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MONETARY AUTHORITY LAW

(2000 Revision)

Law 16 of 1996 consolidated with Laws 14 of 1997, 7 of 1998 and 6 of 2000.

Revised under the authority of the Law Revision Law (1999 Revision).

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Law 16 of 1996-20th September, 1996
Law 14 of 1997-10th June, 1997
Law 7 of 1998-16th March, 1998
Law 6 of 2000-14th July, 2000.

Consolidated and revised this 29th day of August, 2000.

Note (not forming part of the Law): This revision replaces the 1998 Revision which should now be discarded.

MONETARY AUTHORITY LAW

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MONETARY AUTHORITY LAW

(2000 Revision)

PART I -Introductory

1. This Law may be cited as the Monetary Authority Law (2000 Revision). Short title
2. In this Law- Definitions
 - “Authority” means the Cayman Islands Monetary Authority referred to in section 3;
 - “bank” means a person carrying on a banking business and licensed as such in the Islands or elsewhere;
 - “board” means the board of directors established under section 9;
 - “civil and administrative investigations and proceedings” mean 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;
 - “currency notes” and “coins” mean, respectively, the currency notes and coins issued under this Law;
 - “Currency Reserve” means the reserve established under section 28;
 - “demand liabilities” means the total value of-
 - (a) amounts standing to the credit of any accounts opened for any local banks or for the Government of the Islands; and
 - (b) (i) currency notes in circulation; and
(ii) an amount not less than ten per cent of the nominal value of coins in circulation,
other than such currency notes and coins as are no longer legal tender and in respect of which a transfer to the general revenue of the Islands has been made under section 25(3);
 - “director” means a director of the Authority appointed under section 10;
 - “external assets” means assets denominated in a currency other than the Cayman dollar and representing a claim on a non-resident of the Islands;

“financial year” means the financial year of the Authority as defined in section 33;

“General Reserve” means the reserve established under section 6;

“Governor”, except in sections 12(3) and 16, means Governor in Council;

“head office” means the head office of the Authority established under section 3(4);

“licensee” means a person holding a licence under the regulatory laws;

“local bank” means any bank or branch thereof authorised to transact business as such in the Islands;

“managing director” means the managing director of the Authority appointed under section 11;

“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;

“public officer” has the meaning assigned to it by section 50(1) of the Constitution;

“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; and

“regulatory laws” means any one or more of -

- (a) the Banks and Trust Companies Law (2000 Second Revision);
- (b) the Companies Management Law (2000 Revision);
- (c) the Insurance Law (1999 Revision);
- (d) the Mutual Funds Law (1999 Revision),

and any other laws that may be prescribed by the Governor by regulations made under section 40.

PART II - Establishment, Capital and Administration of Authority

3. (1) There is established an Authority to be called the Cayman Islands Monetary Authority which shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name. Establishment of Authority

(2) For the purpose of carrying out its functions under this Law the Authority may buy, sell, hold, deal and otherwise acquire and dispose of land and other property of whatsoever nature and may enter into contracts whether of agency or otherwise.

(3) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the common seal of the Authority by the authority of the Authority in the presence of the chairman or managing director and of one other director of the Authority.

(4) The Authority shall establish and maintain its head office and principal place of business within the Islands, and shall cause details thereof to be gazetted, and service of all documents on the Authority shall be deemed to be effective if delivered at the head office.

(5) The Authority may, by resolution, appoint an officer of the Authority or any other agent either generally or in a particular case to execute or sign on behalf of the Authority any agreement or other instrument not under seal in relation to any matter coming within the powers of the Authority.

4. The principal functions of the Authority shall be- Principal functions of Authority

- (a) to issue and redeem currency notes and coins;
- (b) to promote and maintain monetary stability;
- (c) to promote and maintain a sound financial system;
- (d) to advise Government on banking and monetary matters;
- (e) to provide assistance to overseas regulatory authorities; and
- (f) to perform such ancillary functions as may be appropriate in performing the functions set out in paragraphs (a), (b), (c) and (e).

