



**Board of Directors Meeting of the
Utility Regulation and Competition Office (“OfReg”)
held on Thursday, 27 August 2020, 9:00 am
(Via Virtual Conference)
General Meeting 6 of 2020**

Minutes

In attendance:

Dr. the Hon. Linford Pierson, Chair (Chair)
Mr. Ronnie Dunn, Non-executive Director (RD)
Mr. Rudy Ebanks, Non-executive Director (RE)
Mr. Paul Byles, Non-executive Director (PB)
Mr. Gene Banks, Non-executive Director (GB) [absent from 11:18 am to 12:38 pm]
Mr. Phillip Ebanks, Non-executive Director (PE)
Mr. Malike Cummings, Chief Executive Officer (CEO)
Mr. Duke Munroe, Chief Fuels Inspector/Director Fuels Markets (CFI)
Mr. Gregg Anderson, Executive Director Energy & Utilities (EDEU)
Mr. Sonji Myles, Acting Executive Director ICT (AEDICT) (by invitation of the Chair)
Ms. Alison Maxwell, Assistant General Counsel/Secretary (AGC/S)
Mr. Christen Suckoo, Chief Operating Officer (COO) (by Board Directive)

Start: 9:05 am End: 3:20 pm

1. General

1.1 Welcome and Prayer – The Chair welcomed everyone, and on behalf of the Board thanked the EDICT for his service, and wishes him all the best in his future endeavors. The CEO said the prayer.

1.2 Approval of Agenda – Moved by RE and seconded by PB.

1.3 Chair’s Remarks –

My remarks today are focused on Best Practices, and on board compositions in certain statutory authorities in the UK and the Bahamas.

UK Board and Board Diversity

Governance experts strongly recommend greater board diversity on the composition of boards. UK boards of directors are declining in size, but increasing in terms of diversity and skills, as a report from consultants Spencer Stuart shows--Spencer Stuart has been advising the boards of Europe’s leading companies for several decades. The main purpose of the Report is to help directors and chairpersons understand how changing business requirement and governance of various organizations affect board practice. In this connection, it has been recognized that being the wrong size and diversity may limit a board composition and effectiveness.

Too many members and meetings can become protracted, with silos developing, and potentially poorer decision-making, while at the opposite extreme, too few directors working together can create barriers to successful outcomes. Appropriate board framework should therefore be developed to enable best practice to be identified and tailored to a specific board's needs.

Best Practice of a Successful Board

Whilst there is no universally applicable definition of what makes for an effective and successful board, we can characterize the hallmarks of a successful board as follows:

- Clear definition and understanding of the role of the Board and how it differs from that of management team. For example, how closely are we, as a board, working with OfReg's Senior Management Team? Are resolutions being made by our board without properly taking into account the professional views of our executive directors?
- Appropriate composition of directors, all of whom are aligned with OfReg's Vision, Mission and long-term Strategic Plan. It is against this background that the board should seriously consider the peculiar multi-sectored status of OfReg that sets it apart from other local single-sectored statutory authorities. *The Public Authorities Law, PAL (2020 Revision), was not designed to govern a multi-sectored authority such as OfReg.* To obtain an appropriate precedence for OfReg the board should review the operations of overseas statutory authorities which are similar in its operations, such as Ofcom, Ofgem and Ofwat in the UK, which have executive directors on their boards, as does URCA in the Bahamas. In addition, page 22 of the Cayman Islands Public Sector Good Governance Handbook for Board Members states that executive board members are "*uniquely placed to add value to the Board*". In the absence of available local precedence, as guidance, the Board should strongly consider retaining the executive directors on the board of OfReg, pending a comprehensive review by qualified Regulatory Professionals to advise the Board of the pros and cons in this matter, and the way forward.

2. Declaration of Interest

N/A

3. Minutes of Previous Meetings and Round Robin Resolutions

3.1 Approval of the Minutes of:

- General Meeting no. 5, held 30 July 2020 v1

Motion: It is resolved that the minutes approved as amended. Moved by RE and seconded by PB.

3.2 Matters arising from Minutes

- Third Mobile Application – The AEDICT provided an update. The Utility Regulation and Competition Office ("the Office") does not presently have a licensing framework to support 5G mobile networks. There was discussion with the applicant, and the applicant decided to amend their application for

a general mobile licence and not a 5G mobile licence. The application is currently being vetted, and the requirements are presently being raised with the applicant. It is noted that the applicant does not have a presence in the jurisdiction. The ICT Team had a zoom call with the applicant, and the applicant has since followed up. The AEDICT has raised some of the obligations that are required, such as a local presence with the applicant. The AEDICT will prepare a board paper to discuss the merits of the application and the recommendations, as well as keep the Board updated on the process.

