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Regulatory Policy Applications for the use of Restricted Words

1. Statement of Objectives

To set out the criteria and conditions under which the Cayman Islands Monetary Authority ("the Authority") may permit persons or entities to use words the use of which is restricted under the Banks and Trust Companies Law (as amended), the Building Societies Law (as amended), the Companies Management Law (as amended), the Cooperative Societies Law (as amended), the Insurance Law (as amended), the Mutual Funds Law (as amended) and the Securities Investment Business Law (as amended) (collectively the "Regulatory Laws").

2. Definitions

- 2.1. Relevant Regulatory Law – the Regulatory Law which restricts the use of the word or language which an entity proposes to use.
- 2.2. Regulated Entities – are entities which are licensed by or registered under the relevant Regulatory Law.
- 2.3. Regulated Activities – are activities which are regulated under the relevant Regulatory Law.
- 2.4. Unregulated Entities – are entities which are not licensed by or registered under the relevant Regulatory Law.

3. Introduction

Regulated Entities

- 3.1. Pursuant to the Regulatory Laws regulated entities are prevented from using a name or language in the title or description of their business which:
 - 3.1.1 is either identical or similar to the name of another entity;
 - 3.1.2 falsely suggests a connection to another person, entity, Government or Royalty; or
 - 3.1.3 falsely suggests that the Regulated Entity has a special status conferred by the Government or any of its departments or officials.



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Unregulated Entities

3.2. Pursuant to the Banks and Trust Companies Law, the Insurance Law, the Mutual Funds Law and the Securities Investment Business Law, unregulated entities are restricted from using words or language in their names, description or title that suggest a connection to these regulated sectors, without the approval from the Authority.

4. Scope of Application

- 4.1. This policy applies to any person or entity that wishes to use a restricted word, whether or not that person or entity is regulated by the Authority.
- 4.2. The Authority may require a Regulated Entity to change its name if it is contrary to the prohibitions listed in Section 3 of this Policy.
- 4.3. Unregulated entities must apply to the Authority for approval prior to using a restricted word, as described in Section 7.

5. Criteria and Conditions for Approval

Criteria for regulated entities

Identical or Similar Names

- 5.1. In assessing whether a proposed name would so nearly resemble the name of any company, firm or business house, whether within the Islands or not ("existing entity"), the Authority will consider the following factors:
 - 5.1.1 the degree of resemblance in appearance or sound between the proposed name and the name of the existing entity;
 - 5.1.2 if there are one or more common or similar elements between the proposed name and the existing entity, the extent to which this is likely to lead to confusion having regard to the following factors:
 - a) whether the existing entity has developed a distinctive brand in terms of the common element,
 - b) how long the existing entity has used the similar name,
 - c) the existing entity's operating status (i.e., inactive or no longer undertaking new business), and



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- d) how descriptive the common or similar elements are of the function, quality or other characteristics of the business or activities of the existing entity;
- 5.1.3 if there are one or more distinct elements between the proposed name and the name of an existing entity, the extent to which this is likely to reduce or eliminate the potential confusion between the proposed name and the name of the existing entity (i.e., how would these elements, alone or together with any of the common or similar elements, describe any specific function, quality or characteristic of the current or proposed business or activities of the Regulated Entity, or the Regulated Entity's corporate relationship with other entities);
- 5.1.4 other factors that may likely cause, reduce or eliminate confusion:
 - a) the nature of the products or services offered by the Regulated Entity versus those associated with an existing entity, including the likelihood of any competition between the Regulated Entity and the existing entity,
 - b) the jurisdiction of operation of an existing entity; and
 - c) the nature and extent of the distribution channels and the target market(s) of the Regulated Entity versus those used by an existing entity, including an assessment of the current and potential customers of both the Regulated Entity and the existing entity.

Connection with an Authority, Government, Royalty or Special Status

- 5.2. In assessing whether a name suggests a connection to an Authority, Government, Royalty or that the entity benefits from a special status in relation to or derived from Government, the Authority will consider whether:
 - 5.2.1 the contentious word or words have any meaning other than that associated with an Authority, Government, Royalty or other word that suggests a special status;
 - 5.2.2 other commonly known entities use the word as part of their name; and
 - 5.2.3 on the whole, whether the name of the entity suggests that the entity is connected with an Authority, Government or Royalty or benefits from special status.
- 5.3. These considerations will determine if the proposed name suggests a connection with or the potential of favourable treatment by Government, aside from the entity's status as an entity regulated by the Authority.



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Criteria for unregulated entities

5.4. In considering whether to permit an Unregulated Entity to use a restricted word reflecting the regulated sectors, the Authority must be satisfied that the approval will not create a misrepresentation to the public. The Authority will not approve for an Unregulated Entity to use a regulated name or description which is part of an apparent attempt to mislead or defraud the public. Otherwise, in exercising its discretion, the Authority will take into account the following criteria:

- a) the extent to which the restricted word is indicative of the regulated activity and therefore if its use could mislead the public into thinking that the Unregulated Entity is a Regulated Entity;
- b) the nature of the business actually carried on by the unregulated entity, i.e. whether the unregulated entity carries on a business which is akin to the Regulated Activity; and
- c) whether the Unregulated Entity is part of a larger group whose parent is incorporated or located in or outside the Cayman Islands and has a well-established brand name which includes a regulated word (and the use of that word is not unlawful in the place where the parent is incorporated or located).

5.5. The Authority will consider 5.4 a) as over-riding in order to protect the public from the misrepresentation that an entity is regulated. The distinction between regulated and unregulated entities would be blurred by the use of some language which is clearly misleading e.g. "ebank". The blurring of the distinction between regulated and unregulated entities could be used by unscrupulous entities and presents a risk to the public.

5.6. Where a name or description which includes a restricted word is not clearly misleading, but could be depending on context, the Authority will have regard to criterion b) in paragraph 5.4. If the Unregulated Entity engages in business which is akin to the business regulated under the Relevant Regulatory Law then the Authority will not normally give consent to use the restricted word(s).

5.7. Criterion c) in paragraph 5.4 above will be regarded as subsidiary to the other two. That is, where the Unregulated Entity concerned wishes to use a restricted word which is not clearly misleading and the Unregulated Entity does not engage in business which is akin to the Regulated Activities, the use of a name which is the existing well-established brand name of its parent entity may be an additional factor which would influence the Authority to grant consent to the use of the name



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in question.

6. Conditions

6.1. The Authority may attach conditions to its consent for the use of a restricted word. Such conditions may include, but are not limited to, the following:

- a) the approved entity should not engage, now or in the future, in business activities which are akin to regulated activities;
- b) the approved entity should agree to provide the Authority whatever additional information may be required from time to time for the purpose of ascertaining whether the conditions attached to a specific consent are being fulfilled.

7. Documents/Information to be submitted

7.1. This paragraph outlines the relevant information and documents that should be submitted to the Authority in support of a request for a restricted word application. Applications should be made in advance of the use by any entity of the restricted word as use of a restricted word could be an offence pursuant to the Regulatory Laws. The applicant should provide the following information to the Authority:

- a) the proposed restricted word in the name or description of the entity;
- b) the reasons for the desired use of the restricted word;
- c) a detailed description of the nature of the actual or proposed business activities;
- d) when and where the business will be or has been carried on;
- e) the date and place of incorporation (if relevant);
- f) certified true and correct copy of the current constitutional documents;
- g) organisational chart for applicant group of companies if 4.4(c) applies;
- h) contact information for the applicant; and
- i) any other information the Authority may require.