



Customs Department
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**POSITION STATEMENT OF MR. WADE SMITH
BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

1. How is the Customs system organised in the BVI?

1.1 The answers provided herein are based on the assumption that “Customs system” in your questions refers to Her Majesty’s Customs Department (“**Customs Department**”).

1.2 The Customs Department is a Department within the Ministry of Finance, Government of the Virgin Islands. It operates as a department under the direct supervision and control of the Ministry of Finance. The Customs Department is unique in that, although it is a department within the Government of the Virgin Islands, it is governed also by the Customs Management and Duties Act, 2010 (S.I. No. 6 of 2010) (“the Customs Act”). The Customs Act replaced the Customs Ordinance (Cap 104) and the Customs Duties Ordinance (Cap 105). The Customs Act established the role of Commissioner of Customs and outlines the duties of the Commissioner therein.

1.3 The vision of the Customs Department is to serve the Government of the Virgin Islands and the public with professionalism, fairness, and integrity by, providing quality service, maximizing the collection of revenue, protecting our Territorial borders and facilitating legitimate trade efficiently, effectively and economically in order to safeguard the well-being and security of the entire British Virgin Islands. With a clear and well-articulated vision, the Customs Department is committed to providing essential services to the persons whom we serve and with whom we interact, in any context. The Customs Department’s commitment is as follows:

- To render polite and courteous service;
- To operate with the greatest degree of fairness and equity;
- To handle each individual’s affair with strict confidence;
- To perform our duties professionally at all times;
- To fulfill reasonable requests promptly and accurately;
- To collect only the proper amount of revenue due in accordance with the law; and
- To operate with the greatest degree of transparency and integrity

1.4 The Customs Department is a dynamic environment consisting of various units, ten (10) stations and nine (9) ports with the responsibilities of revenue collection and enforcement. The Customs Department serves as a blueprint, offering important directions and indispensable guidance. The Units of the Customs Department also utilizes the principles that are directly correlated with the revised Kyoto Convention.

1.5 The Customs Department is comprised of the following Units:

(1) Administration Unit, which includes:

(a) **Accounts-** responsible for budget preparations, refunds, and account payables;

(b) **Human Resources** – manages, plans, coordinate and direct the administrative functions of the Customs Department. The Unit oversees work performance, recruitment, interviewing, training, development, and consults with the Commissioner of Customs on strategic and succession planning. The Unit is the link between the Department of Human Resources and the Human Resources Manager of the parent Ministry (Finance);

(2) **Enforcement Unit** responsible for enforcing Customs laws other laws and regulations of the Virgin Islands and liaising with domestic, regional and international counter parts to gather information used in the fight against local, regional and transnational crimes. The Enforcement Unit also serves as a liaison between the Attorney General’s Chambers, Office of the Director of Public Prosecution, Financial Investigative Agency, Royal Virgin Islands Police Force, Immigration, Airport Authority, BVI Ports Authority, Virgin Islands Shipping Registry, Conservation and Fisheries and other private stakeholders (**charter companies, shipping companies, courier services etc.**). This arm of the Customs Administration provides guidance to the Flex Team, Marine Task Force, K-9 Unit, Intelligence Unit, Fuel and Concession Unit, Operations Unit, Assurance Unit and the Customs Automated Processing Systems (“CAPS”) Unit.

- (3) **Flex Team** – a mobile unit whose primary function is to manage the inspection of cargo/freight containers entering and leaving the Territory. The Flex Team conducts on-site supervision and inspection of containers to prevent illicit activities. This specialized mobile unit is staffed with highly skilled officers (**captains, engineers, and mechanics**), who are crossed trained and capable of assisting at any port of entry or on any other enforcement unit within the Customs Department including the Marine Task Force and the K-9 Unit.
- (4) **Marine Task Force** – is responsible for protecting the territorial borders, and to fight against transnational crime (human trafficking, human smuggling, drug and weapon interdiction, an smuggling commercial goods etc). In addition to the border security function the Unit enforces other Virgin Islands Laws (Commercial Recreational Vessel Licenses, Cruising Permits Ordinance, National Parks and Trust, Conservation and Fisheries Legislation and Virgin Islands Shipping Registry Legislation), assists with emergency search and rescue and provides training and technical assistance for other local and regional administrations in the development and maintenance of their own marine capabilities.
5. **K-9 Unit** – This Unit was established in 2003 and is one of the most successful K-9 Units in the region. This Unit provides assistance in the search of contrabands, among other objectives. Due to the sensitive nature of the role of this Unit, its full capabilities are not outlined in this position statement. This highly trained Unit also provides assistance and technical training to local and regional counterparts in the development and maintenance of their own K-9 capabilities.
6. **Intelligence Unit** - Utilizes the entire Department's IT databases (**Overseas Territory Regional Central Intelligence Systems (OTRCIS), Regional Clearance Systems (RCS) and Customs Automated Processing Systems (CAPS)**) and liaise with local, regional, and international counterparts in gathering and disseminating intelligence, which is effective in the fight against local and cross border crimes. This Unit works closely with the Financial Crime Unit of the Royal Virgin Islands Police Force and the Financial Investigative Unit. It monitors cross border movement of bulk cash and other monetary instruments. This cooperation is especially important as it helps to provide

mutual protection for the participating countries. In this way, what is beneficial to them is also reciprocally helpful to the BVI.

7. **Fuel and Concession Unit** – responsible for ensuring policies and procedures are followed for the importation of petroleum products and monitoring all duty-free concessions (**Hotel Aid, Pioneer Status and the Virgin Islands Tourist Duty Free Concession Acts**) at the Cyril B. Romney Pier Park. As it relates to hotel aid and pioneer status, the Unit liaises with Office of the Premier and is responsible for the clearance processes of the cruise industry.
8. **Operations Unit** – responsible for managing and maintaining all nine (9) Customs ports of entries within the Territory, securing borders and maximizing collection of revenue by ensuring all stakeholders are in compliance with the laws and policies of the Customs Department and other key Government entities (**bonds, commercial licenses, cruising permits, National Parks & Trust fees, environmental levy fees etc.**). The Unit also liaises with the Enforcement Units (K-9, Flex Team and the Intelligence) and ensures facilitation of legitimate trade.
9. **Assurance Unit** – This unit ensures compliance with the laws of the Customs Department and the effectiveness of revenue collection within the organization. Its main aim is to improve of financial management, establish and maintain sound accounting procedures and reporting structures for CAPS, Trader Declaration Unit, and the National Risk Assessment Implementation Team.

a. Internal Audit Unit

There is no relation to the Office of the Auditor General. This Unit is responsible for the implementation of recommendation made by the Auditor General or the Office of the Director of Internal Audit.

- ✓ monitors the effectiveness of the internal controls and Officers to mitigate opportunities for corruption (theft, fraud, abuse of powers etc.);
- ✓ gather and disseminate information for the Central Statistics Unit to assist the decision making of the powers that be;
- ✓ Assist enforcement with compliance checks to ensure stakeholders are in compliance with Customs laws and policies;

- ✓ Assist with revenue recovery and post audits; and
- ✓ Reviews refund applications, processing and collection of partial payments, internal audit and ensure compliance of laws.

b. **Customs Automated Processing Systems (CAPS) Unit** – This Unit automates the receiving of Customs Declarations, which includes all imports, exports and bonded goods processes. The structure which was developed through the Customs Reform and Modernization Programme, 2000 continues to evolve and reform in line with the principles of the revised Kyoto Convention that was entered into force on February 3rd 2006. This International Convention on the simplification and harmonization of Customs procedures (as amended), is the blueprint for modern and efficient Customs procedures in the 21st century. The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that details the application of simple yet efficient procedures. The Convention elaborates on several key governing principals such as:

- Transparency and predictability of Customs actions;
- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary Customs control to ensure compliance with regulations;
- Use of risk management and audit based controls;
- Coordinated interventions with other border agencies; and
- Partnership with trade.

The CAPS unit is comprised of IT professionals (Programmers and Data Entry Clerks etc) for monitoring and developing the system, giving network support to stakeholders, maintaining and upkeep of IT equipment in collaboration with the Department of Information Technology and assists the department with the implementation of new systems.

