

SCHEDULE 2

The Constitution of the Cayman Islands

PART II

THE GOVERNOR

The office of Governor

29. There shall be a Governor of the Cayman Islands who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure.

Oaths to be taken by the Governor

30. Before assuming the functions of his or her office, the person appointed to be Governor shall make oaths of allegiance and for the due execution of his or her office before the Chief Justice in the forms set out in the Schedule to this Constitution.

Functions of the Governor

31.—(1) The Governor shall have such functions as are prescribed by this Constitution and any other law, and such other functions as Her Majesty may from time to time be pleased to assign to him or her in exercise of the Royal prerogative.

(2) The Governor shall exercise his or her functions in accordance with this Constitution and any other law and, subject thereto, in accordance with such instructions (if any) as may be addressed to the Governor by or on behalf of Her Majesty.

(3) In the exercise of his or her functions under subsection (2), the Governor shall endeavour to promote good governance and to act in the best interests of the Cayman Islands so far as such interests are consistent with the interests of the United Kingdom.

(4) Notwithstanding the jurisdiction of the courts in respect of functions exercised by the Governor, the question of whether or not the Governor has in any matter complied with any instructions addressed to him or her by or on behalf of Her Majesty shall not be inquired into in any court.

Exercise of the Governor's functions

32.—(1) Subject to subsection (2), the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or any other law, insofar as it is reasonably practicable to do so and unless the matter is not materially significant such as to require consultation.

(2) The Governor shall not be obliged to consult with the Cabinet in the exercise of—

- (a) any function conferred by this Constitution which the Governor is empowered to exercise in his or her discretion or judgement or in pursuance of instructions addressed to him or her by or on behalf of Her Majesty;
- (b) any function conferred by this Constitution or any other law which the Governor is empowered or directed, either expressly or by necessary implication, to exercise without consulting the Cabinet or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or
- (c) the special responsibilities of the Governor set out in section 55, other than external affairs.

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(3) The Governor shall keep the Cabinet informed concerning the general conduct of all matters for which he or she is responsible, and of any matters that in his or her judgement may involve the economic or financial interests of the Cayman Islands or the enactment of laws under this Constitution.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Cabinet he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question of whether or not he or she has so exercised that function shall not be inquired into in any court.

The Governor may act contrary to the advice of the Cabinet

33.—(1) Subject to subsection (2), in any case where the Governor is required to consult with the Cabinet he or she shall act in accordance with the advice given to him or her by the Cabinet.

(2) The Governor may act against the advice given to him or her by the Cabinet—

- (a) if he or she is instructed to do so by Her Majesty through a Secretary of State; or
- (b) if, in his or her judgement, such advice would adversely affect any of the special responsibilities of the Governor set out in section 55.

(3) Whenever the Governor acts otherwise than in accordance with the advice given to him or her by the Cabinet, his or her reasons shall be recorded in the minutes, and any member of the Cabinet may require that there be recorded in the minutes the grounds of any advice or opinion which he or she may have given on the question.

The office of Deputy Governor

34.—(1) There shall be a Deputy Governor who shall be such person as Her Majesty may designate as such by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) A person shall not be designated as Deputy Governor unless—

- (a) he or she is a Caymanian; and
- (b) he or she holds or has held a senior position in the public service and is still eligible to hold public office.

(3) For the purposes of subsection (2), “senior position in the public service” means head of department or head of a statutory authority or Government-owned company or above.

(4) The Deputy Governor shall have such functions as (subject to this Constitution and any other law) may be delegated to him or her by the Governor, acting in his or her discretion.

(5) Under the authority of the Governor, the Deputy Governor shall be head of the civil service.

Acting Governor

35.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Cayman Islands or is for any other reason unable to perform the functions of his or her office, those functions shall be assumed and performed by—

- (a) the Deputy Governor; or
- (b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from the Cayman Islands or is for any other reason unable to perform those functions, such public

officer, being a Caymanian, as Her Majesty may designate by instructions given through a Secretary of State (“the person designated”).

