

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE TERRORISM LAW (2017
REVISION) TO ENSURE ITS COMPLIANCE WITH
INTERNATIONAL STANDARDS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE TERRORISM (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Terrorism Law (2017 Revision) (“the principal Law”) in order to bring some provisions into conformity with the international standards recommended by the Financial Action Task Force for combatting terrorism and money laundering.

Clause 1 provides the short title.

Clause 2 amends section 10 of the principal Law in order to expand the category of offences to which there will be extraterritorial application. These offences relate to the solicitation of terrorist property, the use and possession of terrorist property and arranging for property to be used for terrorist purposes.

Clause 3 amends section 12 of the principal Law in order to extend the category of offences that may be attributable to a body corporate. These offences relate to the solicitation or terrorist property, the use and possession of terrorist property and arranging for property to be used for terrorist purposes.

Clause 4 repeals and replaces section 29A of the principal Law in order to provide the Governor with the power to propose to the United Nations Security Council Committee that a person should be listed or delisted as a designated person. The clause also seeks to make the freezing of the funds and economic resources of a designated person automatic by removing the requirement for a direction to be given by the Governor to freeze the funds and economic resources of a designated person.

Clause 5 amends Schedule 4A of the principal Law in order to provide, among other things, for the following-

- (a) replacement of the definition of relevant institution;
- (b) introduction of a definition for “relevant United Nations Security Council Committee” and “Treasury”;
- (c) amendment of the definition of designated person;
- (d) the power of the Governor to propose the listing of a person as a designated person and the delisting of such a person;
- (e) the requirement for the Financial Reporting Authority to provide a the list of designated persons to non-financial businesses and professions;

- (f) the requirement for the Governor to consult with the Secretary of State when dealing with designations and the Treasury when dealing with licences;
- (g) the freezing of funds and economic resources without providing prior notice;
- (h) extending the instances in which a person will be required to freeze, without delay and without providing prior notice, the funds and economic resources of a designated person;
- (i) the reporting obligations on the part of a relevant institution; and
- (j) the increase in penalties.

Clause 6 contains savings and transitional provisions.

THE TERRORISM (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 10 - extraterritorial application - definitions
3. Amendment of section 12 - offences by body corporate
4. Repeal and substitution of section 29A - freezing of terrorist funds
5. Amendment of Schedule 4A - freezing of funds, etc. of designated persons
6. Savings and transitional provisions

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**A BILL FOR A LAW TO AMEND THE TERRORISM LAW (2017
REVISION) TO ENSURE ITS COMPLIANCE WITH
INTERNATIONAL STANDARDS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Terrorism (Amendment) Law, 2017. | Short title |
| 2. The Terrorism Law (2017 Revision), in this Law referred to as the “principal Law”, is amended in section 10 by deleting the words “under section 4, 5, 6 or 7” and substituting the words “under section 4, 5, 6, 7, 19, 20 or 21”. | Amendment of section 10 of the Terrorism Law (2017 Revision) - extraterritorial application |
| 3. The principal Law is amended in section 12 by deleting the words “under section 4, 5, 6 or 7” and substituting the words “under section 4, 5, 6, 7, 19, 20 or 21”. | Amendment of section 12 - offences by body corporate |
| 4. The principal Law is amended by repealing section 29A and substituting the following section – | Repeal and substitution of section 29A - freezing of terrorist funds |

“Freezing of terrorist funds” 29A. Schedule 4A has effect for the purpose of empowering the Governor to -

- (a) propose the listing of a person as being involved in terrorist activities;
- (b) designate a person as being involved in terrorist activities; and
- (c) propose the delisting of a person who no longer meets the criteria for a designation as being involved in terrorist activities.”.