10. Trader Declaration Unit is responsible for reviewing all entries through CAPS and ensures declarations are made and proper revenues calculated.

11. National Risk Assessment Implementation Unit - implements recommendations made to systems to help improve effectiveness in combatting money laundering, terrorist financing, proliferation and corruption.

1.2 What processes and systems are in place to monitor effectiveness of the Customs Systems?

2.1. The Internal Audit/Assurance Unit monitors the effectiveness of the Customs Department. Once information is referred to the Internal Audit/ Assurance Unit through the Commissioner of Customs, it will review the complaints/allegations against the requirements of the Customs Department and develop, where necessary, a Post Audit Team to investigate the /complaint. These complaints/allegations can include allegations of corruption, fraud, and irregularities, the Internal Audit/Assurance Unit also conducts compliance audits, as part of the annual audit plan and develops post audit strategies, which ensures the protocols of Public Financial Management Act, 2004 are followed and observed. To monitor the effectiveness of officers in carrying out their duties, review is conducted of the strategic plan, output budgeting, role profiles and performance appraisals. All officers are also guided by the Customs Act. Where the Internal Audit/Assurance Unit discovers evidence of corruption, fraud irregularities etc. being investigated this is reported to the Financial Secretary, the Attorney General's Chambers and or the Director of Public Prosecutions, depending on the nature of the evidence discovered.

2.2 To monitor the effectiveness of officers in carrying out their duties this Unit reviews the strategic plan, output budgeting, role profiles and performance appraisal. All Officers are guided by the Customs Act. In addition, if further support is required during investigative processes, this Office will seek the assistance of the Office of the Director of Internal Audit Department and the Office of the Auditor General.

2. What particular responsibilities do you have, as the Commissioner of Customs, in the BVI?

3.1 As the Commissioner of Customs in the BVI my duties are outlined under Part I of the Customs Management Act. The Commissioner is charged with the following responsibilities:

- (a) the management, supervision and control of Customs;
- (b) the collection and accounting of customs revenue;
- (c) the care of public and other property under customs control, but without having to account for loss thereof unless the loss is due to the Commissioner's personal default;
- (d) any other enactments relating to any assigned matter.

3.2 Within the overall structure of Government, the Customs Department is also responsible for the collection and security of the revenues along with the control of all imports and exports to and from the Territory. The primary responsibility of the Commissioner of Customs is border protection and to ensure that the Department meets its goals and targets of revenue collection annually. This is accomplished by ensuring that there are systems in place to secure and protect Government revenues. In conjunction with this, the department assesses and make the appropriate collection of import duties, ensures that commercial licenses are up to date and discourages and safeguards against illicit activities and violators of the Act. For Border Security, the Customs Department liaises closely with all other law enforcement agencies in the BVI (**Police, FIA Immigration, Fisheries**) and work closely with the BVI regional and international counterparts to prevent transnational crimes and monitor cross border movement of vessels, goods and people.

3. What particular responsibilities do you have, as the Commissioner of Customs in respect of detecting and investigating corruption, abuse of office or other serious dishonesty that may have taken place in public office within the Customs system in recent years?

4.1 My responsibilities are to ensure that the systems utilized by the Customs Department to detect corruption (when Officers engage in dishonest or fraudulent activities), abuse of office (using the office to advance matters for personal gain) and other serious dishonesty etc are confidential, effective, and trustworthy to encourage the flow of information by Officers, domestic whistle blowers and external intelligence. When officers, whistle blowers or other stakeholders bring matters such as potential corruption, abuse of office or other serious dishonesty, that may have taken place in the Customs Department to my attention, or where I

observe this firsthand, my responsibility is to ensure that the assurance unit is made aware of this expeditiously to gather relevant information from the IT systems and disseminate for further investigation.

3.2 Secondly, depending on the nature of the suspicious activity the Enforcement Unit will be asked to assist by investigating the activity, which will then be passed to the Commissioner of Customs for review. Any complaint of misconduct, abuse of office, corruption or other serious dishonesty will be forward to the Attorney General Chambers, Royal Virgin Islands Police Force, Office of the Director of Public Prosecutions, Financial Investigative Agency for further investigation.

