

CAYMAN ISLANDS



Supplement No. 10 published with  
Gazette No. 25 dated 5<sup>th</sup> December, 2016.

**THE AUDITORS OVERSIGHT (AMENDMENT) LAW, 2016**

**(LAW 28 OF 2016)**

**THE AUDITORS OVERSIGHT (AMENDMENT) LAW, 2016**

**ARRANGEMENT OF SECTIONS**

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CAYMAN ISLANDS

Law 28 of 2016.

Assent

Helen Kilpatrick

Governor.

22<sup>nd</sup> November, 2016

**A LAW TO AMEND THE AUDITORS OVERSIGHT LAW, 2011, LAW 23 OF 2011, TO INCLUDE TWO ADDITIONAL CATEGORIES OF AUDITS UNDER THE PURVIEW OF THE OVERSIGHT OF THE AUDITORS OVERSIGHT AUTHORITY; TO PERMIT COOPERATION BETWEEN THE AUDITORS OVERSIGHT AUTHORITY AND EQUIVALENT OVERSEAS AUTHORITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

- 1. This Law may be cited as the Auditors Oversight (Amendment) Law, 2016. Short title
- 2. The Auditors Oversight Law, Law 23 of 2011, in this Law referred to as the “principal Law”, is amended in the long title by inserting after the words “market traded companies” the words “and certain other companies”. Amendment of the long title of the Auditors Oversight Law, Law 23 of 2011
- 3. The principal Law is amended in section 2 as follows - Amendment of section 2 - interpretation
  - (a) by renumbering section 2 as subsection 2(1);
  - (b) in the definition of the words “responsible individual” by deleting the words “market traded companies” and substituting the words “ market traded companies, designated companies or Authority specified companies”; and
  - (c) by inserting in the correct alphabetical order the following definitions -

“Authority specified company” means a company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, which is not a market traded company or designated company and which falls within the specific type or category of company, partnership, unit trust or other entity specified by the Authority in a notice issued under section 17A;

“designated company” means a company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, which is not a market traded company or an Authority specified company but which falls within a specific type or category of company, partnership, unit trust or other entity specified by Regulations; and

“overseas auditor oversight body” means a body which, in a country or territory outside the Islands, is designated by law to exercise functions corresponding to -

- (a) any of the functions of the Authority; or
- (b) any additional functions that include the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that body;”.

Amendment of section 3 - establishment and functions of Authority

4. The principal Law is amended in section 3 as follows -

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

“(2) The principal functions of the Authority are -

- (a) to regulate and supervise auditors who audit the accounts of market traded companies or designated companies;
- (b) to regulate auditors who audit the accounts of Authority specified companies and have voluntarily registered as a recognized auditor pursuant to section 17A;
- (c) to make recognized auditors subject to the Authority's systems of oversight, quality assurance, disciplinary action and investigation; and
- (d) to enter into arrangements to facilitate mutual assistance to overseas auditor oversight bodies in accordance with this Law.”; and

(b) by inserting after subsection (3) the following subsection -

“(4) The Authority shall exercise its functions and powers in a manner which ensures that it maintains operational independence from recognized auditors.”.

5. The principal Law is amended in section 8(4) by inserting after the words “exclusively to the Authority” the words “unless the Board resolves otherwise”. Amendment of section 8 - Managing Director
6. The principal Law is amended in section 10(3) by deleting the word “five” and substituting the word “four”. Amendment of section 10 - meetings
7. The principal Law is amended in section 17 as follows - Amendment of section 17 - qualification for appointment as auditor
- (a) in subsection (1), by inserting after the words “market traded company” the words “or a designated company”;
  - (b) in subsection (2), by inserting after the words “market traded companies” the words “or designated companies”; and
  - (c) in subsection (3), by inserting after the words “market traded company” the words “or a designated company”.
8. The principal Law is amended by inserting after section 17 the following section - Insertion of section 17A - voluntary registration of auditors

“Voluntary registration of auditors

17A. (1) The Authority may by notice in the Gazette invite -

- (a) auditors that are not engaged in the auditing of the accounts of market traded companies or designated companies; or
- (b) auditors that are engaged in the auditing of the accounts of market traded companies or designated companies and are already registered as recognized auditors,

to apply to the Authority to be voluntarily registered as a recognized auditor in respect of auditing the accounts of a specific type or category of company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, which is not a market traded company or a designated company.

(2) A notice issued under subsection (1) shall specify -

- (a) the specific type or category of company, partnership, unit trust or other entity to which the

notice applies;

- (b) the basis upon which the Authority considers it appropriate to invite applications for voluntary registration under subsection (1); and
- (c) any specific requirements established by the Authority in relation to that invitation.

(3) An auditor that is voluntarily registered as a recognized auditor following an invitation made pursuant to subsection (1) shall be subject to all of the obligations imposed upon a recognized auditor under this Law.

(4) Nothing contained in this Law shall require an auditor that audits the accounts of an Authority specified company to register under this section and this Law shall not prevent that auditor from continuing to audit the accounts of an Authority specified company.”.

Amendment of section 18 - register of recognized auditors

9. The principal Law is amended in section 18(2) by inserting after the words “withdraw from the register” the words “in respect of the auditing of market traded companies, designated companies or Authority specified companies”.

Amendment of section 19 - eligibility for entry on register

10. The principal Law is amended in section 19 as follows -

- (a) in paragraph (b), by inserting after the words “accounts of market traded companies” the words “designated companies or Authority specified companies”; and
- (b) in paragraph (c), by inserting after the words “accounts of a market traded company” the words “a designated company or an Authority specified company”.

