

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE AUDITORS OVERSIGHT LAW,
2011, LAW 23 OF 2011, TO INCLUDE TWO ADDITIONAL CATEGORIES
OF AUDITS UNDER THE PURVIEW OF THE OVERSIGHT OF THE
AUDITORS OVERSIGHT AUTHORITY; TO PERMIT COOPERATION
BETWEEN THE AUDITORS OVERSIGHT AUTHORITY AND
EQUIVALENT OVERSEAS AUTHORITIES; AND FOR INCIDENTAL
AND CONNECTED PURPOSES**

THE AUDITORS OVERSIGHT (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

Clause 1 of the Bill sets out the short title.

Clause 2 of the Bill amends the long title of the Auditors Oversight Law, Law 23 of 2011 (the “principal Law) so that the Law also applies to designated companies and Authority specified companies.

Clause 3 of the Bill amends section 2 of the principal Law so as to provide definitions for the following words -

- (a) an “Authority specified company”;
- (b) a “designated company”; and
- (c) an “overseas auditor oversight body”.

Clause 4 of the Bill amends section 3 of the principal Law which makes provision for the establishment and functions of the Authority. This clause expands the functions of the Authority so that designated companies and Authority specified companies are subject to the oversight of the Authority. The clause also makes provision for the Authority to provide assistance to overseas auditor oversight bodies.

Clause 5 of the Bill amends section 8 of the principal Law which sets out the functions of the Managing Director. This clause amends subsection (4) so that the Managing Director may render services outside the parameters set by the Board but only at the discretion of the Board.

Clause 6 of the Bill amends section 10 of the principal Law which makes provision for the manner in which meetings of the Board are to be conducted. This clause specifically amends section 7(3) and lowers the quorum requirement for meetings from five to four directors.

Clause 7 of the Bill amends section 17 of the principal Law which makes provision for the qualifications necessary for an auditor prior to appointment. This clause amends subsections (1), (2) and (3), so that the requirements for the appointment of an auditor in respect of a market traded company, also apply with respect to a designated company.

Clause 8 of the Bill amends the principal Law by inserting section 17A which makes provision for the voluntary registration of auditors.

Clause 9 of the Bill amends section 18 of the principal Law which makes provision for the registration of recognized auditors. This clause amends section 18(2) so that the provisions relating to the deregistration of a recognized auditor in respect of a market traded company also apply with respect to a designated company and an Authority specified company.

Clause 10 of the Bill amends section 19 of the principal Law so that the requirements regarding eligibility for entry onto the register in respect of a market traded company also apply with respect to a designated company and an Authority specified company.

Clause 11 amends section 20 of the principal Law which specifies a time period in which auditors are to ensure that they are in compliance with provisions of the principal Law that previously did not apply to auditors. This clause specifies a new time period in which auditors must become compliant with respect to designated companies.

Clause 12 amends section 26 which provides that documents prepared by the Authority are to be kept confidential. This clause prevents this confidentiality from being extended to documents the Authority is required to disclose pursuant to a memorandum of understanding. This clause further amends section 26 so that the Freedom of Information Law (2015 Revision) will not apply to documents protected by this section.

Clause 13 amends section 29 of the principal Law so that the Rules made pursuant to the principal Law extend to recognized Auditors who audit designated companies or Authority specified companies. This clause also removes the creation of penalties from the ambit of the Rules.

Clause 14 amends section 30 of the principal Law so that compliance under the Rules made pursuant to the principal Law extends to monitoring accounts of designated companies and Authority specified companies.

Clause 15 amends section 31 of the principal Law so that the obligations of recognized auditors regarding matters related to compliance also extends to designated companies and Authority specified companies.

Clause 16 inserts sections 32A, 32B and 32C which respectively make provision -

- (a) for the Authority to enter into memoranda of understanding with overseas auditor oversight bodies to facilitate their respective regulatory oversight functions;
- (b) for the protection of persons to whom functions of the Authority have been delegated with respect to the disclosure of information in accordance with those delegated functions; and
- (c) regarding the factors to be considered by the Authority before it undertakes to provide assistance to an overseas oversight body.

Clause 17 of the Bill amends section 33 of the principal Law so an administrative penalty regime with a maximum penalty of five thousand dollars may be prescribed.

THE AUDITORS OVERSIGHT (AMENDMENT) BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of the long title of the Auditors Oversight Law, Law 23 of 2011
3. Amendment of section 2 - interpretation
4. Amendment of section 3 - establishment and functions of Authority
5. Amendment of section 8 - Managing Director
6. Amendment of section 10 - meetings
7. Amendment of section 17 - qualification for appointment as auditor
8. Insertion of section 17A - voluntary registration of auditors
9. Amendment of section 18 - register of recognized auditors
10. Amendment of section 19 - eligibility for entry on register
11. Amendment of section 20 - application for entry on register
12. Amendment of section 26 - confidentiality
13. Amendment of section 29 - rules
14. Amendment of section 30 - monitoring of compliance
15. Amendment of section 31 - obligations of recognized auditors
16. Insertion of section 32A - memorandum of understanding, section 32B - disclosure to the Authority and section 32C - assisting an overseas auditor oversight body
17. Amendment of section 33 - regulations

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**A BILL FOR A LAW TO AMEND THE AUDITORS OVERSIGHT LAW,
2011, LAW 23 OF 2011, TO INCLUDE TWO ADDITIONAL
CATEGORIES OF AUDITS UNDER THE PURVIEW OF THE
OVERSIGHT OF THE AUDITORS OVERSIGHT AUTHORITY; TO
PERMIT COOPERATION BETWEEN THE AUDITORS OVERSIGHT
AUTHORITY AND EQUIVALENT OVERSEAS AUTHORITIES; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Auditors Oversight (Amendment) Law, 2016.

Amendment of the long
title of the Auditors
Oversight Law, Law 23
of 2011

2. The Auditors Oversight Law, Law 23 of 2011, in this Law referred to as the “principal Law”, is amended in the long title by inserting after the words “market traded companies” the words “and certain other companies”.

Amendment of section
2 - interpretation

3. The principal Law is amended in section 2 as follows -

- (a) by renumbering section 2 as subsection 2(1);
- (b) in the definition of the words “responsible individual” by deleting the words “market traded companies” and substituting the words “market traded companies, designated companies or Authority specified companies”; and
- (c) by inserting in the correct alphabetical order the following definitions -
“ “Authority specified company” means a company, partnership, unit trust or other entity, whether or not incorporated or

established in the Islands, which is not a market traded company or designated company and which falls within the specific type or category of company, partnership, unit trust or other entity specified by the Authority in a notice issued under section 17A;

“designated company” means a company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, which is not a market traded company or an Authority specified company but which falls within a specific type or category of company, partnership, unit trust or other entity specified by Regulations;

“overseas auditor oversight body” means a body which, in a country or territory outside the Islands, is designated by law to exercise functions corresponding to -

- (a) any of the functions of the Authority; or
- (b) any additional functions that include the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that body;”.

4. The principal Law is amended in section 3 as follows -

Amendment of section 3 - establishment and functions of Authority

(a) by repealing subsection (2) and substituting the following subsection -

“(2) The principal functions of the Authority are -

- (a) to regulate and supervise auditors who audit the accounts of market traded companies or designated companies;
- (b) to regulate auditors who audit the accounts of Authority specified companies and have voluntarily registered as a recognized auditor pursuant to section 17A;
- (c) to make recognized auditors subject to the Authority's systems of oversight, quality assurance, disciplinary action and investigation; and
- (d) to enter into arrangements to facilitate mutual assistance to overseas auditor oversight bodies in accordance with this Law.”; and

(b) by inserting after subsection (3) the following subsection -

“(4) The Authority shall exercise its functions and powers in a manner which ensures that it maintains operational independence from recognized auditors.”.

5. The principal Law is amended in section 8(4) by inserting after the words “exclusively to the Authority” the words “unless the Board resolves otherwise”.

Amendment of section 8 - Managing Director

The Auditors Oversight (Amendment) Bill, 2016

Amendment of section 10 - meetings 6. The principal Law is amended in section 10(3) by deleting the word “five” and substituting the word “four”.

Amendment of section 17 - qualification for appointment as auditor 7. The principal Law is amended in section 17 as follows -
(a) in subsection (1), by inserting after the words “market traded company” the words “or a designated company”;
(b) in subsection (2), by inserting after the words “market traded companies” the words “or designated companies”; and
(c) in subsection (3), by inserting after the words “market traded company” the words “or a designated company”.

Insertion of section 17A - voluntary registration of auditors 8. The principal Law is amended by inserting after section 17 the following section -

“Voluntary registration of auditors 17A. (1) The Authority may by notice in the Gazette invite -

- (a) auditors that are not engaged in the auditing of the accounts of market traded companies or designated companies; or
- (b) auditors that are engaged in the auditing of the accounts of market traded companies or designated companies and are already registered as recognized auditors,

to apply to the Authority to be voluntarily registered as a recognized auditor in respect of auditing the accounts of a specific type or category of company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, which is not a market traded company or a designated company.

(2) A notice issued under subsection (1) shall specify -

- (a) the specific type or category of company, partnership, unit trust or other entity to which the notice applies;
- (b) the basis upon which the Authority considers it

appropriate to invite applications for voluntary registration under subsection (1); and

- (c) any specific requirements established by the Authority in relation to that invitation.

(3) An auditor that is voluntarily registered as a recognized auditor following an invitation made pursuant to subsection (1) shall be subject to all of the obligations imposed upon a recognized auditor under this Law.

(4) Nothing contained in this Law shall require an auditor that audits the accounts of an Authority specified company to register under this section and this Law shall not prevent that auditor from continuing to audit the accounts of an Authority specified company.”.

9. The principal Law is amended in section 18(2) by inserting after the words “withdraw from the register” the words “in respect of the auditing of market traded companies, designated companies or Authority specified companies”. Amendment of section 18 - register of recognized auditors

10. The principal Law is amended in section 19 as follows - Amendment of section 19 - eligibility for entry on register

- (a) in paragraph (b), by inserting after the words “accounts of market traded companies” the words “designated companies or Authority specified companies”; and
- (b) in paragraph (c), by inserting after the words “accounts of a market traded company” the words “a designated company or an Authority specified company”.

11. The principal Law is amended in section 20(8) as follows - Amendment of section 20 - application for entry on register

- (a) by inserting after the words “audit of a market traded company” the words “or a designated company”; and
- (b) by inserting after the words “three months of the commencement date” the words “or other period that the Cabinet may by regulation prescribe”.

12. The principal Law is amended in section 26 as follows - Amendment of section 26 - confidentiality

- (a) in subsection (1), by deleting the words “prepared for, or received by the Authority” and substituting the words “prepared for, received by or prepared by the Authority”; and
- (b) in subsection (2) -
 - (i) at the end of paragraph (h), by deleting the word “or”;
 - (ii) at the end of paragraph (i), by deleting the full stop and inserting after the word “body” the words “; or”; and
 - (iii) by inserting after paragraph (i) the following paragraph -
 - “(j) made pursuant to a memorandum of understanding entered into by the Authority pursuant to section 32A.”; and
- (c) by inserting after subsection (8) the following subsection -

(2015 Revision) “(9) The Freedom of Information Law (2015 Revision) shall not apply to any document, information or deliberation referred to in subsection (1).”.

Amendment of section 29 - rules

13. The principal Law is amended in section 29 as follows -

- (a) by inserting after the words “a market traded company” the words “a designated company or an Authority specified company”; and
- (b) by deleting the words “quality assurance, investigation and penalties” and substituting the words “quality assurance, disciplinary action and investigation”.