3.3 Further, any allegation of misconduct, abuse of office, corruption or other serious dishonesty made against a Customs Officer, it will be my responsibility in accordance with the General Orders 3.6 and 3.7, Service Commissions Act, 2011, Service Commission Regulations 2014 and Devolution Regulations, 2008 to forward to the Department of Human Resources through the parent Ministry (Finance) headed by the Financial Secretary for further action.

4. What processes and systems are in place to detect and investigate matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs system in recent years?

5.1 The processes and systems that are in place to detect matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs Department in recent years include:

1. segregation of duties using the Customs Automated Processing Systems (**CAPS**);
2. Regional Clearance Systems (**RCS**);
3. Overseas Territory Regional Central Intelligence Systems (**OTRCIS**)
4. whistle blowing procedures for other Officers or the Public; and
5. rotation of Customs Officers at the various ports of entries and Units;
6. revenue audits of all stations and teams (random and investigative audits);
7. compliance audits of all stations and teams (ensuring Officers and stakeholders adhere to all laws and policies);
8. reporting and disclosure of interests (in accordance with Section 8 of the CMDA), which include:

- (a) owns, either in whole or in part, any vessel or aircraft engaged in trade,
- (b) acts on behalf of the owner of any vessel or aircraft engaged in trade,
- (c) imports or is concerned in the importation of any merchandise for sale, or
- (d) acts on behalf of an importer or an importer's agent in the preparation of an entry or any other document required under this Act in respect of the importation of goods, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars;

9. Training on various sections of laws (CMDA and the Money Laundering and Terrorist Financing Act, and FATF 40 recommendations).

5.2 The Customs Department has a zero-tolerance approach and operates transparently. Once corruption and abuse of office or other serious dishonesty is detected using the monitoring systems mentioned above, the matter is referred to Internal Audit/Assurance and Enforcement Units for further investigation. Any type of business conducted outside regular operational procedures will be identified, flagged, investigated and forwarded to relevant agencies.

5. What, if any, challenges have there been/are there in relation to detecting and/or investigating matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs System in recent years?

6.1 The challenges include limited investigative resources and limited human resources. The Customs Department is forced to rely on other agencies (AG Chambers, RVIPF, FIA and DPP etc) with specific skill sets, who may not view Customs matters as priorities because those agencies have their own challenges/cases and/or may not be familiar with the Customs Act, systems and other Laws. The Customs Department continues to be challenged with respect to succession planning, completion of strategic objects and goals due to the loss of several Customs officers due to retirement and relocation after Hurricanes (Irma and Maria, 2017) coupled the external hiring moratorium,

6. What do you, as the Commissioner of Customs, consider to be the strengths and weaknesses of the Customs system in the BVI?

7.1 Strengths:

- The department operates within the framework of transparency;
- Expertise of human resources (institutional knowledge of Customs Officers);
- Legal framework;
- IT system (CAPS, RCS);
- International/Domestic representation and relationships;
- Maritime Assets, Automobiles and IT;
- Confidence the stakeholders has in this organization;
- In house Customs certified Trainers (post audit, K-9, captains, engineers, management etc.);
- High morale;
- Cadre of local employees very familiar with our territory;
- Cadre of local employees intimately familiar with our culture and traditions;
- A number of employees who wish to make the profession a lifetime career;
- Genuinely dedicated employees;
- Commissioner's willingness to accept and respond to constructive observations or criticisms and adopt to change.

7.2 Weaknesses:

- IT Infrastructure;
 - Shared IT servers;
 - Network connectivity;
 - Shared IT expertise;
- Blanket policies by Ministry of Finance and The Human Resources Department restricts law enforcement without considering the structural and operational functionalities of this complex organisation with dual responsibilities (daily revenue collection and border security);
 - Lengthy processes due to stringent policies and handling of HR matters;
 - Lack of human resources information sharing to department heads in a timely manner;
 - Lack of uniformity of handling human resources matters;
- Budgetary restrictions which limits and delay the functions of the Customs Department;

- A lack of a locally based training academy or similar organization with particular focus on Customs specialties.

8. What steps do you, the Commissioner of Customs, consider should be taken to ensure that the strengths and weaknesses you have identified can be maintained or remedied respectively?

