

SCHEDULE 2

The Constitution of the Cayman Islands

PART V

THE JUDICATURE

The Grand Court

Constitution and jurisdiction of the Grand Court

94.—(1) There shall be a Grand Court for the Cayman Islands which shall be a superior Court of Record and shall have such jurisdiction and powers as may be conferred on it by this Constitution and any other law.

(2) The Court shall have and use a seal bearing the style of the Court and a device approved by the Chief Justice.

Composition of the Grand Court

95.—(1) The judges of the Grand Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by a law made under this Constitution; but the office of a judge shall not, without his or her consent, be abolished during his or her continuance in office.

(2) The judges of the Grand Court shall be persons holding such qualifications for appointment as a judge of the Grand Court as may be prescribed by a law enacted by the Legislature; but a person who has been appointed as a judge of the Grand Court may continue in office notwithstanding any subsequent variation in the qualifications so prescribed.

(3) All the judges of the Grand Court, including the Chief Justice, shall be appointed by the Governor by instrument under the public seal in accordance with section 106.

(4) It shall be lawful for a person qualified for appointment as a judge of the Grand Court to be so appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 96 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

(5) The emoluments and allowances of a judge of the Grand Court shall be prescribed by law and shall be charged on the revenues of the Cayman Islands, and the emoluments and allowances of a judge shall not, without his or her consent, be reduced during his or her continuance in office.

(6) The Chief Justice shall be the head of the judiciary of the Cayman Islands.

(7) The Chief Justice shall have responsibility for and management of all matters arising in judicature, including responsibility—

- (a) for representing the views of the judiciary to the Government and the Legislative Assembly, including, where appropriate, through the Attorney General;
- (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary within available resources;
- (c) subject to paragraph (d), for the maintenance of appropriate arrangements for the deployment of the judiciary and the allocation of work within courts;
- (d) after consultation with the President of the Court of Appeal who shall be responsible for the allocation of work within the Court of Appeal, for the maintenance of appropriate arrangements for the work of that court.

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Tenure of office of judges of the Grand Court

96.—(1) Subject to this section and section 95(4), a judge of the Grand Court shall vacate his or her office when he or she attains the age of 65 years; but—

- (a) the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between that judge and the Governor following the recommendation of the Judicial and Legal Services Commission;
- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) A judge of the Grand Court may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Grand Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(1) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Grand Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
- (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.

(5) The Commissions of Inquiry Law as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that Commission as it applies in relation to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Grand Court from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

(1) 1833 c.41.

Acting judges of the Grand Court

97.—(1) If the office of Chief Justice is vacant, or if the holder of it is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the other judges of the Grand Court or such other person qualified for appointment as a judge of the Grand Court as the Governor, acting in accordance with section 106, may appoint for that purpose shall act in that office.

(2) If the office of a judge of the Grand Court other than the Chief Justice is vacant, or if any such judge is acting as Chief Justice or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 106, may appoint a person qualified for appointment as a judge of the Grand Court to act as such a judge.

(3) A person may be appointed under subsection (1) or (2) even though he or she has attained the age of 65 years.

(4) Any person appointed under this section to act as a judge of the Grand Court shall, unless he or she is removed from office under section 96, continue so to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

Oaths to be taken by judges of the Grand Court

98. Before assuming the functions of his or her office, every judge of the Grand Court shall make and subscribe before the Governor, or some other person authorised for that purpose by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of judicial office in the forms set out in the Schedule to this Constitution.

The Court of Appeal

Constitution and jurisdiction of the Court of Appeal

99.—(1) There shall be a Court of Appeal for the Cayman Islands which shall be a superior Court of Record and shall have jurisdiction and powers to hear and determine such appeals from the Grand Court as may be prescribed by this Constitution or any other law.

(2) The Court of Appeal shall, subject to this Constitution and any other law, have all the powers and jurisdiction that are possessed by the Grand Court under any law in force in the Cayman Islands; and decisions of the Court of Appeal in respect of any appeal from the Grand Court shall, subject as aforesaid, be enforced in the Cayman Islands in the same way as decisions of that Court.

(3) Subsection (1) shall not apply to appeals relating to any matter in respect of which this Constitution or any other law provides that the decision of the Grand Court is to be final.

(4) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President.

Composition of the Court of Appeal

100.—(1) The judges of the Court of Appeal shall be a President and not less than two Justices of Appeal.

(2) The judges of the Court of Appeal shall be appointed by the Governor by instrument under the public seal in accordance with section 106; but the office of a judge shall not, without his or her consent, be abolished during his or her continuance in office.

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(3) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he or she holds or has held high judicial office.

(4) A judge of the Grand Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as a law enacted by the Legislature may prescribe.

