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## APPENDIX B

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REFORM THE LAW RELATING TO  
MAINTENANCE; TO REPEAL THE MAINTENANCE LAW (1996  
REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES**

**MEMORANDUM OF OBJECTS AND REASONS**

DRAFT

**THE MAINTENANCE BILL, 2013**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO REFORM THE LAW RELATING TO MAINTENANCE; TO REPEAL THE MAINTENANCE LAW (1996 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 – PRELIMINARY**

1. (1) This Law may be cited as the Maintenance Law, 2013.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law-

Interpretation and application of this Law

“cohabit” means to live together in a conjugal relationship outside marriage;

“court” means a magistrate, judge or court referred to in section 3;

“dependant” means a person to whom another person has an obligation to provide support under this Law;

“matrimonial proceedings” has the meaning assigned by section 2 of the Matrimonial Causes Law, 2013;

“maintenance order” means an order made under this Law for the maintenance of a dependant;

“minor” means a person under the age of eighteen years;

“order of attachment” means an order made under section 15;

“respondent” means a person who, pursuant to this Law, has an obligation to maintain another person; and

“spouse” means a person who is married to a person of the opposite sex and includes for the purposes of matrimonial proceedings a former spouse.

(2) Subject to Part 6, this Law does not apply to the maintenance of minors.

Application for maintenance order

3. (1) Subject to subsection (2), a person may apply to the summary court or, where the order is ancillary to a matrimonial cause, to the Grand Court, for a maintenance order in accordance with the provisions of this Law.

(2) In any case where an application is made for the division of property under the Matrimonial Causes Law, 2013 the court making the order may make a maintenance order in accordance with the provisions of this Law.

## **PART 2 – OBLIGATION OF SPOUSES DURING MARRIAGE**

Obligation of spouses to maintain each other

4. Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to-

- (a) the circumstances specified in section 12(5); and
- (b) any other circumstances which, in the opinion of the court, the justice of the case requires to be taken into account.

Maintenance order in relation to a spouse

5. (1) A maintenance order for the support of a spouse shall-

- (a) contain such provisions as will ensure that the economic burden of child support is shared equitably; and
- (b) make such provision as the court considers fair with a view to assisting the spouse to become able to contribute to that spouse's own support.

(2) In determining the amount and duration of support to be given, to a spouse under a maintenance order, the court shall have regard to the following matters in addition to the matters specified in section 12(5)-

- (a) the length of time of the marriage;
- (b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage on the spouse's earning capacity;
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage;
- (e) whether the spouse has undertaken the care of a child of eighteen years of age or over who is unable, by reason of illness, disability or other cause, to care for himself;
- (f) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support;
- (g) the effect of the spouse's child care responsibilities on the spouse's earnings and career development; and
- (h) the eligibility of either spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.

### **PART 3 – OBLIGATION OF PARENTS OF ADULT DEPENDANTS**

6. (1) Subject to subsection (2), every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried son or daughter who is not a minor but is in need of such maintenance, by reason of physical or mental infirmity or disability.

Obligation of parent to support son or daughter

(2) For the purposes of this Law, a person is the parent (herein referred to as "A") of a person specified in subsection (1) (herein referred to as "B") if-

(2007 Revision)

- (a) A's name is entered as a parent of B in the general register of births pursuant to the Birth and Deaths Registration Law (2007 Revision), or in a register of births or parentage information kept under the law of any overseas jurisdiction;
- (b) A is or was a party to a marriage (including a void marriage) and B was a child of the marriage;
- (c) A is a party to a marriage and accepts as one of the family B who is the son or daughter of the other party to the marriage or cohabitation;
- (d) A adopted B when he was a minor;

- (e) A had admitted paternity or a court has made a declaration of paternity under section 10 or 11 of the Status of Children Law, 2003 against A in respect of B;
- (f) A is B's natural mother;
- (g) A has at any time in any proceedings before a court, or in writing signed by A, acknowledged that A is a parent of B, and a court has not made a finding of paternity of B that is contrary to that acknowledgement; or
- (h) A is in loco parentis to B, including a person who has demonstrated a settled intention to treat B as a child of the person's family, except under an arrangement where B is placed for valuable consideration in a home by a person having lawful parental responsibility.