Amendment of Schedule 4A - Freezing of funds, etc. of designated persons

5. The principal Law is amended in Schedule 4A as follows -

(a) in paragraph (1) -

(i) by repealing the definition of “relevant institution” and substituting the following definition -

“ “relevant institution” means -

- (a) the Cayman Islands Monetary Authority;
- (b) a body or a person who is part of the regulated sector; or
- (c) a person conducting relevant financial business, as defined in the Proceeds of Crime Law (2017 Revision), who is not subject to monitoring by the Cayman Islands Monetary Authority for compliance with money laundering regulations;”;

(ii) by inserting the following definitions in their appropriate alphabetical sequence -

“ “relevant United Nations Security Council Committee” means -

- (a) the United Nations Security Council 1267/1989 Committee concerning Al-Qaida and associated individuals and entities; or
- (b) the United Nations Security Council 1988 Committee concerning the Taliban and associated individuals and entities; and

“Treasury” means Her Majesty’s Treasury.”;

(2017 Revision)

(b) by repealing paragraph 2 and substituting the following paragraph -

“2. In this Schedule “designated person” means -

(a) a person designated by the Governor for the purposes of this Schedule; and

(b) a person -

(i) listed on the Al-Qaida Sanctions List maintained by the Committee established by the United Nations Security Council pursuant to resolution 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities;

(ii) listed on a list maintained and amended from time to time by the Committee established by the United Nations Security Council pursuant to resolution 1988 (2011) as being associated with the Taliban;

(iii) designated by the Treasury in accordance with the applicable laws in the United Kingdom; and

(iv) included in the list provided by Article 2(3) of Council Regulation (EC) 2580/2001 of 27th of September 2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism.”;

(c) by inserting after paragraph 2 -

(i) the following heading -

“Proposed listing, delisting and requested action”; and

(ii) after the new heading, the following subheading -

“Listing and delisting procedure”;

(iii) after the new subheading, the following paragraph -

“2A. (1) The Governor may, through the Foreign and Commonwealth Office of the United Kingdom, propose to any relevant United Nations Security Council Committee, that a person be -

- (a) listed as a designated person because of the involvement of that person in a terrorist activity; or
- (b) delisted from any list maintained by a relevant United Nations Security Council Committee, where the Governor believes that the first-mentioned person no longer meets the criteria for designation.

(2) The Governor shall not make a proposal for a designation under subparagraph (1)(a) against a person unless the Governor has reasonable grounds to suspect or believe that the person is involved in terrorist activity.

(3) The Governor may establish procedures for the -

- (a) de-listing; and
- (b) unfreezing of funds and other resources,

of a person who no longer meets the criteria for designation.

(4) The procedures referred to in subsection (3) include the following -

- (a) the submission of a de-listing request to the relevant United Nations Sanctions Committee;
- (b) in relation to United Nations Security Council Resolution 1373, allowing, upon request, review of a designation decision before a court or other independent competent authority;

- (c) in relation to designations under United Nations Security Council Resolution 1988, facilitation of the review by the 1988 Committee;
 - (d) in relation to designations on the Al-Qaida Sanctions List, informing designated persons and entities of the availability of the United Nations Office of the Ombudsman pursuant to United Nations Security Council Resolutions 1904, 1989, and 2083 to accept de-listing petitions;
 - (e) unfreezing of the funds or other assets of a person or entity with the same or similar name as a designated person or entity; and
 - (f) facilitation of the review of a designation by the United Nations Security Council 1988 Committee concerning the Taliban and associated individuals and entities.”;
- (d) in paragraph 3 as follows -
- (i) by repealing subparagraph (1);
 - (ii) in subparagraph (2), by deleting the words “may also” and substituting the words “may, after consultation with the Secretary of State,”;
 - (iii) in subparagraph (3)(c), by deleting the “full-stop” and substituting a “semi-colon” and thereafter inserting the word “and”; and
 - (iv) by inserting the following subparagraph -

“(ca) attempting any conduct identified in subparagraphs (a) to (c).”;
- (e) by inserting after subparagraph 3 -
- (i) the following subheading -

“Requests for designation and other action”; and

(ii) under the new subheading, the following paragraph -

“3A. (1) The Governor may make a final designation if the Governor -

- (a) has received a request to make a final designation from an authority outside of the Islands which appears to the Governor to have the function of making requests to freeze funds and other resources; and
- (b) considers it appropriate in the circumstances to make the final designation.

