



The Integrity Commission of Jamaica

Anti-Corruption and Good Governance Sensitization Workshop Series

**Specially Developed by the Integrity
Commission for the Cabinet of the Government
of Jamaica**

Good Governance and Anti-Corruption Workshop

Investigating Allegations of Corruption

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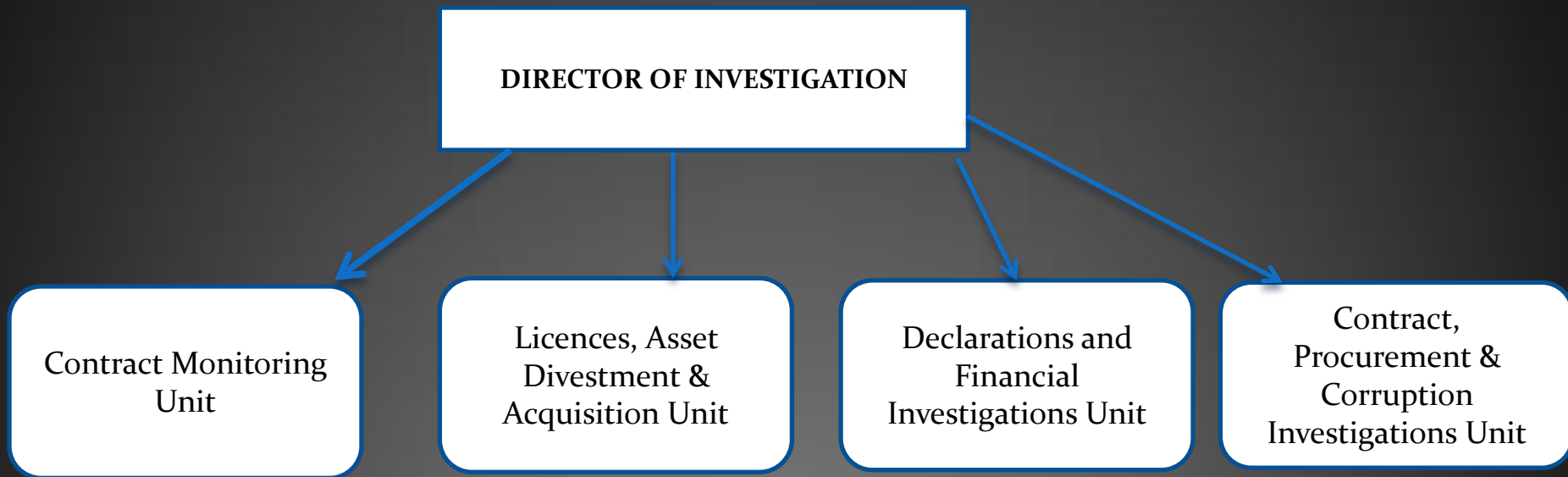
List of Workshop Modules

- Overview of Jamaica's Anti-Corruption Framework
- The Problem of Corruption
- Principles of Good Governance and Integrity in Public Life
- Public Procurement Overview
- Other Critical Areas Involving the Integrity Commission's Oversight
- IC Process - Filing of Statutory Declarations
- IC Process - Protected Disclosures Act - Whistleblowing
- IC Process - Reporting Allegations of Corruption
- **IC Process - Investigating Allegations of Corruption**
- IC Process - Prosecuting Allegations of Corruption
- IC Process - Overview of Corruption Offences in Jamaica
- International Best Practices in Anti-Corruption and Anti-Bribery

Objectives

- Introduction to the Investigation Division and its investigative remit;
- Investigative philosophy and mindset;
- Main allegations investigated by the Commission;
- The investigation process;
- Rights and obligations of individuals pertinent to an investigation; and
- Questions and answers.

The Investigation Division



The Investigations Division

- The Investigation Division is currently comprised of four (4) operational Units, which execute the various functions of the Director of Investigation as prescribed by Sections 33, 45, 47, 48,49, 51, 52 and 54(1)-(3) of the Integrity Commissions Act, 2017.
- The Division is mandated to investigate any allegation relating to non-compliance with the provisions of the Integrity Commission Act; to monitor and investigate the award, implementation and revocation, of government contracts, licences and permits; and to conduct investigations into to alleged acts of corruption related to the statutory declaration of Parliamentarians and Public Officials; and any other matter that falls within the jurisdiction of the Commission.

The Investigations Division

- The four (4) established operational units within the Investigation Division are as follows:

1. Contract Monitoring Unit

- The Contract Monitoring Unit comprises of two sub units namely,
 - (i) the Non-Construction Contracts Inspectorate; and
 - (ii) the Construction Contracts Inspectorate .
- The Inspectorate monitors, on a sustained basis, the award, implementation and termination of Government Contracts.
- Monitoring activities include: attending , Tender Opening Ceremonies and procurement-related meetings and verification of procured items.
- The Inspectorate is also tasked with managing critical portfolios including: the Quarterly Contracts Awards (QCA) Reports and Contract Award Data.

The Investigations Division

2. Licences and Asset Divestment /Acquisition Unit

- The is the monitoring arm within the Investigation Division of the Integrity Commission which is charged with the responsibility of ensuring probity, transparency and equity in the issuance, variation, revocation/suspension of all government of Jamaica licences and permits including the divestment and/or acquisition of land and other government assets obtained *via* Public Private Partnerships.

The Investigations Division

3. Declarations & Financial Investigations Unit

- The Declarations & Financial Investigations Unit is responsible for the conduct of investigations concerning specific offences under the Integrity Commission Act, 2017, the Corruption Prevention Act, 2000 and the Protected Disclosures Act, 2011.
- These investigations are typically categorized in four areas namely; Delinquency Investigation, Financial Investigation, Protected Disclosures Investigation and Background Checks.

The Investigations Division

4. Contract, Procurement and Corruption Investigation Unit

- The Unit has responsibility for the conduct of Investigations concerning any allegation that involves or may involve an act of corruption or any allegation relating to non-compliance with the provisions of the Integrity Commission Act.
- Investigations conducted by this Unit may involve : the registration of contractors; tender procedures relating to government contracts awarded by Public Bodies, the award, variation or termination of any government contract, the implementation of the terms of any government contract; and the circumstances of the grant, issuance, use, suspension or revocation of any prescribed license.

**What is the source of the
investigative mandate?**

Principal Objects - Investigating Allegations of Corruption

The Principal Objects of the Integrity Commission Act (ICA) include:

- Section 3 (c) and (d) of the ICA:
 - (c) ensuring that government contracts are awarded , varied, renewed or terminated in impartially, on merit and in a financially prudent manner.
 - (d) enhancing public confidence that acts of corruption and impropriety committed by persons exercising public functions will be appropriately investigated and dealt with in a manner which achieves transparency, accountability and fairness.

Functions of the Integrity Commission- Investigating Allegations of Corruption

- **Function of the Integrity Commission:**

- Section 6(1)(a) & (c) + (d) of the Act:
 - *“(a) investigate alleged or suspected acts of corruption and instances of non-compliance with the provisions of this Act;”*
 - *“(c) “take necessary and effective measures for the prevention and detection of corruption within public bodies”*
 - *“(d) “examine the practices and procedures of public bodies and make recommendations, in relation to the revision of those practices and procedures, which in the opinion of the Commission may reduce the likelihood of or the occurrence of acts of corruption.”*

PHILISOPHY: An investigative mindset

- Healthy skepticism:
 - Accept nothing
 - Believe nothing
 - Confirm everything



- Concatenation (putting the puzzle together, linkages)
- Crucibles (melting pot)
- Rational judgment (conclusions must be premised on logics, reason, facts and the law)

What do we Investigate?

Investigating Allegations of Corruption

- Complaints and Acts of Corruption Defined

| What are? | Definition |
|--------------------|---|
| Complaints | Matters which involve or may involve, acts of corruption or non-compliance with the provisions of the Act. - <u>Section 37(1) of the ICA.</u> |
| Acts of Corruption | “(a) an offence under the Corruption (Prevention) Act; or (b) an offence relating to the conduct of any person that constitutes an abuse or a misuse of his office (whether or not within the public sector) for the purpose of conferring a benefit or an advantage to himself or another person, being an offence arising under the common law or any enactment;” - <u>Section 2 of the ICA.</u> |

