

**CAYMAN ISLANDS**



# **SPECIAL ECONOMIC ZONES (AMENDMENT) BILL, 2020**

Supplement No. 11 published with Legislation Gazette No. 84 dated 12th November, 2020.

**A BILL FOR A LAW TO AMEND THE SPECIAL ECONOMIC ZONES LAW (2017 REVISION) TO PROVIDE FOR ANTI-MONEY LAUNDERING AND COUNTER TERRORIST AND PROLIFERATION FINANCING REQUIREMENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Ministry of Commerce, Planning and Infrastructure  
(CPI)



## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Special Economic Zones Law (2017 Revision) (the “principal Law”) to provide for anti-money laundering and counter terrorist and proliferation financing requirements.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 2 of the principal Law to provide for new definitions in the legislation.

Clause 3 amends section 3 of the principal Law to make changes to the composition of the Special Economic Zone Authority (“the Authority”).

Clause 4 amends section 5 of the principal Law to require the Authority to share or provide any information required for anti-money laundering, counter terrorist financing or counter-proliferation financing purposes.

Clause 5 amends section 6 of the principal Law to provide for the enhanced investigative powers of the Authority which include the examination of the annual returns and other documents of a special economic zone enterprise for the purpose of ensuring that the special economic zone enterprise complies with its trade certificate and the Law. The provision would also enable the Authority to delegate to the Secretariat the Authority’s function of examining and processing applications with respect to the approval and refusal of applications for renewal.

Clause 6 inserts in the principal Law a new section 6A of the principal Law to provide for the additional powers of the Authority to impose certain measures and conditions on a special economic zone enterprise, upon the Authority’s findings that the special economic zone enterprise has, among other things, acted in a manner detrimental to the public interest or contravened its trade certificate, the Law or its regulations.

Clause 7 repeals section 11 of the principal Law.

Clause 8 amends section 14 of the principal Law to require that an applicant for a trade certificate as well as the controller, beneficial owner, director and senior officer of the applicant must be a fit and proper person.

Clause 9 amends section 16 of the principal Law to require that the Authority refuse the grant of a trade certificate where the grant of the application is not in the public interest, including where it presents a high level of reputational risk for the jurisdiction or where the applicant is or has a controller, beneficial owner, director, senior officer or shareholder that is not a fit and proper person.

Clause 10 amends section 18 of the principal Law to clarify that subject to the exceptions specified in the Law, a special economic zone enterprise must comply with all laws of the Islands.



Clause 11 amends section 23 of the principal Law to enable the Authority to amend a trade certificate to change the name of an applicant director, shareholder or controller.

Clause 12 inserts a new section 24A in the principal Law to require a special economic zone enterprise to notify the Authority of any material change to its business activities, controllers, directors or shareholders within twenty-one days of such change.

Clause 13 amends section 26 of the principal Law to empower the Authority to revoke or suspend a trade certificate issued to a special economic zone enterprise where the special economic zone enterprise fails to comply with the conditions of its trade certificate and certain prescribed requirements.

Clause 14 inserts section 29C in the principal Law to require the special economic zone enterprise to file an annual return in the form and manner prescribed by Regulations made by the Cabinet.

Clause 15 amends section 30 of the principal Law to enable the Cabinet to make Regulations to prescribe administrative fines, and the forms and procedures for the payment of such fines, to be imposed by the Authority under the Law. The provision also empowers Cabinet to make regulations to provide for the form of any return to be made under the legislation.



## CAYMAN ISLANDS



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## Arrangement of Clauses

### Clause

1.	Short title .....	7
2.	Amendment of section 2 of the Special Economic Zones Law (2017 Revision) - definitions .....	7
3.	Amendment of section 3 - establishment of the Special Economic Zone Authority .....	9
4.	Amendment of section 5 - functions of the Authority .....	9
5.	Amendment of section 6 - powers of the Authority .....	10
6.	Insertion of section 6A - additional powers of the Authority .....	11
7.	Repeal of section 11 - special economic zone deemed to be outside of the Islands .....	12
8.	Amendment of section 14 - application for trade certificate .....	12
9.	Amendment of section 16 - grant or refusal of trade certificate.....	13
10.	Amendment to section 18 - benefits of special economic zone enterprise and conditions .....	14
11.	Amendment of section 23 - amendment to trade certificate.....	14
12.	Insertion of section 24A - notification of material changes.....	14
13.	Amendment of section 26 - suspension or revocation of trade certificate .....	14
14.	Insertion of section 29C - annual return .....	15
15.	Amendment of section 30 - regulations.....	15



## CAYMAN ISLANDS



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ENACTED by the Legislature of the Cayman Islands.

