

## SCHEDULE 2

### The Constitution of the Cayman Islands

## PART V

### THE JUDICATURE

#### 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 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.

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(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;
- (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.

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(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.