



The Cayman Islands
Law Reform Commission
1 April, 2011/31 March, 2012

**SEVENTH ANNUAL REPORT OF THE
LAW REFORM COMMISSION**





FOREWORD

This being my first report since my appointment as Chairman in July 2011, it is with great pleasure that I present to the Honourable Attorney General the Seventh Annual Report of the Law Reform Commission. The Report covers the activities of the Commission from 1st April, 2011 to 31st, March, 2012.

I wish to start by recognizing the several years of sterling contribution of the former Chairman, Mr. Langston R.M. Sibbles, QC, JP. I am grateful for having served under his stewardship as Chairman and having benefited from his valuable contribution to the law reform process. Indeed, this report reflects several matters which originated during his tenure and I certainly hope to continue to steer the process in a manner which builds upon the solid foundation that has already been laid. At the same time, I intend to add to our law reform agenda and conclude other law reform projects which exemplify innovative legislative reforms.

Similar to the experience of previous years, the 2011/2012 year was an active one as the Commission sought to deal with several matters on its agenda. The projects on which we are currently working include the establishment of an Administrator General's office, family law reform, enforcement of foreign judgments, strata titles reform, codification of directors duties, reform of succession law, consumer protection, sexual harassment and stalking. All of these projects are at various stages of the law reform process though in several instances progress has been affected by other intervening governmental priorities.

During this review period, we concluded our Final Report on the Review of the Arbitration Law of the Cayman Islands on 4 January, 2012. This report was submitted for the consideration of the Hon. Attorney General and we hope that the Arbitration Bill, 2012 which supports our research will be favourably viewed during the legislative process.

Additionally, the period under review produced discussion papers and supporting Bills on strata titles reform and the introduction of an office of an Administrator General respectively. These papers and Bills were submitted for public consultation. An issues paper on the enforcement of foreign judgments and interim orders was also prepared and submitted for public consultation.

The Commission remains mindful of the Cayman Islands Constitution Order, 2009 and in particular the Bill of Rights Freedoms and Responsibilities which is due for implementation in November 2012. We will certainly endeavour to ensure that our reform recommendations do not adversely affect the rights and freedoms of individuals within the Cayman Islands society.

As we seek to advance the law reform process, the Commission will continue to consider legal issues with multiple stakeholders, conduct comprehensive research when dealing with issues and take into consideration divergent societal views in order to independently advise government.

In an effort to improve accessibility, we commissioned the creation of an independent website on which can be found information concerning the work of the Law Reform Commission. While this website does not reflect the final product, it is hoped that at this preliminary stage, it would assist in publicising the work of the Commission and invite the public to comment on the papers and reports published by the Commission. The address of the website is <http://www.lrc.gov.ky>.

The success of any institution depends on the strength and contribution of its personnel. The Law Reform Commission is no different in this regard. It has been a pleasure to work with the members and staff of the Commission during this year. I certainly wish to express my thanks to the Director and staff of the Commission for their dedication and facilitating my smooth transition into this role.

Equally, I would like to express my appreciation for the commitment of my fellow Commissioners, new and re-appointed. On this note, I must congratulate Commissioner Ms. Cheryll Richards, QC who has the distinction of being appointed the Islands first Director of Public Prosecutions under our 2009 Constitution Order. Congratulations are also extended to Commissioner Mrs. Eileen Nervik for her temporary appointment as Magistrate.

I extend my gratitude to the Hon. Attorney General for finding it fit to appoint me as Chairman and look forward to his continued support of the work of the Commission.

My thanks to all stakeholders and the general public who have contributed to the work of the Commission during the past year.

I would also like to acknowledge the contribution of former fellow Commissioner, Mr. Justice Andrew Jones, QC who demitted office in 2011 after six years. His involvement in the law reform process has been one in which the Commission was able to benefit from his wealth of knowledge and expertise. I do regret that he will not be a part of the Commission going forward. At the same time however, I am pleased that my appointment was joined by the appointments of new Commissioners, Mr. Kenneth Farrow, QC who has over forty-six years of legal expertise and Ms. Vicki Ellis, Solicitor General (Ag.). In the same breath however, I again must express regret at having learnt that Ms. Ellis has now demitted office. Though her tenure with the Commission was

short, we benefited considerably from her concise contributions as we sought to discuss several law reform matters.

The Law Reform Commission looks forward to the next year and will continue to work towards advancing the law reform process in a manner which seeks to enrich the legal system of the Cayman Islands.

Ian Paget-Brown

Chairman

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OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission was established by the Law Reform Commission Law No. 6 of 2005 and commenced operation on 16 September, 2005.

In accordance with the Law, the Commission's mandate is to study and keep under constant review the statutes and other laws comprising the law of the Cayman Islands with a view to its systematic development and reform, including in particular -

- the modification of any branch of the law as far as that is practicable;
- the elimination of anomalies in the law, the repeal of obsolete and unnecessary enactments and the simplification and modernisation of the law;
- the development of new areas in the law with the aim of making them more responsive to the changing needs of Cayman Islands society;
- the adoption of new or more effective methods for the administration of the law and the dispensation of justice; and
- the codification of the unwritten laws of the Cayman Islands.

The Commission, in the performance of its functions, may-

- review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- prepare and submit to the Attorney General from time to time, a programme for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform;
- initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
- undertake, pursuant to any such recommendation approved by the Attorney General, the formulation and preparation of drafts in the form of Bills or other instruments for consideration by the Governor in Cabinet and the Legislative Assembly;
- provide, at the instance of Government departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law; and
- with the approval of the Attorney-General, appoint or empanel committees, whether from among members of the Commission or from among persons outside the Commission or both, to study and make recommendations to the Commission on any aspect of the law referred to it by the Commission.

The work of the Commission is carried out by five part-time Commissioners and two full time legal counsel (the Director and Legislative Counsel) and one executive officer. The Commission is a department of the Portfolio of Legal Affairs but it acts independently in

its review of matters. Its recommendations are based on its own research and analysis of ideas submitted by stakeholders and by the public.

The Attorney General refers matters to the Commission but the Commission may initiate and carry out studies and research necessary for the improvement and modernisation of any area of the law based on comments from the public, interest groups or on its research.

The law reform process is a time consuming one and comprises extensive consultation, legal research and writing. The Commission usually prepares two publications during the course of a project. The first publication, the Discussion or Consultation Paper, sets out the Commission's preliminary suggestions for reform. The preliminary suggestions are usually made after legal research is carried out by the staff of the Commission and after such research has been considered by the Commissioners. The Commission either publishes the Discussion or Consultation paper on <http://www.lrc.gov.ky>, www.gov.ky or the www.judicial.ky or it submits the consultation paper to identified stakeholders for comments.

The second publication is a Final Report, which is submitted to the Attorney General. It contains the final recommendations of the Commission and, in all cases to date, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion or Consultation Paper. Since its establishment the Commission has produced several project reports and five annual reports which are listed in the Appendix.

THE COMMISSIONERS AND STAFF OF THE LAW REFORM COMMISSION

1. The Commissioners are-
 - Mr. Ian Paget-Brown, chairman
 - Mrs. Eileen Nervik
 - Mr. Kenneth Farrow, QC
 - Ms. Cheryll Richards, DPP, QC.



Welcome to new Commissioners and farewell to the former chairman June, 2011
Back row - Mr. Kenneth Farrow Q.C. (back) Mr. Samuel Bulgin Q.C, Attorney General; Mrs. E. Nervik; front row- Ms. Ellis, former member; Mr. Jose Griffith Legislative Counsel; Ms. Cheryl Neblett, Director, Mr. Langston Sibblies (former chairman) Mr. Ian Paget-Brown, chairman



Commissioners- Mr. Kenneth Farrow Q.C., Chairman Mr. Ian Paget-Brown, Mrs. Eileen Nervik. Absent- Ms. Cheryl Richards Q.C.



Staff of the Commission-Mr. José Griffith, Ms. Cheryl Neblett and Mrs. Kimberly Allen

**YEAR IN REVIEW- PROJECTS OF THE LAW REFORM COMMISSION
FROM 1 APRIL, 2011 TO 31 MARCH, 2012**

Meetings of the Commission

5. The Commission met four times between 1 April, 2011 and 31 March, 2012 on the following dates-

- 9 June, 2011
- 17 November 2011
- 23 February 2012
- 29 March, 2012.

COMPLETED PROJECTS

Review of the Arbitration Law in the Cayman Islands

6. The Law Reform Commission (“the Commission”), in December, 2012 concluded its work on the review of the Arbitration Law of the Cayman Islands. The Final Report and the supporting Arbitration Bill were submitted to the Attorney General on 4 January, 2012 for consideration. The Cabinet has approved the report and instructions were given for the Arbitration Bill, 2012 to be published in order to facilitate debate in the Legislative Assembly.

7. Our review sought to-

- (a) determine whether a single regime of arbitration should be formulated on the basis of the UNCITRAL Model Law on International Commercial Arbitration for all types of arbitration;
- (b) ensure that the law on arbitration is responsive to the issues surrounding the resolution of domestic and transnational commercial disputes by enabling the business community and arbitration practitioners to operate in a regime which is consistent with acceptable international arbitration practices and developments; and
- (c) consider whether any steps can be taken to promote the Cayman Islands as a jurisdiction of choice for international arbitration.

8. The recommendations for reform contained in our Final Report were the culmination of legal research into the arbitration regime in the Cayman Islands. The research benefited from an examination of the UNCITRAL Model Law on International Commercial Arbitration and the legislative framework existing in other jurisdictions in

which arbitration proceedings feature prominently amongst other alternative dispute resolution mechanisms.

9. The primary legislation which informed the basis of the Commission's research were the-

- Cayman Arbitration Law (2001 Revision);
- the United Kingdom Arbitration Act, 1996;
- the Bermuda Arbitration Act 1986 and the International Conciliation and Arbitration Act 1993;
- the Singapore Arbitration Act, 2001 and the International Arbitration Act, 1994;
- the Hong Kong Arbitration Ordinance, 1997 CAP 341;
- the Bahamas Arbitration Act, 2009; and
- the Arbitration (Scotland) Act, 2010.

10. The research findings of the Commission were relied upon in the formulation of a draft discussion paper entitled "the Review of the Arbitration Laws of the Cayman Islands," 11 May, 2009. This paper was forwarded to the following stakeholders for consultation:

- the Hon. Attorney General;
- the Hon. Chief Justice;
- Cayman Islands Law Society;
- Cayman Islands Bar Association;
- Cayman Islands Society of Professional Accountants;
- Society of Trust & Estate Practitioners;
- Cayman Islands Chamber of Commerce;
- Cayman Islands Bankers' Association;
- Cayman Islands Compliance Association; and
- Cayman Islands Financial Services Association.

11. The paper examined several issues including the definition of arbitration as a mechanism of binding dispute resolution. It examined the concepts of international arbitration and domestic arbitration and highlighted the advantages of the arbitration process.

12. Stakeholders and the general public were invited to comment in particular on the need for reform of the Cayman Islands Arbitration Law (2001 Revision). It was pointed out that modern legislative trends seem to lean towards repealing existing arbitration laws and replacing them with a new law substantially based upon the UNCITRAL Model Law, which would apply to both domestic and international arbitrations.

13. The Commission proposed for consideration the adoption of the UNCITRAL Model Law as the foundation upon which a unitary regime for arbitration law may be

established in the Cayman Islands. It was recommended that the legislative proposals be informed by those legislative models that have adopted the UNCITRAL Model Law as the foundation for the formulation of their laws. It was further pointed out that it is useful for any country attempting to establish itself as a venue for international arbitration to have in place an immigration system which facilitates the free movement of arbitrators, parties, witnesses and advocates.

14. The consultation period on the discussion paper expired on 19 June, 2009 by which time the Commission received responses from the Cayman Islands Bar Association (CBA) and the Cayman Islands Society of Professional Accountants.

15. Based on the comments made by stakeholders on the discussion paper, the Commission proceeded to formulate a draft Arbitration Bill, 2010. This Bill was published and forwarded to several stakeholders for consultation on 18 June, 2010.

16. The Bill contained provisions dealing with-

- (a) the formation of an arbitration agreement;
- (b) the power of the court to stay legal proceedings in order to facilitate an arbitration agreement;
- (c) the commencement of arbitration proceedings;
- (d) the composition of an arbitral tribunal;
- (e) the jurisdiction of the arbitral tribunal;
- (f) the conduct of arbitral proceedings;
- (g) the power of the arbitral tribunal to order interim measures;
- (h) making of an arbitral award; and
- (i) power of the court in relation to an award.

17. The consultation period for the Bill expired on 30 July, 2010. By that time we received responses from the Government Legal Department, the CBA, the Cayman Islands Law Society (CILS) and Mr. Veeraraghavan Inbavijayan.

18. Though several concerns were expressed, generally, the responses from all commentators supported the introduction of a modernised Bill. On 1 April, 2011, a revised Bill seeking to address several concerns was forwarded for general stakeholder consultation and sent directly to the CILS and CBA as the primary concerns came from both associations. The Bill was also sent to the judiciary and the Cayman Islands Association of Mediators and Arbitrators.

19. The Commission subsequently received comments from the CILS, CBA, Justice Sir Peter Creswell and Mr. Hew Dundas, a Chartered Arbitrator based in London.

20. After taking into consideration all comments, the Commission made its final recommendations and completed the Arbitration Bill. The final draft Bill contained provisions dealing with the formation of an arbitration agreement, the power of the court to stay legal proceedings in order to facilitate an arbitration agreement, the

commencement of arbitration proceedings, the composition of an arbitral tribunal, the jurisdiction of the arbitral tribunal, the conduct of arbitral proceedings, interim measures, power of the arbitral tribunal to order interim measures, making of the arbitral award, power of the court in relation to an award and enforcement of awards.

21. The Commission in its final Report recommended that the proposed modernised Arbitration Bill be adopted and viewed as a vital element in advancing these Islands as an attractive option for the conduct of both domestic and international arbitration proceedings arising from any contractual relationship. In our recommendations it was highlighted that the Bill provides for party autonomy, limited court intervention and it permits arbitrators to decide on their own jurisdiction. It also provides for confidentiality and recognition of the doctrine of separability of the arbitration clause.

22. The Commission also noted that for the Cayman Islands to attain full recognition as an effective seat of arbitration, the legal framework will overtime have to be supported by other legislative and administrative policies which facilitate the following-

- (a) public education;
- (b) establishment of an arbitration centre;
- (c) enhancement of the relevant local infrastructure;
- (d) an immigration regime compatible with international arbitration;
- (e) representation by foreign legal and non-legal practitioners; and
- (f) streamlining the Foreign Arbitral Awards Enforcement Law (1997 Revision).

23. The Commission is of the view that these proposals will streamline the overall regime dealing with arbitral proceedings in the Cayman Islands and fulfill the reform objectives.

CURRENT PROJECTS

Establishment of an office of the Administrator-General

24. Pursuant to a referral by the Attorney General in January, 2011, the Commission agreed to examine the feasibility of the introduction of the post or office of Administrator-General.

24. An Administrator-General carries out duties and functions similar to those of a public trustee and of a public guardian and in some jurisdictions the office is known as the Administrator-General/ Public Trustee office.¹ There is a variety of nomenclature for such office, such as public guardian, official solicitor and official receiver depending on the duties assigned to the office.

25. In 2009, when the Law Reform Commission was reviewing the need for enduring powers of attorney in the Cayman Islands, the Commission concluded that such powers

¹ Kenya, Uganda

should only be introduced if there was an oversight body such as a Public Trustee or Administrator-General to guard against abuse of such powers. The Legal Department stated that there was a need for the office of Public Guardian generally and more particularly if enduring powers of attorney were introduced. In his response to the review, the Chief Justice recommended the establishment of the office of Official Receiver whose duties would include ensuring that donors get proper legal advice before granting an EPA; assessing whether the incapacity triggering the operation of the EPA has occurred; monitoring the actions of attorneys; and bringing court proceedings to protect the donor's or any beneficiary's interests.

27. In June, 2011 a preliminary discussion paper and draft Bill were submitted to the Chief Justice and the Attorney-General for their input. In preparing the paper and Bill legislation in the UK, British Columbia, Alberta, New Zealand and Jamaica were considered, among others.

28. Pursuant to comments received in October, 2011 from the Chief Justice and discussion by the Commission in November, 2011, the Bill was re-drafted and submitted for public comment on 26 March, 2012.

29. The Bill provides for the appointment of an Administrator-General, his deputy and other officers. Clause 3 provides that the Administrator-General should be an attorney-at-law of seven or more years' call to the Bar and that his deputy should have at least three years' call. The Administrator-General shall be deemed to be an officer of the court and would be supervised in his duties by the Chief Justice.

30. The functions and duties of the Administrator-General proposed in the Bill would include the following-

- (a) the administration of small estates i.e. estates with a value of less than \$20,000;
- (b) the administration of estates of intestates with no next of kin or where next of kin has not taken out letters of administration within a specified time period;
- (c) acting as executor under will of any person;
- (d) acting as trustee;
- (e) acting as a court appointed receiver and liquidator;
- (f) acting as next friend, guardian ad litem or legal representative of person under physical or legal disability;
- (g) appointing the guardian of child;
- (h) acting as guardian of the estate of child; and
- (i) investigating and auditing the affairs, dealings and accounts of a trustee, of an attorney under a power of attorney or those of a decision maker or guardian of a person under a disability.

31. The Bill also seeks to regulate the accounts and the auditing of the accounts of the office of the Administrator-General.

32. The deadline for public comments on this project is 3 May, 2012.

Family Law Project (Part 1)- Review of the Matrimonial Causes Law (2005 Revision)

33. On 24 February, 2011 a discussion paper on the reform of the Matrimonial Causes Law (2005 Revision) was submitted for public comment. A wide range of issues were addressed including reform of the grounds for divorce; promotion of mediation in family proceedings; recognition of pre-nuptial agreements and abolition of damages for adultery.

34. A number of persons and organisations including the Cayman Ministers Association, CBA and CILS responded. Pursuant to those responses a Matrimonial Causes Bill is being drafted. This Bill will cover matters such as the following-

- use of marriage and maintenance agreements in matrimonial proceedings;
- mandatory marriage counseling and mediation;
- welfare and custody of children in matrimonial proceedings;
- maintenance of spouse and children in matrimonial proceedings;
- entitlement to family home and to use of family home; and
- dealing with property rights in matrimonial proceedings.

35. In drafting the Matrimonial Causes Bill the Commission agreed that as maintenance and rights to family property were a part of matrimonial proceedings, it was essential that the reform of the Maintenance Law and legislation dealing with family property be commenced. A draft Maintenance Bill was prepared in January 2012 and submitted to the Commission in February 2012 for preliminary comments.

36. The Maintenance Bill, 2012 seeks to reform matters such as obligation of spouses to maintain each other and children of the marriage; maintenance orders for spouses and children; obligation to support parents and regulation of maintenance agreements. The Bill sets out for example the matters which must be taken into account in awarding maintenance to a spouse. Such matters would include the following-

- (a) the length of time of the marriage;
- (b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage on the spouse's earning capacity;
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage;
- (e) whether the spouse has undertaken the care of a child of eighteen years of age or over who is unable, by reason of illness, disability or other cause, to care for himself;
- (f) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in

- performing that service in remunerative employment and were contributing the earnings to the family's support;
- (g) the effect of the spouse's child care responsibilities on the spouse's earnings and career development;
 - (h) the eligibility of either spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.

