

CAYMAN ISLANDS



MONETARY AUTHORITY (AMENDMENT) BILL, 2023

Supplement No. 1 published with Legislation Gazette No. 11 dated 27th March, 2023.

A BILL FOR AN ACT TO AMEND THE MONETARY AUTHORITY ACT (2020 REVISION) TO EXPAND THE POWER OF THE AUTHORITY TO IMPOSE ADMINISTRATIVE FINES; TO PROVIDE FOR THE LIABILITY OF PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS, EXEMPTED LIMITED PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS FOR OFFENCES; TO PROVIDE FOR THE DISCLOSURE AND SHARING OF INFORMATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Commerce (FSC)



Memorandum of OBJECTS AND REASONS

The Monetary Authority (Amendment) Bill, 2023 amends the Monetary Authority Act (2020 Revision) (the “principal Act”) to expand the power of the Authority to impose administrative fines, to provide for the liability of partnerships, limited liability partnerships, exempted limited partnerships and unincorporated associations for offences, to provide for the disclosure and sharing of information and to provide for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 2 of the principal Act to change the section heading.

The clause further amends section 2 of the principal Act by inserting definitions of the words “exempted limited partnership”, “limited liability partnership” and “partnership”.

Clause 3 amends section 34 of the principal Act by repealing subsection (18) as a consequence of the proposed new clause 44A.

Clause 4 repeals section 42A of the principal Act and substitutes proposed new section 42A. The proposed new section 42A empowers the Authority to impose an administrative fine on an individual, a body corporate, a partnership, a limited liability partnership, an exempted limited partnership, an unincorporated association or any other person where that individual, body corporate, partnership, limited liability partnership, exempted limited partnership, unincorporated association or other person breaches the principal Act, a regulatory law or the Anti-Money Laundering Regulations (2023 Revision).

The proposed new section 42A further empowers the Authority to impose an administrative fine on —

- (a) a director, manager, secretary or other similar officer of a body corporate or a person who was purporting to act in any such capacity;
- (b) a partner concerned in the management or control of a partnership or a limited liability partnership or a partner who takes part in the conduct of the business of an exempted limited partnership; and
- (c) a person concerned in the management or control of an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership.

Clause 5 amends section 42B of the principal Act to provide for, among other things, the quantum of the administrative fines that the Authority may impose on a partnership, a limited liability partnership or an exempted limited partnership, and an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership.

Clause 6 amends section 42F(5) of the principal Act in the definition of the words “disgorgement principle” by deleting the words “licensees under” and substituting the words “persons regulated under” to clarify that the principle applies not just to licensees, but to all persons regulated under the regulatory laws and those connected with them as defined in section 34(16)(d) of the principal Act.

Clause 7 repeals section 42H of the principal Act and substitutes a proposed new section 42H which provides that Cabinet may make regulations, including regulations to provide for prescribed provisions, forms and procedures for imposing fines, appeals against certain decisions, how fines shall be paid and may be enforced, interest on outstanding fines, and evidentiary provisions for certain proceedings.

The proposed new clause 42H further provides that regulations made to provide for prescribed provisions shall provide for the category of the breach in respect of each prescribed provision as minor, serious or very serious.

Clause 8 inserts proposed new section 44A in the principal Act to provide for the liability of —

- (a) a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, however designated, where an offence under the principal Act is committed by the body corporate and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, the director, manager, secretary or other similar officer of the body corporate, or the person who was purporting to act in any such capacity;
- (b) a partner concerned in the management or control of a partnership or a limited liability partnership, or a partner who takes part in the conduct of the business of an exempted limited partnership where an offence under the principal Act is committed by the partnership, the limited liability partnership or the exempted limited partnership and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, the partner; and
- (c) a person concerned in the management or control of an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership where an offence under the principal Act is committed by the unincorporated association and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, the person.

Clause 9 amends section 50 of the principal Act to empower the Authority to provide to an overseas regulatory authority, information relating to criminal conduct which is discovered in the performance of the Authority’s regulatory functions under section 6(1)(b) or co-operative functions under section 6(1)(c) of the principal Act.

Clause 10 inserts proposed new section 50A in the principal Act. The proposed new section 50A empowers the Authority to, in its discretion or upon request by the competent authority, share information relating to a person or entity regulated under the principal Act or the regulatory laws.



The proposed new section also defines the words “competent authority” for the purposes of the section as the Minister referred to in section 246(1) of the Companies Act (2023 Revision) and includes a person designated by the Minister under that section.

CAYMAN ISLANDS



**MONETARY AUTHORITY (AMENDMENT) BILL,
2023**

Arrangement of Clauses

Clause	Page
1. Short title	9
2. Amendment of section 2 of the Monetary Authority Act (2020 Revision) - definitions	9
3. Amendment of section 34 - relations with banks and other financial institutions	10
4. Repeal and substitution of section 42A - Authority's power to fine.....	10
5. Amendment of section 42B - fine amounts.....	11
6. Amendment of section 42F - criteria for making fine decision.....	12
7. Repeal and substitution of section 42H - other Regulation-making powers for Part.....	12
8. Insertion of section 44A - offences by corporations, partnerships, unincorporated associations, etc.	13
9. Amendment of section 50 - confidentiality.....	14
10. Insertion of section 50A - disclosure to the competent authority.....	14



CAYMAN ISLANDS

**MONETARY AUTHORITY (AMENDMENT) BILL,
2023**

A BILL FOR AN ACT TO AMEND THE MONETARY AUTHORITY ACT (2020 REVISION) TO EXPAND THE POWER OF THE AUTHORITY TO IMPOSE ADMINISTRATIVE FINES; TO PROVIDE FOR THE LIABILITY OF PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS, EXEMPTED LIMITED PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS FOR OFFENCES; TO PROVIDE FOR THE DISCLOSURE AND SHARING OF INFORMATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Monetary Authority (Amendment) Act, 2023.

Amendment of section 2 of the Monetary Authority Act (2020 Revision) - definitions

2. The *Monetary Authority Act (2020 Revision)*, in this Act referred to as the “principal Act”, is amended in section 2 as follows —
 - (a) by repealing the section heading and substituting the following section heading —

“**Interpretation**”; and

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

“ **“exempted limited partnership”** has the meaning assigned by section 2 of the *Exempted Limited Partnership Act (2021 Revision)*;

“limited liability partnership” means a limited liability partnership registered under section 18(4) or 33(4) of the *Limited Liability Partnership Act (2021 Revision)*; and

“partnership” has the meaning assigned by section 3 of the *Partnership Act (2013 Revision)*”.

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

3. The principal Act is amended in section 34 by repealing subsection (18).

Repeal and substitution of section 42A - Authority’s power to fine

4. The principal Act is amended by repealing section 42A and substituting the following section —

“Authority’s power to fine

42A.(1) The Authority may impose an administrative fine on an individual, a body corporate, a partnership, a limited liability partnership, an exempted limited partnership, an unincorporated association or any other person where that individual, body corporate, partnership, limited liability partnership, exempted limited partnership, unincorporated association or other person breaches —

- (a) this Act;
- (b) a regulatory law; or
- (c) the *Anti-Money Laundering Regulations (2023 Revision)*.

(2) The Authority may impose an administrative fine on —

(a) a director, manager, secretary or other similar officer of a body corporate or a person who was purporting to act in any such capacity, however designated, where the body corporate commits a breach in accordance with subsection (1) and it is proved that the breach —

- (i) was committed with the consent or connivance of; or
- (ii) is attributable to any neglect on the part of,

the director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, however designated;



- (b) a partner concerned in the management or control of a partnership or a limited liability partnership, or a partner who takes part in the conduct of the business of an exempted limited partnership, where the partnership, limited liability partnership or exempted limited partnership commits a breach in accordance with subsection (1) and it is proved that the breach —
 - (i) was committed with the consent or connivance of; or
 - (ii) is attributable to any neglect on the part of, the partner of the partnership, limited liability partnership or exempted limited partnership; and
- (c) a person concerned in the management or control of an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership, where the unincorporated association commits a breach in accordance with subsection (1) and it is proved that the breach —
 - (i) was committed with the consent or connivance of; or
 - (ii) is attributable to any neglect on the part of, the person concerned in the management or control of the unincorporated association.”.

Amendment of section 42B - fine amounts

5. The principal Act is amended in section 42B as follows —

- (a) in subsection (1), by deleting the words “be \$5,000” and substituting the words “be five thousand dollars”;
- (b) in subsection (2) as follows —
 - (i) by deleting the words “of \$5,000” and substituting the words “of five thousand dollars”; and
 - (ii) in paragraph (c), by deleting the words “reaches “\$20,000” and substituting the words “reaches twenty thousand dollars”; and
- (c) by repealing subsections (3) and (4) and substituting the following subsections —
 - “(3) For a breach prescribed as serious, the fine is a single fine not exceeding —
 - (a) fifty thousand dollars for an individual;
 - (b) one hundred thousand dollars for a body corporate;
 - (c) one hundred thousand dollars for a partnership, a limited liability partnership or an exempted limited partnership; or

- (d) one hundred thousand dollars for an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership.
- (4) For a breach prescribed as very serious, the fine is a single fine not exceeding —
- (a) one hundred thousand dollars for an individual;
 - (b) one million dollars for a body corporate;
 - (c) one million dollars for a partnership, a limited liability partnership or an exempted limited partnership; or
 - (d) one million dollars for an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership.”.

Amendment of section 42F - criteria for making fine decision

6. The principal Act is amended in section 42F(5) in the definition of the words “**disgorgement principle**” in paragraph (a), by deleting the words “licensees under” and substituting the words “persons regulated under the”.

Repeal and substitution of section 42H - other Regulation-making powers for Part

7. The principal Act is amended by repealing section 42H and substituting the following section —

“Regulations under this Part

42H.(1) The Cabinet may make regulations to provide for —

- (a) prescribed provisions;
 - (b) forms and procedures for imposing fines;
 - (c) appeals against decisions under this Part;
 - (d) how fines shall be paid and may be enforced;
 - (e) interest on outstanding fines;
 - (f) evidentiary provisions for proceedings relating to this Part; and
 - (g) other matters required or permitted to be prescribed under this Part or that are necessary to give effect to the purposes or provisions of this Part.
- (2) Regulations made under subsection (1)(a) shall provide for the category of the breach in respect of each prescribed provision as minor, serious or very serious.”.



Insertion of section 44A - offences by corporations, partnerships, unincorporated associations, etc.

8. The principal Act is amended by inserting after section 44 the following section —

“Offences by corporations, partnerships, unincorporated associations, etc.

44A.(1) Where an offence under this Act is committed by a body corporate and it is proved that the offence —

(a) was committed with the consent or connivance of; or

(b) is attributable to any neglect on the part of,

any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, however designated, that person as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members or managers, subsection (1) shall apply in relation to the acts and defaults of a member or manager in connection with that member’s or manager’s functions in relation to management as if that member or manager were a director or other similar officer of the body corporate.

(3) Where an offence under this Act is committed by a partnership, a limited liability partnership or an exempted limited partnership and it is proved that the offence —

(a) was committed with the consent or connivance of; or

(b) is attributable to any neglect on the part of,

a partner concerned in the management or control of a partnership or a limited liability partnership, or a partner who takes part in the conduct of the business of an exempted limited partnership, that partner, as well as the partnership, the limited liability partnership or the exempted limited partnership, as applicable, commits the offence and is liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act is committed by an unincorporated association other than a partnership, a limited liability partnership or an exempted limited partnership and it is proved that the offence —

(a) was committed with the consent or connivance of; or

(b) is attributable to any neglect on the part of,

a person concerned in the management or control of the unincorporated association, that person, as well as the unincorporated

association, commits the offence and is liable to be proceeded against and punished accordingly.”.

Amendment of section 50 - confidentiality

9. The principal Act is amended in section 50 as follows —

- (a) in subsection (2)(g) as follows —
 - (i) in subparagraph (ii), by deleting the word “or” at the end of the subparagraph;
 - (ii) in subparagraph (iii), by inserting after the words “subsection (3)”, the words “or (7A)”; and
 - (iii) by inserting after subparagraph (iii) the following subparagraph —

“(iv) under section 50A; or”;
- (b) by inserting after subsection (7) the following subsection —

“(7A) Notwithstanding subsections (3), (3A), (4), (5), (6) and (7) and subject to subsection (8), the Authority may, in its discretion, provide to an overseas regulatory authority, information relating to criminal conduct which is discovered in the performance of the Authority’s regulatory functions under section 6(1)(b) or co-operative functions under section 6(1)(c).”;
- (c) in subsection (8)(c), by inserting after the words “requested by”, the words “, or the information to be provided to,”; and
- (d) by inserting after subsection (8), the following subsection —

“(9) For the purposes of subsection (7A), “**criminal conduct**” has the meaning assigned by section 69 of the *Proceeds of Crime Act (2020 Revision)*.”.

Insertion of section 50A - disclosure to the competent authority

10. The principal Act is amended by inserting after section 50 the following section —

“Disclosure to the competent authority

- 50A.**(1) The Authority may, in its discretion or upon request by the competent authority, share information relating to a person or entity regulated under this Act or the regulatory laws.