Investigating Allegations of Corruption

- Acts of Corruption Defined

| What are? | Description |
|--------------------|--|
| Acts of Corruption | A public officer who corruptly solicits or accepts or a person who offers a public officer any gift or favour for doing or omitting to do any act for the benefit of himself or another person. – <u>Section 14(1)(a) & Section 14(2) of the Corruption Prevention Act (CPA).</u> |
| | A public officer who in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person. – <u>Section 14(1)(b) of the CPA.</u> |

Investigating Allegations of Corruption

- Acts of Corruption Defined

| What are? | Description |
|--------------------|--|
| Acts of Corruption | Any public officer who is or is acting as an intermediary or through a third person who fraudulently seeks to obtain a decision from any Ministry or Department, Agency or company whereby he illicitly obtains any benefit or gain for himself or for another person. – <u>Section 14(7) of the CPA.</u> |
| | Any public officer who for his own benefit or for that of a third person, diverts any property belonging to the Government or any other person, which is in his custody for the due administration of his duties commits an act of corruption. – <u>Section 14(8) of the CPA.</u> |

Investigating Allegations of Corruption

- Acts of Corruption Defined

| What are? | Description |
|--------------------|--|
| Acts of Corruption | A public officer who fraudulently uses or conceals any property derived from any such act or omission to act. – <u>Section 14(1)(c) of the CPA.</u> |
| | A person who instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit any act of corruption. – <u>Section 14(3) of the CPA.</u> |

Investigating Allegations of Corruption

| What are? | Description |
|--------------------|---|
| Acts of Corruption | <p>An agent who knowingly uses or gives to another agent with the intent to deceive his principal, any receipt, account, or other document-</p> <ul style="list-style-type: none">(i) in respect of which the principal is interested;(ii) which contains any statement which is false or erroneous or defective in any material particular; and(iii) which, to the knowledge of the agent, is intended to mislead the principal. – <u>Section 14(10)(b) & Section 14(11)(b) of the CPA.</u> |

Investigating Allegations of Corruption

- Offences related to Statutory Declarations

| Offences | Definition |
|--------------------------------|---|
| Failure to file | Fails, without reasonable cause, to submit a statutory declaration which he is required. – <u>Section 15(2)(a) of the CPA.</u> |
| Failure to provide information | The failure without reasonable cause to provide any information as the Director of Information and Complaints may require. - <u>Section 43(1)(b) of the ICA.</u> |

Investigating Allegations of Corruption

- Offences Relating to Statutory Declarations

| Offences | Definition |
|----------------------------------|--|
| Failure to attend an inquiry | The failure without reasonable cause to attend an inquiry being conducted by the Director of Investigation. - <u>Section 43(1)(c) of the ICA.</u> |
| Knowingly making false statement | Knowingly making a false statement in a statutory declaration. - <u>Section 43(2)(a) of the ICA.</u> |

Investigating Allegations of Corruption

- Offences Relating to Statutory Declarations

| Offences | Definition |
|---|--|
| Knowingly gives false information at an inquiry | Knowingly gives false information at an inquiry being conducted by the Director of Investigation. - <u>Section 43(2)(b) of the ICA.</u> |

Investigating Allegations of Corruption

- Offences relating to Statutory Declarations

| Offences | Definition |
|--------------------|--|
| Illicit Enrichment | <p>Where a public servant-</p> <ul style="list-style-type: none">(a) owns assets disproportionate to his lawful earnings; and(b) upon being requested by the Commission or any person duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he -<ul style="list-style-type: none">(i) fails to do so; or(ii) gives an explanation which is not considered to be satisfactory. <p>- <u>Section 14(5) of the CPA.</u></p> |

Investigating Allegations of Corruption

- Offences Under the Integrity Commission Act

| | | |
|-------|---|---|
| 56(3) | Disclosure of information by staff/persons concerned with the administration of the Act | A person who is concerned with the administration of the Act and communicates or attempts to communicate any such information, declaration, letter or any other document disclosed to him in execution of any provisions of this act to any person, other than who he is authorized to communicate, commits an offence. |
|-------|---|---|

