

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE BANKS AND TRUST
COMPANIES LAW (2013 REVISION) TO REQUIRE LICENSEES
PROVIDING COMPANY MANAGEMENT SERVICES TO COMPLY
WITH PART XVIIIA OF THE COMPANIES LAW (2016 REVISION) AND
PART 12 OF THE LIMITED LIABILITY COMPANIES LAW, 2016; TO
BROADEN AND ENHANCE THE AUTHORITY'S ENFORCEMENT
POWERS AGAINST LICENSEES; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill requires licensees and controlled subsidiaries of trust companies providing company management services to licensees to comply with the requirements of Part XVIIIA of the Companies Law (2016 Revision) and Part 12 of the Limited Liability Companies Law, 2016. The Bill also broadens and enhances the Authority's enforcement powers against licensees.

Clause 1 of the Bill sets out the short title.

Clause 2 amends section 5 of the Banks and Trust Companies Law (2013 Revision) to require a controlled subsidiary of a licensed trust company providing company management services to the licensee to comply with Part XVIIIA of the Companies Law (2016 Revision) and Part 12 of the Limited Liability Companies Law, 2016 in the provision of those services.

Clause 3 amends section 13 to require an auditor to give notice to the Authority where the auditor suspects that Part XVIIIA of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016 is being contravened by a licensee who is a "corporate service provider" as defined in that Part.

Clause 4 amends section 18 to enable the Authority to sanction a licensee that contravenes Part XVIIIA of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016.

The clause also broadens the circumstances in which the Authority may impose sanctions to include the case where an individual who is not a fit and proper person, in the opinion of the Authority, has significant control or ownership of a licensee.

Finally, the clause adds sanctions that the Authority may take against licensees, including the power to suspend the licence, to impose conditions with respect to decisions made by the licensee, to require a licensee to rectify the situation and to require the removal of any director, manager or officer.

Clause 4 amends section 22 to give a Justice of the Peace the power to issue a search warrant where there is reason to believe that an offence has been committed against Part XVIIIA of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016.

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 5 of the Banks and Trust Companies Law (2013 Revision) - licence or registration required to carry on banking or trust business
3. Amendment of section 13 - obligation of auditors
4. Amendment of section 18 - additional powers of Authority
5. Amendment of section 22 - power of search

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE BANKS AND TRUST COMPANIES LAW (2013 REVISION) TO REQUIRE LICENSEES PROVIDING COMPANY MANAGEMENT SERVICES TO COMPLY WITH PART XVIIIA OF THE COMPANIES LAW (2016 REVISION) AND PART 12 OF THE LIMITED LIABILITY COMPANIES LAW, 2016; TO BROADEN AND ENHANCE THE AUTHORITY'S ENFORCEMENT POWERS AGAINST LICENSEES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Banks and Trust Companies (Amendment) Law, 2017.

Short title

2. The Banks and Trust Companies Law (2013 Revision), in this Law referred to as "the principal Law", is amended in section 5 by inserting after subsection (3) the following subsection -

Amendment of section 5 of the Banks and Trust Companies Law (2013 Revision) - licence or registration required to carry on banking or trust business

(2003
Revision)

"(3A) A controlled subsidiary referred to in subsection (3) engaged in the "business of company management" as defined in section 3(1) of the Companies Management Law (2003 Revision), connected with the trust business of the licensee by which the subsidiary is owned, shall -

- (a) if the licensee is a company, comply with Part XVIII of the Companies Law (2016 Revision); and
- (b) if the licensee is a limited liability company, comply with Part 12 of the Limited Liability Companies Law, 2016”.

Amendment of section 13 - obligation of auditors

3. The principal Law is amended in section 13(1)(e) by inserting after subparagraph (i) the following -

“(ia) Part XVIII of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016, if the licensee is a “corporate services provider” as defined in that Part;”.

Amendment of section 18 - additional powers of Authority

4. The principal Law is amended in section 18(1) as follows -

- (a) in paragraph (c), by deleting the word “Law” and substituting the words “Law, Part XVIII of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016”;
- (b) in paragraph (f), by deleting the word “or”;
- (c) paragraph (g), by deleting the comma and substituting the words “; or”;
- (d) after paragraph (g), by inserting the following paragraph -
“(h) an individual, directly or indirectly, holding or acquiring control or ownership of more than 25% of the shares or voting rights in a licensee or the right to appoint or remove a majority of the board of directors of a licensee is not a fit and proper person to have such control or ownership,”;
- (e) after subparagraph (i), by inserting the following subparagraphs -
“(ia) require the licensee immediately to take steps to rectify the matter;
(ib) suspend the licence of the licensee pending a full enquiry into the licensee’s affairs under section 17(1)(b);
(ic) impose conditions with respect to decisions made by the licensee including the suspension of voting rights or nullification of votes cast;”;
- (f) in subparagraph (iii), by deleting the words “of any director” and substituting the words “or removal of any director, manager”.

5. The principal Law is amended in section 22(1)(a) by deleting the word “Law” and substituting the words “Law, Part XVIIIA of the Companies Law (2016 Revision) or Part 12 of the Limited Liability Companies Law, 2016”. Amendment of section 22 - power of search

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.