Amendment of section 30 - monitoring of compliance

14. The principal Law is amended in section 30 as follows -

- (a) in subsection (2)(a) by inserting after the words “accounts of market traded companies” the words “designated companies or Authority specified companies”; and
- (b) by repealing subsection (2)(c) and substituting the following -
 - “(c) taking disciplinary action where necessary against recognized auditors or responsible individuals.”.

Amendment of section 31 - obligations of recognized auditors

15. The principal Law is amended in section 31(2) by inserting after the words “a market traded company” the words “a designated company or an Authority specified company”.

Insertion of section 32A - memorandum of understanding, section 32B - disclosure to the Authority and 32C - assisting an overseas auditors oversight body

16. The principal Law is amended by inserting after section 32 the following sections -

Memorandum of understanding 32A. (1) The Authority may, in the exercise of its functions, after consultation with the Minister charged

with responsibility for Financial Services, enter into a memorandum of understanding with -

- (a) an overseas auditor oversight body for the purpose of assisting the overseas auditor oversight body in the exercise of its regulatory or supervisory functions as they relate to a recognized auditor or a responsible individual or for other regulatory or supervisory purposes the Authority considers fit; and
- (b) a body, whether regulatory or professional and whether established overseas or in the Islands, for the purpose of enabling the Authority to communicate and share information with the body for the purpose of enabling or assisting the Authority to carry out its functions under this Law.

(2) A memorandum of understanding may not call for assistance beyond that which is provided for by this Law or relieve the Authority of any of its functions or duties under this Law.

(3) The Authority shall notify the Minister charged with responsibility for Financial Services of each memorandum of understanding entered into and promptly publish the memorandum of understanding on its website.

Disclosure to the Authority

32B. (1) Where an auditor or any of the auditor's partners, officers, directors, principals or employees, or a responsible individual provides information to the Authority, or to any person to whom the Authority has delegated its functions under section 16, for the purpose of enabling or assisting the Authority to carry out its functions under this Law, the provision of the information shall not be treated as a breach of any restriction upon the disclosure of information by or under any Law and the provision of information under the abovementioned circumstances shall not give rise to any criminal or civil liability.

(2) This section shall apply whether or not the information was provided to the Authority or its delegate pursuant to a request or instruction by the Authority or its delegate that the information be provided.

Assisting an
overseas auditor
oversight body

32C. (1) In deciding whether or not to assist an overseas auditor oversight body, whether by use of the Authority's powers under section 32A or otherwise, the Authority shall take into account -

- (a) whether corresponding assistance would be given in the relevant country or territory to the Authority;
- (b) whether the assistance is required to enable the overseas auditor oversight body to carry out its functions; and
- (c) whether it is in the public interest to give the assistance sought.

(2) The Authority may -

- (a) require an overseas auditor oversight body which requests assistance to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority and where an overseas auditor oversight body fails to comply with such requirement may refuse to provide the assistance sought; and
- (b) decline to assist an overseas auditor oversight body unless the overseas auditor oversight body undertakes to make such contribution towards the costs of the assistance as the Authority considers appropriate.

(3) The Authority shall not give to an overseas auditor oversight body any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless -

- (a) the Authority has satisfied itself that the intended recipient overseas auditor

oversight body is subject to adequate legal restrictions on further disclosures; or

- (b) the Authority has been given an undertaking by the recipient overseas auditor oversight body not to disclose the information provided without the consent of the Authority; and
- (c) the Authority is satisfied that the assistance requested by the overseas auditor oversight body is required for the purposes of the overseas auditor oversight body's regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that body; and

the Authority is satisfied that information provided following the exercise of its powers, will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence of perjury.

17. The principal Law is amended in section 33(2) as follows -

Amendment of section
33 - regulations

- (a) at the end of paragraph (b) by deleting “; or”;
- (b) at the end of paragraph (c) by deleting the full stop and substituting “; or”; and
- (c) by inserting after paragraph (c) the following paragraph -
“(d) prescribe the manner in which an administrative penalty regime with a maximum penalty of five thousand dollars may be implemented.”.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.