

CAYMAN ISLANDS



PARTNERSHIP (AMENDMENT) BILL, 2020

A BILL FOR A LAW TO AMEND THE PARTNERSHIP LAW (2013 REVISION) TO PROVIDE FOR THE ENHANCEMENT OF OVERSIGHT OF THE KEEPING OF ACCOUNTING RECORDS AND FOR INCIDENTAL AND CONNECTED PURPOSES

CONSULTATION DRAFT

[NOT FOR SUBMISSION TO CABINET OR CAUCUS]

PUBLISHING DETAILS

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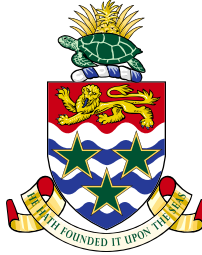
**Memorandum of
OBJECTS AND REASONS**

This Bill seeks to amend the Partnership Law (2013 Revision) (the “principal Law”) to enhance the oversight of the keeping of accounting records and to provide for incidental and connected purposes.

[TO BE COMPLETED UPON FINALIZATION OF THE POLICY FOR THE BILL]



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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 Partnership (Amendment) Law, 2020.

Amendment of section 2 of the Partnership Law (2013 Revision) - definitions

2. The *Partnership Law (2013 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 by inserting in the appropriate alphabetical sequence the following definition —

“**“regulatory law”** means a law which falls within the definition of the words **“regulatory laws”** under section 2 of the *Monetary Authority Law (2020 Revision)*;”.

Amendment of section 28 - accounts

3. The principal Law is amended in section 28 by inserting after subsection (2) the following subsection —

“(2A) Where, in respect of a partnership that is not a limited partnership, a partner keeps the books of account outside the Islands, the partner

shall provide to its registered office, semi-annually, information regarding its books of account that will enable a partner to ascertain the financial position of the partnership with reasonable accuracy.

- (2B) Where, in respect of a limited partnership, a general partner keeps the books of account outside the Islands, the general partner shall provide to its registered office, semi-annually, information regarding its books of account that will enable the general partner to ascertain the financial position of the limited partnership with reasonable accuracy.
- (2C) A person that fails to comply with subsection (2A) or (2B) without reasonable excuse commits an offence and is liable on summary conviction to a fine of five thousand dollars.
- (2D) Subsection (2A) and (2B) shall not apply to a partnership that complies with a requirement under any regulatory law to file information regarding its accounts to the Authority.”.

Amendment of section 48 - regulations

4. The principal Law is amended in section 48 by inserting after paragraph (a) the following paragraphs —

- “(ba) procedures for imposing administrative fines;
- (bb) appeals against the decision of the Registrar to impose an administrative fine in accordance with section 59;
- (bc) how administrative fines shall be paid and may be enforced;
- (bd) interest on outstanding administrative fines;
- (be) evidentiary provisions for proceedings relating to section 59 to 66;
- (bf) such other matters that are necessary or convenient to give effect to the purposes or provisions of section 59 to 66;”.

Insertion of section 50A - partnership to file declaration of proper accounts keeping

5. The *Partnership Law (2013 Revision)* is amended by inserting after section 50 the following section —

“Partnership to file declaration of keeping proper accounting records

- 50A.(1)** A partnership shall, on or before the 16th January in every year, furnish to the Registrar a return which shall be in the form of a declaration that —
- (a) the partnership is maintaining proper books of account;



- (b) states whether the partnership is required to file with the Authority, information regarding its accounts under any regulatory law;
 - (c) states the physical address of the place at which the partnership keeps its books of account; and
 - (d) where applicable, confirms the partnership has provided to its registered office, semi-annually, information regarding its books of account that will enable partners to ascertain the financial position of the limited partnership.
- (2) Where a partnership does not submit the return by the due date under subsection (1), the limited partnership shall incur a penalty of —
- (a) 33.33% of the annual fee specified in section 50 if the documents are submitted between the 1st April and the 30th June;
 - (b) 66.67% of the annual fee specified in section 50 if the documents are submitted between 1st July and the 30th September; and
 - (c) 100% of the annual fee specified in section 50 if the documents are submitted between the 1st October and the 31st December, and every general partner of the partnership who knowingly and wilfully authorizes or permits such default shall incur the like penalty.”.

Insertion of Part VIII - administrative fines

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

“Part VIII - Administrative fines

Registrar’s power to impose administrative fine

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

Administrative fine amounts

60. The Registrar may impose under section 59 an administrative fine of the amount of five thousand dollars and may, in addition to the fine for the initial breach, impose a further administrative 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) the payment of the initial administrative fine and all additional administrative fines imposed for the continuing breach is made; or
- (c) the total of the initial administrative fine and all additional administrative fines for the continuing breach amounts to twenty-five thousand dollars.

Striking off for failure to pay fine

61. Where an administrative fine imposed by the Registrar in accordance with section 59 remains unpaid for ninety days after imposition of the fine, the Registrar may dissolve the partnership.

The power to impose administrative fine

62. For the purposes of section 59 —

- (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, an administrative 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 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

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

Relationship with penalties

64. 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

65. The Registrar may issue guidance published on the enforcement of administrative fines and such guidance shall be published [in the Gazette, official government websites or such other media as the Registrar considers appropriate].



Registrar's rule-making power

- 66.** The Registrar 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 this Part.”.

Insertion of Schedule - administrative fines

- 7.** The principal Law is amended by inserting after section 66 the following Schedule —

“SCHEDULE*(section 59)***Administrative Fines**

No.	Section	Description of breach
1.	28(2A)	Failure of a partner of a partnership to which section 28(2A) applies that keeps the books that keeps the books of account outside the Islands, to provide to the registered office, semi-annually, information regarding the books of account in accordance with section 28(2A).
2.	28(2B)	Failure of a general partner of a limited partnership to which section 28(2B) applies that keeps the books of account outside the Islands, to provide to the registered office, semi-annually, information regarding the books of account in accordance with section 28(2B).
3.	50A	Failure of a partnership to —

		<p>(a) before the expiry of the period for late filing of the return or the payment of the fee under section 50A(2), file with the Registrar a return signed by or on behalf of partnership —</p> <ul style="list-style-type: none"> (i) declaring that the partnership is maintaining proper books of account; (ii) states whether the partnership is required to file with the Authority, information regarding its accounts under any regulatory law; (iii) states the physical address of the place at which it keeps its books of account; or (iv) where applicable, confirms information regarding its books of account have been provided to its registered office semi-annually in accordance with section 28(2A) or (2B); or <p>(b) before the expiry of the periods for late payment under section 20(2), pay to the Registrar the prescribed annual fee.”.</p>
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Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly

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