

CAYMAN ISLANDS



Supplement No. 1 published with Gazette No. 9 dated
26th April, 2010.

**A BILL FOR A LAW TO CONFER POWERS ON THE MONETARY
AUTHORITY TO TAKE ACTION AGAINST PERSONS AND
ACTIVITIES THAT MAY BE RELATED TO TERRORIST FINANCING,
MONEY LAUNDERING OR THE DEVELOPMENT OF WEAPONS OF
MASS DESTRUCTION; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE PROLIFERATION FINANCING (PROHIBITION) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to empower the Monetary Authority to take action against persons engaged in activities that may have some connection with terrorist financing, money laundering or the development of weapons of mass destruction and other related matters. This legislation builds on the current Laws dealing with money laundering and terrorism i.e. the Proceeds of Crime Law, 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001. The Bill also introduces specific prohibitions against the development and production of biological, chemical, nuclear and radiological weapons.

The powers sought to be given to the Monetary Authority under this Bill would enable the Monetary Authority to issue directions to persons (individual and corporate or unincorporated bodies) who operate within the Island's financial services sector as a measure to protect the Islands and the UK against certain risks.

PART I - PRELIMINARY

Part I of the Bill contains clauses 1 and 2.

Clause 1 provides the short title to the legislation.

Clause 2 is the interpretation clause.

PART II - DIRECTIONS

Part II contains clauses 3 to 5 and deals with the directions which may be given under the legislation.

Clause 3 empowers the Monetary Authority to give directions.

Clause 4 provides that a direction may be given under the legislation to a person in the financial sector.

Clause 5 set out the conditions under which a direction may be given. The conditions are that-

- (a) the United Nations Security Council or Financial Action Task Force has advised that measures should be taken in relation to the country because of the risks of terrorist financing, money laundering or proliferation activities being carried on-
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country;
- (b) the Monetary Authority reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on-
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country,and that this poses a significant risk to the interests of the Islands or the United Kingdom; or
- (c) the Monetary Authority reasonably believes that-
 - (i) the development or production of nuclear, radiological, biological or chemical weapons in the country or systems for their delivery; or
 - (ii) the doing in the country of anything that facilitates the development or production of any of the weapons referred to in subparagraph (i),poses a significant risk to the interests of the Islands or the United Kingdom.

PART III - REQUIREMENTS IN RELATION TO DIRECTIONS

Part III contains clauses 6 to 10.

Clause 6 provides that where the Monetary Authority gives a direction under clause 3 it may impose any of the requirements specified in clauses 7, 8, 9 and 10.

Clause 7 provides that a direction given by the Monetary Authority may require a relevant person (i.e. a person to whom a direction is given) to undertake enhanced customer due diligence measures-

- (a) before entering into a transaction or business relationship with a designated person; and
- (b) during a business relationship with that designated person.

“Enhanced customer due diligence measures” means measures to-

- (a) establish the identity of the designated person;
- (b) obtain information about-
 - (i) the designated person and their business; and
 - (ii) the source of their funds; and
- (c) assess the risk of the designated person being involved in relevant activities.

“Relevant activities” means-

- (a) money laundering;
- (b) terrorist financing; or
- (c) proliferation.

Clause 8 provides that a direction given by the Monetary Authority may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

For the purposes of this clause, “enhanced ongoing monitoring” of a business relationship means-

- (a) keeping up-to-date information and documents obtained for the purposes of enhanced customer due diligence measures; and
- (b) scrutinising transactions undertaken during the course of the business relationship and, where appropriate, the source of funds for those transactions, to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and their business.

Clause 9 provides that a direction given by the Monetary Authority may require a relevant person to provide such information and documents relating to transactions and business relationships with designated persons, as may be specified in the direction.

Clause 10 provides that where the Monetary Authority gives a direction, it may, among other things, require a relevant person to restrict or cease a business relationship.

PART IV - PROCEDURES AND LICENSING IN RELATION TO DIRECTIONS

Part IV contains clauses 11 to 13.

Clause 11 deals with how a direction may be given.

Clause 12 deals with the notification and duration of a direction.

Clause 13 provides that a person may, by the licence of the Monetary Authority, be exempted from the requirements under clause 10.

PART V - ENFORCEMENT: INFORMATION POWERS

Part V contains clauses 14 to 18.

Clause 14 gives enforcement officers powers to obtain documents or information required under this legislation.

Clause 15 gives certain powers to enforcement officers including the power to enter and inspect premises.

Clause 16 deals with the entry onto premises by an enforcement officer under a warrant issued by a magistrate or justice of the peace.

Clause 17 imposes restriction on the powers given to enforcement officers.

Clause 18 deals with the failure by a person to comply with a request by an enforcement officer under the legislation.

PART VI - ENFORCEMENT: CIVIL PENALTIES

Part VI contains clauses 19 to 21.

Clause 19 provides that the Monetary Authority may, subject to subsection (2), impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed by a direction under this legislation or a condition of a licence under clause 13. However, the Monetary Authority shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

Clause 20 provides that the Monetary Authority shall, before imposing a penalty give notice to the person.

Clause 21 provides that a person who is aggrieved by a decision of the Monetary Authority imposing a penalty under clause 20 may appeal the decision to the Grand Court.

PART VII - ENFORCEMENT: OFFENCES

Part VII contains clauses 22 to 27.

Clause 22 provides that a person who fails to comply with a direction commits an offence. However a person does not commit an offence under this clause if he took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

Clause 23 provides that a person commits an offence if he, for the purpose of obtaining a licence under clause 13-

- (a) provides information that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

Clause 24 provides that an offence under this legislation may be committed by a person acting in the course of a business in the financial sector although the conduct which gives rise to the offence takes place wholly or partly outside the Islands.

Clause 25 deals with the time limit for summary offences under this legislation.

Clause 26 deals with the liability of officers of bodies corporate.

Clause 27 deals with proceedings against unincorporated bodies.

PART VIII - GENERAL PROVISIONS

Part VIII contains clause 28 to 37.

Clause 28 provides that the Monetary Authority shall, within a period of six months after the end of each year-

- (a) prepare a report about the exercise during that year of its functions under this legislation; and
- (b) transmit a copy of the report to the Attorney General.

Clause 29 provides that the Monetary Authority shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance by those persons with the requirements of any directions given under this legislation.

Clause 30 provides that the Monetary Authority shall provide such assistance as may reasonably be required by any professional body whose members operate in the financial sector in drawing up guidance that, when issued and published, would be relevant guidance for the purposes of clauses 19(3) and 22(3).

Clause 31 deals with notices under the legislation.

Clause 32 provides that where, in relation to a money laundering or terrorist financing activity, a power referred to in this Law may be exercised under this Law and the Proceeds of Crime Law, 2008 as well as the Terrorism Law (2009 Revision), the power shall be exercised under this Law, the Proceeds of Crime Law, 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) or the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 but not under all of those Laws at the same time.

Clause 33 provides that a person who knowingly and intentionally participates in activities the object or effect of which is, directly or indirectly, to circumvent any requirement imposed by a direction under this Law commits an offence and is liable-

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

Clause 34 deals with the immunity of the Monetary Authority and its officers under the legislation.

Clause 35 provides that the Governor in Cabinet may, on the advice of the Monetary Authority, by order amend clause 2(2) to extend the scope of persons operating in the financial sector.

Clause 36 provides that the legislation binds the Crown.

Clause 37 provides that the Governor in Cabinet may make regulations for the effective carrying out of the provisions of the legislation.

THE PROLIFERATION FINANCING (PROHIBITION) BILL, 2010

ARRANGEMENT OF CLAUSES

PART I - PRELIMINARY

1. Short title
2. Interpretation

PART II - DIRECTIONS

3. Power to give a direction
4. Persons to whom a direction may be given
5. Conditions for giving a direction

PART III - REQUIREMENTS IN RELATION TO DIRECTIONS

6. Requirements imposed by the Monetary Authority
7. Customer due diligence
8. Ongoing monitoring
9. Systematic reporting
10. Restricting or ceasing business

PART IV - PROCEDURES AND LICENSING IN RELATION TO DIRECTIONS

11. General directions: how given
12. Specific directions: notification and duration of direction
13. Directions restricting or ceasing business: exemption by licence

PART V - ENFORCEMENT: INFORMATION POWERS

14. Power to require information or documents
15. Powers of entry and inspection without a warrant, etc.
16. Entry to premises under warrant
17. Restrictions on powers
18. Failure to comply with information requirement

