

CAYMAN ISLANDS



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THE MONETARY AUTHORITY (AMENDMENT) LAW, 2002

(LAW 34 OF 2002)

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 34 of 2002.

I Assent

B.H. Dinwiddy

Governor.

Date: 22 January, 2003

**A LAW TO AMEND THE MONETARY AUTHORITY LAW (2002
REVISION) TO MAKE PROVISION FOR THE OPERATIONAL
INDEPENDENCE OF THE CAYMAN ISLANDS MONETARY
AUTHORITY; TO EMPOWER THE MONETARY AUTHORITY TO
FURTHER REGULATE FINANCIAL SERVICES BUSINESSES
OPERATING IN OR FROM WITHIN THE CAYMAN ISLANDS; AND
TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED
MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Monetary Authority (Amendment) Law, 2002.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor and different dates may be appointed for different provisions of this Law.

2. The Monetary Authority Law (2002 Revision), in this Law referred to as the “principal Law”, is amended in section 2 –

Amendment of section 2
of the Monetary
Authority Law (2002
Revision) - definitions

(a) by inserting the following definitions in their appropriate alphabetical order –

“ “advisory functions” means the functions of the Authority specified in section 4(1)(d);

“Class “A” bank” means a bank which is the holder of a licence under section 6(5)(a) of the Banks and Trust Companies Law (2001 Revision);

“co-operative functions” means the functions of the Authority specified in section 4(1)(c);

“financial services business” means business regulated under any regulatory law;

“Management Committee” means the committee established under section 13A(1);

“monetary functions” means the functions of the Authority specified in section 4(1)(a);

“money laundering” has the meaning given by section 27(7) of the Proceeds of Criminal Conduct Law (2001 Revision);

“money laundering regulations” means regulations made under section 20 of the Proceeds of Criminal Conduct Law (2001 Revision);

“private sector association” means an association specified in the Third Schedule;

“regulatory handbook” means the handbook issued by the board under section 41A; and

“relevant financial business” has the meaning given by regulation 4 of the Money Laundering Regulations, 2000.”;

- (b) in the definition of the term “financial year” by repealing the words “in section 33” and substituting the words “in section 35”; and
- (c) by repealing the respective definitions of the terms “Governor”, “overseas regulatory authority” and “regulatory functions” and substituting the following definitions –

“ “Governor” means Governor in Council;

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

- (a) any of the regulatory functions of the Authority;
or
- (b) any additional functions 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 the functions of the Authority
specified in section 4(1)(b);”.

3. The principal Law is amended by inserting after section 2 the following
sections –

Insertion of sections 2A
and 2B- determination
of fitness and propriety;
private sector
consultation

“Determination of
fitness and propriety

2A. 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.

Private sector
consultation

2B. (1) When this Law requires private sector
consultation in relation to a proposed measure –

- (a) the Authority shall give to each private
sector association a draft of the proposed
measure, together with –
 - (i) an explanation of the purpose of the
proposed measure;
 - (ii) an explanation of the Authority’s
reasons for believing that the proposed
measure is compatible with the
Authority’s functions and duties under
section 4;
 - (iii) an explanation of the extent to which a
corresponding measure has been
adopted in a country or territory outside
the Islands;
 - (iv) an estimate of any significant costs of
the proposed measure, together with an
analysis of the benefits that will arise if
the proposed measure is adopted; and
 - (v) notice that representations about the
proposed measure may be made to the
Authority within a period specified in
the notice (not being less than thirty
days or such shorter period as may be
permitted by subsection (3)); and
- (b) before proceeding with the proposed
measure, the Authority shall have regard to

any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.

(2) When this Law requires the approval of the Governor in relation to a proposed measure –

- (a) a copy of the representations made by the private sector associations (or, if not in writing, the Authority's account of them); and
- (b) a copy of the Authority's response to the representations,

shall be forwarded to the Financial Secretary for consideration by the Governor.

