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DORMANT ACCOUNTS LAW

(2011 Revision)

Law 28 of 2010 consolidated with Law 41 of 2010.

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

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Law 28 of 2010-12th July, 2010

Law 41 of 2010-6th December, 2010.

Consolidated and revised this 31st day of July, 2011.

DORMANT ACCOUNTS LAW

(2011 Revision)

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DORMANT ACCOUNTS LAW

(2011 Revision)

1. This Law may be cited as the Dormant Accounts Law (2011 Revision). Short title

2. In this Law - Interpretation
 - “account holder” means a person having a legal or beneficial interest in, or right (including any encumbrance) over, monies held or owed by an account provider;
 - “account provider” means -
 - (a) a Class A insurer;
 - (b) a bank;
 - (c) a trust company;
 - (d) a credit union;
 - (e) a building society; or
 - (f) any other type of financial institution which is declared to be an account provider pursuant to section 17A;
 - “bank” means a person licensed to carry on banking business under the Banks and Trust Companies Law (2009 Revision); 2009 Revision
 - “building society” has the same meaning as in the Cooperative Societies Law (2001 Revision); 2001 revision
 - “claimant” means a person making a claim under section 9;
 - “Class A insurer” means an insurer holding a valid Class ‘A’ Insurer’s Licence under the Insurance Law (2008 Revision); 2008 Revision
 - “computer” includes a personal organizer or any other electronic means of information storage and retrieval;
 - “credit union” has the same meaning as in the Cooperative Societies Law (2001 Revision);
 - “deposit for a fixed period” means a deposit made with an account provider that, subject to any terms agreed between the account holder and the account provider in relation to continued reinvestment as a deposit, becomes due and payable after the expiry of a period of time agreed between the account holder and account provider;
 - “dormancy period” means the period of seven years referred to in section 4(1);
 - “dormant account” means a dormant account referred to in section 4(1);

- “dormant account holder” means a person having a legal or beneficial interest in, or right (including any encumbrance) over, monies deemed to be held in a dormant account pursuant to section 4(1);
- “financial institution” means a person carrying on financial services business;
- 2011 Revision “financial services business” means financial services business as defined in the Monetary Authority Law (2011 Revision);
- “inspector” means a person authorized as such by the Monetary Authority under section 10;
- 2008 Revision “long term business” has the same meaning as in the Insurance Law (2008 Revision);
- S.I. 2009/1379 “Minister” means the Minister charged with responsibility for finance under section 54 of the Constitution;
- “Monetary Authority” means the Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Law (2011 Revision);
- “monies held or owed by an account provider” means -
- (a) any sum payable with respect to any general deposit, demand deposit, savings deposit or deposit for a fixed period, made in the Islands with an account provider, together with any interest, but excluding any lawful charges thereon;
 - (b) any sum payable on cheques certified in the Islands by an account provider;
 - (c) the cash from, or proceeds of sale of precious metals and precious stones (excluding jewellery) from, safe deposit boxes upon which the lease or rental period has expired;
 - (d) monies claimable or payable to an insured or specified beneficiary in relation to long term business carried on by a Class A insurer; and
 - (e) the proceeds of any assets held under a trust by a trust company specifically established for the purposes of maintaining monies settled from dormant accounts except for any trusts created pursuant to section 153 of the Companies Law (2011 Revision);
- 2011 Revision
- Law 36 of 2010 “police officer” means a police officer as defined in section 2 of the Police Law, 2010;
- “record” means any book, document, or any other written or printed material in any form including -
- (a) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form and that is capable of being reproduced in a legible form; and

- (b) all the electronic or other automatic means, if any, by which any such material or information is capable of being so reproduced and to which an account provider being inspected for the purposes of this Law, has access; and

“trust company” means a company licensed to carry on trust business under the Banks and Trust Companies Law (2009 Revision).

