

CAYMAN ISLANDS



## **BANKS AND TRUST COMPANIES (AMENDMENT) (NO. 2) BILL, 2020**

**A BILL FOR A LAW TO AMEND THE BANKS AND TRUST COMPANIES LAW (2020 REVISION) TO PROVIDE FOR AN EFFECTIVE SYSTEM OF OVERSIGHT AND ENFORCEMENT OF ACCOUNTING OBLIGATIONS WHERE ACCOUNTING INFORMATION IS HELD OUTSIDE OF THE ISLANDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Ministry of Financial Services and Home Affairs (FSHA)

Consultation Draft



**TO BE COMPLETED ON THE SETTLING OF POLICY**

**[Memorandum of  
OBJECTS AND REASONS**

This Bill seeks to amend the *Banks and Trust Companies Law (2020 Revision)* to provide for an effective system of oversight and enforcement of accounting obligations where accounting information is held outside of the Islands.

Clause 1 of the Bill provides the short title of the legislation.]





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## Arrangement of Clauses

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ENACTED by the Legislature of the Cayman Islands.

**Short title**

1. This Law may be cited as the Banks and Trust Companies (Amendment) (No.2) Law, 2020.

**Amendment of section 2 of the Banks and Trust Companies Law (2020 Revision) - definitions**

2. The *Banks and Trust Companies Law (2020 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 by inserting after the definition of “participating interest” the following definition —

“**Registrar of Trusts**” means the Registrar of Trusts appointed under section 73 of the *Trusts Law (2020 Revision)*.”

**Insertion of sections 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I – duty to furnish annual returns; registrar’s power to fine, etc.**

3. The principal Law is amended by inserting after section 15A the following sections —

**“Duty to furnish annual returns**

- 15B.**(1) The holder of a Trust licence who provides registered office services for an exempted trust constituted under the laws of the Islands shall furnish to the Registrar of Trusts in January of each year, after the date on which it began providing the registered office for the exempted trust, a return in the form of a declaration stating that the exempted trust is maintaining proper accounts and records in accordance with section 27A of the *Trusts Law (2020 Revision)*.
- (2) The holder of a trust licence who does not submit a return by the due date under subsection (1) shall incur a penalty of —
- (a) 33.33% of the annual fee specified in section 78 if the documents are submitted between 1st April and 30th June;
  - (b) 66.7% of the annual fee specified in section 78 if the documents are submitted between 1st July and 30th September; and
  - (c) 100% of the annual fee specified in section 78 if the documents are submitted between 1st October and 31st December.

**Registrar’s power to impose administrative fine**

**15C.** The Registrar of Trusts has the power to impose an administrative fine on a person who breaches a provision of this Law that is specified in the Schedule.

**Administrative fine amounts**

- 15D.** The fine under section 15C shall be five thousand dollars for a breach and the Registrar of Trusts may, in addition to the fine for the initial breach, impose a further fine of one thousand dollars for every month that the breach continues, until one of the following occurs —
- (a) the breach ceases or is remedied;
  - (b) payment of the initial fine and all additional administrative fines imposed for the continuing breach is made; or
  - (c) the total of the initial fine and all additional administrative fines for the continuing breach amounts to twenty-five thousand dollars.





### **The power to impose administrative fine**

**15E.** For the purposes of section 15C —

- (a) an administrative fine may be imposed for a breach that is not an offence;
- (b) where a breach set out in the Schedule is also an offence, a fine for the breach is not limited by the penalty under the provision or by sections 6(2)(ii) and 8 of the *Criminal Procedure Code (2019 Revision)*; and
- (c) the Registrar of Trusts shall not impose an administrative fine where criminal proceedings have commenced or have been concluded in relation to the acts that constitute the breach.

### **Limitation period**

- 15F.** (1) The Registrar of Trusts shall not impose an administrative fine after the expiration of six months after the date on which the Registrar of Trusts became aware of the occurrence of the breach.
- (2) For the purpose of subsection (1), the Registrar of Trusts becomes aware of the breach when information is first received from which the breach could reasonably have been inferred.

### **Relationship with penalties**

**15G.** If a breach set out in the Schedule is an offence, an administrative fine for the breach shall not preclude a prosecution for the breach or liability for any relevant fees.

### **Registrar may issue guidance**

**15H.** The Registrar of Trusts may issue guidance on the enforcement of administrative fines.

### **Registrar's rule making power**

**15I.** The Registrar of Trusts may, by rules published in the *Gazette*, provide for —

- (a) aggravating and mitigating factors for administrative fines; and
- (b) the publishing of administrative fines imposed in accordance with section 15C.”.

### **Amendment of section 27 - regulations**

- 4.** The principal Law is amended in section 27(1) by inserting after paragraph (b) the following paragraph —

“(ba) in relation to fines under section 15C, to provide for —

- (i) procedures for imposing administrative fines;
- (ii) appeals against decisions of the Registrar of Trusts to impose a fine in accordance with section 15B;
- (iii) how administrative fines may be paid and may be enforced;
- (iv) interest payable on outstanding administrative fines;
- (vi) evidentiary provisions for proceedings relating to sections 15B to 15I; and
- (vii) such other matters that are necessary or convenient to give effect to the purposes or provisions relating to the Registrar of Trusts' power to impose a fine;”.

### Insertion of Schedule - administrative fines

5. The principal Law is amended by inserting after section 27 the following Schedule —

## “SCHEDULE

*(section 15C, 15E and 15G )*

### Administrative Fines

No.	Section	Description of breach
1.	15B(1)	Failure of a licensee who provides a registered office for an exempted trust constituted under the laws of the Islands before the expiry period for late filing of the return, to furnish to the Registrar of Trusts a return declaring that the exempted trust is maintaining proper accounts and records.”.

Passed by the Legislative Assembly the      day of      , 2020.

Speaker

*Clerk of the Legislative Assembly*

