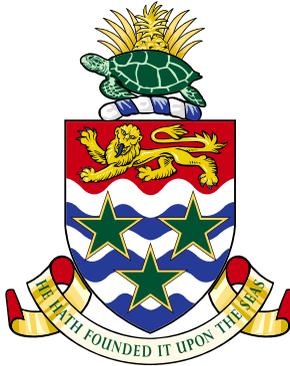


CAYMAN ISLANDS



BUILDING SOCIETIES (AMENDMENT) BILL, 2019

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A BILL FOR A LAW TO AMEND THE BUILDING SOCIETIES LAW (2014 REVISION) TO REQUIRE THE DIRECTORS AND SENIOR OFFICERS OF A BUILDING SOCIETY TO BE FIT AND PROPER PERSONS; TO REQUIRE THE APPROVAL OF THE MONETARY AUTHORITY FOR CHANGES TO DIRECTORS AND SENIOR OFFICERS OF A SOCIETY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

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



Memorandum of OBJECTS AND REASONS

This Bill amends the Building Societies Law (2014 Revision) (“the principal Law”) to, among other things, require that the directors and senior officers of a building society be fit and proper persons and to require the society to notify the Monetary Authority (“the Authority”) of any change of the directors or senior officers of that society. The Bill also provides for incidental and connected purposes.

Clause 1 provides for the short title of the legislation.

Clause 2 amends section 3 of the principal Law by inserting a new subsection to empower the Registrar to reject an application for the incorporation of a building society (“society”) if the proposed directors and senior officers of the society are not fit and proper persons as determined by the Authority.

Clause 3 amends section 4 of the principal Law to require that the rules of a society prescribe that the senior officers of the society be fit and proper persons.

Clause 4 inserts a new section 13A which requires that a society registered under the Law obtain the approval of the Authority prior to changing any of the directors and senior officers of that society.

Clause 5 amends the principal Law by inserting a new section 15A which requires a society which may issue shares which carry voting rights to seek approval from the Authority to issue such shares to a member that would own ten per cent or more of the total voting rights of the society upon the issuance of such shares.

Clause 6 amends the principal Law by inserting a new section 22A which provides for the requirement for an auditor who, in the course of carrying out an audit of the accounts of a society, obtains information or suspects that the society is carrying on or attempting to carry on business in a manner that is prejudicial to its members to notify the Authority of the information or reasons for the suspicion.

Clause 7 amends section 33 of the principal Law by inserting a new paragraph under subsection (1) of that section which would empower the Authority to assess the fitness and propriety of persons required by the legislation to be so assessed.

Clause 8 amends section 34 of the principal Law by inserting a new paragraph under subsection (1) of that section which would empower the Authority to take certain actions against a society where the Authority is of the opinion that a director or senior officer of the society is not a fit and proper person.

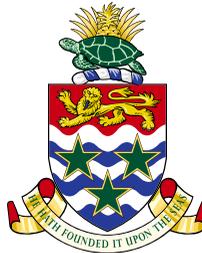
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**BUILDING SOCIETIES (AMENDMENT) BILL,
2019**

A BILL FOR A LAW TO AMEND THE BUILDING SOCIETIES LAW (2014 REVISION) TO REQUIRE THE DIRECTORS AND SENIOR OFFICERS OF A BUILDING SOCIETY TO BE FIT AND PROPER PERSONS; TO REQUIRE THE APPROVAL OF THE MONETARY AUTHORITY FOR CHANGES TO DIRECTORS AND SENIOR OFFICERS OF A SOCIETY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Building Societies (Amendment) Law, 2019.

Amendment of section 3 of the Building Societies Law (2014 Revision) - incorporation of societies

2. The *Building Societies Law (2014 Revision)*, in this Law referred to as “the principal Law”, is amended in section 3 by inserting after subsection (1), the following subsections —
 - “(1A) A person who wishes to incorporate a society under this section shall apply to the Authority for a determination that the proposed directors and senior officers of that society are fit and proper persons.

