



GOVERNMENT MOTION NO. 5 / 2021-2022

Public Management and Finance Act (2020 Revision)

**Issuance of a Deed of Indemnity to the Members of the
Planning Appeals Tribunal**

WHEREAS the Government of the Cayman Islands (the "Government") is desirous of issuing a Deed of Indemnity to the Members of the Public Appeals Tribunal (as per the attached Deed of Indemnity);

AND WHEREAS Section 8 of the Public Management and Finance Act (2020 Revision) provides that, as a general rule, no guarantee may be given by or on behalf of the Government unless it has been authorised by a resolution of the Parliament;

BE IT NOW THEREFORE RESOLVED that the Parliament hereby authorises the issuance, to Members of the Planning Appeals Tribunal, of a Deed of Indemnity guarding against the potential liability of Members of the Planning Appeals Tribunal.

Moved By:

Honourable Johany "Jay" Ebanks
Minister for Planning, Agriculture,
Housing & Infrastructure

Received in the Office of the Clerk this 4th day of April 2022.

Passed/Rejected by the Parliament this day of 2022.

Clerk of the Parliament

MEMBERS OF THE PLANNING APPEALS TRIBUNAL

THIS DEED OF INDEMNITY is made the day of _____ 2022

BETWEEN

- (1) The Cabinet of the Cayman Islands ("The Cabinet") for and on behalf of the Government of the Cayman Islands and
- (2) Dr. A. Steve McField, Mr. Richard Barton, Mr. Travis Ritch, Mr. Phillip Boni, Mr. Alexander Henderson, Mrs. Kendra Foster, Mrs. Natasha Bodden, Ms. Cindy O'Hara, Mr. Neville Aston Ebanks, Mr. Arek Joseph, Mr. Danny Owens, Ms. Jennie Pacheco, Mrs. Kimberly Ebanks, Mrs. Melanie Carmichael and **(each an "Indemnified Person" and together the "Indemnified Persons")**.

WHEREAS

- (a) The Cabinet recognizes that competent and experienced persons are increasingly reluctant to serve as Directors of corporations or members of Tribunals/tribunals unless they are protected by comprehensive liability insurance or indemnification or both, due to the increased exposure to litigation costs and risk resulting from their service to such entities.
- (b) Section T (g) of the Standing Orders and Rules of Procedures adopted by the Planning Appeals Tribunal (the "Tribunal") provides that the Government shall indemnify a Tribunal member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of the member's functions, responsibilities, powers and duties under the Development and Planning Law (2017 Revision), except claims, damages, costs, charges or expenses caused by the bad faith of that Tribunal member.
- (c) The Indemnified Persons are members of the Tribunal having been appointed by the Cabinet.
- (d) The Indemnified Persons are only willing to serve, or to continue to serve as members of the Tribunal, provided that they are furnished with the Indemnity provided for herein by the Cabinet.
- (e) The Cabinet has therefore agreed to indemnify the Indemnified Persons on the terms and conditions hereinafter set out.

Now **THIS DEED WITNESSETH** as follows:

1. INTERPRETATION

- 1.1 In this Deed (including the recitals) the following expressions shall have the following meanings, unless the context otherwise requires:

Claims mean all claims, demands, actions and proceedings, whether civil, criminal or

regulatory by way of arbitration, suit, action or in connection with any application otherwise or in which an Indemnified Person is named in his/her capacity as a Member of the Tribunal and **Claim** shall be construed accordingly;

Indemnified Person means an Indemnified Person and that person's successors, heirs, executors, administrators and personal representatives; and

Losses mean any losses, damages, penalties, judgments, liabilities, compensation or other awards, costs, taxes, fees, fines or expenses whatsoever, or any amount paid in settlement thereof to which the Tribunal consents, arising in connection with any Claim, whether instigated, imposed or incurred (or, in the case of a settlement, agreed) under the laws of the Cayman Islands or the law of any other jurisdiction.

2. INDEMNIFICATION

- 2.1 Subject to clauses 2.9 and 3.3 of this Deed, the Cabinet shall, to the fullest extent permitted by law and without prejudice to any other indemnity to which an Indemnified Person may otherwise be entitled, indemnify and hold the Indemnified Persons harmless on demand in respect of all Claims and Losses arising out of, or in connection with actual or purported exercise of, or failure to exercise, any of the Indemnified Persons' powers, duties or responsibilities as a Member of the Tribunal; **PROVIDED THAT** the Indemnified Person acted in good faith and in a manner reasonably believed by the Indemnified Person to be in, or not opposed to, the best interests of the Tribunal.
- 2.2 Each Indemnified Person shall be entitled to the rights of indemnification provided in this Deed if such Indemnified Person was or is a party or witness or is threatened to be made a party or witness to any threatened, pending or completed Claim.
- 2.3 The termination of any proceeding by judgment, order of court, settlement, conviction or on plea of nolo contendere, or its equivalent, shall not of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Tribunal.
- 2.4 Each Indemnified Person shall after consultation with Cabinet have the right in their sole discretion to appoint and be legally represented by counsel or a law firm of his or her choice.
- 2.5 Without prejudice to the generality of the indemnity set out in clause 2.1 of this Deed, the Cabinet shall, to the fullest permitted by law, indemnify and hold the Indemnified Persons harmless on an 'as incurred' basis against all legal and other costs, charge expenses reasonably incurred in defending Claims including, without limitation, Claims brought by, or at the request of the Tribunal and any investigation into the affairs of the Tribunal by any judicial, governmental, regulatory or other body.
- 2.6 The indemnity contained in clause 2.1 shall extend to oblige the Cabinet, within 28 business days of any written demand, first to advance to the Indemnified Person the full amount of all costs or expenses (not limited to legal costs, expenses and/or disbursements) anticipated by the Indemnified Person to be incurred by such Indemnified Person in defense of, or otherwise in connection with, any Claim commenced against him/her or in connection with the Tribunal in any jurisdiction arising

out of or in any way connected with this Deed and secondly to provide all such further advances as are necessary to cover any such further expenses within 28 business days of any further written demand being made to the Tribunal, and copied to the Cabinet.

- 2.7 For the purposes of this Deed, all legal and other costs, charges and expenses will be deemed to be reasonably incurred unless otherwise disputed within 28 business days of notice thereof having been provided by an Indemnified Person to the Tribunal Secretariat.
- 2.8 An Indemnified Person shall continue to be indemnified under the terms of the indemnities in this Deed notwithstanding that he or she may have ceased to be a Member of the Tribunal.
- 2.9 On receipt of any demand relating to any Claim (or where an Indemnified Person becomes aware of circumstances which may reasonably be expected to give rise to a demand relating to any Claim) and incurring any costs, charges, or expenses in respect of any Claim (including but not limited to securing legal representation), an Indemnified Person shall, as soon as reasonably practicable, notify the Tribunal in writing of such demand or circumstances, giving full details and providing copies of all relevant correspondence and shall consult with the Tribunal Secretariat and have due regard to the advice he or she is given.
- 2.10 An Indemnified Person shall keep the Tribunal fully informed of the progress of any Claim, including providing all Information in relation Claims or Losses or any other costs, charges or expenses incurred as the Tribunal may reasonably request.
- 2.11 An Indemnified Person shall take all such action as the Tribunal may reasonably request to avoid, dispute, resist, appeal, compromise or any Claim and shall not make any admission of liability, agreement or compromise with any person in relation to any Claim without the prior written consent of the Tribunal, such consent not to be unreasonably withheld.
- 2.12 In the event of any payment under this Deed, the Tribunal shall be subrogated to the extent of such payment to all of the Indemnified Persons' rights of recovery against third parties (including any claim under any applicable liability insurance policy) in respect of the payment. The Indemnified Persons shall provide all reasonable cooperation as may be requested by the Tribunal for the purposes of securing and exercising such rights of recovery.
- 2.13 No Indemnified Person shall be liable to the Tribunal for acts, defaults or omissions of any other Indemnified Person.
- 2.14 The indemnity in clause 2.1 of this Deed shall not extend to Claims which arise out of or are attributable to an Indemnified Person's willful misconduct, bad faith or fraud.
- 2.15 The Indemnity in clause 2.1 of this Deed shall be applicable to all Claims made or commenced after the entry into this Deed, whether arising from acts or omissions to act occurring before or after the delivery of this Deed.
- 2.16 The benefit of the indemnity in clause 2.1 shall survive the termination of this Deed, howsoever arising.

3. GOVERNING LAW AND JURISDICTION

- 3.1 This Deed shall be governed by, and interpreted in accordance with laws of the Cayman Islands.
- 3.2 All parties agree that the Courts of the Cayman Islands are to have exclusive jurisdiction to settle any dispute which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by this Deed or otherwise arising in connection with this Deed.
- 3.3 If this Deed is finally judicially determined in a relevant jurisdiction to provide for, or entitle an Indemnified Person to, indemnification against any Claims or Losses that would cause this Deed, or any part of it, to be treated as void under the laws of that jurisdiction, this Deed shall, in as it relates to such jurisdiction, be deemed not to provide for, or entitle the Indemnified Person to, any such indemnification, and the Government shall instead indemnify the Indemnified Person against any Claims or Losses to the fullest extent permitted by the laws of the Cayman Islands.
4. A party who is not a party to this Deed shall have no right under any laws to enforce any of its terms.
5. The Indemnified Persons represent that they have had the opportunity to consult with an Attorney and/or have had a reasonable amount of time to review and consider this Deed, and have carefully read and understand the scope and effect of the provisions of this Deed. No party has relied upon any representations or statements made by any other party hereto which are not specifically set forth in this Deed. Each Indemnified Person acknowledges that he/she understands the terms and consequences of this Deed and is fully aware of the legal and binding effect of this Deed.

IN WITNESS WHEREOF this Deed has been sealed, executed and delivered by the parties hereof the day and year first above written.

THE PUBLIC SEAL of the)
 Cayman Islands was hereunto)
 Affixed and this Deed the Cabinet)
 of the Cayman Islands for and)
 on behalf of the Government of the)
 Cayman Islands In the presence of)

 The Cabinet of the Cayman Islands for and on
 behalf of the Government of the Cayman Islands

SEALED, EXECUTED and DELIVERED

By Chair Dr. A Steve McField

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Dr. A. Steve McField

Witness Signature

Witness Name:

SEALED, EXECUTED and DELIVERED

By Deputy Chair Mr. Richard Barton

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Mr. Richard Barton

Witness Signature

Witness Name:

SEALED, EXECUTED and DELIVERED

By Deputy Chair Mr. Travis Ritch

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Mr. Travis Ritch

Witness Signature

Witness Name:

SEALED, EXECUTED and DELIVERED

By Deputy Chair Mr. Phillip Boni

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Mr. Phillip Boni

Witness Signature

Witness Name:

SEALED, EXECUTED and DELIVERED)
By Deputy Chair Mr. Alexander Henderson)

Mr. Alexander Henderson

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Deputy Chair (Revised) Mrs. Kendra Foster)

Mrs. Kendra Foster

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Deputy Chair Mrs. Natasha Bodden)

Mrs. Natasha Bodden

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Member Ms. Cindy O'Hara)

Ms. Cindy O'Hara

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Member Mr. Neville Aston Ebanks)

Mr. Neville Aston Ebanks

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Member Mr. Arek Joseph)

Mr. Arek Joseph

Witness Signature
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SEALED, EXECUTED and DELIVERED)
By Member Mr. Danny Owens)

Mr. Danny Owens

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Member Mrs. Jennie Pacheco)

Mrs. Jennie Pacheco

Witness Signature
Witness Name:

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By Member Mrs. Kimberly Ebanks)

Mrs. Kimberly Ebanks

Witness Signature
Witness Name:

SEALED, EXECUTED and DELIVERED)
By Member Mrs. Melanie Carmichael)

Mrs. Melanie Carmichael

Witness Signature
Witness Name: