

**Hon Mark Brown**

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# **Money Changing and Remittance Businesses Amendment Bill 2019**

## **Contents**

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### **An Act to amend the Money-Changing and Remittance Businesses Act 2009**

**The Parliament of the Cook Islands enacts as follows—**

- 1 Title**  
This Act is the Money-Changing and Remittance Businesses Amendment Act 2019.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives assent.
- 3 Principal Act amended**  
This Act amends the Money-Changing and Remittance Businesses Act 2009.
- 4 Section 2 amended**
  - (1) Section 2(1) is amended by repealing the definition of **money-changing business** and substituting the following—  
“**Money-changing business** means the business of buying or selling foreign currency.”
  - (2) Section 2(2) is amended by repealing paragraph (a) and substituting the following—
    - “(a) money changing business; if that person offers to buy or sell any foreign currency, or facilitates the buying and selling of foreign currency
- 5 Section 7 amended**
  - (1) Section 7(3) is amended by repealing subsection (3) and substituting the following subsection—
    - “(3) An application made to the Commission for a money-changer’s licence must be accompanied by the relevant prescribed application fee, which is non-refundable, in a manner as specified by the Commission.

- (2) Section 7(5) is amended by repealing subsection (5) and substituting the following subsection—
- “(5) In considering an application for a money-changer’s licence, the Commission must be satisfied as to the following—
- “(a) the risks related to the business plan and proposed operations;
  - “(b) the general character of the management and ownership of the company;
  - “(c) each shareholder, director and manager of the company being a fit and proper person;
  - “(d) the financial standing of the company and its shareholders; and
  - “(e) whether the public interest will be served by the granting of the licence to the company.
- (3) Section 7 is amended by adding a new subsection after subsection (5) as follows—
- “(5A) In consideration of an application for a money-changer’s licence that involves conducting money changing business through a digital or web-based platform, the Commission must be satisfied as to the following—
- “(a) the knowledge and experience of the directors and management in this type of operation
  - “(b) the type of client or market the company is proposing to serve;
  - “(c) the measures in place to ensure an appropriate level of protection for users or participants of the platform; and
  - “(d) the financial resourcing of the proposed operations.”

**6 Section 9 amended**

Section 9(7) is amended by deleting the words “money-changer’s” and substituting the words “remittance”.

**7 Section 26 amended**

Section 26 is repealed and the following section is substituted—

**26 Audit Requirements**

- “(1) Subject to subsection (2) a licensee must appoint an auditor for the purpose of auditing its financial statements.
- “(2) An auditor may only be appointed by a licensee with the prior written approval of the Commission.
- “(3) An application for approval of auditor must be submitted by the licensee and be in such form specified by the Commission.
- “(4) The Commission must not approve the appointment of an auditor unless it is satisfied that:
- “(a) they have sufficient experience and competency to audit the licensee; and
  - “(b) they are sufficiently independent of the licensee.
- “(5) A licensee must notify the Commission in writing if the licensee or auditor intends to terminate the appointment of the auditor.
- “(6) The Commission may revoke the approval of an auditor where the Commission becomes aware of any circumstances to which it considers detrimentally impacts on the auditor’s ability to undertake its role competently and independently.

- “(7) A licensee must submit their audited financial statements, and any other information on their activities as may be requested by the Commission, to the Commission in the form and at such periods as specified by the Commission.
- “(8) A licensee that that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

## **8 New Section 26A**

The following section is added after section 26—

### **26A Obligations of auditor**

- “(1) An approved auditor must carry out sufficient investigation to enable him or her to form an opinion of the financial statements and prepare an audit report of the licensee.
- “(2) The approved auditor must, as soon as practicable, report to the Commission any information that the auditor obtains in the course of auditing the licensee, that the auditor is of the opinion that—
  - “(a) the licensee is—
    - “(i) insolvent or likely to become insolvent;
    - “(ii) in serious financial difficulties;
  - “(b) a breach of this Act has been committed;
  - “(c) a criminal offence involving fraud or dishonesty may have been committed;
  - “(d) the licensee has failed to comply with a condition of licence, prudential statement or direction.
- “(3) The approved auditor of a licensee must, if requested to do so by the Commission—
  - “(a) discuss an audit of the licensee directly with the Commission;
  - “(b) provide any additional information regarding an audit of the licensee that the Commission may require;
  - “(c) examine any systems or controls of a particular area of operations within a licensee.
- “(4) The cost of an audit, additional information or examination under this section is borne by the licensee.
- “(5) No civil, criminal or disciplinary proceedings lie against an auditor arising from a disclosure in good faith of information to the Commission in accordance with this section.
- “(6) An approved auditor that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

## **9 Transitional Provisions**

Where a licensee has been licenced under this Act and has been operating prior to 30 June 2019, sections 6 and 7 of this Act do not apply to until 1 July 2020.