Liberalisation of Sunday Trading in the Cayman Islands

Consultation Paper

1st August 2014
CONSULTATION PROCESS

Request for feedback and comments

This document sets out several areas for consideration in the liberalisation of Sunday trading restrictions in the Cayman Islands. The Government’s intention to consult with the public on this matter was announced by the Premier in his 2014/15 Policy Statement, delivered in the Legislative Assembly on the 26th May 2014.

This consultation is being conducted by the Minister for Commerce, the Hon. Wayne Panton through the Department of Commerce and Investment.

The Minister would like to hear from any interested members of the public, including:

- local trade associations
- religious organisations

Closing date for submissions: 30th September 2014

If you have any comments on the liberalisation of Sunday trading, please let us know. You can submit your comments:

Email: info@dci.gov.ky

Mail: Department of Commerce and Investment, Government Administration Building, 133 Elgin Avenue, Suite 126, Grand Cayman, KY1-9000 CAYMAN ISLANDS

If you are submitting comments, please provide the following information with your response:

- Your name
- Your contact details (email; phone; or mailing address)
- Whether you are commenting as an individual or on behalf of an organisation and, if so, the name of the organisation.

Please note that Government will release a public report on the consultation responses. Your comments therefore may be made public and attributed to you by name/representing organisation, unless you indicate that:

a. you agree that your comments may be made public but not attributed (i.e. anonymous); or
b. you do not want your comments to be made public.
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OVERVIEW

Sunday trading in the Cayman Islands is governed by The Sunday Trading Law (2003 Revision), which determines which businesses may open on a ‘prohibited’ day (defined as Sundays, Good Friday and Christmas Day).

In general, section 5 of the law states that ‘a person shall not sell, offer or expose for sale any goods, ware or merchandise on a prohibited day’. The law also specifies by Schedule those premises that are exempt from the Law and grants Cabinet the power to vary the Schedule (see Appendix 1).

Today, it is generally recognised that the social and economic landscape has evolved significantly since this law was enacted, first by an Order of the UK in 1964, and subsequently by local legislation in 1986. Since then many countries, including the UK and several of its Overseas Territories and Crown Dependencies, have undergone several revisions of policies dealing with restrictions on Sunday trading.

Worldwide, there remain a variety of ways in which restrictions on Sunday trading are imposed in various countries. These include limitations on operating hours, exemptions for certain business types, and exemptions based on the size of a business (for example, for large retail outlets such as supermarkets).

In the Cayman Islands, the issue of the liberalisation of our Sunday trading regime has been debated for several years. Notable periods include 2005 and 2013, when the Chamber of Commerce conducted two surveys of its membership.

Most recently, as part of the 2014/15 Budget Debate, the Premier, the Hon. Alden McLaughlin, outlined several policy proposals that seek to encourage economic activity, provide support for local commerce, and positively impact employment opportunities:

‘Sunday Trading is another option being considered by the Progressive-led Government, but the decision will be made democratically; we will take the issue to the public, again for consultation. We know that there are businesses opening in contravention of the Sunday Trading Law without penalty. We believe that the law could be changed in a way that it does not impact our Christian traditions. We also need to ensure that people who do not wish to work on Sundays because of religious reasons aren’t discriminated against in the job market. If Sunday trading is to be made legal for all businesses that desire to open, it would give employees a chance to supplement their incomes, as well as create more full and part time jobs for Caymanians.’ - Premier Hon. Alden McLaughlin, MBE, JP, MLA

Given this context, the Ministry of Commerce has initiated this consultation in order to determine potential changes to the Sunday Trading Law, in response to the changing social and economic environment; concerns for the competitiveness of local retailers; consumer flexibility and choice; concerns that it unfairly prejudices religious beliefs that hold a day other than Sunday as Sabbath, and the pressures on family life in the Cayman Islands.
1. **POSSIBLE LIBERALISATION OF SUNDAY TRADING**

Several reasons have been raised in support of the liberalisation of Sunday trading.

a) To allow competition between all retailers on a Sunday.

b) To benefit consumers, particularly in the costs of goods currently available for purchase on Sunday through limited retail outlets (such as gas stations).

c) To improve consumer choice by having access to the same variety of goods as available on a weekday.

d) To increase convenience to consumers to avoid peak shopping hours, and for more choice as to when to shop.

e) To provide job opportunities for those who want to work on a Sunday and currently cannot, including existing employees, new employees, and student employees.

f) To maximise efficiency and productivity across the whole retail sector, including reduced congestion and queuing at busier times and reduced wastage for retailers selling perishable goods.

g) To address criticism that the current situation discriminates against those that hold a day other than Sunday as Sabbath.

Counter arguments to the liberalisation of Sunday trading are as follows.

a) There is the potential that operating on Sunday will increase the variable costs of retailers, and it is not necessarily the case that the increase in costs will be outweighed by an increase in revenue.

b) Shops may be forced to open on a Sunday just to match other stores that do so.

c) Smaller shops operating illegally on Sunday (some of which may already be struggling to remain operational) could lose out to competition from larger stores.

d) Some employees may feel they have to offer to work on Sunday when they would otherwise choose not to do so.

e) Removing a ‘weekly holiday’ may further impact employees’ health and welfare, as they may become overworked.

f) There is a concern that allowing Sunday trading will be a threat to traditional Christian values.

g) There is a risk of increased pressure on families, where the necessity for parents and guardians to 'make ends meet' will undermine family life and specifically, have a negative impact on children.
Consultation questions

1. Should Government allow businesses the option to legally operate on Sunday?

2. Should this be applied to all businesses or only to specified businesses (for example, only smaller retailers)?

3. If there is an option for businesses to legally operate on Sunday, should there be a restriction on the number of hours that a business may be open, and if so, what is your suggestion on the maximum number of hours allowed?

4. Are there any other updates that should be made to the Sunday Trading Law? What are those updates?

2. EMPLOYEE PROTECTION

Currently, the Labour Law (2011 Revision) does not explicitly cover employees who work on a Sunday.

In section 24 of the law, a standard work week is defined as a period not exceeding 45 hours in any period of 168 hours. Within this standard work week, section 23 of the law requires every employer to permit each employee to have a period of rest comprising at least 24 consecutive hours in every period of seven consecutive days.

Employees are eligible for overtime pay for every hour of work in excess of the standard work week (section 25). However, non-managerial employees may voluntarily agree to waive consideration for overtime pay, provided that such agreement is registered with a Labour Tribunal (section 26).

Section 74 of the Labour Law establishes Labour Tribunals ‘for the purposes of hearing complaints from employers and employees’. These tribunals have a broad mandate with regards to the complaints that are dealt with, and there are regulations governing the process and administration of these tribunals.

Consultation questions

5. Is there a need to introduce greater protection against discrimination for employees that choose not to work on a Sunday?

6. Is such protection more applicable in certain industries and if so, which industries require specific consideration?
3. **Timeline and Next Steps**

This consultation will run until the 30\textsuperscript{th} September, with submissions accepted up until 5:00pm on the 30th. Members of the public may submit their comments at any point over this period, and will be invited to participate in online discussion through social media sites such as Twitter and Facebook.

A series of public meetings will be scheduled in September to facilitate further open discussion. While feedback provided at these meetings will be noted, individuals are still encouraged to make a written submission. This will ensure that all views are properly represented.

At the conclusion of the consultation period, a summary of the consultation results will be prepared for the Cabinet.

It is anticipated that any legislative changes that are determined would come into effect after the 4\textsuperscript{th} quarter of 2014.

Regardless of the decided policy, a review of the impact of any changes will be undertaken by the Department of Commerce and Investment, one year after the implementation of such changes.
4. **APPENDIX 1: PREMISES NOT SUBJECT TO THE SUNDAY TRADING LAW (2003 REVISION)**

1. Druggist shops and dispensaries in relation to the sale of medical stores only.
2. Restaurants, hotels and lodging houses.
3. Establishments for the sale of motor fuel or oils, in relation to the sale of those items.
4. Motor vehicle repair shops or service stations, in relation to the sale of those items and of spare parts for motor vehicles.
5. Establishments for the sale of bread ice, ice-cream, non-alcoholic beverages, milk, newspapers, bottled water and water in bulk, in relation to the sale of those items.
6. Establishments governed by any law for the time being in force in the Islands regulating the sale of intoxicating liquor, in relation to the sale of intoxicating liquor.
7. Establishments approved by the Governor in Council by publication in the Gazette for the sale of duty-free goods.
8. Establishments concerned in watersports or sightseeing attractions.
9. Establishments within the curtilage of a hotel in relation to the sale of souvenir items, toiletries and medical supplies.
10. Establishments engaged in the sale or supply of funeral caskets or flowers, in relation to the sale or supply of those items.
11. Establishments for the sale of victuals, stores or other necessaries required for a ship or aircraft on arrival at or immediately before departure from a port or airport in the Islands, in relation to the sale of those items.
12. Hairdressing and beauty salons.
13. Airline and shipping offices.
14. Establishments carrying on retail business at an airport.
15. Establishments concerned in the rental of motorcars, motor-cycles or bicycles, or in the rental or charter of boats, in relation to such rentals or charters.
16. Establishments engaged in the sale or supply of toiletries, in relation to the sale or supply or those items.
17. Establishments engaged in the sale or supply of baby products (other than clothing and toys), in relation to the sale or supply of those items.
18. Establishments concerned in the provision of such essential services as may be prescribed by the Governor in Council by order.
19. Establishments in Grand Cayman selling, mainly to tourists, duty-free goods, locally produced goods or souvenir items, in relation to those goods, during the permitted opening hours of the prohibited days as specified by variation orders made, from time to time, under section 6(2).
20. Establishments engaged in the conduct of public cinematographic exhibitions, in relation to the exhibition, on Sundays between the hours of 2:00 p.m. and midnight of films which have been designated by the British or American Film Censorship Authorities as suitable for viewing by children aged seventeen years and under.