

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF
AUDITORS OF MARKET TRADED COMPANIES; AND TO PROVIDE
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE AUDITORS OVERSIGHT BILL, 2011

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the regulation of auditors of market traded companies.

Clause 1 of the Bill provides the short title.

Clause 2 defines various terms for the purposes of the legislation including “market traded company”, “cost of oversight”, “recognized auditor”, “regulated market” and “transferable securities”. By virtue of clause 2(2) the term “a person to whom the Authority has delegated any of its functions under section 16” is construed to include a director, officer, employee, agent or representative of that person.

Clause 3 provides for the establishment of the Auditors Oversight Authority as a body corporate charged with the functions of regulating and supervising auditors who audit the accounts of market traded companies, including subjecting recognized auditors to the Authority's systems of quality assurance, investigation and penalties.

Clause 4 provides for the share capital of the Authority to be such sum not less than one hundred thousand dollars as may be prescribed.

Clause 5 makes provision for the Authority to have the power and rights to pay, satisfy or compromise any claims made against the Authority, to consider all questions connected with the business of the Authority, to collect and circulate statistics and other information relating to the business of the Authority and to make rules.

Clause 6 makes provision for the establishment of a Board of directors of the Authority responsible for the policy and general administration of the affairs and business of the Authority.

Clause 7 provides for the directors of the Board to be appointed by the Governor in Cabinet.

Clause 8 provides for the Board to appoint a fit and proper person to be the Managing Director of the Authority who will be entrusted with the day to day administration of the Authority to the extent delegated to him by the Board.

Clause 9 disqualifies a person who is an elected member of the Legislative Assembly or an official member of Cabinet from being a director and provides for the termination of appointment of any director who resigns his office, becomes of unsound mind, becomes bankrupt, is guilty of serious misconduct, is absent without the leave of the Chairman from three consecutive meetings of the Board or fails to comply with his obligations to declare his pecuniary interest.

Clause 10 empowers the Chairman to summon regular and extraordinary meetings of the Board and provides for the procedure at meetings of the Board. The quorum for meetings of the Board is set at five directors and decisions are to be adopted by a simple majority of the votes of the directors present and voting except that, in the case of an equality of votes, the chairman of the meeting shall, in addition, have a casting vote. The Board is empowered to act notwithstanding that a vacancy exists among the directors or in the office of Chairman or Deputy Chairman and to delegate any of its duties and powers, other than a licensing or supervisory power or duty, to a committee appointed by the Board.

Clause 11 empowers the Board to appoint committees to assist the Board in exercising the Board's functions under the legislation, and to appoint such persons as it sees fit to be members of the committees.

Clause 12 provides for a director or a member of a committee to declare his pecuniary interest in any contract, proposed contract, licence or other matter being considered at a meeting where he is present and not to take part in the consideration or discussion of the contract, proposed contract, licence or other matter or vote on any question with respect to it, and further provides for him to be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

Clause 13 provides the circumstances in which a director or a member of a committee is to be treated as having a pecuniary interest and circumstances in which clause 12 is not to apply.

Clause 14 provides for appointment of persons to act as directors for a specified period, in any case in which the number of directors disabled by clause 12 at any one time would be so great a proportion of the whole as to impede the transaction of business.

Clause 15 provides for the appointment of persons by the Authority, including one or more Deputy Managing Directors as the Board considers necessary for the performance of the functions of the Authority. Clause 15 also provides for the establishment of a fund for the payment of pensions to employees.

Clause 16 gives the Authority the discretion on such terms as approved by the Board to delegate any of its functions under the Law to any person as the Board considers necessary for the better exercise of the Authority's functions under the legislation.

Clause 17 provides for the qualifications for appointment as an auditor of a market traded company so that only a recognized auditor is qualified for appointment as an auditor to a market traded company.

Clause 18 makes provision for the Authority to establish and maintain a register of recognized auditors.

Clause 19 provides for the eligibility of an auditor to be entered on the register.

Clause 20 provides for an application for entry on the register and gives the Authority the discretion to accept or refuse the application. A person aggrieved by a refusal of the Authority of his application for registration, cancellation or suspension of registration, or the imposition or variation of conditions in respect of his registration, may within three months of the decision appeal against that decision to the Grand Court.

Clause 21 makes provision for an entry on the register to be suspended, cancelled or made subject to conditions and provides the circumstances in which such action may be taken.

Clause 22 provides for the annual confirmation of entry on the register and for the payment of a prescribed annual fee.

Clause 23 provides for a recognized auditor to notify the Authority in writing of certain circumstances including that the recognized auditor has become ineligible to be entered on the register.

Clause 24 provides for the content of the register to contain prescribed information.

Clause 25 provides for the register to be available for public inspection.

Clause 26 contains confidentiality provisions.

Clause 27 provides for immunity from damages of the Authority, a director, an officer, an employee, an agent or a representative of the Authority or a person to whom the Authority has delegated any of its functions under section 16.

Clause 28 requires the Authority to cause to be kept proper accounts and records of its transactions and affairs and to have its accounts audited.

Clause 29 requires the Authority to make and publish rules for the purpose of ensuring that a recognized auditor, when auditing a market traded company is subject in the Islands to a system of oversight, quality assurance, investigation and penalties.

Clause 30 provides for the Authority to monitor compliance by recognized auditors with the Rules.

Clause 31 makes a recognized auditor subject to the public oversight of the Authority and imposes an obligation on the recognized auditor to comply with the Authority's requirements including the payment of fees and disciplinary procedures. A recognized auditor is bound by and is required to comply with the Rules and is required to pay the cost of oversight.

Clause 32 provides for matters to be notified by a person to whom any of the functions of the Authority are delegated.

Clause 33 provides for the making of regulations by the Governor in Cabinet.

THE AUDITORS OVERSIGHT BILL, 2011

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CAYMAN ISLANDS

**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF
AUDITORS OF MARKET TRADED COMPANIES; AND TO PROVIDE
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Auditors Oversight Bill, 2011.

Short title

2. In this Law -

Interpretation

“admitted to trading on a regulated market” means that all steps required by the relevant regulated market have been taken to allow the transferable securities in question to be traded on that regulated market;

“auditor” means -

- (a) a sole practitioner engaged in public practice from or within the Islands who is the holder of a valid licence issued under section 11 or 12 of the Regulatory Law;
- (b) a partnership engaged in public practice from or within the Islands where each partner or person holding an equivalent position in such partnership who is engaged in public practice from or within the Islands is the holder of a valid licence issued under section 11 or 12 of the Regulatory Law; or
- (c) a body corporate engaged in public practice from or within the Islands where each director or person holding an equivalent

position in such body corporate who is engaged in public practice from or within the Islands is the holder of a valid licence issued under section 11 or 12 of the Regulatory Law;

“Authority” means the Auditors Oversight Authority established under section 3;

“Board” means the Board of directors established under section 6;

“Chairman” means the Chairman of the Board designated as such under section 6;

“cost of oversight” means any fees payable by the recognized auditor to the Authority in relation to the Authority’s oversight, monitoring or registration of recognized auditors, including but not limited to, the annual fees payable under section 22;

“Deputy Chairman” means the Deputy Chairman of the Board designated as such under section 6;

“director” means a director referred to in section 6;

“exempted entity” means any type of company, partnership, unit trust or other entity specified as such by Regulations;

“functions” includes powers and duties;

“market traded company” means a company, partnership, unit trust or other entity, whether or not incorporated or established in the Islands, some or all of the transferable securities of which are admitted to trading on a regulated market except where that company, partnership, unit trust or other entity is an exempted entity;

“public practice” shall have the meaning given to that expression in the Regulatory Law;

“recognized auditor” means an auditor that is entered on the register;

“register” means the register of recognized auditors to be established and maintained under section 18;

“regulated market” means -

- (a) the Cayman Islands Stock Exchange;

- (b) a market regulated by a member state of the European Union specified by the Authority by notice in the Gazette; or
- (c) any other market specified by the Authority by notice in the Gazette provided that the jurisdiction in which the market is established imposes requirements with regard to the statutory audit of market traded companies by foreign public accountants;

“Regulatory Law” means the Public Accountants Law (2009 Revision);

(2009 Revision)

“Regulations” means regulations made under section 33;

“responsible individual” means an individual, designated by a recognized auditor and who is the holder of a valid licence issued under section 11 or 12 of the Regulatory Law, who is responsible for audit work on a recognized auditor's behalf in relation to market traded companies and who is permitted to sign audit reports for the recognized auditor;

“Rules” means the rules and guidance issued by the Authority from time to time under section 29;

“Society” means the Cayman Islands Society of Professional Accountants established under the Regulatory Law;

“statutory audit” means an audit of annual accounts or consolidated accounts insofar as required by law; and

“transferable securities” means those classes of securities which are negotiable on the capital markets, with the exception of instruments of payment, such as -

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) bonds or other forms of debt securities, including depositary receipts in respect of such securities; or
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(2) For the purposes of this Law a person to whom the Authority has delegated any of its functions under section 16 includes a director, officer, employee, agent or representative of that person.

Establishment and functions of Authority	<p>3. (1) There is established an Authority to be called the Auditors Oversight Authority which shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.</p> <p>(2) The functions of the Authority are to regulate and supervise auditors who audit the accounts of market traded companies and include subjecting recognized auditors to the Authority's systems of quality assurance, investigation and penalties.</p> <p>(3) The Authority shall carry on its business under the powers conferred by and in accordance with this Law and the Companies Law (2010 Revision), insofar as the provisions of such law are not in conflict with this Law.</p>
(2010 Revision)	
Share capital	<p>4. (1) The authorised share capital of the Authority shall be such sum, not less than one hundred thousand dollars, as may be prescribed.</p> <p>(2) The share capital of the Authority shall be divided into shares of a par value of one dollar each.</p>
Powers of Authority	<p>5. (1) In furtherance of the purposes specified in section 3, the Authority shall have the following powers and rights, in addition to and without prejudice to any other powers conferred by this Law or the Companies Law (2010 Revision) -</p> <ul style="list-style-type: none"> (a) to pay, satisfy or compromise any claims made against the Authority; (b) to consider all questions connected with the business of the Authority and to collect and circulate statistics and other information relating to the business of the Authority; and (c) to make and amend, from time to time, Rules in accordance with section 29. <p>(2) The proprietary rights in respect of the statistics and other information referred to in subsection (1)(b) shall be vested exclusively in the Authority.</p>
Board	<p>6. (1) There shall be a board of directors of the Authority which, subject to this Law, shall be responsible for the policy and general administration of the affairs and business of the Authority.</p> <p>(2) The Board shall comprise the following directors -</p> <ul style="list-style-type: none"> (a) the Managing Director of the Authority as an <i>ex officio</i> director; (b) the Attorney General or his designate; (c) the Financial Secretary or his designate; and (d) not more than three other directors (including the Chairman and the Deputy Chairman), who shall be public accountants retired

from the practice of their profession for not less than the period of time determined by the Governor in Cabinet, and having the qualifications determined by the Governor in Cabinet from time to time, one of whom shall also be a person who is not resident in the Cayman Islands during the period of his appointment as a member of the Board;

appointed in accordance with sections 7 and 8, each of whom shall be a fit and proper person and shall have demonstrated to the satisfaction of the Governor in Cabinet substantial knowledge and experience relevant to the functions of the Authority.

(3) The Chairman and the Deputy Chairman, respectively, shall be designated by the Governor in Cabinet after consultation with the directors appointed in accordance with sections 7 and 8.

7. (1) The directors referred to in section 6(2)(d) shall be appointed by the Directors
Governor in Cabinet.

(2) The directors appointed under subsection (1) -

- (a) shall not act as delegates on the Board for any commercial, financial, agricultural, industrial or other interests with which they may be connected;
- (b) shall hold office for a term of three years and shall be eligible for re-appointment; and
- (c) may be paid by the Authority out of the funds of the Authority such remuneration and allowances as may be determined by the Governor in Cabinet.

(3) Subsection (2)(b) and (c) shall not apply to a director who is appointed as the Managing Director under section 8(1).

(4) If a director appointed under subsection (1) dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, the Governor in Cabinet may appoint another person for the unexpired period of the term of office of the director in whose place he is appointed.

8. (1) The Board shall appoint a fit and proper person to be the Managing Managing Director
Director of the Authority.

(2) The Managing Director shall be an employee of the Authority on such terms and conditions of service as the Board, may decide.

(3) The Managing Director shall be entrusted with the day to day administration of the Authority to the extent of the authority delegated to him by the Board.

(4) The Managing Director shall render his services exclusively to the Authority and shall be answerable to the Board for his acts and decisions.

(5) In the event of the Managing Director's absence, or inability to act, the Governor in Cabinet may, after consultation with the Board, appoint a person to discharge the duties of the Managing Director during the period of his absence or inability.

(6) The Board shall terminate the appointment of the Managing Director, where the Managing Director -

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt, suspends payment to or compounds with his creditors;
- (c) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (d) is guilty of serious misconduct in relation to his duties;
- (e) is absent, without leave of the Chairman, from three consecutive meetings of the Board; or
- (f) fails to comply with his obligations under section 12.

Disqualification and
termination of
appointment

9. (1) A person shall not be appointed as or remain a director who is an elected member of the Legislative Assembly or an official member of the Cabinet.

(2) The Governor in Cabinet shall terminate the appointment of any director appointed pursuant section 6 (2)(d) who -

- (a) resigns his office;
- (b) becomes of unsound mind or incapable of carrying out his duties;
- (c) becomes bankrupt, suspends payment to or compounds with his creditors;
- (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (e) is guilty of serious misconduct in relation to his duties;
- (f) is absent, without leave of the Chairman, from three consecutive meetings of the Board; or
- (g) fails to comply with his obligations under section 12.

(3) The Governor in Cabinet may, in the public interest, terminate the appointment of any director.

10. (1) The Chairman shall summon regular meetings of the Board as often as may be required, but not less frequently than once in three months, and shall summon extraordinary meetings when required to do so in accordance with Rules made under section 29. Meetings

(2) At a meeting of the Board, the Chairman or, if he is not present, the Deputy Chairman or, if he is not present, a director chosen by the directors present, shall act as the chairman of the meeting.

(3) At every meeting of the Board, a quorum shall consist of five directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that, in the case of an equality of votes, the chairman of the meeting shall, in addition, have a casting vote.

(4) The Board may act notwithstanding that a vacancy exists among the members or in the office of Chairman or Deputy Chairman, and shall have power to -

- (a) act by committee; and
- (b) delegate any of its duties and powers from time to time to such committees and to any of their own number and to the officers, servants and agents of the Authority.

(5) A delegation under subsection (4)(a) or (b) is revocable at will and does not prevent the exercise by the Board of any duties or powers so delegated.

(6) For the purposes of this Law, a director shall be deemed to be present at a meeting of the Board if he gains access to the meeting by conference telephone or by some other conference facility.

11. (1) The Board may appoint committees to assist the Board in exercising the Board's functions under this Law, and shall appoint such persons as it sees fit to be members of the committees. Committees

(2) The Managing Director may designate a member of any such committee to act as secretary to the committee performing such duties as the committee may determine.

(3) The Board may, by instrument in writing, delegate from time to time to a committee appointed by the Board under subsection (1) such power and duties, other than a licensing or supervisory power or duty, as the Board sees fit.

(4) A committee appointed under subsection (3) shall exercise and carry out the powers and duties delegated under that subsection and a decision of the committee shall be deemed to be a decision of the Board.

