

THE LEGAL SERVICES BILL, 2020

EXECUTIVE SUMMARY

Introduction

The Legal Services Bill, 2020 (the “Bill”) seeks to repeal and replace the Legal Practitioners Law (2015 Revision); to establish the Cayman Islands Legal Services Board; to regulate the practice of Cayman Islands law; to provide for a system of legal education and to provide for a mechanism to deal with professional misconduct. The Bill would also provide for incidental and connected purposes.

The salient matters addressed in the Bill are as follows -

- (a) the establishment of the Cayman Islands Legal Service Board as the regulatory authority and to be assigned as the Supervisory Authority for the purposes of the Proceeds of Crime Law (2020 Revision);
- (b) the regulation of the practice of Cayman Islands law;
- (c) the requirement of 5 years post qualification for a person, other than a Caymanian or the holder of a Residency and Employment Rights Certificate, to be admitted as an attorney-at-law by virtue of a foreign qualification;
- (d) the practice of Cayman Islands law in other jurisdictions; and
- (e) access to the legal profession and training and development of Caymanian attorneys-at-law.

Part 1 –Preliminary

Part 1 deals with preliminary matters and contains the short title and commencement provision and the interpretation provision (clauses 1 and 2).

Part 2 - Cayman Islands Legal Services Board

Part 2 contains clauses 3 to 23 which provide for the establishment, functions and powers of the Cayman Islands Legal Services Board (the “Board”).

The Board would consist of the Chief Justice, the Attorney General, a non-practising attorney-at-law appointed by the Premier and a non-practising attorney-at-law appointed by the Leader of the Opposition (clause 4).

The Board’s functions would include the following —

- (a) to encourage and promote the upholding of the rule of law;
- (b) to promote high standards of professional conduct by attorneys-at-law;
- (c) to regulate the practice of law in the Islands;
- (d) to encourage and promote the study of law;
- (e) to supervise legal education and practical legal training leading to local qualification for admission as an attorney-at-law;
- (f) to establish or supervise a system of law reporting;
- (g) to carry out the functions of the Board under the Proceeds of Crime Law (2020 Revision), in relation to attorneys-at-law in accordance with the assignment of the Board as the Supervisory Authority under section 4(9) of that Law; and
- (h) to carry out such other functions as are imposed on the Board by the Law or any other Law (clause 5(1)).

The Board would be given the power to establish committees for the purposes of advising the Board on, or performing, any of its functions and ancillary powers in relation to the carrying out of its functions. The committees may comprise members of the Board only or members of the Board and persons who are not members of the Board (clause 5(2)).

The Board would be given the power, with the approval of the Cabinet and by written instrument, to delegate to any committee of the Board or other person any of its functions under the Law or any other Law together with any powers

(except this power of delegation) which the Board determines are necessary or expedient to enable the person or the committee to carry out the delegated function (Clause 5(3)).

The Board would be given the power to do everything reasonably incidental or conducive to carrying out its functions (clause 6). In performing its functions, the Board would be supported by a Secretary to the Board and such other public officers as the Deputy Governor, after consultation with the Attorney General, thinks are necessary for assisting the Board in the proper performance of its functions under the Law (clause 7).

An appointed member of the Board would hold office for five years on terms and conditions determined by the Premier or the Leader of the Opposition, as the case may be. An appointed member would be eligible for re-appointment for one additional period of three years. Allowance is also made for an acting appointment if a member is absent or unable to act (clauses 8 and 9).

The Bill contains the usual provisions relating to the resignation and revocation of appointment of members, the filling of vacancies in the offices of appointed members and notices of the appointment of members and changes in membership of the Board (clauses 10, 11, 12 and 13).

The Bill also contains other provisions that are required in relation to the establishment of the Board as a statutory body, including provisions regarding the regulation the Boards procedures, meetings of the Board, the ability to co-opt persons to assist the Board, protection from liability, conflict of interests, allowances, expenses of the Board, the keeping of proper accounts, annual reporting, assignment of the Clerk of Court and the seal of the Board (clauses 14 to 23).

Part 3 - The practice of Cayman Islands law

Part 3 contains clauses 24 to 28 which provide for the practice of Cayman Islands law both in the Cayman Islands and in another jurisdiction.

A person is prohibited from practising Cayman Islands law in the Islands or in another jurisdiction except as provided in the legislation (clause 24).