(3) If the Authority considers that a measure is urgently required for the protection of members of the public, the Authority may, with the consent of the Governor, specify a period less than thirty days under subsection (1)(a)(v), or postpone private sector consultation until after the measure has been adopted.

Third Schedule

(4) The Governor may by order amend the Third Schedule.”.

Repeal of section 4 and substitution - principal functions of Authority

4. The principal Law is amended by repealing section 4 and substituting the following section -

“Principal functions of Authority

4. (1) The principal functions of the Authority are -

- (a) monetary functions, namely –
 - (i) to issue and redeem currency notes and coins; and
 - (ii) to manage the Currency Reserve,
 in accordance with this Law;
- (b) regulatory functions, namely –
 - (i) to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;
 - (ii) to monitor compliance with the money laundering regulations; and
 - (iii) to perform any other regulatory or

- supervisory duties that may be imposed on the Authority by any other Law;
- (c) co-operative functions, namely, to provide assistance to overseas regulatory authorities in accordance with this Law; and
- (d) advisory functions, namely, to advise the Government on the matters set out in the foregoing paragraphs and, in particular, with regard to –
 - (i) whether the regulatory functions and the co-operative functions are consistent with functions discharged by an overseas regulatory authority;
 - (ii) whether the regulatory laws are consistent with the Laws and regulations of countries and territories outside the Islands; and
 - (iii) the recommendations of international organisations.

(2) In performing its functions and managing its affairs, the Authority shall -

- (a) act in the best economic interests of the Islands;
- (b) promote and maintain a sound financial system in the Islands;
- (c) use its resources in the most efficient and economic way;
- (d) have regard to generally accepted principles of good corporate governance;
- (e) comply with this and any other Law, including any regulations or directions made or given thereunder; and
- (f) have such ancillary powers as may be required to fulfil the functions set out in the foregoing paragraphs.

(3) In performing its regulatory functions and its co-operative functions the Authority shall, in addition to complying with the requirements of subsection (2) -

- (a) endeavour to promote and enhance market confidence, consumer protection and the

- reputation of the Islands as a financial centre;
- (b) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
- (c) recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;
- (d) recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (e) recognise the desirability of facilitating innovation in financial services business; and
- (f) recognise the need for transparency and fairness on the part of the Authority.

(4) In exercising its co-operative functions the Authority shall, in addition to complying with the requirements of subsection (2) -

- (a) have regard to the matters mentioned in section 43(4); and
- (b) comply with section 43(9)."

Amendment of section
8 - allocation of profits

5 The principal Law is amended in section 8(1)(a), by repealing the words “, with the approval of the Governor,”.

Amendment of section
9 –board of directors

6. The principal Law is amended in section 9 –

- (a) in subsection (1), by inserting after the word “which” the words “, subject to this Law,”;
- (b) by repealing subsection (2) and substituting the following subsection –

“(2) The board shall consist of –

- (a) the managing director as an ex officio director; and
 - (b) not more than nine other directors (including the chairman of the board and the deputy chairman of the board), appointed in accordance with sections 10 and 11, each of whom shall be a fit and proper person and shall have demonstrated to the satisfaction of the Governor substantial knowledge and experience relevant to at least some of the functions of the Authority.”; and
 - (c) by inserting after subsection (2) the following subsection -
 - “ (3) The chairman of the board and the deputy chairman of the board, respectively, shall be designated by the Governor after consultation with the directors appointed in accordance with sections 10 and 11.”.
- 7. The principal Law is amended in section 10(2) as follows –
 - (a) in paragraph (b), by repealing the words “for a term not less than three years and not exceeding five years” and substituting the words “for a term of three years”; and
 - (b) in paragraph (c), by repealing the words “determined by the Authority” and substituting the words “determined by the Governor”.

