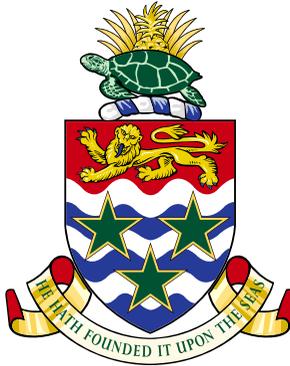


CAYMAN ISLANDS



**COURT OF APPEAL (AMENDMENT) BILL,
2021**

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A BILL FOR AN ACT TO AMEND THE COURT OF APPEAL ACT (2011 REVISION) TO ALLOW CASES TO PROGRESS TO JUDGMENT IN CIRCUMSTANCES WHERE THE CASES HAVE BEEN HEARD BUT JUDGMENT HAS BEEN RESERVED AND ONE OF THE JUSTICES OF APPEAL ON THE PANEL OF THREE BECOMES UNABLE TO RENDER A DETERMINATION; TO PROVIDE THAT WHERE THE RULES OF THE COURT ARE LACKING, THERE SHALL BE REFERENCE TO THE LAW AND PRACTICE OF ENGLAND ONLY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

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



Memorandum of OBJECTS AND REASONS

This Bill amends the Court of Appeal Act (2011 Revision) (“the principal Act”) in order, among other things, to allow cases to progress to judgment in circumstances where they have been heard but judgment has been reserved and, for unavoidable reasons, one of the Justices of Appeal on the panel of three becomes unable to render a determination.

The Bill also amends the principal Act to provide that the default provision for reference, where the rules of the Court are lacking, are to the law and practice of England and Wales only.

Clause 1 provides the short title of the legislation and contains commencement provisions.

Clause 2 repeals and replaces section 3 of the principal Act to provide, inter alia, that in civil proceedings, where a Judge of a Court which has partly heard proceedings is unable to continue —

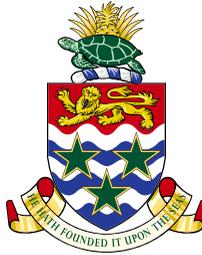
- (a) the parties to the case shall be consulted and their agreement sought as to whether the case can proceed to judgment with two Justices of Appeal; or
- (b) if the agreement of the parties cannot be reached or the matter cannot otherwise proceed with two Judges, because the President does not think the case suitable, then the case shall be re-heard by a differently constituted panel of three Judges.

Clause 2 also inserts in the new section 3 a provision which stipulates that where —

- (a) an appeal has been heard by a Court consisting of two Judges; and
- (b) the Judges of the Court are equally divided,

the case shall, on the application of any party to the appeal, be re-argued before and determined by three Judges, before any appeal to the Her Majesty in Council or before an application for leave to appeal to Her Majesty in Council is made.

Clause 3 repeals and replaces section 36 of the principal Act to provide that, where in any case there is no special provision contained in the principal Act or any other Act, or in rules of court, which relate to that case, any jurisdiction in relation to appeals in criminal and civil matters shall be exercised by the Court as nearly as may be in conformity with the law and practice for the time being observed by the Court of Appeal which has equivalent jurisdiction in England and Wales.

CAYMAN ISLANDS**COURT OF APPEAL (AMENDMENT) BILL, 2021**

A BILL FOR AN ACT TO AMEND THE COURT OF APPEAL ACT (2011 REVISION) TO ALLOW CASES TO PROGRESS TO JUDGMENT IN CIRCUMSTANCES WHERE THE CASES HAVE BEEN HEARD BUT JUDGMENT HAS BEEN RESERVED AND ONE OF THE JUSTICES OF APPEAL ON THE PANEL OF THREE BECOMES UNABLE TO RENDER A DETERMINATION; TO PROVIDE THAT WHERE THE RULES OF THE COURT ARE LACKING, THERE SHALL BE REFERENCE TO THE LAW AND PRACTICE OF ENGLAND ONLY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Court of Appeal (Amendment) Act, 2021.
- (2) This Act comes into force by Order made by the Cabinet.

Repeal of section 3 of the Court of Appeal Act (2011 Revision) and substitution - Judges of the Court

2. The *Court of Appeal Act (2011 Revision)* is amended by repealing section 3 and substituting the following section —

“Judges of the Court

3. (1) The President shall be the senior Judge of the Court.

- (2) Subject to subsection (1), the Judges shall hold seniority in the order of their appointments or, if two or more Judges are appointed on the same day, then in the order of their seniority of first appointment to high judicial office.
- (3) In the absence of the President the senior Judge present at any sitting of the Court shall preside at that sitting.
- (4) Subject to subsections (7) and (8), for the purpose of hearing and determining an appeal or any other matter, the Court shall be duly constituted if it consists of three Judges.
- (5) Subject to subsections (7) and (8), the determination of any matter before the Court shall be according to the opinion of the majority of the Judges hearing the matter.
- (6) Except as otherwise provided in this Act, all Judges shall have and enjoy in all respects equal power, authority and jurisdiction.
- (7) In civil proceedings, where a Judge of a Court which has partly heard proceedings is unable to continue —
 - (a) the parties to the case shall be consulted and their agreement sought as to whether the case can proceed to judgment with two Justices of Appeal; or
 - (b) if the agreement of the parties cannot be reached or the matter cannot otherwise proceed with two Judges, because the President does not think the case suitable, then the case shall be re-heard by a differently constituted panel of three Judges.
- (8) Where pursuant to subsection (7)(a) —
 - (a) an appeal has been heard by a Court consisting of two Judges; and
 - (b) the Judges of the Court are equally divided,the case shall, on the application of any party to the appeal, be re-argued before and determined by three Judges, before any appeal to Her Majesty in Council or before an application for leave to appeal to Her Majesty in Council is made.”



Repeal of section 36 of the Court of Appeal Act (2011 Revision) and substitution - English rules to apply where no other provision made

3. The *Court of Appeal Act (2011 Revision)* is amended by repealing section 36 and substituting the following section —

“English rules to apply where no other provision made

36. Where, in any case, there is no special provision contained in this or any other Act, or in rules of court, which relate to that case, any jurisdiction in relation to appeals in criminal and civil matters shall be exercised by the Court as nearly as may be in conformity with the law and practice for the time being observed by the Court of Appeal which has equivalent jurisdiction in England and Wales.”.

Passed by the Parliament the day of , 2021.

Speaker

Clerk of the Parliament