Declaration of interest

12. (1) If a director or a member of a committee appointed under section 11, has any pecuniary interest, direct or indirect, in any contract, proposed contract, licence or other matter and is present at a meeting of the Board or committee, as the case may be, at which the contract, proposed contract, licence or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract, licence or other matter or vote on any question with respect to it, and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) A person who fails to comply with subsection (1) commits an offence and is liable -

- (a) on summary conviction, to a fine of twenty thousand dollars and to imprisonment for a term of two years; or
- (b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term of five years,

unless he proves that he did not know that the contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board or committee, as the case may be.

(4) An act or proceeding of the Board or a committee, shall not be questioned on the ground that a director of the Board or a member of a committee has contravened this section.

Pecuniary interest

13. (1) For the purposes of section 12, a director, or a member of a committee appointed under section 11 shall be treated, subject to subsections (4) and (5), as having indirectly a pecuniary interest in a contract, proposed contract, licence or other matter if -

- (a) he, or any nominee of his, is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a

direct pecuniary interest in the licence or other matter under consideration; or

- (c) he or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter.

(2) Subsection (1) does not apply to membership of or employment under any public body.

(3) In the case of married persons, the interest of one spouse shall be deemed for the purpose of this section to be also the interest of the other.

(4) Section 12 shall not apply to an interest in a contract, proposed contract, licence or other matter which a director has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(5) Where a director has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed one thousand dollars or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and, if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 12 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

14. (1) The Governor in Cabinet may, in the public interest and subject to such conditions as he may think fit, appoint persons to act as directors for any specified period, in any case in which the number of directors disabled by section 12 at any one time would be so great a proportion of the whole as to impede the transaction of business. Directors

(2) Nothing in section 12 precludes any director from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Governor in Cabinet for the exercise of the powers conferred by subsection (1).

15. (1) The Authority may employ, at such remuneration and on such terms and conditions as may be approved from time to time by the Board, such persons, Appointment of staff and fund

including one or more Deputy Managing Directors as the Board considers necessary for the performance of the functions of the Authority.

(2) The Authority shall create and maintain or subscribe to a fund for the payment of pensions to employees of the Authority in accordance with a scheme, the terms of which shall be approved by the Governor in Cabinet.

(3) The fund shall be vested in trustees to be appointed by the Authority for that purpose, and shall be maintained at a sufficient level according to accepted actuarial principles to enable pensions to be paid to all employees of the Authority in accordance with the approved scheme.

(4) The Governor in Cabinet may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Authority, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

Delegation

16. (1) Subject to subsection (2), the Authority may, on such terms as may be approved from time to time by the Board, delegate any of its functions under this Law to any person as the Board considers necessary for the better exercise of the Authority's functions under this Law.

(2) The Authority shall not delegate any of its functions to a person pursuant to subsection (1) unless the person has -

- (a) experience in -
 - (i) regulating public accountants and in overseeing the audit of financial statements of publicly traded companies;
 - (ii) assisting regulatory authorities in their supervision and investigation of public accountants and their professional activities; and
 - (iii) assessing accounting and assurance standards of regulatory oversight bodies; and
- (b) adequate knowledge in areas relevant to statutory audit.

Qualification for
appointment as auditor

17. (1) Notwithstanding sections 11 and 12 of the Regulatory Law, an auditor is only qualified for appointment as auditor of a market traded company if he is also a recognized auditor.

(2) A person shall not, unless he is a recognized auditor, describe himself as engaged in the audit of market traded companies or hold himself out to be so qualified.

(3) On ceasing to be eligible to be a recognized auditor, a person shall immediately resign any office held as auditor of a market traded company, giving written notice to all such companies that the resignation is by reason of the application of this section.