A person practises Cayman Islands law if, for or in expectation of gain or reward, the person provides legal services¹ –

- (a) in respect of Cayman Islands law;² or
- (b) in the Cayman Islands (clause 24(3)).

A person also practises Cayman Islands law if the person holds himself or herself as qualified to provide legal services in respect of Cayman Islands law or in the Cayman Islands for gain or reward (clause 24(4)).

Subject to compliance with the provisions of the Law and regulations made under the Law, an attorney-at-law or a recognised law entity³ that holds a practising certificate would be permitted to –

- (a) practise Cayman Islands law in the Islands; or
- (b) practise Cayman Islands law in another jurisdiction with an affiliate, subject also to compliance with the law of that jurisdiction (clauses 25 and 26).

Exemptions from the Bill are provided in respect of the rights in connection with the duties of offices of the Attorney General or the Director of Public Prosecutions to act as an advocate or the privileges of the Attorney General or Director of Public Prosecutions (Clause 27).

¹ Clause 2 - “legal services” means —

- (a) giving legal advice or assistance;
- (b) the exercise of rights of audience before court, tribunal or inquiry;
- (c) preparing a document on behalf of another person for use in a court, tribunal or inquiry;
- (d) preparing an instrument governed by law that relates to real, personal or intangible property; or
- (e) preparing evidence for, or giving evidence in a court or tribunal or inquiry as to the effect of law.

² This would apply whether or not the legal services are provided in the Cayman Islands or in another jurisdiction.

³ Clause 2 - “recognised law entity” means a company or limited liability partnership recognised as a recognised law entity by the Board under section 54;

Exemptions from Part 3 of the Bill are also provided for a person, whether or not an attorney-at-law, who has statutory authority to practise Cayman Islands law (clause 28).

By clause 28(2), nothing in Part 3 prohibits an attorney-at-law from establishing that attorney-at-law as a law firm or as a partner or member of a law firm except that —

- (a) in the case of a law firm that is an attorney-at-law practising Cayman Islands law in the Islands as a sole practitioner, the attorney-at-law shall be a Caymanian;
- (b) in the case of a law firm that is a partnership practising Cayman islands law, at least one partner of the partnership shall be an attorney-at-law who is Caymanian; or
- (c) in the case of a law firm that is a recognised law entity, at least one member or partner of the recognised law entity shall be an attorney-at-law who is Caymanian.

Part 4 - Admission as an attorney-at-law

Part 4 contains clauses 29 to 35 which provide for admission of an attorney-at-law.

A judge would have the power to admit a person as an attorney-at-law. However, a judge must not admit a person as an attorney-at-law unless the judge is satisfied that the person meets the eligibility criteria, including specific personal qualifications and professional qualifications (clause 29).

Personal qualifications are required for admission as an attorney-at-law so that to be admitted a person must —

- (a) be a Caymanian;
- (b) hold a work permit or a Residency and Employment Rights Certificate or otherwise be entitled under the Immigration (Transition) Law, 2018 to reside

and work in the Islands as an attorney-at-law in the capacity in which the person is or is to be employed;

- (c) be employed by the Government; or
- (d) be ordinarily resident in another jurisdiction and be a partner, director, member employee, associate or consultant of a law firm or an affiliate of a law firm (clause 30).

To be admitted as an attorney-at-law, a person must also satisfy a judge that the person is not an undischarged bankrupt, has not engaged in conduct that would constitute an act of professional misconduct and is not disbarred for professional misconduct from practising law in another other jurisdiction (clause 31).

The professional qualifications required for admission as an attorney-at-law, including local and foreign qualifications are set out in the Bill (clause 32).

Additionally, a person must have had at least five years post-qualification experience (“PQE”) in the practice of law in another jurisdiction in order to be admitted as an attorney-at-law by virtue of a foreign qualification. The person must also be in good standing on a register or its equivalent maintained by a court or other relevant body of the relevant jurisdiction that contains the name of each person entitled to practise law in that jurisdiction. The post-qualification experience requirements do not apply if the person is Caymanian or the holder of a Residency and Employment Rights Certificate (clause 33).

An application for admission must be made by motion to the Grand Court and a prescribed admission fee is payable. Documentary evidence must be submitted in support of the application (clause 34).

An application must be made to a judge to permit a person to come to the Islands to carry out the functions of an attorney-at-law in a particular suit or matter. The application must be made by a law firm (clause 35).

Part 5 - Attorneys-at-law

Part 5 contains clauses 36 to 47 which make provision relating to attorneys-at-law.