- Review of HR Manual – POCS responded with brief feedback in email correspondence. The COO has asked POCS to insert its responses in a formal letter.
- Report from MERCER – The CEO stated that the Office has not received the evaluation as yet.
- Opinion from Attorney General's chambers re the Indemnity Insurance – The CEO informed the Board that the opinion has not yet been received, and the General Counsel will follow up directly with the Attorney General accordingly.
- 2019 Annual Report – The penultimate version was sent to Fountainhead for review and editing. The Sector heads need to complete their respective output tables.

3.3 Round Robin Resolutions

- Approval of CUC 2020 Base Rate Adjustment Proposal (email correspondence sent by EDEU on 11 August 2020). Approved and motion was carried.

4. Chief Executive Officer Report

- The CEO, on behalf of the Office, thanked Mr. Alee Fa'amoe for his service as EDICT and wished him well in his future endeavors.
- The CEO provided a summary of his report, and discussion ensued.
- RE queried whether one of the primary purposes of the secondment of the COO was to address HR matters of the Office, and asked the CEO to clarify. The COO responded that the roles of COO and Manager (Administration) are completely different, and the Manager (Administration), who is responsible for HR matters, is being supported by the COO by providing structure. The COO also added that the Board is not seeing the day to day work that is being completed and like other areas, HR is on upward trajectory and in the midst of training and development.

- The CEO informed the Board that the EDEU accepted the contract extension, and his contract will now expire at the end of November 2020. RD queried whether the CEO received any legal advice in relation to the extension of the contracts to the EDEU and EDICT. The CEO responded that the URC Law states that the contracts are for three (3) years, and that he was acting on the advice of the General Counsel in relation to the extension of the contracts. In addition, the CEO notified the Board that the legal opinion memo from the Attorney General's Chambers notes that with section 47 of PAL coming into effect, the period of employment is to be decided by OfReg. RD also queried the AEDICT attendance in the meeting when the Board has not provided approval. The CEO responded that he was advised that the appointment of the AEDICT was proper as the AEDICT is attending due to an invitation by the Chair.

Motion: It is resolved that the AEDICT be appointed as a member of the Board through the duration of his acting appointment. Moved by RD and seconded by PE.

- The CEO notified the Board that both posts will be re-advertised.
- Public Relations Contract – RD stated that there is a Public Relations Committee of the Board, and asked if there was any reason why the salient terms of this contract that is being finalised was not shared (who tendered, what is to be delivered, risks, accountability, value for money etc.). The COO indicated that the exclusion of the PR Committee was not intentional. He confirmed that the version of the TOR that was sent to bidders incorporated RD's suggested improvements. He further confirmed that in future the PR Committee will receive the final version of the TOR/RFQ prior to publishing and will receive the related tender report prior to moving to contract stage.
- Timeline of remedies to be applied re prices at the pump – The CFI will keep the Board informed and prepare a board paper upon completion of the investigation.
- ICT – the ICT Team will review and propose amendments to the current licensing frameworks. In addition, the Team continues to provide assistance in relation to cyber-security. The *Click Before You Dig* website launched on 17 August 2020. The next iteration of the project will aim to include all other sectors. A draft cabinet paper was sent to the ministry and to the Minister CPI in relation to the Office's proposed Consumer Protection Regulations (ICT Sector).

5. Regulatory Matters

5.1 Energy and Utilities

The Chair asked for an update regarding the negotiations with Cayman Water Company ("CWC") and the production of the COSS. The EDEU responded that the independent consultant has requested certain information from CWC in order to complete their work, and the Office has forwarded the request accordingly.

5.1.1. CUC COVID-19 Cost Recovery – Deferred. Caribbean Utilities Company ("CUC") is presently preparing information to be sent to the Office, and once the information is received, the EDEU will prepare a board paper with recommendation in response.

5.1.2. Determination - Reallocation of 1MW of DER to CORE Programme at new rate - Deferred. A final draft determination has been drafted. However, an information request was sent to CUC, and upon receipt of that information, the draft determination will be amended (if necessary) and presented to the Board for approval.

5.2 Fuels

Advert for Fuels Inspector

Job description for Deputy CFI also presently being reviewed.

5.2.1. Update on Fuel Price investigation – update provided during the CEO's report.

5.2.2. Update on DCI and fuel LCCLs - The CFI informed the Board that LCCLs is not a part of the Office's licensing regime, and the Licensees are expected to only submit a copy of their trade and business licence to the Office on an annual basis. The CFI stated that he and his team are always guided by the Legal Team when it comes to actions that need to be addressed under the Law.

