

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE BANKS AND TRUST
COMPANIES LAW (2003 REVISION) TO INCREASE THE
PROTECTION OF DEPOSITORS, AND BENEFICIARIES OF A TRUST;
TO INCREASE THE REGULATORY POWERS OF THE CAYMAN
ISLANDS MONETARY AUTHORITY IN RELATION TO BANKS AND
TRUST COMPANIES; TO RE-DEFINE THE OBLIGATIONS OF
AUDITORS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2006

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Banks and Trust Companies Law (2003 Revision) to increase the protection of depositors, and beneficiaries of a trust.

Clause 2 amends section 2 of the principal Law to insert new definitions.

Clause 3 amends section 5 of the principal Law to enable certain trust companies to issue debt instruments without having to apply for a licence. Those companies would be registered by the Monetary Authority.

Clause 4 amends section 8 of the principal Law to correct a clerical error.

Clause 5 inserts into the principal Law new sections 8A and 8B. Section 8A requires a licensee to maintain such portion of its issued capital, in cash or cash equivalent instruments, as the Cayman Islands Monetary Authority considers appropriate. Section 8B prohibits a licensee incorporated under the Companies Law (2003 Revision) from having a capital adequacy ratio of less than ten percent (or such other percentage as may be determined by the Authority).

Clause 6 inserts into the principal Law a new section 10A requiring an auditor to notify the Monetary Authority if, in the course of carrying out an audit of the accounts of a licensee, the auditor obtains information or suspects that the licensee is -

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business without compliance with -
 - (i) the principal Law or any regulations made thereunder;
 - (ii) the Monetary Authority Law (2003 Revision);
 - (iii) the Money Laundering Regulations (2003 Revision); or
 - (iv) a condition of the licence.

An auditor who fails to comply with this requirement may be disqualified, by the Monetary Authority, from being an auditor of the licensee. Clause 3 also enables the Monetary Authority to revoke its approval of an auditor.

Clause 7 amends section 11 of the principal Law to impose upon licensees restrictions in relation to engaging in trade, investing in shares, purchasing real estate and acquiring property which is the security for a debt.

Clause 8 inserts into the principal Law a new section 11A imposing upon trust companies duties in relation to the segregation of the company's assets and liabilities and the maintenance of professional indemnity insurance.

Clause 9 amends section 13 of the principal Law to enable the Monetary Authority to make provision for the payment of a person who has assisted the Authority in the performance of its functions.

Clause 10 amends section 15 of the principal Law to enable the Monetary Authority to attend winding up proceedings where a petition for the winding up of a licensee is presented by a person other than the Authority.

THE BANKS AND TRUST COMPANIES (AMENDMENT) BILL, 2006

ARRANGEMENT OF CLAUSES

1. Short title.
2. Amendment of section 2 of the Banks and Trust Companies Law (2003 Revision) – definitions.
3. Amendment of section 5 - licence required to carry on banking or trust business.
4. Amendment of section 8 - net worth requirements.
5. Insertion of sections 8A and 8B - capital funds requirements; capital adequacy ratio.
6. Insertion of section 10A - obligation of auditors.
7. Amendment of section 11 - certain prohibitions on licensee.
8. Insertion of section 11A - general requirements for trust companies.
9. Amendment of section 13 - powers and duties of Authority.
10. Amendment of section 15 - Authority may apply to Court.

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COMPANIES LAW (2003 REVISION) TO INCREASE THE
PROTECTION OF DEPOSITORS, AND BENEFICIARIES OF A TRUST;
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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Banks and Trust Companies (Amendment) Law, 2006. Short title

2. The Banks and Trust Companies Law (2003 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definitions - Amendment of section 2
of the Banks and Trust
Companies Law (2003
Revision) - definitions

““controlled subsidiary” means a trust company -

- (a) that is incorporated in the Islands;
- (b) that is a wholly owned subsidiary of a licensee under section 6(5)(c); and
- (c) whose directors and senior officers are directors and senior officers of the licensee or are otherwise persons approved by the Authority as fit and proper persons to be directors and senior

officers of licensees holding licences for trust business under section 6(5);

“debt” has the meaning assigned to that expression in section 2 of the Mutual Funds Law (2003 Revision);”.

Amendment of section 5
- licence required to
carry on banking or trust
business

3. The principal Law is amended in section 5 -

- (a) in the marginal note by inserting after the word “Licence” the words “or registration”;
- (b) in subsection (2) by deleting the words “No trust company” and substituting the words “Subject to subsection (2a), no trust company”; and
- (c) by inserting after subsection (2) the following subsections -

“ (2a) A trust company that is a controlled subsidiary does not require a licence to carry on the business of issuing debt instruments.

(2b) Notwithstanding subsection (2a), a controlled subsidiary to which that subsection refers shall register with the Authority; and, in order to be registered, such controlled subsidiary shall -

- (a) at the time of registration and on or before 31 January every year thereafter during the continuation of the registration, file with the Authority an annual declaration, in such form as the Authority may approve, declaring -
 - (i) the name of the controlled subsidiary;
 - (ii) the name of the licensee of which the controlled subsidiary is a subsidiary;
 - (iii) the names of the directors and senior officers of the controlled subsidiary; and
 - (iv) that the controlled subsidiary is a controlled subsidiary to which subsection (2a) applies; and
- (b) at the time of registration and on or before 31 January every year thereafter during the continuation of the registration, pay to the Government the prescribed fee.”.

Amendment of section 8
-net worth
requirements

4. The principal Law is amended in section 8(4) –

- (a) by deleting the words “When he has reasonable cause” and substituting the words “When the Authority has reasonable cause”; and
- (b) by deleting the words “it may determine” and substituting the words “the Authority may determine”.

5. The principal Law is amended by inserting after section 8 the following sections -

Insertion of sections 8A and 8B - capital funds requirements; capital adequacy ratio

“Capital funds requirements

8A. (1) The Authority may, by notice in writing, require a licensee to maintain such portion of its issued capital, in cash or cash equivalent instruments, in such amounts and in such manner, as the Authority considers appropriate, having regard to the risks arising from the activities of the licensee and such other factors as the Authority considers relevant.

(2) In this section, “cash equivalent instruments” means a highly liquid security with a known market value and a maturity, when acquired, of less than three months.

Capital adequacy ratio

8B. (1) A licensee holding a licence for the carrying on of banking business and incorporated under the Companies Law (2004 Revision) shall not, at any time, have a capital adequacy ratio of less than ten percent (or such other percentage as may be determined by the Authority from time to time) as calculated in accordance with such form, content and manner as may be prescribed.

(2) The Authority may, if it considers it to be appropriate in the particular circumstances of a licensee incorporated under the Companies Law (2004 Revision), having regard to the risks arising from the activities of the licensee and such other factors as the Authority considers relevant, vary the capital adequacy ratio applicable to that licensee.

(3) A licensee which fails to comply with the requirements of this section may, for the purposes of section 14, be treated by the Authority as carrying on business in a manner detrimental to the public interest, the interest of its depositors or of the beneficiaries of any trust, or other creditors.”.

Insertion of section
10A - obligation of
auditors

6. The principal Law is amended by inserting after section 10 the following section -

"Obligation of auditors

10A. (1) If an auditor, in the course of carrying out an audit of the accounts of a licensee, obtains information or suspects that the licensee is -

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business without compliance with -
 - (i) this Law or any regulations made hereunder;
 - (ii) the Monetary Authority Law (2004 Revision);
 - (iii) the Money Laundering Regulations (2006 Revision); or
 - (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

(2) Without prejudice to subsection (7), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify him from being an auditor of a licensee; but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with subsection (1).

(3) A licensee shall not appoint as an auditor a person disqualified under subsection (2).

(4) Where the Authority has granted approval of an auditor under any provision of this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a licensee or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(5) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission was in bad faith.

(6) A reference in this section to an auditor carrying out an audit of the accounts of a licensee includes an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.

(7) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars.

(8) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a licensee an obligation to do anything that he would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.”.

7. The principal Law is amended in section 11 -

Amendment of section
11 - certain prohibitions
on licensee

- (a) by re-numbering the section as subsection (1) of section 11; and
- (b) by inserting after subsection (1) the following subsections -

“ (2) A licensee holding a licence for the carrying on of banking business, shall not, without the prior written approval of the Authority, acquire an interest in an entity, whether legal or beneficial and whether directly or indirectly, so that the value of the interest at any time exceeds twenty percent of the net worth

of the licensee, except insofar as may be necessary with respect to any interest acquired by the licensee in satisfaction of debts due to it; but any such interest acquired in satisfaction of debts shall be disposed of within a period not exceeding five years unless permission to extend such period has been given by the Authority.

(3) Subject to subsections (4) and (5), a licensee holding a licence for the carrying on of banking business shall not purchase, acquire or lease real estate unless -

- (a) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff; and
- (b) the market value of the real estate does not exceed twenty percent of the net worth of the licensee, or such other sum as to the Authority may seem appropriate to a maximum of fifty percent of the net worth of the licensee.

(4) Where the licensee exercises its legal right in respect of any property which is the security for any debt, the licensee may acquire such property, but in that case the property shall not be retained for a period in excess of five years without the permission of the Authority.

(5) Nothing in this section shall require a licensee -

- (a) which holds a licence for the carrying on of banking business; and
- (b) which, immediately before the date of commencement of the Banks and Trust Companies (Amendment) Law, 2006, owns or leases real estate the market value of which exceeds fifty percent of the net worth of the licensee,

to comply with subsection (3)(b) before the expiry of a period of five years commencing with that date.”.

Insertion of section 11A
- general requirements
for trust companies

8. The principal Law is amended by inserting after section 11, the following section -

“General requirements
for trust companies

11A.(1) A licensee holding a Trust licence shall segregate the assets and liabilities of its trust business from the licensee’s own assets and liabilities.

(2) A licensee holding a Trust licence shall obtain and maintain adequate professional indemnity insurance, or have in place other appropriate arrangements to cover risks, in respect of its trust business, in such manner as may be determined by the Authority.

(3) In making determinations under subsection (2), the Authority shall have regard to relevant factors including the nature and scope of the trust business, the financial position and reputation of the licensee and its parent company, and the existence of any group coverage or financial commitment made by the parent company or other appropriate body to cover risks in respect of the licensee’s trust business.”.

9. The principal Law is amended in section 13(4) by inserting after the words “under this Law” the words “; and the Authority may make provision for the payment of such person’s remuneration and expenses whether or not the performance of the function has been completed”.

Amendment of section
13 - powers and duties
of Authority

10. The principal Law is amended in section 15 -

Amendment of section
15 - Authority may
apply to Court

- (a) by re-numbering the section as subsection (1) of section 15; and
- (b) by inserting after subsection (1) the following subsections -

“ (2) Where a petition for the winding up of a licensee, or a person who has at any time been a licensee, is presented by a person other than the Authority, the Authority shall be served with a copy of the petition by the petitioner and may appear at the hearing of the petition and the provisions of subsections (3) and (4) shall apply.

(3) A document which relates to a petition for winding up and which is required to be sent to a licensee or former licensee or any of their respective depositors, beneficiaries, or other creditors, shall in addition be sent to the Authority.

(4) A person appointed for the purpose by the Authority may -

- (a) attend a meeting of creditors of a licensee or former licensee;
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.”.

Passed by the Legislative Assembly the day of , 2006.

Speaker.

Clerk of the Legislative Assembly.