

# LEGAL ALERT

## Cayman Islands enhances its commitment to global transparency

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The Cayman Islands Government has issued The Confidential Information Disclosure Bill, 2016 ("**Confidentiality Bill**") which, once it comes into force will bring into effect a fundamental overhaul of confidentiality laws in the Cayman Islands. The introduction of the Confidentiality Bill is part of a series of actions being taken by the Cayman Islands Government to the assist global efforts to increase transparency.

### Existing Law

Under the existing law, which is found in The Confidential Relationships (Preservation) Law (2015 Revision), it is a criminal offence to divulge or attempt, offer or threaten to divulge "confidential information" (which is defined as including information concerning any property which the recipient thereof is not, otherwise than (in the narrowly construed exception of) "in the normal course of business", authorised by the principal to divulge) except in a limited number of specified circumstances.

Notwithstanding the criminal penalties that follow a breach of the existing law, there has not been a criminal conviction under the existing law since its original enactment over 40 years ago.

The prohibition applies with respect to business of a professional nature (e.g. the relationship between a bank, trust company, an attorney-at-law, an accountant, an estate agent, an insurer, or a broker and its client) which arises in or is brought to the Cayman Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or not.

As mentioned above, disclosure is permitted in a number of specified circumstances (e.g. (i) in respect of any professional person acting in the normal course of business, or with the consent, express or implied, of the relevant principal; or (ii) in response to statutory requests from certain criminal or regulatory authorities (e.g. the Cayman Islands Monetary Authority), or (iii) a court order).

### Proposed new Law

The Confidentiality Bill proposes the following key amendments:

- It will no longer be a criminal offence to breach a duty of confidentiality.
- In future it will be necessary to assess whether the information imparted was subject to a duty of confidence in the first place. This will effectively shift the burden of proof from showing that the disclosure falls within

an exception to the current prohibition, to showing that the information imparted was in fact subject to a duty of confidence.

- Where a person owes a duty of confidence, that person's disclosure of such information within a widened list of specified circumstances will not constitute a breach of the duty of confidence and a person will not be able to sue the discloser.
  - A person who discloses confidential information in relation to a serious threat to the life, health, safety of a person or in relation to a serious threat to the environment will have a defence to legal action for breach of a duty of confidence, as long as the person acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of a serious threat to life, health, safety of a person or of a serious threat to the environment.
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*This publication is not intended to be a substitute for specific legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and general guidance only. For more specific advice on the confidentiality laws in the Cayman Islands, please contact:*

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