



ST. CHRISTOPHER AND NEVIS

CHAPTER 4.28

PROCEEDS OF CRIME ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

PROCEEDS OF CRIME ACT

Act 16 of 2000 ... in force 29th November 2000

Amended by: Act 17 of 2001

Act 11 of 2002

Act 25 of 2005

Act 10 of 2008

Act 17 of 2008

Act 19 of 2008

Act 30 of 2008

Act 34 of 2009

Act 2 of 2011

Act 37 of 2011

Act 31 of 2012

S.R.O. 10/2012

Page

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ANTI-MONEY LAUNDERING REGULATIONS – Section 72

S.R.O. 46/2011

Amended by: S.R.O. 9/2012

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Published in
2019
Consolidated, Revised and Prepared under the Authority of the Law Commission Act,
on behalf of the Government of Saint Christopher and Nevis
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PROCEEDS OF CRIME ACT

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CHAPTER 4.28
PROCEEDS OF CRIME ACT

AN ACT TO PROVIDE FOR THE FREEZING, FORFEITURE, AND CONFISCATION OF THE PROCEEDS OF CRIME; TO CREATE NEW OFFENCES AND PROCEDURES FOR THE PURPOSE OF FORESTALLING AND PREVENTING MONEY LAUNDERING, AND TO ENABLE THE ENFORCEMENT OF OVERSEAS FREEZING, FORFEITURE, AND CONFISCATION ORDERS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I
PRELIMINARY MATTERS

Short title.

1. This Act may be cited as the Proceeds of Crime Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“account” means a facility by which a regulated business—

- (a) accepts deposits of money;
- (b) allows withdrawals or transfers of money;
- (c) pays or collects cheques or payment orders drawn on a regulated business by a person or on behalf of a person; or
- (d) supplies a safety deposit box;

“benefit” shall be construed in accordance with the provisions of subsection (1) of section 3;

“business transaction” means—

- (a) any activity or arrangement made or conducted by one or more persons for the purpose of gain or advantage, profit or livelihood;
- (b) any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a financial transaction between the persons concerned; and
- (c) any related transaction between any of the persons concerned and another person, and the making of a gift;

“Commissioner” means the Commissioner of Police;

“confiscation order” means an order made under section 53;

“Court” includes the High Court;

“document” includes—

- (a) a thing on which there is writing marks, figures, symbols or perforations, having a meaning for a person qualified to interpret them;

- (b) a thing from which sounds, images or writings may be reproduced;
and
- (c) a map, a plan, drawing or photograph;

“drug trafficking” falls to be construed in accordance with the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08;

“Financial Intelligence Unit” means the Financial Intelligence Unit as defined under the Financial Intelligence Unit Act, Cap. 21.09;

“forfeiture” means the permanent deprivation of property by order of court or other competent authority;

“forfeiture order” means an order made under section 44;

“freeze” means to temporarily prohibit the transfer, conversion, disposition or movement of property or to temporarily assume custody or control of property on the basis of an order of court or other competent authority;

“freezing order” means an order made under section 15;

“gift” shall be construed in accordance with subsections (12) and (14) of section 3;

“identification record” means—

- (a) documentary evidence to prove the identity of a person who is a nominee, agent, beneficiary or principal in relation to a transaction; or
- (b) in the case where the person is a corporate body—
 - (i) incorporated in Saint Christopher and Nevis, the certificate of incorporation of that body;
 - (ii) incorporated outside Saint Christopher and Nevis, the authenticated certificate of incorporation or equivalent document of that body;
 - (iii) the most recent return to the Registrar of Companies, where the corporate body is incorporated abroad; or
 - (iv) documentary evidence to prove the identity of the corporate body;

“interest”, in relation to property, means—

- (a) a legal or equitable interest in property; or
- (b) a right, power or privilege in connection with the property;

“joint account” means an account held by two or more persons;

“Minister” means the Minister responsible for Legal Affairs;

(Substituted by Act 17 of 2001)

“money” means cash (that is to say, coins or notes in any currency) or negotiable instrument;

“money laundering” has the meaning assigned to it by section 4 of this Act;

“person” includes a body corporate and unincorporated body;

“proceeds of crime” means—

- (a) proceeds of a serious offence;
- (b) any property that is derived, directly or indirectly, by any person from any act or omission that occurred outside Saint Christopher and Nevis

and would, if it had occurred in Saint Christopher and Nevis, have constituted a serious offence;

“production order” means an order made by the court under section 24;

“property” includes all property, whether movable or immovable, vested or contingent, proceeds from, instrumentalities used in and instrumentalities for use in the commission of any money laundering or related offence and whether situated in Saint Christopher and Nevis or elsewhere;

(Amended by Act 34 of 2009)

“Public Trustee” means the Registrar of the High Court;

“realizable property” shall be construed in accordance with subsections (3) and (4) of section 3;

“Regulator” means the Regulator for Saint Christopher or the Regulator for Nevis;

“regulated business activity” means any activity specified in the First Schedule;

“relevant application period”, in relation to a person’s conviction of a serious offence, means a period of twelve months after—

- (a) where the person is to be taken to be convicted by reason of section 3(2)(a), the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of section 3(2)(b), the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of section 3(2)(c), the day on which the court took the offence into account in passing sentence for the other offence referred to in that paragraph;

“requesting State” means a State which makes a request to Saint Christopher and Nevis pursuant to the Mutual Assistance in Criminal Matters Act, Cap. 4:19;

“restraining order” means an order made by the court under section 15;

“serious offence” means any offence triable on indictment or hybrid offences that attracts a penalty of imprisonment for more than one year.

(Amended by Act 19 of 2008)

“tainted property”, in relation to a serious offence, means—

- (a) property used in, or in connection with, the commission of the offence;
or
- (b) property derived, obtained or realised, directly or indirectly, from the commission of the offence;

“transaction” includes—

- (a) opening of a joint account where the purpose of the account is to facilitate a transaction between the holders of that account;
- (b) a transaction between the holders of a joint account relating to the joint account; and
- (c) the making of a gift;

“transaction record” includes—

- (a) the identification records of a person who is a party to a transaction;

- (b) a description of the transaction sufficient to identify its date, purpose, and method of execution;
- (c) the details of any account used for a transaction including the name of the financial institution, address, and sort code;
- (d) the total value of the transaction;
- (e) the name and address of the employee in the financial institution who prepared the transaction record;

“vessel” includes any ship, hovercraft or boat;

“White Collar Crime Unit” means the White Collar Crime Unit of the Royal Saint Christopher and Nevis Police Force.

(Inserted by Act 31 of 2012)

(2) A reference in this Act to a document includes a reference to a part of the document, and a copy, reproduction or duplicate of the document.

Definition of certain terms, etc.

3. (1) In this Act—

- (a) “a benefit” includes any property, service or advantage, whether direct or indirect;
- (b) “to benefit” has a corresponding meaning;
- (c) a reference to a benefit derived or obtained by, or otherwise accruing to, a person (“A”) includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at A’s request or direction.

(2) For the purposes of this Act, a person is to be taken to be convicted of a serious offence if—

- (a) he or she is convicted, whether summarily or on indictment, of the offence—
 - (i) a court with his or her consent takes the offences, of which he or she has not been found guilty, into account in sentencing him or her for another offence.

(3) In this Act, “realisable” means, subject to subsection (4)—

- (a) any property held by a person who has been convicted of, or charged with, a serious offence; and
- (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.

(4) Property is not realisable property if—

- (a) there is in force, in respect of that property, a forfeiture order under this Act or under any other enactment; or
- (b) a forfeiture order is proposed to be made against that property under this Act or any other enactment.

(5) For the purposes of sections 55 and 56, the amount that might be realised at the time a confiscation order is made against a person is the total of the values at the time of all the realisable property held by the person, less the total amount payable in pursuance of an obligation where there is an obligation having priority at

the time, together with the total of the values at that time of all gifts caught by this Act.

(6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation of the person to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence where the fine was imposed or the order was made before the confiscation order;
- (b) pay an amount due in respect of any tax, rate, duty cess or other impost payable under any enactment for the time being in force; or
- (c) pay any other civil obligation as may be determined by the court.

(7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property, other than cash, in relation to a person holding the property—

- (a) where any other person holds an interest in the property; is the market value of the first mentioned person's beneficial interest in the property less the amount required to discharge any encumbrance on that interest; and
- (b) in any other case, its market value.

(8) References in this Act to the value at anytime ("the material time") of the transfer of any property are references to—

- (a) the value of the property to the recipient when he or she receives it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (9) applies, the value there mentioned, whichever is the greater.

(9) Where at the material time the recipient holds—

- (a) the property which he or she received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received,

the value referred to in subsection (7)(b) is the value to him or her at the material time of the property mentioned in paragraph (a) of this subsection or, as the case may be, of the property mentioned in paragraph (b) of this subsection, so far as it represents the property which he or she received.

(10) Subject to subsection (14), a reference to the value at anytime ("the material time") of a gift is a reference to—

- (a) the value of the gift to the recipient when he or she received it adjusted to take account of subsequent changes in the value of money; or
- (b) the value there mentioned, where subsection (11) applies,

whichever is the greater.

(11) Subject to subsection (14), where at the material time a person holds—

- (a) property which he or she received, not being cash; or
- (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received,

value referred to in subsection (10) is the value to him or her at the material time of the property mentioned in paragraph (a) of this subsection or the value of the property mentioned in paragraph (b), so far as it represents the property which he or she received.

(12) A gift, including a gift made before the commencement of this Act, is caught by this Act where—

- (a) it was made by the person convicted or charged at anytime after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate, and the court considers it appropriate in all the circumstances to take the gift into account;
- (b) it was made by the person convicted or charged at anytime and was a gift of property—
 - (i) received by the person in connection with the commission of a serious offence committed by him or her or another; or
 - (ii) which in whole or in part directly or indirectly represented in the person's hands property received by him or her in that connection.

(13) The reference in subsection (12) to “an offence to which the proceedings for the time being relate” include where the proceedings have resulted in the conviction of the person, a reference to an offence which the court takes into consideration when determining sentence.

(14) For the purposes of this Act—

- (a) the circumstances in which a person is to be treated as making a gift include those when the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the person; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportions as the difference between the value referred to in paragraph (a) bears to the value of the consideration provided by the person.

PART II

MONEY LAUNDERING

Offence of money laundering.

4. (1) A person who engages in money laundering commits an indictable offence and shall be liable, on conviction—

- (a) in the case of a natural person, to a fine not exceeding two hundred and fifty thousand dollars, or to imprisonment for a term not exceeding twenty years, or both;
- (b) in the case of a corporate body, to a fine not exceeding seven hundred thousand dollars.

(2) A person engages in money laundering where—

- (a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime;
- (b) the person receives, possesses, disguises, conceals, disposes of, or brings into, or transfers from Saint Christopher and Nevis, any money or other property that is proceeds of crime;
- (c) the person—
 - (i) conspires to commit; or
 - (ii) attempts, incites another, aids, abets, counsels, facilitates or procures the commission of any of the activities in paragraphs (a) and (b),

and the person knows or ought to reasonably have known, that the money or other property is derived, obtained, or realised, directly or indirectly, from some form of serious offence.

(3) Notwithstanding subsection (2), the conviction of a person for money laundering pursuant to this section shall not be dependent on the conviction of that person or any other person for a related serious offence.

(Inserted by Act 19 of 2008)

(4) In this section, “transaction” includes the receiving or making of a gift.

(5) It shall be a defence to a charge under this section if the person satisfies the court that he or she did not know or had no reasonable grounds for knowing that the property referred to in the charge was derived directly, or indirectly, from some form of serious offence.

Tipping off.

5. A person who knows or suspects that—

- (a) an investigation into money laundering, the proceeds of crime or any related activity; or
- (b) a suspicious transaction report,

has been, is being, or is about to be made, and divulges that fact or other related information to any unauthorised person whereby the disclosure of the fact or other related information is likely to prejudice the investigation, commits an offence, and shall be liable, on conviction, to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding three years.

(Substituted by Act 37 of 2011)

Falsification, concealment, etc., of documents.

6. A person who falsifies, conceals, destroys or otherwise disposes of, or causes, or permits the falsification, concealment, destruction, disposal of any document or material which is or is likely to be relevant in an investigation into money laundering or any order made in accordance with this Act commits an offence, and shall be liable, on conviction, to a fine not exceeding two hundred and fifty thousand dollars and to imprisonment for a term not exceeding five years.

PART III

PROVISIONS FOR FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY LIABLE
TO FORFEITURE AND CONFISCATION ORDERS, ETC.*Restriction on importation and exportation of currency, etc.***Reporting, seizure and detention of cash and monetary instruments.**

7. (1) A Customs Officer or a member of the Police Force, after consultation with the Comptroller of Customs, may seize, and in accordance with this section, detain any money which is being imported into or exported from Saint Christopher and Nevis, of a value exceeding ten thousand dollars United States currency or its equivalent in Eastern Caribbean currency, or other currency, if he or she has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in money laundering, drug trafficking or any other unlawful activity.

(Amended by Act 10 of 2008)

(2) On informing any person of the provisions of subsection (1), a Customs Officer or a member of the Police Force shall require the person to sign a declaration as to the amount of money being imported into, or exported from Saint Christopher and Nevis.

(3) For the purposes of subsection (4), if the person who is importing or exporting the money signs a declaration under subsection (2) that is untrue in any material particular, a Magistrate shall receive the untrue declaration as *prima facie* evidence of the matters mentioned in paragraphs (a) and (b) of subsection (4).

(4) Money seized by virtue of this section shall not be detained for more than seventy-two hours unless its continued detention is authorised by the order of the Magistrate upon an application made by the Comptroller of Customs or a member of the Police Force, and no such order shall be made unless the Magistrate is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Saint Christopher and Nevis or elsewhere, of criminal proceedings against any person for an offence with which the money is connected.

(5) (a) Any order made under subsection (4) shall authorise the continued detention of the money to which it relates for such period, not exceeding six months, beginning with the date of the order, as may be specified in the order.

- (b) Where the Magistrate, is satisfied in respect of the grounds referred to in subsection (4) paragraphs (a) and (b), the Magistrate may thereafter, by order, authorise the further detention of the money on the following conditions—

- (i) no period of detention specified in such an order shall exceed two years beginning with the date of the order; or
- (ii) until prosecution is completed in the matter in question.

(Substituted by Act 2 of 2011)

(6) No application to the Magistrate for an order made under subsection (4) or (5) shall be made by the Comptroller of Customs or a member of the Police Force, except with the written approval of the Director of Public Prosecutions.

(7) At anytime while money is detained by virtue of the foregoing provisions of this section—

(a) the Magistrate may direct its release if satisfied—

(i) on an application made by the person from whom it was seized, or a person by, or on whose behalf it was being imported or exported, that there are no, or are no longer any such grounds for its detention as are mentioned in subsection (4); or

(ii) on an application made by any other person, that detention of the money is not for that or any other reason justified; and

(b) a Customs Officer or Police Officer may release the money if satisfied that its detention is no longer justified, but shall first notify the Magistrate under whose order it is being detained.

(8) If at anytime money being detained by virtue of the foregoing provisions of this section—

(a) an application for its forfeiture is made under section 39; or

(b) proceedings are instituted, whether in Saint Christopher and Nevis or elsewhere, against any person for an offence with which the money is connected,

the money shall not be released until any proceedings pursuant to the application, or as the case may be, proceedings for that offence have been concluded.

Search and Seizure

Application to Magistrate to forfeit seized money.

8. (1) Notwithstanding the provisions of section 7(8) and Part IV of this Act, an application for the forfeiture of any money seized pursuant to section 7 may be made to a Magistrate upon the application of the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall give at least fourteen days' notice of an application made pursuant to subsection (1) to the person from whom the money was seized or to any other person that the Director of Public Prosecutions believes may have an interest in the money.

(3) Any person notified under subsection (2) as well as any other person who claims to have an interest in the seized money is entitled to appear and to give evidence at the hearing of the application, but the absence of any such person shall not prevent the court from making a forfeiture order.

(4) Upon hearing an application made pursuant to subsection (1) and upon being satisfied that the seized money is—

(a) the proceeds of some form of unlawful activity or is intended for use in money laundering, drug trafficking or any other form of unlawful activity; or

(b) an instrumentality of an offence, whether or not a person has been convicted of that offence,

the Court may, subject to subsection (5), order that all or part of the money be forfeited to the Government of Saint Christopher and Nevis.

(5) In considering whether to make an order under subsection (4) in respect of the forfeiture of all or part of the seized money, the Court may have regard to—

- (a) the use ordinarily made, or intended to be made for the money; and
- (b) the claim of any third party to an interest in the money, where such party is able to show to the satisfaction of the Court that the party was not involved or aware of any unlawful use or purpose with which the money may have been associated.

(6) Any party to an application for forfeiture under subsection (1) may appeal to the High Court by way of rehearing within thirty days of any order having been made pursuant to subsection (4).

(Inserted as section 7A by Act 2 of 2011. Following sections renumbered)

Search and Seizure

Warrant to search land, etc. for tainted property.

9. (1) Where a Police Officer has reasonable grounds to suspect that there is, or there may be within the next following 72 hours, tainted property upon any land or upon or in any premises, the Police Officer may lay before a Magistrate information on oath setting out the grounds and apply for the issue of a warrant to search the land or premises for tainted property.

(2) The Magistrate may, where an application is made under subsection (1), and subject to section 10, issue a search warrant authorising the Police Officer, with such assistance and by such force as is necessary and reasonable—

- (a) to enter upon the land or upon or into the premises;
- (b) to search the land or premises for tainted property; and
- (c) to seize property found in the course of the search that the Police Officer believes on reasonable grounds to be tainted property.

Restrictions on issue of search warrant.

10. A Magistrate shall not issue a search warrant under section 9 unless—

- (a) the informant, or some other person has given to the Magistrate further information, either on oath or by affidavit, that the Magistrate may require concerning the grounds on which the issue of the warrant is sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Matters to be included in search warrant.

11. A search warrant issued under section 9 shall include the following information—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the serious offence;

- (b) a description of the kind of property to be seized;
- (c) the time, not being later than twenty-eight days, upon which the warrant shall cease to have effect;
- (d) a statement as to whether entry is authorised to be made at anytime of the day or night, or during specified hours of the day or night.

Seizure of tainted property.

12. Where a Police Officer finds, while conducting a search pursuant to a warrant issued under section 9, property that he or she believes, on reasonable grounds, to be tainted property in relation—

- (a) to the offence, although not of the kind specified in the warrant; or
- (b) to another serious offence, or anything that he or she believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

and the Police Officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss, or destruction, or its use in committing, or continuing or repeating the offence or any other offence, then the warrant shall be deemed to authorise the Police Officer to seize that property or thing.

Record of seized property.

13. (1) A Police Officer who executes a warrant under section 9 shall—

- (a) detain the seized property, taking reasonable care to ensure that the property is preserved, so that it may be dealt with in accordance with the law;
- (b) as soon as practicable after the execution of the warrant, but within a period of 48 hours thereafter, prepare a written report, identifying the seized property and the location where the property is being detained, and forward a copy of the report to the court in the magisterial district where the property is being detained.

(2) A Magistrate shall, upon application, provide a copy of the report to—

- (a) the person from whom the property was seized; and
- (b) any other person who appears to the Magistrate to have an interest in the property.

(3) A request made under subsection (2) by a person, other than a person from whom the property was seized, shall be in writing and supported by affidavit sworn to by the person making the request.

Return of seized property.

14. (1) Where property is seized under section 12, otherwise than because it may afford evidence of the commission of a serious offence, the person who claims an interest in the property may apply to the Magistrate Court for an order that the property be returned to him or her.

(2) Where a person makes an application under subsection (1) and the court is satisfied that—

- (a) the person is entitled to possession of the property;

- (b) the property is not tainted property in relation to the serious offence;
and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the court shall order the Commissioner to return the property to the person, and the Commissioner shall arrange for the property to be returned.

(3) Where—

- (a) at the time when the property was seized, information had not been laid in respect of a serious offence;
- (b) property has been seized under section 12, otherwise than because it may afford evidence as to the commission of an offence;
- (c) at the end of 48 hours after the time when the property was seized, information has not been laid in respect of a serious offence,

the Commissioner shall, subject to subsections (5) and (6), arrange for the return of the property to the person from whose possession it was seized, as soon as practicable.

(4) Where—

- (a) property has been seized under section 12, otherwise than because it may afford evidence as to the commission of a serious offence;
- (b) either of the following conditions are satisfied, that is to say—
 - (i) before the property was seized, a person had been convicted of a serious offence or information had been laid in respect of a serious offence; or
 - (ii) before the property was seized information had been laid in respect of a serious offence, but the information was laid in respect of the serious offence within 48 hours after the time when the property was seized; and
- (c) no forfeiture order has been made against the property within a period of fourteen days after the property was seized,

the Commissioner shall, subject to subsections (5) and (6), arrange for the return of the property to the person from whose possession it was seized, as soon as practicable after the end of the fourteen day period.

(5) Where—

- (a) property has been seized under section 12, otherwise than because it may afford evidence as to the commission of a serious offence;
- (b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to a person after the end of a particular period; and
- (c) before the end of the particular period, a restraining order is made in relation to the property,

the Commissioner shall, if the restraining order directs the Public Trustee to take custody and control of the property, arrange for the property to be given to the Public Trustee, and if the court that issued the order, has made an order under subsection (6)

in relation to property, the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with this Act.

(6) Where—

- (a) property has been seized under section 12, otherwise than because it may afford evidence as to the commission of a serious offence;
- (b) a restraining order is made in relation to the property; and
- (c) at the time the restraining order is made, the property is in the possession of the Commissioner,

the Commissioner may apply to the court that made the restraining order for an order that he or she retains possession of the property, and if the court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a serious offence or any other offence, make an order that the Commissioner retains the property for as long as the property is required as evidence.

(7) Where the Commissioner applies for an order under subsection (6), a witness shall not be required to answer any question or to produce any document if the court is satisfied that the question or production of the document may prejudice the investigation, or the prosecution of a person for an offence.

(8) Where—

- (a) property has been seized under section 12, otherwise than because it may afford evidence as to the commission of a serious offence;
- (b) an application is made for a restraining order or a forfeiture order in respect of the property and the application is refused; and
- (c) at the time when the application is refused the property is in the possession of the Commissioner,

the Commissioner shall arrange for return of the property to the person from whose possession it was seized as soon as practicable after the refusal of the application.

(9) Where property is seized under section 12, and while that property is in the possession of the Commissioner, a forfeiture order is made in respect of the property, the Commissioner shall deal with the property as directed in the order.

(Amended by Act 17 of 2001)

Restraining Orders

Freezing of property.

15. (1) Subject to this section, a Judge may, on an application made by the Director of Public Prosecutions, grant a restraining order freezing any—

- (a) realisable property of a person convicted of a serious offence, or charged, or about to be charged with a serious offence in Saint Christopher and Nevis or any other jurisdiction;
- (b) specified property of a person, other than the person referred to in paragraph (a), if the Judge is satisfied that the property is tainted property in relation to the serious offence referred to in paragraph (a).

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating the following, that is to say—

- (a) where the person has been convicted of a serious offence—
 - (i) the serious offence for which he or she was convicted;
 - (ii) the date of conviction;
 - (iii) the court before which the conviction was obtained; and
 - (iv) whether an appeal has been lodged against the conviction;
- (b) in case of the person who has been charged and not yet convicted of a serious offence, the serious offence for which he or she is charged and the grounds for believing that he or she committed the offence;
- (c) in case of the person who is about to be charged, the serious offence for which he or she is to be charged and the grounds for believing that he or she committed the offence;
- (d) a description of the property in respect of which the restraining order is sought;
- (e) the name and address of the person who is believed to be in possession of the property;
- (f) the grounds for the belief that the property is tainted property;
- (g) the grounds for the belief that the person derived a benefit directly or indirectly from the commission of the offence;
- (h) where the application seeks a restraining order against property of a person, other than a person associated with the serious offence, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the person associated with the serious offence;
- (i) the grounds for the belief that a forfeiture order or a confiscation order may be, or is likely to be made under this Act in respect of the property;
- (j) whether the person is the subject of any police investigation.

(3) Where the Director of Public Prosecutions applies to a court for a restraining order in respect of a person convicted of a serious offence in a jurisdiction, other than Saint Christopher and Nevis, and the court grants the order, the person shall, within fourteen days of the making of the order, be notified of the order either by—

- (a) service at his or her last known address;
 - (b) service at, in the case of a body corporate, the registered or principal office of the body corporate;
 - (c) publication in the *Gazette* in Saint Christopher and Nevis; or
 - (d) publication in two consecutive issues of a local newspaper circulating in Saint Christopher and Nevis.
- (4) If the person referred to in subsection (3)—
- (a) does not respond within a period of one hundred and eighty days from the date of the making of the freezing order, the court shall order that the frozen property, frozen proceeds, or frozen instrumentalities be forfeited to the Government of Saint Christopher and Nevis;

- (b) provides, within a period of one hundred and eighty days from the date of the making of the freezing order, satisfactory evidence to the court, the court shall dismiss the charges on the grounds that the charges were filed for political purposes, or otherwise in bad faith, or are unfounded, and the court shall immediately vacate the freezing order it issued;
 - (c) provides, within a period of one hundred and eighty days from the date of the making of the freezing order, evidence to the court that he or she is challenging the charges, then the freezing order shall remain in force pending the outcome of the proceedings in the foreign jurisdiction; and
 - (d) is convicted of the money laundering offence, and has exhausted the opportunities of appeal available to him or her, then the frozen property, frozen proceeds, or frozen instrumentalities shall be forfeited to the Government of Saint Christopher and Nevis.
- (5) Subject to subsection (6), the court shall grant a restraining order if it is satisfied that—
- (a) the person has been convicted of a serious offence;
 - (b) there are reasonable grounds for believing that the person committed the offence, in case of a person who is not yet convicted or charged;
 - (c) there is reasonable cause to believe that the property is tainted property in relation to a serious offence, or that the person derived a benefit directly or indirectly from the commission of the offence;
 - (d) there are reasonable grounds for believing that the property is tainted property in relation to a serious offence, and that the property is subject to the effective control of the person associated with the serious offence, where the application seeks a restraining order against property of a person other than the one associated with the serious offence;
 - (e) there are reasonable grounds for believing that a forfeiture order or a confiscation order is likely to be made under this Act in respect of the property.
- (6) The court may, before granting a restraining order, require notice to be given to, and may hear, any person who, in the opinion of the court, appears to have an interest in the property, unless the court is of the opinion that giving the notice before granting the order would result in the disappearance, dissipation or reduction in value of the property.
- (7) The court may, in granting a restraining order freezing the property of the person, give directions as to the disposal of that property for the purpose of—
- (a) determining any dispute as to the ownership of the property or any part of the property;
 - (b) its proper administration during the period of freezing;
 - (c) the payment of debts due to creditors prior to the order;
 - (d) the payment of moneys to that person for the reasonable subsistence of that person and his or her family; and
 - (e) meeting the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(8) Where a restraining order is granted, a copy of the order shall be served on a person affected by the order in such manner as the court may direct, or as may be prescribed by Rules of Court.

Undertaking by the Crown.

16. (1) Before a restraining order is granted under section 15, the court may require the Crown to give such undertaking as the court may consider appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(Amended by Act 17 of 2001)

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the court such undertaking with respect to the payment of damages or costs, or both, as are required by the court.

Notification of accused person.

17. The accused person shall, within fourteen days of the making of the restraining order, be accordingly notified of the order by the Director of Public Prosecutions either by—

- (a) service at the business address of counsel, if any, acting on his or her behalf;
- (b) service at his or her last known address, or place of business within the jurisdiction;
- (c) the registered or principal office of the body corporate, in the case of a body corporate;
- (d) publication in the *Gazette* in Saint Christopher and Nevis; or
- (e) publication in two consecutive issues of a local newspaper circulating in Saint Christopher and Nevis.

Registration of restraining order.

18. (1) A copy of a foreign restraining order which affects lands, tenements or hereditaments in Saint Christopher and Nevis, shall be registered with the Registrar of the Supreme Court in accordance with the Reciprocal Enforcement of Judgments Act, Cap. 5.14.

(2) A restraining order shall be of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act, Cap. 10.19.

(3) Where particulars of a restraining order are recorded or registered, as the case may be, in accordance with the Reciprocal Enforcement of Judgments Act or the Title by Registration Act, a person who subsequently deals with the property shall, for the purposes of section 32, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order.

19. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with property that is subject to the restraining order, commits an indictable offence punishable upon conviction by—

- (a) a fine not exceeding one hundred thousand dollars or imprisonment for a period not exceeding 5 years or both, in the case of a natural person; or
- (b) a fine not exceeding five hundred thousand dollars, in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public Prosecutions may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the court may—

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any person who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of restraining order.

20. A restraining order granted under section 15 shall cease to have effect—

- (a) if it is revoked;
- (b) where a forfeiture order or a confiscation order is made in respect of the property which is the subject of the order; or
- (c) where the property, which is the subject of the order, becomes forfeited to the Crown under any other enactment.

Review of Search Warrants and Restraining Orders

Review of search warrants and restraining orders.

21. (1) A person who has an interest in property that was seized under a warrant issued pursuant to section 9 or in respect of which a restraining order was made may at any time, apply to the court—

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) An application made under subsection (1) shall not be heard by the court unless the applicant has given to the Director of Public Prosecutions at least three days clear notice in writing of the application.

(3) The court may require notice of the application to be given to, and may hear, any person who, in the opinion of the court appears to have an interest in the property.

(4) On an application made under subsection (1)(a) in respect of any property, the court may, after hearing the applicant, the Director of Public Prosecutions, and

any other person to whom notice was given pursuant to subsection (3), order that the property or any part thereof be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the property or any part thereof from the application of the order, or make the order subject to such conditions as the court thinks fit—

- (a) if the applicant enters into recognisance before the court with or without sureties, in such amount and with such conditions, as the court directs and, where the court considers it appropriate, deposits with the court such sum of money or other valuable security as the court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of—
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made, or any person who, in the opinion of the court, has an interest in the property and of the dependants of that person;
 - (ii) meeting the reasonable business or legal expenses of a person referred to in sub-paragraph (i).

(5) An order made under paragraph (b) of subsection 4 in respect of property may be made by the court if the court is satisfied—

- (a) that a warrant should not have been issued pursuant to section 9, or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of the property and appears innocent of any complicity in the commission of a serious offence or of any collusion in relation to such an offence; and
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(Amended by Act 17 of 2001)

(6) On an application made to the court under paragraph (b) of subsection (1), the court may order that the applicant be permitted to examine the property subject to such terms as appear to the court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic expiry of restraining order.

22. (1) Subject to this section, where a restraining order is made in relation to property, the restraining order shall not continue in force for a period of more than six months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the court that made the order for an extension of the period of the operation of the order.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the court is satisfied—

- (a) that a forfeiture order may be made in respect of the property or part thereof; or

- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order,

the court may extend for a specific period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order.

Disposal of property seized or dealt with.

23. Subject to this section, where the court is satisfied that property will no longer be required for the purposes of section 42 or 60 of this Act or any other enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceedings, the court shall, on the application of the Director of Public Prosecutions, or any person having an interest in the property or on the court's own motion—

- (a) where a restraining order has been made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into pursuant to section 21, cancel the recognizance; and
- (c) where property has been seized under a warrant issued pursuant to section 9—
 - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person;
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession; or
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with law.

Production Orders, etc.

Production and inspection orders.

24. (1) Where—

- (a) a person is convicted of a serious offence and a Police Officer, on reasonable grounds, suspects that a person has possession or control of—
 - (i) a document relevant to identifying, locating or quantifying property of the person who committed the offence, or to identifying or locating a document necessary for the transfer of property of the person who committed the offence;
 - (ii) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence; or

- (b) a Police Officer, on reasonable grounds, suspects that a person has committed a serious offence and that a person has possession or control of any document referred to in paragraph (a),

the Police Officer may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (5) against the person suspected of having possession or control of a document of the kind referred to in paragraph (a) or against the person referred to in paragraph (b).

(2) An application made under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a Police Officer applies for an order under subsection (5) in respect of a serious offence and includes in the affidavit a statement that the officer, on reasonable grounds, believes that—

- (a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a),

the Judge may treat any document relevant to identifying, locating or quantifying that property as a document in respect of which an order may be issued under subsection (5).

(4) In determining whether to treat a document relevant to identifying, locating or quantifying property referred to in subsection (3) as a document in respect of which an order may be issued under subsection (5), the Judge may have regard to the matters referred to in section 55(2).

(5) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (6) and (7) make an order requiring the person to—

- (a) produce to a Police Officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) make available to a Police Officer for inspection, any documents of the kind referred to in subsection (1) that are in the person's possession or control.

(6) An order made under paragraph (a) of subsection (5) shall not be in respect of accounting records used in the ordinary business of banking, including ledger, day-books, cash books and account books.

(7) A Judge shall not make an order under this section unless—

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for making the order.

(8) An order made to the effect that a person produces a document to a Police Officer shall specify the time when, and the place where, the document is to be produced.

(9) An order to the effect that a person makes a document available to a Police Officer for inspection shall specify the time or times when the document is to be made available.

Scope of police power under production order, etc.

25. (1) Where a document is produced to a Police Officer pursuant to an order made under section 24, the Police Officer may—

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document; or
- (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a document is made available to a Police Officer for inspection pursuant to an order made under section 24 the Police Officer may—

- (a) inspect the document;
- (b) take extracts from the document; or
- (c) make copies of the document.

(Amended by Act 17 of 2001)

(3) Where a Police Officer retains a document pursuant to an order made under section 24, the Police Officer shall—

- (a) give the person to whom the order was addressed a copy of the document certified by the Police Officer in writing to be a true copy of the document retained; and
- (b) unless the person has received a copy of the document under paragraph (a), permit the person to—
 - (i) inspect the document;
 - (ii) make copies of the document.

Evidential value of information.

26. (1) Where a person produces or makes available a document pursuant to an order made under section 24 the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, shall not be admissible against the person in any criminal proceeding except a proceeding for an offence against section 28.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person shall not be excused from producing or making available a document when required to do so by an order made under section 24 on the grounds that—

- (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or

- (b) the production or making available of the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

(Amended by Act 17 of 2001)

Variation of production order.

27. Where a Judge makes a production order requiring a person to produce a document to a Police Officer, the person may apply to the Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the document available to a Police Officer for inspection.

Failure to comply with production order.

28. (1) Where a person is required by a production order to produce a document to a Police Officer or make a document available to a Police Officer for inspection, the person commits an offence against this subsection if the person—

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces, or makes available a document known to the person to be false or misleading in a material particular without—
 - (i) indicating to the police to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Police Officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person convicted of an offence under subsection (1) shall be liable, on summary conviction—

- (a) where the offender is a natural person, to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding two years or both;
- (b) where the offender is a body corporate, to a fine not exceeding fifty thousand dollars.

Search warrant to facilitate investigations.

29. (1) Where—

- (a) a person is convicted of a serious offence and a Police Officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in section 24; or
- (b) a Police Officer has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises any document of the type specified in section 24,

the Police Officer may apply to a Judge for a warrant under subsection (2) to search the premises.

(2) Where an application is made under subsection (1) for a search warrant, the Judge may, subject to subsections (3) and (4), issue a warrant authorising the Police Officer with such assistance and by the use of such force as is reasonable—

- (a) to enter the premises;
- (b) to search the premises for documents of the kind referred to in subsection (1); and
- (c) to seize and retain any document found in the course of the search, that in the opinion of the Police Officer, is likely to be of substantial value, whether by itself or together with other documents, to the investigation in respect of which the application is made.