37 As part of this area of reform the Commission is also considering the repeal of the archaic Married Women's Property Law (1997 Revision) and the introduction of more modern regulation similar to the Family Property (Rights of Spouses) Act, 2003 of Jamaica.

The Enforcement of Foreign Judgments and Interim Orders

38. The Law Reform Commission published, on 6 March, 2012, an issues paper entitled the Enforcement of Foreign Judgments and Interim Orders. The paper sought to examine the following issues-

- (a) the process through which judgments of the Cayman Islands Grand Court are enforceable in the United Kingdom;
- (b) the process through which judgments of the United Kingdom superior courts are enforceable in the Cayman Islands;
- (c) the enforcement of foreign superior court non-monetary judgments in the Cayman Islands; and
- (d) facilitating the enforcement of foreign interim orders in the Cayman Islands.

39. In the paper it was stated that the concept of enforcement of foreign judgments had gained prominence in the Islands through judicial dicta emerging from several leading cases. In these cases the Court demonstrated a willingness to recognise that modern-day cross-border legal problems require the adoption of novel or innovative approaches to addressing the issues of enforcement of foreign judgments. In this regard, several reform options were identified. These include:

- (a) amending the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) ("FJRE 1996") in order to expressly identify the UK as a jurisdiction for which Cayman would enforce its superior court judgments;
- (b) recommending that the Governor in Cabinet make an appropriate order under the "FJRE 1996" recognising the judgments of UK superior Courts;
- (c) amending the short title of the "FJRE 1996" by deleting the word "foreign" and referring to the law as one which deals with the enforcement of judgments, awards and, as will later be discussed, interim orders;
- (d) increasing the number of jurisdictions to be recognised for enforcement purposes;

- (e) recommending that the Brussels I Regulation and Lugano Convention extended to the Islands;
- (f) removing the requirement for the Governor in Cabinet to identify the jurisdictions which will be recognised; and
- (g) reforming the common law procedure.

40. The paper suggested that reform along the lines of any or a combination of all options could facilitate the enhancement of the jurisdiction of the court and make the Islands more attractive for the enforcement of judgments and resolution of disputes.

41. On the issue of enforcing non-monetary judgments, discussed was whether enforcement of foreign judgments should remain within the monetary confines of the definition of judgment as reflected in the Foreign Judgments and Reciprocal Enforcement Law (1996 Revision) or whether Caymanian legal jurisprudence should keep pace with modern legislative and business trends by facilitating remedies in respect of enforcement of foreign judgments which go beyond monetary judgments and are in the interests of justice.

42. In this regard, it was suggested that the restriction against the enforcement of foreign non-money judgments should be removed and in the spirit of reform, the Foreign Judgments and Reciprocal Enforcement Law (1996 Revision) could be amended to include non-monetary judgments in the definition of “judgment”.

43. The final issue raised dealt with Mareva orders and by extension all interlocutory orders being enforceable in the jurisdiction where an asset or account is situated. The issues paper refers to a series of cases which reflect clear judicial principles and approaches to this issue and which signal a willingness on the part of the court to facilitate interim proceedings of foreign jurisdictions. In advancing our judicial process it seems appropriate for legislation to build upon the foundation laid by the common law in clarifying and bringing certainty to this issue. In this regard, several legislative models were identified for consideration in the reform of our own process. These models are-

- (a) the UK Civil Jurisdiction and Judgments Act, 1982;
- (b) the Isle of Man High Court Act, 1991;
- (c) the Bahamas Supreme Court Act, 1996;
- (d) the Bermuda Supreme Court Act, 1989 Revision; and
- (e) the Hong Kong High Court Ordinance, 2009.

44. All these models seek to facilitate interim proceedings and are being suggested as reform options for our purposes. It was pointed out that the recognition and enforcement of foreign judgments and interim relief measures remain primarily an issue of judicial discretion based on growing precedent and reliance on general principles of comity and common law. From all indications it is an issue which calls for legislative intervention.

