



## Guide to the Legal System of the Cayman Islands

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## **PREFACE**

This guide introduces the Cayman Islands' legal system and provides a brief overview of the Islands' history, constitution, court system, judiciary and sources of law.

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The Cayman Islands  
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## INTRODUCTION

The Cayman Islands are in the north-western Caribbean and consist of three islands called Grand Cayman, Cayman Brac and Little Cayman (the “**Islands**” or the “**Territory**”). They are collectively a British Overseas Territory of the United Kingdom (the “**UK**”), and have recognition as such, since the 1670 Treaty of Madrid.

The Islands officially became a British colony in 1725 by settlement but formally became a dependency of Jamaica for administrative purposes in 1863. They remained a dependency of Jamaica until 1962, which was until then itself a British colony. Following Jamaica’s independence and withdrawal of membership from the short-lived West Indies Federation, formed in 1958, the Cayman Islands re-emerged as a separate British colony in 1962. Cayman Islands law is today consequently influenced by English and Jamaican law through the Territory’s history and close relationship with those countries.

## THE CAYMAN ISLANDS CONSTITUTION

The Cayman Islands (Constitution) Order 2009 (the “**Constitution**”) is the Territory’s fourth constitution. This Constitution overhauled the roles and functions of the Governor, the Executive, the Legislature and the Judiciary. A significant feature of the Constitution is its Bill of Rights which broadly reflects the European Convention on Human Rights. The Bill of Rights sets out the fundamental rights and freedoms of the individual and rules for their enforcement in the Cayman Islands.

## THE GOVERNOR

HRH Queen Elizabeth II (the “**Queen**”) appoints a governor to be her representative to the Cayman Islands (the “**Governor**”). However, in practice, the UK’s Secretary of State for Foreign and Commonwealth Affairs advises the Queen on the appointment of the Territory’s governor. The Constitution defines the office, functions and powers of the Governor who is usually appointed for 4 years.

## THE LEGISLATURE

The Cayman Islands’ Legislature consists of the Queen’s representatives and a Legislative Assembly. The Legislature may (by majority vote of the Legislative Assembly’s elected members) make laws for the peace, order and good government of the Cayman Islands. These laws cannot be repugnant, in any respect, to the provisions of any UK Act of Parliament or Orders in Council having force in the Islands.

The Legislative Assembly is a unicameral body comprising of a Speaker, 15<sup>1</sup> elected members, and two *ex officio* members (the “**Ex Officio Members**”). The Ex Officio Members, comprising the Deputy Governor and the Attorney General, are the Queen’s representatives.

The political party with the majority of the elected members will form the Government. The Governor will appoint the majority party’s leader to be the Premier. The Governor also appoints the leader of the party having the next greater number of seats to be the Leader of the Opposition. Sessions of the Legislative Assembly take

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<sup>1</sup> The number of elected members will increase to 18 after the next general election in 2013.

place in the Legislative Assembly building in George Town, Grand Cayman. This building houses a chamber similar to that of the House of Commons in London.

## **THE EXECUTIVE**

Executive authority vests in the Governor and the Cabinet who may exercise it either directly or through public officers. The Cabinet consists of the Premier, 5<sup>2</sup> other elected members usually from the majority party (one of whom will become the Deputy Premier) and the Ex Officio Members. Following a ministerial system of Government, each Cabinet member will be responsible for one or more Portfolios or Ministries. The Governor has responsibility for internal security (including the police force), defence and external affairs.

## **SOURCES OF CAYMAN ISLANDS LAW**

The Islands' historical relationship with Jamaica and the UK has influenced its laws. The original settlers are deemed to have brought with them English common law and statutes as they existed prior to 1725 (the deemed date of settlement of the Islands). Local statutes and decisions since then have adapted these laws received into the Cayman Islands from the original settlers.

In practice, the legal system has not diverged much from that of England and Wales because of the continued constitutional relationship with the UK and for two other reasons:

- (a) In large measure, the Islands' statute law follows UK legislation, subject to these qualifications:
  - (i) The Islands may adapt a UK statute and/or create provisions better suited for local circumstances; or
  - (ii) The Islands may choose not to pass equivalent legislation when the UK has passed legislation modifying the common law (which legislation does not in most cases extend to the Cayman Islands); and
- (b) Being a small jurisdiction, the number of decided cases creates relatively little opportunity to develop local jurisprudence, and therefore persuasive decisions of the English courts are regularly relied upon and almost always followed. However, decisions of the English courts (after 1725) do not technically constitute binding precedent: only where they deal with common law principles (or statutes where the relevant Cayman Islands statute has the same or similar wording) are they regarded as highly persuasive by the Cayman courts.

Although the UK Government maintains a residual power to pass legislation affecting the Territory, it is rarely used. In addition, in certain circumstances, European Union Directives have effect in the Cayman Islands as, for instance, the European Union Savings Directive.

In summary, Cayman Islands law has a number of sources including:

- (i) English laws and statutes received prior to 1725, being the deemed date of settlement of the Cayman Islands, that the original settlers brought with them;
- (ii) Laws enacted by the Jamaican Legislature (or the West Indies Federation's Federal Legislature) and extended to the Cayman Islands when the Islands were a dependency of Jamaica during the years 1863 to 1962;
- (iii) The Acts of UK Parliament (or Imperial Acts) and Orders in Council expressed to apply or extend to the Cayman Islands;
- (iv) European Directives expressed to have effect in the Cayman Islands;

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<sup>2</sup> The number of Cabinet ministers will increase to 6 after the next general election in 2013.

- (v) Primary Legislation (laws enacted by the Cayman Islands Legislature); and
- (vi) Binding decisions of the Cayman Islands courts.

## THE COURTS AND JUDICIARY OF THE CAYMAN ISLANDS

The Cayman Islands Legislature has full power to establish courts of judicature and to abolish and reconstitute the same and make provision for the administration of justice. The Constitution establishes the Grand Court of the Cayman Islands (the “**Grand Court**”), the Cayman Islands Court of Appeal (the “**Court of Appeal**”) and an independent judiciary.

The Governor, on the advice of the Judicial and Legal Services Commission, appoints the Attorney General, the Chief Justice, the President of the Court of Appeal, Judges and makes other senior legal appointments. The Chief Justice is constitutionally the head of the judiciary of the Cayman Islands.

The Grand Court of the Cayman Islands is a permanent superior court of record, and has such jurisdiction and powers as conferred on it by the constitution and other laws. It administers the common law and equity, as well as locally-enacted laws and applied laws. The Grand Court has 5 divisions to manage cases: an Admiralty, Civil, Criminal, Family and a Financial Services Division (where the majority of commercial cases are now heard).<sup>3</sup>

Criminal cases before the Grand Court are heard either by judge alone or by judge and jury. The mode of trial in criminal cases is dependent on the nature of the crime. Civil cases before the Grand Court, by contrast, are often heard by judge alone unless the matter is one which can be heard by judge and jury (e.g. in cases of defamation). Grand Court judges also hear *ex parte* and *inter partes* interlocutory matters in their chambers.

The Court of Appeal is also a superior court of record and sits as a three-judge bench, consisting of the President of the Court of Appeal and not less than two Justices of Appeal. The Court of Appeal usually sits for three regularly-scheduled sessions of three weeks each year in the Cayman Islands. However, a party may apply in writing for a special sitting of the Court of Appeal to be convened. A special sitting will be convened if it is held to be necessary in the interests of justice and it is practicable to convene such a sitting.

Final appeal for cases from the Cayman Islands lies to the Judicial Committee of the Privy Council, which sits in London, England (the “**Privy Council**”). The Privy Council is the final appellate tribunal from a number of courts of the overseas territories of the UK, as well as the Cayman Islands and some Commonwealth countries. The Privy Council can be comprised of the Justices of the Supreme Court<sup>4</sup> (the UK’s ultimate appellate court) and Privy Councillors. Privy Councillors often are or were the most eminent judges from other Commonwealth countries or the UK’s Court of Appeal. Cases are often heard by a five member bench of the Privy Council.

In relation to human rights issues, petitions can be made to the European Court of Human Rights in Strasbourg, France.

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<sup>3</sup> Probate and Administration cases are dealt with in Chambers under the Civil Division.

<sup>4</sup> Formerly the House of Lords.

The doctrine of judicial precedent applies to the Cayman Islands courts. Therefore, the *rationes decidendi* (or ‘ratios’) of decisions of the Privy Council in appeals from the Cayman Islands courts are binding on the Cayman Islands courts in subsequent cases. The ratios of Court of Appeal decisions are binding on the Grand Court, and those of Grand Court decisions are normally followed by itself or the Summary Court. In the absence of specific decisions of these courts, relevant decisions of the superior courts of record of England and Wales and of countries of the Commonwealth, whilst not strictly binding, are highly persuasive for the reasons set out above.

This well-established judicial system has played a major role in the development of the Cayman Islands as a leading international financial centre. The Grand Court and Court of Appeal routinely decide complex cases of substantial value, including cross-border insolvency cases, major trust litigation, international fraud and commercial disputes.

## **COURT PROCEDURE**

The Cayman Islands Grand Court Rules closely follow the former Rules of the Supreme Court of England as they stood prior to the introduction in England in 1999 of the Civil Procedure Rules. Consequently, there exists a great deal of detailed commentary to the corresponding English rules, which for the most part is also applicable to the equivalent Grand Court Rules and gives useful guidance to the courts. However, the Grand Court Rules do have some notable differences to reflect local practice and statute law.

## **REPORTING OF CAYMAN ISLANDS COURT DECISIONS**

Pre-1952 reports, specifically decisions of the Supreme Court of Jamaica on appeal from the Grand Court, are found in the collections of Jamaican law reports. Since 1952, select decisions of the Grand Court and the Court of Appeal have been published in *The Cayman Islands Law Reports*. Unreported decisions are or will be available from the Cayman Islands Judicial Administration website: <http://www.caymanjudicial-legalinfo.ky>.

For more specific advice on The Legal System of in the Cayman Islands, we invite you to contact:

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