

SCHEDULE 2

The Constitution of the Cayman Islands

PART III

THE EXECUTIVE

Executive authority

43.—(1) The executive authority of the Cayman Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Cayman Islands shall be exercised on behalf of Her Majesty by the Government, consisting of the Governor as Her Majesty's representative and the Cabinet, either directly or through public officers.

(3) Nothing in this section shall preclude persons or authorities other than the Government from exercising such functions as are or may be conferred on them by any law.

The Cabinet

44.—(1) There shall be a Cabinet in and for the Cayman Islands, which shall consist of—

- (a) a Premier appointed by the Governor in accordance with section 49(2) or (3);
- (b) six other Ministers, one of whom shall be Deputy Premier, appointed by the Governor, acting in accordance with the advice of the Premier, from among the elected members of the Legislative Assembly; and
- (c) the Deputy Governor and the Attorney General, *ex officio*.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made pursuant to section 60(2) which increases the number of elected members of the Legislative Assembly; but in no circumstances may the number of Ministers exceed two-fifths of the total number of elected members of the Assembly.

(3) The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government except those matters for which the Governor has special responsibility under section 55, and the Cabinet shall be collectively responsible to the Legislative Assembly for such policies and their implementation.

(4) Subject to this Constitution, the Cabinet shall determine its own procedures for the conduct of its business.

Meetings of the Cabinet

45.—(1) The Cabinet shall meet regularly at such times as its rules and procedures may prescribe, and shall also meet whenever the Premier, or the Governor, acting in his or her discretion, so requests.

(2) Upon receiving such a request, the Cabinet Secretary shall summon the Cabinet.

Proceedings in and quorum of the Cabinet

46.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor from any meeting of the Cabinet, the Cabinet shall be chaired by the Premier or, in the absence of the Premier, the Deputy Premier.

(3) The Governor and the Premier shall together set the agenda for every meeting of the Cabinet, and each shall be entitled to inscribe items on the agenda.

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(4) A quorum for any meeting of the Cabinet is a majority of Ministers.

(5) Subject to subsection (4), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Cabinet 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) The Deputy Governor and the Attorney General shall not be entitled to vote in the Cabinet.

Attendance of persons at meetings

47.—(1) The person presiding over any meeting of the Cabinet may summon any public officer or invite any other person to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer or other person desirable.

(2) If the presence of any person summoned or invited under subsection (1) is objected to by any member of the Cabinet, the person shall only attend the meeting to which he or she has been summoned or invited with the agreement of the Cabinet.

(3) Where an electoral district is not represented in the Cabinet, the member or members of the Legislative Assembly representing that district shall be entitled to attend a meeting convened by the Cabinet once every three months for the purpose of—

- (a) making representations with respect to matters affecting their district; and
- (b) making budgetary representations when the Annual Plan and Estimates are being developed.

Cabinet Secretary

48.—(1) There shall be—

- (a) a Cabinet Office, which shall be an office in the Government; and
- (b) a Cabinet Secretary, whose office shall be a public office, who shall be a person who is a Caymanian and who shall be appointed by the Governor, acting after consultation with the Premier.

(2) The Cabinet Secretary shall have charge of the Cabinet Office.

(3) The responsibilities of the Cabinet Secretary shall include—

- (a) providing frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy;
- (b) co-ordinating the development and implementation of policy between departments and ministerial portfolios and across the wider Government sector to ensure that Government policy is developed coherently;
- (c) providing for administrative and secretarial support for the Cabinet and the Premier in order to allow high-quality and effective government;
- (d) arranging the business for, and keeping the minutes of, the meetings of the Cabinet or any Cabinet committee and conveying the conclusions reached at the meetings to the appropriate person or authority;

and the Cabinet Secretary shall have such other functions as the Governor, acting after consultation with the Premier, may from time to time direct.

