

**CAYMAN ISLANDS**



**JUDICATURE (AMENDMENT) BILL, 2020**

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**A BILL FOR A LAW TO AMEND THE JUDICATURE LAW (2017 REVISION) TO PROVIDE FOR THE EXERCISE OF THE COURT'S JURISDICTION TO GRANT PROTECTIVE COSTS ORDERS IN JUDICIAL REVIEW PROCEEDINGS AND CONSTITUTIONAL PROCEEDINGS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Portfolio of Legal Affairs (PLA)



**Memorandum of**  
**OBJECTS AND REASONS**

This Bill seeks to amend the Judicature Law (2017 Revision) (the “principal Law”) to provide for the exercise of the jurisdiction of the court to grant protective costs orders in judicial review proceedings and constitutional proceedings. The Bill also provides for incidental and connected purposes.

Clause 1 provides for the short title.

Clause 2 amends section 24 of the principal Law to provide for the power of the court to make a protective costs order in judicial review proceedings and constitutional proceedings.

A protective costs order is an order which will limit or remove an applicant’s liability to pay another party’s costs in the Grand Court or the Court of Appeal, and may only be made after leave to apply for judicial review has been granted or by way of constitutional proceedings.

In the United Kingdom, protective costs orders are made in public interest litigation undertaken by way of judicial review proceedings. In the Cayman Islands context, however, unlike the United Kingdom, there is a written constitutional Bill of Rights. Challenges for the infringement of the rights contained in the Bill of Rights may be brought pursuant to section 26(1) of the Constitution. Further, other proceedings unrelated to the Bill of Rights may be brought in relation to the Constitution. To the extent that any of these constitutional proceedings raise matters of public interest, it is proposed that the availability of protective costs orders be extended to them.

Clause 3 inserts new sections 24A, 24B and 24C in the principal Law, which set out the terms of protective costs orders, the procedure for their application and grant, and matters for consideration by the court.



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ENACTED by the Legislature of the Cayman Islands.

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**Short title**

1. This Law may be cited as the Judicature (Amendment) Law, 2020.

**Amendment of section 24 of the Judicature Law (2017 Revision) - costs**

2. The *Judicature Law (2017 Revision)* is amended in section 24 as follows —
  - (a) by repealing subsection (2) and substituting the following subsection —

“(2) Without prejudice to any general power to make rules of court, such rules may provide for regulating matters relating to the costs of civil proceedings referred to in subsection (1), including, in particular —

    - (a) the entitlement to costs;
    - (b) the taxation of costs;
    - (c) the powers of taxing officers;
    - (d) the powers of judges to review decisions of taxing officers; and
    - (e) the powers of the court (as defined in section 24A(4)) to make protective costs orders in judicial review proceedings and constitutional proceedings.”; and

- (b) in subsection (7), by inserting after the definition of the word **“prescribed”**, the following definition —

“ **“protective costs order”** is an order limiting or removing the liability of a party to judicial review proceedings or to constitutional proceedings, to pay another party’s costs in connection with any stage of the proceedings;”.

**Insertion of sections 24A, 24B and 24C in the Judicature Law (2017 Revision) - protective costs orders in judicial review proceedings and constitutional proceedings; protective costs orders - procedure for application and grant; protective costs orders - matters for consideration by the court**

3. The *Judicature Law (2017 Revision)* is amended by inserting after section 24 the following sections —

**“Protective costs orders in judicial review proceedings and constitutional proceedings**

**24A.**(1) Without prejudice to the generality of section 24(3), the power of the court to determine by whom and to what extent protective costs orders are made in judicial review proceedings and constitutional proceedings, is set out in this section, and in sections 24B and 24C.

- (2) The court may make a protective costs order only if leave to apply for judicial review has been granted, or by way of constitutional proceedings.
- (3) The court may make a protective costs order on an application for such an order made by the applicant by way of judicial review proceedings or constitutional proceedings, in accordance with rules of court if the grant of the order would be fair and just in the circumstances.

- (4) In this section and sections 24B and 24C —

**“Bill of Rights”** means Part 1 of the Constitution;

**“Constitution”** means the Constitution set out in Schedule 2 to the Cayman Islands Constitution Orders 2009 to 2016;

**“constitutional proceedings”** means any application to the court brought under or in respect of, or in relation to, the Constitution, including, but not limited to, those brought under section 26(1) of the Constitution in relation to the Bill of Rights and in accordance with Order 77A, rule 4 of the Grand Court Rules, 1995 (Revised Version);

**“court”** means the Grand Court or the Court of Appeal;



“**protective costs order**” has the meaning given in section 24(7); and

“**judicial review proceedings**” means —

- (a) proceedings on an application for leave to apply for judicial review;
- (b) proceedings on an application for judicial review;
- (c) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a) or (b); or
- (d) proceedings on an appeal from a decision referred to in paragraph (c),

and the proceedings described in paragraphs (a) to (d) are “**stages**” of judicial review proceedings.

- (5) For the purposes of this section, section 24B, and section 24C, in relation to judicial review proceedings —
  - (a) the applicant for judicial review is the person who is or was the applicant in the proceedings on the application for judicial review; and
  - (b) references to relief being granted to the applicant for judicial review include the upholding on appeal of a decision to grant such relief at an earlier stage of the proceedings.

### **Protective costs orders - procedure for application and grant**

- 24B.**(1) A protective costs order may be made in connection with judicial review proceedings in accordance with sections 24A, 24B, and 24C, or in connection with constitutional proceedings.
- (2) Rules of court may, in particular, specify information that shall be contained in the application for grant of a protective costs order, including —
    - (a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant, to meet liabilities arising in connection with the application; and
    - (b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.
  - (3) The court may make a protective costs order only if it is satisfied that —

- (a) the proceedings are public interest proceedings;
  - (b) in the absence of the order, the applicant for the judicial review proceedings or constitutional proceedings, would withdraw the application for the judicial review proceedings or constitutional proceedings, as the case may be, or cease to participate in the proceedings; and
  - (c) it would be reasonable for the applicant for the judicial review proceedings or constitutional proceedings, to do so.
- (4) The proceedings are “**public interest proceedings**” only if —
- (a) an issue that is the subject of the proceedings is of general public importance;
  - (b) the public interest requires the issue to be resolved; and
  - (c) the proceedings are likely to provide an appropriate means of resolving it.
- (5) The matters to which the court shall have regard when determining whether proceedings are public interest proceedings include —
- (a) the number of people likely to be directly affected if relief is granted to the applicant for the judicial review proceedings or constitutional proceedings;
  - (b) how significant the effect on those people is likely to be; and
  - (c) whether the proceedings involve consideration of a point of law of general public importance.

### **Protective costs orders - matters for consideration by the court**

- 24C.**(1) The matters to which the court shall have regard when considering whether to make a protective costs order in connection with judicial review proceedings or constitutional proceedings, and what the terms of such an order should be, include —
- (a) the financial resources of the parties to the proceedings, including the financial resources of any person who provides, or may provide, financial support to the parties;
  - (b) the extent to which the applicant for the order is likely to benefit if relief is granted to the applicant for the judicial review proceedings or constitutional proceedings;
  - (c) the extent to which any person who has provided, or may provide, the applicant with financial support is likely to benefit if relief is granted to the applicant for the judicial review proceedings or constitutional proceedings;





- (d) whether legal representatives for the applicant for the order are acting free of charge; and
  - (e) whether the applicant for the order is an appropriate person to represent the interests of other persons or the public interest generally.
- (2) A protective costs order that limits or removes the liability of the applicant for the judicial review proceedings or constitutional proceedings, to pay the costs of another party to the proceedings if relief is not granted to the applicant for the judicial review proceedings or constitutional proceedings, shall also limit or remove the liability of the other party to pay the applicant's costs if such order is granted.
- (3) In this section —
- “free of charge”** means otherwise than for or in expectation of a fee, gain or reward; and
- “legal representative”**, in relation to a party to proceedings, means a person exercising a right of audience or conducting litigation on the party's behalf.”.

Passed by the Legislative Assembly the                      day of                      , 2020.

*Speaker*

*Clerk of the Legislative Assembly*

