

CAYMAN ISLANDS



Supplement No. 2 published with Gazette No. 8 dated
14 April, 2008.

**A BILL FOR A LAW TO AMEND THE BANKS AND TRUST
COMPANIES LAW (2007 REVISION) TO MAKE FURTHER
PROVISION IN RESPECT OF RESTRICTIONS IMPOSED ON BANKS;
TO RE-STATE CERTAIN DUTIES IMPOSED ON TRUST COMPANIES;
AND TO MAKE PROVISION FOR RELATED MATTERS**

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2008

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Banks and Trust Companies Law (2007 Revision).

Clause 1 of the Bill sets out the short title of the legislation.

Clause 2 amends section 5 of the principal Law to introduce into the Law the ability to prescribe special regimes, by regulations, where it is considered that licensing is not necessary or suitable, given the nature of the activity (for example, in the case of private trust companies, that is, companies that do not provide trust services to the general public, but only to parties within a defined family relationship). The clause also expands the activity scope of controlled subsidiaries, in cases where such activity is directly linked to the business of the parent trust company.

Clause 3 amends section 10 of the principal Law to delete an unnecessary reference to beneficiaries of a trust, since section 10 deals with the capital adequacy ratios of banks.

Clause 4 amends section 14 of the principal Law to confine the twenty per cent of the net worth rule to a bank's holdings of beneficial interests in entities, so that it is not applicable if the interest is only a legal interest, that is, held as security or in the capacity of trustee, agent, nominee or custodian, or otherwise than beneficially.

Clause 5 amends section 15 of the principal Law to re-focus the Monetary Authority's powers on review of indemnity insurance coverage arrangements for trust companies, so that the initial determination of what coverage is appropriate remains the responsibility of the trust company itself.

Clause 6 amends section 27 of the principal Law to confer upon the Governor in Cabinet a general power to prescribe the fees that are payable under the Law.

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2008

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 5 of the Banks and Trust Companies Law (2007 Revision) - licence or registration required to carry on banking or trust business
3. Amendment of section 10 – capital adequacy ratio
4. Amendment of section 14 – certain prohibitions on licensee
5. Amendment of section 15 – general requirements for trust companies
6. Amendment of section 27 - regulations

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A BILL FOR A LAW TO AMEND THE BANKS AND TRUST COMPANIES LAW (2007 REVISION) TO MAKE FURTHER PROVISION IN RESPECT OF RESTRICTIONS IMPOSED ON BANKS; TO RE-STATE CERTAIN DUTIES IMPOSED ON TRUST COMPANIES; AND TO MAKE PROVISION FOR RELATED MATTERS

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Banks and Trust Companies (Amendment) Law, 2008.

Short title

2. The Banks and Trust Companies Law (2007 Revision), in this Law referred to as the “principal Law”, is amended in section 5 as follows -

Amendment of section 5 of the Banks and Trust Companies Law (2007 Revision) - licence or registration required to carry on banking or trust business

- (a) in subsection (2) by inserting after the words “subsection (3)” the words “and to such other exemptions and conditions as may be prescribed by regulations made by the Governor under this subsection”;
- (b) in subsection (3) by inserting after the words “debt instruments” the following words -
 - “or to carry on other trust business that is -
 - (a) connected with the trust business of the licensee by which the controlled subsidiary is owned; and
 - (b) within the scope of that licensee’s Trust licence”;
- (c) by inserting after subsection (4) the following subsection -

“ (4a) A controlled subsidiary that is registered under subsection (4) may, on payment of the prescribed fee, act as a trustee of a trust that is registered as a mutual fund under the Mutual Funds Law (2007 Revision) without being licensed as a mutual fund administrator under that Law, if the licensee by which the controlled subsidiary is owned is itself licensed under that Law to administer such trust.”; and

(d) in subsection (5) by inserting after the words “this section” the words “or any regulations made under subsection (2)”.

Amendment of section
10 – capital adequacy
ratio

3. The principal Law is amended in section 10(3) by deleting the words “or of the beneficiaries of any trust,”.

Amendment of section
14 – certain prohibitions
on licensee

4. The principal Law is amended in section 14 as follows -

(a) by repealing subsection (2) and substituting the following subsection -

“ (2) A licensee incorporated under the Companies Law (2007 Revision) holding a licence for the carrying on of banking business shall not acquire or hold a beneficial interest in an entity, whether directly or indirectly, so that the value of the interest at any time exceeds twenty per cent of the net worth of the licensee -

(a) except with the prior written approval of the Authority; or

(b) except insofar as may be necessary with respect to any interest acquired by the licensee in satisfaction of debts due to it, but any such interest acquired in satisfaction of debts shall be disposed of within a period not exceeding five years unless permission to extend such period has been given by the Authority.”;

(b) in subsection (3) by deleting the words “real estate unless -” and substituting the words “real estate unless the Authority has given prior written approval or -”; and

(c) by inserting after subsection (5) the following subsection -

“ (6) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with banking business carried on by that person in contravention of this section.”.

5. The principal Law is amended in section 15 as follows -
- (a) by repealing subsection (1);
 - (b) in subsection (2) by deleting the words “in such manner as may be determined” and substituting the words “and such insurance or arrangements shall be subject to review”; and
 - (c) in subsection (3) by deleting the words “In making determinations” and substituting the words “In conducting reviews”.
6. The principal Law is amended in section 27(c) by deleting the words “section 6(7) and (8)” and substituting the words “this Law”.

Amendment of section
15 – general
requirements for trust
companies

Amendment of section
27 - regulations

Passed by the Legislative Assembly the day of , 2008.

Speaker.

Clerk of the Legislative Assembly.