(4) A person who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

18. (1) The Authority shall establish and maintain a register of recognized auditors and responsible individuals in which there shall be entered all persons who -

Register of recognized auditors

- (a) under section 19 are auditors eligible to be entered on the register;
- (b) are responsible individuals;
- (c) have applied to and been approved by the Authority to be entered on the register using the form provided by the Authority for this purpose; and
- (d) have paid the application fee or annual fee prescribed in section 20(2) or 22(2).

(2) In order to withdraw from the register, a recognized auditor shall give notice in writing to the Authority of his deregistration, providing a full explanation for the deregistration and the prescribed fee.

(3) A recognized auditor shall always give the notice referred to in subsection (2) in the circumstances described in section 23(1)(a).

19. An auditor is eligible to be entered on the register if -

Eligibility for entry on register

- (a) all responsible individuals of the auditor are licensed under section 11 or 12 of the Regulatory Law;
- (b) the auditor and all responsible individuals of the auditor are bound by and required to comply with the Rules when auditing the accounts of market traded companies or have undertaken to do so; and
- (c) all responsible individuals of the auditor have been designated by the auditor as competent to audit the accounts of a market traded company.

20. (1) An application for entry on the register shall be made by an auditor using the application form provided for this purpose by the Authority, and shall be accompanied by such information and documents in support of the application as the Authority may require.

Application for entry on register

(2) An auditor shall only be entered on the register if prior to the first year of registration the non-refundable prescribed application fee has been paid.

(3) An application for registration may be accepted or refused at the discretion of the Authority.

(4) An application for registration may be accepted subject to conditions.

(5) If an application for registration has been accepted, the Authority may at any time in the circumstances set out in section 21(1) -

- (a) cancel or suspend the registration;
- (b) make the registration subject to conditions or further conditions; or
- (c) vary or withdraw any condition of the registration.

(6) A person aggrieved by -

- (a) the refusal of the Authority of his application for registration;
- (b) the cancellation or suspension of his registration by the Authority;
- (c) the imposition or variation by the Authority of conditions in respect of his registration; or
- (d) the variation of a condition in respect of his registration,

may, within three months of the date of the decision, appeal against the decision to the Grand Court.

(7) No further appeal shall lie from the decision of the Grand Court on an appeal made under subsection (6).

(8) If an auditor is responsible for the audit of a market traded company at the date of commencement of this Law, in this section referred to as the “commencement date”, the auditor may continue to carry on that activity subject to the auditor making an application for entry on the register within three months of the commencement date and until -

- (a) the end of the period within which an appeal can be brought under subsection (6) against the decision on the application; or
- (b) where an appeal is brought, the determination or withdrawal of the appeal.

Circumstances in which
action may be taken
under section 20(5)

21. (1) The circumstances in which an action under section 20(5) may be taken by the Authority are -

- (a) if the recognized auditor ceases to have a responsible individual;

- (b) if the Authority is satisfied that the recognized auditor or a responsible individual is not or is no longer competent or fit and proper to act as recognized auditor or responsible individual;
- (c) if the Authority is otherwise satisfied that the recognized auditor or any responsible individual is not or is no longer eligible to be entered on the register;
- (d) if the Authority is informed by a person to whom the Authority has delegated any of its functions under section 16 that the recognized auditor or a responsible individual has breached any of the Rules substantially;
- (e) if the Authority is satisfied that a condition in relation to the registration has been breached; or
- (f) if the Authority is satisfied that the recognized auditor has not paid the costs of oversight.

(2) If an entry on the register has been suspended, cancelled or made subject to conditions or further conditions, the Authority may draw this matter to the attention of the public.

22. (1) Notwithstanding section 20 and the date of first entry on the register, upon payment of the annual fee as prescribed in subsection (2), the recognized auditor shall confirm in writing to the Authority that the full details held within the register remain accurate, and if this is not the case, the recognized auditor shall provide accurate information immediately in writing to the Authority.

Annual confirmation of
entry on register

(2) In order to remain entered on the register, a recognized auditor shall pay the prescribed non-refundable annual fee by 31st January in the year for which registration is to continue.