An attorney-at-law is declared to be an officer of the Court (clause 36(1)).

However, an attorney-at-law is prohibited from appearing on behalf of another person in a court, tribunal or inquiry in the Cayman Islands if the attorney-at-law holds a practising certificate that only authorises the attorney-at-law to practise Cayman Islands law in another jurisdiction (clause 36(2)). The prohibition does not apply to an attorney-at-law who is Caymanian (clause 36(3)).

An attorney-at-law or recognised law entity must comply with an obligation imposed on the attorney-at-law or recognised law entity under the Law and a failure to comply with an obligation amounts to professional misconduct and accordingly may be the subject of disciplinary proceedings (clause 37(1) and (2)).

The Cabinet is required, after consultation with the Board to issue a Code of Professional Conduct for attorneys-at-law and recognised law entities (clause 37(3)). An attorney-at-law or a recognised law entity is required to observe the Code of Professional Conduct (Clause 37(4)). A failure to comply with that requirement does not amount to professional misconduct, but any such failure may in disciplinary proceedings in relation to the attorney-at-law or a recognised law entity be relied upon as evidence to establish professional misconduct by the attorney-at-law or company (clause 37(5)).

The Clerk of the Court must keep a register to be known as the Court Roll (the "Roll") in respect of each person admitted for the time being to practise as an attorney-at-law in the Islands. The Roll and documents relating to the Roll must be kept at the Court and the Clerk of the Court must permit a person to inspect the Roll free of charge if the Office of the Court is open (clauses 38 and 39).

A certificate of enrolment would be granted to a person whose name is entered in the Roll. The certificate of enrolment is granted under the seal of the Court and must be signed by the Clerk of the Court (clause 40).

Provision is made for the alteration in enrolment details of an attorney-at-law (clause 41). Voluntary removal and removal for non-practice of the name of an attorney-at-law from Roll by the Clerk of the Court would be permitted (clauses 42 and 43).

Provision is also made for the keeping of the name of an attorney-at-law who is Caymanian or employed by a law firm or an affiliate of a law firm and who does not wish to practise Cayman Islands law but wishes to keep his or her name on the Roll (clause 44).

A duty is imposed on a law firm to inform the Clerk of the Court if the law firm or an affiliate of the law firm ceases to employ in another jurisdiction an attorney-at-law who is not a Caymanian. The managers of the law firm must ensure that the law firm complies with the obligation. If a law firm fails to comply with the obligation, each manager of the firm commits an offence and liable on summary conviction to a fine of five thousand dollars (clause 45).

An attorney-at-law is permitted to administer oaths (clause 46).

Attorneys-at-law and recognised law entities would have the power to sue for fees and costs (clause 47).

Part 6 - Practising certificates

Part 6 contains clauses 48 to 52 which provide for practising certificates.

An attorney-at-law is prohibited from practising Cayman Islands law in the Islands unless the attorney-at-law holds a practising certificate that authorises the attorney-at-law to practise Cayman Islands law principally in the Islands (clause 48).

An attorney-at-law is also prohibited from practising Cayman Islands law in another jurisdiction unless the attorney-at-law holds a practising certificate that authorises the attorney-at-law to practise Cayman Islands law principally in another jurisdiction (clause 48).

A practising certificate may be obtained on application by a law firm to the Board and payment of the prescribed practising certificate fee (clauses 49 and 50).

The Board must issue and publish guidance on matters that the Board must have regard to in issuing a practising certificate, including —

- (a) the number of practising certificates that are issued to attorneys-at-law practising Cayman Islands law in another jurisdiction with affiliates of the law firm; and
- (b) the compliance by the attorney-at-law with any applicable programme of legal education and practical legal training that will be undertaken in the attorney-at-law's principal place of practice during the currency of the practising certificate;
- (c) the jurisdiction that will be the attorney-at-law's principal place of practice during the currency of the practising certificate; and
- (d) compliance by the law firm, its affiliates and the attorney-at-law with the Law and regulations made under the Law (clause 50(2)).

The Board is prohibited from issuing a practising certificate that authorises an attorney-at-law to practise Cayman Islands law in another jurisdiction unless the attorney-at-law swears the prescribed oath or makes the prescribed affirmation. Further, a practising certificate must be in a form approved by the Board and would be valid from the date of its issue and expires on 31st January of the ensuing year unless before that date the practising certificate becomes void (clause 50(6)).

A practising certificate would become void in certain circumstances, for example, if the attorney-at-law is suspended from practice or, in the case of an attorney-at-law that is not a Caymanian or the holder of a Residency and Employment

Rights Certificate, if the attorney-at-law ceases to be employed by a law firm (clause 51).

The details of practising certificates must be published⁴ by the Board (clause 52).

Part 7 - Recognised law entity

Part 7 contains clauses 53 to 63 which provide for the recognition of a company or limited liability partnership as a recognised law entity.

An application for recognition of a company or limited liability partnership as a recognised law entity may be made to the Board (clause 53).

The Board is given the power to recognise a company or limited liability partnership as a recognised law entity if the Board is satisfied that the company or limited liability partnership complies with clause 28(2)(c) and is otherwise satisfied that the company or limited liability partnership is a suitable body to practise Cayman Islands law (clause 54). Provision is also made for a certificate of recognition to be issued a company or limited liability partnership recognised as a recognised law entity (clause 55).

Where recognition is refused the company or limited liability partnership may appeal to the Grand Court against the decision of the Board (clause 56).

A recognised law entity must, within sixty days after a change in its directors, managers, members or partners, notify the Board of the change (clause 57).

Clause 58 restricts a recognised law entity from carrying on any business other than the practice of Cayman Islands law in the Islands. However, a recognised law entity may, with the approval of the Board, carry on a business associated with its practice of Cayman Islands law. A recognised law entity that fails to comply with the restriction ceases to be a recognised law entity.

⁴Clause 2 - “publish”, in respect of information, means published in a manner that is likely to bring the information to the attention of those affected by the information;

A recognised law entity is permitted to carry on business under a name that does not include the word “Limited”, or the abbreviation “Ltd.”, if it holds itself out to be a recognised law entity (clause 59).

A recognised law would cease to be a recognised law entity if a winding up order under the Companies Law (2020 Revision) or the Limited Liability Partnership Law, 2017 is made in respect of it (clause 60).

Each director, manager or member of a company or limited liability partnership who is an attorney-at-law would be guilty of professional misconduct if the company or limited liability partnership ceases to be a recognised law entity but continues to practise Cayman Islands law. As soon as practicable after the Board becomes aware that a company or limited liability partnership has ceased to be a recognised law entity, the Board must publish the name of the company or limited liability partnership and the fact that it has ceased to be a recognised law entity (clause 61).

It would be an offence for a company or limited liability partnership to falsely claim to be a recognised law entity (clause 62).

Part 8 - Law firms

Part 8 contains clauses 63 to 66 which make provision in respect of law firms.

The term “law firm” is defined in clause 2 to mean -

- (a) an attorney-at-law practising Cayman Islands law in the Islands as a sole practitioner;
- (b) a partnership practising Cayman Islands law in the Islands; or
- (c) a recognised law entity practising Cayman Islands law in the Islands;

It would be a criminal offence for an attorney-at-law to practise Cayman Islands law in another jurisdiction otherwise than with a law firm or with an affiliate of a law firm. The punishment for the offence is fine of fifty thousand dollars or imprisonment for a term of two years, or both (clause 63).

A law firm would be required to have an annual operational licence to practise Cayman Islands law (clause 64).

Cabinet is given the power, after consultation with the Board, to make regulations requiring law firms to secure insurance for a prescribed minimum amount of cover against losses arising from claims in respect of civil liabilities incurred by such law firms in the practice of Cayman Islands law and any business associated with the practice of Cayman Islands law permitted under the Law (clause 65).

A law firm is also required, on or before 31st January in each year, to deliver to the Board a certificate indicating whether or not the law firm has, during the previous year complied with each obligation imposed on the law firm by the Law and where the law firm is a recognised law entity, complied with the criteria to maintain its status as a recognised law entity (clause 66).

The annual compliance certificate must be signed by a manager of the law firm. If a law firm fails to comply with a requirement of this section each manager of the firm commits an offence and liable on summary conviction to a fine of five thousand dollars (clause 66(4) and (5)).

Part 9 - Legal education and training

Part 9 contains clauses 67 to 70 which provide for the legal education and practical legal training for local qualification for the enrolment of an attorney-at-law.

The Board is given the power designate a legal educator as a recognised legal educator if the Board is satisfied that it has the facilities required to provide legal education or practical legal training to a standard required by Part 9 (clause 67).

