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The Employment Relations Review Task Force (“the Task Force”) extends its gratitude to the Hon. Roy Bodden, Minister responsible for Education, Human Resources and Culture, for the opportunity to review the Drafting Instructions on the Employment Law, 2003. Such an important piece of legislation requires careful consideration by all sectors, and a full understanding of its implications.

In the short period of time given to review this very lengthy document, the Task Force is of the general view that the Ministry and the Government should take into account the concerns raised by the various industries, review the Drafting Instructions in light of these concerns, and if it was still felt that the need for a new Employment Law exceeded the concerns raised by the private sector, to then gradually implement various sections of the new law.

The Drafting Instructions on the Employment Law, 2003 is a substantially different document from the White Paper reviewed by the Task Force in May 2002. The Task Force would refer to its Report submitted to the Ministry, as many of the comments remain relevant.

The Employment Law (hereinafter “the Law”), seeks to be fully comprehensive, seeking to address every single issue which may be “employment related”, with the Employment Relations Department being the “one stop” for all these issues. The Task Force remains opposed to this, and believes strongly that the Law should not be expanded to cover matters under “other employment related laws” (S. 88 of the Law). The enforcement mechanism under such laws should remain within that



authority (for example, pensions with the Superintendent of Pensions, Trade & Business with the Immigration Department and the relevant Board etc). It is submitted that the Law should be restricted to the matters as outlined in the existing Labour Law.

The following are other comments to the Law and which are of concern to the Task Force. In addition a comparative analysis of the Law has been produced as Attachment A, with additional comments noted therein. Comments from the Cayman Islands Tourism Association (Attachment B) and the Cayman Islands Society of Human Resource Professionals (Attachment C) are also included in the Appendices section.

- There is no distinction made between small and large businesses, or indeed family operated business or businesses which could operate as independent contractors. In a society such as ours, the Law amounts to unrealistic over-regulation of relatively small to medium size operations. This is burdensome and unnecessary bureaucracy, and has the potential of causing significant financial damage to the majority of businesses in our society, with resulting social and economic implications.
- The Law seeks to exclude “registered charitable organizations or churches (whether registered or not)”. This exemption arguably excuses church administrators, teachers and other employees employed by churches or other organizations. This is a substantial part of the work force and should not be excluded. The Task Force is of the view that anyone receiving wages or financial reward for services performed is an employee.
- The Definition section of the Law should be reviewed and revised carefully. Some definitions are vague and uncertain as to its practical application (eg: Best Business Practice), some cannot logically be defined by statute (eg: Constructive Dismissal), and some are unreasonable in its scope (eg: Complaint”).
- The Task Force agrees that all employment relationships should have a written contract for certainty. However, it is impossible to cover every possible scenario in a contract, and the terms should address very



basic matters. It is submitted that the Statement of Working Conditions under the Labour Law remains very appropriate and adequate, and that the form of Contract under the Law (Appendix 1) is not. This document is now a 6-7 page document. It is unnecessary bureaucracy and over administration, not suitable for the majority of businesses in our society.

- The Task Force questions the real purpose of the Law, as it appears that its main aim is to over-regulate employment relations, and micromanage businesses. This does not promote good business practice or relations. The administrative costs of attending to all these matters will increase operational costs, and will have resulting negative effects.
- Employees' benefits have increased insofar as paid maternity leave and the provision for paternity leave. It is not believed that the suggested amendments to the Workers' Compensation Law will reap any real immediate benefits to an employee. The impact of these additional "benefits" to the employee is an increased economic burden on the employer, the sole person responsible for such benefits. Increased operational costs will have the effect of employers tightening their budgets even further, which will not have proven to be a positive benefit for employees.
- The Law will restrict an employee's ability to supplement ones income. The introduction of the "primary employer" having the responsibility of all the employee's wages/salary and benefits and needs will result in employers refusing to share employees because of the additional administrative responsibility. As such, many employees will not be able to hold several jobs. The Law has removed the S.26 provision of the Labour Law, which allows employers and employees to contract out of overtime. This has been a major tool for employees in the merchant and construction fields, allowing them to supplement their income with basic wage by working longer hours voluntarily. An employer will be slow to grant longer hours to an employee which now mandates overtime pay.



- The Task Force opposes the proposed changes to the pension provisions to 6% contribution by both the employer and employee. It is an additional expense for both parties. The Task Force further opposes the provision that pension benefits should be immediate and irrespective of age. The Task Force further recognizes the impact this will have on many employees who are also employers to caretakers.
- The Task Force objects to the enhanced warning system of 6-7 months under the Law. This is unreasonably long, and a clear distinction should be made between misconduct and substandard performance. It is submitted that the provisions of the Labour Law are more than adequate in this regard.
- The Task Force objects strongly to the powers given to the Tribunals to impose penalties in addition to rewards, and to take into consideration an employer's past history which may not be relevant to the particular case at hand. This is highly prejudicial to an employer and a very unreasonable approach.

In conclusion, the Task Force is of the view that there should not be any changes to the Labour Law at this time, and in particular, not the changes as outlined in the drafting instructions. The detrimental economic impact of these proposals will far outweigh any perceived benefits.