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Legal Drafting Department

c/o Portfolio of Legal Affairs

4th Fl, Government Administration Building

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Dear Madam

Comments on the Domestic Partnerships Bill, 2020 (the "Bill")

We write to provide our comments on the Bill, set out below, in our capacities as Civil Registrars of Marriage.

Summary Conclusions

In summary, while we appreciate the background and context in which the Bill was drafted, it is our view that **the Bill is not fit for purpose** and ignores practical and commercial considerations of the modern wedding industry in the Cayman Islands. Further, although we do not propose to dwell on legal aspects of the Bill as it relates to legal matters pertaining to Human Rights, it would be remiss of us to ignore the **burdensome and undignified regime** that would be created by the Bill.

Background to Civil Registrars in the Cayman Islands

- A. The local capacity to appoint persons to the office of Civil Registrar first appears in the Marriage Law, 1963. We understand the drafting of this law was typical of marriage laws of the British Commonwealth at the time and was reflective of the Marriage Laws of Jamaica and the earlier Marriage Acts of England. *Thus, the office of Civil Registrar has been enshrined in the laws of the Cayman Islands since the Islands first became a direct dependency of England.*
- B. Whilst deemed "Marriage Officers" by virtue of their office, there are marked and important differences between the appointments of Civil Registrar and Marriage Officer. First, only

Ministers of religion may be appointed Marriage Officers,¹ whereas Civil Registrars are appointed from persons deemed fit for the office. Secondly, unlike Marriage Officers whose right to refuse to act as such with respect to any marriage which is contrary to the rules of their religious denomination is enshrined since the inception of the Marriage Law, Civil Registrar do not enjoy a similar right of refusal. Thirdly, Civil Registrars are expressly prohibited from incorporating religious service when a marriage is solemnised before them. *Thus, the office of Civil Registrar is an inherently secular one.*

- C. We understand the importance of the secular nature of the office of Civil Registrar can be traced back to when marriage ceased to be a religious institution and came under the control of the State, circa the English Marriage Act of 1836. Prior to this, marriages were required to be performed by ministers of the Church of England, and earlier acts were discriminatory of other religious denominations (Roman Catholics, in particular).² The 1836 Act thus allowed civil marriages to be held in registry offices in towns and cities across England. The importance of the office of Civil Registrar is supported by a statutory oddity: Civil Registrars have a positive obligation to appoint another person to act as their deputy in the case of their illness or absence.³ *Thus, the office of Civil Registrar can be said to have an important role in the carriage of the affairs of the State, namely the registration of all marriages.*

Comments on the Bill

1. The Domestic Partnerships Register is inherently discriminatory, may deter same-sex unions, and risk the loss of new revenue

Since the Marriage Act of 1836, it can be said that the policy of the State is to encourage and ensure the recording of all marriages as a matter of public policy. The creation of a new public register, separate from that of births, deaths and marriages, appears directly contrary to nearly two centuries of British public policy, for the following reasons:

- (i) Although it appears that domestic partnerships would be available to both opposite-sex and same-sex couples, as it is the *only* union functionally equivalent to marriage that will be available to same-sex couples it can be expected that such persons will comprise the majority of domestic partnerships, essentially creating a *public record of homosexuality*.⁴ We can state with some confidence that our clients, domestic and foreign, will balk at the idea of their sexuality existing in a catalogued in a separate and readily searchable public record.
- (ii) The Cayman Islands are actively promoted in the tourism industry as a destination wedding jurisdiction such that visitor/tourist weddings make up the majority of all

¹ Such persons being entitled to the appointment where acting for one or more congregations unless thought to be unfit for the office.

² The expansion of British Subjects into the colonies and dominions of the Crown may have also been problematic, as they intermingled with non-British Subjects.

³ Per section 9 of the Marriage Law, which appears to be unique amongst public officials/officers, as those terms are defined in the 2009 Constitution.

⁴ Per section 22, the Domestic Partnerships Register would be a public register.

marriages solemnised in the Cayman Islands.⁵ There are commercial reasons for this as destination weddings generate substantial economic activity, both direct and ancillary, for local "wedding vendors", including but not limited to florists, musicians, hairdressers, the food and beverage industry, the hotel industry and tourism industry as a whole. Whilst we have received many enquiries over the years about the possibility of performing same-sex marriages, we have received a noticeable increase in these enquiries of late. However, the majority of the Islands' destination wedding clients are from the United States where 'marriage' between same-sex couples is the *norm*, not the exception.⁶ The concept of a public record of homosexuality may discourage destination weddings (and risk tarnishing the Islands' reputation within a crowded field of competitors), with the attendant loss of a new line of revenue for Cayman's destination wedding market.⁷

2. The office of Domestic Partnership Officer is unnecessary and risks abuse

In light of the foregoing background to the office of Civil Registrars and the highlighted points which have been distilled for convenience, our most immediate comment would be to question the proposal to create a new and distinct office of "Domestic Partnership Officer", for the following reasons:

- (i) Until such time as a religious congregation is locally established (or an existing one develops) that does not object to same-sex unions, Civil Registrars (who are required by law to perform weddings for persons legally entitled) are already suited to perform same-sex weddings. The creation of what is essentially a new category of Marriage Officer, which lacks the statutory certainty attendant with the office of the Civil Registrar, is therefore unnecessary and also presents an undue administrative burden on any Marriage Officer or Civil Registrar wishing to be dually-registered.
- (ii) The power of appointment of Civil Registrars (and Marriage Officers) currently resides with the Governor. Such persons are appointed and hold office at the Governor's pleasure. It is unclear why it is therefore proposed that applications for appointment as a Domestic Partnership Officer would be made to the Deputy Governor, and that the criteria for such appointment would differ from that of a Marriage Officer or Civil Registrar- in particular, that such appointment should be qualified by a requirement for the appointment to be "*in the public interest*".⁸ Presumably this would have little, if no application to an existing Marriage Officer or Civil Registrar wishing to be registered and, as such, the appointment of those persons should be automatic upon written request.

3. The Notice regime is unduly onerous and uncommercial

The Bill seeks to establish a separate and distinct regime from that of the Marriage Law, although it is not clear whether this is due to the misconception that persons may not be willing to apply for

⁵ Prior to Covid-19 pandemic, there were approximately 350 visitor weddings on average in the Cayman Islands each year.

⁶ We note that Schedule 2 of the Bill, which lists "Specified Relationships", 41 of 50 US states have recognized marriages for same-sex couples.

⁷ Per section 7(3), destination weddings, i.e. "*parties to an intended domestic partnership are ordinarily resident outside of the Islands*", are within the scope of the Bill.

⁸ Per section 25(2)(c) of the Bill.

appointment as a Domestic Partnership Officer. Nevertheless, the proposed regime is unduly onerous and commercially unworkable, best illustrated by way of a comparison table with the procedure for marriage by way of a "Civil Registrar's Certificate":

Marriage Law (2010 Revision)	Domestic Partnership Bill, 2020
Domestic couples – application procedure	
<p>Domestic couples must first give notice of their intended marriage to their Civil Registrar (which need not be in person) in the prescribed form. If satisfactory, their particulars are entered into a "Marriage Notice Book" and the notice posted on the Civil Registrar's external notice board <i>for 7 clear days</i>.</p>	<p>One or both of the persons seeking a Domestic Partnership must first attend the offices of the Registrar at the Government Administration Building to provide (i) notice of their intention,⁹ (ii) make a statutory declaration that they satisfy the legal requirements and (iii) <i>pay a notice fee</i>. The Registrar enters their particulars in the Domestic Partnerships Register and the notice posted on the Registrars external notice board <i>for not less than 14 days</i>.</p>
<p>After this period, and provided the Civil Registrar receives no objections to the marriage, the couple is issued a Civil Registrar's Certificate which permits them to get married.</p>	<p>After the period, and provided the Registrar is satisfied there are no lawful impediments to the intended domestic partnership and there is no "caveat" (objection) entered against the couple, the couple is issued with a licence for domestic partnership.</p>
Foreign couple – application procedure	
<p>Foreign couples (i) apply to the Governor's Office for a Special Licence (which is usually arranged by their Civil registrar) and (ii) pay an application fee and separate licence fee</p>	<p>Foreign couples may either:</p> <p>A.(i) send their notice of intention to the Registrar, (ii) make a statutory declaration before the Registrar's licence issued that they satisfy the legal requirements and (iii) pay a notice fee, or</p> <p>B.(i) in "<i>special or exceptional circumstances</i>", apply to the Deputy Governor (via the Registrar) for a special licence to dispense with the notice and provide an affidavit deposing that there are no lawful impediments to the intended domestic partnership.</p>
Domestic and Foreign couples – following approval of application	
<p>The couple is then free to marry (i) before the Civil Registrar, (ii) with two witnesses, (iii) at any place of their choosing in the Islands,</p>	<p>The couple may formalize their domestic partnership:</p>

⁹ Such notice must contain a declaration that neither party is not currently married, in a domestic partnership or in an "*overseas relationship*".