Investigating Allegations of Corruption

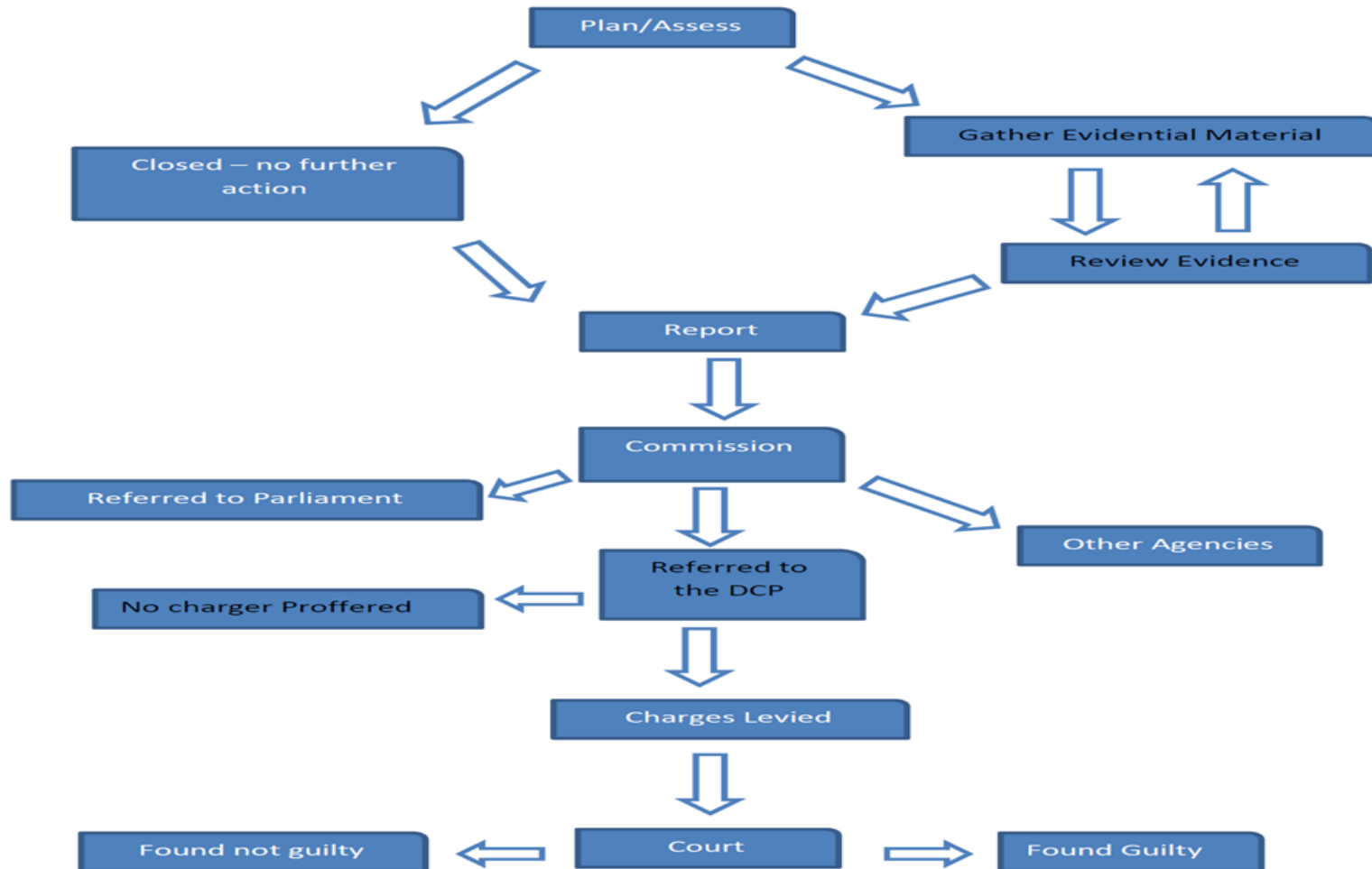
- Other Offences include:
 - Misconduct in public office
 - Conspiracy to defraud
 - Obtaining money by false pretense – S. 35 of the Larceny Act
 - Uttering forged documents contrary to S. 9(1) of the Forgery Act

Commencing an Investigation

- Sources of an Investigation

| Category of Investigations | Sources of Investigation |
|---------------------------------|---|
| Complaints & Acts of Corruption | <ul style="list-style-type: none">- Public- Referrals from other agencies- Information & Complaints Division- Director of Investigation- The Commission |
| Statutory Declarations | <ul style="list-style-type: none">- Public- Referrals from other agencies- Information & Complaints Division |

Investigation Process



Commencing an Investigation

Assessment of Complaints / Allegations

- Upon receipt of a complaint the Director shall examine the complaint or allegation to determine whether an investigation is warranted- S. 47 ICA
- In examining the Complaint / Allegations the following factors are considered:
 - (a) the seriousness of the conduct complained of;
 - (b) whether the matter is frivolous or vexatious
 - (c) whether the conduct complained of is or has been the subject of an investigation or other action by another authority

Commencing an Investigation

- **Types of Assessments done prior to the commencement of an Investigation:**
 - Initial Assessment of the Complaint
 - Secondary Assessment of the Complaint
- Pursuant to the provision under S. 47 ICA , once a complaint or a referral has been made to the Director of Investigation, an Initial Assessment is undertaken with a view to determine the jurisdiction of the Integrity Commission, the adequacy of the information provided and the recommended response and action.

Commencing an Investigation

The Initial and Secondary Assessment must also consider:

- The merit of the Complaint;
- The substantial issues raised in the Complaint;
- The relevance of the Complaint to the functions and powers of the Director of Investigation and by extension the Integrity Commission; and
- Any aspect of the Government Procurement Guidelines or any other relevant legislative or Policy Document that has been breached or is likely to be breached by the action, or in-action, of the Public Body/ Public Official/Officer in all the the circumstances.

Conduct of Investigations- Initial Stages

Appointment of the Lead Investigating Officer

- Upon completing the Initial and Secondary Assessment, the Lead Investigating Officer (LIO) is appointed.
- The Commission may also direct that a matter be investigated by a Competent Authority or jointly by the Investigation Division and a Competent Authority.

Conduct of Investigations- Initial Stages

Other roles in the conduct of an Investigation include :

- Document Reader and Action Manager.
- D2D/CCTV Coordinator
- Receiver (if the enquiry is of such scale that the LIO cannot perform this role)
- Action Manager (if the enquiry is of such scale that the LIO cannot perform this role)
- Exhibit Coordinator
- Witness Liaison Officer
- Interviewer/Interview Coordinator

Conduct of Investigations- Initial Stages

The commencement of LIO's Policy File

- Upon being appointed LIO , the LIO must commence a Policy File, which must contain all decisions made in the case accompanied by the rationale and an investigation strategy.
 - The Policy file may detail the following:
 - Details of initial response;
 - Scene strategy;
 - Main line of enquiry (MLOE);
 - Fast Track Actions (FTA) ;
 - Investigation Strategy
 - Case Management;

Conduct of Investigations- Initial Stages

Development of Terms of Reference

- For the purpose of Investigations, the Terms of Reference (TOR) articulate the extent and focus of the proposed investigation and set the parameters for the person(s) conducting the investigation.
- The TOR is, therefore, the base document which guides the Investigation and are designed, to help the Investigator to think about the objectives, scope of work and deliverables of the Investigation.

Conduct of Investigations- Middle Stages

Gathering and Recording Evidence

- Section 52 (3) allows the Director of Investigations to adopt “... *whatever procedure he considers appropriate to the circumstances of a particular case and ... may obtain information from such person and in such manner and make such inquiries as he thinks fit.*”

Generally, the following methodologies are used for gathering evidence:

- Statutory Requisitions (bolstered by Voluntary Declarations)
- Witness Statements/(Caution Statements-suspects)
- Judicial Hearings- Examination under oath pursuant to Section 48(1) of public officers or any other individual or party collateral to the conduct of the Investigation;
- Interviews (witness and suspect)
- Unannounced visits and sequester of digital and hardcopy documents
- Forensic extraction and analysis of digital evidence
- Review of in-house information which may be stored in the Registry, and on databases.

