

CAYMAN ISLANDS



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**A BILL FOR A LAW TO EMPOWER THE ATTORNEY GENERAL TO
REFER CONSTITUTIONAL AND OTHER QUESTIONS TO THE
COURT OF APPEAL; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

**THE ATTORNEY GENERAL'S REFERENCE OF QUESTIONS BILL,
2012**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make provision for Constitutional and other questions to be referred to the Court of Appeal, by the Attorney General with the approval of the Governor in Cabinet.

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 defines various terms for the purposes of the legislation.

Clause 3 empowers the Attorney General, with the approval of the Governor in Cabinet, to refer Constitutional and other questions of law or fact to the Court of Appeal for its opinion.

Clause 4 empowers the Court, in considering referred questions, to hear arguments from the Attorney General as well as from interested persons and then certify to the Attorney General its opinion on each question, giving reasons for each answer.

Clause 5 enables interested persons to be notified of the hearing on a reference made under the legislation.

Clause 6 enables the appointment of counsel to argue the case of a referred question with respect to any interest that is affected, if no other counsel appears in respect of that interest.

Clause 7 provides for the making of rules of procedure for the purposes of a referral of a question.

Clause 8 is a savings provision and makes it clear that the powers conferred by the legislation do not limit the powers exercisable by the Court of Appeal under other Laws.

**THE ATTORNEY GENERAL'S REFERENCE OF QUESTIONS BILL,
2012**

ARRANGEMENT OF CLAUSES

1. Short title
2. Interpretation
3. Reference to Court of Appeal
4. Opinion of Court
5. Notice to interested persons
6. Appointment of counsel by Court
7. Rules
8. Savings

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Attorney General's Reference of Questions Law, 2012. Short title

2. In this Law - Interpretation
 - “Constitution” means the Cayman Islands Constitution Order 2009; U.K. S.I. 2009/1379

 - “counsel” means a person whose name is enrolled on the Court Roll of attorneys-at-law in the Islands; and

 - “Court” means the Court of Appeal.

3. The Attorney General may, with the approval of the Governor in Cabinet, refer to the Court for hearing and consideration, any question of law or fact concerning - Reference to Court of Appeal
 - (a) the interpretation of the Constitution;
 - (b) the constitutionality or interpretation of any Law; or

- (c) any other matter that the Attorney General thinks fit, whether or not that other matter is in the opinion of the Court similar to the matters set out in paragraphs (a) and (b).

Opinion of Court

4. (1) Where a reference is made to the Court under section 3, the Court shall -

- (a) hear and consider the reference;
- (b) answer each question so referred; and
- (c) certify to the Attorney General its opinion on each question, with the reasons for each answer;

and the opinion shall be pronounced in like manner as in the case of a judgment on appeal to the Court.

(2) For the purpose of considering a question referred to the Court under this Law, the Court shall hear argument -

- (a) by the Attorney General or by a person appearing on his behalf; and
- (b) by any person interested or by counsel acting on behalf of that person.

Notice to interested persons

5. (1) The Court may direct that any person interested or, where there is a class of persons interested, any one or more persons as representatives of that class, shall be notified of the hearing on a reference made under this Law and those persons are entitled to be heard.

(2) The Court, where a person is to be notified under subsection (1), may direct that a copy of the reference be served on -

- (a) the interested person; or
- (b) counsel acting on behalf of the interested person.

Appointment of counsel by Court

6. The Court may, in its discretion, request any counsel to argue the case with respect to any interest that is affected and with respect to which counsel does not appear, and the reasonable expenses thereby occasioned shall be paid out of the general revenue.

Rules

7. (1) The Rules Committee of the Court may make Rules regulating all matters of practice and procedure for the proper exercise of the jurisdiction and powers conferred on the Court by this Law.

(2) Without prejudice to the generality of the power conferred by subsection (1), such Rules may provide for any matter of procedure on a referral

of a question under section 3 and the forms to be used and the fees to be paid in respect of the referral.

8. The provisions of this Law do not derogate from the powers of the Court ^{Savings} under any other Law.

Passed by the Legislative Assembly the day of , 2012.

Speaker.

Clerk of the Legislative Assembly.