(3) A Judge shall not issue a search warrant under subsection (2) unless the Judge is satisfied that—

- (a) a production order has been made in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with;
- (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect of the document;
- (d) it is not practicable to communicate with any person having the power to grant entry to the premises;
- (e) entry to the premises will not be granted unless a warrant is produced; or
- (f) the investigation for the purposes of which the application is made might be seriously prejudiced unless the Police Officer is granted immediate access to the document without notice of any person.

(4) A Judge shall not issue a search warrant under subsection (2) unless—

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the search warrant is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for issuing the search warrant.

(5) A search warrant issued under this section shall state—

- (a) the purpose for which the warrant is issued including a reference to the serious offence that has been, or is believed to have been committed;
- (b) whether entry is authorised to be made at anytime of the day or night or during specified hours of the day or night;
- (c) a description of the kind of documents authorised to be seized; and
- (d) the date, not being later than 28 days after the day of issue of the warrant upon which the warrant ceases to have effect.

(6) Where a Police Officer enters premises in execution of a warrant issued under this section, he or she may seize and retain—

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other documents, to the investigation for the purpose of which the warrant was issued; and
- (b) anything that the Police Officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

Property Tracking and Monitoring Orders

Property tracking.

30. (1) The Financial Intelligence Unit shall, where there are reasonable grounds for believing that a person is committing, has committed, or is about to commit a money laundering offence, apply to the Judge for an order specified in subsection (3).

(2) The Financial Intelligence Unit shall, for the purpose of determining whether any property belongs to, is in the possession or under the control of any person, apply to the Judge for an order referred to in subsection (3).

(3) The Judge may, upon receipt of the application referred to in subsection (1) or (2) and on being satisfied that the order is necessary, make an order directing—

- (a) that any document relevant to—
 - (i) identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property, belonging to, or in the possession or under the control of that person, be delivered forthwith to the Intelligence Unit;
- (b) that a financial institution, forthwith, produces to the Intelligence Unit all information obtained by the institution about any business transaction conducted by, or for that person with the institution during such period before or after the date of the order, as the Judge may direct.

Monitoring orders.

31. (1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (2) for a monitoring order directing a financial institution to give information to the Police Officer.

(2) An application made under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to disclose information obtained by the institution about a transaction conducted through an account held by a particular person with the institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the date of the order.

(5) A Judge shall not make a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought—

- (a) has committed, or is about to commit a serious offence;
 - (b) was involved in the commission, or is about to be involved in the commission of a serious offence; or
 - (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.
- (6) A monitoring order shall contain the following information, that is to say—
- (a) the name or names in which the account is believed to be held;
 - (b) the class of information that the institution is required to give; and
 - (c) the name or names of the Police Officer to whom the information is to be given and the manner in which the information is to be given.
- (7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of section 4 in relation to the institution.
- (8) Where a financial institution that is given notice of the monitoring order knowingly—
- (a) contravenes the order; or
 - (b) provides false or misleading information in purported compliance with the order,
- the institution commits an offence against this subsection, and shall be liable, on summary conviction, to a fine not exceeding five hundred thousand dollars.
- (9) A reference in this section to a transaction conducted through an account includes a reference—
- (a) to the making of a fixed term deposit;
 - (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof, at the end of the term; and
 - (c) to the opening, existence or use of a deposit box held by the institution.

Monitoring orders not to be disclosed.

- 32.** (1) A financial institution that is, or has been subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—
- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;
 - (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order; or
 - (c) the Commissioner or a Police Officer authorised in writing by the Commissioner to receive the information.
- (2) A person referred to in subsection (1) to whom a disclosure of the existence or operation of a monitoring order is made, whether in accordance with subsection (1) or a previous application of this subsection or otherwise, shall not—
- (a) disclose the existence or operation of the order except to another person referred to in that subsection (1) for the purposes of—

- (i) the performance of that person's duties, if the disclosure is made by the Commissioner or Police Officer;
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or
 - (iii) giving legal advice, or making representation in relation to the order, if the disclosure is made by an attorney-at-law; or
- (b) make a record of, or disclose, the existence of the operation of the order in any circumstances, even when he or she ceases to be a person referred to in subsection (1).
- (3) Nothing in subsection (2) prevents the disclosure by a person referred to in paragraph (c) of subsection (1) of the existence or operation of a monitoring order—
- (a) for the purposes of, or in connection with, legal proceedings; or
 - (b) in the course of proceedings before a court.
- (4) A person referred to in paragraph (b) of subsection (1) shall not be required to disclose to any Court the existence or operation of a monitoring order.
- (5) A person who contravenes subsection (1) or (2) commits an offence and shall be liable, on summary conviction—
- (a) in the case of a natural person, to a fine not exceeding twenty thousand dollars or imprisonment for a period not exceeding three years or both; or
 - (b) in the case of a body corporate, to a fine not exceeding one hundred thousand dollars.
- (6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Order for Disclosure of Income Tax Information

Application for disclosure of income tax information.

33. (1) The Director of Public Prosecutions may, for the purposes of an investigation in relation to a serious offence, apply to a Judge in accordance with subsection (2) for an order for the disclosure of information under section 34.

(2) An application made under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit sworn on the information and belief of the Director of Public Prosecutions or a person specially designated by the Director of Public Prosecutions for that purpose deposing to the following matters, namely—

- (a) the serious offence under investigation;
- (b) the person in relation to whom the information or documents referred to in paragraph (c) are required;
- (c) the type of information or book, record, writing, return or other document in the possession of the Comptroller of Inland Revenue to

which access is sought or that is proposed to be examined or communicated; and

- (d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in paragraph (a) and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purpose of which the application is made.

Order for disclosure.

34. (1) Notwithstanding any provision in any other law, where the Judge to whom an application under section 33 is made is satisfied—

- (a) of the matters referred to in paragraph (d) of subsection (2) of section 33; and
- (b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the Judge may, subject to such conditions as the Judge considers advisable in the public interest, order the Comptroller of Inland Revenue as specified in subsection (2).

(2) For purposes of subsection (1), the Judge may order the Comptroller of Inland Revenue—

- (a) to allow the Director of Public Prosecutions, or any other person named in the order, access to all such information and documents and to examine them; or
- (b) where the Judge considers it necessary in the circumstances to produce all such information and documents to a person referred to in paragraph (a), and allow such person to remove the information and documents from the possession of that person,

within such period as the Judge may specify after the expiration of seven days following the service of the order on the Comptroller of Inland Revenue pursuant to subsection (3).

(3) A copy of an order made by a Judge under this section shall be served on the Comptroller of Inland Revenue in such manner as the Judge directs.

(4) A Judge who makes an order under this section may, on application of the Comptroller of Inland Revenue or of the Director of Public Prosecutions, extend the period within which the order is to be complied with.

Objection to disclosure of information.

35. (1) The Comptroller of Inland Revenue may object to the disclosure of any information or document in respect of which an order under section 34 has been made by certifying in writing that the information or document should not be disclosed on the grounds that—

- (a) the Comptroller of Inland Revenue is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which Saint Christopher and Nevis is a signatory;

- (b) a privilege is attached by law to the information or document;
- (c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;
- (d) disclosure of the information or document would not for any other reason be in the public interest.

(2) Where an objection to the disclosure of information or a document is made under subsection (1) the objection may be determined on application by the Comptroller of Inland Revenue or the Director of Public Prosecutions to a Judge in Chambers made not later than fourteen days from the date of the objection.

(3) A Judge who is to determine an objection pursuant to subsection (2) may, if the Judge considers it necessary, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where the Judge is satisfied as to any of the grounds mentioned in subsection (1).

(4) An appeal shall lie from a determination under subsection (2) to the Court of Appeal and shall be brought within fourteen days from the date of the determination appealed from or within such further time as the Court of Appeal considers appropriate in the circumstances.

Evidential value of copies.

36. Where any information or document is examined or provided pursuant to an order under section 34, the person by whom it is examined or to whom it is provided or any officer or person authorised by the Comptroller of Inland Revenue for the purpose, may make, or cause to be made one or more copies thereof, and any copy made pursuant to this section is evidence of the nature and content of the original information or document would have had if it had been proved in the ordinary way.

Further disclosure.

37. No person to whom information or documents have been disclosed or provided, pursuant to an order made under section 34, shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made, and proceedings under this Act.

ACCESS TO SPECIFIED INFORMATION AND DOCUMENTS HELD BY GOVERNMENT DEPARTMENTS, ETC.

Disclosure of information and documents held by Government departments.

38. Notwithstanding any provision in this or in any other law, the court may, on an application by the Director of Public Prosecutions, order the person in charge of any Government department or statutory body to produce or furnish to the Director of Public Prosecutions, or any other person specified in the order, any document or information which is in his or her possession or under his or her control or to which he or she may reasonably have access, not being a document readily available to the public, which the court considers relevant to any investigation into, or proceedings relating to a serious offence alleged or suspected to have been committed by any person.

PART IV

FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

General

Application for forfeiture order, etc.

39. (1) Where a person is convicted of a serious offence the Director of Public Prosecutions may apply to the court for one or both of the following orders, that is to say—

- (a) a forfeiture order against tainted property;
- (b) a confiscation order against the person in respect of the benefits derived by the person from the commission of the serious offence.

(2) The Director of Public Prosecutions shall not make an application referred to in subsection (1) after the end of the relevant application period in relation to the conviction.

(3) An application made under subsection (1) may be in respect of one or more than one serious offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or confiscation order shall be made in respect of the offence for which the person was convicted unless the court is satisfied that—

- (a) the property or benefit to which the new application relates was identified after the previous application was determined;
- (b) the necessary evidence became available after the previous application was determined; or
- (c) it is in the interest of justice that the new application be made.

Notice of application.

40. Where the Director of Public Prosecutions applies for a forfeiture order against property in respect of a person's conviction of a serious offence—

- (a) the Director of Public Prosecutions shall give fourteen days written notice to the convicted person and to any other person the Director of Public Prosecutions has reason to believe may have an interest in the property;
- (b) the convicted person, and any other person who claims to have an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at anytime before the final determination of the application, direct the Director of Public Prosecutions—
 - (i) to give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property;
 - (ii) to publish in the *Official Gazette* and in a newspaper published and circulating in Saint Christopher and Nevis notice of the application in the manner and containing such particulars and within the time that the court considers appropriate.

Amendment of application.

41. (1) The court hearing an application under section 39(1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, if the court is satisfied that—

- (a) the property or benefit was not reasonably capable of identification at the time the application was originally made;
- (b) the necessary evidence became available after the application was originally made.

(2) Where the Director of Public Prosecutions submits an application to the court by virtue of subsection (1) he or she shall give fourteen days written notice to any person whom he or she has reason to believe may have an interest in the property, or benefit, as the case may be, that is to be included in the application for the forfeiture order, or confiscation order.

(3) A person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the amending application.

Procedure to be observed by the court when determining the application.

42. (1) Where an application is made to the court for a forfeiture order or confiscation order in respect of a person's conviction of a serious offence, the court shall, in determining the application, have regard to the transcript of any proceedings against the person for the offence he or she was convicted of.

(2) Where an application is made for a forfeiture order or confiscation order to the court before which the accused person was convicted, that has not, at the time the application is made, imposed any sentence on the convicted person, the court may, if it is satisfied that it is reasonable to do so having regard to all the circumstances defer passing sentence until it has determined the application for the order.

Application for *in rem* forfeiture order on abscondence.

43. (1) The Director of Public Prosecutions may, where a person who has committed a serious offence absconds in relation to that offence, apply to the court for a forfeiture order made under section 44 of this Act in respect of any tainted property.

(2) For the purposes of this section, a person shall be deemed to have absconded in relation to a serious offence if—

- (a) an information has been laid alleging the commission of the offence by the person;
- (b) a warrant for the arrest of the person has been issued in relation to that information; and
- (c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued,

and the person shall be deemed to have absconded on the last day of the period of six months referred to in paragraph (c).

(3) Where the Director of Public Prosecutions applies under this section for a forfeiture order against any tainted property the court shall, before hearing the application—

- (a) require that notice of the application be given to any person who, in the opinion of the court, appears to have an interest in the property;
- (b) direct that notice of the application be published in the *Official Gazette* and in a newspaper published and circulating in Saint Christopher and Nevis containing such particulars and for such time as the court may require.

Forfeiture Orders

Forfeiture of property, proceeds, or instrumentalities.

44. (1) When a person is convicted of a money laundering offence under the laws of Saint Christopher and Nevis and the court is satisfied that the property is tainted property, the court shall, upon the application of the Director of Public Prosecutions, order that the property, proceeds, or instrumentalities derived from, or connected, or related to the offence be forfeited to the Government of Saint Christopher and Nevis.

(2) When a person is charged with a money laundering offence under the laws of Saint Christopher and Nevis and is notified of the charge either by—

- (a) service at the business address of counsel, if any, acting on his or her behalf;
- (b) service at his or her last known address, or place of business within the jurisdiction;
- (c) the registered or principal office of the body corporate, in the case of a body corporate;
- (d) publication in the *Gazette* in Saint Christopher and Nevis; or
- (e) publication in two consecutive issues of a local newspaper circulating in Saint Christopher,

and one hundred and eighty days after the notification the preliminary inquiry of the trial does not take place because of his or her failure to appear at the preliminary inquiry, the court shall order that any property, proceeds, or instrumentalities derived from, connected with, or related to the offence, wherever they may be, be forfeited to the Government of Saint Christopher and Nevis.

(3) In determining whether property is tainted property the court may infer any or all of the following, that is to say—

- (a) that the property was used in, or in connection with, the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted;
- (b) that the property was derived, obtained, or realised as a result of the commission by the person of the offence for which the person was convicted, where the evidence establishes that the property, in particular money, was found in the person's possession or under his or her control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and

charging of the person for the serious offence for which the person was convicted;

- (c) that the value of the increase represents property which was derived, obtained, or realised by the person directly or indirectly from the commission of the serious offence for which the person was convicted, where the evidence establishes that the value, after the commission of a serious offence, of all ascertainable property of the person prior to the commission of the offence, and the court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value.

(4) Where the court orders that property, other than money, be forfeited to the Crown, the court shall specify in the order the amount that it considers to be the value of the property at the time the order is made.

(5) In considering whether a forfeiture order should be made under this section, the court shall have regard to the following—

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order, and the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(6) Where, as a result of any act or omission of the convicted person, any of the property, proceeds or instrumentalities described in subsection (1) cannot be forfeited, the court shall make an order for the forfeiture of any other property of the convicted person, of an equivalent value, or shall order the convicted person to pay a fine of such value.

(7) In making a forfeiture order the court may give such directions as are necessary or convenient for giving effect to the order, and may also give directions for the purpose of determining any dispute as to the ownership of the property or any part of the property.

Effect of forfeiture order.

45. (1) Subject to subsection (2), where the court makes a forfeiture order against any property, the property shall vest absolutely in the Crown by virtue of the order.

(2) Where the property to be forfeited is registerable property—

- (a) the property shall vest in the Crown in equity but shall not vest in the Crown at law until the applicable registration requirements are complied with;
- (b) the Crown shall be entitled to be registered as the owner of the property;
- (c) the Attorney-General shall have power, on behalf of the Crown, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of,

the Crown as the owner, including the execution of any instrument required to be executed by the person transferring an interest in property of that kind.

(3) Where the court makes a forfeiture against any property—

- (a) the property shall not, except with the leave of Court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and
 - (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the “relevant authority”.
- (4) For the purposes of subsection (3)(b), “relevant authority” means—
- (a) in relation to Saint Christopher, the Attorney-General;
 - (b) in relation to the Nevis Island Administration, the Minister responsible for Finance.

(5) Without limiting the generality of paragraph (b) of subsection (4), the directions that may be given pursuant to that paragraph may include a direction that property be disposed of in accordance with the provisions of any enactment specified in the direction.

- (6) For the purposes of this section—

“registerable property” means property the title to which is passed by registration in accordance with the provisions of the Title by Registration Act, Cap. 10:19;

“relevant appeal date”, used in relation to a forfeiture order made in consequence of a person’s conviction of a serious offence, means—

- (a) the date on which the period allowed by rules of Court for the lodging of an appeal against the making of the order lapses in accordance with the rules of Court or is finally determined, whichever is the later; or
- (b) where an appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of Court or is finally determined, whichever is later.

Voidable transfers.

46. The court may—

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made and served in accordance with this Act,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties.

47. (1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this section in respect of his or her interest in property and the court is satisfied, on the balance of probabilities—

- (a) that he or she was not in any way involved in the commission of the offence; and
- (b) where he or she acquired the interest during or after the commission of the offence, that he or she acquired the interest—
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he or she acquired it, property that was tainted property,

the court shall make an order declaring the nature, extent and value (at the time the order is made) of his or her interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of twelve months, commencing on the day on which the forfeiture order is made, apply under this subsection to the court for an order under subsection (2).

(4) A person who—

- (a) had knowledge of the application of the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the court.

(5) A person who makes an application under subsection (1) or (3) must give no less than fourteen days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) An applicant or the Director of Public Prosecutions may, in accordance with the rules of Court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Public Trustee shall, on application made by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from the order taken under subsection (6) has been determined—

- (a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or
- (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Discharge of forfeiture order after quashing of conviction after an appeal.

48. (1) Where the court makes a forfeiture order against any property in reliance on a person's conviction of a serious offence, and the conviction is subsequently quashed, the quashing of the conviction shall discharge the forfeiture order.

(2) Where a forfeiture order against any property is discharged as provided for in subsection (1), any person who claims to have an interest in the property immediately before the making of the forfeiture order, may apply to the Public Trustee, in writing, for the transfer of the interest to that person.

(3) Upon receipt of an application under subsection (2), the Public Trustee shall—

- (a) if the interest is vested in the Crown, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of his or her powers under this section, the Public Trustee shall have power to do or to authorise the doing of anything necessary or convenient to effect the transfer or return of property.

Payment instead of forfeiture.

49. Where the court is satisfied that a forfeiture order should be made in respect of the property of the person convicted of a serious offence, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular—

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Saint Christopher and Nevis;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

Application of procedure for enforcing fines.

50. Where the court orders a person to pay an amount under section 49 that amount shall be treated as if it were a fine upon him or her in respect of a conviction of a serious offence and the court shall—

- (a) notwithstanding anything contained in section 33 of the Interpretation Act, Cap. 1.02, impose, in default of the payment of the amount, a term of imprisonment—
 - (i) not exceeding eighteen months, where the amount does not exceed ten thousand dollars;
 - (ii) not exceeding two years, where the amount exceeds ten thousand dollars but does not exceed twenty thousand dollars;
 - (iii) not exceeding three years, where the amount exceeds twenty thousand dollars but does not exceed fifty thousand dollars;
 - (iv) not exceeding five years, where the amount exceeds fifty thousand dollars but does not exceed one hundred thousand dollars;

- (v) not exceeding seven years, where the amount exceeds one hundred thousand dollars but does not exceed two hundred thousand dollars;
- (vi) not exceeding ten years, where the amount exceeds two hundred thousand dollars but does not exceed one million dollars;
- (vii) not exceeding fifteen years, where the amount exceeds one million dollars;
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a), in the case of conviction for an offence against the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08 be served consecutively to any form of imprisonment imposed on the person, or that the person is then serving;
- (c) direct that the Prison Act, Cap. 19.08, and any regulations made thereunder regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a) in the case of a conviction for an offence against Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08.

Forfeiture order on abscondence.

51. (1) Subject to subsection (3) of section 44, where an application is made to the court under subsection (1) of section 44 for a forfeiture order against any tainted property in consequence of a person's abscondence in connection with a serious offence and the court is satisfied that—

- (a) the property is tainted property in respect of the offence;
- (b) proceedings in respect of the offence committed in relation to that property were commenced;
- (c) the accused person charged with the offence referred to in paragraph (b) has absconded,

the court may order that the property, or such of the property, as is specified by the court in the order, be forfeited to the Crown.

(2) The provisions of sections 44(2), (3), (4) and (5), 45, 46, and 47 shall apply with such modifications as are necessary to give effect to this section.

Limitation on freezing and forfeiture of property.

52. The provisions of sections 46 and 47 shall apply to all property possessed by, or under the control of, a person after the coming into force of this Act.

Confiscation Orders

Confiscation order on conviction.

53. (1) Subject to this section, where the Director of Public Prosecutions applies to the court for a confiscation order against a person in respect of that person's conviction of a serious offence, the court shall, if it is satisfied that the person has benefited from that offence, order the person to pay to the Crown an amount equal to the value of his or her benefits from the offence or such lesser amount as the court

may certify in accordance with section 54 to be the amount that might be realised at the time the confiscation order is made.

(Amended by Act 17 of 2001)

(2) The court shall assess the value of the benefits derived by a person from the commission of the serious offence in accordance with sections 54, 55, 56 and 57.

(3) The court shall not make a confiscation order under this section—

- (a) where an appeal against conviction is not lodged, until the period allowed by the rules of court for lodging of an appeal against conviction has expired;
- (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

Rules for determining benefit and assessing value.

54. (1) Where a person obtains property as a result of, or in connection with, the commission of a serious offence his or her benefit is the value of property so obtained.

(2) Where a person derives an advantage as a result of, or in connection with the commission of a serious offence, his or her advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) In determining whether a person has benefited from the commission of a serious offence or from that offence taken together with other serious offences, and in assessing the value of the benefit the court shall, unless the contrary is proved, deem—

- (a) all property appearing to the court to be held by the person on the day on which the application is made;
- (b) all property appearing to the court to be held by the person at any time—
 - (i) within the period between the day a serious offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of six years immediately before the day on which the application is made, whichever is longer,

to be property that came into the possession under the control of the person by reason of the commission of a serious offence;

- (c) any expenditure by the person since the beginning of the period referred to in paragraph (b) to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of a serious offence;
- (d) any property received or deemed to have been received by the person at any time as a result of, or in connection with, the commission of a serious offence.

(Amended by Act 17 of 2001)

(4) In assessing the value of any benefit derived by a person from the commission of a serious offence the court shall leave out of account any benefits of that person that are shown to the court to have been taken into account by a previous confiscation order made against that person.

(5) The court shall, subject to subsection (6), treat the value of benefits derived by a person from the commission of a serious offence as being not less than the excess if evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence.

(6) Where the person satisfies the court that the whole or part of excess was due to causes unrelated to the commission of the serious offence, subsection (6) shall not apply to the excess or part of the excess, as the case may be.

Statements that relate to benefits from commission of offence.

55. (1) For the purposes of determining whether a person benefited from a serious offence or assessing the value of benefit derived from the offence the court may, where—

- (a) a person is convicted of a serious offence and the Director of Public Prosecutions tenders to the court a statement as to any matters relevant to—
 - (i) the determination of whether the person benefited from the offence or from any other serious offence of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence; or
 - (ii) an assessment of the value of the person's benefit from the offence or other serious offence of which he or she is convicted in the same proceedings or which is so taken into account; and
- (b) the person accepts to any extent an allegation in the statement,

treat the person's acceptance as conclusive of the matters to which the acceptance relates.

(2) Where—

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the court is satisfied that a copy of the statement has been served on the person,

the court may require the person to indicate to what extent he or she accepts each allegation in the statement and, so far as he or she does not accept any of the allegations, to indicate any matters he or she proposes to rely on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2) he or she may, for the purposes of this section, be treated as having accepted every allegation in the statement, other than an allegation—

- (a) in respect of which he or she has complied with the requirement; and
- (b) that he or she has benefited from the serious offence or that any property or advantage was obtained by him or her as a result of, or in connection with, the commission of the offence.

(4) Where—

- (a) the person tenders to the court a statement as to any matters relevant to the determination of the amount that might be realised at the time the confiscation order is made; and
- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions as conclusive of the matters to which the acceptance relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the court; or
- (b) in writing in accordance with the rules of Court.

(6) An acceptance by a person under this section that he or she received any benefit from the commission of a serious offence shall be admissible in any proceedings for any offence.

Amount to be recovered under confiscation order.

56. (1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order shall be the amount which the court assesses to be the value of the person's benefits from the serious offence or if more than one, all the offences in respect of which the order may be made.

(2) Where the court is satisfied as to any matter relevant to the determination of the amount which might be realised at the time the confiscation order is made, the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the court assesses to be the value of the person's benefits from the offence, or if more than one, all the offences in respect of which the confiscation order is made.

Variation of confiscation order.

57. (1) The Director of Public Prosecutions may, where—

- (a) the court grants a confiscation order against a person in relation to a serious offence;
- (b) the court, in calculating the amount of the confiscation order, took into account a forfeiture of property or a proposed forfeiture order in respect of property; and
- (c) an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made,

apply to the court for a variation of the confiscation order to increase the amount of the order by the value of the property not so forfeited and the court may, if it considers it appropriate to do so, vary the order accordingly.

(2) The Director of Public Prosecutions may, where—

- (a) the court grants a confiscation order against a person in relation to a serious offence;
- (b) in calculating the amount of the confiscation order the court took into account, in accordance with section 3(5) and (6) an amount of tax paid by the person; and
- (c) an amount is refunded to the person in respect of that tax,

the Director of Public Prosecutions may apply to the court for a variation of the confiscation order to increase the amount of the order by the value of the property not

so forfeited and the court may, if it considers it appropriate to do so, vary the order accordingly.

Lifting of corporate veil.

58. (1) In assessing the value of benefits derived by a person from the commission of a serious offence the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person, whether or not he or she has any—

- (a) legal or equitable interest in the property;
- (b) right, power, or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the court may have regard to the following—

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship between persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

(3) Where the court, for the purposes of making a confiscation order against a person, treats particular property as the person's property pursuant to subsection (1), the court may, on application by the Director of Public Prosecutions, make an order declaring that the property is available to satisfy the order.

(4) Where the court declares that property is available to satisfy a confiscation order—

- (a) the order may be enforced against the property if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3), that property shall be available to satisfy a confiscation order against a person, then the—

- (a) Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
- (b) person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Enforcement of confiscation order.

59. Where the court orders a person to pay an amount under a confiscation order, the provisions of section 50 shall apply with such modifications as the court may determine for the purpose of empowering the court to impose a term of imprisonment on a person in default of compliance by him or her of a confiscation order.

PART V

MISCELLANEOUS PROVISIONS

*Co-operation with Foreign Jurisdictions***Assistance to foreign countries.**

60. (1) The Financial Intelligence Unit and the Director of Public Prosecutions shall cooperate with the competent authority of another State in matters relating to money laundering offences, in accordance with this Act and within the limits of that State's legal system.

(2) The Financial Intelligence Unit or the Director of Public Prosecutions may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, and may take such appropriate actions as may be necessary.

(3) A final judicial order or judgment that provides for the forfeiture of property, proceeds, or instrumentalities connected to money laundering offences, issued by the court or other competent authority of another State, may be recognised as evidence that the property, proceeds, or instrumentalities referred to in the order or judgment may be subject to forfeiture in accordance with the laws of Saint Christopher and Nevis.

(4) The Financial Intelligence Unit or the Director of Public Prosecutions may take appropriate measures with respect to a request from a court or other competent authority of another State for assistance related to a criminal investigation or prosecution involving money laundering offences or violations in that State, or of any provision of this Act.

(5) The assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, except that no information relating to a client account shall be disclosed unless the client is the subject of a criminal investigation involving a money laundering offence.

(6) The Director of Public Prosecutions shall cooperate with the competent authority of another State for the purpose of—

- (a) obtaining testimony;
- (b) facilitating the voluntary presence or availability of persons, including those in custody, to give testimony locating or identifying persons;
- (c) service of documents;
- (d) examining objects and places;
- (e) executing searches and seizure;
- (f) providing information and evidentiary items; and
- (g) making provisional measures.

(7) Notwithstanding the provisions of subsections (1) to (6), the Financial Intelligence Unit or the Director of Public Prosecutions may cooperate with the competent authority of another State if that State's law has reciprocal provisions which are not less favourable to those that obtain in Saint Christopher and Nevis.

(8) Where any person refuses to give or provide information referred to in subsection (5), the Director of Public Prosecution may apply to the court for an order requiring the person to give or provide the information.

(Inserted by Act 11 of 2002)

(9) Pursuant to the provisions of this section, the White Collar Crime Unit may provide assistance to the Financial Intelligence Unit or to the Director of Public Prosecutions by carrying out investigations as a result of a foreign request for such assistance.

(Inserted by Act 31 of 2012)

Determination of mens rea

Rules for establishing mens rea.

61. (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of that body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement, whether expressed or implied, of a director, servant or agent of that body corporate when the giving of the direction, consent or agreement is within the scope of the actual apparent authority of the director, servant or agent,

shall be deemed to have been engaged in by the body corporate.

(2) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (3) to have been engaged in by that person, it shall be sufficient to show that the servant or agent of that person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of a person, other than a body corporate—

- (a) by a servant or agent of that person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement, whether expressed or implied, of a servant or agent of the first mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall, for the purposes of this Act, be deemed to have been engaged in by the first mentioned person.

(4) A reference in this section to the state of mind of a person shall include a reference to the knowledge, intention, opinion, belief for purpose of that person, and that person's reasons for his or her intention, opinion, and belief for purpose.

Forfeiture Fund

Forfeiture Fund.

- 62.** (1) There is hereby established a Fund to be known as the Forfeiture Fund.
- (2) The Fund shall consist of—
- (a) all monies and proceeds from the sale of property forfeited or confiscated by virtue of this Act, the Anti-Terrorism Act, Cap. 4:02, the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9:08, the Electronic Crimes Act Cap. 4:41, and the Organised Crime (Prevention and Control) Act, Cap. 4:22 and any other relevant legislation that the Minister may by Order prescribe.
(Substituted by Act 31 of 2012)
 - (b) all monies voted for the Fund by Parliament; and
 - (c) any monies derived from any other source.
(Substituted by Act 10 of 2008)

Board.

- 63.** (1) The Minister shall appoint a Board charged with the responsibility of the management of the Fund.
- (2) The Third Schedule shall apply to the composition of the Board and related matters.
(Inserted in as section 61A by Act 10 of 2008)

Deductions from funds.

- 64.** (1) Where a forfeiture or confiscation of monies is made under this Act or the Organised Crime (Prevention and Control) Act, pursuant to a request from a foreign authority—
- (a) there shall be deducted a twenty percent administrative fee from such monies which shall be deposited into the Fund; and
 - (b) the remaining eighty percent may either—
 - (i) be repatriated to the foreign authority where so requested; or
 - (ii) be deposited into the Fund.
- (2) There shall be deducted from any other monies and proceeds of sale of property forfeited or confiscated by virtue of this Act or the Organised Crime (Prevention and Control) Act, other than pursuant to subsection (1)—
- (a) a ten percent administrative fee to be deposited in the Consolidated Fund of Saint Christopher;
 - (b) a ten percent administrative fee to be deposited in the Consolidated Fund of Nevis; and
 - (c) the remaining eighty percent to be deposited into the Fund.
- (3) The deductions referred to in subsection (2) shall be paid to the Government of Saint Christopher and Nevis or to the Nevis Island Administration, as the case may be.
(Inserted in as section 61B by Act 10 of 2008)

Use of Fund.

- 65.** The Board shall use the monies standing in the account of the Fund—
- (a) for the purpose of anti-money laundering activities in Saint Christopher and Nevis;
 - (b) to compensate the victims of offences committed under this Act or the Organised Crime (Prevention and Control) Act.
(Inserted in as section 61C by Act 10 of 2008)

Auditing of Fund.

- 66.** The accounts of the Fund shall be audited at least once every financial year by the Director of Audit.
(Inserted in as section 61D by Act 10 of 2008)

*Overriding of Secrecy obligations***Secrecy obligations overridden.**

***67.** Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other enactment.

Prosecution of offences.

***68.** No prosecution in respect of a money laundering offence shall be instituted except by, or with the consent in writing of, the Director of Public Prosecutions.

Limitations on proceedings.

***69.** Any prosecution, action, suit, or other proceeding brought for a money laundering offence, or for the recovery of any fine, penalty, or forfeiture under this Act or regulations made under this Act, shall be brought within a period of six years next after the date of the offence committed or the cause of action accrued.

Other measures to avoid money laundering.

***70.** A person who is convicted of a serious offence under this Act whether in Saint Christopher and Nevis or elsewhere, shall not be eligible to or be licensed to carry on the business of a regulated business.

Application to Nevis.

***71.** The Nevis Island Administration having requested that the provisions of this Act do apply to the Island of Nevis, in so far as it may be necessary to comply with section 37(7) of the Constitution, consents to the provisions of this Act to apply to the Island of Nevis in respect of those matters over which it has exclusive jurisdiction.

* Originally section 62

* Originally section 63

* Originally section 64

* Originally section 65

* Originally section 66

Regulations.

*72. The Minister may, with the concurrence of the Premier of Nevis, generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing he or she may, in particular, make regulations—

- (a) governing the obligations of a regulated business activity;
- (b) prescribing the compliance duties of the Regulator;
- (c) prescribing—
 - (i) identification procedures;
 - (ii) record-keeping procedures;
 - (iii) internal reporting procedures; and
 - (iv) training procedures;

to be maintained by any person carrying on regulated business for the purposes of forestalling and preventing money laundering.

Amendment of First Schedule.

73. The Minister may, with the concurrence of the Premier of Nevis, make an Order amending the First Schedule to the Act.

(Inserted in as section 67A by Act 19 of 2008)

* Originally section 67

FIRST SCHEDULE*(Section 2)***REGULATED BUSINESS ACTIVITY**

1. Banking business engaged in pursuant to the Banking Act. Cap. 21.01.
(Amended by Act 19 of 2008)
2. Offshore banking carried on under the Nevis Offshore Banking Ordinance.
3. Trust business carried on under the Trust Act, and the Nevis International Trusts Ordinance.
4. Business corporations under the Nevis Business Corporation Ordinance.
5. Finance business carried on under the Financial Services Regulations Order.
6. Company business carried on under the Companies Act, and the Nevis Limited Liability Companies Ordinance.
7. Insurance business.
(Amended by Act 17 of 2008)
8. Venture risk capital.
9. Money transmission services.
10. Issuing and administering means of payment (eg., credit cards, travellers' cheques and bankers' drafts).
11. Guarantees and commitments.
12. Trading for own account or for account of customers in—
 - (a) money market instruments (eg., cheques, bills, certificates of deposits, commercial paper, etc.);
 - (b) foreign exchange;
 - (c) financial and commodity-based derivative instruments (eg., futures, options, interests rate and foreign exchange instruments, etc.);
 - (d) transferable or negotiable instruments.
13. Money brokering.
14. Money lending and pawning.
15. Money exchange (eg. *casa de cambio*).
16. Real estate business:
The business of providing real estate services include agency services for or on behalf of third parties concerning the buying or selling of freehold or leasehold property (including commercial and agricultural property) whether the property is situated in Saint Christopher and Nevis or overseas.
(Amended by Act 19 of 2008)
17. Credit unions.
18. Building societies.
19. Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities—

- (a) buying and selling of real estate;
- (b) managing of client money, securities or other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation, operation or management of companies;
- (e) creation, operation or management of legal persons or arrangements and buying and selling of business entities.

(Substituted by S.R.O. 10/2012)

20. Accountants and accounting business:

The business of providing any of the following—

- (a) external accountancy services;
- (b) advice about the tax affairs of another person;
- (c) audit services; or
- (d) insolvency services:

Provided that for the purposes of this Act “external accountancy services” means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties:

Provided also that “audit services” are audit services provided by way of business pursuant to any function under any enactment.

(Inserted in as paragraph 19A by Act 19 of 2008)

21. The business of acting as company secretary of bodies corporate.

22. Gaming and Casinos- when customers engage in financial transactions equal to or above a threshold of eight thousand one hundred and fifty-five dollars (\$8,155.00).

(Substituted by S.R.O. 10/2012)

23. Charities and other non profit organisations.

24. Dealers in Precious metals and dealers in precious stones-when they engage in any cash transaction with a customer equal to or above a threshold of forty thousand seven hundred and fifty-five dollars (\$40,755.00).

