



Guide to Civil & Commercial Litigation in the Cayman Islands

HIGGS & JOHNSON
Counsel & Attorneys-at-Law



Contents

Preface	2
1. Court Structure	3
2. Court Procedure	3
3. Alternative Civil and Commercial Dispute Resolution	3
4. Civil and Commercial Department	3



Preface

The Cayman Islands judicial system is based on the British model, which is a unique fusion of common law and legislation. Common law is based on the doctrine of *stare decisis* which, generally speaking, means that the prior decision of a superior court is binding on an inferior court when the inferior court is called upon to adjudicate upon a matter similar as to facts in a prior case. Prior decisions thereby become binding, or sometimes persuasive, precedents.

Litigation is the resolution by the courts of a dispute between two or more parties, who are unable to resolve that dispute between themselves. In resolving disputes, the courts are usually required to make findings of fact and to interpret and implement legislation; where there is no applicable legislation, common law precedents are relied on for a determination of the matter. These precedents can be found in the Cayman Islands Law Reports which were first published in the mid 1980's. They now contain reports of the most significant decisions of the courts of the Cayman Islands.

COURT STRUCTURE

The judicial system relied on in the Cayman Islands is adversarial in nature, in that, disputing parties are represented by lawyers, before a court, consisting of one or more highly trained and experienced judges and, in certain circumstances, a jury.

At the pinnacle of the hierarchy of courts making up the judicial system in the Cayman Islands is the Privy Council in London, England, which is the final appellate court for this jurisdiction. The Privy Council is composed of judges drawn from within the ranks of the House of Lords in England. Immediately below the Privy Council in that hierarchy is the Cayman Islands Court of Appeal, the initial appellate court. The Cayman Islands Court of Appeal is convened three times per annum and is staffed by six justices of appeal, of whom three sit at Court of Appeal sessions.

Below the Court of Appeal is the Grand Court of the Cayman Islands (a court of first instance) which is presided over by the Chief Justice, currently the Honourable Mr. Justice Anthony Smellie QC, and two puisne Judges. The Summary Court (another court of first instance) anchors the hierarchy, staffed by two stipendiary magistrates and presided over by the Chief Magistrate.

There are also a number of specialized tribunals adjudicating upon matters of an administrative or quasi-judicial nature (e.g. Labour, Planning, Immigration, Liquor Licensing). The Registrar of Lands sits in quasi-judicial capacity.

There is an official website for judicial and legal information in the Cayman Islands: <http://www.caymanjudicial-legalinfo.ky/Courts/Grand-court.aspx>

COURT PROCEDURE

In 1995, the Grand Court procedure was overhauled and modernized by the *Grand Court Rules 1995*. These Rules are based on the United Kingdom Supreme Court Practice Rules and they have greatly improved the efficiency of the justice system in the Cayman Islands. Modification and amendment of these Rules is ongoing, and the Court also issues Practice Directions.

As an international jurisdiction, the Cayman Islands have to deal with a myriad of legal problems including maritime disputes, trust matters, international insolvency and corporate disputes. The courts also adjudicate upon matters involving evidence in foreign proceedings and letters rogatory. The Cayman Islands Government continues with its efforts to upgrade and improve the service and efficiency provided by the courts, through an ongoing process of reviews and surveys.

ALTERNATIVE CIVIL AND COMMERCIAL DISPUTE RESOLUTION

Alternatives to civil and commercial litigation consist mainly of arbitration and mediation. Arbitration within the Cayman Islands is governed by the *Arbitration Law (2001 Revision)* which stipulates a process by which parties can resolve disputes outside of the courts, a sometimes useful process where disputing parties may not desire that a matter be made public, or, depending on the subject matter in dispute, the parties may hope to engage, as an adjudicator, someone with specialist knowledge in a particular industry. Mediation is often seen as the more modern approach to alternative civil and commercial litigation, again involving the services of a neutral party who assists the parties to arrive at a compromise.

CIVIL AND COMMERCIAL LITIGATION DEPARTMENT

Members of the civil and commercial litigation department at Higgs Johnson Truman Bodden & Co. make up an experienced team of litigators with particular experience in international insolvency disputes, banking and trust matters and general corporate-commercial and civil matters. Additionally, our litigators have in-depth experience in pre-emptive remedies including *Mareva* injunctions and *Anton Pillar* orders.

Our civil and commercial litigation team have also advised on important matters relating to confidentiality issues and the *Confidential Relationships Preservation Law*, the *Mutual Legal Assistance Treaty* with the United States and the *Proceeds of Crime Law*, concerning Confiscation Orders and money laundering (of increased significance in recent times).