- (1B) The Registrar shall not grant approval for incorporation of a society under this section unless the proposed directors and senior officers of the society are determined by the Authority to be fit and proper persons.
- (1C) An applicant for incorporation of a society under this section shall provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of assessing whether the proposed directors and senior officers of the society are fit and proper persons.
- (1D) The Authority shall assess whether the proposed directors and senior officers of the society are fit and proper persons and shall inform the Registrar and the applicant of its determination.
- (1E) In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's —
- (a) honesty, integrity and reputation;
 - (b) competence and capability; and
 - (c) financial soundness.”.

Amendment of section 4 - rules

3. The principal Law is amended in section 4(2) by inserting after paragraph (d), the following paragraph —

“(da) that the directors and senior officers are required to be fit and proper persons;”.

Insertion of section 13A- change of directors or senior officers

4. The principal Law is amended by inserting after section 13, the following section —

“Change of directors or senior officers

- 13A.** (1) The society shall obtain the approval of the Authority prior to appointing a new director or senior officer and shall require that the director or senior officer is a fit and proper person.
- (2) The Authority shall not grant the approval for the appointment of a new director or senior officer of a society referred to in subsection (1) unless the Authority is satisfied that the director or senior officer is a fit and proper person.”.



Insertion of section 15A - shares not to be issued or transferred without the prior approval of the Authority

5. The principal Law is amended by inserting after section 15, the following section —

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

- 15A.** (1) In the case of a society which may issue shares which carry voting rights, shares representing ten per cent or more of total voting rights of the society shall not be issued to a member, and issued shares representing ten per cent or more of the total voting rights of the society shall not be transferred or disposed of in any manner by a member, without the prior approval of the Authority.
- (2) The Authority shall not grant the approval specified in subsection (1) where a person acquiring control or ownership of shares representing ten per cent or more of total voting rights of the society is not a fit and proper person.
- (3) For the purposes of subsection (1), the society shall provide such information to the Authority, and within the specific time, as the Authority may require for the purpose of assessing whether persons acquiring control or ownership of such shares or voting rights referred to in that subsection are fit and proper persons to have such control or ownership.
- (4) For the avoidance of doubt, the references to shares representing ten per cent or more of the total voting rights of a society include cumulative acquisition of shares or voting rights which amount to ten per cent or more of the total voting rights of the society.”.

Insertion of section 22A - obligations of auditors

6. The principal Law is amended by inserting after section 22, the following section —

“Obligations of auditors

- 22A.** (1) If an auditor, in the course of carrying out an audit of the accounts of a society under this Law, obtains information or suspects that the society 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 winding up its business voluntarily in a manner that is prejudicial to its members;

- (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 otherwise than in compliance with —
 - (i) this Law,
 - (ii) the *Monetary Authority Law (2018 Revision)*; or
 - (iii) the *Anti-Money Laundering Regulations (2018 Revision)*,

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

- (2) Without prejudice to subsection (7), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may issue a recommendation to Cabinet to disqualify the auditor from being an auditor of a society.
- (3) Where the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a society or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively, the Authority shall issue to Cabinet a recommendation to revoke the appointment of the auditor.
- (4) When a society changes its auditor, the Authority may require the former auditor to explain the reasons for the change.
- (5) A person carrying out or charged with the carrying out of any duty, obligation or function under this section shall not incur civil liability for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission concerned was in bad faith.
- (6) A reference in this section to an auditor carrying out an audit of the accounts of a society includes a reference to an auditor who was engaged to carry out such an 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 society an obligation to do anything that the auditor 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.”.

Amendment of section 33 - powers and duties of Authority

7. The principal Law is amended in section 33(1) by inserting after paragraph (a), the following paragraph —

“(aa) to assess the fitness and propriety of persons required to be so assessed under this Law and notify the Registrar of the determination of the assessment in respect of such persons;”.

Amendment of section 34 - powers of Authority in respect of building societies

8. The principal Law is amended in section 34(1) by inserting after paragraph (a), the following paragraph —

“(aa) has a director or senior officer who is not a fit and proper person;”.

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly

