

CAYMAN ISLANDS



Supplement No.6 published with Extraordinary
Gazette No. 81 dated 23rd October, 2018.

**A BILL FOR A LAW TO AMEND THE BANKS AND TRUST
COMPANIES LAW (2018 REVISION) TO EMPOWER THE
MONETARY AUTHORITY TO SUPERVISE CAYMAN BANKING
GROUPS ON A CONSOLIDATED BASIS; AND TO PROVIDE FOR
INCIDENTAL AND CONNECTED PURPOSES**

**THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL,
2018**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Banks and Trust Companies Law (2018 Revision) (“the principal Law”) to empower the Cayman Islands Monetary Authority to supervise Cayman banking groups on a consolidated basis.

Clause 1 contains the short title.

Clause 2 amends the principal Law by substituting the word “Cabinet” for the word “Governor”.

Clause 3 amends section 2 of the principal Law by deleting the definition of the word “Governor” and by inserting various definitions including “economic group”, “Cayman banking group”, “participating interest”, and “relevant financial activities”.

Clause 4 provides for the insertion of a new section 6A in the principal Law to empower the Authority with the ability to refuse to grant a licence or impose conditions on a licensee where the structure of the applicant’s or licensee’s economic group, if any, hinders effective supervision.

Clause 5 amends section 8 of the principal Law so that the parent undertaking of a Cayman banking group is required to ensure that the net worth requirement stipulated in accordance with section 8 is maintained and sets out the conditions for the manner in which it is to be maintained.

Clause 6 amends section 10 of the principal Law to impose a duty on a parent undertaking of the Cayman banking group to ensure that capital measures and other prudential measures are met on a consolidated basis by the Cayman banking group.

Clause 7 amends section 12 of the principal Law to provide that every licensee is required to forward consolidated accounts for the licensee’s Cayman banking group to the Authority.

Clause 8 amends section 13 of the principal Law to provide that an auditor is also obligated to audit the accounts of entities forming part of a Cayman banking group.

Clause 9 amends section 14 of the principal Law to require licensees to inform the Authority of any change in holding that affects the licensee's composition of the economic group.

Clause 10 amends section 17 of the principal Law to grant additional powers of supervision on the Authority, including the power to seek information from the Cayman banking group or the licensee's economic group, to examine the affairs of the Cayman banking group and to recover relevant costs.

Clause 11 amends section 18 of the principal Law to grant the Authority additional intervention powers where the state of affairs of a Cayman banking group or the licensee's economic group is likely to jeopardize financial stability.

Clause 12 provides for an appeal to be made to the court against a decision of the Authority.

Clause 13 repeals and substitutes section 27 of the principal Law to enhance the powers of Cabinet to make Regulations which would include transitional, consequential, incidental or supplemental provisions.

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of the Banks and Trust Companies Law (2018 Revision), except section 2 - substitution of “Cabinet” for “Governor”
3. Amendment of section 2 of the Banks and Trust Companies Law (2018 Revision) - definitions
4. Insertion of section 6A - hindrance to effective supervision
5. Amendment of section 8 - net worth requirements
6. Amendment of section 10 - capital adequacy ratio
7. Amendment of section 12 - accounts
8. Amendment of section 13 - obligation of auditors
9. Amendment of section 14 - certain prohibitions on licensee
10. Amendment of section 17 - powers and duties of the Authority
11. Amendment of section 18 - additional powers of the Authority
12. Amendment of section 25 - appeals
13. Amendment of section 27 - regulations

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE BANKS AND TRUST COMPANIES LAW (2018 REVISION) TO EMPOWER THE MONETARY AUTHORITY TO SUPERVISE CAYMAN BANKING GROUPS ON A CONSOLIDATED BASIS; AND TO PROVIDE 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, 2018. Short title

2. The Banks and Trust Companies Law (2018 Revision), in this Law referred to as the “principal Law”, is amended, with the exception of section 2, by deleting the word “Governor” wherever this word appears and substituting the word “Cabinet”. Amendment of the Banks and Trust Companies Law (2018 Revision), except section 2 - substitution of “Cabinet” for “Governor”

3. The principal Law is amended in section 2 as follows - Amendment of section 2 - definitions
 - (a) by deleting the definition of the word “Governor”; and
 - (b) by inserting in the appropriate alphabetical sequence the following definitions -
 - “ “Cayman banking group”, includes -
 - (a) the licensee;
 - (b) the licensee’s parent undertaking except where, in the Authority’s opinion, the undertaking is subject to consolidated supervision by another banking regulator;

- (c) the licensee's subsidiaries;
- (d) any subsidiary of the licensee's parent undertaking except where, in the Authority's opinion, the undertaking is subject to consolidated supervision by another banking regulator;
- (e) a parent undertaking of any of the licensee's subsidiaries except where, in the Authority's opinion, the undertaking is subject to consolidated supervision by another banking regulator; and
- (f) an undertaking in which the licensee or an undertaking in paragraphs (b) to (e) has a participating interest;

“economic group”, in relation to a licensee, includes -

- (a) its subsidiaries;
- (b) parent companies;
- (c) parent undertaking;
- (d) holding companies;
- (e) affiliates;
- (f) participating interests;
- (g) companies related to the licensee through common ownership; and
- (h) companies related to the licensee through a majority of common senior management or directorships;

“parent undertaking” means, unless otherwise specified by the Authority, the entity that, directly or indirectly through another entity or entities, controls or exerts dominant influence over an entity;

“participating interest” means an interest held by an undertaking in the shares of another entity, which the undertaking holds on a long-term basis for the purpose of securing a contribution to the undertaking's activities by the exercise of control or influence arising from or related to that interest; and a holding of twenty per cent or more of the shares of an entity shall be deemed to be a participating interest unless the contrary is shown;

“relevant financial activities” includes -

- (a) financial leasing;
- (b) issuing credit cards;

- (c) portfolio management;
- (d) investment advisory;
- (e) custodial and safekeeping services; and
- (f) other similar activities that are ancillary to the business of banking, but does not include the activities of an insurer; and

“undertaking” means any business such as a body corporate, a partnership, trust, foundation or an unincorporated association carrying on a trade or business or holding an interest in an entity that carries on a trade or business, with or without a view to profit;”.

4. The principal Law is amended by inserting after section 6 the following section -

Insertion of section 6A -
hindrance to effective
supervision

“Hindrance to
effective
supervision

6A. (1) Without prejudice to any other power that the Authority may have under this or any other law, the Authority may refuse to grant a licence or may impose conditions on a licensee where, in the Authority’s opinion, either -

- (a) the structure of an applicant’s or a licensee’s economic group, if any, will hinder effective supervision; or
- (b) the activities of any entity in the Cayman banking group are likely to negatively impact the financial stability of the licensee or prejudice the interests of the licensee’s depositors.

(2) The conditions that may be imposed by the Authority under subsection (1) include the condition that the economic group or the Cayman banking group undergo a restructure.”.

5. The principal Law is amended in section 8 by inserting after subsection (5) the following subsection -

Amendment of section
8 - net worth
requirements

“(6) The parent undertaking of a Cayman banking group is required to ensure that the net worth stipulated in this section, or such higher net worth as the Authority may direct, is maintained both in respect of the licensee on a solo basis and on a consolidated basis taking into account all the entities in the Cayman banking group.”.

Amendment of section
10 - capital adequacy
ratio

6. The principal Law is amended in section 10 as follows -

(a) by inserting after subsection (2) the following subsection -

“(2A) The parent undertaking of a Cayman banking group, which may be a licensee, is required to ensure that capital requirements and other prudential measures that may be issued by the Authority are met on a consolidated basis by the Cayman banking group.

(2B) The parent undertaking of a Cayman banking group, which may be a licensee, shall be required to ensure that any prudential, supervisory or risk management measures that may be issued by the Authority from time to time are met on a consolidated basis by the Cayman banking group”; and

(b) by repealing subsection (3) and substituting the following subsection -

“(3) Where a licensee or the parent undertaking of a Cayman banking group fails to comply with a requirement of this section, the licensee may, for the purpose of section 18, be treated by the Authority as carrying on business in a manner detrimental to the public interest, the interest of its depositors or other creditors.”.