PART VI - ENFORCEMENT: CIVIL PENALTIES

19. Power to impose civil penalties
20. Duty to issue penalty notice
21. Right of appeal

PART VII - ENFORCEMENT: OFFENCES

22. Failure to comply with requirement imposed by a direction

23. Offences in connection with licences
24. Extra-territorial application of offences
25. Time limit for summary proceedings
26. Liability of officers of bodies corporate, etc.
27. Proceedings against unincorporated bodies

PART VIII - GENERAL PROVISIONS

28. Report to Legislative Assembly
29. Monitoring persons operating in the financial sector
30. Assistance in preparing guidance
31. Notices
32. Exercise of powers under this Law, the Proceeds of Crime Law 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
33. Agreement or arrangement to circumvent direction
34. Immunity from liability
35. Power to amend section 2(2)
36. Application to the Crown
37. Regulations

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**A BILL FOR A LAW TO CONFER POWERS ON THE MONETARY
AUTHORITY TO TAKE ACTION AGAINST PERSONS AND
ACTIVITIES THAT MAY BE RELATED TO TERRORIST FINANCING,
MONEY LAUNDERING OR THE DEVELOPMENT OF WEAPONS OF
MASS DESTRUCTION; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I- PRELIMINARY

- | | |
|----------------|---|
| Short title | 1. This Law may be cited as the Proliferation Financing (Prohibition) Law, 2010. |
| Interpretation | <p>2. (1) In this Law-</p> <p>“biological weapon” means any biological agent or toxin as defined and referred to in section 1 (2) of the Biological Weapons Act 1974 (Overseas Territories) Order 1975;</p> <p>“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;</p> |

“chemical weapon” has the definition referred to in section 1 (1) of Schedule 1 of the Chemical Weapons (Overseas Territories) Order 2005, and the exceptions outlined in that section apply accordingly;

“conduct” includes an act or an omission;

“country” includes territory;

“designated person”, in relation to a direction, means a person, including any subsidiary or other entity owned or controlled by that person, in relation to whom a direction is given;

“direction” means a direction issued pursuant to section 3;

“document” means information that is recorded in any form;

“enforcement officer” means an officer of the Monetary Authority, or any officer of Customs or officer of the Royal Cayman Islands Police Force who is specifically or generally authorised by the Governor;

“Monetary Authority” means the Cayman Islands Monetary Authority established under section 5 (1) of the Monetary Authority Law (2008 Revision) and includes any employee of the Monetary Authority acting under the Monetary Authority’s authorisation; (2008 Revision)

“money laundering” means any conduct that constitutes an offence under section 133, 134 or 135 of the Proceeds of Crime Law, 2008;

“notice” means a notice in writing;

“nuclear weapon” includes any nuclear explosive device that is not intended for use as a weapon;

“proliferation” means the development or production, or the facilitation of the development or production, of nuclear, radiological, biological or chemical weapons or systems for their delivery;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“relevant person” means a person to whom a direction is given;

“terrorism” has the meaning assigned by the Terrorism Law (2009 Revision); (2009 Revision)

“terrorist financing” means-

- (a) the use of funds, or the making available of funds, for the purposes of terrorism; or
- (b) the acquisition, possession, concealment, conversion or transfer of funds that are, directly or indirectly, intended to be used or made available for the purposes of terrorism.

(2) Subject to subsection (3), a reference in this Law to a person operating in the financial sector refers to a person whose business is subject to any one or more of the following Laws-

- (a) Banks and Trust Companies Law (2009 Revision);
- (b) Building Societies Law (2001 Revision);
- (c) Companies Management Law (2003 Revision);
- (d) Cooperative Societies Law (2001 Revision);
- (e) Insurance Law (2008 Revision);
- (f) Money Services Law (2003 Revision);
- (g) Mutual Funds Law (2009 Revision);
- (h) Securities Investment Business Law (2004 Revision); or
- (i) any other laws that may be prescribed by the Governor by regulations made under section 46 of the Monetary Authority Law (2008 Revision),

and “financial sector” shall be construed accordingly.

PART II- DIRECTIONS

Power to give a direction

3. (1) The Monetary Authority may, in relation to any country, give a direction to a relevant person mentioned in section 4 if any of the conditions specified in section 5 are satisfied.

(2) A direction given by the Monetary Authority may make different provisions in relation to different descriptions or classes of relevant persons.

Persons to whom a direction may be given

4. A direction under this Law may be given to any of the following relevant persons-

- (a) a particular person operating in the financial sector;
- (b) any description or class of persons operating in the financial sector; or
- (c) all persons operating in the financial sector.

Conditions for giving a direction

5. (1) The conditions referred to in section 3(1) with respect to a country are that-

- (a) the United Nations Security Council or Financial Action Task Force has advised that measures should be taken in relation to the country because of the risks of terrorist financing, money laundering or proliferation activities being carried on-
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country;
- (b) the Monetary Authority reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on-
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country,and that this poses a significant risk to the interests of the Islands or the United Kingdom; or
- (c) the Monetary Authority reasonably believes that-
 - (i) the development or production of nuclear, radiological, biological or chemical weapons in the country or systems for their delivery; or
 - (ii) the doing in the country of anything that facilitates the development or production of any of the weapons referred to in subparagraph (i),poses a significant risk to the interests of the Islands or the United Kingdom.

(2) For the purposes of subsection (1)(b) and (c), the question as to whether or not an activity mentioned in that subsection constitutes a significant risk to the Islands or the United Kingdom is a matter to be determined by the Monetary Authority acting on the directions of the Governor.

PART III- REQUIREMENTS IN RELATION TO DIRECTIONS

6. (1) Where the Monetary Authority gives a direction pursuant to section 3, it may impose any of the requirements specified in sections 7, 8, 9 and 10 in relation to transactions or business relationships with-

Requirements imposed
by the Monetary
Authority

- (a) a person carrying on business in the country concerned;
 - (b) the government of the country; or
 - (c) a person resident or incorporated in the country.
- (2) A direction may further impose requirements in relation to-
- (a) a particular person under subsection (1);
 - (b) a description or class of persons under subsection (1); or
 - (c) all persons under subsection (1).

- (3) A direction may make different provision in relation to-
 - (a) different descriptions or classes of designated persons; and
 - (b) different descriptions of transaction or business relationship.

(4) The requirements imposed by a direction must be proportionate, having regard to the conditions mentioned in section 5(1)(a) or the risk mentioned in section 5(1)(b) or (c), to the interests of the Islands or the United Kingdom.

Customer due diligence

7. (1) A direction given by the Monetary Authority may require a relevant person to undertake enhanced customer due diligence measures-

- (a) before entering into a transaction or business relationship with a designated person; and
- (b) during a business relationship with that designated person.

(2) The direction may do either or both of the following-

- (a) impose a general obligation to undertake enhanced customer due diligence measures;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(2009 Revision)

(3) A direction requiring a relevant person to undertake enhanced customer due diligence measures pursuant to subsection (1) or perform any requirement or undertaking under subsection (2) is without prejudice to the relevant person's obligations or liabilities in relation to the same matters, where applicable, under the Proceeds of Crime Law, 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) or the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001.

(4) For the purposes of this section

- (a) "enhanced customer due diligence measures" means measures to-
 - (i) establish the identity of the designated person;
 - (ii) obtain information about the designated person, his business and the source of his funds; and
 - (iii) assess the risk of the designated person being involved in relevant activities; and
- (b) "relevant activities" means-
 - (i) money laundering;
 - (ii) terrorist financing; or
 - (iii) proliferation.

Ongoing monitoring

8. (1) A direction given by the Monetary Authority may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

- (2) The direction may do either or both of the following-
- (a) impose a general obligation to undertake enhanced ongoing monitoring;
 - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) For the purposes of this section, “enhanced ongoing monitoring” of a business relationship means-
- (a) keeping up-to-date information and documents obtained for the purposes of enhanced customer due diligence measures; and
 - (b) scrutinising transactions undertaken during the course of the business relationship and, where appropriate, the source of funds for those transactions, to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and their business.

9. (1) A direction given by the Monetary Authority may require a relevant person to provide such information and documents relating to transactions and business relationships with designated persons as may be specified in the direction.

Systematic reporting

(2) A direction imposing the requirement referred to in subsection (1) shall specify how the direction is to be complied with, including-

- (a) the person to whom the information and the documents are to be provided; and
- (b) the period within which, or intervals at which, the information and documents are to be provided.

(3) The power conferred by this section is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this section and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

10. Where the Monetary Authority gives a direction, it may require a relevant person not to enter into or continue to participate in-

Restricting or ceasing
business

- (a) a specified transaction or business relationship with a designated person;
- (b) a specified description of transactions or business relationships with a designated person; or
- (c) any transaction or business relationship with a designated person.

**PART IV- PROCEDURES AND LICENSING IN RELATION TO
DIRECTIONS**

General directions: how
given

11. (1) A direction that is given to-
- (a) a description or class of persons operating in the financial sector;
or
 - (b) all persons operating in the financial sector,
- shall be contained in an order made by the Monetary Authority and shall, subject to subsection (3), have effect from the date the order is made.
- (2) If the order made under subsection (1) contains requirements of a kind mentioned in section 10, the Monetary Authority shall forthwith transmit a copy of the order to the Attorney General who shall, as soon as practicable, lay the order before the Legislative Assembly for approval.
- (3) If, following the laying of the order, the Legislative Assembly fails to approve the order within twenty-eight days from the date of laying, the order shall cease to have effect.
- (4) An order that ceases to have effect in accordance with subsection (3) shall not affect anything done under the order.
- (5) In calculating the period specified in subsection (3), account shall not be taken of the period when the Legislative Assembly is prorogued or dissolved.
- (6) The order under subsection (1) shall be published in the Gazette.
- (7) The Monetary Authority may vary or revoke a direction at any time by order.
- (8) The Monetary Authority shall forthwith transmit a copy of the order under subsection (7) which seeks to revoke an order made under subsection (2) to the Attorney-General who shall as soon as practicable lay the order before the Legislative Assembly for approval
- (9) An order, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which it was made but this is without prejudice to the making of a further direction.

(10) Where the order is varied or ceases to have effect, whether on revocation or otherwise, the Monetary Authority shall take such steps as it considers appropriate to publicise that fact.

12. (1) This section applies in relation to a direction that is given to a particular person.

Specific directions:
notification and duration
of direction

(2) Where the Monetary Authority gives a direction, it shall give notice of the direction to that particular person.

(3) The direction, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.

(4) The application of subsection (3) is without prejudice to the giving of a further direction by the Monetary Authority.

(5) The Monetary Authority may vary or revoke the direction at any time.

(6) Where the direction to a particular person is varied or ceases to have effect, whether on revocation or otherwise, the Monetary Authority shall give notice of that fact to that particular person.

13. (1) A relevant person may apply to the Monetary Authority, in such form as the Monetary Authority may specify, for a licence exempting him from the requirements of the direction.

Directions restricting or
ceasing business:
exemption by licence

(2) The applicant shall provide such information and documents as the Monetary Authority may require in determining the application.

(3) A licence granted under this section may be-

- (a) general or granted to a description or class of persons or to a particular person;
- (b) subject to conditions as the Monetary Authority may specify in the licence; or
- (c) of indefinite duration or subject to an expiry date.

(4) The Monetary Authority may at any time vary or revoke a licence issued under this section.

(5) Where the Monetary Authority grants, varies or revokes a licence, it shall-

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

PART V- ENFORCEMENT: INFORMATION POWERS

Power to require
information or
documents

14. (1) An enforcement officer may, by notice to a relevant person, require the relevant person to-

- (a) provide information as may be specified in the notice; or
- (b) produce documents as may be so specified,

in such form and verified or authenticated in such manner as may be required by the enforcement officer.

(2) An enforcement officer may exercise powers under this section only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the Monetary Authority of its functions under this Law.

(3) Where an enforcement officer requires information to be provided or documents to be produced under this section-

- (a) the notice shall set out the reasons why the enforcement officer requires the information to be provided or the documents to be produced; and
- (b) the information shall be provided or the documents produced-
 - (i) before the end of the period determined to be reasonable, as may be specified in the notice; and
 - (ii) at such place as may be so specified.

(4) In relation to a document that is in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which the document can readily be produced in visible and legible form.

(5) An enforcement officer may take copies of, or make extracts from, any document that is produced under this section.

(6) The production of a document shall not affect any lien which a person has on the document.

15. (1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the relevant person's business activities, the enforcement officer may, on producing evidence of authority, at any reasonable time-

Powers of entry and inspection without a warrant, etc.

- (a) enter and inspect the premises;
- (b) observe the carrying on of business activities by the relevant person;
- (c) inspect any document found on the premises; and
- (d) require any person on the premises to provide an explanation of any document or to state where it may be found.

(2) An enforcement officer may take copies of, or make extracts from, any document found pursuant to subsection (1).

(3) An enforcement officer may exercise powers under this section only if the information or document sought to be obtained is reasonably required in connection with the exercise by the Monetary Authority of its functions under this Law.

(4) In this section, "premises" means any premises other than premises used only as a dwelling.

16. (1) A magistrate or justice of the peace may issue a warrant under this section if he is satisfied, on information on oath given by an enforcement officer, that there are reasonable grounds for believing that any set of conditions specified in subsection (2), (3) or (4) is satisfied.

Entry to premises under warrant

(2) The first set of conditions is that-

- (a) there is on the premises specified in the warrant, a document in relation to which a requirement could be imposed under section 14(1)(b); and
- (b) if the requirement under section 14(1)(b) were to be imposed-
 - (i) it would not be complied with; or
 - (ii) the document to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is that-

- (a) a person on whom a requirement has been imposed under section 14 (1)(b) has failed, wholly or in part, to comply with it; and
- (b) there is on the premises specified in the warrant, a document that has been required to be produced.

(4) The third set of conditions is that-

- (a) an enforcement officer has been obstructed in the exercise of a power under section 15; and
- (b) there is on the premises specified in the warrant a document that could be inspected under section 15(1)(c).

(5) A magistrate or justice of the peace may issue a warrant under this section if he is satisfied on information on oath given by an enforcement officer that there are reasonable grounds for suspecting that-

- (a) an offence under this Law has been, is being or is about to be committed by a relevant person; and
- (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.

(6) A warrant issued under this section shall authorise an enforcement officer to-

- (a) enter the premises specified in the warrant;
- (b) search the premises and take possession of anything that appears to be a document specified in the warrant or to take, in relation to that document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
- (c) take copies of, or extracts from, any document specified in the warrant;
- (d) require any person on the premises to provide an explanation of any document which appears to be of the kind specified in the warrant or to state where the document may be found; and

use such force as may reasonably be necessary.

Restrictions on powers

17. (1) This section applies in relation to the powers conferred by sections 14, 15 and 16.

(2) The powers referred to in subsection (1) are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(3) The exercise of the powers referred to in subsection (1) and the provision of information or production of documents under those powers is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Failure to comply with
information requirement

18. (1) If on an application made by an enforcement officer it appears to the Grand Court that a person (“the information defaulter”) has failed to do

something that he was required to do under section 14(1), the Grand Court may make an order under this section.

(2) An order made under this section may require the information defaulter to do either or both of the following-

- (a) to do the thing that he had failed to do within such period as may be specified in the order;
- (b) to take such steps to remedy the consequences of the failure as may be so specified.

(3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the body corporate, partnership or unincorporated body who is, wholly or partly responsible for the failure, to meet such costs of the application as may be specified in the order.

PART VI- ENFORCEMENT: CIVIL PENALTIES

19. (1) The Monetary Authority may, subject to subsection (2), impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed by-

Power to impose civil penalties

- (a) a direction under this Law; or
- (b) a condition of a licence under section 13,

and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Monetary Authority shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether to impose a penalty for failure to comply with a requirement, the Monetary Authority shall consider whether the person followed any relevant guidance which was at the time-

- (a) issued by the Monetary Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Monetary Authority as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 22 in respect of the same failure.

(5) A penalty imposed by the Monetary Authority pursuant to this section shall not exceed forty thousand dollars, unless such higher penalty is presented to and confirmed by the Grand Court.

(6) Where the Monetary Authority presents a higher penalty to the Grand Court for confirmation, the Grand Court may-

- (a) confirm the penalty imposed by the Monetary Authority; or
- (b) vary the penalty as it considers appropriate, having regard to the seriousness of the failure.

(7) A penalty imposed by the Monetary Authority under this section is payable to the Government for its use and is recoverable in civil proceedings by the Monetary Authority as a debt due to the Government.