The CFI informed the Board that he will prepare a Board paper that will examine whether or not the Office should transition to a full price control regime. The question that will be addressed is whether the Office should pursue a direct intervention approach or stay on the present course, which is to review the market and determine how to indirectly intervene in a suitable manner.

5.3 ICT

5.3.1 Update on Cabinet Directives

5.3.1.1. "Achieving Full Liberalisation of the Cayman Islands Telecommunications Market and Developing a Robust Internet Infrastructure," was addressed in the CEO's Report under Agenda item #4.

5.3.1.2. C3 Disputes – some procedural issues in relation to the disputes. External legal assistance is being sought to address the disputes. One of the disputes is being reviewed by the team, and will then be sent to the General Counsel for his assistance with the drafting of the determination.

5.3.2. IXP Licence Application – was addressed under agenda item 5.3.1.



5.3.3 Internet Speed Test – The AEDICT raised several observations and concerns with the OfReg Branded Speed test. The ICT Team is currently reviewing options to address the issues. The Board will be updated accordingly.

6. Board Matters

6.1 Board Administration

6.1.1 Board Action Item Log ('BAIL')

6.1.2 Commission on Standards in Public Life - Annual Declaration Submission – Done.

6.1.3 Planned measures to ensure equitability and fairness in fuel prices at the pump – process still ongoing.

6.1.4 The issuance of Board Directives – proposes that a policy be formulated about the issuance of board directives, so they can be effectively communicated to the Chief Executive Officer. Meeting will be arranged to discuss further with the voting Board, then the issue can be raised at a Board meeting.

6.1.5 HR Management within OfReg – to be discussed at a special meeting.

6.1.6 Office's communication to Licensees – communications with Licensees should be in writing, and made available to the Board.

6.1.7 Recruitment of Recording Secretary (Full time or Part time) – Whereas Section 31(1) of URC Law says "The Board shall appoint an individual, not being a Member, to be the Secretary of the Office, who shall be present at all meetings of the Board and shall take Minutes of the business transacted but shall have no right to vote at meetings of the Board"; and Whereas Section 31(2) of the URC Law says, "The Secretary shall manage the affairs of the Board in accordance with Board directives and policies."; and

Whereas it is necessary for the Board and its Committees to be active and function in an agile manner during the formative stages of the Office; and

Whereas the current Board Secretary has a substantive role within the organization as Assistant General Counsel; and

Whereas the current Board Secretary has previously indicated reservation in adopting the role as it may impede her future development and succession plan;

Be it hereby resolved that the Board seek to recruit and appoint a Recording Secretary in accordance with Section 31(1) of the URC Law. This individual would work principally for the Board and its Committees in scheduling meetings and events, recording Minutes, facilitating communication, conducting research, and managing Board records.

Moved by RD and seconded by RE. CARRIED.



6.1.8 Board's adopted rules for meetings, procedures and minutes – section 23(8) and section 29 of the URC Law.-to be discussed at a Special Meeting.

6.1.9 Entertainment, Gratuity and Gifts Policy with Highlighted changes – to be discussed at a Special Meeting.

6.1.10 Board Minutes Publication Policy – to be discussed at a Special Meeting.

6.1.11 OAG's Recommendations Status of Implementation document was reviewed.

6.1.12 FC's Financial Report and Analysis – RE, on behalf of the Board, congratulated the FC on the recent birth of her twins. The FC gave a summary of her Financial Report and Analysis for Quarter 2, 2020.

6.2 Board Committee reports

6.2.1 Risk and Audit Committee (RD (Chair), PB and PE) – No update.

6.2.2 Public Relations Committee (RD (Chair), PB, PE, RE and CEO) - No update.

6.2.3 Interim Investigation Committee (GB (Chair), PB, PE and COO)
Whereas the Board passed a motion on 30 July for (1) CEO to implement a robust Information Security policy by 30 September 2020 and (2) CEO initiates a procurement process to conduct and conclude by mid-Nov 2020 a review and vulnerability assessment of the IT Systems used by OfReg (in short),

Be it resolved that the Board directs the CEO to provide a monthly update on the status and progress on the aforementioned ahead of monthly general board meetings or by the end of the month whichever is the earliest.

Moved by GB and seconded by PB. CARRIED.

6.2.4 Innovation Committee (PB (Chair), PE, RE, EDEU and EDICT) – No update.

6.2.5 Remuneration and Human Resource Committee (PE (Chair), RD, RE, PB and EDICT) – No update.


6.2.6 Finance Committee (RD (Chair), PB and FC) – No update.

7. Any Other Business

8. Adjournment: Date of next meeting

Motion to adjourn was made by the Chair. All agreed.

The next meeting is scheduled for 24 September 2020 at 9 a.m.


11 October 2020