3. This Law applies to a dormant account notwithstanding that the dormancy period commenced prior to the commencement of this Law. Application

4. (1) Subject to subsections (2) and (3), monies held or owed by an account provider shall be deemed to be held in a dormant account if the monies are due to be claimed but have not been claimed and the dormant account holder has not, within the seven years immediately preceding, effected any of the following transactions - Dormant accounts

- (a) subject to subsection (4), increased or decreased the amount held or owed by the account provider;
- (b) presented the passbook or other record for the crediting of interest or dividends in respect of -
 - (i) any sum payable with respect to any general deposit, demand deposit, savings deposit or deposit for a fixed period, made in the Islands with the account provider; or
 - (ii) any sum payable on cheques certified in the Islands by the account provider;
- (c) corresponded in writing with the account provider concerning the monies; or
- (d) otherwise indicated an interest in the monies as evidenced in writing by the account provider.

(2) Where monies are held or owed by an account provider for an account holder in more than one account, the monies shall not be deemed to be held in a dormant account if the account holder has, within the seven years immediately preceding, effected any of the transactions specified in subsection (1) through, or in relation to, any of the accounts.

(3) Where the monies held or owed by an account provider is a deposit for a fixed period, the dormancy period shall not commence until the fixed period has expired.

(4) Interest paid, or account fees applied, by an account provider on monies held or owed by the account provider shall not be regarded as a transaction which increases or decreases the amount held in the dormant account for the purposes of subsection (1)(a).

(5) For the avoidance of doubt, where any transaction referred to in subsection (1) is effected prior to monies held or owed by an account provider being deemed to be held in a dormant account under that subsection, the dormancy period shall not commence until immediately after that transaction is effected.

Notification procedure

5. (1) Subject to section 6, except where a dormant account holder has been previously notified under this section in respect of the dormant account, an account provider, shall, on or before 31st July in each year, notify the dormant account holder, in writing, of the following -

- (a) the name and current address of the account provider and information regarding a change of name, if any, of the account provider since the opening of the dormant account;
- (b) that the dormant account to which the dormant account holder appears to be entitled is held by the account provider;
- (c) that if a transaction referred to in section 4(1) is not effected on the dormant account on or before 31st December next following, the monies held in the dormant account will be transferred to the Government without further notice to the dormant account holder;
- (d) that on the transfer of the monies held in the dormant account to the Government, and subject to this Law, the dormant account holder will no longer have any right against the account provider to repayment of the monies transferred, but that the dormant account holder will have, against the Government, such right to repayment of the monies transferred that the dormant account holder would have had against the account provider except that any right against the Government or claim arising under this Law shall be dealt with in accordance with section 9 of this Law and Part VIII of the Public Management and Finance Law (2010 Revision); and
- (e) any other matters that may be prescribed.

2010 Revision

(2) The notification referred to in subsection (1) shall be sent either by registered mail, courier service or by any method of communication specified in the account mandate, to the last known address of the dormant account holder.

(3) An account provider that fails to notify a dormant account holder under this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(4) Nothing in this section shall prevent an account provider from re-activating an account (so that the monies held or owed in that account are no

longer deemed to be held in a dormant account) where a person complies with a notification given under this section after the date specified in subsection (1)(c), but prior to the transfer referred to in section 7(1).

(5) For the avoidance of doubt, notification to a dormant account holder under this section shall be given -

- (a) to the person who is the dormant account holder having the legal interest in the monies held or owed by the account provider; and
- (b) to the extent that the account provider is aware, and has contact details, of a person who has a beneficial interest or right (including any encumbrance) over the monies held or owed by the account provider, to the person who has that beneficial interest or right.

6. (1) Where monies held or owed by an account provider are deemed to be held in a dormant account under section 4(1) and -

Publication of notice

- (a) the account provider has been instructed by the dormant account holder not to correspond with or contact the dormant account holder; or
- (b) the account provider has taken all reasonable steps to notify the dormant account holder in writing in relation to the dormant account and has failed to make contact or receive a response from the dormant account holder,

section 5 does not apply and, subject to subsections (2) and (3), the account provider shall publish a notice in the Gazette and, for dormant account holders resident in the Cayman Islands, in a daily newspaper circulating in the Islands, or, for dormant account holders not resident in the Cayman Islands, on the account provider's website or in a register held at the principal office of the account provider in the Cayman Islands.

(2) A notice under subsection (1) shall be in the prescribed form and shall contain the following information -

- (a) the name and current address of the account provider and information regarding a change of name, if any, of the account provider since the opening of the dormant account;
- (b) that the account provider holds dormant accounts and the nature and type of such dormant accounts;
- (c) that if a transaction referred to in section 4(1) is not effected on a dormant account on or before 31 December next following, the monies in the dormant account will be transferred to the Government without further notice;

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- (d) that any interested person should contact the account provider to establish if that person is a dormant account holder;
 - (e) that on the transfer of the monies held in the dormant account to the Government and subject to this Law, the dormant account holder will no longer have any right against the account provider to repayment of the monies transferred, but that the dormant account holder will have, against the Government, such right to repayment of the monies transferred that the dormant account holder would have had against the account provider, except that any right against the Government or claim arising under this Law shall be dealt with in accordance with section 9 of this Law and Part VIII of the Public Management and Finance Law (2010 Revision); and
 - (f) any additional information that may be prescribed.
- (3) A notice under subsection (1) shall be published on or before 31st July in each year.
- (4) *Repealed by section 5 of Law 41 of 2010.*
- (5) An account provider that publishes a notice under subsection (1) shall, on request, make available free of charge -
- (a) details of the current address of the account provider and any information regarding a change of name; and
 - (b) subject to subsection (6), any other relevant information specified in the request.
- (6) Where the information referred to in subsection (5)(b) is otherwise made available to persons subject to a lawful charge, that information may be made available under this subsection subject to that charge.
- (7) Nothing in this section shall prevent an account provider from reactivating an account (so that the monies held or owed in that account are no longer deemed to be held in a dormant account) where a person complies with a notification given under this section after the date specified in subsection (2)(c) but before the date of the transfer referred to in section 7(1).

Transfer and vesting of monies in dormant accounts

7. (1) Subject to subsections (3) and (4) and sections 5(4), 6(7) and 15, if a transaction referred to in section 4(1) is not effected on a dormant account on or before the date specified in section 5(1)(c) or 6(2)(c), as the case may be, the account provider shall, not later than 31st March next following, transfer to the Government the monies held in the dormant account.

(2) The monies, and any related rights and obligations, transferred to the Government from a dormant account by an account provider under subsection (1), shall, subject to section 9, vest in the Government.

(3) An account provider that transfers monies from a dormant account to the Government under this section shall, at the time of the transfer, submit to the Minister and to the Monetary Authority, a report, in the prescribed form, specifying -

- (a) the total amount of monies transferred;
- (b) the total number of the dormant accounts;
- (c) the amount of each dormant account transferred;
- (d) (where known) the name, date of birth and last known address of each dormant account holder; and
- (e) any other details that would enable the dormant account holder to be identified.

(4) The monies transferred from a dormant account to the Government under this section shall be the ledger balance on the date of transfer.

(5) An account provider that does not hold any dormant accounts to which subsection (1) applies shall submit a report to that effect to the Minister and to the Monetary Authority, in writing, not later than 31st March in each year.

(6) Subject to subsection (7), an account provider shall submit a certificate of compliance in the prescribed form to the Minister and to the Monetary Authority, not later than 31st March in each year, stating, if this is the case, that the account provider has complied with this Law in respect of the following -

- (a) the notification procedure under section 5 or the publication of a notice under section 6;
- (b) in the case of an account provider that holds dormant accounts to which subsection (1) applies, the transfer of monies from such dormant accounts to the Government under that subsection and the submission of a report to the Minister and the Monetary Authority under subsection (3);
- (c) in the case of an account provider that does not hold any dormant accounts to which subsection (1) applies, the submission of a report to that effect to the Minister and the Monetary Authority under subsection (5); and
- (d) the keeping and maintaining of a register in accordance with section 8.

(7) A certificate of compliance under subsection (6) shall be signed by an authorized officer and shall include any qualifications, amplifications or explanations that the authorized officer considers appropriate.

