

CAYMAN ISLANDS



**MONEY SERVICES (AMENDMENT) BILL,
2019**

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A BILL FOR A LAW TO AMEND THE MONEY SERVICES LAW (2010 REVISION) TO STRENGTHEN THE REGULATION AND SUPERVISION OF THE MONEY SERVICES BUSINESS SECTOR BY THE CAYMAN ISLANDS MONETARY AUTHORITY; TO REQUIRE THAT A LICENSEE MAINTAINS AN ACCOUNT IN SUPPORT OF TRANSACTIONS CARRIED OUT BY A LICENSEE; AND FOR INCIDENTAL AND CONNECTED PURPOSES.

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs
(FSHA)



Memorandum of
OBJECTS AND REASONS

The Money Services (Amendment) Bill seeks to amend the Money Services Law (2010 Revision) (the “principal Law”) to strengthen the regulation and supervision of the money services business sector by the Cayman Island Monetary Authority (“the Authority”).

Clause 1 provides for the short title.

Clause 2 seeks to provide for amendments to definitions in the principal Law.

Clause 3 seeks to amend section 3 of the principal Law to exclude from the application of the Law a person who the Authority determines is not providing a service within the meaning of “money services business”.

Clause 4 seeks to amend section 5 of the principal Law to empower the Authority to grant a licence subject to conditions that the Authority may impose at the time of licensing, or any time thereafter, based on the nature, risk and scale of the business.

Clause 5 seeks to amend the principal Law by inserting a new section 5A. The new section makes it a requirement that every licensee maintains at least one account approved by the Authority or enters into an arrangement approved by the Authority by which means the money services business transactions are carried out.

Clause 6 seeks to amend the principal Law by inserting a new section 6A. The new section provides for the limitation on the issuing or transferring of shares totaling more than ten per cent of the authorized share capital of a licensee (where the licensee is a company) without the approval of the Authority.

Clause 7 seeks to amend the principal Law by inserting a new section 8A. The new section provides for the licensee’s compliance with the Anti-Money Regulations (2018 Revision) and any rules, statements of principle or guidance prescribed by the Authority. The new section also provides that a licensee shall monitor the compliance of sub-agents (if any) with those rules, statements of principle or guidance.

Clause 8 seeks to repeal and replace section 11 of the principal Law. The new section 11 provides that the Authority may require the licensee to obtain an auditor’s report on the anti-money laundering systems and procedures in place for compliance with the Anti-Money Laundering Regulations (2018 Revision).

Clause 9 seeks to insert a new section 14A that provides for the obligations placed on auditors by the legislation. An auditor in the course of carrying out an audit of the accounts of a licensee who is informed or suspects that the licensee is, among other



things, carrying on business in contravention of the principal Law, is required to immediately notify the authority of the information or suspicion.

Clause 10 seeks to repeal section 31 of the principal Law.

Clause 11 seeks to provide for the compliance of licensees and sub-agents with the provisions relating to anti-money laundering procedures under the new section 8A. Licensees and their sub-agents are not required to comply with those provisions until three months after the commencement of this Law.



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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Money Services (Amendment) Law, 2019.

Amendment of section 2 of the Money Services Law (2010 Revision) - definitions

2. The *Money Services Law (2010 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
 - (a) by deleting the definition of “money services business” and substituting the following definition —

“**money services business**” means the business of providing, in or from within the Islands, any of the following services —

 - (a) money transmission;
 - (b) cheque cashing;



- (c) currency exchange;
 - (d) the issuance, sale or redemption of money orders or traveller's cheques; and
 - (e) such other services as the Cabinet may specify by notice published in the Gazette;";
- (b) in the definition of "net worth", by deleting the words "by the Authority." and substituting the words "by the Authority; and";
- (c) by inserting after the definition of "net worth" the following definition —
- “**sub-agent**” means a person who provides any of the services specified in paragraphs (a) to (e) in the definition of “**money services business**” on behalf of a licensee pursuant to —
- (a) a contract between the sub-agent and the licensee; or
 - (b) an arrangement between the sub-agent and the licensee;”.

Amendment of section 3 - extent of the Law

3. The principal Law is amended in section 3 by repealing subsection (1) and substituting the following subsection —

“(1) This Law does not apply to —

- (a) a person who the Authority determines is not providing a service under paragraph (a) of the definition of “**money services business**”; or
- (b) any of the following persons —
 - (i) a person licensed under the *Banks and Trust Companies Law (2018 Revision)* to carry on money services business in conjunction with other business;
 - (ii) a building society licensed under the *Building Societies Law (2014 Revision)*; or
 - (iii) a cooperative society registered under the *Cooperative Societies Law (2001 Revision)* and carrying on money services business,

unless the licensed person, building society or cooperative society is operating as an agent or franchise holder of a money services business.”.

Amendment of section 5 - application for, and grant of, licence

4. The principal Law is amended in section 5 as follows —

- (a) in subsection (1), by deleting the words “may make application” and substituting the words “shall make an application”;



- (b) in subsection (3), by deleting the words “, if any, as the Authority may consider necessary or desirable” and substituting the words “at the time of licensing or any time thereafter as the Authority may consider appropriate having regard to the nature, risk and scale of the business”; and
- (c) in subsection (9), by deleting the words “and there shall be payable” and substituting the words “and, except where the Authority waives the surcharge, there shall be payable”.

