CAYMAN ISLANDS

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COMPLAINTS (MALADMINISTRATION) LAW

(2018 Revision)

Law 18 of 2003 consolidated with Law 29 of 2005, 19 of 2012 and 26 of 2017.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted -

Law 18 of 2003-1st October, 2003
Law 29 of 2005-9th November, 2005
Law 19 of 2012-31st August, 2012
Law 26 of 2017-27th March, 2017.

Consolidated and revised this 28th day of February, 2018.

Note (not forming part of the Law): This revision replaces the Complaints Commissioner Law (2014 Revision) which should now be discarded.

COMPLAINTS (MALADMINISTRATION) LAW

(2018 Revision)

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COMPLAINTS (MALADMINISTRATION) LAW

(2018 Revision)

Short title

1. This Law may be cited as the Complaints (Maladministration) Law (2018 Revision).

Definitions

2. (1) In this Law -

"complaint" means a complaint made under this Law;

"government entity" includes a government Ministry, government company, government department, government portfolio, statutory board or authority;

"government company" means-

(a) a company in which the Government has a controlling interest; and

(b) in respect of each such company, includes all subsidiary entities of the company;

"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 31 of Schedule 2 to the Cayman Islands Constitution Order 2009, and to the extent to which a Deputy appointed under section 34 of Schedule 2 to the Cayman Islands Constitution Order 2009 is authorised to act, that Deputy; U.K.S.I. 2009/1379

"investigation" means an investigation under this Law;

"maladministration" means inefficient, bad or improper administration and includes-

(a) unreasonable conduct including delay;

(b) abuse of any power (including any discretionary power) or authority including any action which -

(i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) was based wholly or partly on a mistake of law or fact; and

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

"Ombudsman" means the person appointed by the Governor under section 3 of the Ombudsman Law, 2017; Law 23 of 2017

"person" includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons;

"person aggrieved" means the person who claims or is alleged to have sustained an injustice in consequence of maladministration in connection with any action taken by any government entity to which this Law applies; and

"prescribed" means prescribed by regulations made under this Law.

(2) Nothing in this Law authorises or requires the Ombudsman to question the merits of a decision taken without maladministration by a government entity in the exercise of a discretion vested in that government entity.

(3) A complaint under this Law shall not be made in respect of matters which arose before the 15th December, 2003.

Repealed

3. *Repealed by section 4 of the Complaints Commissioner (Amendment) Law, 2017 (Law 26 of 2017).*

Repealed

4. *Repealed by section 4 of the Complaints Commissioner (Amendment) Law, 2017(Law 26 of 2017).*

Repealed

5. *Repealed by section 4 of the Complaints Commissioner (Amendment) Law, 2017(Law 26 of 2017).*

Repealed

6. *Repealed by section 4 of the Complaints Commissioner (Amendment) Law, 2017 (Law 26 of 2017).*

Repealed

7. *Repealed by section 4 of the Complaints Commissioner (Amendment) Law, 2017(Law 26 of 2017).*

Appointment of mediators

8. (1) The Ombudsman may, from time to time, appoint-

(a) mediators for the purposes of section 12; and
(b) professional or technical advisers to assist him in the performance of his functions.

(2) Persons appointed under subsection (1) shall be paid such fees as the Cabinet may approve.

Government entities subject to investigation

9. (1) Subject as herein, this Law applies to all government entities.

(2) Any reference herein to a government entity to which this Law applies includes a reference to the Ministers, members or public officers of that government entity.

Powers of investigation

10. (1) The purpose of an investigation by the Ombudsman shall be to ascertain whether injustice has been caused by improper, unreasonable or

inadequate administrative conduct on the part of any government entity subject to this Law.

(2) In investigating any matter leading to, resulting from or connected with a decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(3) The Ombudsman may investigate any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the government not being functions concerned with any action or matter set out in Schedule 2.

(4) The Cabinet may, by notice published in the Gazette, amend Schedule 2 so as to exclude from that Schedule such actions and matters as may be described in the notice.

(5) An investigation by the Ombudsman shall not be prevented by any enactment other than the Constitution to the effect, howsoever expressed, that any matter or thing shall be final and conclusive or shall not be disputed, reviewed or called in question.

Conditions of investigation

11. (1) The Ombudsman shall not make an investigation without first receiving a written complaint unless he is of the opinion or the Legislative Assembly resolves that there are reasons of special importance which makes investigation by the Ombudsman desirable in the public interest.

(2) Except as provided herein, the Ombudsman shall not conduct an investigation in respect of -

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law; or
(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

(3) Notwithstanding subsection (2), the Ombudsman may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

(4) In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to subsections (1) to (3), act in accordance with his own discretion and any question whether a complaint is duly made shall be determined by the Ombudsman.

(5) The Ombudsman may refuse to investigate any matter on the ground that it is trivial, that the complaint is frivolous or vexatious or not made in good faith or that the complainant has not a sufficient interest therein.

(6) If any question arises whether the Ombudsman is empowered to make an investigation or to exercise any power under this Law, the Ombudsman may, if he thinks fit, apply to the Grand Court, which may determine the question by declaratory order.

Dealing with complaints by mediation

12. (1) The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves only minor maladministration.

(2) The Ombudsman shall appoint, in accordance with section 8, such person as he thinks fit to be a mediator in any mediation.

(3) The Ombudsman shall not participate in any mediation.

(4) Participation in the mediation by the complainant and the relevant government entity is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) Where an attempt to deal with a complaint by mediation under this section is unsuccessful-

(a) the complainant is to be treated as if the mediation had not taken place; and
(b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during mediation and any document prepared for the purposes of such mediation shall not be admissible in evidence-

(a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing or to whom the document relates consents to its admission; or
(b) against any person in any court, at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.

Provisions relating to complaints

13. (1) A complaint may be made by any person but not a person who is -

(a) a body constituted for purposes of the public service or of government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or

(b) any other authority or body whose members are appointed by the Government or by a government entity, or whose revenues consist wholly or mainly of moneys provided by Government.

(2) Where the person by whom a complaint might have been made has died or is for any reason unable to act for himself, the complaint may be made by the personal representative of his estate or by a member of his family or other individual suitable to represent him, but except as provided in this Law a complaint shall not be entertained unless made by the person aggrieved himself.

(3) A complaint shall not be entertained unless it is properly made not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but the Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

(4) A complaint shall not be entertained unless the person aggrieved is ordinarily resident in the Islands (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the Islands on a ship or aircraft registered in the Islands, or in relation to rights or obligations which accrued or arose in the Islands or on such ship or aircraft.

(5) A written complaint by any person shall set out in detail the circumstances which allegedly gave rise to the complaint.

Procedure in respect of investigation

14. (1) Where the Ombudsman proposes to conduct an investigation pursuant to a complaint he shall afford to the principal officer of the government entity concerned, and to any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.

(2) Every such investigation shall be conducted in private, but except as herein provided the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and in particular the Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by his attorney-at-law or otherwise, in the investigation.

(3) No person shall be entitled as of right to be consulted or heard by the Ombudsman except in the manner provided herein.

(4) The Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Law -

(a) sums in respect of expenses properly incurred by them; or
(b) allowances by way of compensation for the loss of their time,

in such amounts and subject to such conditions as may be prescribed.

(5) The conduct of an investigation shall not affect any action taken by the government entity concerned, or any power or duty of that government entity, to take further action with respect to any matters subject to the investigation; but where the person aggrieved has been removed from the Islands under the Immigration Law (2015 Revision) or other enabling legislation he shall, if the Ombudsman so directs, be permitted to re-enter and remain in the Islands, subject to such conditions as the Governor may direct, for the purposes of the investigation.

2015 Revision

Evidence

15. (1) For the purposes of an investigation, the Ombudsman may require any Minister, officer or member of the government entity concerned, or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) Subject as herein, for the purposes of any such investigation the Ombudsman shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) Subject to a specific declaration to the contrary by the Governor acting in his discretion, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Government service, whether imposed by any law or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Law; and subject as aforesaid, Government shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence to the Ombudsman as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this Law to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of Cabinet or to produce so much of any document

as relates to such proceedings, and for the purposes of this subsection a certificate issued by the Governor and certifying that any information, question, document or part of a document so relates shall be conclusive.