Tenure of office of judges of the Court of Appeal

101.—(1) The judges of the Court of Appeal shall be appointed for such period as may be specified in their respective instruments of appointment; but a person whose appointment as a judge of the Court of Appeal has expired may, with the permission of the Governor, acting in his or her discretion, continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Court of Appeal shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
- (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.

(5) The Commissions of Inquiry Law as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that Commission as it applies to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Court of Appeal from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

Acting judges of the Court of Appeal

102.—(1) If the office of the President of the Court of Appeal is vacant, or if the holder of it is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office or until the holder of it has resumed those functions, as the case may be, such one of the Justices of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the Governor, acting in accordance with section 106, may appoint for that purpose shall act in the office of the President.

(2) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 106, may appoint a person qualified for appointment as a judge of the Court of Appeal to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a Justice of Appeal shall, unless he or she is removed from office under section 101, continue so to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

Oaths to be taken by judges of the Court of Appeal

103. Before assuming the functions of his or her office every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised for that purpose by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of judicial office in the forms set out in the Schedule to this Constitution.

Other matters

Subordinate courts

104.—(1) A law enacted by the Legislature may establish courts subordinate to the Grand Court.

(2) The Grand Court shall have jurisdiction to supervise the proceedings before any subordinate court and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such courts.

Judicial and Legal Services Commission

105.—(1) There shall be in and for the Cayman Islands a Judicial and Legal Services Commission which shall consist of—

- (a) a Chairman and one other member, neither of whom shall be a lawyer, appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
- (b) the President of the Court of Appeal, *ex officio*;
- (c) a person appointed by the Governor, acting in his or her discretion, who holds or has held high judicial office in the Cayman Islands and has recent personal knowledge of the courts in the Cayman Islands;
- (d) two persons appointed by the Governor, acting in his or her discretion, who hold or have held high judicial office in a Commonwealth country or Ireland, but do not currently hold such office in the Cayman Islands; and
- (e) two attorneys-at-law qualified to practise in the Cayman Islands, one with experience in Government service and one with experience in private practice, appointed by the

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Governor, acting after consultation with representatives of legal professional organisations in the Cayman Islands and, where appropriate, the Attorney General.

(2) No person shall be qualified to be appointed to the Judicial and Legal Services Commission if he or she is a member of, or a candidate for election to, the Legislative Assembly or (except for appointment under subsection (1)(e)) holds or is acting in any public office.

(3) The office of a member of the Judicial and Legal Services Commission shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of, or a candidate for election to, the Legislative Assembly, or (except for a member appointed under subsection (1)(e)) is appointed to or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(4) If the office of a member of the Judicial and Legal Services Commission becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with subsection (1) for the appointment of that member, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his or her functions.

(5) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than five members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine; but any decision relating to the appointment of the President of the Court of Appeal or the Chief Justice shall require the concurrence of at least two members of the Commission who have judicial experience.

(6) In the exercise of their functions, the Judicial and Legal Services Commission and its members shall not be subject to the direction or control of any other person or authority.

(7) The Judicial and Legal Services Commission may regulate its own procedure, which may include meeting by teleconference or other electronic means of communication.

Functions of Judicial and Legal Services Commission

106.—(1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1) the Governor may, acting in his or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) This section applies to the offices of—

- (a) Chief Justice and other judge of the Grand Court;
- (b) President of the Court of Appeal and other judge of the Court of Appeal;
- (c) Attorney General;

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- (d) Director of Public Prosecutions;
 - (e) Magistrate;
 - (f) such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law enacted by the Legislature.
- (5) No member of the Judicial and Legal Services Commission shall participate in any proceedings of the Commission which affect him or her personally.
- (6) In cases where the Judicial and Legal Services Commission conducts an inquiry under section 96(4) or 101(4), the President of the Court of Appeal and any current judge of the Grand Court who is a member of the Commission shall not participate in that inquiry other than as a witness.
- (7) A person holding the office of Attorney General, Director of Public Prosecutions or Magistrate may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (8) Where the issue of the removal from office of any person holding one of the offices mentioned in subsection (4)(c), (d), (e) or (f) has been referred to the Judicial and Legal Services Commission, the Governor may, acting after consultation with the Commission, suspend that person from performing the functions of his or her office pending the outcome of the referral.
- (9) Any suspension, removal or disciplinary action taken under this section shall be carried out in accordance with the highest appropriate standards of procedural fairness.
- (10) The Judicial and Legal Services Commission shall—
- (a) draw up a code of conduct for the judiciary and a procedure for dealing with complaints; and
 - (b) have such other functions as may be conferred on it by a law enacted by the Legislature.
- (11) Subject to subsection (6), this section is without prejudice to sections 96 and 101.

Judicial administration

107. The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Cayman Islands.