Insertion of section 5A - requirement for account or arrangement approved by Authority

5. The principal Law is amended by inserting after section 5 the following section —

“Requirement for account or arrangement approved by Authority

5A. Every licensee shall —

- (a) maintain at least one account as approved by the Authority; or
- (b) enter into an arrangement as agreed by the Authority,

through which its money services business transactions are to be conducted.”.

Insertion of section 6A - shares not to be issued or transferred without approval of Authority

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

“Shares not to be issued or transferred without approval of Authority

- 6A.** (1) Shares totaling more than ten per cent of the authorized share capital of a company that is a licensee under this Law shall not be issued, and issued shares totaling more than ten per cent of the issued share capital or total voting rights of a company that is a licensee under this Law shall not be transferred or disposed of in any manner, without the prior written approval of the Authority.
- (2) The licensee shall provide the information under subsection (1) to the Authority within such period of time as the Authority may require, in order that the Authority may assess whether a person acquiring control or ownership of such shares or voting rights in the licensee is a fit and proper person to have such control or ownership.
- (3) The Authority may exempt a licensee whose shares, or that of its parent body (if any), are publicly traded on a stock exchange recognized by the Authority from the requirements under subsection (1) and any such exemption shall be subject to —

- (a) a condition that the licensee shall, as soon as reasonably practicable, notify the Authority in writing of —
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the licensee’s issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee’s parent company;
 - (b) a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, within such period of time as the Authority may require, for the purpose of assessing whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
 - (c) such terms and conditions as the Authority may consider necessary.
- (4) In subsection (1), the reference to shares being transferred or disposed of includes the transfer or disposal of —
- (a) the legal interest in the shares; and
 - (b) any beneficial interest in the shares.
- (5) For the avoidance of doubt, the references in this section to shares totaling more than ten per cent include cumulative acquisition of shares or voting rights which may be less than ten per cent but which amount to more than ten per cent of the authorized share capital of a company.”.

Insertion of section 8A - compliance with anti-money laundering procedures

7. The principal Law is amended by inserting after section 8 the following section —

“Compliance with anti-money laundering procedures

- 8A.** (1) A licensee and any sub-agent of the licensee shall, in respect of the money services business, take such steps as may be necessary to comply with the *Anti-Money Laundering Regulations (2018 Revision)* and such rules or statements of principle or guidance as may be prescribed by the Authority that are consistent with anti-money laundering procedures and the combatting of terrorist financing.



- (2) A licensee shall monitor the compliance of the licensee's sub-agent, if any, with the prescribed rules or statements of principle or guidance under subsection (1) and may be required by the Authority to provide a report on the compliance in such form and subject to such conditions as may be prescribed.
- (3) The report under subsection (2) shall be subject to such conditions as the Authority may consider necessary.
- (4) A licensee and the licensee's sub-agent, if any, shall comply with the Authority where the Authority requires specified information or documents in accordance with section 34(8) of the *Monetary Authority Law (2018 Revision)*."

Repeal and substitution of section 11 - auditor's certificate

8. The principal Law is amended by repealing section 11 and substituting the following section —

“Auditor’s report

11. The Authority may at the expense of the licensee, require the licensee to obtain an auditor's report on the licensee's anti-money laundering systems and procedures for compliance with the *Anti-Money Laundering Regulations (2018 Revision)*."

Insertion of section 14A - obligations of auditors

9. The principal Law is amended by inserting after section 14 the following section —

“Obligations of auditors

- 14A.(1) Where an auditor, in the course of carrying out an audit of the accounts of a licensee, obtains information or suspects that the licensee is —
- (a) unable or likely to become unable to meet its obligations as they fall due;
 - (b) carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
 - (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
 - (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
 - (e) carrying on or attempting to carry on business without compliance with —

- (i) this Law or any regulations made hereunder;
- (ii) the *Monetary Authority Law (2018 Revision)*;
- (iii) the *Anti-Money Laundering Regulations (2018 Revision)*; or
- (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of the information or suspicion and, in the case of suspicion, the reason for that suspicion.

- (2) Without prejudice to subsection (8), where it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify the auditor from being an auditor of a licensee and the Authority may remove any disqualification imposed under this subsection if it is satisfied that the auditor in question will comply with subsection (1) in the future.
- (3) A licensee shall not appoint as an auditor a person who is disqualified under subsection (2).
- (4) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if it is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a licensee or that the auditor is incapable of carrying out the audit objectively.
- (5) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall be liable to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty, obligation or function unless it is shown that the act or omission was in bad faith.
- (6) A reference in this section to an auditor carrying out an audit of the accounts of a licensee includes an auditor who was engaged to carry out such audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.
- (7) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a licensee an obligation to do anything that the person would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.
- (8) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.”.



Repeal of section 31

10. The principal Law is amended by repealing section 31.

Transitional

11. Notwithstanding any provision to the contrary in this Law, a licensee and any of the sub-agents through whom a licensee conducts money services business is not required to comply with the provisions under section 8A, as enacted by section 7 of this Law, until ninety days after the commencement of this Law.

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly