefings and invitations to various sessions and receptions which allow the Representative to meet Government ministers and other key parliamentarians.
136. Good relations exist between the UK Representative's office and the Overseas Territories Department (OTD) at the FCO. The Desk Officer is very helpful in providing assistance, information and advice on matters such as immigration, passports and visas which may be brought to the London office by Caymanians in the UK. The London office maintains a good relationship with the Protocol Office within the FCO and the UK Representative is afforded many opportunities within the Diplomatic Corps in London to represent the Cayman Islands and this is appreciated. Some exceptions to this are being brought to the attention of the Committee by UKOTA.

⁴⁵ See separate evidence from UKOTA.

137. Cayman's relationship with the EU is assisted by the Co-ordinator, EU/Overseas Countries and Territories within in the Policy and Co-ordination Unit of the OTD. The UK Representative works closely with the Co-ordinator and this has proved very helpful in dealings with the EU, specifically through the Overseas Countries and Territories Association of the EU.
138. The Cayman Islands is a member of the CPA (UK Branch) and both the London office and the local branch of the CPA enjoy an excellent and close relationship with the CPA. The 32nd CPA Regional Conference of the Caribbean, the Americas and the Atlantic Region was held in the Cayman Islands in June 2007.