

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MONETARY AUTHORITY LAW
(2016 REVISION) TO ADD CERTAIN LAWS AS REGULATORY LAWS
AND TO PROVIDE FOR ADMINISTRATIVE FINES; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE MONETARY AUTHORITY (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Monetary Authority Law (2016 Revision).

Clause 1 provides for the short title and commencement.

Clause 2 amends the definition of “regulatory laws” to include the Development Bank Law (2004 Revision) and the Directors Registration and Licensing Law, 2014. The clause also inserts the new definitions of “breach”, “fine”, “prescribed provision” and “rules”.

Clause 3 inserts a new section 2A. New section 2A will provide that a reference to the Law or a provision of Law includes regulations and rules made under the Law or the provision.

Clause 4 replaces section 34(7). Replacement section 34(7) will provide for the relationship between section 34(6) and new Part VIA.

Clause 5 inserts a new Part VIA, which will consist of new sections 42A to 42H.

New section 42A will empower the Authority to impose “administrative fines” for breaches of prescribed regulatory and other laws, at levels to be prescribed. The fines are in the nature of an independent civil penalty, rather than machinery for how fines for offences may be dealt with administratively, for two reasons. First, the power is not dependant on the breach in question being an offence (new section 42C(a)). Secondly, if the breach is an offence, a fine can be imposed as well as any criminal penalty (new section 42E(1)).

New section 42B will govern the amount of the fines. They will range from fixed fines of \$5,000 for minor breaches to fines of up to \$1,000,000 for the most serious. Fines other than for minor breaches are to be discretionary.

New section 42C will clarify the extent of the power in relation to other laws.

New section 42D will impose a limitation period for exercising the power. The period will start when the Authority first becomes aware of the breach. For minor breaches the period is six months. For serious or very serious breaches it is two years.

New section 42E will clarify that fines, prosecutions for breaches and additional fees, late filing fees and surcharges for a breach under the relevant regulatory law are independent of and do not limit each other. However, the Authority will be

required to have regard to the criminal penalties and such fees or surcharges when fixing the amount of a fine for the same breach.

New section 42F will provide for the criteria for making decisions about fines.

New sections 42G and 42H will provide for rule and Regulation-making powers to supplement the Part. Amongst other things, the Regulations will prescribe the provisions to which fines apply and govern the procedure for imposing fines and appeals against them.

Clause 6 inserts a new Part VIII, which consists of new section 53. New section 53 will provide that the Authority cannot impose a fine for a breach that happened before the commencement of new Part VIA.

THE MONETARY AUTHORITY (AMENDMENT) BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Monetary Authority Law (2016 Revision) - definitions
3. Insertion of section 2A - references to Law includes regulations and rules
4. Amendment of section 34 - relations with banks and other financial institutions
5. Insertion of Part VIA - administrative fines
6. Insertion of Part VIII - transitional

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Monetary Authority (Amendment) Law, 2016. Short title and commencement
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. The Monetary Authority Law (2016 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows - Amendment of section 2 of the Monetary Authority Law (2016 Revision) - definitions
- (a) in the definition of the words “regulatory laws” -
 - (i) by inserting after the words “following Laws” the words “and Regulations made under them”;
 - (ii) by inserting after paragraph (d) the following paragraph - “(da) Development Bank Law (2004 Revision);”;
 - (iii) in paragraph (g), by deleting the word “and”; and
 - (iv) by inserting after paragraph (g) the following paragraph - “(ga) Directors Registration and Licensing Law, 2014, Law 10 of 2014; and”; and
 - (b) in the definition “relevant financial business” by deleting the full stop and substituting the word “; and”; and
 - (c) by inserting in the appropriate alphabetical sequence the following definitions -

“breach” includes a contravention and, in relation to a prescribed provision, includes allowing or not allowing a prescribed state of affairs to exist and engaging or not engaging in prescribed conduct;

“fine”, other than for a provision the breach of which is an offence, means an administrative fine under section 42A(1);

“prescribed provision” means a provision for which the Authority may impose an administrative fine under section 42A(1);

“rules” means rules issued and gazetted under section 34 or 42G.”.

Insertion of section 2A - references to Law includes its instruments

3. The principal Law is amended by inserting after section 2 the following section -

“References to Law includes regulations and rules

2A. In this Law, a reference to this Law or a provision of this Law, includes, if the context permits, a reference to regulations made and rules issued under this Law or the provision.”.

Amendment of section 34 - relations with banks and other financial institutions

4. The principal Law is amended by repealing section 34(7) and substituting the following subsection -

“(7) Subsection (6) shall not affect the power to fine for a breach of a provision of the rules that is a prescribed provision.”.

Insertion of Part VIA - administrative fines

5. The principal Law is amended by inserting after Part VI the following Part -

“PART VIA - Administrative Fines

“Authority’s power to fine

42A.(1) The Authority has the power to impose an administrative fine on a person who breaches a provision prescribed of this Law, a regulatory law or the money laundering regulations.

(2) Regulations prescribing the provisions shall also prescribe the category of the breach as minor, serious or very serious.

Fine amounts

42B.(1) For a breach prescribed as minor the fine shall be \$5,000.

(2) For a breach prescribed as minor the Authority also has the power to impose one or more continuing fines of

\$5,000 each for a fine already imposed for the breach (the “initial fine”) at intervals it decides, until the earliest of the following to happen -

- (a) the breach stops or is remedied;
- (b) payment of the initial fine and all continuing fines imposed for the breach; or
- (c) the total of the initial fine and all continuing fines for the breach reaches \$20,000.

(3) For a breach prescribed as serious, the fine is a single fine not exceeding -

- (a) \$50,000 for an individual; or
- (b) \$100,000 for a body corporate.

(4) For a breach prescribed as very serious, the fine is a single fine of not exceeding -

- (a) \$100,000 for an individual; or
- (b) \$1,000,000 for a body corporate.

(5) For breaches prescribed as serious or very serious the Authority has a discretion in deciding whether or not to impose any fine and the amount of the fine.

Declaratory provisions for power to fine

42C. To avoid doubt -

- (a) a fine may be imposed for a breach even if the breach itself is not an offence;
- (b) if a breach of a prescribed provision is an offence, a fine for the breach is not limited by the penalty under the provision or by sections 6(2) and 8 of the Criminal Procedure Code (2014 Revision); and
- (c) this Part is in addition to, and does not limit or otherwise affect, the Authority’s powers under a law mentioned in section 42A(1).

2014 Revision

Limitation period

42D. (1) The Authority shall not impose a fine after the expiration of the following period from the date on which the Authority became aware of the commission of the breach -

- (a) 6 months for a breach prescribed as minor; or
- (b) 2 years for a breach prescribed as serious or very serious breach.

(2) For subsection (1), the Authority shall be deemed

to have become aware of the breach when it first received information from which the breach can reasonably be inferred.

Relationship
with
penalties

42E. (1) If a breach of a prescribed provision is an offence, a fine for the breach shall not preclude a prosecution for the breach or liability for an additional fee, late filing fee or a surcharge under a regulatory law for the breach, and *vice versa*.

(2) The Authority shall, if the breach is prescribed as serious or very serious, have regard to the amount of the following in fixing the amount of the fine for the breach -

- (a) any penalty imposed on conviction for the offence; or
- (b) the fee or surcharge.

Criteria for
making fine
decision

42F.(1) In making a decision mentioned in section 42B(5), the Authority shall consider all relevant factors including the following criteria -

- (a) the prescribed criteria, after applying any prescribed relative weight that must be given to them; and
- (b) the following principles, in the following order of importance -
 - (i) first, the need to promote and maintain a sound financial system in the Islands;
 - (ii) secondly, the disgorgement principle;
 - (iii) thirdly, the disciplinary principle; and
 - (iv) fourthly, the deterrence principle.

(2) The principles prevail over the factors and the other criteria.

(3) Subsection (2) shall not prevent the Authority from considering prescribed criteria to reduce the amount of a fine.

(4) Notwithstanding subsection (1), the Authority need only consider a particular criteria to the extent it considers the criteria is relevant to making the decision.

(5) In this section -

“deterrence principle” means the need to deter financial services businesses and others from breaching prescribed provisions;

“disciplinary principle” means the need to punish intentional, reckless or inappropriately negligent breaches of prescribed provisions; and

“disgorgement principle” means the principle of ensuring -

- (a) licensees under regulatory laws and those connected with them as defined in section 34(16)(d) do not gain (including by avoiding losses) from breaching prescribed provisions; and
- (b) persons mentioned in paragraph (a) disgorge all such gains.

Authority’s rule-making power for Part

42G (1) The Authority may issue rules consistent with this Part about -

- (a) factors that supplement or tend to show or not to show the extent of a matter the subject of the criteria under section 42F(1);
- (b) aggravating and mitigating factors for fines; and
- (c) other matters, consistent with this Part for administering this Part, including, for example, publishing fines imposed.

(2) The rules have no effect until they are gazetted.

Other Regulation-making powers for Part

42H. Regulations made by Cabinet may provide for -

- (a) forms and procedures for imposing fines;
- (b) appeals against decisions under this Part;
- (c) how fines shall be paid and may be enforced;
- (d) interest on outstanding fines;
- (e) evidentiary provisions for proceedings relating to this Part; and
- (f) other matters required or permitted to be prescribed under this Part or that are necessary or convenient to give effect to the purposes or provisions of this Part.”.

6. The principal Law is amended by inserting after Part VII the following Part -

Insertion of Part VIII - transitional

“PART VIII - Transitional

Transitional provision for

53. The Authority shall not impose a fine for a breach that

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Monetary
Authority
(Amendment)
Law, 2016

happened before the commencement of Part VIA.”.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.