45. The Commission has invited comments, views and recommendations from stakeholders and the general public on the issues and options identified in the Issues paper. The deadline for submissions has been set at 16 April, 2012.

Review of the Strata Titles Registration Law and Regulations

46. In December 2010 after an in-depth consultation with the strata titles sub-committee the Commission decided to deal with the reform of the strata titles legislation in two phases. Thus, on 4 April 2011, a discussion paper and draft amending Strata Titles Registration (Amendment) Bill dealing with the management and termination of strata schemes were submitted for public comment. The original deadline for submission of comments was 17 May, 2011, this was extended to 15 September, 2012 pursuant to the request of the legal associations and other persons. Final comments were not received until late November, 2011.

47. Matters addressed in the paper and provided for in the Bill included-

- duties of corporations;
- preparation and auditing of financial statements;
- levy of contributions on proprietors;
- bye-laws including bye-laws granting exclusive use of common property;
- regulation of executive committees;
- regulation of meetings; and
- insurance, including insurance deductibles.

48. Comments were received from a wide variety of persons including the CBA, the CILS, CIREBA, the Bankers' Associations, CASE², real estate agents, the Cayman Contractors Association, the Water Authority, proprietors of strata lots, overseas attorneys-at-law and executive committees. Pursuant to the comments received the Bill was amended and this amended Bill has been incorporated as part of the second Bill which covers the whole area of strata titles regulation.

49. Work on the second phase of the strata titles review commenced in June, 2011. This phase deals with all of the matters not covered by the first phase and include the regulation of strata schemes on leasehold land, the subdivision and consolidation of strata lots, mixed strata schemes, conversion of strata lots into common property and vacant land strata schemes. The Bill also seeks to modernise the phased development of strata schemes and provide for the protection of purchasers of strata lots.

50. In November, 2011 the Commission appointed well-known local attorney Mr. David Ritch as consultant to advise on the Bill. After receiving public responses in November a Bill was finalised in December, 2011 and consultation with Mr. Ritch commenced on 16 January, 2012. Pursuant to discussions and guidance provided by Mr. Ritch the Bill was amended in March, 2012. When final comments are given on this

² Society of Cayman Architects, Surveyors and Engineers

revised Bill, it will be submitted for the input of the Ministry of District Administration, Works, Lands and Agriculture and thereafter submitted for general public comment.

51. The Bill to be submitted will, among other things, cover matters such as the following-

- Changes in definitions- is there a need to consider reform of certain definitions, e.g. proprietor; strata lot; common property; need to include new definitions e.g. special resolution; super-majority resolution; developer;
- Dealing with strata lots;
- Strata lot boundaries;
- Requirements of a strata plan;
- Creation of leasehold strata lots;
- Restricting use of parcel or part of parcel;
- Unit entitlement of strata lots;
- Registration of strata plans;
- Strata lot registers;
- Ancillary rights;
- Ownership of common property;
- Acquisition of additional common property;
- Transfer or lease of common property;
- Creation of easements and covenants;
- Incorporation of proprietors;
- Duties of corporations;
- Books of account;
- Preparation of financial statements;
- Roll to be kept by corporation;
- Levy of contributions on proprietors;
- Powers of corporation;
- Licences to use common property;
- Power of corporation to carry out work;
- Power of corporation to enter;
- Bye-laws generally;
- Supply of information and certificates by corporation;
- Functions of executive committees;
- Performance of functions where no executive committee or no quorum;
- Restrictions on powers of expenditure;
- Insurance generally;
- Provisions relating to termination of strata schemes;
- Resolution of strata disputes by summary court/ arbitration / mediation; and
- Model bye-laws.

OTHER PROJECTS

52. The Commission in June, 2011 reviewed its legislative programme and the following subjects are at various stages of review-

- legislation to deal with sexual harassment and stalking;
- the regulation of time shares;
- reform of the law of contempt;
- codification of director's duties; and
- legislation to provide consumer protection.

