

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT TO GCR 0.53, r.3

BETWEEN:

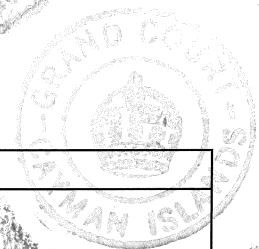
CAYMAN PRIVATE MANAGER II LIMITED

APPLICANT

AND:

REGINA (ON BEHALF OF THE CAYMAN ISLANDS MONETARY AUTHORITY)

RESPONDENT



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicant(s)	CAYMAN PRIVATE MANAGER II LIMITED
Judgment, order, decision or other proceeding in respect of which relief is sought	The consultation process that led up to and resulted in the publication of the ‘Corporate Governance Private Sector Consultation Paper’ dated the 14 th January 2013 (the “Paper”) and any decisions subsequently to be made by the Cayman Islands Monetary Authority and/or by its Board of Directors with respect to corporate directorships based on, in reliance on and/or in subsequence of the Paper.
Relief Sought	
<ol style="list-style-type: none"> 1. An order of mandamus ordering the Respondent to comply with s.4 and/or s.6 and/or s.47(4) Monetary Authority Law (2011 Revision) and/or with the Respondent’s Regulatory Handbook in preparing and/or issuing its Private Sector Consultation on 14th January 2013; 2. An order of mandamus ordering the Respondent to carry out the consultation process initiated by the Private Sector Consultation in accordance with the above sections of the Monetary Authority Law (2011 Revision) and/or with the Respondent’s Regulatory Handbook; 	

3. An order of prohibition or alternatively an injunction preventing the Respondent from making any decision in respect of corporate directorships based upon the purported consultation process;

4. Such further, consequential or other relief that this Honourable Court determines is just; and

5. Costs

Name and address of Applicant's attorneys, or, if no attorneys acting, the address for service of the Applicant



**STENNING
& ASSOCIATES**
ATTORNEYS-AT-LAW

**Stenning & Associates, 4th Floor, Harbour Centre, 42 North Church Street,
George Town, Grand Cayman.**

REF: JS/MW/1271/001

Signed

Dated

2nd April 2013

STATEMENT OF FACTS AND GROUNDS UPON WHICH RELIEF IS SOUGHT

1. The Applicant is an exempted limited company domiciled in the Cayman Islands, that engages in director services.
2. The furnishing of director services has been substantially all of the business of the Applicant, which has always complied with any requirement of the Respondent. Consequently, any changes in the regulation of corporate governance made by the Respondent have a direct bearing upon the business practices and, potentially, the competitiveness of the Applicant within the global financial services marketplace.
3. Pursuant to s.48(4) Monetary Authority Law (2011 Revision), the Respondent is obliged to consult with the private sector associations (set out in Schedule 3 thereof) and the Financial Secretary where the regulatory handbook would have the effect of creating, directly or indirectly, rules or statements of principle or guidance. In accordance with the Respondent's Regulatory Handbook, Volume I, where the Respondent requires public sector consultation in relation to a proposed measure, all proposed measures are to be sent to the private sector associations, giving explanation for the purpose behind the measure, the reasoning for the measure, and an estimate of the costs and benefits. Furthermore, the Respondent is required by section 4 of the Monetary Authority Law (2010 Revision) to perform the foregoing functions. In addition, by section 6 of the Law, (amongst other things) the Respondent is placed under a duty to act in the best economic interests of the Islands; recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands; recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction; recognise the desirability of facilitating innovation in financial services business. The Respondent is bound to give an explanation of the Authority's (Respondent) reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6.
4. On 14th January 2013, the Respondent did issue a Corporate Governance Private Sector Consultation Paper (the "Paper") setting out a number of areas where the Respondent consulted upon proposals for enhancing the Cayman Islands corporate governance regulatory framework. The Paper fails to satisfy the duties placed upon the Respondent in manifold ways, including (but not limited to):
 - a. Failure, to explain how the findings of the Basel Committee on Banking Supervision have any relevance to the regulation of regulated mutual funds in the Cayman Islands;

- b. Failure, to distinguish the position of regulated mutual funds in the Cayman Islands from other financial institutions or entities considered by the Basel Committee for Banking Supervision; The Technical Committee of the International Organization of Securities Commissions; The Organisation for Economic Co-operation and Development; The IAIS; or The FSB.
- c. Failure to provide any cogent reasoning, beyond simple slavish adoption of trend in other jurisdictions operating in industries not germane to the Cayman Islands, why a review of the corporate governance regulatory standards of the Cayman Islands is necessitated, as suggested at paragraph B8;
- d. Failure to address the corporate governance risks raised by the Cayman Islands courts in the Weaving and Bear Stearns court decisions to endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre; endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime; or to promote and maintain a sound financial system in the Islands.
- e. Failure to set out what evidence, if any, is relied upon to suggest that the regulatory regime for funds in the Cayman Islands is not adequate or should be altered in line with the proposals made;
- f. Failure to indicate how, beyond mere assertion and blind speculation, it is suggested that any of the matters set out in the Paper are said to bear on the Cayman Islands, when the Cayman Islands did not itself suffer any of the banking collapses sustained elsewhere in the world during the financial crisis that precipitated the Basel Committee;
- g. Failure to show the extent to which the proposals made by the Respondent have been adopted in other jurisdictions;
- h. Failure to show the extent to which the Respondent complied with Section 6 (2) (d) to have regard to generally accepted principles of good corporate governance. The Respondent commissioned an industry survey on corporate governance standards and awarded the contract to Ernst and Young on a no-bid basis despite the Chairman and the Deputy Chairman of the Respondent having significant affiliations with EY. The Respondent did not demonstrate how it addressed those conflicts.
- i. Failure, to take any account of increasing financial privacy standards in other competing jurisdictions, such as the United Kingdom, European Union, Hong Kong, whom have all recently enacted measures to increase the protection of personal data under data protection legislation and to balance that fact against the proposal for a public database of private data as the Respondent

is required to recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands; and recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction; and to provide an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands; and an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted;

- j. Failure to present any evidence to support the proposal at section E3, dealing the application of the Companies Management Law, or E4 dealing with directors registration;
 - k. Failure to explain how the issue of corporate directorships can properly be omitted from the present consultation, as suggested at paragraph E42;
 - l. Failure to properly examine the alleged benefits of the proposals to the Cayman Islands in any detail and/or failure to support such arguments as are made with any evidential basis;
 - m. Complete failure to examine the competitive position of the Cayman Islands within global financial services marketplace and the benefits/deficits that the proposals might have on that position or how the proposals are compatible with the position of the Cayman Islands within the global marketplace.
6. On the bases set out above, the Applicant does not consider that the Respondent has met its duties in preparing the Paper or bringing the consultation and is likely to regulate on the basis of a deeply flawed consultation exercise.
7. Because of the vital nature of the proposals made in the Paper and the above mentioned concerns, the Applicant made a request for disclosure under the Freedom of Information Law 2008 on the basis of legitimate public interest seeking information and/or documentation in respect of the proposals made by the Respondent in the Paper and seeking to discover the reasons behind and/or the evidence supporting the proposals made, so as to gauge whether or not the Respondent had indeed complied with its duties. The Respondent queried the requests and eventually announced a deadline for satisfaction of the same that lay beyond the date upon which the Board of the Respondent is to meet and to decide/issue policy arising out of the consultation and the Paper. The Respondent did not accept the opportunity to delay the meeting of the Board and to delay making policy decision until a point after the freedom of information request had

been satisfied. The Application accordingly is left with no other remedy but to seek to cause the Respondent to carry out its function properly and/or to prevent the Respondent from taking decision and/or issuing policy based on faulty and ill-considered consultation.

8. It is submitted that the duties of Counsel for the Applicant in making any *ex-parte* application includes making full and frank disclosure of points that go for and against leave for judicial review being granted. Counsel for the Applicant being mindful of his duties, as identified in Cable & Wireless (Cayman) Ltd v. The ICTA, seeks an oral hearing so as to ensure compliance with the same.





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& ASSOCIATES
ATTORNEYS-AT-LAW

Attorneys for the Applicant