

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REPEAL THE CONFIDENTIAL
RELATIONSHIPS (PRESERVATION) LAW (2015 REVISION); TO
PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH
CONFIDENTIAL INFORMATION MAY BE DISCLOSED; AND TO
PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**

THE CONFIDENTIAL INFORMATION DISCLOSURE BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill repeals the Confidential Relationships (Preservation) Law (2015 Revision) and makes provision for the circumstances under which confidential information may be disclosed and provides for incidental and connected purposes.

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

Clause 2 of the Bill makes provision for the definition of certain words used in the Bill.

Clause 3 of the Bill makes provision for the circumstances where confidential information may be disclosed by a person who owes a duty of confidentiality without that person incurring civil liability.

Clause 4 of the Bill makes provision for the application to the Court for directions in proceedings where confidential information is required to be given in evidence.

Clause 5 of the Bill makes provision for rules to be made by the Rules Committee of the Grand Court regarding the procedure to be followed where an application is made under this Law.

Clause 6 of the Bill repeals the Confidential Relationships (Preservation) Law (2015 Revision).

THE CONFIDENTIAL INFORMATION DISCLOSURE BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title
2. Interpretation
3. Disclosure of confidential information
4. Evidence of confidential information directions
5. Rules Committee to make rules for procedure
6. Repeal

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Confidential Information Disclosure Law, 2016. Short title

2. In this Law - Interpretation

“confidential information” includes information, arising in or brought into the Islands, concerning any property of a principal, to whom a duty of confidence is owed by the recipient of the information;

“court” has the meaning assigned to this word in the Evidence Law (2011 Revision); (2011 Revision)

“normal course of business” means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal;

“principal” means a person to whom a duty of confidence is owed;

“property” includes every present, contingent and future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money, moneys worth,

realty or personalty, movable or immovable, rights and securities thereover and all documents and things evidencing or relating thereto;

(2013 Revision) “regulatory laws” has the meaning assigned to these words in section 2 of the Monetary Authority Law (2013 Revision); and

(2015 Revision) “wrongdoing” has the meaning assigned to it by section 50(2) of the Freedom of Information Law (2015 Revision).

Disclosure of confidential information

3. (1) Where a person owes a duty of confidence, the disclosure by that person of confidential information -

- (a) in compliance with the directions of a court pursuant to section 4;
- (b) in the normal course of business or with the consent, express or implied, of a principal;
- (c) to a constable of the rank of inspector or above investigating a criminal offence committed or alleged to have been committed within the Islands;
- (2015 Revision) (d) in compliance with an order or search warrant made by the Central Authority pursuant to the Criminal Justice (International Cooperation) Law (2015 Revision);
- (2015 Revision) (e) in compliance with an order made by the Cayman Authority pursuant to the Mutual Legal Assistance (United States of America) Law (2015 Revision);
- (S.I. 1890/78) (f) in compliance with an order for evidence made by the Grand Court pursuant to the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order, 1978 (S.I 1890/78);
- (2013 Revision) (g) to the Monetary Authority, where the disclosure is made pursuant to a duty imposed under the Monetary Authority Law (2013 Revision) or regulatory laws;
- (2014 Revision) (h) to the Financial Reporting Authority pursuant to a duty imposed by the Proceeds of Crime Law (2014 Revision) or Terrorism Law (2015 Revision);
- (2015 Revision) (i) to the Anti-Corruption Commission pursuant to a duty imposed by the Anti-Corruption Law (2014 Revision); and
- (2014 Revision) (j) in accordance with, or pursuant to, a right or duty created by any other Law or Regulation,

shall not constitute a breach of the duty of confidence and shall not be actionable at the suit of any person.

(2) A person who discloses confidential information on wrongdoing, or in relation to a serious threat to the life, health, safety of a person or in relation to a serious threat to the environment, shall have a defence to an action for breach of

the duty of confidence, as long as the person acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing, of a serious threat to the life, health, safety of a person or of a serious threat to the environment.

4. (1) In this section -

Evidence of confidential
information directions

“give in evidence” means make a statement, produce a document by way of discovery, answer an interrogatory or testify during or for the purposes of any proceeding; and

“proceeding” means any court proceeding, civil or criminal, and includes a preliminary or interlocutory matter leading to or arising out of a proceeding.

(2) If a person intends to or is required to give evidence in or in connection with any proceeding being tried, inquired into or determined by any court, tribunal or other authority, whether within or without the Islands and the evidence consists of or contains any confidential information within the meaning of this Law, the person shall apply for directions in accordance with this section before giving that evidence, unless the person has been provided with the express consent of the principal.

(3) An application for directions under subsection (2) shall be made to and be heard and determined by, a Judge of the Grand Court.

(4) Notice of an application under subsection (3) shall be served on the Attorney-General and if the Judge so orders, to any person who is a party to the proceedings relating to the application being made.

(5) The Attorney-General may appear as *amicus curiae* at the hearing of an application under this section and any party on whom notice has been served under subsection (4) is entitled to be heard with respect to the application, either in person or by an attorney-at-law representing the person.

(6) Upon hearing an application under subsection (3), a Judge shall direct -

- (a) that the evidence be given;
- (b) that some or all of the evidence shall not be given; or
- (c) that the evidence be given subject to conditions which the Judge may specify whereby the confidentiality of the information is safeguarded.

(7) In order to safeguard the confidentiality of a document, statement, answer or testimony ordered to be given under subsection (6)(c), a Judge may order -

- (a) that the divulgence of the document, statement, answer or testimony be restricted to certain persons named by the Judge in the order;
- (b) that evidence be taken in private in a manner specified by the Judge to ensure privacy; and
- (c) that the reference to the name, address and description of any person be made by the assignment of alphabetical letters, numbers or symbols representing the name, address and description of the person, the key to which reference shall be provided to restricted persons named by the Judge.

(8) A person receiving confidential information by operation of subsection (3) is as fully bound by the duty of confidence, as if the information had been disclosed to the person in confidence by the principal.

(9) In considering what order to make under this section, a Judge shall have regard to -

- (a) whether the order would operate as a denial of the rights of any person in the enforcement of a claim;
- (b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of confidentiality;
- (c) in any criminal case, the requirements of the interests of justice.

Rules Committee to
make rules for procedure

5. The Rules Committee of the Grand Court may make rules and prescribe forms governing the procedure for applications to the Grand Court under this Law.

Repeal
(2015 Revision)

6. The Confidential Relationships (Preservation) Law (2015 Revision) is repealed.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.