

**CAYMAN ISLANDS**



# **MONETARY AUTHORITY LAW**

**(2020 Revision)**

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**MONETARY AUTHORITY LAW**

**(2020 Revision)**

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## CAYMAN ISLANDS



## MONETARY AUTHORITY LAW

(2020 Revision)

## PART I - Preliminary

**Short title**

1. This Law may be cited as the *Monetary Authority Law (2020 Revision)*.

**Definitions**

2. In this Law —

“**advisory functions**” means the functions of the Authority specified in section 6(1)(d);

“**anti-money laundering regulations**” means regulations made under section 145 or section 201 of the *Proceeds of Crime Law (2020 Revision)*;

“**Authority**” means the Cayman Islands Monetary Authority referred to in section 5;

“**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 11;

“**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;

“**building society**” means a society incorporated under the *Building Societies Law (2020 Revision)*;

“**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;

“**Class “A” bank**” means a bank which is the holder of a licence under section 6(5)(a) of the *Banks and Trust Companies Law (2020 Revision)*;

“**co-operative functions**” means the functions of the Authority specified in section 6(1)(c);

“**credit union**” means a cooperative society registered under the *Cooperative Societies Law (2020 Revision)* and having as its objects —

- (a) the promotion of thrift among the members of the society by the accumulation of their savings;
- (b) the creation of sources of credit for the benefit of the members of the society at a fair and reasonable rate of interest;
- (c) the use and control of the members savings for their mutual benefit; and
- (d) the training and education of the members in the wise use of money and in the management of their financial affairs;

“**cross border supervision**” means supervision in relation to an entity located in the Islands but which is regulated by an overseas regulatory authority in another territory or country;

“**currency notes**” and “**coins**” mean, respectively, the currency notes and coins issued under this Law;

“**Currency Reserve**” means the reserve established under section 32;

“**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 29(3);

“**director**” means a director of the Authority appointed under section 12;

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

“**financial year**” means the financial year of the Authority as defined in section 39;

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

“**General Reserve**” means the reserve established under section 8;

“**head office**” means the head office of the Authority established under section 5(4);

“**licensee**” means a person holding a licence under the regulatory laws, and includes a building society and a credit union;

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

“**Management Committee**” means the committee established under section 16(1);

“**managing director**” means the managing director of the Authority appointed under section 13;

“**monetary functions**” means the functions of the Authority specified in section 6(1)(a);

“**money laundering**” has the meaning given by section 144(10) of the *Proceeds of Crime Law (2020 Revision)*;

“**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 travellers cheques; and
  - (v) such other services as the Cabinet 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;

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

- (a) any of the regulatory functions of the Authority; or

(b) any additional functions as may be specified in regulations including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority;

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

“**private sector association**” means an association specified in Schedule 3;

“**public officer**” has the meaning assigned to it by section 124(1) of the *Cayman Islands Constitution Order 2009 [UKSI 2009/1379]*;

“**regulatory functions**” means the functions of the Authority, specified in section 6(1)(b) or, in relation to an overseas regulatory authority, functions corresponding to the functions of the Authority, specified in section 6(1)(b);

“**regulatory handbook**” means the handbook issued by the board under section 48;

“**regulatory laws**” means any one or more of the following Laws and Regulations made under them —

(a) *Banks and Trust Companies Law (2020 Revision)*;

(b) *Building Societies Law (2020 Revision)*;

(c) *Companies Management Law (2018 Revision)*;

(d) *Cooperative Societies Law (2020 Revision)*;

(da) *Development Bank Law (2018 Revision)*;

(e) *Insurance Law, 2010 [Law 32 of 2010]*;

(f) *Money Services Law (2020 Revision)*;

(g) *Mutual Funds Law (2020 Revision)*;

(ga) *Directors Registration and Licensing Law, 2014, [Law 10 of 2014]*; and

(h) *Securities Investment Business Law (2020 Revision)*,

and any other laws that may be prescribed by the Cabinet by regulations made under section 46; and

“**relevant financial business**” has the meaning given by section 2 of the *Proceeds of Crime Law (2020 Revision)*; and

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

## References to Law include 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.



**Determination of fitness and propriety**

3. In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's —
- (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.

**Private sector consultation**

4. (1) When this Law requires private sector consultation in relation to a proposed measure —
- (a) the Authority shall give to each private sector association a draft of the proposed measure, together with —
    - (i) an explanation of the purpose of the proposed measure;
    - (ii) an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;
    - (iii) an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;
    - (iv) an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and
    - (v) notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3)); and
  - (b) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.
- (2) When this Law requires consultation with the Financial Secretary in relation to a proposed measure —
- (a) a copy of the representations made by the private sector associations (or, if not in writing, the Authority's account of them); and
  - (b) a copy of the Authority's response to the representations,
- shall be forwarded to the Minister charged with responsibility for Financial Services together with a draft of the proposed measure.
- (3) If the Authority considers that a measure is urgently required for the protection of members of the public, the Authority may specify a period less than thirty

days under subsection (1)(a)(v), or postpone private sector consultation until after the measure has been adopted.

- (4) The Cabinet may by Order amend Schedule 3.

