

CAYMAN ISLANDS



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**A BILL FOR A LAW TO MAKE PROVISION FOR THE HOLDING OF A
REFERENDUM ON THE PROPOSALS TO MODERNISE THE
CONSTITUTION OF THE CAYMAN ISLANDS; AND TO MAKE
PROVISION FOR INCIDENTAL AND CONNECTED MATTERS**

**THE REFERENDUM (CONSTITUTIONAL MODERNISATION) BILL,
2009**

MEMORANDUM OF OBJECTS AND REASONS

Section 29(2) of the Constitution of the Cayman Islands provides that a law may make provision for the holding of a referendum amongst persons qualified as electors in elections to the Legislative Assembly on a question declared by resolution, adopted by a majority of the elected members of the Legislative Assembly, to be a matter of national importance and specified in such law.

This Bill contains the provisions for the holding of such a referendum.

Clause 1 of the Bill provides the short title and makes provision in respect of the commencement of the legislation.

Clause 2 is the interpretation clause.

Clause 3 provides that, for the purpose of guiding persons concerned, a referendum shall be held about whether electors agree with certain proposals for Constitutional Modernisation. The date for the holding of the referendum would be appointed by the Governor in Cabinet.

Clause 4 of the Bill specifies the referendum question which is:

“Do you approve the Draft Constitution which was agreed by the Cayman Islands Constitution Delegation and the Government of the United Kingdom on 5th February, 2009 and tabled in the Legislative Assembly of the Cayman Islands on 11th February, 2009?”

Clause 4 also makes provision in respect of the ballot paper, the form of which is prescribed in Schedule 1. It is provided that the Governor in Cabinet may, by order, add items to Part 2 of that Schedule at any time before the issue of a notice appointing a day for the holding of the referendum.

Clause 5 provides that the persons entitled to vote in the referendum are those who, on the day of the holding of the referendum, would be entitled to vote as electors at an election in an electoral district.

Clause 6 prescribes the functions of the Supervisor, the Deputy Supervisor and various other officials at the referendum.

Clause 7 of the Bill enables the appointment of persons to observe the conduct of the referendum, the verification of the ballot paper accounts and the counting of the votes.

Clause 8 sets out the procedure for questioning the number of ballot papers or votes cast in the referendum.

Clause 9 and Schedule 2 enable the referendum proceedings to be conducted as if the referendum were an election of members to the Legislative Assembly.

Clause 10 of the Bill provides that remuneration and travelling allowances payable to officers under the legislation are to be defrayed out of the general revenue of the Islands.

Clause 11 enables the Governor in Cabinet to make regulations relating to the conduct of the referendum.

**THE REFERENDUM (CONSTITUTIONAL MODERNISATION) BILL,
2009**

ARRANGEMENT OF CLAUSES

1. Short title
2. Interpretation
3. Holding of referendum
4. Referendum question
5. Entitlement to vote
6. Conduct of elections
7. Observers
8. Legal challenge
9. Application of Elections Law (2004 Revision)
10. Expenses of referendum
11. Regulations

Schedule 1 - Form of Ballot Paper

Schedule 2 – Part 1: Application and Modification of Provisions of the Elections Law (2004 Revision); Part 2: Application and Modification of Provisions of the Elections Rules (2004 Revision)

CAYMAN ISLANDS

A BILL FOR A LAW TO MAKE PROVISION FOR THE HOLDING OF A REFERENDUM ON THE PROPOSALS TO MODERNISE THE CONSTITUTION OF THE CAYMAN ISLANDS; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS

WHEREAS section 29(2) of the Constitution of the Cayman Islands provides that a law may make provision for the holding of a referendum amongst persons qualified as electors in elections to the Legislative Assembly on a question declared by resolution, adopted by a majority of the elected members of the Legislative Assembly, to be a matter of national importance and specified in such law;

AND WHEREAS a resolution has been adopted by a majority of the elected members of the Legislative Assembly, declaring the question specified in section 4(1) of this Law to be a matter of national importance:

NOW, THEREFORE, it is DECLARED that the question specified in section 4(1) of this Law is a matter of national importance and ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Referendum (Constitutional Modernisation) Law, 2009. Short title

2. (1) In this Law - Interpretation

(2004 Revision) “Elections Law” means the Elections Law (2004 Revision) and includes the Elections Rules (2004 Revision);

“elector” means a person who votes or is entitled to vote in the referendum;

“Governor” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under section 1 of the Constitution of the Cayman Islands, and, to the extent to which a Deputy appointed under section 4 of the Constitution of the Cayman Islands is authorised to act, that Deputy;

“Governor in Cabinet” means the Governor acting in accordance with the advice of the Cabinet of the Islands;

“observer” means a person appointed in accordance with section 7;

“polling station” means the place appointed by notice for the holding of the referendum in an electoral district; and

“referendum” means the referendum to be held under this Law.

(2) For the purposes of this Law, the expressions “Deputy Supervisor”, “election”, “electoral district”, “presiding officer”, “returning officer” and “Supervisor” have the meanings respectively assigned to those expressions by the Elections Law.

Holding of referendum

3. (1) A referendum shall be held about whether electors approve the Draft Constitution which was agreed by the Cayman Islands Constitution Delegation and the Government of the United Kingdom on 5th February, 2009 and tabled in the Legislative Assembly of the Cayman Islands on 11th February, 2009.

(2) The Governor in Cabinet shall by notice, published in the Gazette, appoint a day for the holding of the referendum, being a day not earlier than the thirtieth day next following the date on which that notice is first so published.

Referendum question

4. (1) The question to be asked in the referendum is:

“Do you approve the Draft Constitution which was agreed by the Cayman Islands Constitution Delegation and the Government of the United Kingdom on 5th February, 2009 and tabled in the Legislative Assembly of the Cayman Islands on 11th February, 2009?”.

(2) The ballot paper to be used for the purpose of the referendum shall be in the form set out in Schedule 1.

Schedule 1

(3) The question specified in subsection (1) will not have been answered in favour of Constitutional Modernisation unless more than fifty per centum or more of those entitled under section 5 to vote in the referendum vote in the referendum in favour of the question.

5. The persons entitled to vote in the referendum are those who, on the day of the holding of the referendum, would be entitled to vote as electors at an election in an electoral district.

Entitlement to vote

6. (1) The functions which, in relation to an election, are conferred on the Supervisor or a Deputy Supervisor by any provision of the Elections Law shall, in relation to the referendum, be discharged by those officers respectively.

Conduct of elections

(2) The Supervisor shall, in addition to the functions conferred upon him by subsection (1), be responsible for conducting the count of votes cast in the referendum and for certifying the total of the ballot papers and the respective answers relating to the referendum.

(3) The Governor shall in writing appoint such persons as may be necessary -

- (a) as returning officers for the purpose of conducting the referendum in an electoral district;
- (b) to assist the Supervisor in conducting the count of votes cast in the referendum.

(4) Subject to subsection (5), the functions which in relation to an election are conferred respectively on returning officers, presiding officers, poll clerks, field officers and logistics officers by any provision of the Elections Law shall, in relation to the referendum, be discharged by those officers respectively.

(5) The returning officers shall assist the Supervisor in conducting the count of votes cast in the referendum, and certifying the total of the ballot papers and the respective answers relating to the referendum.

7. The Governor may, by instrument in writing, appoint persons to observe the conduct of the referendum, the verification of the ballot paper accounts and the counting of the votes.

Observers

- Legal challenge
8. (1) No court shall entertain any proceedings for questioning the number of ballot papers or votes cast in the referendum as certified by the Supervisor unless the proceedings are brought in accordance with this section.
- (2) The proceedings shall be brought by a claim for judicial review, filed in the Grand Court before the end of the permitted period.
- (3) In subsection (2), the “permitted period” means the period of six weeks starting with -
- (a) the date on which a certificate as to the matters mentioned in subsection (1) is given by the Supervisor; or
 - (b) if there is more than one such certificate, the date on which the last such certificate is given.
- Application of Elections Law (2004 Revision)
9. (1) For the purposes of the referendum, the votes of the persons voting shall be cast, and the proceedings shall be conducted, so far as may be as if the referendum were an election of members to the Legislative Assembly; and the Elections Law and any rules in force under that Law shall for those purposes be construed accordingly, but any reference to a candidate, nomination, agent, election agent, polling agent or counting agent shall, unless the context otherwise requires, be disregarded.
- (2) Without prejudice to subsection (1), the provisions of the Elections Law (2004 Revision) and the Election Rules (2004 Revision) specified in column 1 of Schedule 2 shall apply in connection with the referendum, subject to the modifications or exceptions specified in relation to those provisions in column 2 of that Schedule.
- (3) Unless the contrary intention appears, in this Law and in the provisions applied by this Law -
- (a) any reference to an election or poll shall be construed as a reference to the referendum;
 - (b) any reference to an electoral district shall be construed as a reference to the area for which the relevant returning officer acts;
 - (c) any reference to polling day shall be construed as a reference to the day fixed for holding the referendum; and
 - (d) any reference to a ballot paper shall be construed as a reference to the ballot paper to be used for the purpose of the referendum.
- Schedule 2
- (4) The Governor in Cabinet may by order amend Schedule 2.

10. All expenses properly incurred by, and all remuneration and travelling allowances payable to, officers under this Law shall be defrayed out of the general revenue of the Islands. Expenses of referendum

11. The Governor in Cabinet may by regulations - Regulations

- (a) make such provision as to the conduct of the referendum as may appear to him to be necessary or expedient; and
- (b) make such other provision, in relation to any other matter, as may appear to him to be necessary or expedient for the purpose of giving due effect to this Law.

SCHEDULE 1

(Section 4(2))

FORM OF BALLOT PAPER

BALLOT PAPER

NO. _____

REFERENDUM_____

Consecutive number given elector in poll book_____

(Counterfoil)

BALLOT PAPER

Polling day_____

No. _____ Initial of presiding officer

The Referendum Question is:

“Do you approve the Draft Constitution which was agreed by the Cayman Islands Constitution Delegation and the Government of the United Kingdom on 5th February, 2009 and tabled in the Legislative Assembly of the Cayman Islands on 11th February, 2009?”.

YES
NO

SCHEDULE 2

(Section 9(2))

PART 1

**APPLICATION AND MODIFICATION OF PROVISIONS OF THE
ELECTIONS LAW (2004 REVISION)**

Provision applied and subject matter	Modification
section 20 (Electors registration cards)	Omit
PART III (Registration of Political Parties)	Omit.
section 28 (Issue of writs for holding elections)	Omit and substitute - “28. (1) On the issue of the notice of the referendum under section 3(2) of the Referendum (Constitutional Modernisation) Law, 2009, the Supervisor shall by notice published in the Gazette appoint the polling stations for the holding of the referendum in an electoral district. (2) The places appointed for the holding of a referendum in an electoral district shall each be some convenient building or part of a building within, or in the opinion of the Supervisor conveniently near, the boundary of the electoral district concerned, not being a building licensed for the sale of intoxicating liquor.”.
section 29 (Nominations)	Omit and substitute -

“29. (1) The Supervisor shall -

- (a) establish one counting station for counting the votes cast in the referendum; and
- (b) give notice of the holding of the referendum, specifying in the notice -
 - (i) the day and time for the holding of the referendum;
 - (ii) the locations of the polling stations in an electoral district; and
 - (iii) the location of the counting station.

(2) A notice under subsection (1)(b) shall be published in the Gazette and in at least one newspaper circulating in the Islands.”.

section 30
(Offences in
respect of
nomination papers)

Omit.

section 31
(Withdrawal or
death of candidate)

Omit.

section 32
(Deposits)

Omit.

section 33
(When deposit
forfeited or
returned)

Omit.

section 34
(Contested
elections,
publication of date
and place, etc.)