Amendment of section 20 - application for entry on register

11. The principal Law is amended in section 20(8) as follows -

- (a) by inserting after the words “audit of a market traded company” the words “or a designated company”; and
- (b) by inserting after the words “three months of the commencement date” the words “or other period that the Cabinet may by regulation prescribe”.

Amendment of section 26 - confidentiality

12. The principal Law is amended in section 26 as follows -

- (a) in subsection (1), by deleting the words “prepared for, or received by the Authority” and substituting the words “prepared for, received by or prepared by the Authority”; and
- (b) in subsection (2) -
  - (i) at the end of paragraph (h), by deleting the word “or”;
  - (ii) at the end of paragraph (i), by deleting the full stop and inserting after the word “body” the words “; or”; and
  - (iii) by inserting after paragraph (i) the following paragraph -
    - “(j) made pursuant to a memorandum of understanding entered into by the Authority pursuant to section 32A.”; and
- (c) by inserting after subsection (8) the following subsection -

(2015 Revision) “(9) The Freedom of Information Law (2015 Revision) shall not apply to any document, information or deliberation referred to in subsection (1).”.

13. The principal Law is amended in section 29 as follows -

Amendment of section 29 - rules

- (a) by inserting after the words “a market traded company” the words “a designated company or an Authority specified company”; and
- (b) by deleting the words “quality assurance, investigation and penalties” and substituting the words “quality assurance, disciplinary action and investigation”.

14. The principal Law is amended in section 30 as follows -

Amendment of section 30 - monitoring of compliance

- (a) in subsection (2)(a) by inserting after the words “accounts of market traded companies” the words “designated companies or Authority specified companies”; and
- (b) by repealing subsection (2)(c) and substituting the following -
  - “(c) taking disciplinary action where necessary against recognized auditors or responsible individuals.”.

15. The principal Law is amended in section 31(2) by inserting after the words “a market traded company” the words “a designated company or an Authority specified company”.

Amendment of section 31 - obligations of recognized auditors

16. The principal Law is amended by inserting after section 32 the following sections -

Insertion of section 32A - memorandum of understanding, section 32B - disclosure to the Authority and 32C - assisting an overseas auditor oversight body

“Memorandum of understanding 32A. (1) The Authority may, in the exercise of its functions, after consultation with the Minister charged

with responsibility for Financial Services, enter into a memorandum of understanding with -

- (a) an overseas auditor oversight body for the purpose of assisting the overseas auditor oversight body in the exercise of its regulatory or supervisory functions as they relate to a recognized auditor or a responsible individual or for other regulatory or supervisory purposes the Authority considers fit; and
- (b) a body, whether regulatory or professional and whether established overseas or in the Islands, for the purpose of enabling the Authority to communicate and share information with the body for the purpose of enabling or assisting the Authority to carry out its functions under this Law.

(2) A memorandum of understanding may not call for assistance beyond that which is provided for by this Law or relieve the Authority of any of its functions or duties under this Law.

(3) The Authority shall notify the Minister charged with responsibility for Financial Services of each memorandum of understanding entered into and promptly publish the memorandum of understanding on its website.

Disclosure to the Authority

32B. (1) Where an auditor or any of the auditor's partners, officers, directors, principals or employees, or a responsible individual provides information to the Authority, or to any person to whom the Authority has delegated its functions under section 16, for the purpose of enabling or assisting the Authority to carry out its functions under this Law, 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 provision of information under the above-mentioned circumstances shall not give rise to any criminal or civil liability.

(2) This section shall apply whether or not the information was provided to the Authority or its delegate pursuant to a request or instruction by the Authority or its delegate that the information be provided.

Assisting an  
overseas auditor  
oversight body

32C. (1) In deciding whether or not to assist an overseas auditor oversight body, whether by use of the Authority's powers under section 32A or otherwise, the Authority shall take into account -

- (a) whether corresponding assistance would be given in the relevant country or territory to the Authority;
- (b) whether the assistance is required to enable the overseas auditor oversight body to carry out its functions; and
- (c) whether it is in the public interest to give the assistance sought.

(2) The Authority may -

- (a) require an overseas auditor oversight body which requests assistance to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority and where an overseas auditor oversight body fails to comply with such requirement may refuse to provide the assistance sought; and
- (b) decline to assist an overseas auditor oversight body unless the overseas auditor oversight body undertakes to make such contribution towards the costs of the assistance as the Authority considers appropriate.

(3) The Authority shall not give to an overseas auditor oversight body any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless -

- (a) the Authority has satisfied itself that the intended recipient overseas auditor

oversight body is subject to adequate legal restrictions on further disclosures; or

- (b) the Authority has been given an undertaking by the recipient overseas auditor oversight body not to disclose the information provided without the consent of the Authority; and
- (c) the Authority is satisfied that the assistance requested by the overseas auditor oversight body is required for the purposes of the overseas auditor oversight body's regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that body; and

the Authority is satisfied that information provided following the exercise of its powers, will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence of perjury.”.

Amendment of section  
33 - regulations

17. The principal Law is amended in section 33(2) as follows -

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

- (c) by inserting after paragraph (c) the following paragraph -  
“(d) prescribe the manner in which an administrative penalty regime with a maximum penalty of five thousand dollars may be implemented.”.

Passed by the Legislative Assembly the 24<sup>th</sup> day of October, 2016.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.