## **PART II - Establishment, Capital and Administration of Authority**

### **Establishment of Authority**

5. (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.
- (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 chairperson 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.

### **Principal functions of Authority**

6. (1) The principal functions of the Authority are —
- (a) monetary functions, namely —
- (i) to issue and redeem currency notes and coins; and
- (ii) to manage the Currency Reserve,
- in accordance with this Law;
- (b) regulatory functions, namely —
- (i) to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;



- (ii) to monitor compliance with the anti-money laundering regulations; and
    - (iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;
  - (c) co-operative functions, namely, to provide assistance to overseas regulatory authorities in accordance with this Law; and
  - (d) advisory functions, namely, to advise the Government on the matters set out in paragraphs (a) to (c) and, in particular, with regard to —
    - (i) whether the regulatory functions and the co-operative functions are consistent with functions discharged by an overseas regulatory authority;
    - (ii) whether the regulatory laws are consistent with the laws and regulations of countries and territories outside the Islands; and
    - (iii) the recommendations of international organisations.
- (2) In performing its functions and managing its affairs, the Authority shall —
  - (a) act in the best economic interests of the Islands;
  - (b) promote and maintain a sound financial system in the Islands;
  - (c) use its resources in the most efficient and economic way;
  - (d) have regard to generally accepted principles of good corporate governance;
  - (e) comply with this and any other law, including any regulations or directions made or given thereunder; and
  - (f) have such ancillary powers as may be required to fulfil the functions set out in paragraphs (a) to (e).
- (3) In performing its regulatory functions and its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2) —
  - (a) endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;
  - (b) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
  - (c) recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;

- (d) recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (e) recognise the desirability of facilitating innovation in financial services business; and
  - (f) recognise the need for transparency and fairness on the part of the Authority.
- (4) In exercising its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2) —
- (a) have regard to the matters mentioned in section 50(4); and
  - (b) comply with section 50(8).

### **Authorised capital**

7. (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 Cabinet.
- (2) On the establishment of the Authority, such portion of the authorised capital, as the Cabinet 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 Cabinet.
- (3) The paid-up portion of the authorised capital may be varied, from time to time, by such amount as the Cabinet may approve.
- (4) The payment of any increase in the paid-up capital referred to in subsection (3) may be made by way of transfers from the General Reserve.
- (5) Where a variation of the paid-up portion of the authorised capital is approved by the Cabinet pursuant to subsection (3), and results in the paid up capital being reduced, any excess capital shall be transferred by the Authority to the general revenue of the Islands.

### **General Reserve**

8. (1) There shall be a General Reserve of the Authority to which shall be allocated any amounts that may become available under section 10.
- (2) In the event that the General Reserve, after the allocation of amounts under section 10, 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

9. 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

10. (1) The net profits of the Authority for each financial year shall be calculated in accordance with section 9 and shall be distributed as follows —
- (a) firstly, such amount from the net profits of the Authority as the board 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 32(7), be maintained at a level of at least one hundred per cent of the demand liabilities of the Authority;
  - (b) secondly, so long as the General Reserve established under section 8 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.

### Board of directors

11. (1) There shall be a board of directors of the Authority which, subject to this Law, shall be responsible for the governance, policy and performance of the Authority and the general conduct of its affairs and business.
- (2) The board shall consist of —
- (a) the managing director as an *ex officio* director; and
  - (b) not more than nine other directors (including the chairperson of the board and the deputy chairperson of the board),
- appointed in accordance with sections 12 and 13, each of whom shall be a fit and proper person and shall have demonstrated to the satisfaction of the Cabinet substantial knowledge and experience relevant to at least some of the functions of the Authority.

- (3) The chairperson of the board and the deputy chairperson of the board, respectively, shall be designated by the Cabinet.

### **Appointment of directors**

- 12.** (1) The directors referred to in paragraph (b) of section 11(2) shall be appointed by the Cabinet.
- (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 of three 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 Cabinet.
- (3) Paragraphs (b) and (c) of subsection (2) shall not apply to a director who is appointed managing director under section 13.
- (4) If any director appointed under subsection (1) dies, resigns or otherwise vacates that director's office before the expiry of the term for which that director has been appointed, another person may be appointed by the Cabinet for the unexpired period of the term of office of the director in whose place that person is appointed.

### **Appointment of managing director**

- 13.** (1) The Cabinet, after consultation with the board, shall appoint a fit and proper person to be the managing director.
- (2) The managing director shall be an employee of the Authority on such terms and conditions of service as the Cabinet, after consultation with the board, 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 that managing director by the board.
- (4) The managing director shall render that managing director's services exclusively to the Authority and shall be answerable to the board for that managing director's acts and decisions.
- (5) In the event of the absence, or inability to act of the managing director, the board —
- (a) may appoint a person to discharge the duties of the managing director during the period of the managing director's absence or inability; and
  - (b) shall forthwith notify the Minister charged with responsibility for Financial Services of an appointment made under paragraph (a).





