

New Offices and Commissions

By: The Caymanian Bar Association

This is the second, in a series of articles prepared by the Caymanian Bar Association (CBA) to consider the implications of various aspects of the proposed Cayman Islands Constitution Order 2009 (the 2009 Draft Constitution).

The 2009 Draft Constitution would make provision for new offices and commissions under the Branches of Government as well as restructure those that currently exist under the current Cayman Islands (Constitution) Order 1972 (as amended) (the 1972 Constitution). Certain powers and responsibilities which currently vest in the Governor would be delegated to these reconfigured posts. Through greater consultation between and within the Branches of Government, the 2009 Draft Constitution would enhance the democratic process of decision making while providing for greater transparency and accountability.

This article will focus on the offices of (i) Deputy Governor and (ii) Premier as well as the (iii) Electoral Boundary Commission and (iv) National Security Council.

Deputy Governor

Under the 2009 Draft Constitution, the office of Deputy Governor would no longer be appointed by the Governor, as is currently the case, but by Her Majesty. The appointed person would hold such office during Her Majesty's pleasure. Only a Caymanian who holds or has held a "senior position in public service" may be appointed as Deputy Governor. A "senior position in public service" would include the head of (i) a Government department, for example the Chief Immigration Officer, (ii) a statutory authority, for example the Managing Director of the Cayman Islands Monetary Authority, or (iii) a Government-owned company, for example the Chief Executive Officer of Cayman Airways. Under the 2009 Draft Constitution, the Deputy Governor would replace the Chief Secretary (who is, among other things, the current head of the civil service). The Deputy Governor would also be delegated additional responsibilities by the Governor in his or her discretion. The Deputy Governor would continue to serve as Acting Governor where the Governor is either absent from the Islands or has vacated office. As the replacement for the Chief Secretary, the Deputy Governor would be an ex-officio member of Cabinet, the Legislative Assembly and the National Security Council. As an ex-officio member, the Deputy Governor would be entitled to attend any meeting held by such bodies but, except in respect of the National Security Council, not vote.

The Deputy Governor would be subject to summons by any standing committee of the Legislative Assembly, for example by the Public Accounts Committee, to answer questions and provide information about the conduct of business of his or her office and to report on such activities to the Legislative Assembly.

Premier (previously the Leader of Government Business)

Under the 2009 Draft Constitution, the Premier would be appointed by the Governor on recommendation of either (i) a majority of elected members of the Legislative Assembly of the Premier's political party where such party gained a majority of seats in the Legislative Assembly or (ii) by a ballot of all elected members of the Legislative Assembly where the Premier's political party does not have such majority. Cabinet Ministers would then be appointed by the Governor on recommendation of the Premier.

The Premier would now be limited to two consecutive parliamentary terms, such term starting from the first meeting of the Legislative Assembly constituted under the 2009 Draft Constitution. The Governor would be entitled to remove the Premier upon a no-confidence vote of two-third's of the elected members of the Legislative Assembly. Unlike the 1972 Constitution, where the office of Premier is vacated, all other Ministers of Cabinet would also vacate their offices as Ministers.

Under the 2009 Draft Constitution, the Premier (unlike the Leader of Government Business) would be able to call Cabinet Meetings and, together with the Governor, set the agenda for such meetings. The Premier would, however, be required to brief and keep the Governor fully informed on the policies of the Government and the public affairs of the Islands.

The Premier or other Ministers of Cabinet would, subject to certain exceptions, be delegated special responsibilities for the conduct of external affairs insofar as they relate to matters falling within the relevant Minister's portfolio. This would include, for example, matters regarding taxation and the regulation of finance and financial services as well as European Union matters which directly affect the Islands.

Unlike the Governor, the Premier would be required to exercise his or her functions in the best interests of the Cayman Islands without qualification.

Electoral Boundary Commission

Under the 2009 Draft Constitution, an Electoral Boundary Commission would be appointed, as soon as practicable, after the 2009 Draft Constitution is brought into force. The Commission would comprise of the Chairman, appointed by the Governor in his or her sole discretion, and two other members appointed by the Governor upon the advice of the Premier and the Leader of Opposition, respectively.

The 2009 Draft Constitution would not change the existing multi-member electoral districts or the number of elected representatives of the Legislative Assembly. Nor would it create single member constituencies, where each electoral district would have only one elected representative. Instead, the 2009 Draft Constitution would charge the Commission with the responsibility of preparing a report, in accordance with certain guidelines, which contains its recommendations for any changes to the number and boundaries of the electoral districts.

The report would be required to, so far as reasonably practicable, reflect an equal ratio between the number of elected members of the Legislative Assembly representing each electoral district and the number of persons qualified to be registered as electors in that district. Cayman Brac and Little Cayman, however, would be excluded from this provision and remain as one electoral district, having at least two elected representatives.

A perceived disadvantage of single-member constituencies is that it would induce a concentration of voters of a particular ethnic group or national origin. Under the 2009 Draft Constitution, the Commission would be required to "take no account of the racial distribution of electors within the Cayman Islands" in preparing its report.

National Security Council

A National Security Council would be established under the 2009 Draft Constitution. The Council would comprise of the Governor as Chairman, the Premier, two other Ministers of Cabinet, the Leader of Opposition, two lay persons, the Deputy Governor (ex-officio), the Attorney General (ex-officio), and the Commissioner of Police (ex-officio).

The National Security Council would be responsible for advising the Governor on matters of internal security (excluding operational and staffing matters). The Governor would be obliged to, subject to certain exceptions, act in accordance with the advice of the Council. The Governor may, however, act contrary to such advice if it would, in the Governor's opinion, have an adverse effect on Her Majesty's interest (whether in respect of the United Kingdom or the Islands). In such an event, the Governor would be required to notify the Council of his or her decision. The Governor's decision, however, would not be subject to an inquiry in any court.