

CAYMAN ISLANDS



COMPANIES MANAGEMENT (AMENDMENT) BILL, 2020

Supplement No. 5 published with Legislation Gazette No. 43 dated 5th June, 2020.

A BILL FOR A LAW TO AMEND THE COMPANIES MANAGEMENT LAW (2018 REVISION) TO ADJUST REFERENCES TO THE LIST OF EQUIVALENT JURISDICTIONS PUBLISHED UNDER THE ANTI-MONEY LAUNDERING REGULATIONS (2018 REVISION) TO JURISDICTIONS DESIGNATED IN ACCORDANCE WITH SECTION 5(2) OF THE PROCEEDS OF CRIME LAW (2020 REVISION); TO ALIGN THE FITNESS AND PROPRIETY PROVISIONS UNDER SECTION 18 OF THE LAW WITH OTHER REGULATORY LAWS; TO EMPOWER THE AUTHORITY TO IMPOSE ADMINISTRATIVE FINES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

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



Memorandum of OBJECTS AND REASONS

This Bill amends the Companies Management Law (2018 Revision) (the “principal Law”) to adjust references to the list of equivalent jurisdictions published under the Anti-Money Laundering Regulations (2018 Revision) to jurisdictions designated in accordance with section 5(2)(a) of the Proceeds of Crime Law (2020 Revision), to align the fitness and propriety provisions under section 18 of the principal Law with other regulatory Laws and to empower the Monetary Authority to impose administrative fines.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 2 of the principal Law in the definition of the word “custodian” by replacing the reference to the list published in the Gazette and referred to in regulations 22(d) and 23(1) of the Anti-Money Laundering Regulations (2018 Revision) with a reference to the jurisdictions that are designated as having measures for combating money laundering and the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2)(a) of the Proceeds of Crime Law (2020 Revision).

Clause 3 amends section 18 of the principal Law in subsection (1) to align the language used in subsection (1) which empowers the Authority to take enforcement provisions with the language used in other regulatory Laws.

The clause also amends subsection (1) to provide for the power to impose an administrative fine as an additional power of the Monetary Authority where it is of the opinion that a licensee does an act under subsection (1)(a) to (g).

Clause 3 also repeals subsection (7) which limits the circumstances in which the Monetary Authority may declare that a licensee is a fit and proper person. This amendment would align the fitness and propriety test under the principal Law with the test under other regulatory Laws which does not have any such limitation.

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**COMPANIES MANAGEMENT (AMENDMENT)
BILL, 2020**

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ENACTED by the Legislature of the Cayman Islands.

Short title

- 1.** This Law may be cited as the Companies Management (Amendment) Law, 2020.

Amendment of section 2 of the Companies Management Law (2018 Revision) - definitions

2. The *Companies Management Law (2018 Revision)* is amended in section 2, in paragraph (b) of the definition of the word “custodian”, by deleting the words “included in the list published in the Gazette and referred to in regulations 22(d) and 23(1) of the *Anti-Money Laundering Regulations (2018 Revision)*” and substituting the words “designated as having measures for combating money laundering and the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2)(a) of the *Proceeds of Crime Law (2020 Revision)*”.

Amendment of section 18 of the Companies Management Law (2018 Revision) - additional powers of Authority

3. The *Companies Management Law (2018 Revision)* is amended in section 18 as follows —
- (a) in subsection (1) as follows —
 - (i) by deleting the words “If the Authority is of the opinion that a licensee” and substituting the words “Where the Authority is of the opinion that”;
 - (ii) by repealing paragraphs (a) to (e) and substituting the following paragraphs —
 - “(a) a licensee is or appears likely to become unable to meet the licensee’s obligations as they fall due;
 - (b) a licensee is carrying on business in a manner detrimental to the public interest or the interest of the licensee’s clients or creditors;
 - (c) a licensee has contravened this Law, Part XVIIIA of the *Companies Law (2020 Revision)* or Part 12 of the *Limited Liability Companies Law (2020 Revision)*;
 - (d) a licensee has failed to comply with a condition of the licensee’s licence;
 - (e) the direction and management of a licensee’s business is not being conducted in a fit and proper manner;
 - (f) a person holding a position as a director, manager or officer of a licensee’s business is not a fit and proper person to hold the respective position; or
 - (g) a person holding or acquiring control or ownership of a licensee is not a fit and proper person to have such control or ownership,”; and
 - (iii) by inserting after subparagraph (ic), the following subparagraph —



- “(id) impose an administrative fine in accordance with section 42A of the Monetary Authority *Law (2020 Revision)*”;
and
(b) by repealing subsection (7).

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly