

## SCHEDULE

### THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

## CHAPTER 1

### ST HELENA

#### PART 6

#### THE ADMINISTRATION OF JUSTICE

##### Court of Appeal

##### **Constitution of Court of Appeal**

- 86.**—(1) There shall be a Court of Appeal for St Helena which shall be a superior court of record.
- (2) The judges of the Court of Appeal shall be the President, and two or more Justices of Appeal.
- (3) A person shall be qualified for appointment as the President or a Justice of Appeal of the Court if—
- (a) he or she is, or has been, a judge of a superior court in some part of the Commonwealth or in Ireland; or
  - (b) he or she is entitled to practise as a legally qualified advocate or a solicitor in such a court and has been so entitled for not less than five years.
- (4) For the purposes of subsection (3), a person shall be regarded as entitled to practise as such an advocate or a solicitor if he or she has been called, enrolled or otherwise admitted in that capacity (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) even if, during any relevant period—
- (a) the person was holding or acting in any office that precluded him or her from practising in a court; or
  - (b) the person did not hold a practising certificate or had not satisfied any other like condition of being permitted to practise.
- (5) If the office of President of the Court of Appeal is vacant or the President has not assumed, or is for any reason unable to perform the functions of, that office, those functions shall be performed by the next most senior Justice of Appeal in terms of the date of his or her appointment.
- (6) If the office of a Justice of Appeal is vacant, or any Justice of Appeal is discharging the functions of President or is for any other reason unable to perform the functions of the office, the Governor, acting in his or her discretion, may decide that a person qualified for appointment as a Justice of Appeal should be appointed to sit as an Acting Justice of Appeal.
- (7) The Court of Appeal shall have and use a seal bearing a device and impression of the Royal Arms within a border bearing the words “Seal of the St Helena Court of Appeal”.

##### **Jurisdiction of Court of Appeal**

- 87.**—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of St Helena as may be prescribed by this Constitution or any other law.
- (2) Except as otherwise provided by this Constitution, an appeal shall lie to the Court of Appeal from the Supreme Court—
- (a) as of right, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution;

- (b) as of right, or, as the case may be, with the leave of the Supreme Court, in such other cases involving the exercise of the criminal, civil or appellate jurisdiction of the Supreme Court as may be provided by this Constitution or any other law;
- (c) with the leave of the Supreme Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interests affected, or for any other reason, ought to be submitted to the Court of Appeal for decision; and
- (d) subject to such limitations as may be provided by law, if the Court of Appeal, in any case in which it thinks fit, and at any time, grants special leave to appeal to that Court from a judgment of the Supreme Court, subject to such conditions as to security for costs or otherwise as the Court of Appeal thinks fit.

(3) In connection with any appeal from a court of St Helena, the Court of Appeal shall, subject to this Constitution and any other law, have all the powers and jurisdiction that are possessed by that court under any law; and decisions of the Court of Appeal in respect of any appeal from a court of St Helena shall, subject as aforesaid, be enforced in St Helena in the same way as decisions of that court.

### **Practice and procedure on appeals**

**88.**—(1) Rules made under section 89 may fix the number of judges of the Court of Appeal who may sit for any purpose; but, subject to subsection (2)—

- (a) an uneven number shall sit, which for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be fewer than three; and
- (b) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

(2) If, in a circumstance referred to in section 86(6), it is not practicable for the Governor to make an appointment under section 90(3), two judges of the Court of Appeal may hear, or continue to hear, and may determine, an appeal that has been set down for hearing; but—

- (a) if those judges are not in agreement about the determination of any matter arising in the course of the proceedings, the presiding judge shall decide; and
- (b) if those judges are not in agreement as to whether the appeal should be allowed, the presiding judge shall discontinue the appeal, and the matter shall be required to be reheard before the Court of Appeal consisting of three or a greater uneven number of judges of the Court.

(3) Subject to subsections (1) and (2), rules made under section 89 may provide for a reference from a decision of a single judge to the Court of Appeal.

(4) Subject to subsection (5), the Court of Appeal may sit in St Helena or outside St Helena.

(5) The Court of Appeal may sit outside St Helena, if satisfied that—

- (a) every party to the proceeding is able to participate, in person or through a legal representative, by teleconference or other means of electronic, oral or written communication;
- (b) no injustice will result; and
- (c) the course proposed is in the public interest.