53. The Commission also decided in June, 2011 to commence work on the reform of the Wills Law and the Succession Law. It was agreed in November, 2011, after discussions with the Director, that former lecturer at the Cayman Islands Law School, Dr. Simon Cooper³ would act as consultant to the Commission on these two projects.

54. The reform of the law of defamation and modernisation of the Interpretation Law were also added to the legislative agenda in June, 2011 while on 27 February, 2012 the Attorney General requested that the Commission consider a review of the law relating to conditional/ contingency fee agreements.

APPENDIX

Publications/Papers

1. A Review of the legal aid system in the Cayman Islands- A preliminary discussion paper; Draft Legal Aid Bill; Draft Legal Aid Regulations (28 March, 2006)
2. First Annual Report of the Law Reform Commission 2005/6 (31 March, 2006)
3. Final Report- A Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law; Draft Companies (Amendment) Bill (12 April, 2006)
4. Discussion paper- The Law of Landlord and Tenant; Draft Residential Tenancies Bill (30 September, 2006)
5. Consultation paper - A Review of the Law regulating legal practitioners in the Cayman Islands (29 January, 2007)
6. Second Annual Report of the Law Reform Commission 2006/7 (31 March, 2007)
7. Final Report - A Review of the Law regulating legal practitioners in the Cayman Islands; Draft Legal Practitioners Bill; Draft Accountant's Reports Regulations (31 May, 2007)
8. Final Supplemental Report of the Law Reform Commission- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the

³ Reader in Law, Oxford Brookes University UK

- Amendment of Part V of the Companies Law (2004 Revision); Companies (Amendment) Bill (20 July, 2007)
9. Discussion paper- A Review of the legal aid system in the Cayman Islands (14 December, 2007)
 10. Third Annual Report of the Law Reform Commission 2006/7 (31 March, 2008)
 11. Final Report- A Review of the legal aid system in the Cayman Islands (15 July, 2008)
 12. Final Report- Review of the Law regulating the relationship of landlords and tenants in the Cayman Islands (11 August, 2008)
 13. Preliminary Discussion paper- Is there a need for enduring powers of attorney in the Cayman Islands? (20 January, 2009)
 14. Discussion paper- Regulation of Charitable Non-profit Organisations in the Cayman Islands (26 January, 2009); Draft Charities Bill, 2009
 15. Review of the Law Regulating Charitable Organisations in the Cayman Islands, Final Report (29 April, 2010)
 16. Fourth Annual Report of the Law Reform Commission 2008/9 (31 March, 2009)
 17. "Is there a need for enduring powers of attorney in the Cayman Islands? Final Report No. 6 (30 April 2009)
 18. Discussion Paper – Review of the Arbitration Laws of the Cayman Islands (11 May, 2009)
 19. The Draft Charities Bill (26 June, 2009)
 20. The Draft Trusts (Amendment) Bill (26 June, 2009)
 21. The Protection Against Domestic Violence Legislative Proposals, (12 October, 2009)
 22. The Protection Against Domestic Violence Bill, (12 October, 2009)
 23. Fifth Annual Report of the Law Reform Commission 2009/10 (31 March, 2010)
 24. Protection Against Domestic Violence Final Report (29 April, 2010)
 25. Review of the law of contempt of court in the Cayman Islands (Part 1)- Consultation paper- Contempt in the face of the court (September 2010)
 26. Tort Reform Consultation Paper -Caps on Non-Economic Damages and Reducing the Limitation Period (22 October, 2010)
 27. Family Law Reform (Part 1) Discussion Paper - the Matrimonial Causes Law (2005 Revision) (18 February 18, 2011)
 29. Modernisation of the regulation of Strata titles in the Cayman Islands (Part 1)- Management of Strata Schemes- Discussion Paper and Strata Titles Registration (Amendment) Bill, (4 April 2011)
 30. Final Report - Review of the Arbitration Laws of the Cayman Islands; Arbitration Bill (4 January, 2012); and
 31. Issues Paper - The Enforcement of Foreign Judgments and Interim Orders, (6 March, 2012).

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30 March, 2012