(5) Subject to subsection (3), no person shall be compelled for the purposes of an investigation under this Law to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Grand Court.

(6) The Governor shall not be compelled for the purposes of an investigation under this Law to give any evidence before the Ombudsman.

(7) Subject to this section, no information, answer, documents or thing shall be withheld from the Ombudsman on the ground that its disclosure would be contrary to the public interest.

Provision for secrecy of information

16. (1) Information obtained by the Ombudsman or his officers in the course of or for the purposes of an investigation shall not be disclosed except -

(a) for the purposes of the investigation and of any report to be made on the investigation;
(b) for the purposes of proceedings (or possible proceedings) for an offence of perjury connected with an investigation; or
(c) for the purposes of any proceedings under section 15,

and the Ombudsman and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation.

(2) The Governor, acting in his discretion, may give notice in writing to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Governor, acting in his discretion, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the Islands or otherwise contrary to the public interest; and where such a notice is given nothing herein shall be construed as authorising or requiring the Ombudsman or any of his officers to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

Obstruction and contempt

17. (1) If any person, without lawful excuse, obstructs the Ombudsman or any of his officers in the performance of his functions, or is guilty of any act or omission in relation to any investigation under this Law which, if that investigation were a proceeding in the Grand Court, would constitute contempt of court, the Ombudsman may certify the offence to the Grand Court.

(2) Where an offence is certified under this section, the Grand Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the Grand Court could deal with him if he had committed a contempt of the court.

Procedure after investigation

18. (1) After conducting an investigation, the Ombudsman shall inform the principal officer of the government entity concerned of the result of that investigation, and if the Ombudsman is of the opinion that the person aggrieved has sustained injustice in consequence of a fault in the administration of that government entity, he shall inform such officer of the reason for that opinion and may, if he thinks fit, make recommendations for action to be taken by the government entity, as the case may be, within a specified time.

(2) Recommendations made by the Ombudsman under subsection (1) may include all or any of the following -

(a) that the action which was the subject matter of the complaint be reviewed;
(b) that an enactment, rule or regulation which causes or may cause injustice, be altered; or
(c) that compensation be made to the person aggrieved.

(3) Where the Ombudsman has made a recommendation under subsection (1) and, within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a special report on the case.

(4) The Ombudsman, prior to laying a special report under subsection (3), shall provide the Governor with a copy of such report.

(5) The Ombudsman shall not, in any report under subsection (3), comment adversely on any person unless he has given that person an opportunity to be heard.

(6) Where the Ombudsman is of the opinion that -

(a) the person aggrieved has sustained any such injustice as is mentioned herein**,** he shall inform that person of his opinion, the nature of the injustice sustained and the recommendation, if any, which has been made to remedy the injustice, and may make any comments in relation to the case as he thinks fit; and
(b) the person aggrieved has suffered no injustice, he shall inform that person of that opinion and the reasons therefor and may make such comments in relation to the case as he thinks fit.

(7) Where the Ombudsman makes an investigation on his own initiative or pursuant to a resolution of the Legislative Assembly he shall make a report thereupon to the Legislative Assembly.

Disciplinary actions against officers

19. If the Ombudsman finds, during the conduct of his investigations or on conclusion of such investigations, that there is evidence of a breach of duty, misconduct or a criminal offence on the part of an officer of any government entity, he shall refer the matter to the person or body of persons competent to take such disciplinary or other proceeding as may be appropriate against that officer and in all such cases shall lay a special report before the Legislative Assembly.

Reports by Ombudsman

20. (1) The Ombudsman shall annually lay before the Legislative Assembly, a general report on the performance of his functions and may, from time to time, lay before the Legislative Assembly such other reports with respect to those functions as he thinks fit.

(2) The Ombudsman may lay before the Legislative Assembly reports on the inequitable or unreasonable nature or operation of any enactment or rule of law.

Appeals restricted

21. No proceeding of the Ombudsman may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman conducted or taken in good faith is liable to be challenged, reviewed, quashed or called in question in any court.