- (6) An appointment made by the board under subsection (5) shall not exceed three months and in the event that the absence of the managing director or the inability of the managing director to act is anticipated to be for a period exceeding three months, the Cabinet may, after consultation with the board, appoint a person to discharge the duties of the managing director for the duration of the managing director's absence or inability.
- (7) Without prejudice to section 14(3), the Cabinet, on the recommendation of the board, shall terminate the appointment of the managing director.

### **Disqualification of directors**

14. (1) No person may be appointed as or remain a director of the Authority who is an elected member of the Legislative Assembly or an official member of the Cabinet.
- (2) The Cabinet shall terminate the appointment of any director who —
  - (a) resigns that director's office;
  - (b) becomes of unsound mind or incapable of carrying out that director's duties;
  - (c) becomes bankrupt, suspends payment to or compounds with that director's creditors;
  - (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
  - (e) commits serious misconduct in relation to that director's duties;
  - (f) is absent, without leave of the chairperson of the board, from three consecutive meetings of the board; or
  - (g) fails to comply with that director's obligations under section 18.
- (3) The Cabinet, in the public interest may terminate the appointment of any director.

### **Meetings and decisions of board**

15. (1) The chairperson 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 47.
- (2) At a meeting of the board, the chairperson of the board or, if that chairperson is not present, the deputy chairperson or, if that deputy chairperson is not present, a director chosen by the directors present, shall act as the chairperson of the meeting.
- (3) At every meeting of the board, a quorum shall consist of five 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 chairperson of the meeting shall, in addition, have a casting vote.

- (4) The board may act notwithstanding that a vacancy exists among the members or in the office of chairperson or deputy chairperson, 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,
- (5) The board shall have power to delegate from time to time —
  - (a) any of its duties and powers (other than a duty or power expressly imposed or conferred on the board by this Law), to the Management Committee; and
  - (b) any of its duties and powers (other than a licensing or supervisory power or duty), to a committee appointed by the board under section 17,and a decision of the Management Committee or a committee so appointed shall be deemed to be a decision of the board.
- (6) A delegation under paragraph (a) or (b) of subsection (4) is revocable at will and does not prevent the exercise by the board of any duties or powers so delegated.
- (7) For the purposes of this Law, a director shall be deemed to be present at a meeting of the board if that director gains access to the meeting by conference telephone or by some other conference facility.

### **Establishment of Management Committee**

- 16.** (1) Without prejudice to section 17, there is established a committee to be known as the Management Committee.
- (2) The Management Committee shall comprise —
    - (a) the managing director;
    - (b) a deputy managing director;
    - (c) the head of each regulatory and each supervisory division within the Authority, or such person as may be designated by the head to act in that head's absence; and
    - (d) such other senior officer of the Authority as the managing director may, with the approval of the board, designate.
  - (3) The managing director may designate an employee of the Authority to act as secretary to the Management Committee performing such duties as the Management Committee may determine.
  - (4) The board may, subject to section 15(4), by instrument in writing, delegate to the Management Committee such licensing, supervisory and other powers and



duties as the board sees fit; and the Management Committee shall, subject to section 48, exercise and carry out the powers and duties so delegated by the board.

### **Additional committees**

- 17.** (1) The board may appoint committees additional to the Management Committee, to assist the board in exercising the board's management functions under this Law, and shall appoint such persons as it sees fit to be members of the committees.
- (2) The managing director may designate a member of any such committee to act as secretary to the committee performing such duties as the committee may determine.
- (3) The board may, by instrument in writing, delegate to a committee appointed by the board under subsection (1), such powers and duties (other than licensing or supervisory powers or duties) as the board sees fit; and the committee shall exercise and carry out the powers and duties so delegated by the board.

### **Pecuniary interest of director or committee member**

- 18.** (1) If a director, a member of the Management Committee or a member of a committee appointed under section 17, 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, Management Committee or other committee, as the case may be, at which the contract, proposed contract, licence or other matter is the subject of consideration, that person 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.
- (2) A person who fails to comply with subsection (1) commits an offence and is 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 that person proves that that person did not know that the contract, proposed contract, licence or other matter in which that person 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, Management Committee or other committee, as the case may be.

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

### **Pecuniary interests for the purposes of section 18**

- 19.** (1) For the purposes of section 18, a director, a member of the Management Committee or a member of a committee appointed under section 17, shall be treated, subject to subsections (2) and (3) and to section 20, as having indirectly a pecuniary interest in a contract, proposed contract, licence or other matter if —
- (a) that person, or any nominee of that person, 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) that person 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) that person or any partner of that person 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 this section to be also the interest of the other.

### **Removal or exclusion of disability, etc.**

- 20.** (1) The Cabinet may, in the public interest and subject to such conditions as it 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 18 at any one time would be so great a proportion of the whole as to impede the transaction of business.
- (2) Nothing in section 18 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 Cabinet for the exercise of the powers conferred by subsection (1).
- (3) Section 18 shall 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 that director has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 18 shall not prohibit that director 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 that director's duty to disclose that director's interest.

### **Power to employ staff, etc.**

- 21.** (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, including one or more deputy managing directors 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 Cabinet.
- (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 Cabinet may, subject to such conditions as it 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**

### **Unit of currency**

- 22.** (1) The unit of currency of the Islands shall continue to be the Cayman dollar divided into one hundred cents.
- (2) The value of the Cayman dollar shall be equivalent to such an amount of currency of the United States of America as the Cabinet may, in accordance with the advice of the Authority, by Order made under 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 Cabinet 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 (2007 Revision)*.

### **Contracts, etc., to be made in currency**

**23.** 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.

### **Sole right of currency issue**

- 24.** (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 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**

- 25.** (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 22 as may, from time to time, be prescribed by the Cabinet 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**

**26.** 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**

- 27.** (1) Currency notes issued under this Law shall be of such denominations, of such form and design, printed from such plates, on such paper and authenticated in such manner as may, from time to time, be recommended by the Authority and approved by the Cabinet.
- (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 Cabinet.
- (3) When seeking approval from the Cabinet under this section, the Authority shall direct its communication in writing through the Minister charged with responsibility for Finance.

### **Legal tender**

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

**Calling-in of currency**

29. (1) The Authority may, with the approval of the Cabinet, 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.
- (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 Cabinet, 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.
- (4) When seeking approval from the Cabinet under this section, the Authority shall direct its communication in writing through the Minister charged with responsibility for Finance.

**Mutilated, etc., currency**

30. 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.

**Defacing, etc., of notes or coins**

31. A person who, 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 commits an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for three months.

**PART IV - Currency Reserve****Currency Reserve**

32. (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) marketable securities issued by such government agencies as may be approved by the Cabinet on the recommendation of the board; and
    - (vii) such other securities and investments not exceeding twenty-five per cent of the value of the Currency Reserve assets as may be authorised by the Cabinet on the recommendation of the board.
- (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 money at call or on deposit with such Class “A” banks as may be approved by the board.
- (6) The total of the value of the local assets referred to in subsection (5) shall not, at any time, exceed ten 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 25(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.

- (9) For the avoidance of doubt, it is hereby declared that the assets of the Currency Reserve shall not be the subject of any order for injunction, attachment, execution or similar order in any proceedings before any court or tribunal.

## PART V - Operations

### Relations with Government

33. (1) The Cabinet may, from time to time, after consultation with the board, give to the Authority, in writing, such general directions as appear to the Cabinet to be necessary in the public interest, and the Authority shall act in accordance with such directions.
- (2) If it appears to the Authority that the regulatory laws, or any regulations or directions made or issued thereunder, are to any extent inconsistent with the Authority's regulatory functions, the Authority shall make recommendations to the Cabinet and, if so required by the Minister charged with responsibility for Financial Services, shall conduct private sector consultation with respect to such recommendations.
- (3) In its relations with the Cabinet, the Authority shall direct its communication in writing through the Minister charged with responsibility for Financial Services.

### Relations with banks and other financial institutions

34. (1) After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may —
- (a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;
  - (b) issue or amend statements of guidance concerning the requirements of the anti-money laundering regulations or the provisions of the regulatory laws; and
  - (c) issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.
- (2) **Repealed** by section 6(b) of the *Monetary Authority (Amendment) Law, 2010 [Law 9 of 2010]*.
- (3) Rules or statements of principle or guidance issued under subsection (1) shall be consistent with this Law and the regulatory laws and with any regulations or directions made or given thereunder and shall state the provision of this Law,



the regulatory Law, the regulations or the directions, as the case may be, to which they relate.

- (4) The guidance notes referred to as “*The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands*” issued on the 13th December, 2017, shall be deemed to have been issued under subsection (1).
- (5) The Authority shall, without delay, publish in the Gazette notice of the issue or amendment of rules or statements of principle or guidance under subsection (1) and forward to the Minister charged with responsibility for Financial Services copies of the rules or statements of principle or guidance as issued or amended.
- (6) A breach of the rules or statements of principle or guidance issued under subsection (1) shall not constitute an offence, or of itself give rise to any right of action by persons affected, or affect the validity of any transaction.
- (7) Subsection (6) shall not affect the power to fine for a breach of a provision of the rules that is a prescribed provision.
- (8) 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 that person —
  - (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 its regulatory functions.
- (9) Where, in accordance with section 50, 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.
- (10) Where a person fails to comply with a requirement under subsection (8) or a direction given under subsection (9) 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.
- (11) Where, in connection with a requirement under subsection (8) or a direction given under subsection (9), 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.
- (12) The court shall process an application under subsection (11) within seven days of its receipt and shall send the results of the examination to the Authority within fourteen days of the examination.
- (13) Where documents are produced pursuant to subsection (8) or (9), the Authority may take copies of them or extracts from them.
- (14) A person shall not be required under this section to disclose information or to produce a document which that person 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 that attorney-at-law's client or principal.
- (15) Where a person claims a lien on a document, its production under this section is without prejudice to that person's lien.
- (16) (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 that professional legal adviser —
  - (i) by, or by a representative of, a client of that professional legal adviser 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 (8) and (9), a person is connected with a person regulated under the regulatory laws (“A”) if that person 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.
- (17) A person who, without reasonable cause —
- (a) fails to comply with a requirement of the Authority under subsection (8) or a direction of the Authority under subsection (9);
  - (b) with intent to avoid the provisions of subsection (8) or (9) destroys, mutilates, defaces, hides or removes a document; or
  - (c) wilfully obstructs an inquiry by the Authority, made in accordance with subsection (8) or (9),
- commits an offence and is 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 that person is convicted is continued after conviction that person commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.
- (18) (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, commits that offence and is 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 that member’s functions of management as if that member were a director of the body corporate.

- (19) Where a person complies with a requirement under subsection (8), a direction under subsection (9) or an order under subsection (10), or gives evidence under subsection (11), 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**

- 35.** (1) Where, in accordance with section 50, the Authority is satisfied that assistance should be provided in response to a request by an overseas regulatory authority, and that such assistance cannot be provided satisfactorily by means of its powers in section 34(9), the Authority may —
- (a) authorise a competent person to exercise any of its co-operative functions; and
  - (b) seek the assistance of the Commissioner of Police in the exercise of those functions.
- (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 that person has, if required, produced evidence of that person's 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, that person 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.
- (5) The Authority, any person authorised under subsection (1) or the commissioner of Police may apply to a Justice of the Peace, a Magistrate or a Judge of the Grand Court for a search warrant in pursuance of an investigation under subsection (2).

### **General powers**

- 36.** The Authority may —
- (a) purchase and sell gold coin and bullion;
  - (b) open and maintain accounts with local banks;



- (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 board;
- (g) borrow money, on such terms and conditions, as may be authorised by 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 37, 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.

### **Prohibited activities**

**37.** Except as expressly authorised by this Law, the Authority may not —

- (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**

### **Funds and resources of the Authority**

**38.** The funds and resources of the Authority shall comprise —



- (a) such monies as may be appropriated by law for the purposes of the Authority;
- (b) monies paid and property provided to the Authority by way of grants, rent, interest and other income derived from the investment of the Authority's funds;
- (c) monies derived from the disposal of or dealing with real or personal property held by the Authority;
- (d) monies borrowed by the Authority in accordance with this Law; and
- (e) any property lawfully received or made available to the Authority.

### Financial year

39. The financial year of the Authority shall be the date set out in paragraph (a) of the definition of “**financial year**” in section 2 of the *Public Management and Finance Law (2020 Revision)*.

### Application of the Public Management and Finance Law

40. The Authority is a statutory authority as defined in section 2 of the *Public Management and Finance Law (2020 Revision)* and accordingly that law applies, among other things, to —
- (a) the Authority's expenditure budget for each financial year; and
  - (b) the preparation, maintenance, auditing and publication of the Authority's accounts.

### Independent review of Authority's performance

41. (1) The Cabinet may, at any time, appoint an independent person to —
- (a) review the Authority's performance of any of its functions, including its observance of its general duties under section 6 and the regulatory handbook established under section 48; or
  - (b) enquire into any action or inaction of the Authority which appears to raise questions of importance to the public interest,
- and such appointment may include directions concerning the scope and conduct of the review or enquiry and the making of interim reports.
- (2) The person appointed under subsection (1) (“the appointed person”) may, subject to any directions given in that person's appointment —
- (a) obtain such information from such persons and in such manner as that person thinks fit;
  - (b) review or enquire into such matters as that person thinks fit; and
  - (c) determine the procedure to be followed in connection with the review or the enquiry.





- (3) The appointed person may require any person who, in that person's opinion, is able to provide any information or produce any document which is relevant to the review or enquiry to provide any such information or produce any such document, and for this purpose the appointed person shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.
- (4) Where a person fails to comply with a requirement imposed on that person under subsection (3), the appointed person may refer the matter to the Grand Court which may enquire into the matter and, if satisfied after hearing —
  - (a) any witness who may be produced against or on behalf of the person who fails to comply; and
  - (b) any statement made by or on behalf of such person,  
that such person would have been in contempt of court if the review or enquiry had been proceedings before the court, such person may be dealt with by the court in the same manner as if that person were in contempt of court.
- (5) The appointed person shall, upon the completion of the review or enquiry, make a written report to the Minister charged with responsibility for Financial Services setting out the result of the review or enquiry and making such recommendations (if any) as that person considers appropriate.
- (6) The report under subsection (5) shall be laid before the Legislative Assembly, subject to the removal of any material —
  - (a) which the Minister charged with responsibility for Financial Services considers to relate to the affairs of a particular person whose interests would be seriously and unfairly prejudiced by the publication; or
  - (b) whose disclosure, in the opinion of the Minister charged with responsibility for Financial Services, would be incompatible with the public interest or an international obligation of the Islands.
- (7) Expenses reasonably incurred in conducting a review or enquiry shall be paid out of the revenue of the Islands.

### **Surplus**

- 42.** Where there is a surplus on the budget approved for the Authority's expenditure for any financial year, such surplus shall be paid into the General Reserve unless otherwise agreed upon with the Cabinet.

## 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 in this Law, a regulatory law or the anti-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 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 (2019 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).



**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.
- (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) firstly, 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.

## **PART VII - General**

### **Immunity**

**43.** 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 and the regulatory laws unless it is shown that the act or omission was in bad faith.



## Indemnity

44. The Authority shall indemnify a director against all claims, damages, costs, charges or expenses incurred by that director in the discharge or purported discharge of that director's functions or duties under this Law and the regulatory laws, except claims, damages, costs, charges or expenses caused by the bad faith of that director.

## Exemption

45. The functions of the Authority shall be deemed not to be banking business for the purposes of the *Banks and Trust Companies Law (2020 Revision)*.

## Regulations

46. (1) The Cabinet may make regulations providing for such matters as may be contemplated by, or necessary for giving full effect to, this Law and for its administration including the charging of fees for any administrative service provided by the Authority to a licensee or to members of the public upon request.
- (2) Without prejudice to subsection (1), the fees prescribed in Schedule 2 shall be charged for the administrative services specified in relation thereto, and the Cabinet may, by regulations, amend that Schedule.
- (3) Regulations made under subsection (1) and providing for the charging of fees for administrative services, are subject to affirmative resolution of the Legislative Assembly.
- (4) Without prejudice to the generality of subsection (1), the Cabinet may, for the purpose of facilitating business continuity and disaster recovery, make regulations that authorise the Authority to exempt from any provision of this Law or the regulatory laws any person or class of persons that is affected by a disaster for such period of time as the Cabinet may stipulate.
- (5) Without prejudice to section 32 of the *Interpretation Law (1995 Revision)* or to any other provision of this Law, regulations under subsection (4) may provide for —
- (a) a financial service business that would otherwise be subject to regulatory laws to which the exemption relates and the conditions to which the exemption shall be subject;
  - (b) circumstances under which the Authority may withdraw the exemption from a person or class of persons;
  - (c) limitation of the exemption to some or all financial service businesses that would otherwise be subject to regulatory laws; or
  - (d) a stipulation that the exemption operates in respect of some or all regulated activities.

- (6) For the purposes of this section, “**disaster**” shall have the same meaning as in the *Disaster Preparedness and Hazard Management Law (2019 Revision)*.

### Rules

47. (1) The Authority may, subject to this Law, make such rules as it thinks fit to regulate its own internal management.
- (2) A copy of rules made under subsection (1) shall be forwarded to the Minister charged with responsibility for Financial Services.

### Regulatory handbook

48. (1) The board shall issue, and may amend, a regulatory handbook setting out, as far as is practicable, the policies and procedures to be followed by the Authority, its committees and its officers in performing the Authority’s regulatory functions and co-operative functions.
- (2) The regulatory handbook shall be consistent with any law or any regulations or policy directions given or made thereunder.
- (3) The regulatory handbook shall include policies and procedures for —
- (a) giving warning notices to persons affected adversely by proposed actions of the Authority;
  - (b) giving reasons for the Authority’s decisions; and
  - (c) receiving and dealing with complaints against the Authority’s actions and decisions.
- (4) In cases where the regulatory handbook would have the effect of creating, directly or indirectly, rules or statements of principle or guidance, the Authority shall consult with the private sector associations and the Minister charged with responsibility for Financial Services.
- (5) The regulatory handbook may provide for exceptions from its own requirements to be made by the board or a specified committee or officer of the Authority.
- (6) The Authority shall publish the regulatory handbook and any amendments to it in the Gazette, and the regulatory handbook and any such amendments shall take effect and come into operation on the date of such publication.
- (7) It shall be a duty of the board to ensure that the regulatory handbook is observed by the committees and officers of the Authority, to keep the regulatory handbook under continuing review, and to consult the Financial Secretary and the private sector associations on the extent to which the regulatory handbook could be made more consistent with section 6.

### Additional powers

49. The Cabinet may, by regulation subject to affirmative resolution, provide for the administration of any statutory function of government by the Authority.



**Confidentiality**

- 50.** (1) Subject to subsections (2) and (3), a person who is a director, officer, employee, agent or adviser of the Authority and who discloses any information —
- (a) relating to the affairs of the Authority;
  - (b) relating to any application made to the Authority or the Government under the regulatory laws;
  - (c) relating to the affairs of a licensee;
  - (d) relating to the affairs of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee; or
  - (e) shared by or with an overseas regulatory authority or any communication related thereto,
- that that person has acquired in the course of that person's duties or in the exercise of the Authority's functions under this or any other law, commits an offence and is 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) shall 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 it 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, member, client or policyholder of, or a company or mutual fund managed by, a licensee, with the authority of the licensee, customer, member, 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 Cabinet to exercise any functions conferred on it under this Law or regulations made thereunder or in connection with the dealings between the Cabinet 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, member, client or policyholder of, or company or mutual fund managed by, a licensee to which the information relates to be ascertained;
  - (g) lawfully made —

- (i) to the Director of Public Prosecutions or a law enforcement agency in the Islands, with a view to the institution of, or for the purpose of, criminal proceedings;
  - (ii) to a person pursuant to the anti-money laundering regulations; or
  - (iii) under subsection (3); 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 (8), where the Authority is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Authority —
  - (a) may disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority;
  - (b) shall keep a record of all such requests and disclosures and an inventory of the information disclosed;
  - (c) may, either at the time of request or at any time thereafter, consent to the use of the information for the purpose of —
    - (i) the conduct of civil and administrative enforcement proceedings;
    - (ii) assisting a self-regulatory organisation with surveillance or enforcement activities (insofar as the Authority is satisfied that the organisation is involved in the supervision of conduct that is the subject of the request); or
    - (iii) assisting a criminal investigation or prosecution of any charge applicable to the contravention of the provision specified in the request, where such charge pertains to a contravention of the laws and regulations administered by the requesting authority; and
  - (d) may, in accordance with rules of court, apply to a Judge of the Grand Court in Chambers for an order to protect the interest of investors, depositors, policy holders or beneficiaries of trusts, including an order —
    - (i) to freeze relevant assets or accounts;
    - (ii) to suspend the issue, repurchase or redemption of units or shares of regulated funds; or
    - (iii) to authorise any other action in accordance with any request made to the Authority by the overseas regulatory authority pursuant to, and in accordance with, the terms of a memorandum of understanding entered into between the Authority and the overseas regulatory authority; and





- (e) may permit the overseas regulatory authority to carry out, in relation to an entity in the Islands that is subject to its supervision or regulation, an on-site inspection or visit in a manner agreed in writing by the Authority and the overseas regulatory authority.
- (3A) Upon application made to the Grand Court pursuant to subsection (3)(d), the Court shall make such orders as it considers appropriate in the circumstances.
- (4) In deciding whether or not to assist an overseas regulatory authority (whether by use of the Authority's powers under subsection (3), section 34, section 35 or otherwise), the Authority shall take into account —
- (a) whether corresponding assistance would be given in the relevant country or territory to the Authority;
  - (b) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in the Islands or involve the assertion of a jurisdiction not recognised by the Islands; and
  - (c) whether it is in the public interest to give the assistance sought.
- (5) For the purposes of subsection (4)(a), 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) The Authority shall not give to an overseas regulatory authority any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless —
- (a) the Authority has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures; 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 and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that authority; and

- (d) the Authority is satisfied that information provided following the exercise of its powers, will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence of perjury.

### **Memoranda of understanding**

51. (1) The Authority may, in the exercise of its co-operative functions, after consultation with the Minister charged with responsibility for Financial Services, enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting cross border supervision with such authorities or for such other regulatory or supervisory purposes as the Authority may deem fit.
- (2) No memorandum of understanding may call for assistance beyond that which is provided for by this Law, or relieve the Authority of any of its functions or duties under this Law.
- (3) The Authority shall notify the Minister charged with responsibility for Financial Services of each memorandum of understanding entered into and promptly publish the memorandum of understanding in the Gazette.

### **Disclosure to regulators**

52. Where a person regulated under the regulatory laws provides information to the Authority or, in the case of a foreign branch or subsidiary, to an overseas regulatory authority that regulates its parent company, for the purpose of cross border supervision, the provision of the information shall not be treated as a breach of any restriction upon the disclosure of information by or under any Law and the fact of such provision of information shall not give rise to any criminal or civil liability.

## **PART VIII – Savings and Transitional**

### **Savings of the Cayman Islands Currency Order, 1974**

53. The Cayman Islands Currency Order, 1974 shall, insofar as it is not inconsistent with the provisions of this Law, continue in force as if made under this Law.

### **Transitional provision for the *Monetary Authority (Amendment) Law, 2016* [Law 27 of 2016]**

54. The Authority shall not impose a fine for a breach that happened before 15th December, 2017, the date of commencement of Part VIA.



## SCHEDULE 1

(section 34(1))

### **Regulation of Banks, Trust Companies, Company Management, Insurance Companies, Mutual Funds, Money Services Businesses, Credit Unions and Building Societies**

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 (1995 Revision)* is to be read as a reference to the Authority.

## SCHEDULE 2

(section 46)

### Fees

Column 1 Item	Column 2 Description of Fee	Column 3 Fee
1.	Letter confirming registration or licensed status of Authority regulated entity and status of regulatory filings	\$800
2.	Approval by the Authority of the appointment of a new Director of a licensee	\$1,000
3.	Voluntary surrender of a licence or registration certificate to the Authority	\$600
4.	Application for a change in shareholding of a licensee	\$1,000
5.	Application for the appointment of a Senior Officer or Manager to a licensee	\$1,000
6.	Application for the variation of the terms of a licence	\$1,000
7.	Application for change of business plan of a licensee	\$1,000
8.	Application for a certified copy of a licence or certificate	\$300
9.	Application for an extension to the filing of audited financial statements	\$500
10.	Application for an exemption or waiver	\$500
11.	Application for the use of a restricted word	\$600
12.	Application for a change of an appointed service provider to a licensee	\$500
13.	Application for a change of name	\$500
14.	Filing for amendments or supplements of offering documents	\$100
15.	Photocopying of — (a) applications for registering or licensing mutual funds; (b) reporting forms; (c) offering documents; or (d) other constitutive documents	\$25
16.	Auditor's application for approval for local audit sign-off	\$15,000



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**SCHEDULE 3***(sections 2 and 4(4))***Private Sector Associations**

Alternative Investment Management Association (Cayman Islands)  
Cayman Islands Association of Insurance and Financial Advisors  
Cayman Islands Bankers Association  
Cayman Islands Company Managers Association  
Cayman Islands Directors Association  
Cayman Islands Financial Services Association  
Cayman Islands Fund Administrators Association  
Cayman Islands Insurance Association  
Cayman Islands Legal Practitioners Association  
Cayman Islands Society of Professional Accountants  
Chartered Financial Analysts Society of the Cayman Islands  
Cayman Islands Compliance Association  
Insurance Managers Association of Cayman  
Society of Trust and Estate Practitioners (Cayman Islands).

