

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MONETARY AUTHORITY LAW
(2008 REVISION) TO MAKE FURTHER PROVISION IN RESPECT OF
THE OPERATIONAL INDEPENDENCE OF THE MONETARY
AUTHORITY; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE MONETARY AUTHORITY (AMENDMENT) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

The Monetary Authority Law (2008 Revision), in broad terms, enables the Cayman Islands Monetary Authority to enjoy operational independence; however, certain provisions of the Law can be interpreted as compromising that independence. This Bill seeks to amend the Monetary Authority Law to address those provisions thereby further enhancing the Authority's operational independence.

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

Clause 2 amends section 2 of the principal Law to include the Securities Investment Business Law (2004 Revision) as a regulatory law for the purposes of the principal Law.

Clause 3 amends section 4 of the principal Law to remove the procedure prescribed for obtaining the approval of the Governor in Cabinet for rules or statements of principle or guidance and to include a procedure for consultation with the Financial Secretary. This amendment is consequential upon the amendment of section 34.

Clause 4 of the Bill amends section 6 of the principal Law to correct a clerical error.

Clause 5 amends section 11 of the principal Law to remove the requirement for the Governor in Cabinet to consult the directors of the Authority in relation to the designation of a chairman and deputy chairman of the board of directors.

Clause 6 amends section 34 of the principal Law to remove the requirement for the Monetary Authority to obtain the approval of the Governor in Cabinet before issuing rules or statements of principle or guidance. Instead, the Authority is required to include the Financial Secretary in its consultation procedure before issuing such rules or statements of guidance.

Clause 7 of the Bill amends section 35 of the principal Law to prescribe the circumstances in which a search warrant may be granted where the Monetary Authority is unable to provide a suitable response to a request by an overseas regulatory authority.

Clause 8 amends section 48 of the principal Law to remove the requirement for the Monetary Authority to obtain the approval of the Governor in Cabinet in

cases where the regulatory handbook would have the effect of creating certain rules. Instead, the Authority is required to include the Financial Secretary in its consultation procedure. This amendment is consequential on the amendment to section 34.

Clause 9 of the Bill amends section 51 of the principal Law to remove the requirement for the Monetary Authority to obtain the approval of the Governor in Cabinet in order to enter into memoranda of understanding. Instead, the Authority is required to consult with the Financial Secretary.

Clause 10 inserts a new section 52 into the principal Law for the purpose of protecting persons disclosing information to regulators, in the context of consolidated supervision arrangements, from criminal or civil liability.

Clause 11 repeals and replaces the Third Schedule to the principal Law to vary the list of private sector associations prescribed for the purposes of the Law.

Clause 12 contains savings and transitional provisions.

THE MONETARY AUTHORITY (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Monetary Authority Law (2008 Revision) - definitions
3. Amendment of section 4 - private sector consultation
4. Amendment of section 6 - principal functions of Authority
5. Amendment of section 11 - board of directors
6. Amendment of section 34 - relations with banks and other financial institutions
7. Amendment of section 35 - assistance in obtaining information
8. Amendment of section 48 - regulatory handbook
9. Amendment of section 51 - memoranda of understanding
10. Insertion of section 52 - disclosure to regulators
11. Repeal and substitution of Third Schedule - private sector associations
12. Savings and transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Monetary Authority (Amendment) Law, 2010. Short title

2. The Monetary Authority Law (2008 Revision), in this Law referred to as the “principal Law”, is amended in section 2, in the definition of the term “regulatory laws”, as follows - Amendment of section 2
of the Monetary
Authority Law (2008
Revision) - definitions
 - (a) by substituting a semi colon for the comma appearing at the end of paragraph (g); and
 - (b) by inserting after paragraph (g) the following paragraph -
“(h) Securities Investment Business Law (2004 Revision),”.

3. The principal Law is amended in section 4 as follows - Amendment of section
4 - private sector
consultation
 - (a) in subsection (2) -
 - (i) by deleting the words “the approval of the Governor” and substituting the words “consultation with the Financial Secretary”; and