5. (1) The authorised capital of the Authority shall be one hundred million dollars and may be increased, from time to time, by regulations made by the Governor. Authorised capital

(2) On the establishment of the Authority such portion of the authorised capital, as the Governor may decide, shall be subscribed and paid up by Government, and shall be held on behalf of Government by the person nominated by Order by the Governor for the time being.

(3) The paid-up portion of the authorised capital may be increased, from time to time, by such amount as the Governor may approve.

(4) The payment of such increase in the paid-up capital referred to in subsection (3) may be made by way of transfers from the General Reserve.

General Reserve

6. (1) There shall be a General Reserve of the Authority to which shall be allocated any amounts that may become available under section 8.

(2) In the event that the General Reserve, after the allocation of amounts under section 8, amounts to less than fifteen per cent of the demand liabilities of the Authority, the Government may appropriate such funds from the general revenue of the Islands as are required to extinguish all or part of such deficiency.

Calculated profits

7. The net profits of the Authority for any financial year shall include, but shall not be limited to, the income from the investments of the Authority, and the profits from the sales of investments belonging to the Authority; and shall be determined by the Authority after meeting or providing for all expenditure for that year and making such provisions for contingencies and the establishment of such additional reserves as it may consider desirable.

Allocation of profits

8. (1) The net profits of the Authority for each financial year shall be calculated in accordance with section 7 and shall be distributed as follows-

- (a) firstly, such amount from the net profits of the Authority as the board, with the approval of the Governor, may determine to be consistent with the prudent management of the Authority, shall be allocated to the Currency Reserve so that the Currency Reserve shall, subject to section 28(7), be maintained at a level of at least one hundred per cent of the demand liabilities of the Authority; and
- (b) secondly, so long as the General Reserve established under section 6 amounts to less than fifteen per cent of the demand liabilities of the Authority at the end of the financial year in which such profits were earned, there shall be allocated to the General Reserve all such net profits or such lesser amount as shall make the General Reserve equivalent to fifteen per cent of the said liabilities; and
- (c) any net profits not allocated in accordance with paragraph (a) or (b) shall be transferred to the general revenue of the Islands.

(2) Where the total assets of the Authority are less than the total liabilities of the Authority such deficiency shall be a first charge on the Authority's net profits.

9. (1) There shall be a board of directors of the Authority which shall be responsible for the policy and general administration of the affairs and business of the Authority. Board of directors

(2) The board shall consist of -

- (a) the Financial Secretary who shall be the chairman by virtue of his office; and
- (b) six other directors, appointed in accordance with sections 10 and 11, all of whom shall have demonstrated to the satisfaction of the Governor substantial knowledge and experience of the economy of the Islands and of the financial industry.

10. (1) The directors referred to in paragraph (b) of section 9(2) shall be appointed by the Governor. Appointment of directors

(2) The directors so appointed -

- (a) shall not act as delegates on the board from any commercial, financial, agricultural, industrial or other interests with which they may be connected;
- (b) shall hold office for a term not less than three years and not exceeding five years and shall be eligible for re-appointment; and
- (c) may be paid by the Authority out of the funds of the Authority such remuneration and allowances as may be determined by the Authority.

(3) Paragraphs (b) and (c) of subsection (2) shall not apply to a director who is appointed managing director under section 11.

(4) If any director appointed under subsection (1) dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the Governor for the unexpired period of the term of office of the director in whose place he is appointed.

11. (1) The Governor shall appoint one of the directors appointed under section 10(1) to be the managing director. Appointment of managing director

(2) The managing director shall be an employee of the Authority on such terms and conditions of service as the Governor may decide.

(3) The managing director shall be entrusted with the day to day administration of the Authority to the extent of the authority delegated to him by the board.

(4) The managing director shall render his services exclusively to the Authority and shall be answerable to the board for his acts and decisions.

(5) In the event of the absence or inability to act of the managing director, the Governor may appoint a director to discharge his duties during the period of his absence or inability.

Disqualification of directors

12. (1) No person may be appointed as or remain a director of the Authority who is an elected member of the Legislative Assembly.

(2) The Governor shall terminate the appointment of any director who -

- (a) resigns his office;
- (b) becomes of unsound mind or incapable of carrying out his duties;
- (c) becomes bankrupt, suspends payment to or compounds with his creditors;
- (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (e) is guilty of serious misconduct in relation to his duties;
- (f) is absent, without leave of the chairman of the board, from three consecutive meetings of the board; or
- (g) fails to comply with his obligations under section 14.

(3) The Governor, at his discretion, may terminate the appointment of any director.

Meetings and decisions of the board

13. (1) The chairman of the board shall summon regular meetings of the board as often as may be required, but not less frequently than once in three months, and shall summon extraordinary meetings when required to do so in accordance with rules made under section 41.

(2) At every meeting of the board, a quorum shall consist of four directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that in the case of an equality of votes the chairman shall, in addition, have a casting vote.

(3) The board may act notwithstanding that a vacancy exists among the members 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,

except that where the board sets up a sub-committee which consists of members other than directors, officers or servants of the Authority, it may only act or

delegate its duties or powers to such sub-committee with the approval of the Governor.

14. (1) If a director has any pecuniary interest, direct or indirect, in any contract, proposed contract, licence or other matter and is present at a meeting of the board at which the contract, proposed contract, licence or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract, licence or other matter or vote on any question with respect to it, and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

Director's interest

(2) Whoever fails to comply with subsection (1) is guilty of an offence and liable -

- (a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years; or
- (b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years,

unless he proves that he did not know that the contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the board.

(4) No act or proceeding of the board shall be questioned on the ground that a director has contravened this section.

15. (1) For the purposes of section 14, a director shall be treated, subject to subsections (2) and (3) and to section 16, as having indirectly a pecuniary interest in a contract, proposed contract, licence or other matter if -

Pecuniary interests for the purposes of section 14

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or
- (c) he or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter.

(2) Subsection (1) does not apply to membership of or employment under any public body.

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of section 15 to be also the interest of the other.

Removal or exclusion of disability, etc.

16. (1) The Governor may, at his discretion and subject to such conditions as he may think fit, appoint persons to act as directors for any specified period, in any case in which the number of directors disabled by section 14 at any one time would be so great a proportion of the whole as to impede the transaction of business.

(2) Nothing in section 14 precludes any director from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Governor for the exercise of the powers conferred by subsection (1).

(3) Section 14 does not apply to an interest in a contract, proposed contract, licence or other matter which a director has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(4) Where a director has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed one thousand dollars or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 14 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

Power to employ staff, etc.

17. (1) The Authority may employ, at such remuneration and on such terms and conditions as may be approved from time to time by the board, such persons as the board considers necessary for the performance of the functions of the Authority.

(2) The Authority shall create and maintain or subscribe to a fund for the payment of pensions to employees of the Authority in accordance with a scheme, the terms of which shall be approved by the Governor.

(3) The fund shall be vested in trustees to be appointed by the Authority for that purpose and shall be maintained at a sufficient level according to accepted actuarial principles to enable pensions to be paid to all employees of the Authority in accordance with the approved scheme.

(4) The Governor may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Authority, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

PART III - Currency

18. (1) The unit of currency of the Islands shall continue to be the Cayman dollar divided into one hundred cents. Unit of currency

(2) The value of the Cayman dollar shall be equivalent to such an amount of currency of the United States of America as the Governor may, in accordance with the advice of the Authority, by Order made in accordance with this section, prescribe.

(3) An Order made under subsection (2) shall come into operation at such time and day as may be specified in such Order.

(4) An Order made under subsection (2) shall be given such publicity immediately after it is subscribed in writing by the Governor as, in the opinion of the Authority, is likely to bring the Order to the notice of such persons as are immediately affected thereby, and shall also be gazetted.