<p>provided there are "open doors", i.e. access is not prevented, and (iv) between the hours of 6am and 8pm.</p>	<p>A.(i) before the Registrar and (ii) two "credible witnesses"¹⁰ (iii) at the Government Administration Building <i>or</i> (iii) at an officially-approved location (provided it is approved by Cabinet or with the permission of the landowner) and (iv) between the hours of 9am and 5pm Mon-Fri and 9am and 12noon on Saturday, but never on Sunday or a Public Holiday, or</p> <p>B.(i) before a Domestic Partnership Officer (who is not obliged to do so, despite the presentation of the licence), (ii) two "credible" witnesses, (iii) at any place of their choosing, provided there are open doors and (iv) with no restriction on the day or time of the ceremony.¹¹</p>
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- (i) Accordingly, unlike the longstanding regime set out in the Marriage Law where couples are free to apply to their choice of Marriage Officer or Civil Registrar, the Bill proposes that applicants for a domestic partnership *must* apply to the Registrar at the Government Administration Building. This is entirely uncommercial, because couples expect service, and for that service to come to *them*, not to be required to seek out that service.
- (ii) Further, the Bill proposes to transform the Registrar into what is essentially an officiant, but only in the case of domestic partnerships, as the Registrar is required to perform their domestic partnership ceremony (provided all legal requirements are met) but there is no Domestic Partnership Officer willing to do so. It is unclear why it was felt that the Registrar should be required to add the performance of domestic partnership ceremonies in addition to their usual administrative duties, especially at private locations, or how the Registrar will be able to schedule more than one ceremony a day. It is also entirely uncommercial as vendor would necessarily have to coordinate their wedding services with the Registrar's office.
- (iii) It is also unclear as to what grounds a Domestic Partnership Officer, who has specifically applied for such appointment, should be able to refuse the carrying-out of their public duties. The couple would then be at the mercy of the restrictions on time, date and locations as they await the Registrar. This presents a level of uncertainty which is simply uncommercial for the destination wedding industry.

¹⁰ The language of the Bill is in this, and other regards, unfortunate. The requirement of witnesses in the Marriage Law is not referred to in this way and has never been ambiguous.

¹¹ Per section 14. It is not clear if this break from the norm is intentional, but it would seem to make little sense that access to the ceremony must be permitted if, for example, the ceremony is arranged at an unsociable hour.

4. The introduction of "Maritime Domestic Partnerships" is a transparent assault on the Islands' destination wedding vendors by the cruise ship industry.

Respectfully, the introduction of the concept of a "maritime domestic partnership" is clearly an attempt to appease the cruise ship industry and entice more Cayman Islands ship registrations (evidenced by the unnecessary involvement of the Registrar of Shipping), to the detriment of the Islands' local wedding vendors. This attempt follows years of abuse by the cruise industry which, having faced local trade and business licensing and work permit requirements, has turned to promoting ship-board ceremonies which can be serviced by ship-board wedding vendors. Not only would this proposed regime be inexplicably more expedient than terrestrial domestic partnerships under the Bill,¹² it would all but guarantee that the cruise industry would be able to ignore local wedding vendors entirely, presenting a potentially catastrophic reduction in domestic revenue and risks bypassing the local destination wedding industry entirely.

Conclusion

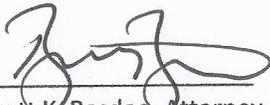
For the foregoing reasons alone, we remain opposed to the Bill and urge the Legislative Assembly to reject its passage.

Yours faithfully



V. Joy Basdeo, MBE, JP, Notary Public

Civil Registrar of Marriages



Brett K. Basdeo, Attorney-at-law, Notary Public

Civil Registrar of Marriages (Deputy)

¹² Inexplicably, the regime for applying for a Maritime domestic partnership is much simpler than the application process for a terrestrial domestic partnership. It is unclear why the master of a Cayman Islands registered ship should be given such preferential (and provisional) treatment.