

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP  
MECHANISM FOR THE IMPLEMENTATION OF  
THE INTER-AMERICAN CONVENTION AGAINST  
CORRUPTION**

**QUESTIONNAIRE ON PROVISIONS SELECTED BY  
THE COMMITTEE OF EXPERTS FOR ANALYSIS  
WITHIN THE FRAMEWORK OF THE FIRST ROUND**

**The Bahamas  
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## **COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

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#### **I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM**

The Commonwealth of The Bahamas is a sovereign and democratic state with a parliamentary form of government. The government is composed of the executive, the legislative and the judicial branches.

Under the Constitution of The Bahamas the Queen of England is the Head of State. The Governor-General who is appointed by and serves at Her Majesty's pleasure represents her in The Bahamas. The Prime Minister and a Cabinet consisting of not less than eight (8) other Ministers exercise executive powers. The Prime Minister is appointed by the Governor General and must be a member of the House of Assembly who is the leader of the party, which commands the support of the majority of the members of that House.

The legislative branch is represented by Parliament, which consists of Her Majesty, the Senate and the House of Assembly. The Senate has sixteen (16) members who are appointed by the Governor General; nine (9) members on the advice of the Prime Minister, four (4) on the advice of the Leader of the Opposition and three (3) on the advice of the Prime Minister after consultation with the Leader of the Opposition. The House of Assembly must have a minimum of thirty-eight (38) members elected by universal adult suffrage every five years. The number of member of the House of Assembly may be increased by Order made by the Governor General on the recommendation of the Constituencies Commission. At present there are forty (40) members of the House of Assembly.

Parliament makes laws for the peace, order and good government of the Bahamas. The Constitution may be amended by an Act of

Parliament. Entrenched provisions may be amended only by a two-thirds majority vote of all members of each House followed by a referendum. Specially entrenched provisions may be amended only by a three quarter majority of all members of each House followed by a referendum.

An independent judiciary through the court system exercises judicial power.

The Supreme Court is a court of general jurisdiction in both civil and criminal matters. The Governor General on the recommendation of the Prime Minister appoints the Chief Justice after consultation with the Leader of the Opposition. The Governor General acting on the advice of the Judicial and Legal Service Commission appoints the other justices.

There are eleven Justices of the Supreme Court, not including the Chief Justice. Two Justices are resident in Freeport, Grand Bahama and have jurisdiction over matters concerning the northern region of The Bahamas, which includes Abaco, Bimini and Grand Bahama. The Supreme Court has original jurisdiction in constitutional matters.

Decisions of the Supreme Court are subject to appellate review by The Bahamas Court of Appeal, the highest tribunal in The Bahamas, which sits on a full time basis. The Governor General on the recommendation of the Prime Minister appoints the five Justices of Appeal after consultation with the Leader of The Opposition. There are four (4) resident Justices of Appeal and one non-resident Justice of Appeal. Typically hearings are conducted by a panel of three (3) judges but in certain constitutional matters the full court is empanelled. In certain instances, such as appeals relating to the fundamental rights and freedoms, appeals from the Court of Appeal lie to the Judicial Committee of Her Majesty's Privy Council in the United Kingdom.

Magistrates Courts exercise summary jurisdiction in criminal matters and in civil matters involving amounts not exceeding \$5,000. Magistrates Courts are presided over by Stipendiary and Circuit Magistrates. There are three magistrates' courts in Freeport, Grand

Bahama, one in Eight Mile Rock, Grand Bahama and one magistrate's court in Abaco.

In addition all Administrators on islands other than New Providence and Grand Bahama exercise summary jurisdiction in criminal matters of a less serious nature and in civil matters involving amounts not exceeding \$400.

Appeals from a decision by a Stipendiary and Circuit Magistrate exercising original jurisdiction go to the Supreme Court or in some instances, directly to the Court of Appeal.

Justices of the Supreme Court and the Court of Appeal may be suspended or removed from office by the Governor General following an inquiry by a tribunal established for that purpose.

## **CHAPTER ONE MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)**

### **1. General standards of conduct and mechanisms**

- a. There are standards of conduct in The Bahamas for the correct, honourable and adequate fulfillment of public functions.

1. Many standards are contained in **General Orders**. General Orders contains the conditions of service for Government servants, instructions for the conduct of public business, the code of discipline and other matters. General Orders includes the following relevant rules –

- (i) that public officers may not engage either directly or indirectly in trade or private professional practice except where expressly permitted in the terms of service (Paragraph 900);
- (ii) that public officers may not take part directly or indirectly in the management or proceedings of a

commercial undertaking notwithstanding he may have invested money in such undertaking (Paragraph 901);

- (iii) that public officers are limited from taking part in political activities (Paragraph 949);

### **The Politically Restricted Group**

Senior public officers, particularly those whose duties include advising Ministers or who may be serving in a sensitive post or in a senior or influential position are completely debarred from all political activities. These senior public officers include all public officers serving in any post in the Governor-General's Office, the Cabinet Office, Ministry of Finance, The Service Commissions, the House of Assembly, the Senate, the Parliamentary Registration Department, Principals and Vice Principals of Schools, Department of Public Service, the Ministry of Foreign Affairs and all officers of the Royal Bahamas Police Force;

### **The Intermediate Group**

Typists, clerks, and technicians are free to engage in political activity but only if specific permission is granted and subject to conditions which may be imposed.

### **The Politically Free Group**

The unestablished daily paid employees and equivalent (all officers not included in the politically restricted group and the intermediate group) are completely free to engage in all political activity.

- (iv). Where the indebtedness of a public officer becomes excessive that he is unable to meet his obligations he may not be employed on duties involving the handling of the public money. (Paragraph 1011);

- (v). Public officers may not receive gifts. (Paragraph.1020);
- (vi). Public officers may not sell or allow to be sold or lease his private property to government. (Paragraphs 1030, 1031).

2. **The Prevention of Bribery Act**, Chapter 81 applies to all public officers, as well as any employee or member of a public body whether temporary or permanent and whether paid or unpaid. The Prevention of Bribery Act provides for standards that are designed to prevent corruption. The Act provides -:

- i. A public officer may not solicit or accept any advantages as an inducement to or reward for his performing or abstaining from performing, expediting or delaying any act in his capacity as a public officer or assisting favoring hindering any person in the transaction of any business with a public body. (Section 3(2))
- ii. A public officer may not solicit or accept any advantage for giving assistance or using influence in the promotion, execution or procuring of any contract or subcontract with a public body. (Section 4(2)).

3. **The Code of Ethics for Ministers and Parliamentary Secretaries** provides standards for Cabinet Ministers and parliamentary secretaries. The Code of Ethics was laid before the House of Assembly and is intended to be incorporated into an Act of Parliament (The Integrity in Public Life Bill). The Code provides -

- i. Private work whether remunerated or not is prohibited;
- ii. A Minister must not hold any other public office or serve as director and or officer of public or private companies or associations except personal or family holding companies that are not involved in any business or trade, and religious or non profit organizations. The Prime Minister should be advised of these exceptions and his approval obtained.

- iii. A Minister who previously engaged in a profession or business is not necessarily required to dispose of his interest in the relevant entity, but he shall remove his name from all business letterheads or amend it to reflect his inactive status and cease to participate in the profits except for an amount due to him in return for his previous investment;
- iv. Ministers who hold shares in companies that have contractual relationships with the Government must divest themselves of such interest upon assuming office, where disposal is impractical it should be brought to the attention of the Prime Minister who, if satisfied that disposal is impractical will generally advise the Minister to divest himself of his interest by transferring the same to a “Blind Trust”. Such a trust should be administered by a trustee not related to the Minister;
- v. A Minister should not use “insider information” to make speculative investments in the securities market or to obtain some advantage for himself in advance of an imminent change in Government policy or revenue measures;
- vi. Whenever Cabinet is due to discuss any matter that could affect the private interest of a Minister, that Minister should declare his interest and withdraw from the meeting for the duration of their discussion;
- vii. Ministers should not accept gifts that might be perceived to create an obligation to the donor.

A draft Integrity in Public Life Bill has been prepared by the Office of the Attorney General for submission to Cabinet. Additionally the Law Reform Commissioner has been instructed to review and regulate financial contributions to political parties and their expenditures in political campaigns and elections.

4. **The Official Secrets Act 1911** applies to all public officers and makes it an offence for public officers to communicate, retain or fail to take reasonable care of information received during their service and the information (includes codes, pass words, plans, models, notes and documents) is used in a manner prejudicial to the safety or

interests of the state. The provision of this Act applies to public officers even after they have left the public service.

5. **The Powers and Privileges (Senate and House of Assembly) Act** Chapter 8 prohibits a Senator or a Member of Parliament from accepting agreeing to accept or attempting any bribe compensation or benefit for speaking, voting or acting as such Senator or Member of in proceedings of the Senate or House of Assembly or a committee or refraining from so doing.

6. **The Constitution of The Bahamas** disqualifies a person from being appointed a Senator who-

- i. has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
- ii. is interested in any government contract and has not disclosed to the Governor-General the nature of such contract and of his interest therein. (Article 42).