(4) The Cabinet Secretary shall also—

- (a) transmit copies of all papers submitted for consideration by the Cabinet or any Cabinet committee to the Governor and all members of the Cabinet;

- (b) inform the Governor and all members of the Cabinet of the summoning of any meeting of the Cabinet or any Cabinet committee and of the matters to be discussed at any meeting of the Cabinet or any Cabinet committee; and
- (c) furnish the Governor and all members of the Cabinet, as soon as practicable after each meeting of the Cabinet or any Cabinet committee, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

Appointment of the Premier and other Ministers

49.—(1) The Premier shall be appointed by the Governor as follows.

(2) Where a political party gains a majority of the seats of elected members of the Legislative Assembly, the Governor shall appoint as Premier the elected member of the Assembly recommended by a majority of the elected members who are members of that party.

(3) If no political party gains such a majority or if no recommendation is made under subsection (2), the Speaker shall cause a ballot to be held among the elected members of the Legislative Assembly to determine which elected member commands the support of the majority of such members, and shall record the vote of each member voting; and, where such a ballot is held, the Governor shall appoint as Premier the elected member who obtains a majority of the votes of the elected members.

(4) Notwithstanding subsections (2) and (3), the Governor shall not appoint as Premier a person who has held office as Premier during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office; and for the purposes of this subsection a parliamentary term shall be deemed to be a period commencing when the Legislative Assembly first meets after being constituted under this Constitution or after its dissolution at any time, and terminating when the Assembly is next dissolved.

(5) After his or her appointment, the Premier shall advise the Governor to appoint the other Ministers.

(6) Appointments of the Premier and the other Ministers shall be made by the Governor by instrument under the public seal.

(7) If occasion arises for making an appointment of any Minister between a dissolution of the Legislative Assembly and the polling in the next following general election, a person who was an elected member of the Assembly immediately before the dissolution may be appointed as a Minister.

(8) The Governor shall without delay report to Her Majesty through a Secretary of State every appointment made under this section.

(9) The members of the Cabinet shall each, before assuming the functions of his or her office, make before the Governor oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

(10) The Governor and the Premier shall confer on a regular basis and the Premier shall brief and keep the Governor fully informed about the policies of the Government and the public affairs of the Cayman Islands.

Functions of the Premier

50. The Premier shall have such functions as are conferred on him or her by or under this Constitution, and shall exercise those functions in accordance with this Constitution and any other law and in the best interests of the Cayman Islands.

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Tenure of office of the Premier

51.—(1) The Governor shall, by instrument under the public seal, revoke the appointment of the Premier if a motion that the Legislative Assembly should declare a lack of confidence in the Government receives the affirmative votes of not less than two-thirds of the elected members of the Assembly; but before so revoking the Premier's appointment, the Governor shall consult the Premier and may, acting in his or her discretion, dissolve the Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election, the Governor, acting in his or her discretion, informs him or her that he or she is about to appoint another person as Premier.

Tenure of office of Ministers

52.—(1) Any Minister shall vacate his or her office—

- (a) if he or she ceases to be a member of the Legislative Assembly for any reason other than its dissolution;
- (b) if he or she is not a member of the Assembly when it first meets after a general election;
- (c) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
- (d) if he or she is absent from the Cayman Islands or absent from three consecutive meetings of the Cabinet without—
 - (i) in the case of the Premier, having given the Governor prior notice of such absence; or
 - (ii) in the case of any other Minister, having obtained written permission for such absence from the Governor, acting in accordance with the advice of the Premier.

(2) A Minister other than the Premier shall also vacate his or her office if—

- (a) the Premier vacates his or her office; or
- (b) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

Performance of functions of Ministers in certain events

53.—(1) If the Premier is unable, due to illness or absence from the Cayman Islands, to perform the functions of his or her office, the Governor shall authorise the Deputy Premier to perform those functions; and in the absence or illness of the Deputy Premier, the Governor shall authorise another Minister to perform those functions, acting in accordance with the advice of the Premier or, if it is impracticable to obtain the advice of the Premier, acting in his or her discretion but after consulting the Cabinet.

(2) Whenever a Minister other than the Premier is unable, by reason of illness or absence from the Cayman Islands or absence from his or her duties on leave, to perform the functions of his or her office, the Governor, acting in accordance with the advice of the Premier, may—

- (a) appoint a person who is an elected member of the Legislative Assembly to be a temporary Minister; or
- (b) assign responsibility for the performance of the functions of that Minister to another Minister (including the Premier),

and may specify the period for which such person shall be a temporary Minister or for which such other Minister shall perform the functions of that Minister.

(3) If occasion arises for making an appointment under subsection (2)(a) between a dissolution of the Legislative Assembly and the next following general election, subsection (2) shall have effect for the purpose as if the Assembly had not been dissolved.

(4) Subject to this Constitution—

- (a) a temporary Minister shall hold office; and
- (b) a Minister assigned to perform the functions of another Minister shall perform those functions,

until the expiry of the period specified under subsection (2) or, where no period was so specified, until he or she is notified by the Governor in writing that he or she shall cease to hold that office or to perform those functions.

(5) Any authorisation, appointment or assignment under this section shall be made by the Governor by instrument under the public seal, and may be revoked in like manner.

Allocation of responsibilities to Ministers

54.—(1) The Governor, acting in accordance with the advice of the Premier, shall by directions in writing—

- (a) charge any Minister with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government including responsibility for the administration of any department of government;
- (b) designate the style by which any Minister so charged shall be known,

but a Minister shall be charged with responsibility for finance.

(2) If the persons appointed as Ministers do not include an elected member of the Legislative Assembly representing Cayman Brac and Little Cayman, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the members of the Assembly representing Cayman Brac and Little Cayman.

(3) Nothing in this section shall empower the Governor to confer on any Minister authority to exercise any function that is conferred by this Constitution or any other law on any person or authority other than a Minister.

(4) Without prejudice to the generality of subsection (3), except for the purpose of submitting questions relating to such matters to the Cabinet and conducting business relating to such matters in the Legislative Assembly, a Minister shall not be charged under this section with responsibility for—

- (a) any matter for which the Governor, acting in his or her discretion, is responsible under section 55;
- (b) the discharge by the courts of their judicial functions;
- (c) the initiation, conduct and discontinuance of criminal proceedings; or
- (d) the audit of the accounts of the Cayman Islands or any authority or office of the Government or of the courts.

(5) Ministers shall be collectively responsible to the Legislative Assembly with respect to any matter for which a Minister is responsible under this section.

(6) A Minister charged under subsection (1) with responsibility for the conduct of any business of the Government may be assisted in the discharge of that responsibility by a board, committee or other similar body consisting wholly or partly of persons who are not public officers and established by a law made under this Constitution or by directions in writing given by the Minister concerned; and any such body shall have such advisory, consultative and administrative functions as may be conferred on it by such a law or directions, but, in exercising any such functions, the body shall be subject to the directions of the Minister concerned.

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(7) Where a Minister has been charged under subsection (1) with responsibility for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise general direction and control over the department, and, subject to such direction and control, the department shall be under the supervision of a public officer; but two or more departments of government may be placed under the supervision of one public officer.

(8) The Governor, acting in his or her discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a matter for which that Minister is responsible under this section.

Special responsibilities of the Governor

55.—(1) The Governor shall be responsible for the conduct, subject to this Constitution and any other law, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs, subject to subsections (3) and (4);
- (c) internal security including the police, without prejudice to section 58;
- (d) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages and pensions) for which financial provision has been made, and the organisation of the public service to the extent that it does not involve new financial provision.

(2) The Governor, acting after consultation with the Premier, may assign or delegate to any member of the Cabinet, by instrument in writing and on such terms and conditions as he or she may impose, responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to any of the matters listed in subsection (1).

(3) The Governor shall not enter, agree or give final approval to any international agreement, treaty or instrument that would affect internal policy or require implementation by legislation in the Cayman Islands without first obtaining the agreement of the Cabinet, unless instructed otherwise by a Secretary of State.

