



OFFICE OF THE
PREMIER
CAYMAN ISLANDS GOVERNMENT

Statement concerning Constitutional talks with the United Kingdom

By Premier Hon. Alden McLaughlin, MBE, JP, MLA

Mister Speaker, I rise today to provide you, the members of this Honourable House and the public an update on the Government's efforts to make important and necessary safeguards to the Cayman Islands Constitution.

Before doing so Mister Speaker I will provide some background for the benefit of the public and the members of this House.

We will recall Mister Speaker that in May this year the House of Commons attached an amendment to a Sanctions and Anti Money Laundering Bill that was making its way through the United Kingdom Parliament. The Bill and the amendment were passed by the Commons and then later by the House of Lords.

This amendment requires the British Overseas Territories, but not the Crown Dependencies, to establish a public register of beneficial ownership, and to do so no later than 31 December, 2020. Failing this, the amendment requires the UK Government to utilise an Order in Council to change our local legislation to

implement a public register of beneficial ownership on our behalf.

But Mister Speaker this was not the first attempt by the UK Parliament to force the issue of Public Registers on the territories. Late last year a similar attempt was made with a similar amendment and we worked with our team in the London office and with the UK Government to fight off that attempt. The UK Government at that point was able to gather sufficient votes to help stave off the threat. In particular Lord Ahmad, the Minister responsible for the Overseas Territories, fought on our behalf in the House of Lords and assisted us greatly to fend off the threat on that occasion.

But unfortunately, in May when the new amendment was introduced, the UK Conservative Government, with 19 conservative members supporting the amendment, was unable to muster sufficient votes for its defeat. And so, facing a possible vote loss the Government conceded and the amendment passed in both the Commons and in the Lords. Again Lord Ahmad, along with Lord Naseby and several other Law Lords, spoke up in the Lords to defend Cayman and the OTs.

That final fight back in the Lords, led by Lord Naseby, is greatly appreciated. Lord Naseby has been a longstanding supporter of the Cayman Islands and is the current vice chair of the All Party Parliamentary Group for Cayman in the UK Parliament.

This final effort in the Lords was encouraged and assisted by our team in the Cayman Islands London Government office, led by me, because we felt that even though the House of Commons had done what it had done, this issue was so significant that it deserved at least another last gasp effort on the legislative front to

see what could be done to prevent what had transpired from becoming reality. In the end, and we were quite aware before the end, that our efforts would not succeed because the UK Government in its weakened state had declined to give it support. But the debate was useful as it allowed many Law Lords, including Lord Neuberger of Abbotsbury (Former President of the UK Supreme Court) to give their views and defend Cayman and the OTs on what we deem as an overreach of the UK Parliament. So despite not winning this final attempt in the Lords, the merit of the effort was borne out by that debate in the Lords; a debate that took place starkly in the frame of the constitutional overreach. We believe those speeches will aid not just in any legal challenge we make if the UK proceeds to make the Order in Council as they are now mandated to do, but also in our efforts with the UK when we enter into a fresh set of constitutional discussions to put in place the necessary constitutional safeguards to avoid any future attempt of constitutional overreach by Parliament.

So Mister Speaker, I have said many times since the amendment passed in the UK Parliament that the Cayman Islands will not accept that the United Kingdom Parliament has any right to legislate for us when it comes to domestic matters that are devolved to local government. Furthermore sir, we will not be changing any laws or making any moves to adopt legislation to implement public registries of beneficial ownership.

If the United Kingdom does try to use an Order in Council to force the territories to adopt public registries, we are prepared to challenge that order in the Cayman Islands courts where we believe we will be successful. And if necessary, we are

prepared to take our case to the Privy Council in London, where we believe officials there will have to look at our local laws and take in account of the devolved nature of local legislation as well as consider the views of our local courts.

I raised this issue of a review of our Constitution with the UK Prime Minister Theresa May when I visited London in May and had considerable discussions with David Lidington as well as Lord Ahmad about it. I have also written to the Prime Minister, Mr. Lidington and Lord Ahmad as well. The UK has agreed to begin this dialogue, both in a letter from the Prime Minister as well as in conversations as recently as when I attended meetings in London during the week of June 11th. I have requested a timeframe for us to commence talks and I am awaiting confirmation from the UK, which I hope to receive soon.

I have previously spoken to the Leader of Opposition and a number of the other members of the Opposition about what we are proposing in regard to constitutional safeguards and I have their support, of which I am most appreciative. It is important that we in this House are fully in agreement on this matter.

What we are striving for is to have aspects of the constitution clarified to ensure that the ability of the UK Parliament to legislate for the Cayman Islands is significantly restricted. In particular, we are proposing that the power currently reserved to Her Majesty in Section 125 of the Constitution, which is the section that says Her Majesty reserves unto herself the power to legislate for the territories with respect to peace, order and good government be removed as is the case with the Bermuda

constitution or clarified to apply only to matters involving the most serious circumstances such as a fundamental breakdown in public order or endemic corruption in the government, judiciary or legislature.

And further that it be made clear that the UK's power over international affairs be confined to the enforcement and implementation of clear international obligations of the United Kingdom alone and that it also be made clear that provided the Cayman Islands are not in breach of international standards, the power of internal self-governance is absolute and that the power of this allowance with respect to legislation passed by the Legislative Assembly of the Cayman Islands be removed as is the case with the Gibraltar constitution.

So in broad strokes those are the measures that we are going to be pressing for in terms of constitutional change to prevent this sort of constitutional overreach from occurring. This matter extends well beyond the issue of the position of public registers. Indeed it extends well beyond even the implications of our Financial Services Industry. If the UK Parliament, emboldened by what it has just done, comes to believe it can legislate for the territories anytime it disagrees with something in the territories or any time it believes that a certain situation should obtain within the territories, then as I have said previously it is not just our financial industry that is at risk, but really, our very existence.

Hence the reason we intend to do two things: Challenge when appropriate should they attempt to implement public registers, and to seek to insulate, as far as possible, the Cayman Islands from such further constitutional overreach.

Mister Speaker, I have also pointed out to the Prime Minister and Mister Lidington that the exchange of notes and the technical protocol that the Cayman Islands and other BOTs have worked on over the course of almost two years have been impaired. The exchange of notes allowed the exchange of information or the access to information in the Cayman Islands by law enforcement or tax regulatory authorities swiftly and in extreme cases in as little as two hours where there is an urgent issue. The whole premise of that arrangement – the agreement we reached with the UK Government - was that that would provide an alternative to the public registry regime. The actions of the Parliament have essentially vitiated that underlying agreement and we do not believe we have any further obligation to the UK Government under that arrangement.

I am not suggesting that the Cayman Islands Government should seek or will not continue to cooperate with law enforcement and tax regulatory authorities in the United Kingdom Government. That is certainly not the case. We believe we need to continue to play the important role we do in the global fight against international crime and tax evasion. I am simply saying that henceforth our cooperation is a result of our willingness and desire to cooperate and not as a result of any obligation we have to the United Kingdom pursuant to the technical protocol and the exchange of

notes because the underlying premise, I repeat, for that agreement was that that would be the alternative to the implementation of a public registry regime.

In all that we have done so far on this issue I can confirm that we have met with Industry and kept them abreast of developments. Importantly we have taken the advice of two very senior members of the UK Bar in the persons of Sir Jeffrey Jowell, QC, and Lord David Pannick, QC, both highly regarded constitutional lawyers in this regard and we are following their advice in this respect.

As this matter progresses I will keep this House and indeed this country advised. Indeed, before any final safeguards to our Constitution are agreed with the UK, the matter will be debated in the House.

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