(5) For the avoidance of doubt it is hereby declared that an Order may be made on a public holiday within the meaning of the Public Holidays Law (1995 Revision). 1995 Revision

19. Every contract, document, sale, payment, bill, note, transaction, instrument or security for money and every transaction, dealing, matter or thing whatsoever relating to money or involving payment of or the liability to pay in money shall, to be valid in the Islands, be made, executed, entered into, done, had or settled in the currency of the Islands unless it is expressly made, executed, entered into, done, had or settled in the currency of some other country. Contracts, etc., to be made in currency

20. (1) The Authority, on behalf of the Government, shall have the sole right of issuing legal tender notes and coins in the Islands and no person other than the Authority shall, in the Islands, issue currency notes, bank notes or coins or any Sole right of currency issue

documents or tokens payable to bearer on demand being documents or tokens which are likely to pass as legal tender.

(2) No currency notes or coins other than the currency notes and coins issued by the Authority shall be legal tender in the Islands.

Obligation to deal in United States dollars

21. (1) The Authority shall, on demand at its head office, issue and redeem Cayman dollars against the currency of the United States of America provided that-

- (a) the Authority shall not be required to issue and redeem Cayman dollars of an amount less than such minimum sum as may, from time to time, be prescribed; and
- (b) the rate of exchange quoted by the Authority in respect of spot transactions shall not differ by more than such margins on either side of the value of the currency of the Islands established in terms of section 18 as may, from time to time, be prescribed by the Governor after consultation with the Authority.

(2) The Authority shall publish or cause to be published, at its offices and at the offices of its agents and representatives, the rates referred to in paragraph (b) of subsection (1) at which it is prepared to deal against the currency of the United States of America with the public.

(3) Notwithstanding subsection (2), the Authority may, at its discretion, deal against the currency of the United States of America with local banks at rates different from its published rates.

Provisions relating to issue of currency

22. The Authority shall-

- (a) arrange for the printing of currency notes and the minting of coins and for all matters relating thereto and for the security of such notes and coins; and
- (b) issue, re-issue, withdraw and, at its discretion, exchange currency notes and coins at its head office and at such offices and agencies elsewhere in the Islands as it may establish.

Denominations and forms of currency

23. (1) Currency notes issued under this Law shall be of such denominations, of such form and design, printed from such plates and on such paper and authenticated in such manner as may, from time to time, be recommended by the Authority and approved by the Governor .

(2) Coins issued under this Law shall be of such denominations, of such form and design, made of such metal or metals and made or issued by such mint or mints as may, from time to time, be recommended by the Authority and approved by the Governor .

24. (1) Currency notes shall continue to be legal tender in the Islands at their face value for the payment of any amount. Legal tender

(2) Coins shall, if they have not been illegally dealt with, continue to be legal tender in the Islands to an amount not exceeding two hundred and fifty dollars in the case of coins of denomination of not less than five cents, and not exceeding fifty cents in the case of lower denominations.

(3) For the purposes of this Law, a coin shall be deemed to have been illegally dealt with where the coin has been impaired, diminished or lightened otherwise than by fair wear and tear, or has been defaced by having any name, word, device or number stamped or engraved thereon, whether the coin has or has not been thereby diminished or lightened.

25. (1) The Authority may, with the approval of the Governor, declare that any currency notes or coins shall cease to be legal tender and may provide for any matters incidental to the calling-in of such notes or coins. Calling-in of currency

(2) Any declaration authorised by subsection (1) shall have effect as from the date of gazettal or such later date as may therein be specified, and the holders of any notes or coins so called in shall be entitled within such period as may be specified in such declaration, or in any subsequent declaration issued by the Authority with the approval of the Governor, to claim payment from the Authority of the face value thereof.

(3) When any currency notes or coins are called in under subsection (1) the Authority may, at its discretion, transfer to the general revenue of the Islands, ten years after the date of the calling-in, an amount equivalent to the value of any such notes or coins still remaining in circulation, and the Authority shall have the right to recover from the general revenue an amount equivalent to the value of any such notes or coins presented for payment thereafter.

26. No person shall be entitled to recover from the Authority the value of any lost, stolen, mutilated or imperfect currency note or coin, or of any coin which has been illegally dealt with. The circumstances and conditions under which such value may be refunded as an act of grace shall be within the absolute discretion of the Authority. Mutilated, etc., currency

27. Whoever, without lawful authority or excuse (the proof whereof shall be on the person accused), defaces, mutilates or perforates any currency note or coin which, under this Law, is made legal tender in the Islands is guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for three months. Defacing, etc., of notes or coins

Part IV -Currency Reserve

Currency Reserve

28. (1) The Authority shall, at all times, maintain a Currency Reserve which shall consist of external assets and local assets.

(2) The external assets referred to in subsection (1)-

- (a) shall be in value not less than an amount equivalent to ninety per cent of the demand liabilities of the Authority; and
- (b) shall consist of all or any of -
 - (i) gold coin or bullion;
 - (ii) notes and coins, in such currencies as may be approved by the board;
 - (iii) money at call and deposits with such banks and in such countries as may be approved by the board;
 - (iv) treasury bills maturing within one hundred and eighty four days issued by such foreign governments as may be approved by the board;
 - (v) marketable securities issued or guaranteed by such foreign governments or international financial institutions as may be approved by the board and maturing within ten years;
 - (vi) such other securities and investments not exceeding twenty per cent of the value of the external assets as may be authorised by the Governor on the recommendation of the Authority.

(3) An amount equivalent to not less than twenty per cent of the demand liabilities of the Authority shall, at all times, be held in liquid form, that is to say it shall be held in Treasury bills issued by such governments as shall be approved by the board, or may be lent out at call or for short term to such banks as may be approved by the board, or invested in such readily realisable securities as may be approved by the board.

(4) The local assets referred to in subsection (1) shall be in value not less than the difference, if any, between the amount of its total demand liabilities and the value of external assets specified in subsection (2).

(5) The local assets shall consist of-

- (a) money at call or on deposit with such local Class "A" banks as may be approved by the board; or
- (b) balances with the Treasury.

(6) The total of the value of the local assets referred to in subsection (5) shall not, at any time, exceed twenty-five per cent of the demand liabilities of the Authority.

(7) If, at any time, the total assets of the Currency Reserve shall be less than one hundred per cent of the demand liabilities of the Authority, such deficiency shall, so far as possible, be met by transfer from the General Reserve and, to the extent that such deficiency is not thereby removed, it shall be a liability of the Government, and the Government shall appropriate such funds from the general revenue of the Islands as are required to extinguish such deficiency.

(8) The Currency Reserve shall only be used for the compliance by the Authority with its obligations under section 21(1) and the assets of the Currency Reserve shall be segregated from all other assets of the Authority and not be chargeable with any liability arising from any other business of the Authority.

Part V - Operations

29. The Governor may, from time to time, after consultation with the board, give to the Authority in writing such general directions as appear to the Governor to be necessary in the public interest, and the Authority shall act in accordance with such directions.

Relations with
Government

30. (1) The Authority shall be responsible for the regulation, in accordance with the regulatory laws or such enactments as may amend or replace them from time to time, of banks, trust companies, companies managers, insurance companies and mutual funds in the Islands, together with such other financial institutions as may be prescribed in any law, and the Schedule shall have effect for the purposes of such regulation.

Relations with banks
and other financial
institutions

(2) The Authority shall monitor compliance with regulations made under section 20 of the Proceeds of Criminal Conduct Law (2000 Revision).

2000 Revision

(3) 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.

(4) 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 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.

(5) Where a person fails to comply with a requirement under subsection (3) or a direction given under subsection (4) 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.

(6) Where, in connection with a requirement under subsection (3) or a direction given under subsection (4), 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.

(7) The court shall process an application under subsection (6) within seven days of its receipt and shall send the results of the examination to the Authority within fourteen days of the examination.