Amendment of section
10 - appointment of
directors
- 8. The principal Law is amended in section 11 as follows -
 - (a) by repealing subsection (1) and substituting the following subsection –
 - “ (1) The Governor, after consultation with the board, shall appoint a fit and proper person to be the managing director.”;
 - (b) in subsection (2), by repealing the word “Governor” and substituting the words “Governor, after consultation with the board,”;
 - (c) by repealing subsection (5) and substituting the following subsection –
 - “ (5) In the event of the absence or inability to act of the managing director, the Governor may, after consultation with the board, appoint a person to discharge the duties of the managing director during the period of his absence or inability.”;
 - and
 - (d) by inserting after subsection (5) the following subsection -

Amendment of section
11 – appointment of
managing director

“(6) Without prejudice to the provisions of section 12(3), the Governor, on the recommendation of the board, shall terminate the appointment of the managing director.”.

Amendment of section 12 - disqualification of directors

9. The principal Law is amended in section 12 -

- (a) in subsection (1), by inserting after the words “elected member of the Legislative Assembly” the words “or an official member of the Executive Council”; and
- (b) in subsection (3), by repealing the words “at his discretion” and substituting the words “in the public interest”.

Amendment of section 13 – meetings and decisions of the board

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

- (a) by inserting after subsection (1) the following subsection -

“(1A) At a meeting of the board, the chairman of the board or, if he is not present, the deputy chairman or, if he is not present, a director chosen by the directors present, shall act as the chairman of the meeting.”;
- (b) in subsection (2) as follows -
 - (i) by repealing the words “four directors” and substituting the words “five directors”; and
 - (ii) by inserting after the words “the chairman” the words “of the meeting”;
- (c) by repealing subsection (3) and substituting the following subsection –

“(3) The board may act notwithstanding that a vacancy exists among the members or in the office of chairman or deputy chairman, and shall have power to -

 - (a) act by sub-committee; and
 - (b) delegate any of its duties and powers from time to time to such sub-committees and to any of their own number and to the officers, servants and agents of the Authority.”; and
- (d) by inserting after subsection (3) the following subsections –

“(4) The board shall have power to delegate from time to time –

 - (a) any of its duties and powers (other than a duty or power expressly imposed or conferred on the board by this Law), to the Management Committee; and
 - (b) any of its duties and powers (other than a licensing or supervisory power or duty), to a

committee appointed by the board under section 13B(1);

and a decision of the Management Committee or a committee so appointed shall be deemed to be a decision of the board.

(5) A delegation under subsection (4)(a) or (b) is revocable at will and does not prevent the exercise by the board of any duties or powers so delegated.

(6) For the purposes of this Law, a director shall be deemed to be present at a meeting of the board if he gains access to the meeting by conference telephone or by some other conference facility.”.

11. The principal Law is amended by inserting after section 13 the following sections –

Insertion of sections
13A and 13B -
committees

“Establishment of
Management
Committee

13A. (1) Without prejudice to the provisions of section 13B, there is established a committee to be known as the Management Committee.

(2) The Management Committee shall comprise –

- (a) the managing director;
- (b) a deputy managing director;
- (c) the head of each regulatory and each supervisory division within the Authority, or such person as may be designated by the head to act in his absence; and
- (d) such other senior officer of the Authority as the managing director may, with the approval of the board, designate.

(3) The managing director may designate an employee of the Authority to act as secretary to the Management Committee performing such duties as the Management Committee may determine.

(4) The board may, subject to section 13(4), by instrument in writing delegate to the Management Committee such licensing, supervisory and other powers and duties as the board sees fit; and the Management Committee shall, subject to section 41A, exercise and carry out the powers and duties so delegated by the board.

Additional committees 13B. (1) The board may appoint committees additional to the Management Committee, to assist the board in exercising the board's management functions under this Law, and shall appoint such persons as it sees fit to be members of the committees.

(2) The managing director may designate a member of any such committee to act as secretary to the committee performing such duties as the committee may determine.

(3) The board may, by instrument in writing, delegate to a committee appointed by the board under subsection (1), such powers and duties (other than licensing or supervisory powers or duties) as the board sees fit; and the committee shall exercise and carry out the powers and duties so delegated by the board.”.