- (8) An account provider that -
- (a) fails to transfer monies from a dormant account to the Government under this section;
 - (b) fails to submit a report to the Monetary Authority or to the Minister under subsection (3) or (5); or
 - (c) fails to submit a certificate of compliance under subsection (6),

commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(9) Monies which an account provider fails to transfer from a dormant account to the Government under this section, together with any accrued interest thereon, shall be a debt due and owing by the account provider to the Government and may be recovered from the account provider in any court.

(10) Except with the approval of the Monetary Authority, on such terms and conditions as the Monetary Authority may determine, a reduction in the amount of interest payable and charges in excess of those made in respect of comparable active accounts shall not be made by an account provider during the period of inactivity of a dormant account or at the time payment or transfer of the monies held in the dormant account is required.

(11) In this section -

“authorized officer” means a person authorized in writing by the account provider; and

“ledger balance” means the monies in the dormant account on the date of transfer of those monies to the Government under this section together with any accrued interest thereon but excluding any charges that may lawfully be withheld by the account provider.

Register of dormant accounts

8. (1) Subject to subsections (2) and (3), an account provider shall keep and maintain a register of dormant accounts.

(2) An account provider shall enter in the register kept under subsection (1), the following particulars in respect of dormant accounts from which, within the past six years, monies have been transferred to the Government under section 7 -

- (a) (where known) the name, date of birth and last known address of the dormant account holder and any other details which would enable the dormant account holder to be identified;
- (b) the dormant account number, if any;

- (c) if a notification was sent to the dormant account holder under section 5, the date on which and, if different from the address referred to in paragraph (a), the address to which, the notification was sent;
- (d) if a notice was published under section 6, the date on which the notice was published;
- (e) the date on which the monies were deemed to be held in a dormant account;
- (f) the date of the transfer of the monies to the Government and the amount transferred; and
- (g) any other matters that may be prescribed.

(3) The register under subsection (1) may be kept in any form capable of being converted into a legible form and being used to make a legible copy or reproduction of any entry in the register.

(4) Subject to subsection (5), the register kept under subsection (1) shall not be open to public inspection.

(5) Nothing in subsection (4) shall be construed as restricting the right of a person, who proves to the satisfaction of an account provider that he is, or may be, a dormant account holder, to inspect the register kept under subsection (1) with regard to the dormant account concerned.

(6) An account provider that fails to keep and maintain a register in accordance with this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

9. (1) Where an account provider has transferred monies (and any related rights and obligations) from a dormant account to the Government under section 7, the monies vested in the Government shall be held as trust assets within the meaning of Part VIII of the Public Management and Finance Law (2010 Revision) and -

Claims

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- (a) the dormant account holder no longer has any right against the account provider to repayment of the monies transferred and any other related rights and related obligations of the account provider are extinguished; and
- (b) the dormant account holder has, against the Government such right to repayment of the monies transferred and any other related rights and obligations as the dormant account holder would have had against the account provider, except that any right against the Government or claim arising under this section shall be dealt with in accordance with this section and Part VIII of the Public Management and Finance Law (2010 Revision).

(2) A claim under subsection (1) shall be submitted to the Minister in writing signed by the claimant and shall be accompanied by the prescribed documents and information.

(3) Where a claimant proves to the satisfaction of the Minister that he is the dormant account holder and the monies in the dormant account have been transferred to the Government under section 7, the claimant shall be provided with a statement of account and shall within twenty-eight days be paid by the Government, subject to the deduction of any charges that may lawfully be withheld, the total amount of the monies transferred to the Government under section 7.

(4) The Government or an account provider shall not be liable for any interest on monies transferred to the Government by account provider under section 7.

(5) A person aggrieved by a decision of the Minister under this section has a right of appeal against that decision to the Grand Court.

(6) A person who fraudulently makes a claim for repayment under subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Inspector

10. (1) The Monetary Authority may authorize a person to be an inspector for the purposes of -

- (a) ensuring compliance by an account provider with this Law;
- (b) ascertaining whether an account provider has established systems, procedures and practices that are adequate to secure an effective check on the identification, notification, transfer, recording and repayment of monies in dormant accounts; and
- (c) determining whether the systems, procedures and practices referred to in paragraph (b) have been employed and applied in an adequate manner in relation to monies in dormant accounts by an account provider.

(2) An authorization under subsection (1) shall be in writing and shall be subject to any terms and conditions, including terms and conditions relating to remuneration, fees and allowances for expenses, that may be determined by the Monetary Authority, and that are specified in the authorization.

(3) The authorization of an inspector under this section ceases when the Monetary Authority revokes the authorization in writing or where the authorization expires.

(4) Subject to section 13, the Monetary Authority may give directions in relation to the form, manner and content of the report to be prepared by an inspector under section 12(1).

11. (1) Subject to subsection (4), an inspector may, for the purposes specified in section 10 and on production of the authorization issued under section 10, at all reasonable times and on reasonable notice enter and search any premises of an account provider and may - Inspection

- (a) inspect and take copies of or extracts from, and make any enquiries that the inspector considers necessary in relation to, the following records kept by an account provider -
 - (i) accounts held by the account provider;
 - (ii) records of the transfer of monies to the Government under section 7;
 - (iii) the register kept under section 8(1);
 - (iv) any other records relating to the matters specified in subparagraphs (i) to (iv); and
 - (v) any other records relating to dormant accounts;
- (b) where records are -
 - (i) stored in electronic form, require the account provider or a person employed by the account provider to produce a written copy of those records; or
 - (ii) not in the English language, require the account provider or a person employed by the account provider to produce a copy of those records in the English language;
- (c) require a person by whom or on whose behalf a computer is or has been used to produce or store records or any person having charge of, or otherwise concerned with the operation of, the computer to afford the inspector all reasonable assistance in relation to the computer; and
- (d) remove and retain the records referred to in this subsection for such period as may be reasonable for further inspection or until the conclusion of any legal proceedings, subject to a warrant being issued for that purpose by a magistrate under subsection (6).

(2) A person who has in his power or possession any records referred to in subsection (1) shall -

- (a) produce them at the request of the inspector and permit the inspector to inspect and take copies of or extracts from them;
- (b) at the request of the inspector, give the inspector any information that the inspector may reasonably require in relation to any entries in those records and provide an explanation of any

apparent omissions from them or any omission of a record required to be produced; and

- (c) give any other assistance and other information to the inspector that is reasonable in the circumstances.

(3) The duty to produce or provide any record or information extends to an examiner, administrator, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of an account provider or who appears to the inspector to have the information or record in his possession or under his control in relation to the dormant account.

(4) For the purposes specified in section 10, an inspector shall not, except with the consent of the occupier, enter -

- (a) a dwelling; or
- (b) premises other than that of an account provider,

unless the inspector has obtained a warrant issued by a magistrate under subsection (6) authorizing the entry.

(5) Where an inspector considers it necessary, the inspector may be accompanied by a police officer when performing any powers conferred on the inspector under this section.

(6) If a magistrate is satisfied, on the sworn information of an inspector, that there are reasonable grounds for suspecting that there is information required by an inspector under this section held on any premises or any part of any premises, the magistrate may issue a warrant authorizing the inspector, accompanied by a police officer, at any time within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter the premises, and exercise all or any of the powers conferred on an inspector under this section or section 10.

(7) For the purposes of carrying out inspections under this section, the inspector shall have access to -

- (a) all records kept by the Minister and the Monetary Authority in relation to the transfer of monies to the Government; and
- (b) the certificates of compliance furnished to the Minister and the Monetary Authority under section 7.

(8) A person who -

- (a) obstructs an inspector in the exercise of a power under this section;
- (b) gives to an inspector information that the person knows is false or misleading; or

- (c) without reasonable excuse, fails to comply with a request or requirement made by an inspector under this section,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

12. (1) Where, following an inspection under section 11, the inspector is of the opinion that -

Report to Monetary Authority

- (a) there is reason to believe that an account provider is in breach of any provision of this Law; or
- (b) there is a material defect in the systems, procedures and practices referred to in section 10(1)(b),

the inspector shall prepare a report, in writing, and submit a copy of the report to the Monetary Authority.

(2) Subject to subsection (3), a dormant account holder shall not be referred to in a report under subsection (1), otherwise than for the purposes of subsection (3), by name or in any manner by which the dormant account holder could be identified as a dormant account holder.

(3) An inspector who, in the course of an inspection, obtains *prima facie* evidence of -

- (a) a possible underpayment or non-transfer of monies from a dormant account to the Government under section 7; or
- (b) a fraudulent claim for repayment under section 9,

shall submit to the Monetary Authority particulars of the evidence and of the dormant account and dormant account holder concerned.

(4) An inspector shall provide to the Monetary Authority any information and assistance that may reasonably be required by the Monetary Authority in respect of any matters relating to an inspection carried out under section 11 or for the purpose of clarifying any matter in the report under subsection (1).

13. (1) Subject to section 12(2), any prohibition or restriction imposed by law, including any contract, in relation to the disclosure of information does not apply in relation to -

Disclosure to the inspector

- (a) the disclosure of information in good faith to, or access to information by, an inspector for the purposes of his functions under this Law; or

- (b) any information that is contained in a report under section 12(1) and is information that in the inspector's opinion ought, in the public interest, to be so contained,

and no liability shall attach to the person or account provider making the disclosure.

(2) Nothing in this section or in section 12 compels the disclosure by any person of any information that the person would, in the opinion of any court, be entitled to refuse to produce on the grounds of legal professional privilege or authorizes the taking possession of any document containing such information that is in the person's possession.

Directions for compliance

14. (1) Without prejudice to any prosecution that might be brought under this Law, where a report under section 12(1) discloses particulars of -

- (a) non-compliance by an account provider with any provision of this Law; or
- (b) a material defect referred to in section 12(1)(b),

the Monetary Authority may, as soon as practicable after receiving the report, give, by notice in writing, directions to the account provider aimed at ensuring compliance or rectification of the material defect, as the case may be, subject to any terms and conditions that the Monetary Authority may specify in the directions.

(2) An account provider that fails to comply with a direction given under subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(3) It is a defence to a prosecution under subsection (2) for the account provider to prove that a direction given under subsection (1) was unreasonable having regard to -

- (a) the scope and terms of the provision of this Law that, in the opinion of the inspector, the account provider has breached; or
- (b) the nature and consequences of the alleged material defect.

Regulations for disclosure

15. (1) The Governor in Cabinet, in the interests of consumer protection and the proper and orderly regulation of account providers, may, for statistical purposes only, make regulations providing for the disclosure of the information specified in subsection (2) -

- (a) to the persons and subject to the conditions, including the payment of charges by the person seeking the information, that the Minister may determine; and

(b) in a form that the information cannot be directly or indirectly related to an identifiable person.

(2) The information referred to in subsection (1) is -

- (a) prescribed information from the register kept under section 8;
- (b) details of the classes of dormant accounts; and
- (c) the number of dormant accounts in each class.

16. (1) The Monetary Authority, a director, an inspector or an employee of the Authority shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith. Immunity

(2) An account provider, a director, an officer or an employee of an account provider shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith.

17. (1) Where a body corporate commits an offence under this Law, every director or other officer concerned in the management of the body corporate commits that offence unless the director, officer or employee proves that the offence was committed without his consent or connivance or that he exercised reasonable diligence to prevent the commission of the offence. Liability of directors etc. where an offence is committed by a body corporate

(2) In subsection (1), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

17A. The Governor in Cabinet may by Order published in the Gazette declare any type of financial institution to be an account provider where the Governor in Cabinet deems it to be in the national interest. Declaration by Governor in Cabinet of account provider

18. The Governor in Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law. Regulations

Publication in consolidated and revised form authorised by the Governor in Cabinet this 18th day of October, 2011.

Kim Bullings
Clerk of Cabinet

(Price \$ 4.00)