23. (1) A recognized auditor shall notify the Authority immediately in writing of any the following -

Notifications

- (a) the recognized auditor becoming ineligible to be entered on the register;
- (b) the termination of the appointment of a responsible individual or a responsible individual becoming ineligible to hold that role in respect of the recognized auditor;
- (c) the taking of any disciplinary action under the Regulatory Law against a responsible individual that resulted in an adverse finding;
- (d) any reasonable grounds he has for suspecting that he or a responsible individual has contravened the laws of the Islands; or
- (e) a request for the addition of a responsible individual to the register entry.

(2) The written details required by subsection (1) shall be accompanied by such information and documents as the Authority may reasonably require.

(3) Notwithstanding subsection (1), the Authority may by notice in writing require a recognized auditor to notify the Authority of any other information as it may reasonably require for the exercise of the functions conferred on it by section 3 within such reasonable time, in respect of such periods, given in such form and verified in such manner as it may specify in that written notice.

Content of register

24. The register shall contain the prescribed information.

Public inspection of register

25. The register shall be available for public inspection in visible and legible form -

- (a) on the Authority's website; and
- (b) at the offices of the Authority whenever those offices are open for business.

Confidentiality

26. (1) Subject to subsection (2), all documents and other information prepared for, or received by, the Authority in the exercise of its functions under this Law and all deliberations of the Authority, a director, an officer, an employee, an agent or a representative of the Authority, or a person to whom any of the functions of the Authority have been delegated under section 16, are confidential and shall not be disclosed.

(2) Subsection (1) shall not apply to a disclosure -

- (a) lawfully required or permitted by any court of competent jurisdiction within the Islands;
- (b) for the purpose of assisting the Authority to exercise any functions conferred on the Authority by this Law, by any other law or by the Regulations;
- (c) where the recognized auditor who provided the information or documents referred to in subsection (1) or the relevant underlying clients have given their consent;
- (d) for the purpose of enabling or assisting the Governor in Cabinet to exercise any functions conferred on him under this Law or the Regulations or in connection with the dealings between the Governor in Cabinet and the Authority when the Authority exercises its functions under this or any other law;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any person to which the information relates to be ascertained;

- (g) lawfully made -
 - (i) to the Attorney General, the Director of Public Prosecutions or a law enforcement agency in the Islands, with a view to the institution of or for the purpose of criminal proceedings; or
 - (ii) to a person pursuant to the money laundering regulations made under the Proceeds of Crime Law, 2008;
- (h) for the purposes of any legal proceedings in connection with the cancellation or suspension of registration of a recognized auditor, the winding-up or dissolution of a recognized auditor, or the appointment or duties of a receiver of a recognized auditor; or
- (i) for the purpose of enabling the Authority to satisfy a request for assistance from an overseas auditor oversight body.

Law 10 of 2008

(3) The Authority, a director, an officer, an employee, an agent or a representative of the Authority, or any person to whom any of the functions of the Authority have been delegated under section 16, shall not be required in any proceeding, except a proceeding under this Law, to give testimony or produce any document with respect to documents or information that the person is prohibited from disclosing under this section.

(4) Subject to subsections (1) and (3), the Authority may agree such provisions relating to confidentiality with any person to whom it has delegated its functions under section 16 as the Board considers necessary.

(5) Notwithstanding any law in force in the Islands to the contrary, the Authority may, subject to subsection (6), require the provision of information or the production of documents referred to in subsection (1) by an auditor that are the subject of legal professional privilege if access to the information or documents is absolutely necessary for the purpose of review of the audit.

(6) The disclosure of information or documents pursuant to subsection (5) does not negate, or constitute a waiver of, any legal professional privilege and the legal professional privilege continues for all other purposes.

(7) Where a person fails to comply with a requirement of the Authority pursuant to subsection (5) within three days of the requirement or such longer period as the Authority may permit, the Authority may apply to the court for an order requiring that person to comply with the requirement.

