MINISTRY OF
FINANCIAL SERVICES,
COMMERCE & ENVIRONMENT
CAYMAN ISLANDS GOVERNMENT

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Dear All,

On October 17th, 2016 you made a request for additional time to consider and provide comments to the Ministry in respect of the Legal Practitioners Bill 2016 (the "Bill").

In respect of that request and assuming good faith, I made the decision to defer the Bill on the LA agenda to allow you several additional weeks of time to consider the Bill further and provide what I assumed would be comments on the provisions of the Bill.

I am disappointed that rather than responding constructively as you implied you would, you have refused to provide comments on the Bill. Instead, you have unfortunately chosen to condemn the Bill and attack the process as being "secretive" and also attack the integrity of the members of the Caymanian Bar Association and the Cayman Islands Law Society as proponents of the Bill.

Far from being unprecedented, the Bill has in fact been developed in a way which is very much in line with the usual process that Bills come into being. An experienced draftsperson prepared the Bill on the basis on drafting instructions approved by the Cabinet. The drafting instructions were based on a joint position paper agreed by the CBA and the CILS – the two organisations which represent the members of the legal profession. This position paper reflected a substantial shift across the board in the position of the CILS in particular to the strongly pro Caymanian positions of the CBA.

The Bill has also been published in the normal way in full compliance with all relevant constitutional and legal requirements and it is therefore anticipated that it would be subject to the usual review and debate by the members of the Legislative Assembly.

Furthermore in the development of the Bill, local officials including the Attorney General and members of the Judiciary including the Chief Justice had the opportunity for input and made very helpful contributions to the underlying principles and/or the drafting.

It is therefore a nonsense to suggest that the 2016 Bill was developed in a "secretive" way.

The 2013 draft bill which you refer to was not known to me at all prior to this but I have been advised that far from being an "advanced draft " as you suggest, that draft was not agreed to at all. In fact it had been rejected by the CBA , the CILS and apparently the Government of the day. It is certainly no surprise then that it was not used as a starting point and in fact a clean slate approach was taken to the preparation of the 2016 Bill to reflect the strongly pro Caymanian approach of the newly agreed Position Paper.

One important matter in respect of which you apply your own conclusions to prop up the majority of your arguments in your letter is the question of whether the existing Legal Practitioners Law deals with the practice of Law outside the Cayman Islands.

I was certainly very pleased to see that you now accept that "law firms in an increasingly competitive legal services landscape, need to be able to offer Cayman legal advice from overseas jurisdictions". Perhaps you have only recently accepted that but it is in fact not a recent reality.

The reality that our law is now practiced outside of the Cayman Islands is not a phenomenon unique to Cayman. Cayman was not the first jurisdiction to do so. Cayman firms have responded to client demand and expectations and the pressure of that "competitive legal landscape" which you noted.

If the Cayman firms had not so responded in major growth markets around the world over the last two decades, clients would have sought other alternatives that are available and Cayman would have lost out massively. It is a significant factor in the dominance of Cayman in the global financial services market and it has been to the indisputable benefit of the Cayman economy. Many jobs are created in Cayman as a result and the Government derives revenue in the region of $25 to $30 million annually which is directly attributable to the overseas offices. That alone is close to a quarter of our education budget.

So the need for overseas offices is clear and the benefits to the jurisdiction are clear. Is it the case then that all of these benefits come at a price which would be what you call the "egregious breaches" of S.10 of the current law? The answer is no. There are no such breaches under the current law.

You will know that an application for general admission under Section 3 and an application for limited admission under Section 4 of the current law are limited to applications to practice as an attorney-at-law "in the Islands". That means within the Cayman Islands – not Singapore or Hong Kong or London or Dubai or Shanghai or anywhere else outside the Cayman Islands. Furthermore, Section 12 of the current law requires that anyone who applies (other than for limited admission under S4) for a practicing certificate is required by Subsection 2 thereof to "swear an affidavit that he intends to reside within the Islands for the entire period in respect of which the work permit has been granted". The provisions of the current law therefore make it abundantly clear that the law is only contemplating the practice of law within the Cayman Islands and is therefore not intended in any way to be extraterritorial.

In light of the foregoing and apart from other compelling arguments, it clearly follows that the practice of Cayman law outside the Cayman Islands cannot be an offence under Section 10 as you have attempted to varyingly describe as an "anomaly", a "breach", "egregious breaches", "continuing breaches", "offences committed" and "deliberate and calculated offences". This is an incorrect and misguided perspective.

I would also note that since the advent of overseas offices some twenty years ago not one official has taken a position that the practice of Cayman Islands law outside the Cayman Islands without a practicing certificate is an offence under the existing law. This is so despite the fact that the issue has been well ventilated publicly and under active consideration by many officials over the 15 year period that modernisation of the law has been attempted.

Having noted all of the foregoing, both associations and local officials have recognised as you agree that there are risks which need to be addressed and that is one of the motivations for their active support for modernisation - there is an acceptance that the current law is woefully inadequate and issues like the foregoing need to be specifically addressed. As you correctly note the practice of Cayman law "has matured beyond the imagination of those who originally conceived the need for a regulatory framework". It is now way past time for us to modernise the law without further delay for all the reasons noted.

I am also concerned with your unsupported allegation that compliance with FATF recommendations in relation to existing AML/CFT regulations as proposed in the Bill will be unconstitutional or offensive to attorney client privilege. You have provided nothing in support of this comment but I can say that I have the assurance of the Honourable Attorney General amongst others that the Bill reflects no discernible constitutional issue on this point and there is nothing in the Bill which impinges on attorney client privilege.

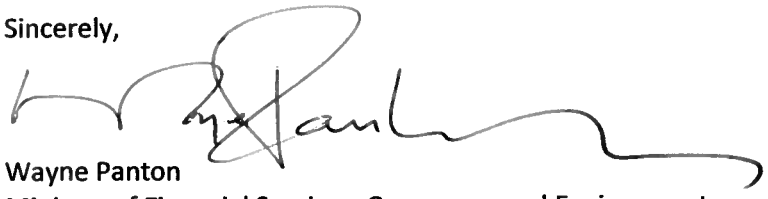
In relation to your comments on the proposed Committee Stage amendments to Clause 25, this is narrowly referenced to assist two necessary situations which arise commonly in practice. The first is where a Cayman lawyer or firm needs to obtain advice from senior counsel in London for example. The second facilitates US or other foreign counsel preparing initial drafts of documents (reflecting the commercial terms between the parties) which may be governed by Cayman Islands law. These amendments are necessary exceptions to a new rule requiring anyone practicing Cayman Islands Law anywhere in the world to be admitted on the Cayman Roll and have a Cayman Islands Practicing Certificate. Plainly these do in fact serve the public interest and if anything reinforces the good faith approach being taken.

Finally, your assertion that the 2016 Bill will effectively bring about a significant loss to the public purse is not correct. The 2016 Bill would in fact result in an increase in revenue to the public purse because those overseas practitioners would be paying higher fees for a practicing certificate. On the other hand sole practitioners and small firms in Cayman will have reduced costs for practicing certificates and operating license costs. Effectively, Qualified Firms with overseas Affiliates will be subsidising those cost reductions.

Furthermore, the one to one ratio set out in Clause 68 will ensure that there will be a nexus with and that the critical mass of Qualified Firms remains in, the Cayman Islands. This ensures that if there is any growth in an overseas office then that necessarily means that there is corresponding equal or better growth in the Cayman office. That means more opportunities for Caymanian lawyers and Articled Clerks, more support staff jobs available to Caymanians and overall a greater contribution to the local economy and the public purse.

You have clearly said that you will not support the current Bill and have rejected the opportunity which you requested to provide modifications to the Bill. While that is a pity, we have received other useful comments from sole practitioners and small firms and we are considering some of those for inclusion in committee stage amendments to the Bill. For the avoidance of doubt, I do note that some of you provided comments during the initial consultation period and I confirm those have been considered.

Sincerely,



Wayne Panton
Minister of Financial Services, Commerce and Environment