Conduct of Investigations- Middle Stages

Preparation of Investigation Reports- pursuant to S. 54 of the ICA

General Format:

- Summary of Investigation and key findings
- Background
 - Initiation
 - Jurisdiction
 - Individuals/entities pertinent to the investigation
- Terms of Reference
- Law, Evidence, Findings and Discussion
- Conclusions
- Recommendations
 - Referrals
 - Anti-corruption Initiatives

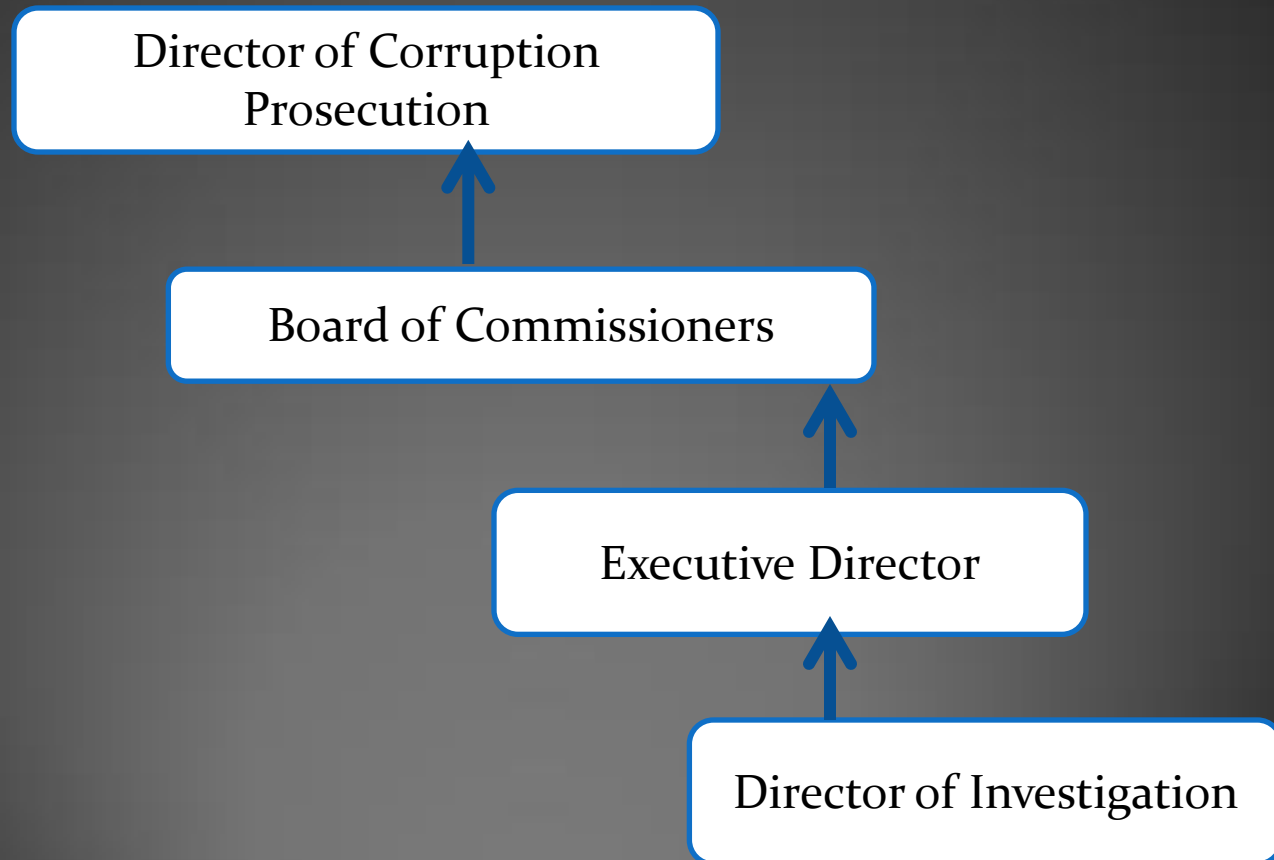
Conduct of Investigations- Final Stages

Review and Approval

- Final Investigation Reports are subjected to mandatory due diligence exercises which involves the meticulous scrutiny of all elements of a draft report of Investigation. The due diligence checks include:
 1. A thorough audit of all findings contained in the report;
 2. A comprehensive grammar, language and spelling check;
 3. A thorough gap analysis and critique of the conclusions and recommendations presented; and
 4. Further investigation where necessary

Conduct of Investigations- Final Stages

- Internal submission flow for investigation reports



Conduct of Investigations- Final Stages

Steps in the review and approval of investigation reports

- Once the Investigation has been reviewed by the Director of Investigation it is submitted, through the Executive Director, to the Board of Commissioners for approval , pursuant to S. 54(2) of the ICA.
- Where revisions to the investigation report are recommended by the Board, the report reverts to the Director of Investigation, through the Executive Director for amendment and re-submission to the Board for approval.
- The investigation report may also be reviewed and redacted by the Director of Corruption Prosecution pursuant to Sections 54(b) and 54(4) of the ICA.