(2) The Governor may request another country or territory to give effect to any action the Islands have initiated under this Schedule.”;

(f) by inserting after the new paragraph 3A -

(i) the following subheading -

“Collection and solicitation of information”; and

(ii) after the new subheading, the following paragraph -

“3B. The Governor may collect or solicit information to identify persons who meet the criteria for a final designation.”;

(g) in paragraph 5(2), by deleting the word “may” and inserting the words, “may, after consultation with the Secretary of State,”;

(h) in paragraph 6(1), by deleting the word “may” and inserting the words “may, after consultation with the Secretary of State,”;

(i) in paragraph 7 as follows -

- (i) in subparagraph (1), by deleting the word “may” and inserting the words “may, after consultation with the Secretary of State,”; and
 - (ii) in subparagraph (2), by deleting the word “may” and inserting the words “may, after consultation with the Secretary of State,”;
- (j) in paragraph 10(1), by deleting the word “may” and inserting the words “may, after consultation with the Secretary of State,”;
- (k) by inserting after paragraph 11 -
- (i) the following heading -

“Publication of designated persons list”;
 - (ii) after the new heading, the following subheading -

“Financial Reporting Authority obligations”;

and
 - (iii) after the new subheading, the following paragraph -

“11A. (1) The Financial Reporting Authority shall, as soon as is reasonably practicable after a designation is made, communicate that designation through a medium it considers appropriate, to -

 - (a) all relevant institutions; and
 - (b) any public sector body or self-regulatory body assigned responsibility by Cabinet for monitoring the compliance of a person with money laundering regulations where that person -
 - (i) is conducting a relevant financial business as defined in the Proceeds of Crime Law (2017 Revision); and

(2017 Revision)

- (ii) is not subject to monitoring for compliance with those regulations by the Cayman Islands Monetary Authority.

(2) The Financial Reporting Authority shall maintain and make available to the public an updated list of all designated persons.”;

(l) in paragraph 12 as follows -

- (i) by repealing subparagraph (1) and substituting the following subparagraph -

“(1) A person shall freeze, without delay and without providing prior notice -

- (a) the funds or economic resources owned, held or controlled by a designated person;
- (b) the funds or economic resources that are wholly or jointly owned or controlled, directly or indirectly by a designated person;
- (c) the funds or economic resources derived or generated from funds or other economic resources owned or controlled directly or indirectly by a designated person; and
- (d) the funds or economic resources of a person acting on behalf of or at the direction of a designated person,

if the first-mentioned person knows, or has reasonable cause to suspect, that the first mentioned person is dealing with such funds or economic resources.”;

- (ii) in subparagraph (3), by deleting the words “subject to paragraphs 17 and 18” and substituting the words “subject to paragraphs 16A, 17 and 18”; and

- (iii) by inserting after subparagraph (4), the following subparagraphs -

“(5) A person who, in good faith, freezes the funds or economic resources of a designated person or refuses to make those funds or economic resources available to a designated person on the basis that such action is in accordance with this Law shall not be held liable for any action to freeze the funds or economic resources unless it is proved that the funds and economic resources were frozen or withheld as a result of the negligence of the first-mentioned person.

(6) A person who, in good faith, does not freeze the funds or economic resources of a designated person shall not be held liable if it is proven that the first-mentioned person did not know or had no reasonable cause to suspect that the first-mentioned person’s actions would be in contravention of the freezing obligation.”;

(m) in paragraph 13 as follows -

(i) by repealing subparagraph (1) and substituting the following subparagraph -

“13. (1) A person shall not make funds or financial services or other related services available, directly or indirectly, wholly or jointly to -

- (a) a designated person;
- (b) an entity owned or controlled, directly or indirectly by a designated person;
or
- (c) a person acting on behalf of, or at the direction of, the designated person,

if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the funds or financial services available to the designated person.”; and

(ii) in subparagraph (2), by deleting the words “subject to paragraphs 17 and 18” and substituting the words “subject to paragraphs 16A, 17 and 18”;

(n) in paragraph 14 as follows -

(i) by repealing subparagraph (1) and substituting the following subparagraph -

“(1) A person shall not make funds, financial services or other related services available, directly or indirectly, wholly or jointly for the benefit of -

- (a) a designated person;
- (b) an entity owned or controlled, directly or indirectly by a designated person; or
- (c) a person acting on behalf of, or at the direction of, the designated person,

if the first-mentioned person knows, or has reasonable cause to suspect that the first-mentioned person is making or will be making the funds, financial services or other related services so available.”; and

