

CAYMAN ISLANDS



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**THE MONETARY AUTHORITY (AMENDMENT) (INTERNATIONAL
CO-OPERATION) LAW, 2000**

(LAW 6 OF 2000)

**THE MONETARY AUTHORITY (AMENDMENT) (INTERNATIONAL
CO-OPERATION) LAW, 2000**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Amendment of principal Law - references to regulatory authorities.
4. Amendment of section 2 - Definitions.
5. Amendment of section 4 - Principal functions of Authority.
6. Amendment of section 30 - Relations with banks and other financial institutions.
7. Insertion of new section - Assistance in obtaining information.
8. Amendment of section 42 - Confidentiality.

CAYMAN ISLANDS

Law 6 of 2000.

I Assent

P.J. SMITH

Governor.

20 July, 2000

**A LAW TO AMEND THE MONETARY AUTHORITY LAW (1998
REVISION); TO MAKE PROVISION FOR ASSISTING FINANCIAL
SERVICES SUPERVISORY AUTHORITIES OUTSIDE THE ISLANDS
TO OBTAIN INFORMATION FROM WITHIN THE ISLANDS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Monetary Authority (Amendment) (International Co-operation) Law, 2000. | Short title |
| 2. In this Law “the principal Law” means the Monetary Authority Law (1998 Revision). | Interpretation |
| 3. The principal Law is amended by repealing the words “financial services supervisory authority outside the Islands” wherever they appear and substituting “overseas regulatory authority”. | Amendment of principal Law - references to regulatory authorities |
| 4. Section 2 of the principal Law is amended by inserting the following definitions -

“ “civil and administrative investigations and proceedings” means proceedings in any court of law in the jurisdiction of an overseas regulatory authority and investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings; | Amendment of section 2 - Definitions |

“overseas regulatory authority” means an authority which, in a country or territory outside the Islands, exercises functions corresponding to -

- (a) any functions of the Authority; or
- (b) any additional regulatory functions in relation to companies or financial services as may be specified in regulations including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority; and

“regulatory functions” means functions of the Authority, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified in regulations;”.

Amendment of section 4
- Principal functions of
Authority

5. Section 4 of the principal Law is amended -

- (a) by repealing the word “objects” wherever it appears and substituting “functions”; and
- (b) (i) by inserting, after paragraph (d), the following paragraph -
“*(da)* to provide assistance to overseas regulatory authorities.”; and
(ii) by repealing paragraph (e) and substituting the following paragraph -
“*(e)* to perform such ancillary functions as may be appropriate in performing the functions set out in paragraphs (a), (b), (c) and *(da)*.”.

Amendment of section
30 - Relations with
banks and other financial
institutions

6. Section 30 of the principal Law is amended -

- (a) by inserting after subsection (1) the following subsection -
“(1a) The Authority shall monitor compliance with regulations made under section 19A of the Proceeds of Criminal Conduct Law (1999 Revision).”;
- (b) by repealing subsections (2) to (5) and substituting the following subsections -
“(2) The Authority may at all reasonable times by notice in writing given -
 - (a) to a person regulated under the regulatory laws;
 - (b) to a connected person; or
 - (c) to a person reasonably believed to have information relevant to an enquiry by the Authority,

require him -

- (i) to provide specified information or information of a specified description; or
- (ii) to produce specified documents or documents of a specified description,

as it may reasonably require in connection with the exercise by the Authority of functions conferred on it by or under this Law or the regulatory laws.

(3) Where, in accordance with section 42, the Authority is satisfied that assistance should be provided in response to a request by an overseas regulatory authority it may in writing direct -

- (a) a person regulated under the regulatory laws;
- (b) a connected person;
- (c) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or
- (d) a person reasonably believed to have information relevant to enquiries to which the request relates,

within a stated time, to-

- (i) provide the Authority with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;
- (ii) produce specified documents or documents of a specified description relevant to those inquiries; or
- (iii) give to the Authority such assistance in connection with those inquiries as the Authority may specify in writing.

(4) Where a person fails to comply with a requirement under subsection (2) or a direction given under subsection (3) within three days from the date of the requirement or direction or such longer period as the Authority may permit, the Authority may apply to the court for an order requiring the person to comply with the requirement or direction.

(5) Where, in connection with a requirement under subsection (2) or a direction given under subsection (3), the Authority considers it necessary to examine a person on oath, the

Authority may apply to a court of summary jurisdiction to have that person examined by the court and to have the results of that examination sent to the Authority.

(5a) The court shall process an application under subsection (5) within 7 days of its receipt and shall send the results of the examination to the Authority within 14 days of the examination.

(5b) Where documents are produced pursuant to subsections (2) or (3) the Authority may take copies of them or extracts from them.

(5c) A person shall not be required under this section to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings except that an attorney-at-law may be required to provide the name and address of his client or principal.

(5d) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

- (5e) (a) In this section “document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form.
- (b) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -
- (i) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
 - (ii) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (iii) by any person -
 - (A) in contemplation of, or in connection with, legal proceedings; and
 - (B) for the purpose of those proceedings.

- (c) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (d) For the purposes of subsections (2) and (3) a person is connected with a person regulated under the regulatory laws ("A") if he is or has at any relevant time been -
 - (i) a member of A's group;
 - (ii) a controller of A;
 - (iii) any other member of a partnership of which A is a member; or
 - (iv) a member, officer, manager, employee or agent of A.”;
- (c) in subsection (6), by repealing “Whoever fails to comply with any requirement of the Authority under subsections (2), (3), (4) or (5)”, and substituting -

“A person who without reasonable cause-

 - (a) fails to comply with a requirement of the Authority under subsection (2) or a direction of the Authority under subsection (3);
 - (b) with intent to avoid the provisions of subsections (2) or (3) destroys, mutilates, defaces, hides or removes a document; or
 - (c) wilfully obstructs an inquiry by the Authority, made in accordance with the provisions of subsections (2) or (3),”;
- (d) by repealing subsection (7) and substituting the following subsection -

“(7) (a) Where an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

 - (b) Where the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with

his functions of management as if he were a director of the body corporate.”; and

(e) by inserting, after subsection (7) the following subsection -

“(8) Where a person complies with a requirement under subsection (2), a direction under subsection (3) or an order under subsection (4), or gives evidence under subsection (5), such compliance shall not be treated as a breach of any restriction upon disclosure of information by or under any Law and shall not give rise to any civil liability.”.

Insertion of new section -
Assistance in obtaining
information

7. After section 30 of the principal Law, the following section is inserted -

“Assistance
in obtaining
information

30A. (1) The Authority may -

- (a) authorise a competent person to exercise any of its powers under this Law; and
- (b) seek the assistance of the Commissioner of Police in the exercise of those powers.

(2) No such assistance shall be sought or authority granted under subsection (1) except for the purpose of investigating -

- (a) the affairs, or any aspect of the affairs, of a person specified by the Authority; or,
- (b) a subject matter specified by the Authority,

being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority.

(3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.

(4) Where the Authority seeks assistance or grants an authority under subsection (1), the assistance or authority shall be provided or executed in such manner as the Authority may determine; and where the Authority grants such an authority to a person, he shall make a report to the Authority in such manner as the Authority may require on the exercise of that authority and the results of exercising it.”.

8. Section 42 of the principal Law is amended -

Amendment of section
42 - Confidentiality

- (a) in subsection (2) by inserting the following paragraph after paragraph (f) -

“(fa) lawfully made to a person with a view to the institution of, or for the purpose of -

- (i) criminal proceedings;
- (ii) disciplinary proceedings, whether within or outside the Islands, relating to the exercise by an attorney-at-law, auditor, accountant, valuer or actuary of his professional duties; or
- (iii) disciplinary proceedings relating to the discharge by a public officer, a member of the Executive Council or a member or employee of the Authority of his duties; or”;

- (b) by repealing subsection (3) and substituting the following subsection -

“(3) Subject to subsection (4), the Authority, after having sent a copy of a request for information to the Attorney-General in accordance with subsection (5), may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.”; and

- (c) by inserting the following subsections after subsection (3) -

“(3a) In deciding whether or not to exercise its power under subsection (3), the Authority may take into account -

- (a) whether corresponding assistance would be given in the relevant country or territory to the Authority;
- (b) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in the Islands or involve the assertion of a jurisdiction not recognised by the Islands;
- (c) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in the Islands; and

- (d) whether, in the light of advice from the Attorney-General, it is not in the public interest to give the assistance sought.

(3b) For the purposes of subsection (3a)(a) the Authority may require an overseas regulatory authority which requests assistance to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority.

(3c) Where an overseas regulatory authority fails to comply with a requirement of the Authority under subsection (3b) the Authority may refuse to provide the assistance sought.

(3d) The Authority may decline to exercise its power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Authority considers appropriate.

(3e) In subsection (3a)(a) “relevant country or territory” means the country or territory from which the request for assistance is made.”;

- (d) in subsection (4) -
 - (i) in paragraph (a) by repealing the word “and” and substituting “or” after “confidentiality”;
 - (ii) by repealing paragraph (b) and substituting the following paragraphs -
 - “(b) the Authority has been given an undertaking by the recipient authority 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 regulatory authority is required for the purposes of the overseas regulatory authority’s regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
 - (d) the Authority is satisfied that information provided following the exercise of its powers under subsection (3) will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence under section 30(6) or an offence of perjury;”;

- (e) by inserting the following subsection after subsection (4) -

“(5) The Authority shall notify the Attorney-General immediately a request for assistance from an overseas regulatory authority is received, with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in the Islands, or in any appeal from such proceedings, arising directly or indirectly from any such request.”.

Passed by the Legislative Assembly the 14th day of July, 2000.

MABRY S. KIRKCONNELL

Speaker.

W. EBANKS

Deputy Clerk of the Legislative Assembly.