

CAYMAN ISLANDS



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THE MONETARY AUTHORITY (AMENDMENT) LAW, 2016

(LAW 27 OF 2016)

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CAYMAN ISLANDS

Law 27 of 2016.

I Assent

Helen Kilpatrick

Governor.

16th November, 2016

A LAW TO AMEND THE MONETARY AUTHORITY LAW (2016 REVISION) TO ADD CERTAIN LAWS AS REGULATORY LAWS AND TO PROVIDE FOR ADMINISTRATIVE FINES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Monetary Authority (Amendment) Law, 2016.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The Monetary Authority Law (2016 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows -

Amendment of section 2 of the Monetary Authority Law (2016 Revision) - definitions

- (a) in the definition of the words “regulatory laws” -
 - (i) by inserting after the words “following Laws” the words “and Regulations made under them”;
 - (ii) by inserting after paragraph (d) the following paragraph - “(da) Development Bank Law (2004 Revision);”;
 - (iii) in paragraph (g), by deleting the word “and”; and
 - (iv) by inserting after paragraph (g) the following paragraph - “(ga) Directors Registration and Licensing Law, 2014, Law 10 of 2014; and”; and

- (b) in the definition “relevant financial business” by deleting the full stop and substituting the word “; and”; and
- (c) by inserting in the appropriate alphabetical sequence the following definitions -

“breach” includes a contravention and, in relation to a prescribed provision, includes allowing or not allowing a prescribed state of affairs to exist and engaging or not engaging in prescribed conduct;

“fine”, other than for a provision the breach of which is an offence, means an administrative fine under section 42A(1);

“prescribed provision” means a provision for which the Authority may impose an administrative fine under section 42A(1);

“rules” means rules issued and gazetted under section 34 or 42G.”.

Insertion of section 2A - references to Law includes its instruments

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

“References to Law includes regulations and rules

2A. In this Law, a reference to this Law or a provision of this Law, includes, if the context permits, a reference to regulations made and rules issued under this Law or the provision.”.

Amendment of section 34 - relations with banks and other financial institutions

- 4. The principal Law is amended by repealing section 34(7) and substituting the following subsection -

“(7) Subsection (6) shall not affect the power to fine for a breach of a provision of the rules that is a prescribed provision.”.

Insertion of Part VIA - administrative fines

- 5. The principal Law is amended by inserting after Part VI the following Part -

“PART VIA - Administrative Fines

“Authority’s power to fine

42A.(1) The Authority has the power to impose an administrative fine on a person who breaches a provision prescribed of this Law, a regulatory law or the money laundering regulations.

(2) Regulations prescribing the provisions shall also prescribe the category of the breach as minor, serious or very serious.

Fine amounts

42B.(1) For a breach prescribed as minor the fine shall be

\$5,000.

(2) For a breach prescribed as minor the Authority also has the power to impose one or more continuing fines of \$5,000 each for a fine already imposed for the breach (the “initial fine”) at intervals it decides, until the earliest of the following to happen -

- (a) the breach stops or is remedied;
- (b) payment of the initial fine and all continuing fines imposed for the breach; or
- (c) the total of the initial fine and all continuing fines for the breach reaches \$20,000.

(3) For a breach prescribed as serious, the fine is a single fine not exceeding -

- (a) \$50,000 for an individual; or
- (b) \$100,000 for a body corporate.

(4) For a breach prescribed as very serious, the fine is a single fine of not exceeding -

- (a) \$100,000 for an individual; or
- (b) \$1,000,000 for a body corporate.

(5) For breaches prescribed as serious or very serious the Authority has a discretion in deciding whether or not to impose any fine and the amount of the fine.

Declaratory provisions for power to fine

42C. To avoid doubt -

- (a) a fine may be imposed for a breach even if the breach itself is not an offence;
- (b) if a breach of a prescribed provision is an offence, a fine for the breach is not limited by the penalty under the provision or by sections 6(2) and 8 of the Criminal Procedure Code (2014 Revision); and
- (c) this Part is in addition to, and does not limit or otherwise affect, the Authority’s powers under a law mentioned in section 42A(1).

2014 Revision

Limitation period

42D. (1) The Authority shall not impose a fine after the expiration of the following period from the date on which the Authority became aware of the commission of the breach -

- (a) 6 months for a breach prescribed as minor; or

- (b) 2 years for a breach prescribed as serious or very serious breach.

(2) For subsection (1), the Authority shall be deemed to have become aware of the breach when it first received information from which the breach can reasonably be inferred.

Relationship
with
penalties

42E. (1) If a breach of a prescribed provision is an offence, a fine for the breach shall not preclude a prosecution for the breach or liability for an additional fee, late filing fee or a surcharge under a regulatory law for the breach, and *vice versa*.

(2) The Authority shall, if the breach is prescribed as serious or very serious, have regard to the amount of the following in fixing the amount of the fine for the breach -

- (a) any penalty imposed on conviction for the offence; or
- (b) the fee or surcharge.

Criteria for
making fine
decision

42F.(1) In making a decision mentioned in section 42B(5), the Authority shall consider all relevant factors including the following criteria -

- (a) the prescribed criteria, after applying any prescribed relative weight that must be given to them; and
- (b) the following principles, in the following order of importance -
 - (i) first, the need to promote and maintain a sound financial system in the Islands;
 - (ii) secondly, the disgorgement principle;
 - (iii) thirdly, the disciplinary principle; and
 - (iv) fourthly, the deterrence principle.

(2) The principles prevail over the factors and the other criteria.

(3) Subsection (2) shall not prevent the Authority from considering prescribed criteria to reduce the amount of a fine.

(4) Notwithstanding subsection (1), the Authority need only consider a particular criteria to the extent it considers the criteria is relevant to making the decision.

(5) In this section -

“deterrence principle” means the need to deter financial services businesses and others from breaching prescribed provisions;

“disciplinary principle” means the need to punish intentional, reckless or inappropriately negligent breaches of prescribed provisions; and

“disgorgement principle” means the principle of ensuring -

- (a) licensees under regulatory laws and those connected with them as defined in section 34(16)(d) do not gain (including by avoiding losses) from breaching prescribed provisions; and
- (b) persons mentioned in paragraph (a) disgorge all such gains.

Authority’s
rule-making
power for Part

42G (1) The Authority may issue rules consistent with this Part about -

- (a) factors that supplement or tend to show or not to show the extent of a matter the subject of the criteria under section 42F(1);
- (b) aggravating and mitigating factors for fines; and
- (c) other matters, consistent with this Part for administering this Part, including, for example, publishing fines imposed.

(2) The rules have no effect until they are gazetted.

Other
Regulation-
making powers
for Part

42H. Regulations made by Cabinet may provide for -

- (a) forms and procedures for imposing fines;
- (b) appeals against decisions under this Part;
- (c) how fines shall be paid and may be enforced;
- (d) interest on outstanding fines;
- (e) evidentiary provisions for proceedings relating to this Part; and
- (f) other matters required or permitted to be prescribed under this Part or that are necessary or convenient to give effect to the purposes or provisions of this Part.”.

Insertion of Part VIII -
transitional

6. The principal Law is amended by inserting after Part VII the following
Part -

“PART VIII - Transitional

Transitional
provision for
Monetary
Authority
(Amendment)
Law, 2016

53. The Authority shall not impose a fine for a breach that
happened before the commencement of Part VIA.”.

Passed by the Legislative Assembly the 24th day of October, 2016.

Juliana O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.