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## **SUPPORT. PROMOTE. PROTECT.**

The Cayman Islands Chamber of Commerce was established in 1965 and is a non-profit organisation that exists to Support, Promote and Protect Cayman business and the wider community. We proudly represent more than 700 businesses and associations from every major industry sector and have recently expanded our operations to include a Visitors Centre.

### **MINUTES OF THE 8<sup>th</sup> MEETING OF THE 2012 COUNCIL ON 12<sup>th</sup> SEPTEMBER 2012 AT THE CHAMBER OF COMMERCE & VISITORS CENTRE SECOND FLOOR BOARD ROOM, WEST BAY, GRAND CAYMAN, CAYMAN ISLANDS.**

#### **ATTENDING:**

- Mr. David Kirkaldy, President and Chairman
- Mr. Johann Moxam, Vice President
- Mr. Lendon Jackson, Secretary
- Mr. Shayne Howe, 3<sup>rd</sup> Year Councilor
- Mr. Barry Bodden, 3<sup>rd</sup> Year Councilor
- Mr. Alan Brady, 1<sup>st</sup> year Councilor
- Mr. Rory Mohammed, 1<sup>st</sup> Year Councilor
- Mrs. Natalie Urquhart, 1<sup>st</sup> Year Councilor
- Mr. Wil Pineau, CCE, Chief Executive Officer

#### **1. Call to order**

President David Kirkaldy called the meeting to order at 3:35 p.m. He confirmed the required quorum of five Council members for the meeting. CEO Wil Pineau recorded the minutes.

#### **2. Apologies**

- Mr. Chris Duggan, President-Elect
- Mr. James O'Neill, Immediate Past President
- Mr. Wayne Cowan, Treasurer
- Mr. Kyle Broadhurst, 2<sup>nd</sup> Year Councilor

#### **3. Review/Approval of draft minutes of 11<sup>th</sup> July 2012 meeting**

The draft minutes were distributed to the Council prior to the meeting for review. A motion to accept the draft minutes without amendment was moved by Secretary Len, seconded by Councilor Shayne and accepted unanimously. The President and Secretary will sign the approved minutes which are to be posted to the members' only section of the Chamber website.

#### **4. Action items arising from Minutes**

##### **a. Request for proposal (RFP) for health insurance plan for Chamber members**

ASUIA will be contacted tomorrow to confirm that they have obtained the required license from the Health Insurance Commission.

**ACTION ITEM:** CEO will follow up with ASUIA.

##### **b. Employment Guide for Chamber members**



Councilor Alan confirmed that Appleby is willing to work with the Chamber to develop the guide and has submitted draft sections dealing with various employment matters. He will edit the draft and has agreed to sponsor the printing and design of the booklet. The booklet will be available electronically for members to download from the Chamber website.

**ACTION ITEM:** Councilor Alan will develop the guide and submit to the Council for final review once completed.

**c. Council membership referrals**

Each Council member was reminded to submit five potential membership leads in an effort to increase membership.

**d. Show Me the Money website**

The new scholarship portal is completed with the exception of a few testimonials on the home page. Efforts are being made to increase the number of scholarships posted on the site and to secure some featured sponsors. The CEO presented the Council with a short presentation about the website and its functions. He encouraged Council members to post any scholarships or opportunities that they offer and to share information about the new site to their industry sectors. The Council expressed their collective satisfaction with the new site and believed it will quickly become a valuable asset that will benefit both businesses and school leavers.

**e. Small Business Committee report**

Secretary Len, who chairs the Committee, provided the Council with an update on the progress since the last meeting. Secretary Len and the CEO met with Ryan in early August from the Department of Commerce and Investment (DCI) who is spearheading the review of the Trade and Business Licensing Law and Regulations and the widespread reform of the department. Ryan provided a behind the scenes tour of the operation and he was candid about the challenges that the Department faces. He also shared some of the Department's successes over the last year. He reported that the Department now processes a new T&B application within two weeks. The approval process was taking three to four months. Last year, 875 new trade and business licenses were approved which averages to more than 70 new businesses each month. The Department receives \$6.5 million in income last year from license fees and according to Ryan costs \$500,000 to operate.

He highlighted some of the key amendments that are being proposed in the Bill:

1. The Department of Commerce and Investment will be given more authority to enforce the law and to process applications.
2. Trade Officers will be established and will be given the powers of a Special Constable.
3. The Composition of the Trade and Business License Board will be expanded to include key Government departments involved in commerce activities. Four



private sector appointments will be made to the Board (Currently a Chamber of Commerce representative is not a mandated member in the Bill.)

4. A new ticket system is being recommended to impose hefty fines for people who violate the law.
5. Small businesses will be defined by the number of employees and the revenue received.

Some structural changes he plans to introduce in the department include:

1. Fast track system to process T&B licenses within 24 to 48 hours.
2. Set up a kiosk to pay T&B licenses and introduce online payments.
3. Hire two new staff members to deal with enforcement matters once the law is amended. (This item was cut from the budget last week. Ryan said he directed a campaign to clamp down on past due licenses and was able to collect \$250,000. He believes there is significant additional revenue that can be collected if more resources were obtained.)

He asked us to review the 10 June version of the draft Bill and to submit our comments within two weeks. He also asked us to provide a list of incentives for small businesses that can be considered. He said a small committee of the Department has helped with the Bill review to date, including Past President and Attorney Sophia Ann Harris, Attorney Mr. Nick Joseph and other attorneys from Maples. Councilor Kyle also serves on the review panel but he said he unaware of the new draft.

Sec. Len distributed the Bill to the Small Business Committee for review and met to develop of a list of small business incentives and definitions for consideration by the Council. The draft Bill was also distributed to the Council for review. The CEO also prepared a summary review of the bill that was distributed to members of the Executive Committee and Councilor Kyle for review. Councilor Kyle provided some general comments since he was unaware that a revised draft of the Bill had been prepared. Sec. Len also circulated the review to the SBC at their July meeting.

The Small Business Committee recommended the following incentives for small businesses:

- Micro businesses (3 or less employees) would pay a duty fee of 5% on the first \$250,000.00 of imports per year as well as receive a 50% discount on licensing fees. (That would save them \$42,500 on duty and keep more money in Cayman, as buyers would buy more locally and illegal/unlicensed business would get licenses as they are paying 22% now J). After they hit their 250k allowance (easy to control ) in a year the normal duty rate presently 22% would kick in.
- Small Business (10 or less employees) would pay a duty fee of 10% on the first \$750,000.00 of imports per year as well as receive a 25% discount on licensing fees. (That would save them \$90,000 on duty and keep more money in



Cayman, as buyers would buy more locally) After they hit their 750k allowance (easy to control) in a year the normal duty rate presently 22% would kick in.

- No Duty allowance for local off island trips of 5 days or less. As that will also help all businesses as more people will shop locally knowing that they would have to pay the 22% if buying off island.
- One duty free allowance per person per calendar year of CI\$400.
- Any goods brought in personally at the airport above this annual duty free allowance would be charged the prevailing duty fees
- Local small businesses must do their part & cut out blatant profiteering.

The Council did not reach a final position on the SBC recommendations.

ACTION ITEM:

**f. Impact of duty increase on shell fish from 12 to 17%**

The CEO contacted Mr. Langlie Powery, Assistant Collector of Customs regarding the duty increase on shell fish. His response is as follows: "I have carried out my research on these items and have found that in one tariff issue, they are 15% and another tariff they are 10% and in tariff (2011) they are 12%. I am currently accepting any queries or known mistake found within the HS tariff from the traders/public. I have spoken with the legal drafting personnel on this matter and they have assured me that this should not cause any problems going forward because once we provide them with the errors they can issue a corrective amendment. Therefore, once we find or are informed of any mistakes, Customs will make the corrections within TRIPS and inform legal drafting." This information was passed along to the member that pointed out the error. This firm was also asked to review the tariffs to confirm if there were any other errors that should be corrected.

**5. New Business**

- a. **Data Protection Bill 2012:** President David welcomed Peter Broadhurst, Chamber representative on the Working Group on the Data Protection Bill to the meeting. He asked him to provide an overview of the proposed Bill and to respond to any questions from the Council. Mr. Broadhurst reported that the Governor-in-Cabinet established a Data Protection Working Group in 18<sup>th</sup> August 2009 with representatives from both the public and private sectors. Data protection legislation seeks to protect the individual's rights with respect to the collection, use and sharing of his or her personal data. In 1995, the European Commission (EC) created a framework that allows European member states that other, non-member countries to develop national legislation with an internationally accepted minimum level of data protection. There are now over forty countries worldwide which have enacted European-style data



protection laws at the national and federal level and many more are in the process of doing so. The draft Bill has been developed in line with international best practices but a conscious effort has been made to ensure that it reflects the specific needs of the Cayman Islands. The Bill is consistent with the requirements of the Bill of Rights, Freedoms and Responsibilities in the Cayman Islands Constitution Order 2009 to promote respect for every person's private and family life, home and correspondence. The Working Committee reviewed data protection legislation in various countries. The draft Bill, which was modeled in part on Jersey's data protection legislation,

- i. applies to all types of personal data, whether held digitally or on paper (as long as the paper documents form part of a filing system);
- ii. applies to both public and private sectors;
- iii. places limits on how personal data may be used or shared with third parties;
- iv. includes specific provisions concerning protection of particularly sensitive personal data;
- v. grants specific rights to individuals, including the rights to gain access to information about themselves, ensure that information is accurate and demand that use of the information be stopped;
- vi. grants remedies to affected individuals when the data protection principles defined in the Bill are contravened, including compensation in certain cases; and
- vii. requires individuals, businesses and other organizations that handle personal data to register with the Information Commissioner, and imposes other obligations on them.

Other laws and/or regulations that address certain types of processing or sectorial risks may complement and supplement the main law to provide additional protections, for example to deal with electronic communication or health care data.

Appeals and complaints related to data protection issues will be heard by the Information Commissioner. The Information Commissioner's Office will also maintain the appropriate public registers, carry out public education and awareness, act as an international liaison for data protection issues and report to the Legislative Assembly annually once the law comes into effect. Decisions by the Information Commissioner may be appealed to the Grand Court.

Mr. Broadhurst said there are eight principles that the Bill addresses arising from the EC framework and are similar to the principles for the protection of personal data that were first espoused in the OEDC and upheld in the Council of Europe prior to being issued by the EC. The eight principles are as follows:

1. First principle: Personal data shall be processed fairly. In addition, personal data may be processed only if certain conditions are met, for example the data subject has consented to the processing, or it is required under a law or to protect the individual's vital interests.
2. Second principle: Personal data shall be obtained only for one or more specified, explicit and legitimate purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.



3. Third principle: Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are collected or processed.
4. Fourth principle: Personal data shall be accurate and, where necessary, kept up to date.
5. Fifth principle: Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose.
6. Sixth principle: Personal data shall be processed in accordance with the rights of data subjects under the Data Protection Law, for example, subject access.
7. Seventh principle: Appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Eighth principle: Personal data shall not be transferred to a country or territory unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Mr. Broadhurst pointed out that each organisation that collects data from its customers will have to appoint a data controller. He pointed out that there is not much case law with regards to data protection written reports. The Working Committee recommends that after the DPB is passed into law by the Legislative Assembly it should be implemented over a 12 month period, with phased registration of data controllers occurring first. Training and guidance will be provided at the end of the implementation period the full provisions of the Law should be brought into effect by Order of the Governor. The draft Bill grants the Information Commissioner discretion to vary the implementation phases and their timing.

When asked by the Council if the legislation will be retroactive, Mr. Broadhurst said no. He did say, however, that the legislation will impact every small business who will have to appoint a data collector and register the person with the Information Commissioner's office. There must be put in place a mechanism within each business to protect the confidentiality of all data collected from customers.

Exemptions are provided for the following reasons: national security, crime and taxation, health, education or social work, regulatory activity, journalism, literature or art, research, history or statistics, legal requirements or proceedings, purely domestic purposes, conferring of crown honours/dignities, corporate finance, negotiations with the data controller and legal professional privilege. Mr. Broadhurst did not believe the implementation will be costly. Businesses will need to ensure that there a data controller appointed and registered with the Information Commissioner's office. There will be a need to develop a tool kit for businesses to assist them with becoming compliant and this could be an area to be filled by the Chamber for its members.

The President thanked Mr. Broadhurst for representing the Chamber on the Working Group and taking the time to explain the Bill. The Bill will be featured at the BE INFORMED session on Wednesday, 26<sup>th</sup> September at the Chamber office in Governors Square. All members have been invited to attend.



**ACTION ITEM:** Organise a BE INFORMED session on 26<sup>th</sup> September to give the membership an opportunity to learn about the Bill and to ask questions.

6. **CEO Report (7<sup>th</sup> July – 7<sup>th</sup> September 2012)**

The report was distributed to the Council prior to the meeting for review and will be attached to the minutes.

7. **Any other business**

8. **Next meeting:** Wednesday, 10<sup>th</sup> October 2012, Chamber conference room, Governors Square, 3:30 p.m. Councilor Rory noted his apologies for the meeting. He will be off island.

9. **Adjournment**

The meeting adjourned at 4:45 p.m.

*Approved by:*

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**David Kirkaldy**

President & Chairman

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**Lendon Jackson**

Secretary