(ii) in subparagraph (3), by deleting the words “subject to paragraphs 17 and 18” and substituting the words “subject to paragraphs 16A, 17 and 18”;

(o) in paragraph 15 as follows -

(i) by repealing subparagraph (1) and substituting the following subparagraph -

“(1) A person shall not make economic resources available, directly or indirectly, wholly or jointly to -

- (a) a designated person;
- (b) an entity owned or controlled, directly or indirectly by a designated person; or
- (c) a person acting on behalf of, or at the direction of, a designated person,

if the first-mentioned person knows, or has reasonable cause to suspect that-

- (i) he is making the economic resources so available; and
 - (ii) that the designated person is likely to exchange the economic resources, or use them in exchange, for funds, goods or services.”; and
 - (ii) in subparagraph (2), by deleting the words “subject to paragraph 18” and substituting the words “subject to paragraphs 16A and 18”;
- (p) in paragraph 16 as follows -
- (i) by repealing subparagraph (1) and substituting the following subparagraph -

“16. (1) A person shall not make economic resources available to any other person for the benefit of -

 - (a) a designated person;
 - (b) an entity owned or controlled, directly or in directly by a designated person; and
 - (c) a person acting on behalf of, or at the direction of, a designated person,

if the first-mentioned person knows, or has reasonable cause to suspect, that he is making or will be making the economic resources so available.”;
 - (ii) in subparagraph (2), by deleting the words “subject to paragraphs 18” and substituting the words “subject to paragraphs 16A and 18”.; and
 - (iii) by inserting after paragraph 16(4) -

(A) the following subheading -
“Licences granted outside the Islands”; and

(B) after the new subheading, the following paragraph -

“16A. The prohibitions identified in paragraphs 12 to 16 do not apply to anything done -

- (a) outside the Islands; and
 - (b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where the prohibited conduct occurred and which corresponds with the provisions of this Schedule.”;
- (q) in paragraph 18, by repealing subparagraph (3) and substituting the following subparagraph -

“(3) The Governor -

- (a) may, after consultation with the Secretary of State, grant, vary or revoke, at any time, a licence issued in relation to a person who falls within paragraph 2(a); and
 - (b) may, after consultation with the Treasury, grant, vary or revoke, at any time, a licence issued in relation to a person who falls within paragraph 2(b)(iii) and (iv).”;
- (r) in paragraph 20, by inserting after subparagraph (4), the following subparagraph -

“(4A) A relevant institution shall -

- (a) report any action taken in accordance with the prohibitions of this Schedule; and
 - (b) report any transaction attempted by a designated person to deal with funds, economic resources or other assets.”;
- (s) in paragraph 21(4), by deleting the words “granted under paragraph 18” and substituting the words “referred to in paragraph 16A or granted under paragraph 18”;
- (t) in paragraph 22(3), by deleting the words “granted under paragraph 18” and substituting the words “referred to in paragraph 16A or granted under paragraph 18”;

- (u) in paragraph 30 as follows -
 - (i) in subparagraph (1)(b), by deleting the word “four” and substituting the word “ten”;
 - (ii) by repealing subparagraph (2)(b) and substituting the following subparagraph -
 - “(b) on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year or to both.”; and
 - (iii) in subparagraph (3), by inserting after the word “fine” the words “of ten thousand dollars”.

6. (1) Where -

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- (a) prior to the date of commencement of this amending Law, an accused person is convicted following a trial of or a plea of guilty to an offence under the former Law; and
- (b) at the date of commencement of this amending Law, no judgment or sentence has been passed upon him in respect of the offence,

the accused person shall, for the purpose of the judgment or sentence, be dealt with in all respects as if this amending Law had not come into force and the provisions of the former Law are to apply accordingly.

(2) Where, at the date of commencement of this amending Law, any trial or any proceedings in respect of an offence are pending before a court, the trial or proceedings shall, after the commencement, be dealt with in all respects as if the amending Law had not come into force and the provisions of the former Law are to apply accordingly.

(3) In this section “former Law” means the principal Law in force immediately before the date of commencement of this amending Law.

Passed by the Legislative Assembly the day of _____, 2017.

Speaker.

Clerk of the Legislative Assembly.