

CAYMAN ISLANDS



Supplement No. 2 published with Gazette No. 82
dated 30 November, 2010

**A BILL FOR A LAW TO PROVIDE A REGIME FOR THE
PRIVATISATION OF WASTEWATER COLLECTION, CONVEYANCE
AND TREATMENT; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE WASTEWATER COLLECTION AND TREATMENT BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

Clause 1 provides the short title.

Clause 2 specifies that the Law will apply to the Islands as a whole or to only such parts as the Governor in Cabinet may declare by notice in the Gazette.

Clause 3 sets out the definitions.

Clause 4 empowers the Governor in Cabinet to issue concessions for the purpose of wastewater collection, conveyance and treatment. In so doing, the Governor in Cabinet shall seek the advice of the Water Authority. Concessionaires will have to obtain a licence to deal with the details of exercising the rights under a concession.

Clause 5 provides that once a concession is granted, the concessionaire will be deemed to hold a franchise under the Local Companies (Control) Law (2007 Revision) and will not need a trade and business licence under the Trade and Business Licensing Law (2007 Revision).

Clause 6 protects works installed on private premises from being subject to distress or any other landlord's remedy for non-payment of rent.

Clause 7 provides, among other things, that a concessionaire may interrupt the collection, conveyance or treatment of wastewater by reason of any unusual or unforeseen circumstances.

Clause 8 provides for cases where a consumer defaults in payment or does anything that is harmful to the works. This clause specifies what the concessionaire may do, which includes cutting off the service and recovering any expenses that he may incur as a result.

Clause 9 provides for the appointment, by the concessionaire, of inspectors and for related matters.

Clause 10 provides for the concessionaire's powers and limits of those powers in relation to entry on premises for the purpose of installing, improving or maintaining any works.

Clause 11 provides for the right of a concessionaire to apply to a summary court for an order allowing him to make such adjustments to private installations as

may be necessary to ensure that those private installations do not interfere with the wastewater system.

Clause 12 provides for the establishment of the Compensation Assessment Tribunal. Its function is to make awards in relation to any claims for compensation which may become necessary due to the collection, conveyance or treatment of wastewater under the Law.

Clause 13 provides for the power of the Attorney General to seek damages in the case of injury to public amenities.

Clause 14 makes it mandatory for all buildings to be connected to a wastewater system.

Clause 15 empowers the Governor in Cabinet to make regulations.

Clause 16 provides for offences and penalties.

THE WASTEWATER COLLECTION AND TREATMENT BILL, 2010

ARRANGEMENT OF CLAUSES

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**A BILL FOR A LAW TO PROVIDE A REGIME FOR THE
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AND TREATMENT; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Wastewater Collection and Treatment Bill, 2010. Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet.

2. In this Law - Interpretation

“Authority” means the Water Authority established under the Water Authority Law (1996 Revision); (1996 Revision)

“concession” means any instrument whereby the Governor in Cabinet grants a right or privilege enabling a person to collect, convey and treat wastewater under this Law;

“concessionaire” means a person to whom a concession has been granted under this Law;

“domestic wastewater” means any waste substance, liquid or solid, associated with human habitation, or which contains or may be contaminated with human or animal excrete or offal;

“licence” means a licence issued by the Authority containing the terms and conditions upon which a concession shall be exercised;

“trade effluent” means any liquid, either with or without particles, or matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, and includes a reference to all waste in a liquid, solid or gaseous state, but does not include domestic wastewater;

“wastewater” means domestic wastewater or trade effluent, or both, from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface runoff or leachate that may be present;

“wastewater system” means the operative method whereby the collection, conveyance and treatment of wastewater is effected; and

“works” means -

- (a) mechanical, electrical and other equipment; and
- (b) civil engineering works or plant including appurtenances,

which are constructed for or in connection with the collection, conveyance and treatment of wastewater.

Application

3. This Law shall apply to the whole of the Islands or to such part or parts thereof as the Governor in Cabinet may, from time to time, declare by notice published in the Gazette.

Governor in Cabinet
may grant concessions

4. (1) Subject to subsections (3) and (4), the Governor in Cabinet may grant concessions under this Law.

(2) Before the Governor in Cabinet may grant any concession under subsection (1) he shall seek the advice of the Water Authority which shall advise him pursuant to all the powers for the time being in force in relation to advice relating to wastewater.

(3) All concessions shall be exercised in accordance with the terms and conditions contained in a licence issued by the Authority, which may include

such matters as geographical area, means of collection and treatment, volume, pressure, hygiene, charges, fees, inspection, reporting and accounting, power of acquisition by the Government, cancellation, suspension and such other matters as the Authority may determine.

(4) A concession granted under this Law shall not be exercised until a licence has been issued.

5. A concessionaire under this Law is deemed to be the holder of a franchise for the purpose of section 4(1)(d) of the Local Companies (Control) Law (2007 Revision), and is exempt from obtaining a trade and business licence under the Trade and Business Licensing Law (2007 Revision).

Application of other
licensing legislation
(2007 Revision)
(2007 Revision)

6. Where a concessionaire places or installs works upon any private premises, such works are not subject to distress or any other landlord's remedy for non-payment of any rent nor are they liable to be taken in execution by any process of any court against any person other than the concessionaire.

Protection of
concessionaires from
distress, etc.

7. A concessionaire may collect, convey and treat wastewater from any person, but a concessionaire may, subject to the terms of his concession but notwithstanding any other agreement to the contrary, without incurring any liability for so doing other than to make a proportionate abatement in any agreed charge or rate, temporarily interrupt the service if, by reason of any unusual or unforeseen circumstances, he is of the opinion that maintenance of a full service would be onerous.

Collection, conveyance
and treatment of
wastewater

8. Where any person otherwise entitled to the collection, conveyance and treatment of wastewater from a concessionaire makes default in any payment due under such agreement or throws, empties, turns or suffers or permits to be thrown, emptied or passed into any parts of the works under the control of the concessionaire -

Collection, conveyance
and treatment of
wastewater from
defaulters may be cut off
while default continues

- (a) any matter likely to injure the works, to interfere with the free flow of its contents or to prejudicially affect the treatment and disposal of its contents;
- (b) any chemical refuse, chemical, acid, petrol or any inflammable liquid; or
- (c) any surface water run-off,

the concessionaire may cut off and discontinue such service using any reasonable means in that behalf until the amount due, together with any incidental expenses incurred to the concessionaire have been paid, whereupon the service shall be restored without unnecessary delay.

Inspection, etc., of
supplied premises

9. A concessionaire may, from time to time, appoint inspectors who shall wear or carry such means of identification, if any, as may be prescribed, and such inspectors may, at all reasonable times, enter any supplied premises with necessary workmen, machinery and equipment to examine, remove, repair or adjust any works of the concessionaire and the concessionaire shall restore or give compensation for any damage caused by his own default or that of his inspectors or workmen in so doing.

Concessionaire's powers
of entry, etc.

10. For the purpose of initiating or maintaining a system of collecting, conveying and treating wastewater from the public, the concessionaire may, on giving to occupiers seven days' notice in that behalf, or without such notice in any case of emergency, enter upon any enclosed or other premises other than buildings for the purpose of installing, improving or maintaining any works, but -

- (a) a concessionaire shall not thereby acquire any right over any land other than for the purpose of service in accordance with its concession and in terms of compensation to occupiers for any consequential nuisance or damage;
- (b) in case of serious risk of flooding, a concessionaire may enter without notice upon any building accompanied, if practicable, by a constable; and
- (c) where a nuisance or damage is caused to any person by reason of any action of a concessionaire (including any of his servants) taken under this section and compensation cannot be agreed, any question of the quantum of compensation shall be referred, by any of the parties involved, to the Compensation Assessment Tribunal referred to in section 12.

Interference by private
installations

11. Where any private installation or works interferes or appears calculated to interfere with a wastewater system, a summary court may, upon the application of the concessionaire in that behalf and after hearing any party who would or might thereby be affected, make an order empowering the concessionaire to make such alteration or adjustment of such private installation as to the court appears just upon such terms as to compensation, if any, as appears just, and in hearing and determining such application the court shall, as nearly as may be, follow its usual procedure in civil cases.

Compensation
Assessment Tribunal

12. (1) There shall be a Compensation Assessment Tribunal whose function shall be to assess and award compensation claimed as a result of the collection, conveyance and treatment of wastewater under this Law.

(2) The Tribunal shall comprise-

- (a) one person qualified to practise law in the Cayman Islands;

- (b) one person with technical knowledge of the wastewater industry;
and
- (c) one member of the public.