The Board is given the power to make arrangements -

- (a) for the provision of a system of legal education and practical legal training leading to local qualification for enrolment as an attorney-at-law; and

(b) requiring a person admitted as an attorney-at-law to participate in a programme of legal education or practical legal training (clause 68).

The power is also given to the Cabinet, after consultation with the Board, to make regulations relating to matters connected with the Board's functions regarding the arrangement for legal education and training and participation in programmes of legal education or practical legal training (clauses 68 and 69).

Cabinet is given the power to make regulations in respect of qualifying as an attorney-at-law and in respect of a programme of legal education or practical legal training (clause 68 and 70).

Part 10 - Articles of clerkship

Part 10 of the Bill contains clauses 71 to 78 which make provision in respect of articles of clerkship.

The Cabinet is given the power, after consultation with the Board, to make regulations in respect of service under articles of clerkship (clause 71). The draft Legal Services (Professional Development) Regulations, 2020 provide for articles of clerkship.

Part 10 also specifies the qualifications required for an attorney-at-law to take an articulated clerk into the attorney-at-law's service and gives a recognised law entity permission to take an articulated clerk into the service of the recognised law entity. The Attorney General, Director of Public Prosecutions and Clerk of the Court are also given permission to take an articulated clerk into their respective service (clauses 72 to 75).

The Board has the power to certify that time spent by a person in a legal or judicial department of the public service performing duties is equivalent to a similar time spent in the service of an attorney-at-law under articles of clerkship. The Board may also discharge articles of clerkship in certain circumstances (clause 76).

Provision is also made for the transfer of articles of clerkship and for the obligations of an attorney-at-law or a recognised law entity in relation to an articulated clerk (clauses 77 and 78).

Part 11 - Investigation of misconduct

Part 11 contains clauses 79 to 95 which provide for the investigation of alleged misconduct by an attorney-at-law.

The conduct of a person while holding or acting in an office to which section 106 of the Constitution applies is exempt from the application of Part 11 (clause 79). Section 106 of the Constitution applies to offices such as the Chief Justice, Judges, Attorney General, Director of Public Prosecutions and Magistrates.

Any person may file with the Board a complaint that any specified conduct of an attorney-at-law constitutes professional misconduct by the attorney-at-law (clause 80).

The Board has a duty to investigate the complaint and the Board would be required to make and publish rules in respect of the process for its investigation of the conduct of attorneys-at-law. The Board would have the power to do everything reasonably necessary to investigate any conduct of an attorney-at-law that is alleged to constitute professional misconduct (clauses 81 to 83).

The Board may impose disciplinary sanctions which include striking off and suspension from practice of an attorney-at-law (clause 84). The Board may also make an interim order to suspend from practice an attorney-at-law being investigated by the Board until the investigation has been completed and any subsequent order made by the Board has come into effect (clauses 85 and 86).

Provision is also made in Part 11 for the restoration of name of an attorney-at-law to Roll, the termination of suspension of an attorney-at-law and the payment of costs, appeals to the Court of Appeal against action taken by the Board and trusteeships held by an attorney-at-law who is suspended or struck off (clauses 87 to 93).

An attorney-at-law would be guilty of professional misconduct if the attorney-at-law practises law in contravention of a condition or restriction specified in the attorney-at-law's practising certificate (clause 94).

If, in investigating the conduct of an attorney-at-law, it appears to the Board that the attorney-at-law or any other person may have committed an offence, the Board must refer the matter to the police (clause 95).

Part 12 - Miscellaneous provisions

Part 12 contains clauses 96 to 101 which are miscellaneous provisions. These include provisions for an offence for providing false and misleading information, the criminal liability of partners in a limited liability partnership or officers of a body corporate, the making of regulations by the Cabinet's regulation-making power, the repeal of the Legal Practitioners Law (2015 Revision) and savings and transitional provisions.

The Cabinet is given the power, after consultation with the Board, to make regulations prescribing anything that may be prescribed under the Law, providing for access to the legal profession and training and development of attorneys-at-law⁵ or providing for such matters as may be necessary or convenient for carrying out on giving effect to the Law and its administration (clause 99(1)).

The Regulations regarding access to the legal profession and training and development of attorneys-at-law may make provisions giving the Board the power to assess and monitor compliance with such regulations and, the provisions may give the Board the power to delegate the power to assess and monitor compliance with the regulations to another person (clause 99(2)).

⁵ These regulations contain requirements for training and development of Caymanian attorneys at law and impose requirements relating to the practice of Cayman Islands law in another jurisdiction.