(8) Where the provision of information or the production of documents is required by the Authority pursuant to subsection (5), an auditor shall satisfy such obligation by permitting the Authority or any person to whom it has delegated

functions under section 16 to inspect such information or documents at the auditor's premises in the Islands or such other location in the Islands as the auditor shall determine; and unless the underlying client shall have given its consent, neither the Authority nor such person shall be permitted to take a copy of or make any note or record in any form of such information or documents.

Immunity

27. The Authority, a director, an officer, an employee, an agent or a representative of the Authority, or a person to whom any of the functions of the Authority have been delegated under section 16, shall not be liable in damages for anything done or omitted in the discharge or the purported discharge of the functions of the Authority under this Law unless it is shown that the act or omission was in bad faith.

Accounts

28. (1) The Authority shall cause to be kept proper accounts and records of the transactions and affairs of the Authority and shall do all things necessary to ensure that all moneys received are properly brought to account and that all payments out of its moneys are correctly made and properly authorised.

(2) The financial year end of the Authority shall be on 30th June.

(2010 Revision)

(3) The Authority is a statutory authority as defined in section 2 of the Public Management and Finance Law (2010 Revision) and accordingly that Law applies, among other things, to -

- (a) the Authority's expenditure budget for each financial year; and
- (b) the preparation, maintenance, auditing and publication of the Authority's accounts.

Rules

29. The Authority shall make and publish rules for the purpose of ensuring that a recognized auditor, when auditing a market traded company, is subject in the Islands to a system of oversight, quality assurance, investigation and penalties.

Monitoring of compliance

30. (1) The Authority shall monitor compliance by recognized auditors with the Rules.

(2) For the purposes of subsection (1) the monitoring of recognized auditors includes -

- (a) monitoring of actions of recognized auditors in auditing the accounts of market traded companies;
- (b) conducting inspections of recognized auditors; and
- (c) taking disciplinary action, including the application of penalties, where necessary against recognized auditors or responsible individuals.

(3) A person to whom any of the functions of the Authority are delegated under section 16 shall report to the Authority annually in writing on or before 31st January in each year specifying, among other things -

- (a) the work the person has undertaken in relation to public oversight of recognized auditors; and
- (b) the outcome of any inspections, during the preceding year up to 31st December of that preceding year.

31. (1) A recognized auditor shall be subject to the public oversight of the Authority, and shall comply with the Authority's requirements, including the payment of fees and disciplinary procedures.

Obligations of
recognized auditors

(2) A recognized auditor when auditing the accounts of a market traded company -

- (a) is bound by and shall comply with the Rules;
- (b) shall, in so far as practicable, maintain the working papers relating to the audit of the company in English; and
- (c) shall make those working papers in his possession or control available to the Authority or to any person to whom the Authority has delegated any of its functions and shall use his reasonable endeavours to obtain and make available to the Authority or any such person those working papers which are not in his possession or control.

(3) A recognized auditor shall pay the costs of oversight as prescribed.

32. (1) A person to whom any of the functions of the Authority are delegated under section 16 shall notify the Authority immediately in writing of -

Notification by person to
whom functions of
Authority are delegated

- (a) any loss of a recognized auditor's or responsible individual's eligibility (to the extent that he has knowledge thereof) to be entered on the register;
- (b) the reasons (to the best of his knowledge) for the loss; and
- (c) any reasonable grounds he has for suspecting that a recognized auditor or responsible individual has contravened the law of the Islands.

(2) The Authority may by notice in writing require a person referred to in subsection (1) to notify it of any other information as it may reasonably require for the exercise of the functions conferred by this Law, within such reasonable time, in respect of such periods, given in such form and verified in such manner as it may specify in that written notice.

Regulations

33. (1) The Governor in Cabinet may by regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law.

(2) Regulations made under subsection (1) may -

- (a) make different provision in relation to different cases or circumstances;
- (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or
- (c) create an offence punishable by a fine not exceeding five thousand dollars.

Passed by the Legislative Assembly the _____ day of _____, 2011.

Speaker.

Clerk of the Legislative Assembly.