Omit.

section 35
(Polling stations)

In subsection (1) omit the words “section 34(2) for the taking of the poll” and substitute the words “section 29(1)(b)(i) for the holding of the referendum”.

section 36 (Presiding officers)	In subsection (1) omit the words “candidate in or about the election” and substitute the words “political party in or about the referendum”.
section 40 (Polling and counting agent)	Omit and substitute - “40. An observer, on being admitted to a polling station, shall take an oath in Form 25 to keep secret the manner in which any of the electors has marked his ballot paper in his presence.”.
section 41 (Taking of poll and the ballot)	Omit subsection (2) and substitute - “ (2) The ballot of each elector shall be a printed paper in the form set out in Schedule 1 to the Referendum (Constitutional Modernisation) Law, 2009 and each ballot paper shall have a serial number printed on the back and shall have attached to it a counterfoil with the same serial number printed on the face and there shall be a line of perforations between the ballot paper and the counterfoil.”.
section 44 (Restriction on voting)	Omit.
section 45 (Proceedings at poll)	In subsection (1) omit the words “candidates, their agents,” and substitute the word “observers”. In subsection (4) omit the words “agent of a candidate” and substitute the word “observer”.
section 46 (Who are to be admitted within polling stations)	In subsection (2) omit the words “agents aforesaid” and substitute the words “observers”.
section 47 (General mode of taking ballot)	In subsection (3) omit the words “within the space to the right of the name of the candidate or each candidate for whom” and substitute the words “in the box to the left of each answer for which”.
section 48 (Questions which may be put to	In subsection (1) omit the words “a candidate or his agent” and substitute the words “an observer”.

elector)

section 49
(Mode of taking
ballot in special
cases)

Omit subsection (2)(a) to (c) and substitute –

- “(a) the name of such elector; and
- (b) a note of his having voted on a second ballot paper issued under the same name.”.

section 54
(Who may be
present)

Omit and substitute –

“54. The following persons shall be permitted to remain in the polling station during the time the poll remains open -

- (a) the presiding officer;
- (b) the poll clerk;
- (c) the Supervisor;
- (d) the Deputy Supervisors of Elections;
- (e) the returning officer of the electoral district;
- (f) the observers;
- (g) the constables in uniform on duty ; and
- (h) such field officers, logistics officers, emergency personnel and other persons as may be authorised in writing by the Supervisor.”.

section 55
(Proceedings at the
close of the poll)

In subsection (2) omit the words “candidate or agent” and substitute the word “observers”.

Omit subsection (3).

section 56
(The count)

Omit subsections (1) and (2) and substitute –

“ (1) Immediately after the close of the poll, the presiding officer shall -

- (a) seal the ballot box so as to prevent the introduction of additional ballot papers and shall turn over the box in its sealed condition to the returning officer; and
- (b) seal up in separate packets all -
 - (i) spoilt ballot papers in his possession; and
 - (ii) unused ballot papers in his possession,

and shall endorse on each packet a description of its contents and the name of the electoral district and deliver all the aforesaid packets so endorsed to the returning officer.

(1a) Upon receipt of a sealed ballot box from a returning officer under subsection (1), the Supervisor shall break the seal thereon in the presence of observers and of any other persons who are lawfully in the counting station at that time and place all the ballot papers therein contained in the appropriate ballot box which shall be provided, and in such box all the ballot papers removed from the ballot boxes for the electoral districts in the referendum shall be placed and mixed together for the purpose of being counted.

(2) When all the ballot boxes from all the polling stations have been received by the Supervisor and dealt with in accordance with subsection (1a), and not before, the Supervisor shall, in the presence of such of the observers as are present, or, if no observers are present, two electors -

- (a) record and count the number of votes (allowing the observers or, in the absence of the observers, the two electors present, full opportunity to see such votes but not the official number on the back of the ballot paper) and a poll clerk and not less than two witnesses shall be supplied with tally sheets upon which they may keep their own scores as each vote is called out by the returning officer; and
- (b) reject all ballot papers -
 - (i) which have not been marked; or
 - (ii) upon which there is any writing or mark by which the elector could be identified, but no ballot paper shall be rejected on account of any writing, number or mark placed thereon by any presiding officer.”.

In subsection (7) omit the words “candidates or their counting agents” and substitute the words “observers”.

In subsection (9) omit the words “candidate or his counting agent” and substitute the word “observer”.

In subsection (10) omit the words “given to each candidate” and substitute the words “for the respective answers relating to the referendum”.