Privileged communications

22. For the purposes of the law of defamation -

(a) any communications made by or to the Ombudsman for the purposes of a complaint or investigation shall be privileged in the same manner as if it were made in the course of proceedings in the Grand Court;

(b) any report of the Ombudsman shall be deemed to be authorised to be published by the Legislative Assembly; and

(c) any communication between the Ombudsman and a member of the Legislative Assembly and the Speaker of the Legislative Assembly for the purposes of the Ombudsman's functions shall be deemed to be a proceeding of the Legislative Assembly.

Regulations

23. (1) The Cabinet may make regulations for the administration of this Law and for prescribing anything required to be prescribed under this Law.

(2) Regulations shall be subject to affirmative resolution.

Expenses

24. All expenses incurred by the Ombudsman in connection with his functions shall be defrayed out of moneys voted for the purpose by the Legislative Assembly.

Transitional provisions

25. (1) On the operative date, the post of Complaints Commissioner is abolished and the assets, liabilities, property and contracts of the office of the Complaints Commissioner, together with all functions and powers required to ensure the effectiveness and continuity of regulation, are transferred to the Ombudsman.

2014 Revision

(2) Every matter commenced under the Complaints Commissioner Law (2014 Revision) and partly dealt with by the Complaints Commissioner on the operative date, is to be continued and dealt with in all respects under this Law and the provisions of this Law are to apply accordingly.

(3) Regulations which relate to the functions or powers of the Complaints Commissioner and which are in force on the day preceding the operative date, shall continue to apply to the Ombudsman on and after the operative date, with all necessary changes being made, as if made under this Law.

(4) On and after the operative date, a reference to the Complaints Commissioner in any other Law or in any document shall be read and construed as a reference to the Ombudsman.

2014 Revision

(5) All things lawfully made or done under the Complaints Commissioner Law (2014 Revision) shall continue in force on and after the operative date and shall be deemed to have been made or done under this Law.

(6) In this section -

2014 Revision

"Complaints Commissioner" means the person appointed as such under section 3 of the Complaints Commissioner Law (2014 Revision);

"this Law" means the Complaints (Maladministration) Law (2018 Revision);

Law 23 of 2017

"Ombudsman" means the person appointed by the Governor under section 3 of the Ombudsman Law, 2017; and

Law 26 of 2017

"operative date" means the 17th January, 2018, the date of commencement of the Complaints Commissioner (Amendment) Law, 2017.

SCHEDULE

(section 9)

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Governor to affect relations or dealings between the Government of the Islands and any other Government or any international organisation of States or Governments.

2. Action taken in matters certified by the Governor to affect defence, external affairs or internal security.

3. Action taken by or with the authority of the Director of Public Prosecutions, the Commissioner of Police, the Chief Immigration Officer or the Collector of Customs for the purposes of investigating crime or of protecting the security of the Islands, including action so taken with respect to passports.

4. Action taken in connection with the Governor's power of pardon under section 39 of the Constitution.

5. The commencement or conduct of civil or criminal proceedings before any court of law in the Islands.

6. Action taken in respect of appointments or removals, pay, discipline, or other personal matters in relation to-

    (a) service in any office or employment under the Government; or
    (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in the Government.

7. Action taken by the Director of Public Prosecutions in connection with the exercise or possible exercise of his power under the Constitution to institute, undertake, take over, continue or discontinue criminal proceedings before any court of law in the Islands.

8. Legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions to the Government or to any public body.

9. Action taken by the Auditor General in connection with the exercise or possible exercise of his power under the constitution or otherwise.

10. Action taken by the appropriate authority in connection with the exercise or possible exercise of the authority's power under any Mutual Legal Assistance arrangement, including extradition.

11. Action taken in matters relating to contractual or other commercial transactions, being transactions of a Ministry, department or statutory authority not being transactions relating to-

    (a) the acquisition of land compulsorily or in circumstances in which it can be acquired compulsorily; or
    (b) the disposal of surplus land acquired compulsorily or in circumstances in which it could be acquired compulsorily.

12. Any action which, by virtue of the Constitution, may not be enquired into by any court.

13. Any judicial function not specifically excluded by paragraphs 1 to 12.

Publication in consolidated and revised form authorised by the Cabinet this 13th day of March, 2018.

Kim Bullings

Clerk of the Cabinet

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