## Short title

1. This Law may be cited —
  - (a) before its commencement as the *Special Economic Zones (Amendment) Law, 2020*; and
  - (b) after its commencement as the *Special Economic Zones (Amendment) Act, 2020*.

## Amendment of section 2 of the Special Economic Zones Law (2017 Revision) - definitions

2. The *Special Economic Zones Law (2017 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
  - (a) by deleting the definitions of the words “**Chief Immigration Officer**” and “**Collector**”; and

(b) by inserting in the appropriate alphabetical sequence the following definitions —

“**beneficial owner**” has the meaning given in regulation 2(1) of the *Anti-Money Laundering Regulations (2020 Revision)*;

“**competent authority**” has the meaning given in section 2(1) of the *Proceeds of Crime Law (2020 Revision)*;

“**controller**” means a person who has —

- (a) the ownership, either directly or indirectly, of ten per cent or more of the issued share capital in a special economic zone enterprise;
- (b) the ability to, either directly or indirectly, exercise or control the exercise of ten per cent or more of the total voting rights in a special economic zone enterprise;
- (c) the power to appoint or remove directors of the special economic zone enterprise;
- (d) the office of the most senior officer responsible for the operations of the special economic zone enterprise; or
- (e) the authority to issue instructions or directions which the directors of the special economic zone enterprise either directly or indirectly are accustomed to act;

“**Director of Customs and Border Control**” means the officer appointed under section 4 of the *Customs and Border Control Law, 2018* to be in charge of Customs and Border Control and includes any officer acting for the Director;

“**Director of WORC**” means the person appointed under section 6 of the *Immigration (Transition) Law, 2018* in control of the Workforce, Opportunities and Residency Cayman Department and includes any person acting for the Director;

“**proliferation financing**” means —

- (a) providing funds and economic resources for; or
- (b) entering into or becoming concerned in,

an arrangement that a person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of funds and economic resources to fund the unauthorized development or production or the facilitation of the development or production of nuclear, radiological, biological or chemical weapons or systems for their delivery;

“**shareholder**” includes beneficial owner;





“**Supervisory Authority**” has the meaning given in section 2(1) of the *Proceeds of Crime Law (2020 Revision)*; and

“**WORC**” means the department of the Government known as the Workforce, Opportunities and Residence Cayman Office continued to be established under section 3 of the *Immigration (Transition) Law, 2018*.”.

### **Amendment of section 3 - establishment of the Special Economic Zone Authority**

3. The principal Law is amended in section 3(2) as follows —

- (a) in paragraph (c), by deleting the word “three” and substituting the word “four”; and
- (b) in paragraph (d) as follows —
  - (i) by deleting subparagraphs (ii) and (iii) and substituting the following subparagraphs —
    - “(ii) Director of WORC or the designate of the Director of WORC; and
    - (iii) Director of Customs and Border Control or the designate of the Director of Customs and Border Control.”; and
  - (ii) by deleting subparagraph (iv).

### **Amendment of section 5 - functions of the Authority**

4. The principal Law is amended in section 5 —

- (a) in subsection (1)(j), by inserting after the word “Law” the words “, the *Anti-Money Laundering Regulations (2020 Revision)*”; and
- (b) by inserting after subsection (2) the following subsections —
  - “(3) The Authority shall, to the extent that information is required and requested in writing by a Supervisory Authority or competent authority for anti-money laundering, counter terrorist financing or counter-proliferation financing purposes, share the required information with the relevant Supervisory Authority or competent authority.
  - (4) The Authority may —
    - (a) of its own volition; or
    - (b) upon request by a Supervisory Authority or competent authority,

through its Secretariat, share or provide any information required for anti-money laundering, counter terrorist financing or counter-proliferation financing purposes in accordance with this section.

- (5) Where information is shared or provided in accordance with subsection (3), the recipient of such information shall —
- (a) only use the information for the purpose for which it was shared or provided;
  - (b) only retain the information for as long as is necessary to carry out the purpose for which it was shared or provided;
  - (c) not disclose the information, without the prior consent of the Authority, for any purpose other than the purpose for which it was shared or provided; and
  - (d) provide confirmation in writing that the recipient shall not disclose the information, without the prior consent of the Authority, for any purpose other than the purpose for which it was shared or provided.”.

### **Amendment of section 6 - powers of the Authority**

5. The principal Law is amended in section 6 as follows —

- (a) by deleting subsection (1B) and substituting the following subsections —

“(1B) The Authority may delegate to the Secretariat —

- (a) the Authority’s function of examining and processing applications with respect to the approval and refusal of applications for renewal; and
- (b) the Authority’s duties under subsection (1C).

(1C) The Authority shall —

- (a) whenever it thinks fit, examine, by way of the receipt of regular annual returns, or in such other manner as it thinks necessary, the affairs or business of any special economic zone enterprise for the purpose of satisfying itself that the trade certificate and this Law are being complied with; and
- (b) assist in the investigation of any offence against the laws of the Islands which it has reasonable grounds to believe has, or may have, been committed by a special economic zone enterprise or by any of its controllers, directors or senior officers acting in an official capacity.

(1D) In the performance of its functions under this Law, the Authority or the Secretariat to which the Authority’s functions are delegated is entitled at all reasonable times to request to have access to such books, records, vouchers, documents and any other information, matter or thing from the special economic zone enterprise, as the Authority may reasonably require.



- (1E) A person who fails to comply with any requirement or request of the Authority under this section commits an offence and is liable —
- (a) on summary conviction to a fine of ten thousand dollars; or
  - (b) on conviction on indictment to a fine of one hundred thousand dollars,
- and if the offence for which the person is convicted continues after conviction that person commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.
- (1F) A person who, knowingly or recklessly, furnishes any information, provides any explanation or makes any statement to the Authority which is false or misleading in a material particular commits an offence and is liable —
- (a) on summary conviction to a fine of ten thousand dollars and to imprisonment for six months; or
  - (b) on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years.”.

### **Insertion of section 6A - additional powers of the Authority**

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

#### **“Additional powers of the Authority**

**6A.** Where the Authority is of the opinion that —

- (a) a special economic zone enterprise is carrying on business in a manner detrimental to the public interest;
- (b) a special economic zone enterprise has failed to comply with a condition of its trade certificate;
- (c) a special economic zone enterprise or its controller, director or senior officer is not a fit and proper person;
- (d) regulatory, disciplinary or criminal action has been taken against the special economic zone enterprise or a person holding a position as a controller, director or senior officer of a special economic zone enterprise;
- (e) a person acquiring control or ownership of a special economic zone enterprise is not a fit and proper person;
- (f) a special economic zone enterprise or its controller, director or senior officer has failed to comply with any requests made by the Authority under section 6; or
- (g) a special economic zone enterprise has contravened this Law or the regulations,

the Authority may —

- (i) require the special economic zone enterprise immediately to take steps to rectify the matter;
- (ii) revoke or suspend the trade certificate issued to the special economic zone enterprise, in accordance with section 26;
- (iii) impose conditions or further conditions upon the special economic zone enterprise, and may amend or revoke any such condition;
- (iv) require a controller or shareholder of a special economic zone enterprise who is not fit and proper to divest the controller's or shareholder's respective shares;
- (v) require the substitution or removal of any controller, director, or senior officer of the special economic zone enterprise;
- (vi) impose administrative penalties on the special economic zone enterprise for contravention of this Law; or
- (viii) require such action to be taken by the special economic zone enterprise as the Authority considers necessary.”.

### **Repeal of section 11 - special economic zone deemed to be outside of the Islands**

7. The principal Law is amended by repealing section 11.

### **Amendment of section 14 - application for trade certificate**

8. The principal Law is amended in section 14 as follows —

- (a) by inserting after subsection (1A) the following subsections —
  - “(1B) An applicant under subsection (1) shall be a fit and proper person.
  - (1C) The controller, beneficial owner, director and senior officer of the applicant referred to in subsection (1B) shall be a fit and proper person.
  - (1D) In determining whether a person is a fit and proper person, the Authority shall have regard to the person's honesty, integrity and reputation.
  - (1E) Without prejudice to the generality of subsection (1D), regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has —



- (a) committed an offence involving money laundering, terrorist financing, proliferation financing, fraud or other dishonesty or violence;
  - (b) contravened any provision made by or under any enactment designed for protecting members of the public against financial loss due to —
    - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of services or the management of companies or other legal entities; or
    - (ii) the conduct of discharged or undischarged bankrupts; or
  - (c) engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether lawful or not) or which discredit the person’s method of conducting business.
- (1F) The Authority may issue guidelines for the determination of fitness and propriety under subsection (1D).”; and
- (b) by inserting after subsection (5) the following subsection —
- “(6) Where an applicant for a trade certificate is a person who commits an offence under subsection (4), the Authority may refuse to grant a trade certificate to the applicant for a period of five years commencing from the date of conviction for the offence.”.

### **Amendment of section 16 - grant or refusal of trade certificate**

9. The principal Law is amended in section 16 as follows —
- (a) by renumbering section 16 as section 16(1); and
  - (b) by inserting after section 16(1) as renumbered the following subsection —
 

“(2) The Authority shall not approve a trade certificate application where the Authority considers that —

    - (a) the grant of the application is not in the public interest, including where it presents a high level of reputational risk for the jurisdiction;
    - (b) the applicant for a trade certificate is not a fit and proper person;
    - (c) the applicant has contravened section 14(4); or
    - (d) the applicant for a trade certificate has a controller, beneficial owner, director, senior officer or shareholder that is not a fit and proper person.”.

**Amendment to section 18 - benefits of special economic zone enterprise and conditions**

10. The principal Law is amended in section 18 by inserting after subsection (1) the following subsection —

“(1A) Notwithstanding the benefits referred to in subsection (1) and any other exceptions specified in this Law, a special economic zone enterprise shall comply with all laws in force in the Islands.”.

**Amendment of section 23 - amendment to trade certificate**

11. The principal Law is amended in section 23 by inserting after paragraph (a) the following paragraph —

“(aa) change the name of a director, shareholder or controller;”.

**Insertion of section 24A - notification of material changes**

12. The principal Law is amended by inserting after section 24 the following section —

**“Notification of material changes**

**24A.** A special economic zone enterprise shall notify the Authority of any material change to its business activities, controllers, directors or shareholders within twenty-one days of such change.”.

**Amendment of section 26 - suspension or revocation of trade certificate**

13. The principal Law is amended by repealing section 26(1) and substituting the following subsections —

“(1) Where a special economic zone enterprise —

- (a) contravenes —
  - (i) the provisions of this Law or the Regulations; or
  - (ii) the terms and conditions of its trade certificate;
- (b) is convicted of an offence under the *Proceeds of Crime Law (2020 Revision)* or an allegation of criminal conduct has been made involving the special economic zone enterprise in the context of civil recovery proceeding under the *Proceeds of Crime Law (2020 Revision)*;
- (c) is the subject of a notification from a Supervisory Authority to the Authority that the special economic zone enterprise has contravened the *Anti-Money Laundering Regulations (2020 Revision)* or is convicted for an offence for contravening the *Anti-Money Laundering Regulations (2020 Revision)*;
- (d) has a controller, director, senior officer or shareholder or beneficial owner who is not a fit and proper person; or



(e) makes any representation or statement that the special economic zone enterprise knows is false or misleading in a material particular in relation to any information or particulars that the special economic zone enterprise is required to furnish pursuant to this Law,

the Authority, after proper notice and hearing, may suspend or revoke the trade certificate.

(1A) Where the Authority has revoked the trade certificate of a special economic zone enterprise pursuant to subsection (1)(e), the Authority shall not approve a subsequent application for a trade certificate in respect of that special economic zone enterprise for a period of three years from the date of the revocation.”.

### **Insertion of section 29C - annual return**

**14.** The principal Law is amended by inserting after section 29B the following section —

#### **“Annual return**

**29C.** A special economic zone enterprise shall, in respect of each financial year of the special economic zone enterprise, submit an annual return in such manner and in the form prescribed by Regulations made by the Cabinet.”.

### **Amendment of section 30 - regulations**

**15.** The principal Law is amended in section 30 by inserting after paragraph (e) the following paragraphs —

- “(ea) prescribe the form of any return required to be submitted under this Law;
- (eb) prescribe administrative fines, and the forms and procedures for the payment of such fines, to be imposed by the Authority under this Law;
- (ec) prescribe for appeals against the imposition of administrative fines;”.

**Passed by the Parliament the            day of            , 2020.**

*Speaker*

*Clerk of the Parliament*

