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## Cayman Islands: Confidential Relationships Law to be repealed

The Government of the Cayman Islands has this week gazetted a bill to repeal the statute that has frequently – and mistakenly – been described as Cayman's banking secrecy law. The Confidential Relationships (Preservation) Law was originally enacted in the 1970s, when Cayman as a financial centre was in its infancy. In essence, all it does is to overlay criminal penalties on disclosures of confidential information that in most cases would be actionable by civil proceedings in any event. However, in the 40 years of the Law's existence, no-one has ever been prosecuted, and the only part of the Law that is commonly used is section 4, which enables a person who intends or is being required to disclose confidential information in evidence in proceedings (whether in Cayman or elsewhere) to get the approval of the Court to so doing.

The Bill just gazetted is called the Confidential Information Disclosure Bill, 2016. By repealing the Confidential Relationships (Preservation) Law it will essentially return the whole area of liability for breach of confidence to the realm of the common law and rules of equity. But importantly, it retains the mechanism for seeking court approval for disclosure. This is a distinct feature of Cayman Islands law that does not exist in most other common law jurisdictions. Although the common law defences to an action for breach of confidence, such as acting under compulsion of law, are well established, they do not cover all the circumstances in which disclosure may be appropriate or necessary in practice. For example, where the obligation to disclose arises under foreign law, rather than domestic law, the holder of the information may not be protected by the common law 'compulsion of law' defence. In particular if it is a business with operations in the foreign country imposing the requirement it might, absent such a mechanism, find itself in a difficult position. Moreover, there are situations where a person intends to make disclosure (e.g. to protect his own interests) but is not actually being compelled to do so. A court direction authorising disclosure will thus provide protection that would not be available otherwise.

Even under the current law, disclosure in numerous contexts is already expressly permitted, including responding to statutory notices from the Cayman Islands financial services regulator, both for its own purposes and for onward transmission to overseas regulators; providing information to the police investigating offences and under mechanisms for international co-operation in criminal matters; producing information to the Tax Information Authority under a notice issued on the request of an overseas tax authority; and filing suspicious activity reports or reports under anti-corruption legislation. The Bill preserves and enumerates these and various other circumstances in which disclosure is specifically allowed, although for the most part they are cases where the well-established common law defences to disclosure would apply. Given the removal of the criminal component of the regime, this and certain other aspects of the Bill are arguably unnecessary and run the risk of creating uncertainty by replicating matters that are already sufficiently dealt with by the common law, without seeking to codify it fully. It is hoped that these issues will be resolved in the legislative process.

The new Bill also introduces a 'whistle-blower' defence for disclosures made in good faith evidencing wrongdoing, a serious threat to the life, health or safety of a person or a serious threat to the environment. This is consistent with a more general move towards protecting public interest disclosures, but would arguably be better addressed, in a more developed form, in the context of specific whistle-blower legislation which is currently under consideration.

The Government has stated its intention that the Bill should pass into law by September 2016.

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