

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE TRADE AND BUSINESS
LICENSING LAW, 2014 TO CLARIFY AND TO EXTEND THE
APPLICATION OF, AND EXEMPTIONS TO, THAT LAW, TO EXTEND
THE TRADE AND LICENSING BOARD'S FUNCTIONS, TO EXTEND
THE BOARD'S FUNCTIONS THAT ARE MAY BE DELEGATED TO
THE DEPARTMENT, TO CLARIFY THAT TRADE OFFICERS MAY BE
GRANTED EQUIPMENT, TO RESTRICT PARTNERSHIPS THAT MAY
BE LICENSED, TO AMEND THE REQUIREMENTS FOR LICENCE
AND RENEWAL APPLICATIONS, TO IMPOSE CONFIDENTIALITY
REQUIRMENTS ON PUBLIC SERVANTS OF, AND AGENTS AND
ADVISERS TO, THE DEPARTMENT, TO EMPOWER THE
DEPARTMENT TO DISCLOSE CERTAIN INFORMATION
REQUESTED BY OVERSEAS LAW ENFORCEMENT AGENCIES, TO
AMEND THE FEES PAYABLE UNDER THE LAW; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE TRADE AND BUSINESS LICENSING (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Trade and Business Licensing Law, 2014.

Clause 1 states the short title of the resulting Law.

Clause 2 seeks -

- (a) to insert the new definitions “deal in” parcels of Island land, “function”, “owner” of parcels of Island land, “parcel of Island land”, “property development” and “self-leasing owner” of parcels of Island land; and
- (b) in conjunction with clause 9, to shift the definition “significant interest” in section 24(7) to section 2 as a definition for all of the Law; and
- (c) to replace the definition “trade and business” with the definition “trade or business”.

The replacement definition “trade or business” extends the existing term to include online businesses and clarifies that the term captures property development and also self-leasing owners and their agents who receive reward for their services.

Clause 3 seeks to amend section 3(b) to include some examples of agricultural products that are exempt from the Law which Caymanian producers commonly query. Clause 3 also includes new exemptions for certain self-leasing owners and their agents. These inclusions will formalise the existing status of such owners and agents under the Trade and Business Licensing Directions, 2016.

Clause 4 seeks to amend section 5 to include licence amendments and exemptions as part of the Trade and Business Licensing Board’s functions.

Clause 5 seeks to make a consequential amendment to section 6 because of the amendment sought by clause 4.

Clause 6 seeks to amend section 7 to clarify that the Board or Department may grant a trade officer the equipment necessary to carry out their instructions to the officer.

Clause 7 seeks to amend section 18 to change the requirements for licence and renewal applications to -

- (a) remove the requirement for police clearance certificates for those with an interest in listed companies;
- (b) change the requirement for such checks in relation to non-listed companies to just those with a significant interest as defined;
- (c) only require evidence of compliance with the Islands' laws about pensions and health insurance in relation to employees, rather than those laws generally; and
- (d) extend the required reference from a bank to financial institutions generally and to add an alternative of providing a bill in the applicant's name for the provision of electricity or water services, or for rates, in the Islands.

Clause 8 seeks to amend the list of those who cannot be granted a licence or have one renewed under section 19(1) to include certain partnerships. As amended, the applicant partnership must be at least sixty percent Caymanian and not otherwise disqualified under the section.

Clause 9 seeks to repeal section 24(7), which defines "significant interest". Under clause 2, that definition is being re-enacted in section 2.

Clause 10 seeks to insert new sections 38A and 38B. New section 38A will impose a duty on public servants employed by, and agents and advisers to, the Department not to disclose information relating to a licensee's affairs obtained in the course their duties, except for certain purposes. New section 38B empowers the Department to make disclosures of information requested by overseas law enforcement agencies, subject to certain safeguards.

Clause 11 seeks to amend Part B of Schedule 1 to -

- (a) include the definitions "affiliated agent" and "licensed";
- (b) replace the fee item for real estate agents with an item for real estate agencies and real estate agents; and
- (c) insert new fee items for property developers, the rental and leasing of parcels of land (other than as a real estate agency or real estate agent), money services and courier services.

THE TRADE AND BUSINESS LICENSING (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Trade and Business Licensing Law, 2014 - interpretation
3. Amendment of section 3 - application
4. Amendment of section 5 - functions of the Board
5. Amendment of section 6 - delegation by the Board
6. Amendment of section 7 - trade officers
7. Amendment of section 18 - application for grant or renewal of a licence
8. Amendment of section 19 - restriction on grant or renewal of a licence
9. Amendment of section 24 - transfer of licence
10. Insertion of sections 38A - confidentiality of licensee's affairs and 38B - assistance to overseas law enforcement agencies
11. Amendment of Schedule 1 - fees

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Trade and Business Licensing (Amendment) Law, 2017. Short title
2. The Trade and Business Licensing Law, 2014, in this Law referred to as the "principal Law", is amended in section 2 by - Amendment of section 2 of the Trade and Business Licensing Law, 2014 - interpretation
 - (a) inserting in the appropriate alphabetical sequence the following definitions -

“ “deal in”, for parcels of Island land, means to deal, or offer to deal in the parcels, or both, by any or all of the following transactions relating to the parcels -

 - (a) purchases;
 - (b) sales; or
 - (c) rentals, tenancies or leasing;

“function” includes duty, power and role;

“owner”, of parcels of Island land, means any or all legal and beneficial owners of the parcels;

“parcel of Island land” means -

(2004 Revision)

- (a) an area of land that, under the Registered Land Law (2004 Revision), has been separately delineated on the Registry Map and given a number; and

(2013 Revision)

- (b) land subdivided under a strata plan and registered under section 10 of the Strata Titles Registration Law (2013 Revision);

“property development” means carrying out work for any or all of the following activities in relation to a parcel of Island land (whether by the parcel’s owner or by someone else with the owner’s consent) with a view to obtaining a reward from selling or leasing the parcel -

(2015 Revision)

- (a) constructing a building or other structure;
- (b) renovating a building or other structure;
- (c) making a material change (within the meaning of that term under the Development and Planning Law (2015 Revision)) to the use of the parcel or a building or other structure on the parcel; or
- (d) clearing, site works and other activities to prepare for the carrying out of an activity mentioned in paragraph (a), (b) or (c);

“self-leasing owner” means an owner of parcels of Island land who deals in any of the parcels other than through a real estate agency or real estate agent;

“significant interest”, in a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly -

- (a) to control ten percent or more of the voting rights of that company at a general meeting of the company;
 - (b) to a share of ten percent or more in dividends declared and paid by the company; or
 - (c) to a share of ten per cent or more in any distribution of the surplus assets of the company;”;
- (b) deleting the definition of the words “trade and business” and substituting the following definition -
- “ “trade or business” includes -
- (a) a profession, calling, vocation, occupation, trade, manufacture, mercantile, wholesale or retail operation or an

- undertaking of any kind whatever, whether carried out online, seasonally, occasionally or otherwise;
- (b) the carrying out of property development;
 - (c) acting as a self-leasing owner for parcels of Island land; and
 - (d) acting for reward as an agent for a self-leasing owner of parcels of Island land; and”.
3. The principal Law is amended in section 3 by - Amendment of section 3 - application
- (a) in paragraph (b) after the word “products”, inserting the words “(including, for example, jams, jellies, sauces and thatch work)”;
 - (b) in paragraph (d) by deleting the word “or”; and
 - (c) after paragraph (d) inserting the following paragraphs -
 - “(da) a self-leasing owner of parcels of Island land (other than any parcel that is the owner’s principal place of residence) for no more than two parcels of Island land; and
 - (db) an agent (except a real estate agency or real estate agent) of a self-leasing owner mentioned in paragraph (da); or”.
4. The principal Law is amended in section 5 as follows - Amendment of section 5 - functions of the Board
- (a) in paragraph (a), by deleting the words “for a licence”; and
 - (b) in paragraph (b), by inserting after the word “suspension,” the word “amendment,”.
5. The principal Law is amended by repealing section 6(1) and substituting the following subsection - Amendment of section 6 - delegation by the Board
- “(1) The Board may delegate to the Department any or all of the Board’s functions under section 5(a), (b), and (c).”.
6. The principal Law is amended in section 7 by inserting after subsection (3) the following subsection - Amendment of section 7 - trade officers
- “(3A) The Board or Department may grant a trade officer the equipment necessary to carry out their instructions to the officer.”.
7. The principal Law is amended in section 18 as follows - Amendment of section 18 - application for grant or renewal of a licence
- (a) by repealing subsection (2)(b)(iii)(B) and substituting the following sub-subparagraphs -
 - “(B) all individuals who are directors of the applicant, where the applicant is a listed company;
 - (BA) all individuals who have a significant interest in, or who are directors of, the applicant, where the applicant is a company other than a listed company; or”;

- (b) by repealing subsection (2)(b)(iv) and inserting the following subparagraph -
 “(iv) in the case of an application for the grant of a licence only -
 (A) a reference for the applicant from a financial institution; or
 (B) a bill in the applicant’s name for the provision of electricity or water services, or for rates, in the Islands;”;
- (c) in subsection (2)(b)(vii) and (viii), by inserting after the words “relating to” the word “employee”; and
- (d) by after subsection (9) inserting the following subsection -
 “(10) In this section -
 “financial institution” has the meaning assigned to that expression in section 182(1) of the Proceeds of Crime Law (2016 Revision); and
 “listed company” means a company that, under the Securities Investment Business Law (2015 Revision), has securities listed on a recognised securities exchange.”.
- (2016 Revision)
- (2015 Revision)
- Amendment of section 19 - restriction on grant or renewal of a licence
8. The principal Law is amended in section 19(1)(a) as follows -
- (a) in subparagraph (iv), by deleting the word “or”; and
- (b) in subparagraph (v) by deleting the full stop and substituting the words “; or”; and
- (c) by inserting after subparagraph (v) the following subparagraph -
 “(vi) is a partnership and less than sixty percent of its partners are individuals who are not Caymanian, companies that are not Caymanian owned and controlled or persons of any type mentioned in subparagraphs (i) to (v).”.
- Amendment of section 24 - transfer of licence
 Insertion of sections 38A - confidentiality of licensee’s affairs and 38B - assistance to overseas law enforcement agencies
9. The principal Law is amended by repealing section 24(7).
10. The principal Law is amended by inserting after section 38 the following sections -
- “Confidentiality of licensee’s affairs
- 38A. (1) This section applies to a person as follows (the “official”) -
- (a) a public servant employed under the Public Service Management Law (2013 Revision) by the Department; or
- (b) an agent or adviser to the Department about any functions of, or delegated to, the
- (2013 Revision)

Department under this Law (“Departmental functions”).

(2) If, in the course of in performing Departmental functions or the official’s duties, the official obtains information relating to a licensee’s affairs, the official shall not disclose the information to anyone else, except if the disclosure is -

- (a) in the course of performing Departmental functions;
- (b) lawfully required or permitted by a court;
- (c) to the licensee or with the licensee’s authority;
- (d) to enable or assist the Cabinet to perform functions under this Law or in connection with dealings between the Cabinet and the Board when the Board performs its functions under this Law;
- (e) is about information that is publicly available from another source;
- (f) is about information that is in a summary or in statistics and expressed in a way that does not allow the licensee’s identity to be established; or
- (g) lawfully made -
 - (i) to the Director of Public Prosecutions or a law enforcement agency in the Islands, with a view to the institution of, or for the purpose of, criminal proceedings; or
 - (ii) under the Money Laundering Regulations (2015 Revision).

(2015 Revision)

(3) If the official contravenes subsection (2), the official commits an offence and is liable -

- (a) on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year; or
- (b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for three years.

Assistance to
overseas
law
enforcement
agencies

38B (1) This section applies if an overseas law enforcement agency requests assistance from the Department to perform the agency’s functions.

(2) The Department may disclose information to the agency if the Department has satisfied itself that -

- (a) the agency -
 - (i) is subject to adequate legal restrictions on further disclosures of the information; or
 - (ii) has given the Department an undertaking not to further disclose the information without the Department's consent; and
- (b) the disclosure to the agency -
 - (i) is necessary for the agency to perform its functions; and
 - (ii) will not be used in criminal proceedings against the person who provided the information to the Department, other than in a prosecution for an offence of perjury.

(3) The Department may refuse the request if it has required a written undertaking as follows, in a form that the Department decides, and the agency has not complied with the requirement -

- (a) to make corresponding disclosures to the Department; or
- (b) to make a contribution to the cost of complying with the request in an amount that the Department considers appropriate.

(4) In deciding whether or not to comply with the request, the Department shall consider whether -

- (a) corresponding disclosures would be made in the relevant country or territory to the Department;
- (b) the performance of the agency's functions relates to the possible breach of a law or other requirement that has no close parallel in the Islands or involves asserting a jurisdiction not recognised by the Islands; and
- (c) it is in the public interest to comply with the request.

(5) The Department may, when the request is made or

at any later time, consent to the agency using the information -

- (a) to conduct a proceeding in a court of law in the agency's jurisdiction or investigations by the agency preliminary to bringing such a proceeding;
- (b) to assist a self-regulatory organisation with surveillance or enforcement activities, if the Department is satisfied the organisation is involved in the supervision of conduct that is the subject of the request; or
- (c) to assist in a criminal investigation or prosecution of any charge relating to a contravention of a provision stated in the request, if the charge relates to a contravention of the laws enforced by the agency.

(6) The Department shall keep a record of all requests and disclosures made, and an inventory of the information disclosed, under this section.

(7) In this section -

“functions”, of an overseas law enforcement agency, includes conducting civil and administrative proceedings to enforce laws the agency enforces;

“law” includes regulations; and

“overseas law enforcement agency” means an agency from a country or territory outside the Islands that performs law enforcement functions under a law of that country or territory.”.

11. The principal Law is amended in Part B of Schedule 1 by -

Amendment of Schedule
1 - fees

- (a) under the heading “Professional” -
 - (i) inserting in the appropriate alphabetical sequence the following definitions -
 - “affiliated agent” means a real estate agent who trades under, or holds out to be affiliated with, a name that is the same as, or similar to or the derivative of the name of, a licensed real estate agency;

- “licensed”, for a real estate agency or real estate agent, means licensed in that capacity under this Law;”;
- (ii) deleting item 9 under the columns headed “Category of trade or business” and “Fee” (the “columns”) and substituting the following item -
- | | | |
|------------------------|---|---------|
| “9. Property developer | being a person who carries out property development | \$750”. |
|------------------------|---|---------|
- (iii) deleting item 11 under the columns and substituting the following item -
- | | | |
|---|--|---|
| “11. Real estate agency or real estate agent, or both | a real estate agency (an “agency”) or being a real estate agent (an “agent”), or both, who as an agent deals in parcels of Island land | \$750 for each agency, plus an additional \$750 for each affiliated agent of the agency; or

\$750 for a self-employed agent who is not an affiliated agent”; and |
|---|--|---|
- (iv) after item 12 under the columns inserting the following items -
- | | | |
|--|--|-------------|
| “13. Self-leasing owner | being a self-leasing owner of parcels of Island land | \$750” |
| 14. Agent for a self-leasing owner (except as a licensed real estate agency or licensed real estate agent) | being an agent for reward (except as a licensed real estate agency or licensed real estate agent) of a self-leasing owner, of parcels of Island land | \$750”; and |
- (b) under the heading “Trades and Technical” by -
- (i) in item 17 under the columns, deleting the words “including any person who buys from a merchant or who himself imports and offers for sale direct to the public in small quantities and who manufactures and sells his own products-”; and

(ii) inserting after item 24 under the columns, the following items -

“26. Money services	being in the business of making cash loans or cash advances	\$300
27. Courier services	being in the business of transporting packages or documents	\$300”.

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.