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MONEY SERVICES LAW

(2003 Revision)

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Consolidated and revised this 27th day of May, 2003.

MONEY SERVICES LAW

(2003 Revision)

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MONEY SERVICES LAW

(2003 Revision)

1. This Law may be cited as the Money Services Law, (2003 Revision) Short title
2. In this Law - Definitions
- “Authority” means the Cayman Islands Monetary Authority established under section 5(1) of the Monetary Authority Law (2003 Revision) and includes any employee of the Cayman Islands Monetary Authority acting under the Authority’s authorisation; 2003 Revision
- “Court” means the Grand Court;
- “financial year”, in relation to a licensee, means the period not exceeding fifty-three weeks at the end of which the balance of the licensee’s accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then a calendar year;
- “licence” means a licence granted under section 5;
- “licensee” means a person holding a licence under this Law;
- “money services business” means –
- (a) the business of providing (as a principal business) any or all of the following services -
 - (i) money transmission;
 - (ii) cheque cashing;
 - (iii) currency exchange;
 - (iv) the issuance, sale or redemption of money orders or traveller’s cheques; and
 - (v) such other services as the Governor in Council may specify by notice published in the Gazette; or
 - (b) the business of operating as an agent or franchise holder of a business mentioned in paragraph (a),
- and any question as to whether the provision of a service is the principal business of any person, shall be determined by the Authority; and
- “net worth” means excess assets over liabilities as presented under applicable generally accepted accounting principles subject to adjustment for non-admitted assets as determined by the Authority.

Extent of the Law	3. (1) This Law does not apply to –
2003 Revision	(a) a person licensed under the Banks and Trust Companies Law (2003 Revision) to carry on money services business in conjunction with other business;
1997 Revision	(b) a building society licensed under the Building Societies Law (1997 Revision) and carrying on money services business; or
2001 Revision	(c) a cooperative society licensed under the Cooperative Societies Law (2001 Revision) and carrying on money services business,
	unless such licensed person, building society or cooperative society is operating as an agent or franchise holder of a money services business.
2003 Revision	(2) No money services business which is licensed under this Law is required to be licensed under the Trade and Business Licensing Law (2003 Revision).
Licence required to carry on money services business	4. (1) Subject to sections 3(2) and 31, any person who carries on money services business without first obtaining a licence under section 5, is guilty of an offence.
	(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year and, in the case of a continuing offence, to a fine of one thousand dollars for each day during which the offence continues.
Application for, and grant of, licence	5. (1) Any person desirous of carrying on money services business, may make application in writing to the Authority for the grant of a licence.
	(2) An application for a licence shall contain such information and particulars and shall be accompanied by such details and things as may be prescribed.
	(3) The Authority may grant a licence in the prescribed form, subject to such terms and conditions, if any, as the Authority may consider necessary or desirable.
	(4) The application shall be accompanied by the prescribed application fee which shall be forwarded by the Authority to the Financial Secretary for the benefit of the revenue.
	(5) A licence shall not be granted in respect of a money services business unless the person applying for the licence has, in the Islands, a place of business

approved by the Authority, which will be the principal office, in the Islands, for that money services business.

(6) A licence granted under subsection (3) shall be granted for the carrying on of money services business within the Islands but subject to such conditions as may be prescribed by this Law or imposed by the Authority.

(7) It is a condition of every licence that the licensee –

- (a) shall not change its name without the prior approval of the Authority;
- (b) shall not cease to have a principal office in the Islands;
- (c) shall not change its principal office in the Islands without the prior approval of the Authority; and
- (d) shall notify the Authority forthwith of any change in the information supplied in the application for the licence.

(8) Conditions imposed by the Authority under subsection (6) may at any time be varied or revoked by the Authority.

(9) Every holder of a licence shall, on or before every 15th day of January after the first grant of the licence, pay the prescribed annual fee for a licence to carry on money services business, and there shall be payable by a licensee who fails to pay the prescribed annual fee by that date, a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid.

(10) Without prejudice to subsections (1) to (9), if the annual fee referred to in subsection (9) is not paid by the holder of a licence on or before every 15th day of January after the first grant of the licence, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.

(11) The Authority may refuse to grant a licence if the Authority is of the opinion that the person applying for the licence would fail to fulfil the obligations of a licensee under this Law.

(12) In subsection (10)-

“court” means the Grand Court or a court of summary jurisdiction, as the case may be.

6. (1) The Authority shall not grant a licence to a person whose net worth is less than thirty thousand dollars or its equivalent in other currencies. Net worth requirements

(2) It is a condition of every licence that the licensee shall maintain its net worth at an amount not less than that prescribed by subsection (1).

(3) When the Authority has reasonable cause to believe that there are grounds for doing so, the Authority may require a licensee to increase its net worth by increasing its paid-up capital to such greater sum as the Authority may determine for the nature of the licensee's business, current or proposed.

Advertisement of money
services business

7. (1) No person, other than a licensee, shall -

- (a) use words representing that that person is carrying on money services business, in English or in any other language, in the description or title under which that person carries on business within the Islands;
- (b) make any representation in any billhead, letter, letterhead, circular, paper, notice or advertisement or in any other manner that that person is carrying on money services business within the Islands; or
- (c) in any manner solicit or receive money from any person for the purpose of carrying on money services business within the Islands.

(2) The Authority may refuse to grant a licence to a person, or if a person is already in possession of a licence, the Authority may revoke the licence, if, in the Authority's opinion, such person is carrying on or intending to carry on money services business under a name which -

- (a) is identical with that of any company, firm or business house, whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated to suggest, falsely, the patronage of or connection with some person or authority, whether within the Islands or not; or
- (c) is calculated to suggest, falsely, that the money services business has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government or any department, branch, agency or organ of Government, or of any officer thereof, or is recognised in the Islands as a national or central money services business.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months and, in the case of a continuing offence, to a fine of five hundred dollars for each day during which the offence continues.

Accounting records and
systems of business
control

8. (1) Every licensee shall, in respect of its money services business -

- (a) cause accounting records to be kept; and
- (b) establish and maintain systems of control of the business and records, and systems of inspection and report,

in accordance with this section.

(2) The accounting records of a licensee shall -

- (a) explain its transactions;
- (b) disclose, with reasonable accuracy and promptness, the state of the business at any time;
- (c) enable the directors properly to discharge their duties; and
- (d) enable the business properly to discharge its duties.

(3) The accounting records shall, in particular, contain -

- (a) entries from day to day of all sums received and paid by the business and the matters in respect of which they are received or paid; and
- (b) a record of the assets and liabilities of the business.

(4) The systems of control and of inspection and report shall secure that the money services business is so conducted and its records so kept that -

- (a) the information necessary to enable the directors and the business to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or at need and with sufficient promptness, for those purposes; and
- (b) the information obtained by or furnished to the Authority under or for the purposes of this Law is sufficiently accurate for the purpose for which it is obtained or furnished.

9. Every holder of a licence shall, at such times as may be specified by the Authority, furnish to the Authority - Returns

- (a) written confirmation that the information set out in the application for the licence remains correct, and gives a full and fair picture of its money services business; and
- (b) such returns in respect of its money services business as the Authority may specify in writing,

in such form as the Authority may reasonably require.

10. (1) Every licensee shall have the accounts of its money services business audited annually or at such other times as the Authority may require by an auditor, who shall be a chartered accountant, a certified public accountant, or some other professionally qualified accountant, approved by the Authority. Accounts

	(2) The audited accounts shall be forwarded to the Authority within three months of the end of the financial year of the licensee's money services business, unless prior written approval for an extension has been granted by the Authority.
Auditor's certificate	11. Within three months of the end of the financial year of a licensee's money services business, the licensee shall forward to the Authority an auditor's certificate of the existence of adequate procedures to ensure compliance by the business with any Code of Practice that may be issued under section 21 of the Proceeds of Criminal Conduct Law (2001 Revision).
2001 Revision	
Authority may summon auditor	12. (1) The Authority may summon the auditor or any former auditor of a licensee's money services business for the purpose of making enquiries into the operations and financial position of the business. (2) Where an auditor is summoned under subsection (1), the Authority shall in writing notify the licensee concerned which shall have the right to attend any meeting held by the Authority with the auditor.
Auditor's notice of resignation	13. Where an auditor appointed by a licensee – (a) intends to resign during the currency of his appointment; or (b) has given written notice to the licensee of his unwillingness to be considered for reappointment at the expiration of the period for which he is appointed, the auditor shall give written notice to the Authority accordingly, and shall in such notice state the reasons for his intention to resign or his unwillingness to be considered for reappointment.
Notice of termination of auditor's appointment	14. Where a licensee – (a) intends to terminate the appointment of its auditor; or (b) decides that the auditor shall not be reappointed, the licensee concerned shall notify the Authority accordingly, and shall in such notification state the reason for such intention or decision.
Consequences of auditor's disclosure	15. An auditor or former auditor of a licensee shall not be regarded as being in breach of his duty to the licensee in consequence of any disclosure to the Authority under sections 11 to 14.
Prohibitions on certain licensees 2003 Revision	16. A licensee incorporated under the Companies Law (2003 Revision) shall not, without the prior written approval of the Authority, open, in or outside the Islands, a subsidiary, branch, agency or representative office.
Number and approval of directors	17. (1) A licensee shall, at no time, have less than two directors.

(2) Unless exempted from such a requirement by the Authority, a licensee shall, before the appointment of a director or other senior officer, apply to the Authority for its written approval of such appointment.

(3) Approval granted under subsection (2) -

- (a) lapses if the director or senior officer becomes bankrupt or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Authority.

18. (1) It is the duty of the Authority -

Powers and duties of the Authority

- (a) to maintain a general review of money services business practice in the Islands;
- (b) whenever the Authority thinks fit, to examine the affairs or business of any licensee carrying on business within the Islands for the purpose of satisfying itself that this Law has been or is being complied with, and that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;
- (c) to assist in the investigation of any offence against the laws of the Islands which the Authority has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such; and
- (d) to examine -
 - (i) returns furnished to the Authority under section 9; and
 - (ii) audited annual accounts forwarded to the Authority under section 10,and to report on them to the Governor in Council whenever the Authority thinks fit.

(2) In matters relating to money services business, the Authority shall take all necessary action to ensure the proper and just implementation of this Law.

(3) In the performance of its functions under this Law and subject to the Monetary Authority Law (2003 Revision), the Authority is entitled at all reasonable times -

2003 Revision

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee;
- (b) to request such information, matter or thing from any person who the Authority has reasonable grounds to believe is carrying on money services business in contravention of section 4(1); and
- (c) to call upon the manager of the licensee or any similar person, or any officer designated by either of them, for such information or explanation,

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law; and information requested under paragraph (b) shall be provided in such form as the Authority may reasonably require.

(4) If it appears to the Authority that there is reasonable ground for suspecting that an offence against this Law has been or is being committed by any person, the Authority may, with the approval of the Court, take such action as it considers necessary, in the interest of the customers of a licensee or creditors of that person, to preserve any assets held by that person.

(5) Any person who fails to comply with any requirement under subsection (3) by the Authority is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

Powers of Authority in
respect of licensees

19. (1) Whenever the Authority is of the opinion that -

- (a) a licensee is or appears likely to become unable to meet its obligations as they fall due;
- (b) a licensee is carrying on business in a manner detrimental to the public interest or the interest of its customers or creditors;
- (c) a licensee has contravened this Law;
- (d) a licensee has failed to comply with a condition of its licence; or
- (e) there has been or is, on the part of a licensee or its directors, a failure to satisfy any one or more of the criteria of prudent management set out in section 20(1),

the Authority may forthwith do any of the following -

- (i) revoke the licence;
- (ii) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (iii) require the substitution of any director or officer of the licensee;
- (iv) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of the date of his appointment;
- (v) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, with any necessary changes, have all the powers of a person appointed, under section 18 of the Bankruptcy Law (1997 Revision), as a receiver or manager of a business; and
- (iv) require such action to be taken by the licensee as the Authority considers necessary.

1997 Revision

(2) Notwithstanding section 27(1), a licensee may, within seven days of the Authority's decision to revoke a licence under subsection (1)(i), apply to the Authority for a reconsideration of its decision.

(3) A person appointed under subsection (1)(iv) or (v) or whose appointment has been extended under subsection (4)(b) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Authority of the affairs of the licensee and of his recommendations thereon.

(4) On receipt of a report under subsection (3), the Authority may -

- (a) revoke the appointment of the person appointed under subsection (1)(iv) or (v);
- (b) extend the period of his appointment;
- (c) subject to such conditions as the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority;
- (d) revoke the licence and apply to the Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law (2003 Revision) relating to the winding up of a company by that Court shall, with any necessary changes, apply.

2003 Revision

(5) Notwithstanding any provision in this section, the Authority may revoke a licence if the licensee -

- (a) has ceased to carry on money services business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(6) Whenever the Authority revokes a licence under subsection (1)(i), (4)(d) or (5), the Authority shall cause notice of such revocation to be gazetted, and may also cause such notice to be published (whether within the Islands or elsewhere) in such newspaper or other publication as the Authority may consider necessary in the circumstances.

20. (1) For the purposes of section 19(1)(e), the criteria of prudent management are -

Criteria of prudent management.

(a) maintenance of -

- (i) adequate reserves and other capital resources;
- (ii) adequate assets in liquid form;
- (iii) a system for managing and containing risks to the net worth of the licensee's business and risks to its net income,

- whether arising from fluctuations in interest or exchange rates or from other factors; and
- (iv) the requisite accounting records and systems of control of business and of inspection and report;
- (b) direction and management conducted with prudence and integrity by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers in their respective positions; and
- (c) conduct of the licensee's business with adequate professional skills.

(2) The following provisions apply for the interpretation of the list of criteria in subsection (1) in their application to a licensee's business -

"adequate", except with reference to liquidity, means adequate having regard to the range and scale of the business;

"adequate", with reference to liquidity, means of such proportion and composition as will at all times enable the business to meet its liabilities as they arise and "liquid form", in relation to assets, shall be construed accordingly;

"business" includes business the licensee proposes to conduct;

"requisite", with reference to accounting records and systems of control, means such as are required by section 8;

"sufficient", with reference to the number of directors and officers, means sufficient having regard to the range and scale of the business.

(3) In determining for the purposes of subsection (1)(b) whether a person is a fit and proper person to hold a particular position in a licensee's business, regard shall be had, in particular -

- (a) to his probity;
- (b) to his competence and soundness of judgement for fulfilling the responsibilities of that position;
- (c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (d) to whether the interests of customers of the business are, or are likely to be, in any way threatened by his holding that position.

(4) Nothing in this section shall give rise to any claim against a licensee's directors or money services business, or afford a defence to any claim made by a money services business.

Authority may apply to Court to preserve customers' interests

21. The Authority may, in any case in which a licensee, or a person who has at any time been a licensee, is being wound up voluntarily, apply to the Court if the Authority considers that the winding up is not being conducted in the best

interests of the licensee's customers or creditors, and the Court shall make such order as it considers appropriate.

22. The Chief Justice may make rules governing the procedure in relation to applications to the Court under section 18(4), 19(4)(d) or 21. Rules

23. (1) If a Magistrate or Justice of the Peace is satisfied by information on oath given by the Authority that - Power of search

- (a) there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 18(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Authority or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 18(3).

(3) No female shall, in pursuance of any warrant issued under this section, be searched except by a female.

(4) Where under this section a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

(5) Any person who obstructs the Authority or any other person in the exercise of any powers conferred under this section, is guilty of an offence and

	liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.
False or misleading information	24. Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Authority, is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for three months.
General penalty	25. Any person who contravenes any provision or requirement of this Law for which no offence is specifically created is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for three months.
Offences by officers of corporate bodies	26. (1) Where an offence under this Law 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 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. (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of the member in connection with his functions of management as if he were a director of the body corporate.
Appeals	27. (1) An appeal lies to the Court from any decision of the Authority - (a) revoking a licence under section 7(2), 19(1)(i), 19(4)(d) or 19(5); or (b) requiring a licensee to take certain steps which the Authority may specify under section 19. (2) An appeal against the decision of the Authority shall be by motion. (3) The appellant, within twenty-one days after the day on which the Authority has given its decision, shall serve a notice in writing signed by the appellant or his attorney-at-law on the Authority of his intention to appeal and of the general ground of his appeal. (4) Any person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the Court upon the hearing of such application may extend the time prescribed by this section as it considers fit.

(5) The Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the Court without delay a copy of the decision and all papers relating to the appeal, but the Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

(6) The Clerk of Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(7) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Court, go into any matters not raised by such statements.

(8) The Court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Court thereon to the Authority.

(9) An appeal against a decision of the Authority shall not have the effect of suspending the execution of such decision.

28. The Authority shall not be liable in damages for anything done or omitted in the discharge or purported discharge of its functions under this Law, unless it is shown that the act or omission was in bad faith. Immunity

29. The Governor in Council may make regulations - Regulations

- (a) to control the form of advertising by licensees;
- (b) to prescribe fees payable under this Law;
- (c) to prescribe the information and particulars to be contained in an application for a licence and the details and things to accompany the application;
- (d) to prescribe the forms of licences and other documents to be used for the purposes of, and in connection with, this Law;
- (e) to provide for the formation and maintenance, by the Authority, of a record of licensees; and
- (f) generally for carrying this Law into effect.

30. (1) The Authority may, from time to time, issue policy directions for the guidance of licensees in the exercise of their duties under this Law, and it shall be the duty of each licensee to put into effect and to carry out such directions. Policy directions.

(2) Any licensee or any officer of a licensee who fails to comply with any direction issued under subsection (1), is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

Savings 31. This Law has no application to or effect upon the validity of any money services business transaction in existence at the 20th November, 2000.

Publication in consolidated and revised form authorised by the Governor in Council this 27th day of May, 2003.

Carmena Watler
Clerk of Executive Council

(Price \$ 4.00)