(3) Except for rules of procedure relating to appeals referred to in subsection (6), the establishment, tenure and other matters relating to the operation of the Tribunal shall be determined by Order made by the Governor in Cabinet.

(4) A decision of the Tribunal may be appealed to the Grand Court on a point of law.

(5) Awards made under this section shall be enforced as if they were awards made by the Grand Court.

(6) The Chief Justice may make rules relating to appeals made under this section.

13. (1) Subject to subsection (2), all buildings within the area to which the concessionaire's wastewater system extends shall be connected to it.

All buildings to be
connected to wastewater
system

(2) On failure or neglect by the owner of any new or reconstructed building to connect it to the concessionaire's wastewater system, the concessionaire may enter into the building at any reasonable time and connect the same, and the expense thereof shall become a debt due from the owner to the concessionaire and a charge upon the building and, in addition, the owner commits an offence and is liable on summary conviction to a fine of one thousand five hundred dollars and to imprisonment for six months.

14. The Attorney General may on behalf of the public claim damages for pollution or other injury to public amenities arising from the collection, conveyance and treatment of wastewater.

Damages for injury to
public amenities

15. The Governor in Cabinet may make regulations for carrying this Law into effect and, without prejudice to the generality of this provision, prescribing -

Regulations

- (a) the health and safety standards and precautions in relation to the collection, conveyance and treatment of wastewater;
- (b) the rates of compensation for damage to members of the public arising from the collection, conveyance and treatment of wastewater;
- (c) the establishment, management and payment of compensation for wayleaves;
- (d) the procedure for applications for, and granting of, concessions;

- (e) the terms and conditions upon and subject to which a concession shall or may be granted;
- (f) penalties for contravention of such regulations;
- (g) fees to be paid for anything done under this Law; and
- (h) any matters required by this Law to be prescribed.

Offences and penalties

16. (1) Any person who -

- (a) subject to subsection (2) -
 - (i) operates a wastewater system with the intention of collecting, conveying or treating wastewater, except under a concession granted under this Law; or
 - (ii) collects, conveys and treats wastewater, except under a concession granted under this Law;
- (b) contravenes any provision of this Law or the terms and conditions of the licence; or
- (c) for any purpose connected with this Law makes any statement or representation in the truth of which he does not believe, proof of his belief being upon him,

commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for one year, and, in the case of a continuing offence, in addition, a fine of five hundred dollars per day for each day the offence continues after conviction in the first instance.

(2) Paragraph (a) of subsection (1) has no application to -

- (a) the collection, conveyance or treatment of wastewater by the Government, the armed forces of Her Majesty, the police or fire services, or any statutory body or Government agent;
- (b) wastewater collected on private residential property and appropriately treated thereon;
- (c) wastewater collected and treated by the management of condominiums, apartment complexes, multi-family dwellings, hotels or any other commercial enterprise, for the benefit of their premises by residents therein; and
- (d) persons specifically exempted by the Governor in Cabinet by Order published in the Gazette,

but paragraphs (b) and (c) shall not apply where a concessionaire's wastewater system is readily accessible for connection thereto, and the concessionaire has required, by notice in writing, the owner or occupier to connect the premises to the concessionaire's wastewater system.

(3) Any person who -

- (a) unlawfully and maliciously destroys or does damage to any wastewater system or works, including the disposal into the works of any matter likely to injure the works, to interfere with the free flow of its contents or to prejudicially affect the treatment and disposal of its contents;
- (b) with intent to defraud, connects any premises to the wastewater system or works without the concessionaire's consent in writing;
- (c) obstructs the execution of any works or any employee of a concessionaire while engaged in his duties as such; or
- (d) aids or abets, or having control of any person, permits such person to contravene paragraph (a), (b) or (c),

commits an offence and in the case of an offence against paragraph (a) is liable upon conviction upon indictment to a fine of fifteen thousand dollars and to imprisonment for five years, or upon summary conviction to a fine of three thousand dollars and to imprisonment for one year, and in the case of an offence against paragraph (b) or (c) or of any other contravention of this Law is liable upon summary conviction to a fine of three thousand dollars and to imprisonment for one year and, in the case of an offence against paragraph (b), liable to an additional fine of one hundred dollars for each day the offence is continued; and the court may, in addition to any other penalty, order the convicted person to pay such compensation to the concessionaire or to any other person who has suffered consequential damage as to it appears just.

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.