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CONSTITUTION (AMENDMENT) BILL, 2017

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CONSTITUTION (AMENDMENT) BILL, 2017

OF THE BAHAMAS (2-1)

A BILL FOR AN ACT TO AMEND THE CONSTITUTION TO PROVIDE FOR THE ESTABLISHMENT OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND FOR MATTERS CONNECTED THERETO

Enacted by the Parliament of The Bahamas

WHEREAS it is enacted, *inter alia*, by Article 54(1) of the Constitution that subject to the provisions of Article 54, Parliament may, by an Act of Parliament passed by both Houses, alter any of the provisions of the Constitution:

BE IT KNOWN in accordance with Article 54(5), this Act shall have the effect of altering the Constitution.

1. Short title and commencement.

- (1) This Act may be cited as the Constitution (Amendment) Act, 2017.
- (2) This Act shall come into operation on such day as the Prime Minister may by notice published in the *Gazette*, appoint.

2. Interpretation.

In this Act, “the Constitution” means the Constitution as set out in the *Schedule* to The Bahamas Independence Order 1973.

3. Repeal and replacement of Article 78 of the Constitution.

Article 78 of the Constitution is repealed and replaced as follows —

“78. Functions of the Attorney-General.

- (1) The Attorney-General shall be the principal legal adviser to the Government of The Bahamas.

- (2) The Attorney-General shall be responsible for the administration of legal affairs of The Bahamas and legal proceedings for and against the State shall be taken —
 - (a) in the case of civil proceedings, in the name of the Attorney-General;
 - (b) in the case of criminal proceedings, in the name of the Director of Public Prosecutions.
- (3) The Attorney-General may, in any case involving considerations of public policy, national security or the international obligations of The Bahamas give general or specific directions to the Director of Public Prosecutions as to the exercise of the powers conferred upon the Director of Public Prosecutions by Article 78A(3) and the Director of Public Prosecutions shall act in accordance with those general or specific directions.
- (4) Any specific directions given under paragraph (3) must be in writing and signed by the Attorney-General.

78A. Establishment of the office and functions of Director of Public Prosecutions.

- (1) There shall be a Director of Public Prosecutions of The Bahamas whose office shall be a public office.
- (2) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Justice of the Supreme Court.
- (3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do —
 - (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
 - (c) to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (4) The powers of the Director of Public Prosecutions under paragraph (3) of this Article may be exercised by him in person or through any other person acting under and in accordance with his general or specific instructions.
- (5) Where any other person or authority has instituted criminal proceedings, nothing in this paragraph shall prevent the withdrawal

of those proceedings by or at the instance of the Director of Public Prosecutions.

- (6) Subject to the provisions of Article 78 (3) and (4), in the exercise of the powers conferred upon the Director of Public Prosecutions by paragraph (3), the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.
- (7) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court in The Bahamas or to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament pursuant to this Constitution, shall be deemed to be part of those criminal proceedings:

Provided that the power conferred upon the Director of Public Prosecutions by paragraph (3)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such person.

78B. Tenure of Director of Public Prosecutions.

- (1) The Director of Public Prosecutions —
 - (a) may hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment for a further period of five years, but may not hold the office beyond age sixty-eight, whichever is earlier; and
 - (b) shall not be eligible for re-appointment to office after having served a period of ten years in total.
- (2) The Director of Public Prosecutions may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of paragraph (5) of this Article.
- (3) If the Prime Minister represents to the Governor-General that the question of removing the Director of Public Prosecutions from office for inability as aforesaid or for misbehaviour ought to be investigated, then —
 - (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold high judicial office; and

- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Director of Public Prosecutions ought to be removed from office for inability as aforesaid or for misbehaviour.
- (4) If the question of removing the Director of Public Prosecutions from office has been referred to a tribunal appointed under paragraph (3) of this Article, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission after such Commission has consulted with the Prime Minister, may suspend the Director of Public Prosecutions from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director of Public Prosecutions should not be removed from office.
- (5) Where the tribunal has recommended to the Governor-General that the Director of Public Prosecutions ought to be removed from office for inability as aforesaid or for misbehaviour, the Director of Public Prosecutions shall be removed from office by the Governor-General by instrument under the Public Seal.
- (6) The Office of the Director of Public Prosecution shall not be abolished while there is a substantive holder thereof.”.

4. Transitional provision.

- (1) Any criminal proceedings to which the Attorney-General is a party and that are on-going on the day on which this Act comes into force shall be continued by the Director of Public Prosecutions without further formality.
- (2) A person who immediately before the appointed day holds the office of Director of Public Prosecutions —
 - (a) shall, as from the appointed day of the coming into force of this Act, continue to hold office for a period of five years as if he had been appointed thereto in accordance with the provisions of the Constitution;
 - (b) shall be deemed to have been duly appointed to such office under the Constitution; and
 - (c) subject to Article 78B(1), may be appointed for a further period of five years.

5. Repeal of No. 12 of 2002.

The Bahamas Constitution (Amendment) (No. 3) Act, 2002 is hereby repealed.

OBJECTS AND REASONS

This Bill seeks to amend Article 78 of the Constitution to provide for the creation of the Office of the Director of Public Prosecutions.

By virtue of the creation of the Office of Director of Public Prosecutions, this Bill seeks to confer all powers relating to criminal prosecutions previously vested in the Attorney-General to the Director of Public Prosecutions.

Clause 2 of the Bill provides for the interpretation of certain expressions used throughout the Bill.

Clause 3 of this Bill seeks to provide for the establishment and tenure of the office of Director of Public Prosecutions. This clause also provides for criminal legal proceedings for and against the State to be taken in the name of the Director of Public Prosecutions and for the Attorney-General to, in cases involving considerations of public policy, national security or the international obligations of The Bahamas, give general or specific directions to the Director of Public Prosecutions as to the exercise of the powers conferred on such Director.

Clause 4 of this Bill seeks to provide for transitional provisions. This clause provides for criminal proceedings to which the Attorney-General is a party and that are on-going on the day on which the Act comes into force to be continued by the Director of Public Prosecutions without formality.

Additionally, clause 4 of the Bill provides that the person who, on the day on which this Act comes into force holds the post of Director of Public Prosecutions to continue to hold office for a period of five years as if he had been appointed thereto in accordance with the provisions of the Constitution and such person shall be deemed to have been duly appointed to such office under the Constitution and subject to Article 78B(1), may be appointed for a further period of five years.

Clause 5 of the Bill seeks to repeal the Bahamas Constitution (Amendment)(No. 3) Act, 2002.