Amendment of section
14 – pecuniary interest
of director or committee
member

12. The principal Law is amended in section 14 as follows –

(a) by repealing the marginal note and substituting the following marginal note -

“Pecuniary interest of director or committee member.”;

(b) in subsection (1) -

(i) by inserting after the word “director” the words “, a member of the Management Committee or a member of a committee appointed under section 13B, ”; and

(ii) by inserting after the word “board” the words “, Management Committee or other committee, as the case may be,”;

(c) in subsection (3), by inserting after the word “board” the words “, Management Committee or other committee, as the case may be”; and

(d) by repealing subsection (4) and substituting the following subsection -

“(4) No act or proceeding of the board, Management Committee or other committee, shall be questioned on the ground that a director of the board or a member of the Management Committee or other committee, as the case may be, has contravened this section.”.

13. The principal Law is amended in section 16(1) by repealing the words “The Governor may, at his discretion and subject to such conditions as he may think fit,” and substituting the words “The Governor may, in the public interest and subject to such conditions as the Governor may think fit,”.
14. The principal Law is amended in section 17(1) by inserting after the words “such persons” the words “, including one or more deputy managing directors,”.
15. The principal Law is amended in section 28 as follows -
 - (a) in subsection (2)(b) –
 - (i) by inserting after subparagraph (v) the following subparagraph -

“(va) marketable securities issued by such government agencies as may be approved by the Governor on the recommendation of the board;”;
 - (ii) by repealing subparagraph (vi) and substituting the following subparagraph –

“(vi) such other securities and investments not exceeding twenty-five per cent of the value of the Currency Reserve assets as may be authorised by the Governor on the recommendation of the board.”;
 - (b) by repealing subsection (5) and substituting the following-

“(5) The local assets shall consist of money at call or on deposit with such Class “A” banks as may be approved by the board.”;

and
 - (c) by inserting after subsection (8) the following subsection -

“(9) For the avoidance of doubt, it is hereby declared that the assets of the Currency Reserve shall not be the subject of any order for injunction, attachment, execution or similar order in any proceedings before any court or tribunal.”.
16. The principal Law is amended in section 29 as follows -
 - (a) by re-numbering the section as subsection (1) of section 29; and
 - (b) by inserting after subsection (1) the following subsections -

“(2) If it appears to the Authority that the regulatory laws, or any regulations or directions made or issued thereunder, are to any extent inconsistent with the Authority’s regulatory functions, the Authority shall make recommendations to the Governor and, if so required by the Financial Secretary, shall conduct private sector consultation with respect to such recommendations.

Amendment of section 16 - removal or exclusion of disability, etc.

Amendment of section 17 - power to employ staff, etc.

Amendment of section 28 - Currency Reserve

Amendment of section 29 - relations with Government

(3) In its relations with the Governor, the Authority shall direct its communication in writing through the Financial Secretary.”.

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

17. The principal Law is amended in section 30 as follows –

- (a) by repealing subsections (1) and (2) and substituting the following subsections -

“(1) After private sector consultation and with the approval of the Governor, the Authority may –

- (a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees;
- (b) issue or amend statements of guidance concerning the requirements of the money laundering regulations; 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.

(1A) The approval of the Governor may be given specifically with regard to a proposed measure or generally with regard to measures of a specified description.

(1B) Rules or statements of principle or guidance issued under subsection (1) shall be consistent with this Law and the regulatory laws and with any regulations or directions made or given thereunder.

(1C) The guidance notes referred to as “The Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands” issued on 26 April, 2001, shall be deemed to have been issued under subsection (1).

(1D) The Authority shall, without delay, publish in the Gazette notice of –

- (a) the issue or amendment of rules or statements of principle or guidance under subsection (1); and
 - (b) any approval of the Governor under subsection (1A).
- (2) A breach of the rules or statements of principle or guidance issued under subsection (1) shall not constitute an offence, or of itself give rise to any right of action by persons affected, or affect the validity of any transaction.”;

(b) by inserting after subsection (2) the following subsection-

“(2a) Rules made under subsection (1) may provide for the imposition by the Authority of penalties for breach of such rules, but-

- (a) no penalty shall exceed one thousand dollars; and
- (b) the rules shall establish the procedure and policy for imposing the penalty.”; and

(c) in subsection (3), by repealing the words “functions conferred on it by or under this Law or the regulatory laws” and substituting the words “its regulatory functions”.

18. The principal Law is amended in section 31 by repealing subsection (1) and substituting the following subsection –

Amendment of section
31 - assistance in
obtaining information

“(1) Where, in accordance with section 43, the Authority is satisfied that assistance should be provided in response to a request by an overseas regulatory authority, and that such assistance cannot be provided satisfactorily by means of its powers in section 30(1), the Authority may -

- (a) authorise a competent person to exercise any of its co-operative functions; and
- (b) seek the assistance of the Commissioner of Police in the exercise of those functions.”.

19. The principal Law is amended in section 32 as follows-

Amendment of section
32 - general powers

- (a) in paragraph (b), by repealing the words “and with the Treasury of the Islands”; and
- (b) in paragraphs (f) and (g), respectively, by repealing the words “Governor on the recommendation of the”.

20. The principal Law is amended by repealing Part VI and substituting the following Part -

Repeal and substitution
of Part VI – accounts
and statements

“PART VI - Accounts And Statements

Funds and resources of
the Authority

34. The funds and resources of the Authority shall comprise -

- (a) such monies as may be appropriated by Law for the purposes of the Authority;
- (b) monies paid and property provided to the Authority by way of grants, rent, interest and other income derived from the investment of the Authority’s funds;
- (c) monies derived from the disposal of or

- dealing with real or personal property held by the Authority;
 - (d) monies borrowed by the Authority in accordance with this Law; and
 - (e) any property lawfully received or made available to the Authority.
- Financial year 35. The financial year of the Authority shall end on 30th June.
- Application of the Public Management and Finance Law, 2001 36. The Authority is a statutory authority as defined in section 3 of the Public Management and Finance Law, 2001 and accordingly the provisions of that Law apply, among other things, to -
- (a) the Authority's expenditure budget for each financial year; and
 - (b) the preparation, maintenance, auditing and publication of the Authority's accounts.
- Independent review of Authority's performance 37. (1) The Governor may at any time appoint an independent person to-
- (a) review the Authority's performance of any of its functions, including its observance of its general duties under section 4 and the regulatory handbook established under section 41A; or
 - (b) enquire into any action or inaction of the Authority which appears to raise questions of importance to the public interest;
- and such appointment may include directions concerning the scope and conduct of the review or enquiry and the making of interim reports.
- (2) The person appointed under subsection (1) ("the appointed person") may, subject to any directions given in his appointment,
- (a) obtain such information from such persons and in such manner as he thinks fit;
 - (b) review or enquire into such matters as he thinks fit; and
 - (c) determine the procedure to be followed in connection with the review or the enquiry.

(3) The appointed person may require any person who, in his opinion, is able to provide any information or produce any document which is relevant to the review or enquiry to provide any such information or produce any such document and for this purpose the appointed person shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) Where a person fails to comply with a requirement imposed on him under subsection (3) the appointed person may refer the matter to the Grand Court which may enquire into the matter and, if satisfied after hearing –

- (a) any witness who may be produced against or on behalf of the person who fails to comply; and
- (c) any statement made by or on behalf of such person,

that such person would have been in contempt of court if the review or enquiry had been proceedings before the court, such person may be dealt with by the court in the same manner as if he were in contempt of court.

(5) The appointed person shall, upon the completion of the review or enquiry, make a written report to the Financial Secretary setting out the result of the review or enquiry and making such recommendations (if any) as he considers appropriate.

(6) The report under subsection (5) shall be laid before the Legislative Assembly, subject to the removal of any material-

- (a) which the Financial Secretary considers to relate to the affairs of a particular person whose interests would be seriously and unfairly prejudiced by the publication; or
- (b) whose disclosure, in the Financial Secretary's opinion, would be incompatible with the public interest or an international obligation of the Islands.

| | |
|--|---|
| | (7) Expenses reasonably incurred in conducting a review or enquiry shall be paid out of the revenue of the Islands. |
| Surplus | 37A. Where there is a surplus on the budget approved for the Authority's expenditure for any financial year, such surplus shall be paid into the General Reserve unless otherwise agreed upon with the Governor." |
| Amendment of section 40 –regulations | <p>21. The principal Law is amended in section 40 by repealing subsection (2) and (3) substituting the following subsections –</p> <p>“(2) Without prejudice to the provisions of subsection (1), the fees prescribed in the Second Schedule shall be charged for the administrative services specified in relation thereto, and the Governor may, by regulations, amend that Schedule.</p> <p>(3) Regulations made under this section and providing for the charging of fees for administrative services, are subject to affirmative resolution of the Legislative Assembly.”.</p> |
| Repeal and substitution of section 41 - rules | <p>22. The principal Law is amended by repealing section 41 and substituting the following section –</p> <p>“Rules</p> <p>41. (1) The Authority may, subject to this Law, make such rules as it thinks fit to regulate its own internal management.</p> <p>(2) A copy of rules made under subsection (1) shall be forwarded to the Financial Secretary.”.</p> |
| Insertion of section 41A - regulatory handbook | <p>23. The principal Law is amended by inserting after section 41 the following sections –</p> <p>“Regulatory handbook</p> <p>41A. (1) The board shall issue, and may amend, a regulatory handbook setting out, as far as is practicable, the policies and procedures to be followed by the Authority, its committees and its officers in performing the Authority's regulatory functions and co-operative functions.</p> <p>(2) The regulatory handbook shall be consistent with any Law or any regulations or policy directions given or made thereunder.</p> |

(3) The regulatory handbook shall include policies and procedures for -

- (a) giving warning notices to persons affected adversely by proposed actions of the Authority;
- (b) giving reasons for the Authority's decisions; and
- (c) receiving and dealing with complaints against the Authority's actions and decisions.

(4) In cases where the regulatory handbook would have the effect of creating, directly or indirectly, rules or statements of principle or guidance concerning the conduct of licensees or their officers or employees, the Authority shall consult with the private sector associations and seek the approval of the Governor.

(5) The regulatory handbook may provide for exceptions from its own requirements to be made by the board or a specified committee or officer of the Authority.

(6) The Authority shall publish the regulatory handbook and any amendments to it in the Gazette and the regulatory handbook and any such amendments shall take effect and come into operation on the date of such publication.

(7) It shall be a duty of the board to ensure that the regulatory handbook is observed by the committees and officers of the Authority, to keep the regulatory handbook under continuing review, and to consult the Financial Secretary and the private sector associations on the extent to which the regulatory handbook could be made more consistent with the provisions of section 4.”.

24. The principal Law is amended in section 43 as follows-

Amendment of section
43 - confidentiality

- (a) in subsection 2, by repealing paragraph (g) and substituting the following-
 - “(g) lawfully made to a person pursuant to the money laundering regulations ;”;
- (b) by repealing subsections (3) and (4) and substituting the following subsections -
 - “(3) Subject to subsection (9) -