Maintenance order relating to a dependant under section 6

7. (1) A maintenance order for the support of a dependant under section 6 shall apportion the obligation according to the capacities of the parents to provide support.

(2) In considering the circumstances of a dependant under section 6 the court shall have regard to the following matters in addition to the circumstances specified in section 12(5)-

- (a) that each parent has an obligation to provide support for the said dependant;
- (b) the dependant's aptitude for, and reasonable prospects of, obtaining an education; and
- (c) the dependant's need for a stable environment.

(3) The court shall have regard to the following matters in considering whether any and what order should be made under this section for requiring any party to make any payment towards maintenance or education of a dependant under section 6-

- (a) the extent (if any) to which that party had, on or after such acceptance of the dependant, assumed responsibility for the dependant's maintenance; and
- (b) the liability of any person, other than the persons who cohabited, to maintain the dependant.

#### **PART 4 - OBLIGATION OF PERSON WHO IS NOT A MINOR**

Obligation of person to support parent

8. (1) Every person who is not a minor has an obligation, to the extent that the person is capable of doing so, to maintain the person's parents and grandparents who are in need of such maintenance by reason of age, physical or mental infirmity or disability.

(2) In considering the circumstances of a dependant who is a parent or grandparent, the court shall have regard to -

- (a) whether, by reason of age or infirmity, that dependant is unable to provide for himself or herself; and
- (b) the circumstances specified in section 12(5)(a) to (g), (l) and (m).

(3) The obligation of a person under subsection (1) in respect of that person's grandparent only arises in the event of the failure of the grandparent's children to do so owing to death, physical or mental infirmity or disability.

#### PART 5 - MAINTENANCE ORDERS

9. A court may, on application by or on behalf of a dependant, order the respondent named in the application to maintain that dependant and in making such an order, the court shall, where the order is a monetary order, determine the amount to be paid thereunder.

Order for maintenance

10. (1) An application for an order for the maintenance of a dependant may be made to the court by the dependant or, in the case of a dependant referred to in section 6, a parent of the dependant or any other person who has the care of the dependant.

Application for order of maintenance

(2) Where-

- (a) the Government is providing assistance in respect of the maintenance of a dependant; or
- (b) an application for such assistance has been made to the Government by or on behalf of the dependant,

an application for a maintenance order may be made to the court by the relevant Ministry on behalf of the Government.

11. (1) Proceedings in a summary court or the Grand Court for maintenance under this Law, shall be by way of [summons].

Manner of proceeding in court

(2) A magistrate or judge may hear and determine the matter in the absence of the respondent where the magistrate or judge is satisfied by evidence upon affidavit, in the form set out in the Schedule, that a summons in respect of the proceedings was served on the respondent at least seven days before the date of the proceedings.

12. (1) In hearing an application for an order under section 9, the court shall act in accordance with subsection (2) if satisfied that-

Power of the court in relation to an application

- (a) the dependant is entitled under this Law to be maintained by the respondent named in the application; and
- (b) the respondent has failed to fulfil the obligation to maintain the dependant.

(2) The court shall enquire into the matters referred to in subsection (5) and if the court is satisfied that the respondent is able to maintain or to contribute to the maintenance of the dependant, the court shall make a maintenance order that the respondent pay, either to the dependant or to some other appropriate person named by the court in the order, such periodical sum as the court thinks fit, having regard to the relevant circumstances specified in subsection (5), or such other order under section 13(1) as the court considers appropriate.

(3) Subject to subsection (5), where an application is made under section 10(2) on behalf of the Government, it shall be lawful for the court to further order the respondent to pay to the Government such additional periodical sum as the court thinks just, as reimbursement for assistance given.

(4) The total amount payable under subsection (3) shall not exceed the aggregate amount of assistance given by the Government to the dependant.

(5) In determining the amount and duration of support, the court shall consider all the circumstances of the parties including the matters specified in sections 5(2), 7(2), 7(3) or 8(2), as the case may require and-

- (a) the respondent's and the dependant's assets and means;
- (b) the assets and means that the dependant and the respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to the dependant's own support;
- (d) the capacity of the respondent to provide support;
- (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;
- (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
- (g) any legal obligation of the respondent or the dependant to provide support for another person;
- (h) the desirability of the dependant or respondent staying at home to care for a child;
- (i) any contribution made by the dependant to the realisation of the respondent's career potential;
- (j) any other legal right of the dependant to support other than out of public funds;

- (k) the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (l) the quality of the relationship between the dependant and the respondent; and
- (m) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

13. (1) In relation to an application for a maintenance order, the court may make an interim or final order requiring-

Powers of court  
regarding maintenance  
orders

- (a) that an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) that a lump sum be paid or held in trust;
- (c) that property be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) that some or all of the money payable under the order be paid to the Clerk of the Court or to another appropriate person or agency for the dependant's benefit;
- (e) that payment be made in respect of any period before the date of the order;
- (f) payment to an agency referred to in section 10(2) of an amount in reimbursement for assistance referred to in that subsection, including assistance provided before the date of the order; and
- (g) the securing of payment under the maintenance order, by a charge on property, an order of attachment or otherwise.

(2) The provisions of section 15(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under subsection (1)(g).

(3) The court may, on application by or on behalf of a person for whose benefit a maintenance order has been made, make an interim or final order restraining the depletion of a person's property that would impair or defeat a claim under this Law.

(4) In an application for a maintenance order or for variation thereof, the court may order the employer of a party to the application, or the party in the case where he is self-employed, to make a written return to the court showing the party's emoluments during the preceding twelve months.

(5) A return purporting to be signed by the employer may be received in evidence as prima facie proof of its contents.

(6) A respondent against whom an order is made under this section shall notify the court in writing of any change in the respondent's employment, within seven days after becoming aware of the change.

Duration of order

14. (1) Subject to the provisions of this section and section 16, a maintenance order shall remain in force for such period as may be specified in the order.

(2) Where a dependant is unable to maintain himself or herself by reason of old age or an illness or infirmity which is likely to be permanent, a maintenance order may be made to be in force for the rest of the natural life of that dependant.

(3) Subject to any agreement by spouses to the contrary, an order in respect of the maintenance of a spouse ceases to have effect upon the re-marriage of the spouse in whose favour the order is made.

(4) It is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date that a re-marriage took place as referred to in subsection (3).

(5) Any moneys paid in respect of a period after the date of a re-marriage may be recovered in a court having jurisdiction under this Law.

(6) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

Pension or income liable to attachment

15. (1) Where a maintenance order has been made against a respondent in respect of whom there is any pension or income payable and capable of being attached, the court may-

- (a) after giving the respondent an opportunity to be heard; and
- (b) if satisfied that the respondent has failed to comply with the order without reasonable cause,

make an order of attachment in accordance with subsection (2).

(2) An order of attachment shall direct that such sum periodically as is specified in the maintenance order, or any part of such sum, be attached and paid either to the person to whom a periodical sum has been directed to be paid in the maintenance order or to some other person named in the order of attachment.

(3) An order of attachment made under subsection (1) shall be an authority to a person by whom any pension or income affected by such order is payable, to make the payment and the receipt of the person to whom payment is

ordered shall be a good discharge to the person by whom the pension or income is payable.

16. At any time after a maintenance order or an order of attachment has been made under this Law, a court may upon the application of -

Variation, suspension or  
cancellation of orders

- (a) any of the parties to the proceedings in which such order was made; or
- (b) any person to whom any payment was directed in such order to be made,

vary the order in such manner as the court thinks fit, suspend the order, revive a suspended order or cancel the order if circumstances so warrant.

17. (1) Where a maintenance order has, whether before or after the passing of this Law, been made against any person by any court in England or Ireland, and a certified copy of the order has been transmitted to the Governor he shall send a copy of the order to the Clerk of the Court for registration.

Registration of orders  
and enforcement

(2) Where the Clerk of the Court receives the order he shall register it in the prescribed manner and from the date of such registration, the order shall be of the same force and effect, and subject to this Law, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(3) The court in which such order is to be registered shall, if the court by which the order was made was a court of superior jurisdiction, be the Grand Court, and, if the court was not a court of superior jurisdiction be a summary court.

(4) Where a court in the Islands has made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the Governor, for transmission to the Secretary of State, a certified copy of the order.

18<sup>2</sup>. (1) Where an application is made to a summary court for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such a case the order shall be provisional

Procedure where  
application is made for a  
maintenance order  
against a resident of  
England or Ireland

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<sup>1</sup> Repeat of current provisions

<sup>2</sup> *ibid*

only, and shall have no effect unless and until confirmed by a competent court in England or Ireland.

(2) The evidence of any witness who is examined on an application under subsection (1) shall be put in writing and such deposition shall be read over to and signed by him.

(3) Where such an order is made the court shall send to the Governor, for transmission to the Secretary of State, the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England or Ireland for confirmation, and the order has by that court been remitted to the summary court which made the order for the purpose of taking further evidence, that court or any other summary court shall, after giving the prescribed notice, proceed to take the evidence in a similar manner and subject to the same conditions as the evidence in support of the original application.

(5) If, upon the hearing of evidence under subsection (4), it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Secretary of State and dealt with in the same manner as the original depositions.

(6) Subject to subsection (7), the confirmation of an order made under this section shall not affect any power of a summary court to vary or rescind that order.

(7) On the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor, for transmission to the Secretary of State, and that in case of an order varying the original order the order shall not have any effect unless and until confirmed in the same manner as the original order.

(8) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

19<sup>3</sup>. (1) Where a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by a summary court in the Islands and-

Procedure where a provisional maintenance order has been made by a court in England or Ireland, etc.

- (a) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor; and
- (b) it appears to the Governor that the person against whom the order was made is resident in the Islands,

the Governor may send the documents to the Clerk of the Court with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue the summons and cause it to be served upon such person.

(2) A summons issued under subsection (1) may be served in the Islands in the same manner as if it had been originally issued or subsequently endorsed by a summary court in the Islands.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If, at the hearing, the person served with the summons does not appear, or on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as to the court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in the same manner as if it had originally been made by the confirming court, and where on application for rescission or variation the

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<sup>3</sup> *ibid*

court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound by the order shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

Payments under Law

20. (1) Where a summary court or the Grand Court makes a maintenance order it shall, upon the application of a person entitled to be maintained by any other person under this Law either at the time of making the order or subsequently on an ex parte application for variation of the order, provide in the order that all payments under the order be made to the Clerk of the Court and payments under such order shall thereafter be made to the Clerk of the Court.

(2) Payments of any amount ordered by a court under this Law may be made to the Clerk of the Court in person or by letter sent by registered post addressed to the Clerk of the Court and posted in time to be delivered to the Clerk of the Court on the day appointed for payment.

(3) It shall be the duty of the Clerk of the Court to-

- (a) receive all payments directed to be made to the Clerk of the Court under this Law; and
- (b) make to the person named in the maintenance order fortnightly payments of the sum directed to be paid under the maintenance order or such part of the payment as is received by the Clerk of the Court without making any deduction therefrom.

(4) Payment shall be made by the Clerk of the Court at the court.

Distress may issue if payment in arrears

21. (1) Where any amount ordered by a maintenance order to be paid to the Clerk of the Court is fourteen days in arrears, a magistrate may, on the application of the Clerk of the Court, issue a warrant directing the sum due under the order or since any commitment for disobedience as hereinafter provided and the costs in relation to the warrant, to be recovered from the respondent.

(2) If upon the return of the warrant issued under subsection (1) it appears that no sufficient distress can be had, the magistrate may issue a warrant to bring the respondent before the court.

(3) If the respondent neglects or refuses without reasonable cause to pay the sum due under the maintenance order and the costs in relation to the warrant,

the magistrate may commit the respondent to prison for any period not exceeding three months unless the sum and costs and the costs of commitment, be sooner paid.

(4) Where a respondent is committed to prison under subsection (3), the provisions of section 19(3) shall apply.

(5) Notwithstanding anything to the contrary in any enactment limiting the time within which summary proceedings are to be taken, such limitation shall not apply to proceedings for enforcing the payment of sums under an order made under this Law.

22. (1) A person shall not be committed to prison for default in payment under a maintenance order unless the court is satisfied that the default is due to the willful refusal or culpable neglect of that person.