**Publication in consolidated and revised form authorised by the Cabinet this 7th day  
of January, 2020.**

**Kim Bullings**  
*Clerk of the Cabinet*





## ENDNOTES

### Table of Legislation History:

SL#	Law #	Legislation	Commencement	Gazette
	20//2019	Monetary Authority (Amendment) (No. 2) Law, 2019	8-Aug-2019	LG28/2019/s11
	6//2019	Monetary Authority (Amendment) Law, 2019	15-May-2019	LG16/2019/s6
9/2019		Legal Associations (Miscellaneous Amendments) Law, 2018 (Commencement) Order, 2019	19-Feb-2019	LG2/2019/s13
	29/2018	Legal Associations (Miscellaneous Amendments) Law, 2018 (part)	21-Feb-19	GE97/2018/s4
		<b>Monetary Authority Law (2018 Revision)</b>	23-Mar-2018	GE24/2018/s3
97/2017		Monetary Authority (Amendment) Law, 2016 (Commencement) Order, 2016	15-Dec-2017	GE106/2017/s1
	27/2016	Monetary Authority (Amendment) Law, 2016	15-Dec-2017	GE93/2016/s5
		<b>Monetary Authority Law (2016 Revision)</b>	2-Sep-2016	GE69/2016/s16
	11/2015	Monetary Authority (Amendment) Law, 2015	12-Oct-2015	G21/2015/s1
		<b>Monetary Authority Law (2013 Revision)</b>	1-Nov-2013	GE87/2013/s1
	5/2013	Monetary Authority (Amendment) Law, 2013	6-May-2013	G9/2013/s1
79/2012		Monetary Authority (Fees) Regulations, 2012	13-Dec-2012	GE125/2012/s19
		<b>Monetary Authority Law (2011 Revision)</b>	7-Nov-2011	G23/2011/s7
	9/2010	Monetary Authority (Amendment) Law, 2010	26-Apr-2010	G9/2010/s13
		<b>Monetary Authority Law (2010 Revision)</b>	8-Nov-2010	G23/2010/s11
	32/2009	Monetary Authority (Amendment) Law, 2009	29-Dec-2009	GE91/2009/s2
		<b>Monetary Authority Law (2008 Revision)</b>	21-Jul-2008	G15/2008/s1
	20/2007	Monetary Authority (Amendment) Law, 2007	4-Feb-2008	G3/2008/s2
		<b>Monetary Authority Law (2004 Revision)</b>	23-Aug-2004	G17/2004/s1
	35/2003	Monetary Authority (Amendment) Law, 2003	27-Jan-2004	G2/2004/s4
		<b>Monetary Authority Law (2003 Revision)</b>	28-Jul-2003	G15/2003/s5
34/2003		Monetary Authority (Amendment) Law, 2002 (Commencement) Order, 2003	12-Mar-2003	GE10/2003/s4
	34/2002	Monetary Authority (Amendment) Law, 2002	1-Aug-2003	GE5/2003/s4
		<b>Monetary Authority Law (2002 Revision)</b>	2-Jul-2002	G13/2002/s7
	22/2001	Monetary Authority (Amendment) (Fees) Law, 2001	24-Sep-2001	G20/2001/s3
		<b>Monetary Authority Law (2001 Revision)</b>	23-Apr-01	G9/2001/s5
	12/2000	Monetary Authority (Amendment) (Regulation of Non-Bank Financial Institutions) Law, 2000	20-Nov-2000	G24/2000/s1

SL#	Law #	Legislation	Commencement	Gazette
		<b>Monetary Authority Law (2000 Revision)</b>	11-Sep-2000	G19/2000/s8
	6/2000	Monetary Authority (Amendment) (International Co-operation) Law, 2000	24-Jul-2000	GE7/2000/s4
		<b>Monetary Authority Law (1998 Revision)</b>	31-Aug-1998	G18/1998/s4
	7/1998	Monetary Authority (Amendment) (Reserves) Law, 1998	11-May-1998	G10/1998/s2
	14/1997	Monetary Authority (Amendment) (Membership) Law, 1997	15-Sep-1997	G19/1997/s12
11/1996		Monetary Authority (Amendment) Law, 1996 (Commencement) Order, 1996	9-Dec-1996	G25/1996/s5
	16/1996	Monetary Authority Law, 1996	1-Jan-1997	G25/1996/s4

(Price: \$9.60)