- (a) where the Authority is satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority may disclose to the overseas regulatory authority the requested information but shall keep a record of all such requests and disclosures and an inventory of the information disclosed, and shall make the records and inventory available to the Attorney-General or the Financial Secretary upon request; and
 - (b) where the Authority is not satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority, after having sent a copy of the request to the Attorney-General and to the Financial Secretary in accordance with subsection (10), may disclose to the overseas regulatory authority information necessary to enable the overseas regulatory authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority.
- (4) In deciding whether or not to assist an overseas regulatory authority (whether by use of the Authority's powers under subsection (3), section 30, section 31, 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 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) except in the case of a routine regulatory request, whether in the light of advice from the Attorney-General or the Financial Secretary, it is not in the public interest to give the assistance sought.”;
- (c) in subsection (9) as follows –
 - (i) by repealing the words “Nothing in subsection (3) authorises a disclosure by the Authority unless-” and substituting the words “The Authority shall not give to an overseas regulatory authority any assistance involving the

- disclosure or gathering of, or the giving of access to, information or documents unless –”; and
- (ii) in paragraph (c), by inserting after the word “laws” the words “corresponding to the regulatory laws and”;
- (d) by repealing subsection (10) and substituting the following subsection –
- “ (10) Where the Authority is not satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority shall notify the Attorney-General and the Financial Secretary immediately the request is received, with particulars of the request, and shall send them 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.”; and
- (e) by inserting after subsection (10) the following subsection –
- “ (11) For the purposes of this section and subject to any general direction given by the Governor under section 29, a “routine regulatory request” in relation to an overseas regulatory authority is a request for the purpose of allowing the overseas regulatory authority to carry out its day to day functions of approval of licences, approval of persons subject to regulation and registration of applicants.”.

25. The principal Law is amended by inserting after section 43 the following section -

Insertion of section 44 –
memoranda of
understanding

“Memoranda of
understanding

44. (1) The Authority may in the exercise of its co-operative functions, with the approval of the Governor, enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting consolidated supervision by such authorities.

(2) No memorandum of understanding may 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 Financial Secretary of each memorandum of understanding and promptly publish the memorandum of understanding in the Gazette.”.

Insertion of Third
Schedule - Private
Sector Associations

26. The principal Law is amended by inserting after the Second Schedule the following schedule –

“THIRD SCHEDULE (Sections 2 and 2B(4))

Private Sector Associations

Cayman Islands Bankers Association
Cayman Islands Company Managers Association
Cayman Islands Fund Managers Association
Cayman Islands Insurance Managers Association
Cayman Islands Law Society
Cayman Islands Society of Professional Accountants
Caymanian Bar Association
Compliance Association

Society of Trust and Estate Practitioners (Cayman Islands)”.

Validation

27. (1) Any direction, guidance note, statement of principle or guidance, rule, code of practice, code of conduct or other instrument issued by the Authority or the board in purported exercise of powers conferred by the former Law, in so far as it is not inconsistent with the new Law, is validated and is to be taken to have been lawfully issued and to continue in force as if made under the relevant provisions of the new Law.

(2) This Law does not affect any order or determination made by a court prior to the commencement of this Law.

Savings and transitional
provisions

28. (1) A person, other than the Financial Secretary, who immediately before the coming into force of this Law was a director of the Authority under the former Law, continues to be a director of the Authority under and for the purposes of the new Law for a term expiring on the day on which the appointment of the person would have expired under the former Law.

(2) The person who immediately before the coming into force of this Law was the managing director of the Authority under the former Law, continues to be the managing director of the Authority under and for the purposes of the new Law for a term expiring on the day on which the appointment of the person would have expired under the former Law.

(3) Notwithstanding the amendments effected by section 20 -

(a) the first financial year ending on 30 June shall be the financial year ending on 30 June, 2004;

- (b) the financial year immediately prior to the year ending on 30 June, 2004 shall be for a period of six months ending on 30 June, 2003; and
- (c) the financial years prior to that defined in paragraph (b) shall be for a year ending on 31 December.

(4) In this section -

“Authority” means the Cayman Islands Monetary Authority referred to in section 3 of the principal Law;

“board” means the board of directors established under section 9 of the principal Law;

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

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

Passed by the Legislative Assembly the 19th day of December, 2002.

JULIANNA O’CONNOR - CONNOLLY

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.