Omit subsection (11) and substitute -

“ (11) Any of the observers, if not satisfied with the accuracy of the count of any segment of the count, may, on completion of the count of that segment, immediately demand a recount which shall thereupon be carried out in the same manner as the original count; but no observer may demand such a recount more than once in respect of any segment of the count.”.

Omit subsections (12) and (13).

section 58
(Influencing
electors to vote for
any candidate)

In subsection (1) omit the words “any elector to vote for any candidate or to ascertain for what candidate” and substitute the words “how any elector will vote or to ascertain the manner in which”.

section 59
(Election return)

Omit the section and substitute -

“59. (1) The Supervisor shall keep in safe custody -

- (a) the notice appointing a day for the holding of the referendum, with his return showing the answer declared to be mandated in accordance with section 56;
- (b) a report of his proceedings showing the number of votes cast for the respective answers relating to the referendum, and making such observation as he may think proper as to the state of the referendum papers as received from the presiding officer;
- (c) information relating to the number of persons to whom, it appears from the counterfoils, ballot papers have been

- supplied in the electoral district;
- (d) the reserve supply of undistributed blank ballot papers;
- (e) the poll book used at each polling station, a packet containing the counterfoils and unused ballot papers, a packet containing the used ballot papers (other than the rejected ballot papers), a packet containing the spoiled ballot papers, a packet containing the rejected ballot papers and a packet containing the official list of electors used at the polling stations, and the written appointments of the observers; and
- (f) all other documents used for the referendum.

(2) When the result of the poll has been ascertained the Supervisor shall forthwith publicly declare that result and shall subsequently by notice published in the Gazette, publish the result.”.

section 60
(Custody of
election
documents)

In subsections (1)(a), (3) and (5) omit the word “election” wherever it appears and substitute the word “referendum”.

Omit subsection (2) and substitute -

“ (2) If proceedings have been brought questioning the number of ballot papers or votes cast in a referendum, the Supervisor shall, on the order of the court, deliver to the court the documents relating to the referendum.”.

Omit subsection (4) and substitute -

“ (4) No such referendum documents in the custody of the Supervisor shall be inspected or produced except on the order of a Judge of the Grand Court; and an order under this subsection may be made by the Judge upon his being satisfied by evidence on oath that the inspection or production of such referendum documents is required for the purpose of instituting or maintaining a prosecution for an offence in relation to a referendum or for the purpose of proceedings which have been brought questioning the

number of ballot papers or votes cast in the referendum.”.

PART V
(Election
Expenses)

Omit.

section 72
(Regulation of
political
broadcasts)

Omit subsection (2) and substitute –

“ (2) The provisions of this Part shall, with the necessary changes being made, apply in respect of a referendum as they apply to an election.”.

PART VII
(Publication of
Statistical
Information)

Omit.

PART VIII
(Election Petitions)

Omit.

section 92
(Loudspeakers,
ensigns, banners,
advertisements,
etc., prohibited on
polling day)

In subsection (2) omit the words “candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate” and substitute the words “specific result at the referendum”.

In subsection (3)(a) omit the words “particular candidate or group of candidates” and substitute the words “specific result at the referendum”.

In subsection (3)(b) omit the words “candidate or group of candidates” and substitute the words “person, group or political party”.

Omit subsection (4).

section 93
(Definition of
bribery)

In subsection (1)(c) and (d) omit the words “the return of any person as an elected member of the Assembly, or the vote of any elector at any election” and substitute the words “a specific result at the referendum”.

Omit subsection (3)(a) and (c).

section 100
(Illegal practices)

Omit subsection (1)(b).

In subsection (1)(c) omit the words “called for the purpose

and penalties) of promoting the election of a candidate as a member to serve in the Assembly” and substitute “called in relation to the referendum”.

Omit subsection (1)(d) and substitute –

“(d) himself or as a director of any body or association corporate, before or during the referendum for the purpose of affecting the results of the referendum, makes or publishes any false statement of fact in relation to the referendum.”.

Form 21 in the Second Schedule (Oath of presiding officer) Omit and substitute –

“FORM 21

Section 36(2)

OATH OF PRESIDING OFFICER

I, _____ the undersigned, appointed presiding officer for the polling station at _____ in the _____ electoral district swear that I will act faithfully in my said capacity of presiding officer, according to law, without partiality, fear, favour or affection, and that I will keep secret the manner in which any of the electors in the above-mentioned polling station marks his ballot in my presence at this referendum.

SO HELP ME GOD.

Presiding Officer

Sworn before me at _____ this ____ day of _____, 2009.”.

Form 23 in the Second Schedule (Oath of poll clerk) Omit and substitute –

“FORM 23

Section 37(2)

OATH OF POLL CLERK

I, _____ the

undersigned, appointed poll clerk for the polling station at _____ in the _____ electoral district swear that I will act faithfully in my said capacity of poll clerk and also in that of presiding officer if required to act as such, according to law, without partiality, fear, favour or affection and that I will keep secret the manner in which any of the electors in the above-mentioned polling station marks his ballot in my presence at this referendum.

SO HELP ME GOD.

Poll Clerk

Sworn before me at _____ this ____ day of _____, 2009.”.

Form 24 in the Second Schedule (Direction for the guidance of electors)

Omit and substitute –

“FORM 24

Section 39(2)(e)

DIRECTION FOR THE GUIDANCE OF ELECTORS

1. An elector must not vote at more than one polling station.
2. An elector may vote for 1 answer only. If the elector votes for more than 1 answer the ballot paper is void and none of the votes will be counted.
3. An elector votes for an answer by placing an **X** to the right of the answer, thus

YES	X
NO	

4. If an elector marks the ballot paper in any way that will identify the elector the ballot paper will be rejected.
5. After voting, an elector must fold the ballot paper along the line shown on the ballot paper and hand the folded ballot paper to the presiding officer.

6. The presiding officer will, in the full view of those present including the elector, remove the counterfoil from the ballot paper and return the ballot paper to the elector who will deposit the ballot paper in the ballot box; except that where the elector is unable from physical or other disability to deposit the ballot paper in the ballot box, the presiding officer will, on the elector's behalf, deposit the ballot paper in the ballot box.

7. If an elector inadvertently spoils a ballot paper he or she can obtain another one by returning the spoiled one to the presiding officer.

8. A person given a ballot paper must not take it from the polling station.

9. After voting an elector must leave the polling station.”.

Form 25 in the
Second Schedule
(Oath of agent of a
candidate)

Omit and substitute –

“FORM 25

Section 40

OATH OF AN OBSERVER

I _____ the undersigned,
observer in the referendum held on this day in the
_____ electoral district do
swear that I will keep secret the manner in which any
elector at this polling station marks his ballot paper in my
presence at this referendum.

SO HELP ME GOD.

Signature

Sworn before me at _____ this _____
day of _____ 2009.”.

Form 30 in the
Second Schedule
(Oath that the
elector is the
person intended to
be referred to in the
official list of
electors)

Omit and substitute –

“FORM 30

Section 53(1)

**OATH THAT THE ELECTOR IS THE PERSON
INTENDED TO BE REFERRED TO IN THE
OFFICIAL LIST OF ELECTORS**

You swear that you are qualified to vote at this referendum
and you are not disqualified from voting thereat and that
you verily believe that you are the person intended to be
referred to by the entry in the official List of Electors used
at the polling station, of the name
_____ whose occupation is
given as _____ and
whose street address is given as

SO HELP YOU GOD”.

PART 2

**APPLICATION AND MODIFICATION OF PROVISIONS OF THE
ELECTIONS RULES (2004 REVISION)**

rule 3
(Application to be
treated as absent
elector)

In the proviso to paragraph (1) omit the words “, not being
a candidate for election or the agent of such a candidate”.
Omit paragraph (6).

rule 8
(Form of
declaration of
identity)

Omit paragraphs (2) and (3).

rule 9
(Persons entitled to

Omit and substitute –
“9. No person other than the returning officer, his clerk

be present at the issue and receipt of postal ballot papers) and observers may be present at the proceedings on the issue or receipt of postal ballot papers.”.

rule 11
(Notice of issue of postal ballot papers) Omit.

rule 25
(Ballot paper for by-election) Omit.

Passed by the Legislative Assembly the day of , 2009.

Speaker.

Clerk of the Legislative Assembly.