(4) The Governor shall, acting after consultation with the Premier, assign or delegate to the Premier or another Minister, by instrument in writing and on the terms and conditions set out in subsection (5), responsibility for the conduct of external affairs insofar as they relate to any matters falling within the portfolios of Ministers, including—

- (a) the Caribbean Community, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
- (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Cayman Islands;
- (c) tourism and tourism-related matters;
- (d) taxation and the regulation of finance and financial services; and
- (e) European Union matters directly affecting the Cayman Islands.

(5) The terms and conditions referred to in subsection (4) are the following—

- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government;

- (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government without the prior approval of a Secretary of State;
- (c) a formal invitation to a member of government or Head of State of another country to visit the Cayman Islands shall not be issued without prior consultation with the Governor;
- (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government;
- (e) the Premier or other Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4);
- (f) the Premier or other Minister shall provide the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4); and
- (g) any directions given by the Governor on any matter which in his or her judgement might affect defence or security shall be complied with.

(6) In the event of any disagreement regarding the exercise of any authority delegated or assigned under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(7) The Governor may, by directions in writing and with the prior approval of a Secretary of State, delegate or assign such other matters relating to external affairs to the Premier or another Minister designated by the Premier as the Governor thinks fit on such conditions as he or she may impose.

Attorney General

56.—(1) There shall be an Attorney General of the Cayman Islands, whose office shall be a public office and who shall be appointed in accordance with section 106.

(2) The Attorney General shall be the principal legal adviser to the Government and the Legislative Assembly.

Director of Public Prosecutions

57.—(1) There shall be a Director of Public Prosecutions for the Cayman Islands, whose office shall be a public office and who shall be appointed in accordance with section 106.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Cayman Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(6) In the exercise of the powers conferred on him or her by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

National Security Council

58.—(1) There shall be in and for the Cayman Islands a National Security Council which shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier;
- (c) two other Ministers appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (d) the Leader of the Opposition or his or her designate;
- (e) two persons representative of civil society appointed in writing by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
- (f) the Deputy Governor, *ex officio*;
- (g) the Attorney General, *ex officio*; and
- (h) the Commissioner of Police, *ex officio*.

(2) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the National Security Council if—

- (a) his or her office becomes vacant under section 52; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) A person appointed under subsection (1)(e) may be appointed for a period of up to two years, and may be reappointed.

(4) The National Security Council shall advise the Governor on matters relating to internal security, with the exception of operational and staffing matters, and the Governor shall be obliged to act in accordance with the advice of the Council, unless he or she considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or the Cayman Islands); and where the Governor has acted otherwise than in accordance with the advice of the Council, he or she shall report to the Council at its next meeting.

(5) The Commissioner of Police shall—

- (a) provide regular briefings to the National Security Council on matters of internal security, including the police force save insofar as to do so would prejudice current operations;
- (b) have responsibility for the day to day operation of the police force and shall report regularly on such operation to the Governor; and
- (c) inform the Premier of any significant security developments in the Cayman Islands, including the occurrence of any significant criminal activity.

(6) Before assuming office each member of the National Security Council shall sign a declaration that he or she will not disclose to any other person, without the permission of the Governor, information acquired as a member of the Council; and, without prejudice to any other penalties that may be imposed under any other law, the Governor, acting in his or her discretion, may by published directions in writing exclude from the activities of the Council, or revoke the membership of the Council of, any member who breaches such a declaration.

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(7) Where the Governor has good reason to believe that there has been a breach by a member of the declaration made pursuant to subsection (6), the Governor, acting in his or her discretion, may suspend from the activities of the Council that member while the question of a breach is being investigated; and any such investigation shall be concluded expeditiously.

(8) The National Security Council may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Council on the areas of their work bearing on internal security.

(9) The Governor, acting in his or her discretion, may summon a meeting of the National Security Council whenever he or she considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(10) Subject to this section, the National Security Council may regulate its own procedure.

(11) The Cabinet Secretary shall be the Secretary to the National Security Council.