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths directed by section 30 to be made by the Governor.

(3) The Deputy Governor shall cease to perform the functions of the office of Governor after the Governor has notified him or her that he or she is about to resume or assume those functions, and the person designated shall cease to perform those functions after the Governor or Deputy Governor has so notified him or her.

(4) The Governor or the Deputy Governor shall not, for the purposes of this section, be regarded as absent from the Cayman Islands or as unable to perform the functions of his or her office—

- (a) by reason that he or she is in passage from one part of the Cayman Islands to another; or
- (b) at any time when there is a subsisting appointment under section 36.

(5) In this section, “Governor” means the person holding the office of Governor, and “Deputy Governor” means the person holding the office of Deputy Governor.

Temporary exercise of certain functions of the Governor

36.—(1) Whenever the Governor—

- (a) has occasion to be absent from Grand Cayman but not from the Cayman Islands;
- (b) intends to be absent from the Cayman Islands for a short period; or
- (c) is suffering from any illness which he or she believes will be of short duration,

the Governor may, acting in his or her discretion and by instrument under the public seal, appoint the Deputy Governor (or if the Deputy Governor is not available any other public officer in the Cayman Islands who is a Caymanian) during such absence or illness to perform on his or her behalf such of the functions of the office of Governor as may be specified in the instrument.

(2) The power and authority of the Governor shall not be affected by an appointment under this section, and a person so appointed shall comply with such instructions as the Governor, acting in his or her discretion, may from time to time address to him or her; but the question of whether or not that person has in any matter complied with any such instructions shall not be inquired into in any court.

(3) A person appointed under this section shall hold that appointment for such period as may be specified in the instrument by which he or she is appointed, and the appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion.

Emoluments, personal staff and expenditure of the Governor

37.—(1) The Governor shall receive such emoluments as may for the time being be fixed by a Secretary of State by directions in writing, and those emoluments are hereby charged on and shall be paid out of the revenues of the Cayman Islands.

(2) A law enacted by the Legislature may prescribe the offices that are to constitute the personal staff of the Governor, the salaries and allowances that are to be paid to the members of that staff and the other sums that are to be paid in respect of the expenditure attaching to the office of Governor; but no such law shall apply to such members of the personal staff of the Governor as are recruited and paid under the authority of a Secretary of State.

(3) Any salaries, allowances or other sums prescribed under subsection (2) are hereby charged on and shall be paid out of the revenues of the Cayman Islands.

Powers to dispose of land

38. Subject to any law for the time being in force in the Cayman Islands, the Governor or any person duly authorised by him or her in writing under his or her hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within the Cayman Islands that may be lawfully granted or disposed of by Her Majesty.

Powers of pardon, etc.

39.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his or her powers under this section the Governor shall consult the Committee established by section 40, but he or she shall decide whether to exercise any of those powers in any case in his or her discretion, whether the members of the Committee concur in his or her decision or otherwise.

Advisory Committee on the Prerogative of Mercy

40.—(1) There shall be in and for the Cayman Islands an Advisory Committee on the Prerogative of Mercy, which shall consist of the Attorney General, the Chief Medical Officer and four other members, of which two shall be appointed by the Governor acting after consultation with the Premier and two shall be appointed by the Governor acting after consultation with the Leader of the Opposition.

(2) The Committee shall not be summoned except by the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(3) No business shall be transacted at any meeting of the Committee unless there are at least three members present, of whom one shall be the Attorney General.

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) shall become vacant if the Governor, acting after consultation with the Premier and the Leader of the Opposition, revokes his or her appointment as a member of the Committee.

(5) Subject to subsection (3), the Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) Subject to this section the Committee may regulate its own proceedings.

Public seal

41. The Governor shall keep and use the public seal for sealing all things that should pass that seal.

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Constitution of offices

42. Subject to this Constitution and any other law, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Cayman Islands.