

Understanding Your Constitutional Rights

Part III The Executive (a.)

(See "The Executive" (part b.) in the Monday, 6th April paper)

Part III of the Draft 2009 Cayman Islands Constitution deals with the executive branch of the Cayman Islands Government. The major areas in this section consist of the appointment and functions of the Premier, Ministers, Cabinet Secretary and the Director of Public Prosecutions; special responsibilities of the Governor; role of the Attorney General; and the creation of the National Security Council.



EXECUTIVE AUTHORITY

The current Constitution gives the Governor the sole authority to administer the government of the Cayman Islands. The Draft 2009 Constitution would ensure that the executive authority of the Cayman Islands would be exercised on behalf on Her Majesty the Queen by the government, which would consist of the Governor, as Her Majesty's representative, and the Cabinet.

COMPOSITION OF THE CABINET

The Draft 2009 Constitution would significantly change the composition of the Cabinet. The Financial Secretary would no longer be an Official Member of the Cabinet, however the Deputy Governor (now the Chief Secretary) and the Attorney General would continue to be ex officio (non-voting and advisory) Members of the Cabinet. The number of Ministers in the Cabinet would also increase from five (5) to seven (7) (including the Premier).

APPOINTMENT OF THE PREMIER AND MINISTERS

The current Constitution gives the Governor the responsibility for appointing the Leader of Government Business and the Governor appoints the MLA who he or she considers to be the leader of the majority party in the Legislative Assembly (LA). If there is no majority party, the Governor appoints the Member who he or she believes has the support of the majority of all Members present in the LA.

The Draft 2009 Constitution would require the Governor to appoint, as the Premier, the MLA who is recommended by a majority of the MLAs from the party winning the most seats. If there is no majority party, or an agreement cannot be reached,

the Speaker would then call a ballot to be held and the Governor would then appoint, as the Premier, the MLA who obtains a majority of the votes. After the Premier has been appointed he or she would be required to advise the Governor to appoint one (1) of the new Cabinet Ministers as the Deputy Premier.

Another new feature of the Draft 2009 Constitution is the introduction of term limits on the office of the Premier. Currently a Minister can continually be appointed as LoGB. However, the Draft 2009 Constitution would place a limit of two (2) consecutive four-year terms on the office of the Premier. The person would still be allowed to run for elected office and could still be appointed as a Minister, but he or she would have to take one (1) four-year term hiatus from the position of Premier before being recommended again.

Under the current Constitution, Ministers are elected to their post by their colleagues in the LA. However, the proposed Constitution would allow the Premier to advise the Governor as to which MLAs should be made Ministers and to also advise the Governor which portfolios should be assigned to those Ministers (one of the Ministers would be made responsible for finance).

FUNCTIONS OF THE CABINET PREMIER

The 1972 Constitution does not clearly outline the responsibility of the Cabinet. Under the proposed Constitution Cabinet would be responsible for the formulation of policy; directing the implementation of that policy and be collectively responsible to the LA for those policies and their implementation. Under the proposed Constitution the Premier would be required to perform all of his or her duties in accordance with the Constitution and any other law, and in the best interests of the Cayman Islands. The Governor and the Premier would also be required to meet regularly in order for the Governor to keep informed about the policies of the government and the public affairs of the country.

TEMPORARY MINISTERS

Under the current Constitution, if a Minister is unable to perform his or her responsibilities the Governor can ask the MLAs to elect one (1) of their colleagues to be a temporary Minister. The Draft 2009 Constitution would require the Governor to follow the advice of the Premier in choosing this person. The Premier would have two (2) options to choose from, i) he or she can advise the Governor to appoint a MLA to be a temporary Minister or ii) to temporarily assign the responsibilities of the absent Minister to another existing Minister.

The current Constitution does not specifically outline the procedure that is to be followed in the event that the LoGB is unable to perform his or her functions. The Draft 2009 Constitution would require the Governor to authorize the Deputy Premier to perform those functions should such circumstances arise. In the event that the Deputy Premier is also unable to perform those functions the Governor would be required to authorize another Minister to perform them, acting in accordance with instructions from the Premier. If the Governor was unable to consult the Premier he or she could then authorize a Minister to perform those functions, but only after consulting the Cabinet.

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