(8) Where documents are produced pursuant to subsection (3) or (4). the Authority may take copies of them or extracts from them.

(9) 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.

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

(11) (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 (3) and (4), 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.

(12) Whoever, without reasonable cause-

(a) fails to comply with a requirement of the Authority under subsection (3) or a direction of the Authority under subsection (4);

(b) with intent to avoid the provisions of subsection (3) or (4) destroys, mutilates, defaces, hides or removes a document; or

(c) wilfully obstructs an inquiry by the Authority, made in accordance with subsection (3) or (4),

is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and on conviction on indictment to a fine of one hundred thousand dollars, and if the offence of which he is convicted is continued after conviction he

commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

(13) (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, is guilty of that offence and 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.

(14) Where a person complies with a requirement under subsection (3), a direction under subsection (4) or an order under subsection (5), or gives evidence under subsection (6), 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.

Assistance in obtaining information

31. (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.

32 The Authority may -

General powers

- (a) purchase and sell gold coin and bullion;
- (b) open and maintain accounts with local banks and with the Treasury of the Islands;
- (c) open and maintain accounts with banks and other depositories outside the Islands and appoint correspondents or agents outside the Islands;
- (d) purchase and sell foreign currencies and purchase, sell, discount and rediscount bills of exchange and Treasury bills drawn in or on places outside the Islands and maturing within one hundred and eighty-four days;
- (e) purchase and sell securities, maturing within ten years, of, or guaranteed by, such foreign governments as may be approved by the board;
- (f) purchase and sell such other securities and investments as may be authorised by the Governor on the recommendation of the board;
- (g) borrow money, on such terms and conditions, as may be authorised by the Governor on the recommendation of the board, except that such loan shall not exceed two hundred and fifty thousand dollars or one per cent of the paid-up capital of the Authority, whichever shall be the greater;
- (h) undertake the administration and management of securities issued by Government; and
- (i) without prejudice to section 33, do any thing which is calculated to facilitate, is incidental to or consequential upon the exercise of the powers of the Authority or the discharge of its duties under this Law.

33. Except as expressly authorised by this Law, the Authority may not-

Prohibited activities

- (a) engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking except such interest as the Authority may acquire in the course of the satisfaction of debts due to it, so, however, that it shall be the duty of the Authority to dispose of any such interest so acquired at the earliest suitable opportunity;
- (b) purchase shares of any company including the shares of any banking company or public corporation;
- (c) make loans to any person; or

- (d) purchase, acquire or lease real property except so far as the board considers necessary or expedient for the provision or future provision of business premises for the Authority or of any other requirement incidental to the performance of its functions under this Law.

Part VI - Accounts and Statements

Financial year

34. The financial year of the Authority shall end on the 31st December.

Budget

35. (1) The Authority shall, not later than two months before the commencement of each financial year, submit to the Governor for his approval estimates in such form and in such detail as the Governor may require in respect of the Authority's administrative expenditure in that financial year.

(2) The Authority shall submit to the Governor for his approval any proposed amendments to any such estimates as soon as practicable and not later than one month after the submission of the estimates.

(3) Such estimates and any amendments, when approved by the Governor for any financial year, shall constitute the Authority's expenditure budget for that financial year.

(4) The Authority shall not, without the approval of the Governor, spend in total in any financial year more than the total amount of expenditure approved by the Governor for that financial year.

Audit

36. (1) The accounts of the Authority shall be prepared and maintained in accordance with the standards recommended for the time being by the International Accounting Standards Committee or by such other body as may be set up in its place.

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(2) The accounts of all transactions of the Authority shall be audited annually by the Auditor-General of the Islands who shall have such powers in relation to the Authority, its directors, and the property securities and accounts of the Authority as he has in relation to other public money and public officers by virtue of the Public Finance and Audit Law (1997 Revision).

(3) On completion of the audit of the Authority's accounts under subsection (2) the Auditor-General shall prepare a report thereon within three months of the close of the financial year to which the audited accounts relate.

Publication of accounts and annual report

37. (1) The Authority shall submit annually to the Governor not later than the 30th April, a report on its transactions during the previous financial year, together

with an audited balance sheet and income and expenditure accounts as at the close of the previous financial year.

(2) The report and accounts under subsection (1) and the report of the Auditor-General under section 36 shall be laid on the Table of the Legislative Assembly not later than 30th June following the end of the financial year to which they relate, and shall thereupon be gazetted.

(3) The Authority shall publish in the Gazette a statement of its assets and liabilities as at the 31st December and the 30th June of each year.

Part VII - General

38. Neither the Authority, nor any director or employee of the Authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith. Immunity
39. The functions of the Authority shall be deemed not to be banking business for the purposes of the Banks and Trust Companies Law (2000 Second Revision). Exemption
2000 Second Revision
40. The Governor may make such regulations as are required for the effective implementation of this Law. Regulations
41. The Authority may, subject to this Law, make such rules as it thinks fit to regulate its own internal management. Rules
42. The Governor may, by regulation subject to affirmative resolution, provide for the administration of any statutory function of government by the Authority. Additional powers
43. (1) Subject to subsections (2) and (3), whoever is a director, officer, employee, agent or adviser of the Authority and who discloses any information relating to-
- (a) the affairs of the Authority;
 - (b) any application made to the Authority or the Government under the regulatory laws;
 - (c) the affairs of a licensee; or
 - (d) the affairs of a customer, client or policyholder of, or a company or mutual fund managed by, a licensee,
- that he has acquired in the course of his duties or in the exercise of the Authority's functions under this or any other law, is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for three years.

- (2) Subsection (1) does not apply to a disclosure-
- (a) lawfully required or permitted by any court of competent jurisdiction within the Islands;
 - (b) for the purpose of assisting the Authority to exercise any functions conferred on them by this Law, by any other law or by regulations made thereunder;
 - (c) in respect of the affairs of a licensee or of a customer, client, policyholder of, or a company or mutual fund managed by, a licensee, with the authority of the licensee, customer, client, policyholder, company or mutual fund, as the case may be which consent has been voluntarily given;
 - (d) for the purpose of enabling or assisting the Governor to exercise any functions conferred on him under this Law or regulations made thereunder or in connection with the dealings between the Governor and the Authority when the Authority exercises its functions under this or any other law;
 - (e) if the information disclosed is or has been available to the public from any other source;
 - (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any licensee, or of any customer, client, or policyholder of, or company or mutual fund managed by, a licensee to which the information relates to be ascertained;
 - (g) 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
 - (h) for the purposes of any legal proceedings in connection with-
 - (i) the winding-up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.

(3) Subject to subsection (9), the Authority, after having sent a copy of a request for information to the Attorney-General in accordance with subsection (10), 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.

(4) 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.

(5) For the purposes of paragraph (a) of subsection (4) 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.

(6) Where an overseas regulatory authority fails to comply with a requirement of the Authority under subsection (5), the Authority may refuse to provide the assistance sought.

(7) 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.

(8) In paragraph (a) of subsection (4)-

“relevant country or territory” means the country or territory from which the request for assistance is made.

(9) Nothing in subsection (3) authorises a disclosure by the Authority unless-

- (a) the Authority has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (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(12) or an offence of perjury.

(10) 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.

SCHEDULE

section 31(1)

Regulation of Banks, Trust Companies, Company Management, Insurance Companies and Mutual Funds

From the 1st January, 1997, the powers, functions and duties of Government and of the Authority shall be such as are provided in the regulatory laws as replaced or amended from time to time and in any subordinate legislation made thereunder. Any reference in any law other than the regulatory laws, or in any other subordinate legislation, to the Inspector of Financial Services appointed under section 12(1) of the Banks and Trust Companies Law (2000 Second Revision) is to be read as a reference to the Authority.

2000 Second Revision

Publication in consolidated and revised form authorised by the Governor in Council this 29th day of August, 2000.

Carmena Watler
Clerk of Executive Council