7. **The Constitution of The Bahamas** disqualifies a person from being elected as a Member of the House of Assembly who-

- i. has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
- ii. is interested in any government contract and has not disclosed the nature of such contract and of his interest therein by publishing a notice in the Gazette within one month before the day of election. (Article 48).

8. **The Commission of Inquiry Act**, Chapter 172 provides that The Governor-General can issue a Commission to inquire into and report on any matter stated as the subject of inquiry if he thinks it will be for the public benefit. By virtue of section 7 (1) of the Act the duty of the Commissioners appointed to such a Commission is to make a full, faithful and impartial inquiry into the matter specified in the Commission having summoned and examined witnesses and to report the results of their inquiry to the Governor-General. The Governor-General in turn transmits a copy of the report signed by the Commissioners to both Houses of Parliament. In that regard it is

possible for a Commission to inquire into allegations of corruption involving public officials.

There has been several Commissions of Inquiry appointed under the Commission of Inquiry Act, the most recent being a Commission of Inquiry established in February 2004 to look into allegations of impropriety by members of the Royal Bahamas Defence Force and the Royal Bahamas Police Force.

This Commission heard evidence and presented its final report to the Governor General on 31 August 2004.

9. Article 136 of the **Constitution of The Bahamas** provides for the establishment of an Auditor General, whose office is a public office. The Auditor General is responsible for auditing and reporting on the accounts of the Supreme Court, the Senate, the House of Assembly, all Departments and Offices of the Government, including the Public Service Commission, the Judicial and Legal Service Commission, the Police Service Commission, and all Magistrates Courts. The accounts of the Department of the Auditor General are audited and reported on by the Minister of Finance. The Auditor has security for tenure and can only be dismissed for inability to discharge his functions or for misbehaviour.

10. **The Penal Code**, Chapter 77 also addresses the issue of corruption of public officers and jurors. A public officer is guilty of extortion who, under the cover of his office, demands from any person, whether for public purposes or for himself or any other person, any money or valuable consideration which he knows that he is not lawfully authorized to demand or obtain, or at a time at which he knows that he is not lawfully authorized to demand the same.

b. There are mechanisms for enforcing the standards of conduct set out above.

1. All acts of misconduct under General Orders by a public officer would require disciplinary action by an “empowered officer” (i.e. a public officer to whom powers of appointment and disciplinary control

has been delegated under provisions of the constitution) or the Public Service Commission (Public Service Commission Regulations 41 and 42). Misconduct has been defined in Paragraph 1041 of General Orders as any act contrary either to specific rules or regulations or against the general interest of efficient public service. In addition, disciplinary action can be taken for general misconduct to the prejudice of discipline and the proper administration of Government business, for example, corruption, dishonesty, false claims, the falsification of records or their suppression, or failure to keep them, and the like.

2. Where any person is guilty of an offence described at a. under the Prevention of Bribery Act he is liable, on conviction on information to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding four years or to both such fine and imprisonment or on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceed two years or to both such fine and imprisonment and shall be ordered to pay to such person or public body the amount or value of any advantage received by him or such part as the court may specify. (Section 10)

3. The Code of Ethics for Ministers and Parliamentary Secretaries does not expressly stipulate any penalties for violation. Once the Act is passed sanctions would be imposed.

4. A person in violation of the Official Secrets Act who commits the offences described under this Act at a. would be liable on conviction on indictment to a term not exceeding two years or on summary conviction to a term not exceeding three months. (Official Secrets Act 1920 Section 8).

5. The Powers and Privileges (Senate and House Of Assembly) Act prohibits offers or acceptance of bribes by Senators or Members of the House of Assembly. Section 27 of that Act provided that any person who -

- (a) offers to any Senator, Member or officer of the Senate or House of Assembly any bribe, in order to influence him in his conduct as such Senator Member or Officer, or offers to any Senator, Member or Officer any fee, compensation, gift or

reward for or in respect of the promotion of or opposition to any Bill or matter submitted or intended to be submitted to either Chamber or Committee; or

- (b) being a Senator or Member, accepts or agrees to accept or obtains or attempts to obtain for himself or for any other person any bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting as such Senator or member in proceedings of the Senate or the House or a Committee, as the case may be, or for refraining from so speaking, voting or acting, or for absenting himself from such proceedings, or on account of his having so spoken, voted, acted, refrained or absented himself; or
- (c) being a Senator or a Member brings forward, promotes or advocates in the Senate or the House as the case may be, any proceedings or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward,

shall be guilty of an offence and shall be liable on conviction on information to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding three years or to both.

6. The Election Court established under Article 51 of the Constitution have the power to make enquiries into the qualification of a candidate to be a Member of Parliament on the petition of a candidate or a registered voter.

7. Under the Financial Administration and Audit Act, Chapter 329, the Auditor General is responsible for examining, enquiring into and auditing the accounts of all accounting officers and persons responsible for the collection, receipt, custody or disposal of public monies or public stores, and reporting any irregularities thereto. Further he may consult with the auditors of any statutory corporation regarding its financial affairs, and if he is dissatisfied with the result of such consultation he may so report to the Minister of Finance.

8. Section 474 of the Penal Code states that every public officers or juror who is guilty of corruption, or of willful oppression, or of extortion, in respect of the duties of his office, commits a misdemeanour and is liable to imprisonment for two years. Further Section 483 of the Code provides that whoever corrupts or attempts to corrupt any person in respect of any duties as a public officer or juror is guilty of a misdemeanour.

c. There are no statistical data available which shows the results obtained in implementing the standards.

d. Not applicable.

## **2. Conflicts of interest**

a. There are standards of conduct in The Bahamas regarding the prevention of conflicts of interests in the performance of public functions.

1. General Orders provides-

i. A government contract may not be let to a public servant or to any partnership of which he is a member unless he has disclosed fully the measure of his interest in the contract and the Permanent Secretary in the Department of Public Service has given permission;

ii. If an officer finds he has been given official duties whereby he would have knowledge or authority concerning his private investments he must disclose this to the Permanent Secretary in the Department of Public Service and he may be required to divest himself of them if is considered that his private affairs might be brought into real or apparent conflict with his public duties.

2. The Code of Ethics for Ministers and Parliamentary Secretaries provides that -

i. A Minister must divest himself of relevant holdings if it appears that there might be a conflict of interest;

- ii. Ministers who have direct contractual relationships with the government must terminate such relationships when assuming office unless the nature of the relationship has been fully disclosed in accordance with the law and termination in the Prime Minister's view would not be in the public interest;
- iii. Ministers must avoid recommending their former firms or businesses to persons seeking the government's favour or continued favour;
- iv. Ministers must avoid using their ministerial status or influence for the enrichment of themselves or their families.

b. There are mechanisms to enforce compliance with the standards stated above. All acts of misconduct under General Orders by a public officer would require disciplinary action by an empowered officer or the Public Service Commission. (Public Service Commission Regulations 41 and 42)

c. There are no statistical data available which shows the results obtained in implementing the standards at a.

d. Not applicable

### **3. Conservation and proper use of resources entrusted to public officials in the performance of their functions**

a. There are standards of conduct in the Bahamas that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions.

1. General Orders provides the following:
  - i. Public officers are not allowed to furnish supplies on account of the public without the sanction of the Deputy Prime Minister. (Paragraph 912)
  - ii. If at any time the public funds sustain a loss by reason of the neglect or fault of any officer or by his disregard of or failure to comply with any provision of general orders, Financial Instructions, Stores

Rules or departmental instructions he shall be surcharged up to the amount of the loss. (Paragraph 1048).

2. The Rules of the House of Assembly in paragraph 24 provides that a standing committee designated the Committee of Public Accounts be established for the examination of the accounts showing appropriation of the sums granted by the legislature to meet the public expenditure of The Bahamas. This committee consists of five members of the House of Assembly who shall be nominated at the commencement of every session and of whom three shall be a quorum. It is mandatory that the committee report at least once every session and not later than sixty days after the commencement of the session. It is conventional that opposition members dominate the Committee of Public Accounts.

3. The Financial Administration and Audit Act, Chapter 329, section 22 provides that if it appears to the Financial Secretary upon a report by the Treasurer a person, who is or was an officer,

- (i). has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;
- (ii) .is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or
- (iii) is or was responsible for any deficiency in, or for the loss or destruction of, any public money, public stores or other government property,

and if within a specified period given by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure he may surcharge against the said person the loss or such lesser amount as the Financial Secretary may determine.

4. The Penal Code, Chapter 77 Section 235 provides that if any public officer who is bound as such officer to pay or account for any moneys or valuable things, fails to pay or account for the same according to his duty to any officer or person lawfully demanding the same he commits an offence.

b. There are mechanisms to enforce compliance with the above standards of conduct.

1. All acts of misconduct under General Orders by a public officer would require disciplinary action by an empowered officer of the Public Service Commission (Public Service Commission Regulations 41 and 42).

## **DISCIPLINARY PROCEDURES UNDER PUBLIC SERVICE COMMISSION REGULATIONS**

The power to exercise disciplinary control over persons holding or acting in any public office is vested in the Governor General acting in accordance with the recommendation of the appropriate Service Commission.

An officer may be disciplined for misconduct in accordance with Public Service Commission Regulations and General Orders.

Any act of misconduct by any Public Officer shall be dealt with as soon as possible after the time of its occurrence. (PSC Regulation 31 and G. O. 1100)

Punishments that may be implemented (PSC Regulation 40 (1)) as a result of proceedings under PSC Regulations are:

- (a) dismissal
- (b) reduction in rank
- (c) reduction in salary
- (d) deferment of increment
- (e) withholding of increment
- (f) reprimand
- (g) forfeiture of any part of any emoluments withheld during any period of interdiction under PSC Regulation 37.

When a preliminary investigation or a disciplinary inquiry discloses that an offence against any law may have been committed by a Public Officer, the empowered officer, unless action has been or is about to be taken by the police, shall consult the Attorney General as to whether a prosecution should be instituted and, if no prosecution is

advised, whether disciplinary action should be taken or continued under the appropriate regulations. If a disciplinary action is to be taken then the charges shall be approved by the Attorney General before the officer is required to answer them or before the inquiring proceeds.

**A. Procedures for Dismissal of Officers holding Non Delegated Posts (PSC Reg. 41)**

1. Preliminary investigation by the empowered Officer (Supervisor or Head of Department)
2. Report the facts to the Permanent Secretary, Department of Public Service.
3. If the Permanent Secretary, Department Public Service considers that a charge should be made against the officer, he shall consult the Attorney General's Office re the terms of the charge.
4. A statement of the charge and a brief statement of particulars of the allegation upon which the charge is based shall be forwarded to the officer and he shall state in writing within 14 days or receipt of the letter any grounds upon which he relies to exculpate himself.
5. Forward this report to the Chairman, Public Service Commission along with the relevant proceedings.
6. The Public Service Commission after receiving the documents and obtaining any amplification or after further investigation shall forward the written proceeding to the Governor General with a recommendation as to what punishment, if any, should be inflicted on the accused officer.

**B. Disciplinary Procedures not warranting Dismissal – Non Delegated Posts (PSC Reg. 43)**

1. An investigation by the empowered officer is done or he could request the Permanent Secretary, Department of Public Service to cause an investigation to be made.
2. The accused officer is informed of the whole case against him and given 14 days to make his defense.
3. If after the investigation the empowered officer is of the opinion that the allegation is proved, he shall make a report to the Permanent Secretary, Department of Public Service who shall forward the report with his recommendation as to penalty to the Chairman Public Service Commission.
4. The Public Service Commission shall make recommendations to the Governor General as to what penalty if any should be inflicted upon the officer.
5. The decisions on each charge preferred against the officer shall be communicated to him by the Permanent Secretary, Department of Public Service

**C. Procedures for Retirement in the Public Interest (PSC Reg. 45)**

1. The Permanent Secretary or Head of Department reports the matter to the Permanent Secretary, Department of Public Service.
2. The Permanent Secretary, Department of Public Service may obtain from any public officer under whom the accused has served a report of his work and conduct.
3. The officer may be allowed to consider such report and to Show cause, in writing why he should not be retired from the Public Service.
4. If, after consideration of the accused officers statement and having regard to the circumstances of the case, the Permanent Secretary, Department of Public Service is of

the view that the officer should be retired in the public interest, he shall forward the report along with the officer's statement to the Public Service Commission along with recommendation.

5. The Commission shall recommend to the Governor General whether or not the officer should be retired.
6. If it is recommended that the officer be retired then the Commission shall further recommend what benefits, if any, the officer should be granted.

#### **D. Disciplinary Procedures for Criminal Convictions (PSC Reg. 46)**

The same procedures under procedures not warranting dismissal are followed except:

1. Permanent Secretary, Department of Public Service must require the accused officer to make any representation on his behalf.
2. a copy of the charge and conviction and proceedings of the court, if available, must be forwarded to the Public Service Commission along with the officer's representations and the Permanent Secretary in the Department of Public Service's recommendation (s) as to punishment.

#### **SECURITY VETTING**

Security Vetting by the Security and Intelligence Branch of the Royal Bahamas Police Force of applicants is required for the following Ministries/Departments:

- Department of The Auditor General;
- Cabinet Office;

- Civil Aviation;
- Customs Department;
- Department of Public Service;
- Office of the Governor-General;
- House of Assembly;
- Immigration Department;
- Meteorological Department;
- Ministry of Finance;
- Ministry of Financial Services and Investment;
- Ministry of Foreign Affairs;
- Ministry of Trade and Industry;
- Office of the Attorney General;
- Office of the Deputy Prime Minister;
- Office of the Prime Minister;
- Parliamentary Registration Department;
- Port Department;
- Public Service Commission;
- Road Traffic Department;
- The Senate;
- Treasury Department;
- Security Personnel for all Ministries.

The purpose of the Security vetting is to ascertain that the persons employed in these Ministries and Department are persons of integrity.

### **STATISTICS RELATING TO DISCIPLINARY MATTERS FOR CORRUPT BEHAVIOUR**

	<b>Persons Punished</b>	<b>Persons interdicted</b>
Jan – Dec 2003	8	7
Jan – June 2004	5	4

2. There is no mechanism to enforce the Public Accounts Committee to make its report.

3. Section 26 of The Financial Administration and Audit Act provides that where a surcharge against an officer the Financial Secretary may direct that the amount of any surcharge which may be due from an officer shall be recovered by monthly deductions from the salary of such officer in such amounts, not exceeding one-sixth of the amount payable monthly to such in respect of salary. Or the amount of such surcharge may be sued for and recovered as a debt due to the Government by action at the suit of the Attorney General.

4 A person who commits an offence under section 235 of The Penal Code, Chapter 77 shall be liable to imprisonment for three months.

## **PUBLIC SECTOR REFORM**

Discussions have been held with several local, international and regional bodies/organizations at the highest levels and proposals have been put to the Government. However, no decision has been made as to what direction Public Sector Reform will take.

The Hon. Minister of Foreign Affairs and the Public Services proposes a forum for September 2004 with the various representative Public Service Unions to discuss matters relating to Public Sector Reform.

### **4. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.**

a. The Financial Administration and Audit Act Chapter 329 provides that if at any time it appears to the Auditor General that any irregularity has occurred in the collection custody or expenditure of public moneys or in the accounting for the same and it does not appear to have been reported to the Minister, The Auditor General shall forthwith bring the matter to the notice of the Minister.

b. Where there is evidence of corruption a report is made to the Royal Bahamas Police Force for investigation. If there is sufficient evidence of corruption charges are laid before the Courts.

c. There are no results available.

d. Not applicable

## **CHAPTER TWO SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, 4)**

a.

1. The Public Disclosure Act, Chapter 9, Section 4 makes it the duty of Senators and Members of Parliament to declare their assets income and liabilities in a prescribed form as at 31<sup>st</sup> day of December in each year. The declaration must be submitted before the 1<sup>st</sup> day of March in the following year. There is a Public Disclosure Commission who examines the declaration and may ask for further explanations of the items declared. Section 8 provides that where any person fails to furnish the Commission with a declaration or the Commission is not satisfied with any aspect of a declaration after examination and enquiries, it shall report the matter to the Prime Minister and the Leader of the Opposition.

By section 9 of the Public Disclosure Act the Prime Minister may by notice published in the Gazette apply the provisions of the Public Disclosure Act to any member of the Commission; public appointee or class of public appointee or public officer or class of public officer as may be designated in the notice. By notice dated 3 April 1980 (S. I. No 20 of 1980) the Act was applied to

- Secretary to the Cabinet;
- Financial Secretary;
- Chairman of the Public Service Commission;
- Permanent Secretary;
- Director of Legal Affairs;
- Auditor-General;
- Director of Public Personnel;
- Commissioner of Police;
- Secretary of Revenue;
- Deputy Permanent Secretary;

- Deputy Financial Secretary;
- Deputy Auditor-General;
- Deputy Commissioner of Police;
- Deputy Director of Public Personnel;
- Head of Department;
- Deputy Head of Department;
- General Manager (by whatever name called) of any Corporation established by Act of Parliament for public purposes;
- Deputy General Manager (by whatever name called) of any Corporation established by Act of Parliament for public purposes;
- Governor of the Central Bank of The Bahamas;
- Deputy Governor of the Central Bank of The Bahamas.

The declaration must be submitted before the 1<sup>st</sup> day of March in the following year. Where any person fails to make a declaration pursuant to this section or the Commission is not satisfied after examination of the declaration and enquiries the commission shall report the matter to the Prime Minister and the Attorney General. The declarations of these officers are not published in the Gazette.

Section 13 provides that any person (public officer or Senator or Member of Parliament) who fails to make a declaration or makes a false declaration shall be guilty of an offence and shall on conviction on information be liable to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or to both. Where the offence involves the deliberate non disclosure of property of a Senator or Member of Parliament the court shall in addition to the imposition of a fine or imprisonment or both declare that the property be forfeited to the Government if the property is situated within The Bahamas or order the value of the property be paid to the Government if the property is situated outside The Bahamas.

The Commission publishes a summary of the declaration after examination of the declaration and the Commission is satisfied that the declaration has been fully made.

2. The Parliamentary Elections Act, 1992 section 37 (1) (a) provides that a person shall not be validly nominated unless a declaration by him to best of his knowledge, estimation or endeavours as the circumstances permit of the assets, income and liabilities in the prescribed form as pertaining to himself, his spouse and his children. A Justice of the Peace or Notary Public must notarize this declaration.

Section 39 (2) provides that the Returning Officer shall publish a copy of the declaration not later than the second day after nomination day.

b. There is no available information of the results obtained in implementing the above Act.

c. Not applicable

### **CHAPTER THREE OVERSIGHT BODIES**

a. There are oversight bodies charged with the responsibility of ensuring compliance with provisions stated in Article III (1), (2) and (4).

- (i). The Public Service Commission established under Article 107 of the Constitution of The Bahamas oversees the matters contained in Article III (1) (2) and (4) of the convention. The Public Service Commission consist of a Chairman and not less than two nor more than four other members all appointed by the Governor General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

The Public Service Commission functions include advising the Governor-General on appointment, and dismissal. They also hold disciplinary proceedings for misconduct according to Public Service Commission Regulations.

- (ii) The Police Service Commission has established under Article 118 of the Constitution of The Bahamas oversees the matters raised in Article III (1) (2) and (4) of the convention in relation to the police. The Police Service Commission consists of a Chairman and two other members appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.
- (iii) The Judicial and Legal Service Commission established under Article 116 of the Constitution of The Bahamas oversees the matters raised in Article III (1) (2) and (4) of the convention in relation to attorneys.

b. There is no available information on the results.

c. Not applicable

## **CHAPTER FOUR**

### **PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER II)**

#### **1. General questions on the mechanisms for participation.**

- a. There are mechanisms to encourage participation by civil society and non governmental organization in efforts to prevent corruption.
  - (i). Once the Public Disclosure Commission publishes a summary of each declaration of Senators and Members of Parliament any person may make a written complaint to the Commission in relation to the summary (Public Disclosure Act Section 6 (3)).
  - (ii) Members of the public may make complaints to Police Complaints Unit concerning corruption by Police Officers.

b. (1) The Public Disclosure Commission has not received any complaints in the last two years.

(2) For the period January to June 2002, The Police Complaints Unit has received one hundred and ninety-four (194) complaints. One hundred and sixty (160) complaints are being investigated, twenty-one (21) complaints have been resolved and thirteen (13) complaints are sub judice.

c. Not applicable

## **2. Mechanisms for access to information.**

a. There are no mechanisms in The Bahamas that regulate and facilitate the access of civil society and non-governmental organizations to information in the control of public institutions.

b. Not applicable

## **3. Mechanisms for consultation**

a. There are no mechanism to consult civil society. However it is a common practice for public bodies to hold town meetings and also to invite comments from civil society on certain issues.

b. Not applicable

## **4. Mechanism to encourage active participation in public administration.**

a. There are no mechanism to encourage active participation in public administration.

b. Not applicable

## **5. Participation mechanisms for the follow-up of the public**

**administration**

- a. There are no mechanisms for active participation of civil society in the follow up of public administration.

**CHAPTER FIVE  
ASSISTANCE AND COOPERATION (ARTICLE XIV)****1. Mutual Assistance**

- a. The Mutual Legal Assistance (Criminal Matters) Act 1988 provides for legal assistance in criminal matters from other countries who have a treaty with The Bahamas.

Presently The Bahamas has treaties with the United States of America, Canada and the United Kingdom (The treaty with the United Kingdom only applies to dangerous drugs). The assistance would include acts of corruption as long as they were not of a political nature. Under the Act the Attorney General is designated as the Competent Authority to whom requests for legal assistance should be sent. When a request is presented in accordance with the provisions of a treaty, to the Attorney General, by a foreign state, the Attorney General deals with it in such way to discharge the obligations of the Government of The Bahamas under the relevant treaty.

For countries where there is no treaty with The Bahamas Letters Rogatory may be sent through diplomatic channels. Additionally requests for assistance may be executed under the Criminal Justice (International Cooperation) Act 2000. The request must emanate from a court or prosecutor in a country outside The Bahamas and that authority should ensure that an offence under the Law of its country has been committed or that there are reasonable grounds for suspecting that an offence has been committed and that proceedings in respect of that offence have been instituted in its country or that an investigation has been initiated.

- b. This information is not available
- c. Not applicable

## 2. **Mutual technical cooperation**

- a. The Bahamas does not have mechanisms to permit mutual technical cooperation.
- b. The Bahamas has not made requests to other countries or received requests from them for mutual technical cooperation under the convention.
- c. The Bahamas has not implemented its obligation under Article XIV (2) of the convention.

### **Mutual Legal Assistance**

The Bahamas has received and executed one request for mutual legal assistance in a criminal matter dealing with corruption of high level public officials from a member country of the OAS. This request has been completed and charges have been laid in the requesting country. The provision of the information to the requesting country is now the subject of a challenge before the Supreme Court of The Bahamas.

## **CHAPTER SIX**

### **CENTRAL AUTHORITIES (ARTICLE XVIII)**

#### **1. Designation of Central Authorities**

- a. The Bahamas has designated the Attorney General as the Central Authority for the purposes of channeling requests for mutual assistance as provided under the Convention.
- b. The Bahamas has designated the Attorney General as the Central Authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention.
- c. .Contact data-

Responsible official – **Rhonda P. Bain**  
 Position - **Director of Legal Affairs**

Agency - Office of The Attorney General  
Mailing Address - P.O. Box N-3007,  
3<sup>rd</sup> – 6<sup>th</sup> Floors, Post Office Building,  
East Hill Street,  
Nassau, The Bahamas.

Telephone - 242 502-0400/242-502-430  
Fax - 242 322-2255  
E-mail address attgenrb@batelnet.bs

d. Not applicable

## 2. Operation of Central Authorities

a. The central authority of The Bahamas does have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention. The Office of the Attorney General has an International Legal Co-operation Unit (ILCU). This Unit is charged with the duty of dealing with all requests for legal assistance, which are sent from foreign jurisdictions. The ILCU has a complement of three attorneys, and an administrative assistant. Two other attorneys assist when the need arises.

b. The central authority has not received or made requests for assistance and cooperation under the Convention.

## III. INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

A . State Party – **The Bahamas**

B, The official to be consulted regarding the responses to the questionnaire:

**Rhonda P. Bain**  
Title/ position: **Director of Legal Affairs**  
Agency/office: Office of the Attorney General  
Mailing address: P.O. Box N-3007,

3<sup>rd</sup> – 6<sup>th</sup> Floors, Post Office Building,  
East Hill Street,  
Nassau, The Bahamas.  
Telephone 242-502-0400/242-502-0430  
Fax number: 242-322-2255  
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## **RECENT DEVELOPMENTS**

### **Constitutional Commission**

The Government in December 2002 appointed a Constitutional Commission under the Chairmanship of two senior attorneys. The broad mandate of the Commission is to carry out a comprehensive review of the Constitution of The Bahamas and to consider the method of amending the current Constitution or adopting a new one. Specific objectives of the review include the strengthening of the fundamental freedoms and civil and political rights of the individual; critically examining the structure of executive authority; examining the structure and functions of parliamentary institutions in order to ensure transparency and accountability in the expenditure of public funds; the retention or otherwise of the Senate in its present form and to examine the alternative methods of determining the composition of Parliament.

The Commission has produced a booklet containing basic information about the Constitution with a view to deepening public knowledge of the Constitution and to stimulate public interest and debate on constitutional issues. The booklet contains basic information about the Constitution and questions to start citizens thinking about reform possibilities,

Some of the issues being considered by the Commission are -

- the requirement for Members of the House of Assembly to publicly disclose their assets with appropriate penalties for failure to disclose;
- provision for the House of Assembly to prescribe the amounts and limits on election expenditure, and impose restrictions on the sources of contributions;
- election of Senators and greater power of senators;

- tenure of the Prime Minister.

The Commission was instructed to engage in nation-wide consultation and dialogue with The Bahamas people, associations and academic institutions as an intrinsic part of the foregoing inquiry and to do so by such means as the Commission may deem appropriate, including town meetings throughout The Bahamas; “call in” radio and television programmes, public symposia; public circulars inviting comments on constitutional reform as well as public hearings before the Commission of statements from interested parties.

To this end the Constitutional Commission has held a series of Town Meetings in New Providence, Grand Bahama and all the major Bahamian islands.

The Commission is required to submit a Report on proposals for Constitutional reform within two years.

**A copy of the booklet published by the Constitutional Commission is attached..**

#### **ATTACHMENTS**

**The Constitution of The Bahamas;**

**The Prevention of Bribery Act;**

**The Public Disclosure Act;**

**The Penal Code;**

**The Powers and Privileges (Senate and House of Assembly) Act;**

**The Mutual Legal Assistance in Criminal Matters Act;**

**The Criminal Justice (International Cooperation) Act;**

**The Financial Administration and Audit Act;**

**The Proceeds of Crime Act;**

**The Commission of Inquiry Act;**

**The Parliamentary Elections Act;**

**The Official Secrets Act;**

**The Public Service Commission Regulations;  
General Orders;  
The Code of Ethics for Ministers and Parliamentary  
Secretaries;  
Rules of the House of Assembly;  
The Public Disclosure (Application to Public Appointees and  
Public Officers Notice.  
The Bahamas Constitution – Options for Change.**

**Updated August 2004  
Office of the Attorney General.**