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Sent by: Electronic Submission and E-mail

Dear Sirs

Our Client: Christian Association for Civics and Political Education.

Consultation Response to the Identification Register Bill 2022 and the Cayman Islands Identification Card Bill 2022.

We have been instructed by the Christian Association for Civics and Political Education ("**The Association**") to respond on their behalf, addressing the significant concerns that have arisen following a review of the Identification Register Bill 2022 and the Cayman Islands Identification Card Bill 2022 (the "**Proposed Legislation**").

Our Client intends that this letter be treated as open correspondence and therefore the letter and its contents may be disclosed publicly. If you wish to refer to or quote from this letter, it should be identified as the 'Christian Association' letter.

1. Failure to follow Due Process and lack of a Full Public Consultation

Following the publication of the Bills within the Legislation Gazette, the Honourable Minister for Investment, Innovation & Social Development has made several media announcements indicating the intention of the Cayman Islands Government ("**CIG**") is to make substantial amendments to the Proposed Legislation.

We are highly concerned that it has been proposed that these proposed amendments will be dealt with at the Committee Stage and that there is no intention to publish the proposed amendments before the conclusion of the public consultation. Given the significance of the Proposed Legislation and the substantial nature of the proposed amendments, the failure to allow an informed public consultation offends the principles of open governance and Administrative Law.

It is concerning that it has been suggested that public engagement with the Proposed Legislation should be left to public education at the implementation stage.

We share the views of the Honourable Leader of the Opposition that the Bills must be withdrawn from the current Parliamentary Agenda to allow sufficient time for the proposed amendments to be published and the opportunity for full public engagement and a genuine public consultation to take place.

2. Executive Summary

Whilst the CIG argues that the Proposed Legalisation serves a useful purpose, allowing persons to prove their identities more easily and streamlining access to Government Services, the Proposed Legislation goes much further, laying the foundations for the type of registration, categorisation, processing, and identification of persons witnessed in 1930's Germany. We must not forget that the Jews were first made the subject of mandatory registration enforced by criminal sanction. The registration of the Jews led to discriminative processing, loss of freedoms, and abuse. It ultimately became the administrative foundation upon which the holocaust occurred.

Allowing this current or any future Government to use such extensive powers without additional scrutiny from Parliament is a dangerous step, it ignores the lessons of history and opens the door to abuse, discrimination and the erosion of civil liberties and privacy rights.

3. Substantive Observations

a) Mandatory Registration

Clauses 3(2) and 5(1) of the Identification Register Bill 2022 (the "**Register Bill**") is drafted in terms that all Caymanians, Permanent Residents, Other Residents, Participants in Registerable Events and **any other person or category of persons** that may be prescribed by regulation, "**shall be enrolled in the register**" and the "Registrar **shall** make an entry in the register".

Requiring mandatory registration interferes with the principles of privacy set out in the Data Protection Act (2021 Revision) and the right to private and family life enshrined in the Constitution of the Cayman Islands.

We refer to the Judgment of the full Supreme Court of Judicature of Jamaica in **Robinson, Julian v Attorney General of Jamaica**¹, where mandatory registration was found to offend similar rights to privacy provided for by the Constitution of Jamaica:

*"It is the right to choose, whether or not to share personal information, which individual liberty in a free and democratic state jealously guards. The mandatory nature of the requirement as well as the breadth of its scope, and the absence of a right to opt out, are not justified or justifiable in a free and democratic society"*².

The lessons from Jamaica and other jurisdictions, seemingly ignored when the Bills were first published, may now have been acknowledged.

¹ [2019] JMFC Full 04.

² Sykes, CJ at [349].

We note the indication from the Honourable Minister that "shall" is to be replaced by "may" in clauses 3 and 5, such that a person's inclusion within the Register is intended to become voluntary. The change of 'shall' to 'may' in clause 5(1) creates a situation where the Registrar would retain an 'optional' power to register without the consent of the person concerned. In the circumstances, clause 5(1) must be further amended to require the prior consent of the person concerned before the Registrar 'may' make an entry in the Register. Only with this additional amendment will registration become voluntary.

We remain concerned, however, that voluntary registration becomes 'mandatory' in circumstances where there is a significant impact on a person's ability to access government or privately offered goods and services or the enjoyment of any other freedoms when they have chosen not to register.

Appropriate protections must be included to prevent discrimination of unregistered persons by any person or entity, either public or private.

We are further concerned that the Honourable Minister's comment that he hoped "... *people would eventually sign up through choice rather than being compelled*" is indicative of an intention to require mandatory registration in the future if insufficient numbers register through choice.

b) Powers Delegated to Cabinet

The Register Bill delegates new and additional powers to the Cabinet (at levels unprecedented in any other legalisation of the Cayman Islands) to provide by regulation substantial and significant extensions to the scope and purpose of the Proposed Legislation.

Clauses 3(1)(b) states that the register shall provide "*a secure and reliable method for the use of identification information for the purposes of the ascertainment, verification and authentication by a requesting entity of identity facts or related facts about the persons referred to ... where such is necessary in the public interest*".

We are concerned to note that Clause 3(4) defines use as being in the 'public interest if it is for "**any other purpose prescribed by regulations**". Clause (3)(2) further provides for the registration of "**any other person or category of person prescribed by regulations made by the Cabinet**".

Clause 45(a), (b) and (d) enable regulations to be made that are permitted to **make different provisions in relation to different cases or circumstances; apply in respect of particular persons or particular cases or particular categories of persons** or particular categories of cases and define the categories by reference to any circumstances **of any kind**; and may **create an offence** punishable on summary conviction by a fine of up to twenty thousand dollars or to imprisonment for a term of two years, or to both.

This level of delegation is inappropriate; it allows for the unfettered future extension of the Proposed Legislation together with the inclusion of substantial criminal sanctions. These powers would allow this, or any future government to radically extend the indicated scope without limitations which could lead to abuse and the erosion of civil liberties and privacy rights. It has happened before. Unchecked it could happen again.

The delegation of powers envisaged by clauses 3(2), 3(4) and 45(a), (b) and (d) should be entirely omitted from the Register Bill, leaving future amendments in the hands of Parliament, where it belongs.

c) Use of Identification Codes

Clause 21(2) of the Register Bill provides that, "*identification code(s) may be used, held or maintained by a private entity or public authority for any of the purposes referred to under section 3(1)*". The use of the word "*maintained*" is of significant concern since it would appear to delegate powers (that should be strictly reserved to the Registrar), to private entities. In doing so, giving those private entities the power to hold, access and manipulate our private information.

We are concerned (as in section (b) above) that the purposes for which the holding or use of registration codes by public or private entities could be extended by Cabinet, without further scrutiny from Parliament by simply following clause 3(4)(f) of the Register Bill. In this respect, the way the Bill has been drafted has the effect of misleading the reader that the relevant purposes are limited to those set out in clause 3(1), obfuscating entirely the additional delegation of power that has been provided for by clause 3(4).

d) Unnecessary Legislation

The current clause 3(4) justifications of the Register Bill are:-

- (a) establishing the eligibility, entitlement or categorization of persons for the efficient and effective provision of government services or benefits;
- (b) establishing a person's entitlement to vote at an election or in a referendum;
- (c) the prevention or detection of crime;
- (d) the enforcement of immigration controls, including the enforcement of prohibitions on unauthorized work or employment; and
- (e) national security.

No objective case has been set out by the CIG to explain how these justifications will be assisted by enactment of the Proposed Legislation, particularly now that registration is intended to be voluntary. One must assume that any persons presenting as a risk to national security, or in breach of criminal or immigration laws would simply choose not to register, rendering the law pointless.

Given the significant existing powers that already exist to allow the investigation and prevention of crime and immigration breaches, the powers contained within the Proposed Legislation become redundant. There is no pressing need to change the way in which access to government services are provided, or the way in which a person's right to vote is ascertained.

The Proposed Legislation is entirely unnecessary and comes at too great a cost to the public purse. The reported KY\$8 million cost could be better spent elsewhere; increasing services to the disabled and the elderly, further help with the cost-of-living crisis or improving road

safety. Improvement in these areas would have a far more valuable impact upon the lives of the public than any of the justifications identified in the Proposed Legislation.

e) Compliance with International Obligations

No explanation has been provided to enable clause 14(1)(h) to be readily understood. By the context of '*international obligations*' referred to at clause 30(4)(iii)(A), it must be assumed that clause 14(1)(h) refers to international taxation obligations.

Since international taxation does not form any part of the clause 3(4) justifications, any corresponding provisions should be omitted.


4. Conclusions

Notwithstanding the observations above, we reiterate our primary position that the Proposed Legislation in its present form must now be withdrawn from the current Parliamentary Agenda to allow sufficient time for the proposed amendments to be published and the opportunity for genuine public engagement and proper consultation to take place.

This letter should not be treated as a letter before action in the context of any legal proceedings that may be commenced by our Client in relation to the Proposed Legislation. Should such a step become necessary, our Client reserves the right to amend, withdraw or add to the objections that have been identified within this letter.

We look forward to your response in relation to the matters raised.

Yours faithfully,

A handwritten signature in black ink, consisting of the letters 'KSG' in a stylized, cursive font.

KSG Attorneys-at-Law

Cc: Hon. Andre Ebanks, MP, Minister of Investment, Innovation & Social Development.
Hon. Roy McTaggart, MP, Leader Of The Opposition.