Conduct of Investigations- Final Stages

Possible Recommendations emanating from an Investigation Report:

- Recommendations to the Director of Corruption Prosecutions: where the report includes an act of Corruption or an offence under the ICA or other enactment. -S. 54(3)(b) .
- Recommendation of anti-corruption initiatives to the public body, where the investigation report indicates a breach on the part of a public officer. – S. 54(3)(a)(i).
- Recommendation of anti-corruption initiatives to the Speaker of the House of Representatives and the President of the Senate, where the Investigation Report indicates a breach on the part of a Parliamentarian.- S. 54(3)(a)(ii) .

Conduct of Investigations- Final Stages

- **Termination and Closing of Investigations**

Terminating an investigation

- Where, during the course of an investigation, the Director of Investigation is satisfied that there are insufficient grounds for continuing an investigation he shall terminate the investigation and issue a report of his findings to the Commission, through the Executive Director (**s. 54(2)**).
- The decision to terminate an investigation shall be recorded in the decision log (policy)

Closing an investigation

- Investigations should be considered closed once a final investigation report has been tabled in Parliament (both houses) and/or dispatched to the requisite public body by the Commission.

Conduct of Investigations- Final Stages

- **Termination and Closing of Investigations**

Exoneration

- Pursuant to **Section 54(5) of the Act**, “Where the Director of Investigation finds that the matter which gave rise to the Investigation does not constitute an act of corruption or any wrong doing , he shall recommend to the Commission that the person who was the subject matter of the Investigation be publicly exonerated of culpability, in such manner as the Commission deems fit, and the Commission may do so, unless the person concerned has requested the Commission in writing not to do so.”

Rights and Obligations of Persons under Investigation

Rights/Entitlements of persons under Investigation include:

- The constitutional right to an Attorney.
- The right to seek Judicial Review of a decision of the Director of Investigation. S.6(3)(a) ICA
- Compensation – where summoned to attend and give evidence or to produce any document or information before the Commission pursuant to the Witness Expenses Act. S. 50(1) ICA. Recommendations have been made for the Schedule of Rates in the Witnesses' Expenses Act to be updated in order to facilitate Subsections 50(1) and 50(2) of the Integrity Commission Act, in relation to the reimbursement of witness expenses. The schedule of rates are wholly outdated and do not reflect expenses reasonably incurred by a witness who is required to attend and/or give evidence to the Integrity Commission.
- The right against self incrimination. S. 48(5) ICA

Entitlement and Obligations of Persons under Investigation

Obligations of a Person Under Investigation:

- It is the obligation of a person under investigation to cooperate with the investigation and to provide responses in good faith.
- The applicability of Commission of Enquiry Act:
 - *“For the purposes of an investigation, the Director of Investigation shall have the same powers as a Commissioner pursuant to the provisions of the Commission of Enquiry Act in respect of the attendance and examination of witnesses and the production of documents, and the provisions of sections 11G, 11H, 11I, 11J, 11K and 11L of that Act shall apply, mutatis mutandis, in relation thereto:*

Entitlement and Obligations of Persons under Investigation

- **Obligations of a Person Under Investigation**
 - Section 11 c of the Commissions of Enquiry) Act provides, *inter alia*, that:
 - “(1) A person shall not assault, obstruct, hinder, or resist or use any threatening or abusive language or aid or incite any other person to assault, obstruct, hinder or resist a member of the Constabulary Force [**Commission**] in the execution of his duties under this Act.
 - (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.”
 - Comply with s.4 of Perjury Act in Judicial Hearings and proceedings undertaken by the Director of Investigation.

Thank you for Listening

Questions ?