Duty to issue penalty
notice

20. (1) The Monetary Authority shall, before imposing a penalty against a person under section 19, give notice to the person-

- (a) stating its intention to impose the penalty;
- (b) stating the reasons for the intention to impose the penalty;
- (c) stating the amount proposed to be imposed as the penalty; and
- (d) inviting the person to make any representation he wishes.

(2) A notice issued under subsection (1) shall require the person to whom it relates to submit his representation, if any, within a period of twenty-eight days from the date indicated on the notice.

(3) Where the Monetary Authority receives a representation under this section, it shall consider the representation and-

- (a) confirm the amount of the proposed penalty;
- (b) vary the penalty to be imposed in such manner as it considers fit; or
- (c) withdraw the penalty proposed to be imposed.

(4) Where the Monetary Authority varies or withdraws a proposed penalty under paragraph (b) or (c), as the case may be, it may take further steps, if any, in consequence of the variation or withdrawal as it considers appropriate.

(5) The Monetary Authority shall notify the person of its decision under subsection (3) and, where it varies or withdraws the proposed penalty, of the further steps, if any, it has taken in relation to the person.

(6) The Monetary Authority shall, by the notice under subsection (5), advise the person of his right of appeal under section 21.

(7) Where the Monetary Authority imposes a penalty under subsection (3)(a) or (b), it shall require the person to pay to the Monetary Authority the penalty imposed within such period as the Monetary Authority may determine.

(8) Where the Monetary Authority varies a penalty under subsection (3)(b), the application of subsection (7) is without prejudice to any further steps that the Monetary Authority may take under subsection (5).

(9) Where the Monetary Authority does not receive a representation in relation to a notice it has issued under this section, it shall proceed to impose such penalty as it considers appropriate.

(10) A notice issued under this section may, at the written request of the person against whom it is issued, be extended by the Monetary Authority for a period not exceeding an additional seven days.

21. (1) A person who is aggrieved by a decision of the Monetary Authority to impose a penalty under section 20 may appeal the decision to the Grand Court. Right of appeal

(2) On an appeal brought under subsection (1), the Grand Court may-

- (a) set aside the decision of the Monetary Authority;
- (b) confirm the decision of the Monetary Authority; or
- (c) vary the decision of the Monetary Authority in a manner it considers fit.

PART VII-ENFORCEMENT: OFFENCES

22. (1) Subject to subsection (2), a person who fails to comply with a requirement imposed by a direction under this Law commits an offence. Failure to comply with requirement imposed by a direction

(2) A person does not commit an offence under subsection (1) if he took all reasonable steps and exercised all due diligence to ensure compliance with the requirement.

(3) In deciding whether a person has committed an offence under this section, the court shall consider whether the person followed any relevant guidance that was at the time-

- (a) issued by the Monetary Authority or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Monetary Authority or other supervisory body or by the professional body as suitable in

its opinion to bring the guidance to the attention of persons likely to be affected by it.

- (4) A person who commits an offence under subsection (1) is liable-
- (a) on summary conviction, to a fine of fifty thousand dollars; or
 - (b) on conviction on indictment, to a fine of seventy thousand dollars or imprisonment for a term of three years or both.

(5) A person who is convicted of an offence under this section is not liable to a penalty under section 19 in respect of the same offence.

Offences in connection
with licences

23. (1) A person commits an offence if he, for the purpose of obtaining a licence under section 13-

- (a) provides information that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine of seventy thousand dollars or imprisonment for a term of three years or both.

Extra-territorial
application of offences

24. (1) An offence under this Law may be committed by a person acting in the course of a business in the financial sector although the conduct which gives rise to the offence takes place wholly or partly outside the Islands.

(2) Nothing contained in this section affects any criminal liability arising otherwise than under this section.

Time limit for summary
proceedings

25. An offence under this Law that is triable summarily shall be tried-

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

Liability of officers of
bodies corporate, etc.

26. (1) Where an offence under this Law committed by a body corporate is shown to-

- (a) have been committed with the consent or connivance of an officer of the body corporate; or
- (b) be attributable to any neglect on the part of any such officer,

the officer as well as the body corporate commits an offence and both are liable to be proceeded against and punished accordingly.

