

CAYMAN ISLANDS



Supplement No. 1 published with Gazette No. 25 dated
10 December, 2007.

**A BILL FOR A LAW TO AMEND THE MONETARY AUTHORITY LAW
(2004 REVISION) TO REVISE THE MONETARY AUTHORITY'S
POWERS OF DISCLOSURE; AND TO MAKE PROVISION FOR
INCIDENTAL AND CONNECTED MATTERS**

THE MONETARY AUTHORITY (AMENDMENT) BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Monetary Authority Law (2004 Revision) to revise the Monetary Authority's powers of disclosure.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 amends section 50 of the principal Law to implement the agreed position reached with the International Organisation of Securities Commission in respect of what were perceived to be areas of non-compliance with the Commission's requirements relating to international cooperation. The clause removes the distinction between routine and non-routine requests and the corresponding referrals to the Attorney-General and the Financial Secretary. The clause also enables the Monetary Authority to consent to the use of information provided pursuant to a regulatory request for assistance in certain criminal investigations or proceedings.

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Monetary Authority (Amendment) Law, 2007.

Short title

2. The Monetary Authority Law (2004 Revision) is amended by repealing section 50 and substituting the following section -

Repeal and substitution
of section 50 of the
Monetary Authority Law
(2004 Revision) -
confidentiality

“Confidentiality

50. (1) Subject to subsections (2) and (3), whoever 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 he has acquired in the course of his duties or in the exercise of the Authority's functions under this or any other law, is guilty of an offence and 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 them 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 Governor to exercise any functions conferred on him under this Law or regulations made thereunder or in connection with the dealings between the Governor 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 Attorney-General 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 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; and
 - (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.

(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.”.

Passed by the Legislative Assembly the day of , 2007.

Speaker.

Clerk of the Legislative Assembly.