

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE TERRORISM LAW (2009
REVISION) IN ORDER TO IMPOSE FINANCIAL RESTRICTIONS ON,
AND IN RELATION TO, CERTAIN PERSONS BELIEVED OR
SUSPECTED TO BE, OR TO HAVE BEEN, INVOLVED IN TERRORIST
ACTIVITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES.**

MEMORANDUM OF OBJECTS AND REASONS

On 28 September, 2001 the UN Security Council passed Resolution 1373 requiring all states to freeze the assets of terrorists.

On 9 October, 2001, the UK passed an Order in Council under the UN Act to give effect to UNSCR 1373 in the UK. On the same day separate Orders in Council covering the Crown Dependencies and Overseas Territories (including the Cayman Islands) were passed.

In early 2010, the UK Supreme Court quashed the UK's Order in Council on grounds of vires. The Court's judgment also rendered the Orders in Council covering the Crown Dependencies and Overseas Territories vulnerable to being quashed.

The Emergency Act passed by the UK Treasury in February 2010 reversed the effect of the Supreme Court ruling and maintained the vires validity of the quashed UK Orders in Council. It also provided protection from vires challenge for the Orders in Council covering the Crown Dependencies and Overseas Territories until December 2010.

The Terrorist Asset-Freezing etc Act, passed in December 2010, puts the UK's domestic terrorist asset freezing regime on a permanent legislative footing.

Section 54 of the Act extends the vires protection to the Orders in Council covering the Crown Dependencies and Overseas Territories until 31 March, 2011. Section 54 also provides that the UK Government may by Order in Council extend the provisions of Part 1 of the Act (i.e. the part relating to terrorist asset freezing), with or without modifications, to any of the Channel Islands, the Isle of Man or any British Overseas Territory.

As a result of the above the Cayman Islands Government has agreed to have this legislation in place by 31 March, 2011 in order to ensure that a proper legislative base is provided for terrorist asset freezing as mandated by UNSCR 1373.

Clause 1 of the Bill provides the short title.

Clause 2 amends the Terrorism Law (2009 Revision) by inserting a new Part IIIA containing section 29A. Section 29A provides that there will be a Schedule 4A which would empower the Governor to designate a person as being involved in terrorist activities and to direct the freezing of funds and economic sources of such designated persons.

Clause 3 inserts the new Schedule 4A.

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE TERRORISM LAW (2009 REVISION) IN ORDER TO IMPOSE FINANCIAL RESTRICTIONS ON, AND IN RELATION TO, CERTAIN PERSONS BELIEVED OR SUSPECTED TO BE, OR TO HAVE BEEN, INVOLVED IN TERRORIST ACTIVITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES.

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Terrorism (Amendment) Law, 2011.

Short title

2. The Terrorism Law (2009 Revision) is amended by inserting after Part III the following Part-

Amendment of the
Terrorism Law (2009
Revision)- insertion of
new Part

“PART IIIA- FREEZING OF FUNDS AND DESIGNATION BY GOVERNOR, ETC

“ Freezing of terrorist funds

29A. Schedule 4A has effect for the purpose of empowering the Governor to-

- (a) designate persons as being involved in terrorist activities; and
- (b) direct, as a result of such designation, the freezing of funds and economic sources of such persons.”.

Amendment of the
Terrorism Law (2009
Revision)- insertion of
new Schedule

3. The Terrorism Law (2009 Revision) is amended by inserting after Schedule 4 the following Schedule-

“SCHEDULE 4A

FREEZING OF FUNDS, ETC. OF DESIGNATED PERSONS

PRELIMINARY

Interpretation

1. In this Schedule-

“Caymanian” means a person who possesses Caymanian status under the repealed Immigration Law (2003 Revision) or any earlier law providing for the same or similar rights, and includes a person who acquired that status under Part III of the Immigration Law (2010 Revision);

“designated person” has the meaning given by paragraph 2;

“economic resources” has the meaning given by paragraph 39(2);

“final designation” means a designation under paragraph 3 including any renewed designation;

“financial services” has the meaning given by paragraph 40;

“funds” has the meaning given by paragraph 39(1);

“government entity” means any body of the Cayman Islands Government and includes a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner and the Audit Office;

“interim designation” means a designation under paragraph 7;

“relevant institution” means-

- (a) the Cayman Islands Monetary Authority; or
- (b) a body or person who is part of the regulated sector;

“relevant Security Council resolutions” meanS-

- (a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001; and
- (b) resolution 1452 (2002) adopted by the Security Council of

the United Nations on 20th December 2002; and
“terrorist activity” has the meaning given by paragraph 3(2).

TERRORIST ASSET-FREEZING

Designated persons

Introductory

Meaning of “designated person”

2. In this Schedule “designated person” means a person designated by the Governor for the purposes of this Schedule.

Final designations

Governor’s power to make final designation

3. (1) The Governor may make a final designation of a person for the purposes of this Schedule if the United Nations Security Council has advised that measures should be taken in relation to a person because of the risks of terrorist activities being carried on by that person.

(2) The Governor may also make a final designation of a person for the purposes of this Schedule-

- (a) if he reasonably believes-
 - (i) that the person is or has been involved in terrorist activity;
 - (ii) that the person is owned or controlled directly or indirectly by a person within sub-subparagraph (i);
or
 - (iii) that the person is acting on behalf of or at the direction of a person within sub-subparagraph (i);
and
- (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

(3) For the purposes of this Schedule involvement in terrorist activity means any one or more of the following-

- (a) the commission, preparation or instigation of acts of terrorism;

- (b) conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so;
- (c) conduct that gives support or assistance to persons who are known or believed by the person concerned to be involved in conduct falling within paragraph (a) or (b).

(4) It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.

Notification of final designation

4. (1) Where the Governor makes a final designation of a person, he shall-

- (a) give written notice of the designation to the designated person; and
- (b) cause the designation to be published in accordance with this paragraph.

(2) Unless one or more of the conditions set out in subparagraph (3) is met, the Governor shall cause the designation to be published by notice in the Gazette.

(3) The conditions referred to in subparagraph (2) are that-

- (a) the Governor believes that the designated person is an individual under the age of eighteen; or
- (b) the Governor considers that disclosure of the designation should be restricted-
 - (i) in the interests of national security;
 - (ii) for reasons connected with the prevention or detection of serious crime; or
 - (iii) in the interests of justice.

(4) If one or more of the conditions in subparagraph (3) is met, the Governor shall inform only such persons as he considers necessary; but where the condition no longer exists the Governor shall-

- (a) give written notice of that fact to the designated person; and
- (b) cause the designation to be published by notice in the Gazette.

Duration of final designation

5. (1) A final designation expires at the end of the period of one year

beginning with the date on which it was made, unless it is renewed.

(2) The Governor may renew a final designation at any time before it expires, if the requirements in paragraph 3(1) or (2) (a) and (b) continue to be met.

(3) A renewed final designation expires at the end of the period of one year beginning with the date on which it was renewed, or last renewed, unless it is renewed again.

(4) Paragraph 4 applies where a final designation is renewed, or further renewed, as in relation to the original making of a final designation.

(5) Where a final designation expires the Governor shall-

- (a) give written notice of that fact to the designated person; and
- (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.

Variation or revocation of final designation

6. (1) The Governor may vary or revoke a final designation at any time.

(2) Where a final designation is varied or revoked the Governor shall-

- (a) give written notice of the variation or revocation to the designated person; and
- (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

Interim designations

Governor's power to make interim designation

7. (1) The Governor may make an interim designation of a person for the purposes of this Schedule if the United Nations Security Council has advised that measures should be taken in relation to a person because of the risks of terrorist activities being carried on by that person.

(2) The Governor may also make an interim designation of a person for the purposes of this Schedule if-

- (a) he reasonably suspects-
 - (i) that the person is or has been involved in terrorist activity;
 - (ii) that the person is owned or controlled directly or indirectly by a person within sub-subparagraph (i); or
 - (iii) that the person is acting on behalf of or at the direction of a person within sub-subparagraph (i); and
- (b) he considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

(3) Paragraph 4(2), (3) and (4) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

(4) The Governor shall not make more than one interim designation of the same person in relation to the same, or substantially the same, evidence.

Notification of interim designation

8. (1) Where the Governor makes an interim designation of a person, he shall-

- (a) give written notice of the designation to the designated person; and
- (b) cause the designation to be published in accordance with this paragraph.

(2) Unless one or more of the conditions set out in subparagraph (3) is met, the Governor shall publicise the designation by notice in the Gazette.

(3) The conditions referred to in subparagraph (2) are that-

- (a) the Governor believes that the designated person is an individual under the age of eighteen; or
- (b) the Governor considers that disclosure of the designation should be restricted-
 - (i) in the interests of national security;
 - (ii) for reasons connected with the prevention or detection of serious crime; or
 - (iii) in the interests of justice.

(4) If one or more of those conditions is met, the Governor shall inform only such persons as he considers necessary; but where the condition no longer exists the Governor shall-

- (a) give written notice of that fact to the designated person; and
- (b) cause the designation to be published by notice in the Gazette.

Duration of interim designation

9. (1) An interim designation expires-

- (a) at the end of the period of thirty days beginning with the date on which it was made; or
- (b) on the making of a final designation in relation to the same person,

whichever is the earlier.

(2) Where an interim designation expires the Governor shall-

- (a) give written notice of that fact to the designated person; and
- (b) take reasonable steps to bring that fact to the attention of the persons informed of the designation.

(3) Where an interim designation expires on the making of a final designation in relation to the same person-

- (a) a notice under subparagraph (2) may be combined with a notice under paragraph 4(1)(a); and
- (b) steps under subparagraph (2) may be combined with steps under paragraph 4 to publicise the final designation.

Variation or revocation of interim designation

10. (1) The Governor may vary or revoke an interim designation at any time.

(2) Where an interim designation is varied or revoked the Governor shall-

- (a) give written notice of the variation or revocation to the designated person; and
- (b) take reasonable steps to bring the variation or revocation to the attention of the persons informed of the designation.

Confidential information

Confidential information

11. (1) Where the Governor, in accordance with paragraph 4(4) or 8(4), informs only certain persons of a designation, he may specify that information contained in it is to be treated as confidential.

(2) A person who-

- (a) is provided with information that is to be treated as confidential in accordance with subparagraph (1); or
- (b) obtains such information,

shall not, subject to subparagraph (3), disclose it if he knows, or has reasonable cause to suspect, that the information is to be treated as confidential.

(3) The prohibition in subparagraph (2) does not apply to any disclosure made by the person with lawful authority.

(4) For the purposes of this paragraph information is disclosed with lawful authority if-

- (a) the disclosure is by, or is authorised by, the Governor;
- (b) the disclosure is by, or with the consent of, the designated person;
- (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of this Schedule or any other enactment; or
- (d) the disclosure is required, under rules of court, tribunal rules or a court or tribunal order, for the purposes of legal proceedings of any description.

(5) This paragraph does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.

(6) A person who contravenes the prohibition in subparagraph (2) commits an offence.

Prohibitions in relation to designated persons

Freezing of funds and economic resources

12. (1) A person shall not deal with funds or economic resources owned, held or controlled by a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is dealing with such funds or economic resources.

(2) In subparagraph (1) “deal with” means-

(a) in relation to funds-

- (i) use, alter, move, allow access to or transfer;
- (ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
- (iii) make any other change that would enable use, including portfolio management; and

(b) in relation to economic resources, exchange or use in exchange for funds, goods or services.

(3) Subparagraph (1) is subject to paragraphs 17 and 18.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence.

Making funds or financial services available to designated person

13. (1) A person shall not make funds or financial services available, directly or indirectly, to a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the funds or financial services so available.

(2) Subparagraph (1) is subject to paragraphs 17 and 18.

(3) A person who contravenes the prohibition in subparagraph (1) commits an offence.

Making funds or financial services available for benefit of designated person

14. (1) A person shall not make funds or financial services available to any person for the benefit of a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the

funds or financial services so available.

(2) For the purposes of this paragraph-

- (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraphs 17 and 18.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence.

Making economic resources available to designated person

15. (1) A person shall not make economic resources available, directly or indirectly, to a designated person if the first-mentioned person knows, or has reasonable cause to suspect-

- (a) that he is making the economic resources so available; and
- (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Subparagraph (1) is subject to paragraph 18.

(3) A person who contravenes the prohibition in subparagraph (1) commits an offence.

Making economic resources available for benefit of designated person

16. (1) A person shall not make economic resources available to any person for the benefit of a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the economic resources so available.

(2) For the purposes of this paragraph-

- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or

partly responsible.

(3) Subparagraph (1) is subject to paragraph 18.

(4) A person who contravenes the prohibition in subparagraph (1) commits an offence.

Exceptions and licences

Exceptions

17. (1) The prohibitions in paragraphs 12 to 14 are not contravened by a relevant institution crediting a frozen account with-

- (a) interest or other earnings due on the account; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in paragraphs 13 and 14 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution shall inform the Governor without delay if it credits a frozen account in accordance with subparagraph (1)(b) or (2).

(4) In this paragraph “frozen account” means an account with a relevant institution which is held or controlled, directly or indirectly, by a designated person.

Licences

18. (1) The prohibitions in paragraphs 12 to 16 do not apply to anything done under the authority of a licence granted by the Governor.

(2) A licence shall specify the acts authorised by it and may be-

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions; and
- (c) of indefinite duration or subject to an expiry date.

(3) The Governor may vary or revoke a licence at any time.

(4) On the grant, variation or revocation of a licence, the Governor

shall-

- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as he considers appropriate to publicise the grant, variation or revocation of the licence.

(5) A person commits an offence who, for the purpose of obtaining a licence, knowingly or recklessly-

- (a) provides information that is false in a material respect; or
- (b) provides or produces a document that is not what it purports to be.

(6) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

Circumventing prohibitions etc.

Circumventing prohibitions etc.

19. A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly)-

- (a) to circumvent any of the prohibitions in paragraphs 12 to 16; or
- (b) to enable or facilitate the contravention of any such prohibition.

Information

Information for Governor

Reporting obligations of relevant institutions

20. (1) A relevant institution shall inform the Governor as soon as practicable if-

- (a) it knows, or has reasonable cause to suspect, that a person-
 - (i) is a designated person; or
 - (ii) has committed an offence under any provision of paragraphs 12 to 16; and

- (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.
- (2) Where a relevant institution informs the Governor under subparagraph (1), it shall state-
 - (a) the information or other matter on which the knowledge or suspicion is based; and
 - (b) any information it holds about the person by which the person can be identified.
- (3) Subparagraph (4) applies if-
 - (a) a relevant institution informs the Governor under subparagraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person; and
 - (b) that person is a customer of the institution.
- (4) The relevant institution shall also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.
- (5) A relevant institution that fails to comply with any requirement of subparagraph (1), (2) or (4) commits an offence.

Powers to request information

21. (1) The Governor may request a designated person to provide information concerning-
- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person; or
 - (b) any disposal of such funds or economic resources.
- (2) The Governor may request a designated person to provide such information as the Governor may reasonably require about expenditure-
- (a) by or on behalf of the designated person; or
 - (b) for the benefit of the designated person.
- (3) The power in subparagraph (1) or (2) is exercisable only where the Governor believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Schedule.
- (4) The Governor may request a person acting under a licence granted under paragraph 18 to provide information concerning-

- (a) funds or economic resources dealt with under the licence; or
- (b) funds, economic resources or financial services made available under the licence.

(5) The Governor may request any person in or resident in the Islands to provide such information as the Governor may reasonably require in order to-

- (a) establish for the purposes of this Schedule-
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person;
 - (ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated person; or
 - (iii) the nature of any financial transactions entered into by a designated person;
- (b) monitor compliance with or detecting evasion of this Schedule; or
- (c) obtain evidence of the commission of an offence under this Schedule.

(6) The Governor may specify the manner in which, and the period within which, information shall be provided; and if no such period is specified, the information which has been requested shall be provided within a reasonable time.

(7) A request may include a continuing obligation to keep the Governor informed as circumstances change, or on such regular basis as the Governor may specify.

(8) Information requested under this paragraph may relate to any period of time during which a person is, or was, a designated person.

(9) Information requested under subparagraph (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person, as well as, or instead of, any subsequent period of time.

Production of documents

22. (1) A request under paragraph 21 may include a request to produce specified documents or documents of a specified description.

(2) Where the Governor requests that documents be produced, he may-

- (a) cause copies to be made of, or extracts to be taken from, any document so produced;
- (b) request any person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is-
 - (i) in the case of a partnership, a present or past partner or employee of the partnership; or
 - (ii) in any other case, a present or past officer or employee of the body concerned,to give such an explanation.

(3) Where the Governor requests a designated person or a person acting under a licence granted under paragraph 18 to produce documents, that person shall-

- (a) take reasonable steps to obtain the documents, if they are not already in the person's possession or control; and
- (b) keep the documents under the person's possession or control except for the purpose of providing them to the Governor or as the Governor may otherwise permit.

Failure to comply with request for information

23. (1) A person commits an offence who-

- (a) without reasonable excuse refuses or fails within the time and in the manner specified, or, if no time has been specified, within a reasonable time) to comply with any request made or requirement under paragraph 20, 21 or 22;
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade the provisions of paragraphs 20, 21 or 22, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise intentionally obstructs the Governor in the exercise of his powers under paragraphs 20, 21 and 22.

(2) Where a person is convicted of an offence under this paragraph, the court may make an order requiring that person, within such period as

may be specified in the order, to comply with the request.

Disclosure of information by Governor

General power to disclose information

24. (1) The Governor may disclose any information obtained by him in exercise of his powers under this Schedule, including any document so obtained and any copy made of, or extract taken from, any document so obtained-

- (a) to a constable;
- (b) to a public officer;
- (c) to the Financial Reporting Services Authority or the Cayman Islands Monetary Authority;
- (d) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council resolutions, to-
 - (i) any organ of the United Nations; or
 - (ii) any person in the service of the United Nations or the Government of any country;
- (e) with a view to instituting, or otherwise for the purposes of, any proceedings-
 - (i) in the Islands, for an offence under this Schedule; or
 - (ii) in the United Kingdom or any British Overseas Territory, for an offence under a similar provision in any such jurisdiction; or
- (f) with the consent of a person who, in his own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In subparagraph (1)(f) “in his own right” means not merely in the capacity as a servant or agent of another person.

Co-operation with local or international investigations

25. The Governor shall take such steps as he considers appropriate to co-operate with any investigation, in the Islands or elsewhere, relating to the funds, economic resources or financial transactions of a designated person.

Application of provisions

26. (1) Nothing done under paragraphs 20 to 25 shall be treated as a breach of any restriction imposed by statute or otherwise.

(2) Notwithstanding subparagraph (1), nothing done under paragraphs 20 to 25 authorises a disclosure that contravenes the Freedom of Information Law, 2007.

(3) Paragraphs 20 to 25 shall not be considered to require a person who has acted as an attorney-at-law for any person to disclose any privileged information in his possession in that capacity.

(4) Paragraphs 20 to 25 do not limit the circumstances in which information may be disclosed apart from those paragraphs.

(5) Paragraphs 20 to 25 do not limit the powers of the Governor to impose conditions in connection with the discharge of his functions under paragraph 18.

(6) In this paragraph-

“information” includes documents; and

“privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

Supplementary provisions

Supervision of exercise of powers

Appeal to the court in relation to designations

27. (1) This paragraph applies to any decision of the Governor-

- (a) to make or vary an interim or final designation of a person;
- (b) to renew a final designation of a person; or
- (c) not to vary or revoke an interim or final designation of a person.

(2) The designated person concerned may appeal against any such decision to the Grand Court.

(3) On an appeal under subparagraph (2), the court may make such order as it considers appropriate.

(4) The making of an appeal under this paragraph does not suspend

the effect of the decision to which the appeal relates.

Review of other decisions by the court

28. (1) This paragraph applies to any decision of the Governor in connection with his functions under this Schedule other than a decision to which paragraph 27 applies.

(2) Any person affected by a decision to which this paragraph applies may apply to the Grand Court for the decision to be set aside.

(3) In determining whether the decision should be set aside, the court shall apply the principles applicable on an application for judicial review.

(4) If the court decides that a decision should be set aside it may make any order, or give any relief, as may be made or given in proceedings for judicial review.

Rules of court

29. The Rules Committee of the Grand Court may make rules in relation to proceedings on an appeal under paragraph 27 or on a claim arising from any matter to which such an appeal relates.

Offences

Penalties

30. (1) A person guilty of an offence under paragraph 12, 13, 14, 15, 16 or 19 is liable-

- (a) on conviction on indictment, to a fine or to imprisonment for a term of seven years or to both; or
- (b) on summary conviction, to a fine of four thousand dollars or to term of imprisonment of twelve months or to both.

(2) A person guilty of an offence under paragraph 11 or 18 is liable-

- (a) on conviction on indictment, to a fine or imprisonment for a term of two years or to both; or
- (b) on summary conviction, to a fine of two thousand dollars or to imprisonment for a term of six months or to both.

(3) A person guilty of an offence under paragraph 20(5) or 23 is liable on summary conviction to a fine or to imprisonment for a term of one year or to both.

Extra-territorial application of offences

31. (1) An offence under this Schedule may be committed by conduct wholly or partly outside the Islands by-

- (a) a Caymanian; or
- (b) a body incorporated or constituted under the law of the Islands.

(2) In this paragraph “conduct” includes acts and omissions.

(3) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

Liability of officers of body corporate etc.

32. (1) Where an offence under this Schedule committed by a body corporate-

- (a) is committed with the consent or connivance 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; or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

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

(3) Subparagraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference-

- (a) in the case of a partnership, to a partner; and
- (b) in the case of an unincorporated body other than a partnership-
 - (i) where the body’s affairs are managed by its

- members, to a member of the body; or
- (ii) in any other case, to a member of the governing body.

Jurisdiction to try offences

33. Where an offence under this Schedule is committed outside the Islands proceedings for the offence may be taken in the Islands and the offence may for all incidental purposes be treated as having been committed in the Islands.

Time limit for proceedings for summary offences

34. (1) An information relating to an offence under paragraph 20(5) or 23 may be tried by a summary court if it is laid-

- (a) at any time within three years after the commission of the offence; and
- (b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) For the purposes of this paragraph a certificate of the prosecutor as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

Consent to prosecution

35. (1) Proceedings for an offence under this Schedule may not be instituted except by or with the consent of the Director of Public Prosecutions.

(2) Nothing in subparagraph (1) prevents-

- (a) the arrest of a person in respect of an offence under this Schedule; or
- (b) the remand in custody or on bail of a person charged with such an offence.

Procedure for offences by unincorporated bodies

36. (1) A fine imposed on an unincorporated body on its conviction of an offence under this Schedule shall be paid out of the funds of the body.

(2) If it is alleged that an offence under this Schedule has been committed by an unincorporated body, as opposed to by a member of the

body-

- (a) proceedings for the offence shall be brought in the name of the body; and
- (b) for the purposes of such proceedings any rules of court relating to the service of documents have effect as if the body were a body corporate.

Interpretation

Meaning of “funds” and “economic resources”

37. (1) In this Schedule, “funds” means financial assets and benefits of every kind, including-

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends and other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources; and
- (h) any other instrument of export financing.

(2) In this Schedule, “economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

Meaning of “financial services”

38. (1) In this Schedule, “financial services” means any service of a financial nature, including-

- (a) insurance services consisting of-
 - (i) direct life assurance;
 - (ii) direct insurance other than life assurance;
 - (iii) reinsurance and retrocession;
 - (iv) insurance intermediation, such as brokerage and

- agency; and
- (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (b) banking and other financial services consisting of-
 - (i) accepting deposits and other repayable funds;
 - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
 - (iii) financial leasing;
 - (iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts);
 - (v) providing guarantees or commitments;
 - (vi) financial trading;
 - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
 - (viii) money brokering;
 - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services); and
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-subparagraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

(2) In subparagraph (1)(b)(vi), "financial trading" means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in-

- (a) money market instruments (including cheques, bills and certificates of deposit);
- (b) foreign exchange;
- (c) derivative products (including futures and options);
- (d) exchange rate and interest rate instruments (including

- products such as swaps and forward rate agreements);
- (e) transferable securities; and
- (f) other negotiable instruments and financial assets (including bullion).

Miscellaneous

Service of notices

39. (1) Where a notice is required to be given to a person by the Governor under this Schedule, the notice may be given-

- (a) by posting it to the person's last known address; or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(2) Where the Governor does not have an address for the person, he shall cause arrangements to be made for the notice to be given to the person at the first available opportunity.

Application

40. (1) This Schedule binds government entities.

(2) A contravention by a government entity of a provision of this Schedule shall not make the government entity criminally liable.

(3) The Grand Court may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the government entity that constitutes a contravention of a provision of this Schedule.

Power to repeal Schedule

41. (1) If the Security Council of the United Nations takes any decision that has the effect of terminating, permanently and without replacement, the operation of the relevant Security Council resolutions, in whole or in part, the Governor shall take steps to repeal the order and shall, through the office of the Deputy Governor, cause to be laid before the Legislative Assembly a draft order repealing this Schedule, in whole or in part, in accordance with the decision.

- (2) Any order under subparagraph (1)-
 - (a) may contain such incidental, consequential, supplementary, transitional, transitory or saving provision as the Governor in Cabinet considers appropriate, including provision amending or repealing any enactment, whether in this Schedule or elsewhere;
 - (b) shall be made by statutory instrument; and
 - (c) shall not be made unless the draft is approved by a resolution of the Legislative Assembly.”.

Passed by the Legislative Assembly the day of , 2011.

Speaker.

Clerk of the Legislative Assembly.