- (ii) by deleting the words “for consideration by the Governor” and substituting the words “together with a draft of the proposed measure”; and
 - (b) in subsection (3) by deleting the words “, with the consent of the Governor,”.
- Amendment of section 6 - principal functions of Authority
4. The principal Law is amended in section 6(4)(b) by deleting the words “with section 50(4)” and substituting the words “with section 50(8)”.
- Amendment of section 11 - board of directors
5. The principal Law is amended in section 11 as follows -
- (a) in subsection (1) by deleting the words “policy and general administration of the affairs and business of the Authority” and substituting the words “governance, policy and performance of the Authority and the general conduct of its affairs and business”; and
 - (b) in subsection (3) by deleting the words “after consultation with the directors appointed in accordance with sections 12 and 13”.
- Amendment of section 34 - relations with banks and other financial institutions
6. The principal Law is amended in section 34 as follows -
- (a) by repealing subsection (1) and substituting the following subsection -
 - “ (1) After private sector consultation and consultation with the Financial Secretary, the Authority may -
 - (a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;
 - (b) issue or amend statements of guidance concerning the requirements of the money laundering regulations or the provisions of the regulatory laws; and
 - (c) issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.”;
 - (b) by repealing subsection (2);
 - (c) in subsection (3) by inserting after the words “given thereunder” the words “and shall state the provision of this Law, the regulatory law, the regulations or the directions, as the case may be, to which they relate”;

- (d) by repealing subsection (5) and substituting the following subsection -
- “ (5) The Authority shall, without delay, publish in the Gazette notice of the issue or amendment of rules or statements of principle or guidance under subsection (1) and forward to the Financial Secretary copies of the rules or statements of principle or guidance as issued or amended.”; and
- (e) in subsection (7)(a) by deleting the words “one thousand “ and substituting the words “five thousand”.
7. The principal Law is amended in section 35 as follows - Amendment of section 35 - assistance in obtaining information
- (a) in subsection (1) by deleting the words “in section 34(1)” and substituting the words “in section 34(9)”;
- (b) by inserting after subsection (4) the following subsection -
- “ (5) The Authority, any person authorised under subsection (1) or the Commissioner of Police may apply to a Justice of the Peace, a Magistrate or a Judge of the Grand Court for a search warrant in pursuance of an investigation under subsection (2).”.
8. The principal Law is amended in section 48 by repealing subsection (4) and substituting the following subsection - Amendment of section 48 - regulatory handbook
- “ (4) In cases where the regulatory handbook would have the effect of creating, directly or indirectly, rules or statements of principle or guidance, the Authority shall consult with the private sector associations and the Financial Secretary.”.
9. The principal Law is amended in section 51 as follows - Amendment of section 51 - memoranda of understanding
- (a) by repealing subsection (1) and substituting the following subsection -
- “ (1) The Authority may, in the exercise of its co-operative functions, after consultation with the Financial Secretary, enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting consolidated supervision with such authorities or for such other regulatory or supervisory purposes as the Authority may deem fit.”; and
- (b) in subsection (3) by inserting after the words “each memorandum of understanding” the words “entered into”.

Insertion of section 52 -
disclosure to regulators

10. The principal Law is amended by inserting after section 51 the following section -

“Disclosure to
regulators

52. Where a person regulated under the regulatory laws provides information to the Authority or, in the case of a foreign branch or subsidiary, to an overseas regulatory authority that regulates its parent company, for the purpose of consolidated supervision, the provision of the information shall not be treated as a breach of any restriction upon the disclosure of information by or under any Law and the fact of such provision of information shall not give rise to any criminal or civil liability.”.

Repeal and substitution
of Third Schedule -
private sector
associations

11. The principal Law is amended by repealing the Third Schedule and substituting the following schedule -

“THIRD SCHEDULE

(Sections 2 and 4(4))

Private Sector Associations

Alternative Investment Management Association (Cayman Islands)
Cayman Islands Association of Insurance and Financial Advisors
Cayman Islands Bankers Association
Cayman Islands Company Managers Association
Cayman Islands Directors Association
Cayman Islands Financial Services Association
Cayman Islands Fund Administrators Association
Cayman Islands Insurance Association
Cayman Islands Law Society
Cayman Islands Society of Professional Accountants
Caymanian Bar Association
Chartered Financial Analysts Society of the Cayman Islands
Compliance Association
Insurance Managers Association of Cayman
Society of Trust and Estate Practitioners (Cayman Islands)”.

Savings and transitional
provisions

12. (1) Every matter commenced under the former Law and partly dealt with immediately before the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

(2) Every matter commenced under the former Law and not wholly or partly dealt with immediately before the new Law comes into force, is to be taken to be a matter commenced under the new Law and the provisions of the new Law are to apply accordingly.

(3) Any subordinate legislation made under the former Law and in force immediately before the new Law comes into force, so far as such subordinate legislation is not inconsistent with the provisions of the new Law, continues in force as if made under the new Law.

(4) In this section -

“former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.