

The Cayman Islands Constitution

A Concise Guide

By

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1 What is the Cayman Islands Constitution?

The Cayman Islands Constitution is a written master plan of governance for the Cayman Islands. It is the fundamental law of the country and contains the principles and rules upon which the government is founded. It regulates the divisions of sovereign powers, directing to which persons or institutions each of these powers is delegated and the manner in which it is to be exercised. As a British Overseas Territory, the Cayman Islands are under the sovereignty of the Crown. There are two sources of power, Her Majesty the Queen in Parliament (United Kingdom) and the Royal Prerogative. The first Constitution Order in Council issued specifically for the Cayman Islands was made on 13 May 1959. The current Cayman Islands Constitution came into force on 6 November 2009.

2 What is Government?

Government is the ruling body of the Cayman Islands which directs the affairs of the country.

3 What is the Rule of Law?

The Rule of Law can be summarised as a legal-political regime which protects certain rights and liberties of citizens and which lays down order and predictability regarding how a country functions.

4 Who is the Queen?

Her Majesty Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, is the constitutional monarch of the United Kingdom. The Queen is represented in the Cayman Islands by the Governor of the Cayman Islands.

5 What is an Order in Council?

An Order in Council is a type of legislation made in the name of Her Majesty by the Privy Council (which is a body of advisors to Her Majesty) and which has the force of law. Two principal types of Order-in-Council exist: (i) Orders-in-Council whereby the Privy Council exercises the Royal Prerogative (which are powers exercised by Her Majesty acting alone) and (ii) Orders-in-Council made in accordance with an Act of the British Parliament (such Orders-in-Council are also known as Statutory Instruments). The Cayman Islands Constitution is an example of a Statutory Instrument.

6 Who is the Governor?

The Governor of the Cayman Islands is the representative of Her Majesty in the Cayman Islands. The Governor has his own flag and his official residence is the "Government House" on Seven

Mile Beach, Grand Cayman. The Governor has special powers where he may (i) delegate responsibilities to Ministers of Government; and (ii) consult with the Premier and Leader of the Opposition before appointing commissions, councils and Constitutional committees. The Governor also has powers where, if necessary, he may bypass the Cabinet and the Legislative Assembly to allow a bill to become law, subject to approval of the UK Secretary of State.

7 What is the Executive?

The executive authority of the Cayman Islands is vested in Her Majesty and is exercised on behalf of Her Majesty by the Government, consisting of the Governor and Cabinet, either directly or through public officers.

7.1 What is the Cabinet?

The Cabinet is part of the executive body of government responsible for (i) creating policies regarding all aspects of government business, and (ii) implementing such policies. It is comprised of:

- (a) the Premier;
- (b) six other Ministers, one of whom must be appointed as the Deputy Premier (provided that until the next election there shall only be four other Ministers); and
- (c) the Deputy Governor and Attorney General (who are not elected, but are members by virtue of their office).

A Cabinet Secretary is also appointed by the Governor, after consultation with the Premier. The Cabinet Secretary is a public officer and must be a Caymanian.

7.2 Who is the Premier?

The Premier is the leader of the elected government appointed by the Governor upon the recommendation of the majority of elected Members of the Legislative Assembly.

Some of the Premier's responsibilities include:

- (a) Informing the Governor of policies and public affairs;
- (b) Requesting Cabinet meetings;
- (c) Assisting the Governor in setting agendas for meetings;
- (d) Chairing meetings in the Governor's absence;
- (e) Advising the Governor of which elected Ministers should serve as Deputy Premier and Ministers of Cabinet; and
- (f) Advising the Governor on appointments of persons to Constitutional commissions, committees and councils.

7.3 What do Ministers do?

- (a) Ministers carry out responsibilities given to them by the Governor, who is advised by the Premier.
- (b) A Minister's responsibilities may relate to: conducting government business, finance and/or administering any department of government.
- (c) Ministers are collectively answerable to the Legislative Assembly in relation to their responsibilities.

7.4 Who is the Attorney General?

The Attorney General is a government official who is the chief legal advisor to the Government and the Legislative Assembly. He is a non-voting member of Cabinet and the Legislative Assembly.

7.5 Who is the Director of Public Prosecutions?

The Director of Public Prosecutions shall have power to deal with criminal proceedings against any person before any court in respect of any offence against any law in force in the Cayman Islands. He is independent of others; that is to say, he is not under the direction or control of any other person or authority, and can act as he sees fit in his professional capacity as the Director of Public Prosecutions. The Director of Public Prosecutions is to be appointed by the Governor acting in accordance with the advice of the Judicial and Legal Services Commission.

7.6 What is the National Security Council?

The National Security Council is a group of elected ministers, senior civil servants and civil society members with the responsibility of making policy recommendations to the Governor regarding internal security in the Islands. The National Security Council consists of the Governor, the Premier, the Leader of Opposition, the Deputy Governor, the Attorney General, the Commissioner of Police and four Governor appointees (two other Ministers and two civil society members).

8 What is the Legislature?

The Legislature of the Cayman Islands consists of Her Majesty and the Legislative Assembly. The Legislature is responsible for creating and amending laws for the peace, order, and good government of the Cayman Islands.

9 Who makes up the Legislative Assembly?

The Legislative Assembly consists of:

- (a) The Speaker;
- (b) 18 elected members (provided that until the next election, there shall only be 15 elected members);
- (c) The Deputy Governor; and
- (d) The Attorney General.

Elections for the Elected Members by the voting public are held at the discretion of the Governor at least every four years.

10 What is an election? How does a person get elected to the Legislative Assembly? Who are electors?

An election is a decision-making process whereby the members of the Legislative Assembly are chosen by the voting population (electors). An elector is a resident of one of the electoral districts who is registered to vote.

11 What is a referendum?

A referendum is a process of national voting similar to elections. It is usually used to gather a national opinion on issues of national importance.

11.1 How can a referendum be initiated?

In the Cayman Islands, there are two types of referendum (i) Parliament (Legislative Assembly) initiated and (ii) People Initiated. In a People Initiated Referendum, the electorate (i.e. the voting public) can begin a referendum by presenting to the Cabinet a petition signed by 25% of the electorate. If the petition is valid, the Cabinet is then responsible for wording the referendum question and deciding a date for the referendum vote. The referendum is only legally binding if more than 50% of the electorate vote in favour of the question.

12 What are Standing Orders?

Standing Orders are the 'working rules' of the Legislative Assembly. They describe the process for the Legislative Assembly's specific functions including duties and responsibilities. They are also used to monitor the performance of business within the Government.

13 Who is the Speaker of the House?

The Speaker of the House is best known for keeping order in the Legislative Assembly and calling Members of the Legislative Assembly to speak during Legislative Assembly debates. The Speaker has authority to ensure that Members of the Legislative Assembly follow the rules of the House (Standing Orders) during debates, and must remain politically neutral at all times.

After a general election, the elected members of the Assembly select the Speaker by a majority vote. The Speaker can be an elected member of the Assembly or someone else who is qualified to be elected as a member of the Assembly.

14 Who is the Leader of the Opposition?

The Leader of the Opposition is an elected member of the Legislative Assembly and is usually the leader of the political party with the second largest number of seats in the Legislative Assembly. The Leader of the Opposition is appointed by the Governor.

15 What is a Bill?

A Bill is a draft that sets out proposals for new laws and changes to existing laws. A proposal is presented to the Cabinet by the ministry and/or portfolio responsible for the matter. The Bill must then be considered and passed by the Legislative Assembly and approved by the Governor before it becomes law.

15.1 What is a Law?

A law is an instrument having the force of law in the Cayman Islands.

16 What is the Judicature?

Judicature is a system of courts of law and consists of the Summary Court, the Grand Court and the Court of Appeals. The Summary Court is a lower court and its jurisdiction covers a wide range of civil and criminal matters. All criminal cases start in the Summary Court and are heard by judges known as Magistrates. The Grand Court is a superior court and has unlimited authority in civil (between individuals) and criminal (between the Queen and individuals) matters. It also hears appeals from lower courts. The Court of Appeal is a superior court which has the authority and power to hear and determine appeals from the Grand Court.

17 Who is a public officer?

A public officer is someone who holds public office or acts in such capacity. All public officers are required to act in best interest of the Cayman Islands and to implement the policy of Government.

18 What is the Public Accounts Committee?

The Public Accounts Committee is a select committee that is comprised of five members of the Legislative Assembly.

18.1 What does the Public Accounts Committee do?

The Public Accounts Committee has the power and responsibility to examine the public accounts and financial dealings of the Cayman Islands. This includes all Authorities, offices and departments of Government, all courts and Government-owned companies. The Committee receives these accounts from the Auditor General.

19 What is public debt?

Public debt is a term for all of the money owed at any given time by Government.

20 What is the Electoral Boundaries Commission?

The Electoral Boundaries Commission is an independent body established to review the electoral district boundaries and submit a report to the Governor and the Legislative Assembly with its recommendations for changes in the number and boundaries of the election districts.

21 What is the Judicial and Legal Services Commission?

The Judicial and Legal Services Commission is an independent body which advises the Governor on appointments and removals of persons in the positions of Chief Justice; Judges of the Grand Court; the President of the Court of Appeal; Judges of the Court of Appeal; the Attorney General; the Director of Public Prosecutions; Magistrates; and other positions in the public service, which require a legal qualification, that is prescribed by law. The Commission also advises the Governor on disciplinary matters, if this is necessary, for persons in these positions.

22 What is the Human Rights Commission?

The Human Rights Commission is an independent body whose main role is to help people understand what their human rights are and how they can be upheld. The Commission will do this by educating the public about the Bill of Rights, Freedoms and Responsibilities (which is scheduled to come into effect on 6 November 2012).

23 What are human rights?

Human rights are rights and freedoms to which all human beings are entitled, and help to protect people from severe political, legal, and social abuses. They are about standing up for our own rights and our responsibility to respect the rights of others, and are necessary to keep our society functioning in an orderly way so that everyone is treated with fairness, dignity and respect. Some examples of human rights are the right to have life; the right to a fair trial when charged with a crime; the right not to be tortured; and the right not to be held in slavery.

24 What is the Commission for Standards in Public Life?

The Commission for Standards in Public Life is an independent body which oversees Government's activities to ensure that they are conducted honestly and in the best interests of the public. The conduct in the Legislative Assembly and Cabinet, as well as the conduct of public authorities and public officers will be monitored by this Commission to make sure that corruption and conflicts of interest are prevented, especially when public contracts are awarded. Its responsibilities also include the maintenance of the Register of Interests and establishing procedures for appointing members to public authorities.

25 What is the Register of Interests?

The Register of Interests, which is maintained by the Commission for Standards of Public Life, is a register in which all members of the Legislative Assembly and holders of certain other offices declares such interests, assets, income and liabilities of that person, or any other person connected with him. The purpose of the Register of Interests is to ensure that everyone knows those details about the public officers so they cannot be interpreted as being biased (or unfair) in the conduct of their duties.

26 What is the Constitutional Commission?

The Constitutional Commission is an independent body responsible for advising Government on matters relating to the Cayman Islands Constitution. The Constitutional Commission, in addition, is charged with developing and facilitating public awareness and education of the Constitution.

27 What is the Freedom of Information Law?

The Freedom of Information Law, 2007, of the Cayman Islands gives the public the right of access to information held by Government agencies so that the public is informed about their activities. This allows the Government to remain transparent and to be held accountable for its actions, ensuring that it remains honest, competent and responsive.

28 What is 'good governance'?

'Good governance' is the competent management of a country's resources and affairs in a manner that is responsible, transparent, accountable and responsive to people's needs. As an example, some key elements of good governance are:

- (a) the establishment of a representative and accountable form of government;
- (b) the maintenance of the Rule of Law through an impartial and effective legal system;
- (c) a high degree of transparency and accountability in public processes;

- (d) the development and promotion of a competitive private sector to create jobs and income;
and
- (e) careful management of the national economy.