(2) Where an offence under this Law committed by a partnership is shown to-

- (a) have been committed with the consent or connivance of a partner; or
- (b) be attributable to any neglect on the part of a partner,

the partner as well as the partnership commits an offence and both are liable to be proceeded against and punished accordingly.

(3) Where an offence under this Law committed by an unincorporated association, other than a partnership, is shown to-

- (a) have been committed with the consent or connivance of an officer of the association; or
- (b) be attributable to any neglect on the part of any such officer,

the officer as well as the association commits an offence and both are liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(5) In this section-

- (a) "officer"-
 - (i) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
 - (ii) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and
- (b) "partner" includes a person purporting to act as a partner.

27. (1) Proceedings under this Law that are alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the partnership or association and not in that of its members.

Proceedings against
unincorporated bodies

(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Law as if the partnership or association were a body corporate.

(3) A fine imposed on the partnership or association on its conviction for an offence shall be paid out of the funds of the partnership or association.

PART VIII- GENERAL PROVISIONS

Report to Legislative
Assembly

28. (1) The Monetary Authority shall, within a period of six months after the end of each year-

- (a) prepare a report about the exercise during that year of its functions under this Law; and
- (b) transmit a copy of the report to the Attorney General.

(2) The Attorney General shall, within a period of three months after receipt of a report under subsection (1)(b), lay the report before the Legislative Assembly.

(3) Subsection (1) shall not apply in relation to a year if no direction under this Law was in force at any time in that year.

(4) In calculating the period specified in subsection (2), account shall not be taken of the period when the Legislative Assembly is prorogued or dissolved.

Monitoring persons
operating in the financial
sector

29. The Monetary Authority shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance by those persons with the requirements of any directions given under this Law.

Assistance in preparing
guidance

30. The Monetary Authority shall provide such assistance as may reasonably be required by any professional body whose members operate in the financial sector in drawing up guidance that, when issued and published, would be relevant guidance for the purposes of sections 19(3) and 22(3).

Notices

31. (1) A notice required under this Law may be given to a person-

- (a) by posting it to the person's last known address;
- (b) by leaving it for him with some adult person at his usual or last known place of abode or business; or
- (c) where the person is a body corporate, partnership or unincorporated association-
 - (i) by posting it to the registered or principal office of the body corporate, partnership or association; or
 - (ii) by delivering it to the secretary or clerk of the body corporate, partnership or association at the registered or principal office of the body corporate, partnership or association.

(2) Where under this Law the Monetary Authority is under a duty to give a notice to a person but does not have an address for the person, it shall cause the notice to be published in the Gazette and in at least three issues of a newspaper published and circulating in the Islands.

(3) The form of a notice issued under this section shall be such as the Monetary Authority may determine.

32. Where, in relation to a money laundering or terrorist financing activity, a power referred to in this Law may be exercised under this Law and the Proceeds of Crime Law, 2008 as well as the Terrorism Law (2009 Revision), the power shall be exercised under this Law, the Proceeds of Crime Law, 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) or the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 but not under all of those Laws at the same time.

Exercise of powers under this Law, the Proceeds of Crime Law 2008, the Money Laundering Regulations (2009 Revision), the Terrorism Law (2009 Revision) and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001

33. A person who knowingly and intentionally participates in activities the object or effect of which is, directly or indirectly, to circumvent any requirement imposed by a direction under this Law commits an offence and is liable-

Agreement or arrangement to circumvent direction

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

34. Neither the Monetary 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 unless it is shown that the act or omission was in bad faith.

Immunity from liability

35. (1) The Governor in Cabinet may, on the advice of the Monetary Authority, by order amend section 2(2) to extend the scope of persons operating in the financial sector.

Power to amend section 2(2)

(2) An order made under subsection (1) shall-

- (a) be published in the Gazette; and
- (b) be subject to a negative resolution of the Legislative Assembly.

36. (1) Subject to subsection (2), this Law binds the Crown.

Application to the Crown

(2) The Crown shall not be criminally liable on account of any contravention of this Law.

(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 Crown that constitutes such a contravention.

Regulations

37. The Governor in Cabinet may make regulations for the effective carrying out of the provisions of this Law.

Passed by the Legislative Assembly this day of , 2010.

Speaker

Clerk of the Legislative Assembly