



Public Expenditure Review Committee and Audit (Appointment of Director) Order 2020

Sir Tom J. Marsters, KBE


Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this 30th day of October, 2020

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to sections 21 and 22 of the Public Expenditure Review Committee and Audit Act 1995-96, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following order—

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Schedule

Terms and conditions of appointment

Order

- Title**
This order is the Public Expenditure Review Committee and Audit (Appointment of Director) Order 2020.
- Commencement**
This order is deemed to have come into force on 16 October 2020.

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- 3 Appointment**
Allen Parker is appointed as Director of the Office of the Public Expenditure Review Committee and Audit.
- 4 Term of appointment**
The term of the appointment is 3 years from the commencement of this order.
- 5 Remuneration**
The rate of remuneration for the appointment is \$120,000 (before tax) each year.
- 6 Terms and conditions of appointment**
The terms and conditions of the appointment are set out in the Schedule.
- 7 Repeal**
The Public Expenditure Review Committee and Audit (Appointment of Director) Order 2018 is repealed.

Schedule
Terms and conditions of appointment

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1.0 Status of Agreement

This is an individual employment agreement made pursuant to section 21 of the Public Expenditure Review Committee and Audit Act 1995-96 ("Act") between the parties ("Agreement").

2.0 Parties to Agreement

This Agreement is made:

BETWEEN Her Majesty in right of the Government of the Cook Islands acting by and through the Minister of the Public Expenditure Review Committee and Audit **HON MARK BROWN** ("Minister")

AND

ALLEN PARKER ("the Director")

Each a "party" and together referred to as the "parties".

WHEREAS

The Director has agreed to accept the position of Director of the Office of the Public Expenditure Review Committee and Audit ("PERCA").

3.0 Responsibilities of the Minister

- 3.1 The Minister appoints the Director as the Director of the Office on the terms and conditions set out in this Agreement, and the Act.
- 3.2 During the term of this Agreement the Minister shall act as a good employer in all of his dealings with the Director, being mindful of the Values and Code of Conduct of the Public Service with which the Director is required to comply.
- 3.3 For the purposes of this Agreement a good employer is an employer who treats employee's fairly and properly in all aspects of their employment.

4.0 Responsibilities of the Director

- 4.1 The Director accepts the appointment as Director by the Minister on the terms and conditions set out in this Agreement and the Schedules attached, as approved by Order in Executive Council. The Director shall subject to the provisions of Part III of the Act report to the Minister. The Director shall diligently and faithfully perform his functions under the Act and shall devote his best skill and energies to the discharge of his functions and shall use his best endeavours to protect and promote the interests and standing of the PERCA.
- 4.2 During the term of this Agreement the Director shall be responsible for:

- 4.2.1 Leading, planning, directing and conducting audits, investigations and inquiries into the operations of the Cook Islands Government. In particular, the responsibilities include the following:
- a. Conducting reviews, audit and investigations of the financial affairs of the Crown with emphasis on the Audit of Ministries, State Owned enterprises and Crown Agencies and other areas of public expenditure. Examining budgets, estimates, records and accounts of revenue and expenditure.
 - b. Reporting the progress and results of reviews, audit and investigations to Parliament
 - c. Analysing the level of management and internal control of revenue and expenditure and assessing the degree of compliance with relevant legislations, including but not limited to the Ministry of Finance and Economic Management Act 1995-96 (“MFEM Act”)
 - d. Administration of and compliance with the Act
 - e. Reviewing the efficiency, effectiveness and economy of financial and management policies, practices and procedures and recommending practical improvement in their form, content and method of delivery.
 - f. Reviewing the level of disclosure in accounts, estimates, statements and reports and recommending improvement in their form, content and method of preparation. Providing assurance and issuing the audit opinion and report to management of Ministries, Agencies and the Crown Consolidated Financial Statements.
 - g. Appraising the adequacy of action taken to implement recommendations through follow up reviews and audits.
 - h. Advising and consulting with management and staff of Departments and Authorities on internal controls and issues identified through examinations and inquiries.
 - i. Ensuring a high professional standard is maintained on assigned special projects and work is completed within agreed time frames.
 - j. Reviewing the conduct and content of audits, investigations and inquiries and suggesting appropriate actions for penalty and prosecution.
 - k. Facilitating and ensuring a functional and harmonious working relationship with the PERCA.
 - l. Ensuring the strictest codes of confidentiality and security are applied in all projects undertaken.

- 4.2.2 In carrying out the Director's responsibilities under this Agreement the Director shall maintain the standards of conduct and integrity appropriate for a Public Sector entity, pursuant to the Values and Code of Conduct of the Public Service as stipulated in sections 20, 21 and 22 of the Public Service Act 2009.

5.0 Term of Appointment

- 5.1 The Director shall be appointed for a term of three (3) years commencing on the date the Public Expenditure Review Committee and Audit (Appointment of Director) Order 2020 comes into force, namely 16 October 2020, unless earlier terminated pursuant to other provisions of this Agreement.
- 5.2 The Director acknowledges the fixed term nature of this Agreement and that nothing in this Agreement shall be construed to create an expectation of automatic reappointment or an entitlement to continued employment beyond the expiry date. The Director may apply for reappointment, subject to applicable employment policy of Government.

6.0 Remuneration

- 6.1 The Minister shall throughout the term of this Agreement remunerate the Director for the duties and responsibilities under this Agreement in accordance with the provisions of **Schedule 2** to this Agreement as may be negotiated and agreed upon by the parties and in accordance with any modification as the parties may from time to time agree upon in writing, subject to any other statutory requirements.
- 6.2 The salary of the Director is as set out in the Public Expenditure Review Committee and Audit (Appointment of Director) Order 2020 as the rate of remuneration for the appointment.
- 6.3 The remuneration received by the Director pursuant to this Agreement shall be deemed to fully compensate the Director for all time worked and duties and responsibilities performed under this Agreement.
- 6.4 If there is a general public service salary increase or review during the term of the appointment, such increase or review shall apply to and include the salary of the Director
- 6.5 The Director shall with the approval of the Minister, be entitled to reimbursement of the actual and reasonable expenses incurred by the Director in the proper performance of the Director's responsibilities and duties under this Agreement.

7.0 Travel and Accommodation Allowances

- 7.1 The Director shall be entitled when travelling on official Government business within the Cook Islands or overseas to the travel, accommodation, meal, incidental and other allowances as provided by the Travel policy and guidelines issued by Cabinet for all Heads of Ministries and Crown Agencies.

8.0 Leave

- 8.1 The Director shall be entitled to paid annual leave of twenty working days per annum, in addition to statutory holidays. The Director shall take all annual leave at a time or times that will not unreasonably impinge upon the proper performance of the duties of the Director under this Agreement and with the approval of the Minister. Such leave may, if not taken in the year in which it falls due, be carried forward to any succeeding year, or remunerated in part or in full. Carrying forward of annual leave will require the approval of the Minister, and should only be granted in exceptional circumstances.
- 8.2 The Director shall be entitled to up to ten days paid sick leave. Sick leave is not accumulative. Evidence of sickness may be required for leave of more than three working days and no payment will be made for unused sick leave entitlement.
- 8.3 Where the Director has unused sick leave entitlements, the Director may be given leave where he is required to remain at home to care for an immediate member of the Director's family who is sick. Immediate family includes the Director's spouse/partner, parent/guardian, child, grandparent, grandchild, brother, sister, father-in-law, mother-in-law, daughter-in-law and son-in-law. Such leave is to be treated as sick leave for the Director and off set against the Director's own sick leave entitlement.
- 8.4 The Director shall on production of satisfactory evidence be entitled to a maximum of three days leave on full pay on each occasion on the death of a member of the Director's immediate family. Immediate family is as defined in section 8.3 above.
- 8.5 The Minister may grant special leave on full pay of up to five working days and an additional two working days where any member of the Director's family dies and overseas travel is required.
- 8.6 The Director shall be entitled to special and national representation leave, where the Director is representing the Office at Conference and Seminars.
- 8.7 The Director may be entitled to such other special leave pursuant to Leave Entitlement Policies and Instructions issued by the Cabinet from time to time.

9.0 Performance

- 9.1 The Public Service Commissioner ("Commissioner") shall prepare an annual performance agreement between the Director and the Minister that details, inter alia:
- 9.1.1 the objectives of the Director's position for that year;
 - 9.1.2 the process and criteria by which the Director's performance is to be assessed for that year and in particular, the criteria for assessing the performance payment referred to in **Schedule 2** of this Agreement;
 - 9.1.3 the statutory reporting requirements of the Director including the requirements of the Act and the MFEM Act

- 9.2 The Minister, or someone he appoints, will annually either generally or in respect of any particular matter, review the performance of the Director in carrying out the duties and responsibilities of the position.
- 9.3 The Minister, or someone he appoints, in reviewing the performance of the Director shall, in addition to any other relevant matters, take into account –
- 9.3.1 the performance agreement between the Director and his Minister;
 - 9.3.2 the Outputs signed by the Director and his Minister;
 - 9.3.3 delivery on objectives and programs funded by donor agencies;
 - 9.3.4 the operational performance of the PERCA;
 - 9.3.5 fiscal prudence of the Office as measured by Ministry of Finance and Economic Management and the PERCA; and
 - 9.3.6 any other requirement of the Director as may be necessitated by Government policy and/or instruction of the Commissioner at any time during the term of this contract.
- 9.4 The decision of the Minister on the contents of any performance agreement shall be final, but the Minister may consider the Director's views before finalising the performance agreement.
- 9.5 The Director shall co-operate with the Minister, or someone he appoints, during all stages of the performance review process. The Director shall provide the Minister with such information as the Minister may require in carrying out any review of the Director's performance.

10 Confidentiality

- 10.1 The Director shall not, either during the term of this Agreement or at any time thereafter, except so far as may be necessary for the proper performance of the Director's duties and responsibilities, or as may be required by law:
- 10.1.1 Disclose to any person any official information, as defined in Section 2 of the Official Information Act 2008 that has come to the Director's knowledge in the course of the performance of this Agreement, except in accordance with applicable legislation; or
 - 10.1.2 Use or attempt to use any such official information for the Director's own personal benefit, or for the benefit of any other person or organisation, or in any manner whatsoever, other than in accordance with the Director's duties and responsibilities and consistent with the Code of Conduct and Values of the Public Service.
- 10.2 Upon the termination of this Agreement, the Director shall forthwith deliver to PERCA, any files, documents, precedents, reports or other information of or relating to the Crown (including all copies and extracts thereof) which may have come into his possession during the term of his appointment.

11 Conflict of Interest

- 11.1 The Director shall disclose to the Minister, in writing, all (including political) interests of the Director and of his or her immediate family, which may conflict with the interests of the Minister and/or PERCA. The Director shall make the first declaration of interest on signing this Agreement and thereafter at the request of the Minister or as new interests of the Director, and of his immediate family, arise. The Director agrees to take such steps, as the Minister reasonably requires, to resolve or manage any such conflict.
- 11.2 Without the prior written authorisation of the Minister, the Director shall not engage in any activity (including political), paid or unpaid, which impinges upon or is likely to impinge upon, the proper performance of the Director's duties and responsibilities under this Agreement.
- 11.3 If the Minister forms the opinion that any activity engaged in or about to be engaged in by the Director impinges upon, or is reasonably likely to impinge upon, the proper performance of the Director's duties and responsibilities under this Agreement, the Minister may after considering any comments from the Director, require the Director to cease or refrain from such activity and the Director shall act accordingly.

12 Politics Prohibited

- 12.1 The Director acknowledges and agrees that in the interests of maintaining the independence and integrity of PERCA, that he will not engage in political activity or become a member of or adviser in any capacity to a political party and must before becoming a candidate for election as a member of Parliament resign from Office.

13 Ownership of Work

- 13.1 All work produced by the Director in the performance of the duties under this Agreement shall be the property of the Crown and the Crown shall be entitled to any copyright or merchandising rights arising from such work.

14 Termination of Agreement

- 14.1 This Agreement may be terminated at any time prior to the expiry date by the Director giving to the Minister not less than three months written notice of termination. The Minister must then provide written advice to the Queen's representative to revoke the Public Expenditure Review Committee and Audit (Appointment of Director) Order 2020.

15 Early Termination

- 15.1 The Director may be removed or suspended from Office in accordance with Section 23 of the Act.
- 15.2 For the purposes of this clause the term "misconduct" shall include (but not be limited to):

- 15.2.1 Any material breach of the terms of this Agreement or of the Public Service Code of Conduct.
- 15.2.2 The commission of any offence involving dishonesty resulting in charges punishable by three months imprisonment or more, being brought against the Director in a court of law.
- 15.2.3 Any situation where the Director is declared bankrupt and becomes insolvent.
- 15.2.4 Any situation where the Director behaves in a manner that brings or is likely to bring the Government of the Cook Islands and PERCA into disrepute.
- 15.2.5 If the Director is rendered incapable of the proper performance of the duties and responsibilities of the Director under this Agreement as a result of mental or physical illness the Queen's Representative acting on the advice of the Prime Minister may terminate this Agreement by giving at least three months' notice (or pay in lieu of notice) to the Director.

16 Termination – Performance

- 16.1 If the Minister is dissatisfied with any aspect of the performance by the Director of his duties the Minister's concerns may be discussed with the Director and in such case the Director may be given such period as the Minister considers being reasonable in the circumstances to rectify the inadequacies to the satisfaction of the Minister.
- 16.2 In the event that the Minister shall reasonably conclude, after the period of notice referred to in clause 16.1 that the inadequacies referred to in 16.1 have not been remedied to the satisfaction of the Minister, the Minister may terminate the Director's employment in accordance with Section 23 of the Act.

17 Restructuring

- 17.1 If at any particular time during the term of this Agreement the responsibilities and duties of the Director become significantly different, including any changes made pursuant to section 6 (1) (a) and section 26 of the Public Service Act 2009, the Minister may either:
 - 17.1.1 Conclude a variation to this Agreement with the Director to reflect the changed nature of the position; or
 - 17.1.2 Terminate this Agreement by giving three months' notice, or pay in lieu of notice.
- 17.2 The Director shall not be entitled to receive any sum payable under this clause and the Minister shall not give the Director any such sum if prior to the date of termination, the Director receives any reasonable offer of employment from the Commissioner or another crown entity.

17.3 The Director acknowledges that payment under clause 17.1.2 of this Agreement by the Minister shall constitute full and final settlement of any claim the Director has or may have against the Minister for salary, compensation, special or general damages, interest or legal costs or disbursements or otherwise whether under any statute, at common law, in equity or otherwise and arising out of or in connection with the termination of the employment of the Director under this Agreement.

18 *Dispute Resolution*

18.1 In the event of any dispute or difference regarding any matter or thing arising out of these terms and conditions or the interpretation of any clause, the matter or thing herein contained or hereby contemplated, such dispute or difference shall be:

18.1.1 Resolved by negotiation between the parties in the first instance.

18.1.2 If resolution is not resolved by negotiation the matter must be referred to and settled by the Chief Justice of the Cook Islands or his nominee, appointed as sole arbitrator pursuant to the Arbitration Act 2014 or any statutory modification or re-enactment thereof for the time being in force in the Cook Islands.

19 *General Provisions*

19.1 In the event that the Director fails to comply with a lawful instruction conveyed to the Director by the Minister, the Minister may suspend the Director for such period, with or without pay, as the Minister shall determine, until the fault is remedied.

19.2 This Agreement, together with its Schedules, constitutes the entire agreement between the Minister and the Director, and supersedes all previous negotiations, communications and commitments whether written or oral.

19.3 It is expressly recognised that the parties may from time to time agree to vary the terms and conditions of this Agreement and that the Minister must consult or obtain the written consent of the Director before finalising any such variation. No variation shall have any legal effect unless it is in writing, signed by the parties and endorsed by the Queens Representative by Order in Executive Council.

19.4 This Agreement shall, except as required by law or as required for the proper negotiation, interpretation or application of this Agreement, be treated by the parties as confidential and shall in no way be disclosed, published or circulated to any person except with the prior written agreement of the parties.

19.5 No waiver of any of the terms of this Agreement shall be effective or binding on either party unless made in writing and signed by the parties and all statutory requirements have been complied with.

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- 19.6 If any part or parts of this Agreement is or are held to be illegal or null and void by any court or administrative body of competent jurisdiction, such determination shall not affect the remaining parts of this Agreement. The Agreement shall remain in full force and effect as if such part or parts held to be illegal, null or void had not been included in the Agreement, provided that the principal obligations of the parties are maintained.
- 19.7 If issues arise that are not covered specifically in this Agreement, they will be resolved by reference to Public Service Policies and Instructions issued by Cabinet and/or the Commissioner from time to time.
- 19.8 The Director acknowledges that he has been advised to obtain independent legal advice about this Agreement and has been given a reasonable opportunity to do so and the fact that he does not seek such independent legal advice shall not be a defence to any dispute arising under the Agreement between the parties
- 19.9 Any written notice to be given under this Agreement by either party to the other shall be served either personally or by registered letter addressed to the other party and in the case of the Minister at his office, and in the case of the Director, at the last known residential address.
- 19.10 This Agreement shall be construed and take effect in accordance with the laws of the Cook Islands and is subject to the jurisdiction of the Cook Islands Courts.

This Agreement has been executed by the parties on the day of 2020

SIGNED by the said **ALLEN PARKER**).....

in the presence of:).....

SIGNED by **HON MARK BROWN**).....

Minister of PERCA)

in the presence of:).....

SCHEDULE 1: Job description



JOB DESCRIPTION

JOB TITLE: Director of Audit
OFFICE: Public Expenditure Review Committee and Audit
RESPONSIBLE TO: Parliament, through the Minister of Audit and Finance

Responsible for:

1. Leading, planning, directing and conducting audits, investigations and inquiries into the operations of the Cook Islands Government. In particular, the responsibilities include the following:
2. Conducting reviews, audit and investigations of the financial affairs of the Crown with emphasis on the Audit of Ministries, State Owned enterprises and Crown Agencies and other areas of public expenditure. Examining budgets, estimates, records and accounts of revenue and expenditure.
3. Reporting the progress and results of reviews, audit and investigations to Parliament.
4. Analysing the level of management and internal control of revenue and expenditure and assessing the degree of compliance with relevant legislations, including but not limited to the Ministry of Finance and Economic Management Act 1995-96
5. Administration of and compliance with the Public Expenditure Review Committee and Audit Act 1995-96.
6. Reviewing the efficiency, effectiveness and economy of financial and management policies, practices and procedures and recommending practical improvement in their form, content and method of delivery.

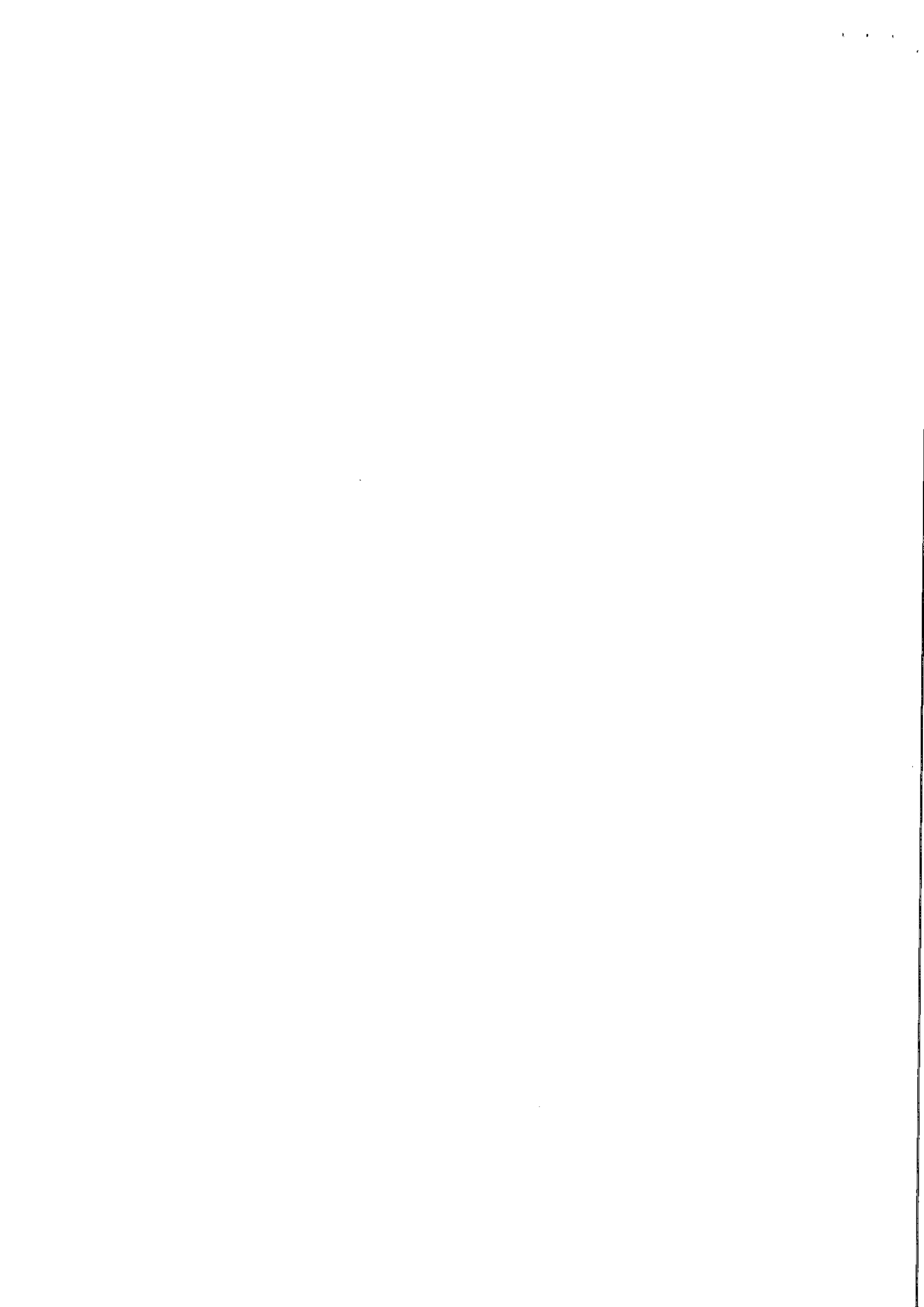
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7. Reviewing the level of disclosure in accounts, estimates, statements and reports and recommending improvement in their form, content and method of preparation. Providing assurance and issuing the audit opinion and report to management of Ministries, Agencies and the Crown Consolidated Financial Statements.
8. Appraising the adequacy of action taken to implement recommendations through follow up reviews and audits.
9. Advising and consulting with management and staff of Departments and Authorities on internal controls and issues identified through examinations and inquiries.
10. Ensuring a high professional standard is maintained on assigned special projects and work is completed within agreed time frames.
11. Reviewing the conduct and content of audits, investigations and inquiries and suggesting appropriate actions for penalty and prosecution.
12. Facilitating and ensuring a functional and harmonious working relationship with the Public Expenditure Review Committee
13. Ensuring the strictest codes of confidentiality and security are applied in all projects undertaken.

Code of Conduct

The Director of Audit must, in the course of his employment:

1. behave with integrity and honesty; and
2. exercise care and diligence; and
3. be professional, courteous, and treat everyone with respect and without coercion or harassment; and
4. comply with all applicable laws relating to their employment; and
5. comply with all lawful and reasonable instructions; and
6. take reasonable steps to disclose and avoid any real or apparent conflicts of interest in connection with their employment; and
7. ensure the proper and prudent use of government resources; and
8. use official information only for official purposes; and
9. not improperly use their status or authority to seek or obtain a benefit for themselves or any other person or body; and



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10. at all times act and behave in a manner that upholds and promotes the integrity, values, and good reputation of the Cook Islands Public Service; and
11. comply with any other conduct requirements as may be prescribed by regulations.

SCHEDULE 2: Remuneration Schedule

(a) Remuneration

The Director shall be paid a salary of **NZ\$120,000** gross per annum.

The salary shall be paid fortnightly by direct credit to the Director's nominated bank account.

The Minister may at the conclusion of each 12 month period hereof, after reviewing the performance of the Director in carrying out the duties and responsibilities of the position as prescribed in **Schedule 1**, review the salary of the Director.

If in the event a performance bonus is provided instead of a salary increase, bonus payments will be governed by the Public Service Bonus Policy established from time to time and applicable to the public service as a whole.

(b) Motor Vehicle

The Director will be entitled to a motor vehicle for his private use. The motor vehicle may be made available for the use of the Office, at the discretion of the Director.

The motor vehicle provided under this Agreement shall remain the property of Government and shall be used according to Policies governing the use of Government vehicles.

The Director will, at all times, take reasonable care of the vehicle and use the vehicle properly and responsibly.

(c) Telephone

The Director shall have a mobile phone provided by the office and all calls to be paid by the office, except overseas personal calls.

(d) Superannuation

The Director will remain a member of the Government Superannuation Fund or the Cook Islands National Superannuation Fund. The Office will pay the notional employer subsidy as determined from time to time by either Fund or the tax, if any, in relation to the employer's contribution.

(e) Study Allowance

The Director may, with the prior approval of the Minister, undertake further studies that must be relevant to the work of the Audit Office, and shall be paid for fully by the Office provided that there is an appropriation for such. Where the Director desires to undertake studies in an area of personal interest, he shall pay for those studies himself.

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Clerk of the Executive Council

This order is administered by the Office of Public Expenditure Review Committee and Audit.

This order was made on the 30th day of October 2020.