Committal for non-payment

(2) For the purposes of subsection (1), if the person liable to make payment is not before the court, the court may, if it thinks necessary or desirable, issue a warrant to bring that person before the court.

(3) Where a person is committed to prison for default then-

- (a) unless the court otherwise directs, no arrears shall accrue under the maintenance order during the time that the person is in prison; and
- (b) the committal shall not operate to discharge the liability of the person to pay the sum in respect of which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order, the court may, if in its opinion the circumstances so warrant, remit the whole or any part of the sum due under the order.

23. (1) If a respondent is incarcerated for any offence (other than by committal under section 22) and the court is satisfied that the respondent has means by which payments under a maintenance order may be made, the court may-

Court may order payment during respondent's incarceration for any offence

- (a) order that, during the period of incarceration, such payments shall be made from the respondent's income; and
- (b) make an order of attachment in respect thereof.

(2) The provisions of section 15(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under this section.

- Appeal
- (2006 Revision)
- (2008 Revision)
24. (1) Appeals shall lie from any order under this Law of-
- (a) the summary court to the Grand Court in accordance with the Summary Jurisdiction Law (2006 Revision); and
  - (b) the Grand Court to the Court of Appeal in accordance with the Grand Court Law (2008 Revision).
- (2) The Grand Court or Court of Appeal, as the case may be, may, upon hearing an appeal-
- (a) confirm, reverse or modify the decision of the court;
  - (b) remit the matter to the court for rehearing generally or with the opinion of the Grand Court or Court of Appeal thereon; or
  - (c) make such order as the Grand Court or the Court of Appeal thinks fit, including an order as to costs to be paid by either party as the court may think just.
- (3) The Grand Court or the Court of Appeal may, in making an order under subsection (2)(c), exercise any power which the court below might have exercised and such order shall have the same effect and may be enforced in the same manner as if it had been made by the court below.

#### **PART 6 – MAINTENANCE AGREEMENTS**

- Agreements in respect of maintenance
25. (1) Subject to section 26, spouses or two persons in contemplation of their marriage to each other may, for the purpose of facilitating the settlement of their support rights and obligations, make such maintenance agreement as they think fit.
- (2) For the purposes of this Part, a maintenance agreement means an agreement that-
- (a) makes provision in respect of the support rights and obligations of the parties with respect to each other or any child that either party has an obligation to maintain under section 6; and
  - (b) includes provisions in respect of-
    - (i) financial matters;
    - (ii) the right to direct the education and moral training of their children; or
    - (iii) any other matter in the settlement of the support obligations of the parties, including an agreement that varies an earlier maintenance agreement.
- (3) Each party to a maintenance agreement shall obtain independent legal advice before signing the agreement and the legal adviser shall certify that the

implications of the agreement have been explained to the person obtaining the advice.

(4) Every maintenance agreement shall be in writing signed by both parties whose signatures shall-

- (a) if signed in the Islands, be witnessed by a justice of the peace, notary public or by an attorney-at-law;
- (b) if signed in a country or State other than the Islands, be witnessed by-
  - (i) a notary public or other person having authority by the law of such country or State to administer an oath in that country or State; or
  - (ii) a British Consul-General or Consul or Vice-Consul or Acting Consul or Consul Agent exercising his functions in that country or State.

(5) Subject to subsection (7), a maintenance agreement shall be unenforceable in any case where-

- (a) there is non-compliance with subsection (3) or (4); or
- (b) the court is satisfied that it would be unjust to give effect to the agreement.

(6) An agreement made pursuant to subsection (1) by a minor and every instrument executed by such minor for the purpose of giving effect to any such agreement shall be valid and effective as if the minor were of full age.

(7) Notwithstanding subsection (5)(a), the court shall have jurisdiction to enquire into any agreement made under subsection (1) and may, in any proceedings under this Law or on an application made for the purpose, declare that the agreement shall have effect in whole or in part or for any particular purpose if it is satisfied that the non-compliance mentioned in that subsection has not materially prejudiced the interests of a party to the agreement.

(8) In deciding under subsection (5)(b) whether it would be unjust to give effect to an agreement, the court shall have regard to-

- (a) the provisions of the agreement;
- (b) the time that has elapsed since the agreement was made;
- (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;
- (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable;
- (e) any other matter which it considers relevant to any proceedings.

(9) Nothing in this section shall limit or affect the capacity of spouses to agree to acquire or hold any property jointly or in common (whether or not with any other person) and whether legally or beneficially.

(10) A maintenance agreement ceases to be in force upon the death of a party to the agreement, unless the agreement otherwise provides.

(11) Where in relation to a maintenance agreement the court is satisfied that the arrangements in respect of a child that either party has an obligation to maintain under section 6 are-

- (a) not proper; or
- (b) no longer adequate in the circumstances,

(2012 Revision) the court may make such order under the Children Law (2012 Revision) as it thinks necessary to secure the proper support of the child.

(12) In subsection (6) “minor” means a person who is sixteen years of age and over but below the age of eighteen years.

Agreement to defeat creditors

26. Any maintenance agreement that is intended to defeat any creditor of either party to the agreement is void.

#### **PART 7 - GENERAL**

Depositions which may be received in evidence<sup>4</sup>

27. Depositions taken in a court in England or Ireland for the purposes of this Law may be received in evidence in proceedings before a summary court under this Law.

Governor may make regulations

28. The Governor may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

Courts and officers shall take steps for enforcing orders

29. (1) A summary court in which an order has been registered under this Law or by which an order has been confirmed under this Law, and the officers of such court shall take such steps for enforcing the order as may be prescribed.

(2) Every order referred to in subsection (1) shall be enforceable in the same manner as if the order were for the payment of a civil debt recoverable summarily.

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<sup>4</sup> *ibid*

(3) A warrant of distress or commitment issued by a summary court for the purpose of enforcing any order so registered or confirmed may be executed in any part of the Islands in the same manner as if the warrant had been originally issued or subsequently endorsed by a summary court having jurisdiction in the Islands.

30. Any document purporting to be signed by a judge or officer of a court in England or Ireland, shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Signing of documents<sup>5</sup>

31. Sections 17 to 19 and 27 to 30 shall have effect in respect of Jamaica as though the references to England or Ireland therein were references to Jamaica, and the references to the Secretary of State were references to the person holding equivalent authority in Jamaica.<sup>6</sup>

Provisions applicable to Jamaica

32. (1) The Governor, if satisfied that, were the benefits conferred by this Law to be applied to, or to a particular class of, maintenance orders made by the courts of any country or territory outside the Islands, similar benefits would in that country or territory be applied to, or to that class of, maintenance orders made by the courts of the Islands, may, by order, extend this Law to that country or territory, and this Law shall thereupon apply in respect of the country or territory as though-

Power of Governor to extend Law to other countries or territories<sup>7</sup>

- (a) references in it to England or Wales were references to that country or territory; and
- (b) references in it to the Secretary of State were references to the Head of State or Governor of the country or territory.

(2) An order made under subsection (1) may extend sections 17 to 19 and 27 to 30 to another country or territory either as regards maintenance orders generally, or as regards a specified class of maintenance orders.

33. The Rules Committee of the Grand Court may make rules and prescribe forms for carrying into effect the provisions of this Law.

Power to make rules

34. The Maintenance Law (1996 Revision) is repealed.

Repeal  
(1996 Revision)

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<sup>5</sup> *ibid*

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

[Transitional provisions]<sup>8</sup>

[35.] Any maintenance proceedings commenced under the Maintenance Law (1996 Revision) but not concluded before the date of the commencement of this Law shall be continued and completed after such date in accordance with this Law.]

**SCHEDULE**

(Section 11)

**Affidavit of Service**

I, \_\_\_\_\_ make oath and say that I did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, duly serve the defendant, C.D., with a summons (or order) a true copy whereof is herewith annexed, marked A, by delivering the same personally to the defendant (or by leaving the same with \_\_\_\_\_ at the place of abode of the defendant).

Sworn at \_\_\_\_\_ in \_\_\_\_\_ this day of \_\_\_\_\_ 20\_\_\_\_, before me

Justice of the Peace

*Endorse the copy summons (or order) thus-*

This paper marked A is the paper referred to in the annexed affidavit.

Passed by the Legislative Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Speaker

Clerk of the Legislative Assembly

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<sup>8</sup> To be completed after consultation