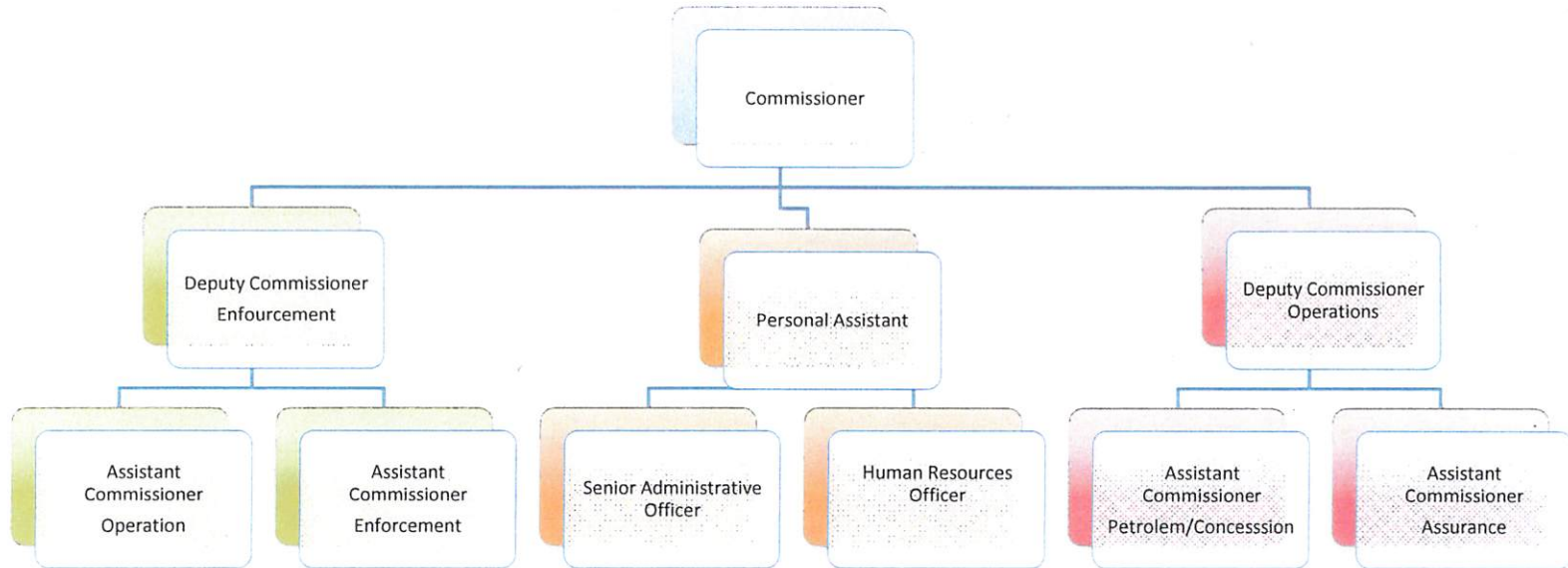
8.1 I consider the following steps should be taken to ensure maintenance of our strengths and the corrections of our weaknesses:

8.2 Recommendations:

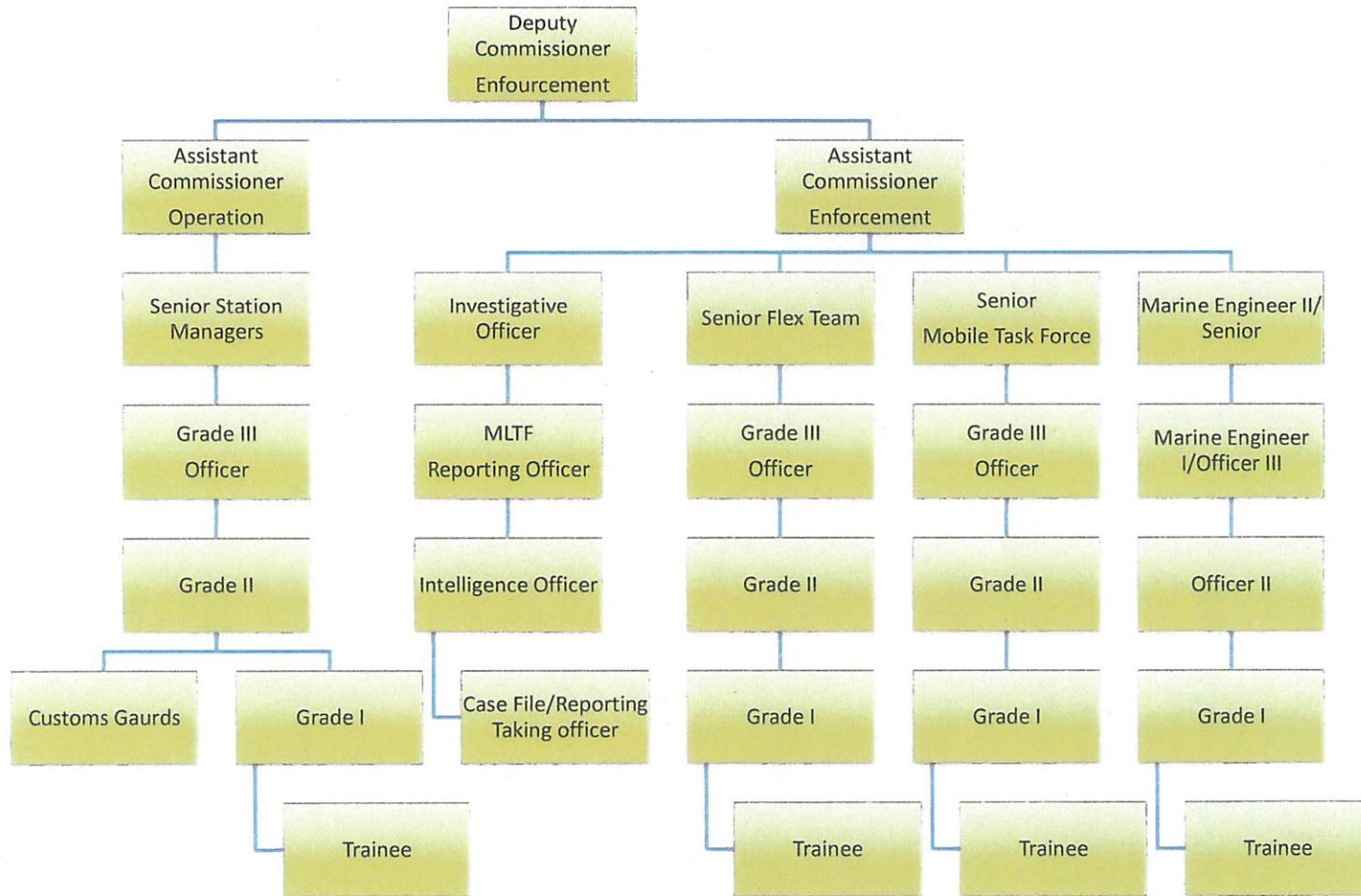
- Customs Department should be made a statutory body with board members consisting of the Attorney General, Financial secretary, Deputy Governor, Commissioner of Customs and Director of Financial Investigative Agency to ensure
 - Customs processes are handled timely;
 - eliminate the limitations of blanket polices;
 - In house legal counsel to give advice, assist with investigations and prosecute offenders timely.
- Modernization of outdated legal framework (Acts and Regulations);
- Continuous cross training to maintain expertise and encouragement of self-development;
- Independent network and servers to improve risk management and systems;
- Ability to lead our own law enforcement investigations;
- Proper in-house legal representative versed in Customs Laws;
- Continue to be the benchmark for the other regional agencies;
- Continue to be utilized as the pilot programme for many law enforcement initiatives identified through CCLEC;
- Continue to build local, regional and International relationships by information sharing;
- Continue to increase capabilities by capacity building;
- Continue to operate in a transparent environment in line with the vision and mission of the Customs Department;
- Ensure effective collection of revenue and proper inspection of imported goods;
- Continuous retraining in line with the succession plan.
- Some blanket policies should not apply to Law Enforcement Agencies;
- Human resources has too many restrictions which delays in hiring and disciplining;

- Ministry of Finance funding process/budgetary processes are lengthy;
- Ensure that the process of establishing a Customs Courier Cargo Distribution Center is completed in a timely manner so that the policies and procedures in place for collecting government revenues help to guarantee a smooth functioning;
- Develop the local Law Enforcement Training Academy for all Law Enforcement Agencies.

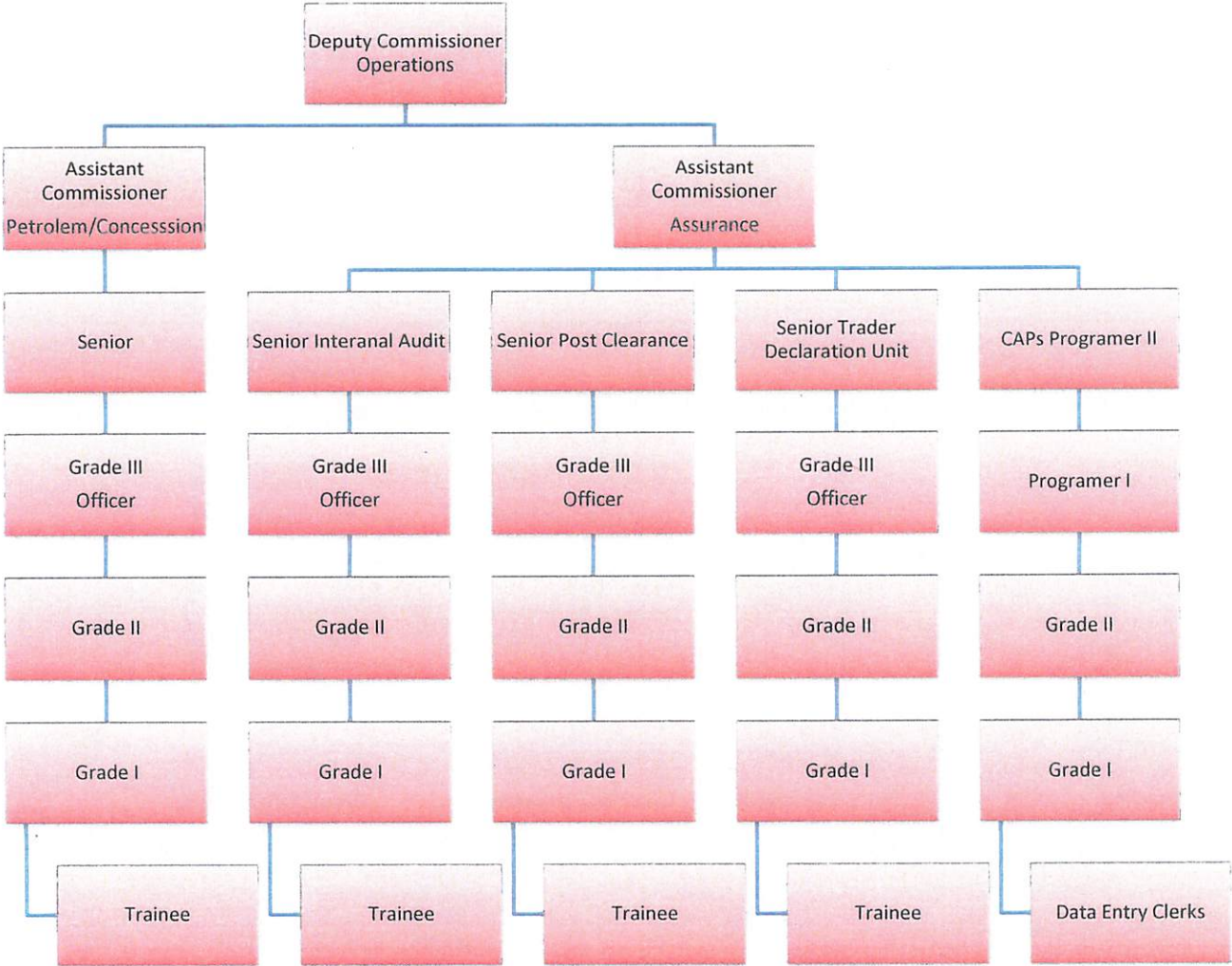
Management Team



Enforcement Team



Operations Team



Administration