Amendment of section
12 - accounts

7. The principal Law is amended in section 12 by inserting after subsection (2) the following subsection -

“(2A) Every licensee incorporated under the Companies Law (2018 Revision) shall forward to the Authority consolidated accounts in respect of the parent undertaking of the Cayman banking group of which the licensee is a member within three months of the end of the financial year of the parent undertaking of the Cayman banking group, unless prior written approval for an extension has been granted by the Authority.”.

Amendment of section
13 - obligation of
auditors

8. The principal Law is amended in section 13(1) by inserting after the words “accounts of a licensee” the words “or of any entity forming part of a Cayman banking group”.

Amendment of section
14 - certain prohibitions
on licensee

9. The principal Law is amended in section 14 by repealing subsection (1) and substituting the following subsection -

“(1) A licensee incorporated under the Companies Law (2018 Revision) shall not, without the prior written approval of the Authority -

- (a) open outside of the Islands a subsidiary, branch, agency or representative office; or
- (b) change its name.

(1A) A licensee shall inform the Authority of any change in holdings that affects the composition of the licensee’s economic group, including any new entities forming part of the licensee’s economic group, within forty-five days of the occurrence of the change.”.

10. The principal Law is amended in section 17(3) as follows -

Amendment of section
17 - power and duties of
the Authority

- (a) in paragraph (a) by deleting the word “and” appearing after the semi-colon;
- (b) in paragraph (b) by deleting the comma appearing after the words “in contravention of section 5(1) or (2)” and substituting a semi-colon;
- (c) by inserting after paragraph (b) the following paragraphs -
 - “(c) to have access to information from any member of the Cayman banking group or any member of the licensee’s economic group and such information includes -
 - (i) policies;
 - (ii) procedures;
 - (iii) financial statements;
 - (iv) audit reports;
 - (v) board reports;
 - (vi) regulatory returns; and
 - (vii) supervisory reports from overseas regulators;
 - (d) to examine the business or affairs including the carrying on of onsite inspections, of any member of the Cayman banking group; and
 - (e) to conduct onsite inspections of a licensee.”.

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

Amendment of section
18 - additional powers of
the Authority

- (a) in paragraph (g) as follows -
 - (i) by inserting after the words “a person” the words “holding or”;
 - (ii) by deleting the words “in the circumstances set out in paragraph (a) of section 7(2)”;
 - (iii) by deleting the word “or” at the end of the paragraph;

- (b) in paragraph (h) by inserting at the end of the paragraph the words “; or”;
- (c) by inserting after paragraph (h) the following paragraph -
 - “(ha) the state of affairs which exists in respect of the Cayman banking group or material members of the licensee’s economic group is likely to jeopardize the financial stability of the licensee or prejudice the interest of the licensee’s depositors;”;
- (d) in subparagraph (v) by deleting the word “and”;
- (e) in subparagraph (vi) by deleting the full-stop and substituting the word “; and”; and
- (f) by inserting after subparagraph (vi) the following subparagraph -
 - “(vii) impose any term or condition the Authority deems necessary on the activities or transactions of the members of the Cayman banking group in which the licensee is involved or that would materially affect the licensee.”.

Amendment of section
25 - appeals

12. The principal Law is amended in section 25 as follows -

- (a) by deleting the word “or” at the end of paragraph (b);
- (b) by deleting the full stop at the end of paragraph (c) and substituting the words “; or”; and
- (c) by inserting after paragraph (c) the following paragraph -

(2013 Revision)

“(d) made under regulation 4A(b) of the Private Trust Companies Regulations (2013 Revision).”.

Amendment of section
27 - regulations

13. The principal Law is amended by repealing section 27 and substituting the following section -

- “Regulations
27. (1) The Cabinet may make Regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes and administration of this Law and in particular -
- (a) to prescribe the information, particulars and references which may be prescribed under section 6(1) or 11(3);
 - (b) to control the form of advertising by licensees;
 - (c) to prescribe fees payable under this Law; and
 - (d) to prescribe matters, information, particulars, and requirements for the registering and maintenance of private trust companies.

- (2) Regulations made under this Law may -
- (a) make different provisions in relation to different cases or circumstances;
 - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or
 - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary for the purposes of the Regulations.”.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.