(Substituted by S.R.O. 10/2012)

25. Other services:

The business of providing any of the following services to third parties not otherwise included in this Schedule—

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), financial of commercial transactions (including forfeiting);
- (c) financial leasing;
- (d) participation in securities issues and the provision of services related to such issues;

- (e) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
- (f) portfolio management and advice;
- (g) safekeeping and administration of securities;
- (h) safe custody services;
- (i) otherwise investing, administering or managing funds or money on behalf of third parties.

(Paragraphs 21, 22, 23, & 24 inserted in as paragraphs 21, 21A, 21B & 21C by Act 19 of 2008)

26. Any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

(Originally paragraph 22)

SECOND SCHEDULE

(Section 72)

ANTI-MONEY LAUNDERING REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation
 2. Interpretation
 3. General requirements
 4. Identification procedures in relation to business relationships and one-off transactions
 5. Enhanced customer due diligence
 6. Reduced customer due diligence for low risk situations
 7. Identification procedures in relation to introduced persons
 8. Record keeping procedures
 9. Maintaining a register of money laundering enquiries
 10. Reporting officer
 11. Reporting procedures and requirements
 12. Duty to appoint Compliance Officer
 13. Due diligence audit
 14. Offences and penalties
 15. Directives
 16. Use of Guidance Notes
-

Citation.

1. These Regulations may be cited as the Anti-Money Laundering Regulations.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Proceeds of Crime Act, Cap. 4.28;

“applicant for business” means a person seeking to form a business relationship or carry out a one-off transaction with a relevant person who is carrying on relevant business in or from the Federation;

“appropriate times” means—

- (a) in respect of the application of identification procedures—
 - (i) times that are appropriate having regard to the degree of risk of money laundering, taking into account the type of customer, business relationship, product or transaction concerned; and
 - (ii) times when either a relevant person suspects money laundering in a given situation or when he or she doubts the veracity or adequacy of the identifying documents provided pursuant to section 4(1)(c).
- (b) in respect of the application of on-going identification procedures—
 - (i) throughout the business relationship for the purposes of applying the procedure described in regulation 4(3)(a); and
 - (ii) times when a relevant person becomes aware that documents, data or information that he or she holds, are out of date or no longer relevant for the purposes of applying the procedure described in regulation 4(3)(b);

“beneficial owner or controller”—

- (a) means a natural person who—
 - (i) ultimately owns or Controls a customer or other person on whose behalf a transaction is being conducted; or
 - (ii) exercises ultimate, effective control over the management of a legal person or other entity; and
- (b) includes ultimate ownership or control whether it is direct or indirect; but
- (c) does not extend to a body corporate, the shares or shares of which are admitted to trading on a regulated market;

“beneficial ownership or control” shall be construed accordingly;

“business relationship” means an arrangement between two or more persons

where—

- (a) at least one of those persons is acting in the course of a business;
- (b) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and

- (c) the total amount of any payment or payments to be made by a person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“Commission” means the Financial Services Regulatory Commission established by section 3 of the Financial Services Regulatory Commission Act, Cap. 21.10;

“compliance officer” means a senior officer of a relevant person appointed under regulation 12;

“equivalent business” means business in relation to any category of financial service business carried on in St. Christopher and Nevis if that business is—

- (a) carried on in a country or territory other than St. Christopher Nevis;
- (b) carried on in St. Christopher and Nevis, and would be financial services business whether or not it is referred to as financial services business;
- (c) carried on in a country or territory other than St. Christopher and Nevis where the business may only be carried on by a person registered or otherwise authorised for that purpose under the law of the country or territory;
- (d) subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF recommendation in respect of that business; and
- (e) supervised, for compliance with the requirements of FATF;

“FATF” means the Financial Action Task Force on money laundering and anti-terrorism;

“Guidance Notes” means the Guidance Notes issued pursuant to the Financial Services Regulatory Commission Act;

“one-off transaction” means—

- (a) a transaction amounting to not less than forty thousand five hundred dollars but does not include a money services business;
- (b) two or more transactions, other than in respect of a money services business—
 - (i) where it appears at the outset to any person handling any of the transactions that the transactions are linked and that the total amount of those transactions is not less than forty thousand five hundred dollars; or
 - (ii) where at any later stage it comes to the attention of any person handling any of those transaction that sub-paragraph (i) is satisfied;
- (c) a transaction carried out in the course of a money services business amounting to not less than two thousand seven hundred dollars; or
- (d) two or more transactions carried out in the course of a money services business —
 - (i) where it appears at the outset to any person handling any of the transactions that those transactions are linked and that the total amount of those transactions is not less than two thousand seven hundred dollars; or

- (ii) where at any later stage it comes to the attention of any person handling any of those transactions that sub-paragraph (i) is satisfied;

“physical presence” means that the substantive direction and management of a bank is conducted from within the local jurisdiction, rather than solely through the presence of a local agent or junior member of staff;

“politically exposed person” means a person who is—

- (a) an individual who is a prominent public person or a person who has been entrusted with a prominent public function in a country or territory outside St. Christopher and Nevis or by an international organisation outside St. Christopher and Nevis, including—
 - (i) heads of State, heads of government; senior politicians;
 - (ii) senior government, judicial or military officials;
 - (iii) senior executives of State owned corporations; or
 - (iv) important political party officials;
- (b) an immediate family member of a person mentioned in paragraph (a), including any of the following—
 - (i) a spouse;
 - (ii) a partner, being someone who is considered by his or her national law as equivalent to a spouse; or who has been cohabiting in a relationship with a person for more than five years;
 - (iii) children and their spouses or partners as defined in sub-paragraph (ii);
 - (iv) parents;
 - (v) grandparents and grandchildren;
 - (vi) siblings;
- (c) close associates of an individual referred to in paragraph (a), including any person who is known to maintain a close business relationship with such individual or a person who is in a position to conduct substantial financial transactions on his or her behalf.

“prominent public function” includes the role held by a head of State, head of government, government minister, senior civil servant, senior judicial or military official, senior executive of a state-owned corporation or senior political party official;

“regulated person” means any person carrying on a regulated business activity as defined under the Proceeds of Crime Act Cap. 4.28;

“relevant business” means engaging by way of business in one or more of the businesses or transactions referred to in relation to a regulated person;

“relevant person” means a person carrying on relevant business;

“Reporting Authority” means the Financial Intelligence Unit established by section 3 of the Financial Intelligence Unit Act, Cap.21.09;

“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision.

- (2) For the purposes of these Regulations—
- (a) a business relationship formed by any relevant person is an established business relationship where that person has obtained, under procedures maintained in accordance with these Regulations, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;
 - (b) the question as to what constitutes satisfactory evidence of identity may be determined in accordance with the Guidance Notes as issued by the Financial Services Regulatory Commission; and
 - (c) a reference to the expression “key staff” means a member of staff, who at any time in the course of his or her duties, has or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering;
 - (d) in determining whether an individual is a “beneficial owner or controller” of another person, regard shall be had to all the circumstances of the case. in particular the size of an individual’s beneficial ownership or degree of control, having regard to the risk of that individual or that other person being involved in money laundering; and
 - (e) in determining whether or not a person is a close associate of a politically exposed person as referred to in paragraph (a) of that definition, a relevant person need only have regard to the information which is in that person’s possession or that is publicly known information.

GENERAL REQUIREMENTS.

3. (1) In conducting relevant business, a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person unless the relevant person—

- (a) maintains appropriate policies for the application of—
 - (i) identification procedures in accordance with regulation 4;
 - (ii) record keeping procedures in accordance with regulation 8;
 - (iii) internal reporting procedures in accordance with regulation 11; and
 - (iv) internal Controls and communication procedures as may be necessary for the purposes of forestalling and preventing money laundering;
- (b) for the purposes of subregulation (1)(a)—

“appropriate policies” means prudential policies that are established by the relevant person having regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person’s business is concerned.

(2) A relevant person shall, at least once in every year, make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to money laundering or the internal procedures of the relevant person and at a minimum shall do the following—

- (a) take appropriate measures for the purpose of making employees aware of—
 - (i) the procedures maintained under subregulation (1)(a);
 - (ii) the provisions of the Anti-Terrorism Act, the Financial Intelligence Unit Act, the Financial Services Regulatory Commission Act, the Proceeds of Crime Act and any regulations made there under; and
 - (iii) any directives issued under these Regulations;
- (b) provide training for employees to assist them in—
 - (i) the recognition and handling of transactions carried out by, on or behalf of, any person who is, or appears to be, engaged in money laundering;
 - (ii) dealing with customers where such transactions have been reported to the Reporting Authority in accordance with the provisions of the Act;
- (c) maintain adequate procedures for monitoring and testing the effectiveness of—
 - (i) the policies applied under subregulation (1)(a);
 - (ii) the measures taken under paragraph (a); and
 - (iii) training provided under paragraph (b).
- (3) The policies referred to in subregulation (1) shall include principles that—
 - (a) provide for the identification and scrutiny of the following—
 - (i) complex or unusually large transactions;
 - (ii) business relationships and transactions connected with countries or territories which have insufficient or non-existent application of the FATF recommendations;
 - (iii) business relationships and transactions with persons, countries or territories that are subject to measures imposed by one or more countries for insufficient or non-existent application of the FATF recommendations; or otherwise sanctioned by the United Nations for purposes connected with the prevention of money laundering;
 - (iv) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
 - (v) any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering;
 - (b) specify the taking of additional procedures, where appropriate, to prevent the use for money laundering of products and transactions which are susceptible to anonymity;
 - (c) determine whether for money laundering purposes a customer is a politically exposed person;
 - (d) prevent the misuse of technological developments in money laundering schemes;
 - (e) address any specified risks associated with non-face-to-face business relationships or transactions.

(4) The requirements of subregulation (1)(a) shall apply in relation to a person with whom, prior to the coming into force of these Regulations, a business relationship or on-off transaction was formed or carried out and such relationship or transaction is substituting or continues upon the coming into force of these Regulations and in such a case the reference in regulation 4, as to the period when contact is first made, shall be construed as if contact was made upon the coming into force of these Regulations.

(5) A relevant person shall submit for the approval of the Commission appropriate policies for the application of—

- (a) customer due diligence procedures in accordance with regulation 5 and 6;
- (b) record-keeping procedures in accordance with regulation 8;
- (c) reporting procedures in accordance with regulation 11;
- (d) such other procedures of internal control and communication as may be appropriate,

in respect of that person's financial services business in order to forestall and prevent activities relating to money laundering.

(6) The Commission may keep, for its own use, copies of the documents referred to in subregulation (5).

(7) A relevant person commits an offence where it acts in a manner that is contrary to the provisions of subregulation (1), (2), (4) or (5) and shall be liable on conviction to a fine of twenty-five thousand dollars.

(8) For the purposes of this regulation, a reference to maintaining "internal controls and communication procedures for the purposes of forestalling and preventing money laundering", means internal control measures that include but are not limited to—

- (a) appointment of a compliance officer pursuant to regulation 12;
- (b) developing independent internal audit programmes to test and validate activities associated with the mitigation of money laundering risks, including processes for—
 - (i) identification of trends in criminal activity and other areas of vulnerability;
 - (ii) monitoring of transactions and reporting of suspicious activities to competent authorities;
 - (iii) maintaining ongoing staff training programmes;
 - (iv) implementing adequate screening procedures to ensure high standards when hiring employees;
 - (v) development of an independent audit function to test internal systems;
- (c) application of the type and extent of measures to be taken having regard to the risk of money laundering and terrorist financing and the size of the business.

(Inserted by S.R.O. 9/2012)

**IDENTIFICATION PROCEDURES IN RELATION TO BUSINESS
RELATIONSHIPS AND ONE-OFF TRANSACTIONS.**

4. (1) A relevant person shall apply—
- (a) identification procedures before the establishment of a business relationship or before carrying out a one-off transaction;
 - (b) on-going identification procedures during a business relationship;
 - (c) identification procedures where—
 - (i) the relevant person suspects money laundering; or
 - (ii) the relevant person has doubts about the veracity or adequacy of documents; data or information previously obtained.
- (2) Identification procedures referred to in subregulation (1)(a) and (1)(c) are procedures—
- (a) for identifying the customer;
 - (b) for determining whether the customer is legitimately acting for a third party and, if so—
 - (i) identifying that third party;
 - (ii) where the third party is not an individual, understanding the ownership and control structure of that third party; or
 - (iii) where sub-paragraph (ii) does not apply, identifying each individual who is that third party's beneficial owner or controller;
 - (c) in respect of a customer that is not an individual, for—
 - (i) identifying any person purporting to act on behalf of the customer and verifying that the person is authorized to act in that capacity;
 - (ii) understanding the ownership and control structure of that customer; and
 - (iii) identifying the individuals who are the customer's beneficial owners or controllers;
 - (d) obtaining information on the purpose and intended nature of the business relationship or one-off transaction;
 - (e) Where a relevant person fails to institute the requisite procedures as contemplated by this subregulation, it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars and if after conviction, the contravention of the offence continues, to a further fine of two hundred and fifty dollars for each day that the offence continues.
- (3) On-going identification procedures referred to in subregulation (1)(b) are procedures for—
- (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile; and
 - (b) ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records, including but without

prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of applying the procedures described in sub-paragraph (a).

- (4) For the purpose of these Regulations, identification of a person means—
- (a) establishing the true identity of that person, including that person's name and legal status and where that person is not an individual, verifying the legal status of the person; and
 - (b) obtaining evidence that—
 - (i) is reasonably capable of verifying that the person to be identified is in fact one and the same as the customer, third party, beneficial owner or controller being identified;
 - (ii) satisfies the relevant person through the use of documents, data or other information that the evidence of identification referred to in subparagraph (i) is conclusive; and
 - (iii) relying on evidence that is supported by independent documentation that is derived from a reliable source.

(Inserted by S.R.O. 9/2012)

(5) The identification of a person in the manner that is described in subregulation (4)(b) may be completed as soon as reasonably practicable after the establishment of a business relationship if—

- (a) it is not sufficiently urgent or necessary to interrupt the normal conduct of business; and
- (b) there is, in the interim, little risk of money laundering occurring.

(6) For the purposes of subregulation (2), the identification procedures shall include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve money laundering, including obtaining appropriate information for assessing that risk.

(7) For the purposes of subregulation (2)(b) and (c), procedures for obtaining evidence shall involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.

(8) Where a relevant person has a business relationship with a customer that started before these Regulations came into force, the relevant person shall apply customer due diligence procedures to that relationship within sixty days after the coming into force of these Regulations.

(9) Where a relevant person carries out a one-off transaction, he shall apply identification procedures as soon as reasonably practicable on the following terms—

- (a) if a relevant person is unable to apply the identification procedures before the establishment of a business relationship or before the carrying out of a one-off transaction to the extent specified in regulation 4(1)(a), that person shall not establish that business relationship or carry out that one-off transaction;
- (b) if a relevant person is unable to apply the identification procedures to the extent that they involve identification of a person in the circumstances described in subregulation (5) after the establishment of a business relationship, that person shall terminate that relationship;

- (c) if a relevant person is unable to comply with regulation 4(1)(b) in respect of a business relationship, that person shall terminate that relationship;
- (d) if a relevant person is unable to apply identification procedures as soon as reasonably practicable, in respect of a one-off transaction, that person shall not complete or carry out any further linked transactions in respect of that one-off transaction;
- (e) subject to paragraph (f), if a relevant person is unable to apply the identification procedures in the cases described in subregulation 4(1)(c) in respect of any business relationship or transaction with a person, the relevant person shall—
 - (i) not establish that business relationship or carry out or complete the transaction; or
 - (ii) terminate that business relationship or not carry out or complete the transaction as the case requires;
- (f) the relevant person need not apply the identification procedures in the case described in regulation 4(1)(c)(i) in respect of any business relationship or transaction with a person, if the relevant person, having made a report under procedures maintained under Regulation 11, to a designated reporting authority and acting with the consent of that reporting authority—
 - (i) does not complete that transaction;
 - (ii) does not carry out that transaction;
 - (iii) does not establish that business relationship; or
 - (iv) terminates that business relationship;
- (g) subject to paragraph (f), if a relevant person is unable to apply the identification procedures at an appropriate time for the purposes of subregulation (7) in respect of a business relationship, the relevant person shall terminate that relationship.
- (h) in a situation where paragraph (a), (b), (c), (d), (e) or (g) applies, a relevant person shall consider whether to make a report under regulation 11.
- (i) paragraphs (a), (b), (c), (d), (e) and (g) shall not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for his or her client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.
- (j) in paragraph (i), “other professional adviser” means an auditor, accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—
 - (i) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
 - (ii) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

- (k) if a report is made under procedures maintained under regulation 8 to a designated reporting authority, paragraphs (a), (b), (c), (d), (e) and (g) shall not apply to the extent that the relevant person is acting with the consent of that reporting authority.
 - (l) where a relevant person acts in contravention of paragraphs (a), (b), (c), (d), (e) or (g), it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars and, if the contravention continues after such conviction, the person commits a further offence and shall be liable on conviction to an additional fine of five hundred dollars for each day that the relationship in question is allowed to continue in violation of this regulation.
- (10) A regulated person shall not, in the course of a business relationship—
- (a) operate or keep open, or keep anonymous accounts or accounts which are in fictitious names; or
 - (b) conduct business with a shell bank.
- (11) For the purpose of this Regulation—
- (a) a correspondent banking relationship involves the provision of services such as bank accounts or the facilitation of funds transfers or securities transactions;
 - (b) the provision of direct access to the services of a correspondent bank is often known as “payable through accounts” or “straight through processing”.
- (12) A relevant person that is a correspondent bank shall—
- (a) gather sufficient information about the respondent to understand fully the nature of its business;
 - (b) determine the reputation of the respondent and the quality of its supervision;
 - (c) assess the respondent’s systems and Controls to combat money laundering and to determine whether they are consistent with the requirements of the FATF Recommendations;
 - (d) require new correspondent banking relationships to be approved by the Board;
 - (e) document the respective responsibilities of the correspondent and the respondent banks to combat money laundering so that they are clearly understood;
 - (f) be satisfied that, in respect of customers of the respondent who have direct access to the services of the correspondent bank, the respondent—
 - (i) has performed identification procedures in line with those set out in subregulation (2); and
 - (ii) is able to provide relevant customer due diligence information and documents evidencing verification of identity on request to the correspondent bank;
 - (g) a relevant person that is a correspondent bank shall not enter into a correspondent banking relationship, or continue an existing

correspondent banking relationship, with a respondent that is a shell bank;

- (h) a relevant person that is a correspondent bank shall satisfy itself that its respondents do not themselves provide correspondent banking services to shell banks;
- (i) a relevant person that is a correspondent bank shall not enter into a banking relationship where it has knowledge or suspicion that the respondent, or any of its customers is engaged in the financing of money laundering.

(13) Where a relevant person acts in contravention of subregulation (12), it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars.

ENHANCED CUSTOMER DUE DILIGENCE.

5. (1) This regulation applies in the following cases where—

- (a) a relevant person who is registered under the Banking Act, the Nevis Offshore Banking Ordinance, as amended, or the Financial Services Regulations Order has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside St. Christopher and Nevis;
- (b) a relevant person proposes to have a business relationship or carry out a one-off transaction with a politically exposed person;
- (c) a customer has not been physically present for identification purposes; or
- (d) the relevant person—
 - (i) intends to conduct business transactions with persons, including legal persons and other financial institutions from or in countries which do not apply or insufficiently apply the FATF Recommendations; or
 - (ii) has a foreign branch or subsidiary in countries which do not, or which insufficiently apply the FATF Recommendations.

(2) A relevant person shall apply the following measures on a risk-sensitive basis—

- (a) enhanced customer due diligence procedures where regulation 4(1) (a) to (d) apply; and
- (b) enhanced customer due diligence procedures in any other situation which by its nature can present a higher risk of money laundering.

(3) If the business transactions referred to in subregulation (1)(d) (i) have no apparent economic or visible lawful purpose, the background and purpose of such transactions shall, as far as possible, be examined, and written findings shall be made available by the relevant person to assist the Reporting Authority, the Commission or any other competent authorities.

(4) (a) Where the minimum anti-money laundering requirements of St. Christopher and Nevis differ from those of the branches and subsidiaries of the relevant person or its customer located outside of the Federation, the higher standard of enhanced due diligence measures shall be applied with the consent of the Commission.

- (b) The relevant person shall inform the Commission when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering measures as a result of prohibitive laws of the host country.
- (5) A relevant person shall—
- (a) obtain senior management approval for establishing business relationships with politically exposed persons;
 - (b) take reasonable measures to establish the source of wealth and source of funds;
 - (c) conduct enhanced ongoing monitoring of the business relationship.
- (6) A relevant person who acts in contravention of subregulation (2), (3), (4) or (5), commits an offence and is liable on conviction to a fine of one hundred and fifty thousand dollars.

REDUCED CUSTOMER DUE DILIGENCE FOR LOW RISK SITUATIONS.

6. (1) Identification procedures under Regulation 4 are not required in any of Cases A to E as described in subregulations (2), (3), (4), (5) and (6).

(2) Case A is where the person whose identity is to be verified is a public authority, and is acting in that capacity.

(3) Case B is where the business relationship or one-off transaction relates to a pension, superannuation or similar scheme and where the contributions to the scheme are made by way of deductions from wages and the rules of the scheme do not permit the assignment of an interest of a member of the scheme under the scheme.

(4) Case C is where, in the case of an insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation—

- (a) the policy contains a “no surrender” clause; and
- (b) it may not be used as collateral security for a loan.

(5) Case D is where, in respect of insurance business, a premium is payable in one instalment of an amount not exceeding five thousand dollars.

(6) Case E is where, in respect of insurance business, a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed twenty-five hundred dollars—

- (7) Where the customer of a relevant person is—
- (a) a regulated person; or
 - (b) a person who carries on equivalent business to any category of regulated business,

the relevant person need not comply with his or her obligations under regulation 4(1) in respect of those procedures mentioned in paragraphs (a) and (c) of regulation 4(2).

- (8) Where—
- (a) a person is authorised to act on behalf of a customer;
 - (b) the customer is not a relevant person;
 - (c) the person who is so authorised acts on behalf of the customer in the course of employment by a financial services business; and

- (d) the financial services business is either a regulated business or equivalent business to a regulated business,

the relevant person need not comply with his or her obligations under regulation 4 in respect of the procedure mentioned in regulation 4(2) paragraphs (a) to (d).

(9) Notwithstanding the provisions of this Regulation, in any case where there is a suspicion of money laundering the requirements of enhanced due diligence shall be applicable pursuant to regulation 4.

IDENTIFICATION PROCEDURES IN RELATION TO INTRODUCED PERSONS.

7. (1) In this regulation, the expression “other party” shall be used to refer to either an intermediary or an introducer.

(2) Notwithstanding the provisions of subregulation (3) a relevant person shall satisfy itself that the introducer or intermediary has appropriate customer due diligence processes in place prior to entering into business with that introducer or intermediary.

(3) Subject to the conditions in subregulation (7) being met, a relevant person may rely on an intermediary or introducer to apply the identification procedures specified in subregulation (5) and (6) in respect of—

- (a) that other party’s customers; and
- (b) the persons to which subregulation (8) applies,

in order to meet the relevant person’s obligation under regulation 4 to apply those specified identification procedures.

(c) For the purposes of this subregulation a relevant person shall satisfy itself by immediately obtaining from an introducer or intermediary the necessary information concerning the introducer or intermediary’s customer due diligence processes including specific details on—

- (i) identification procedures of customers;
- (ii) verification procedures where a customer is acting for a third party or in the case of a legal person, verifying the legal status or arrangements of that legal person;
- (iii) verifying whether any person is properly authorised to act on behalf of a customer.

(Inserted by S.R.O. 9/2012)

(4) The reliance of a relevant person on the other party pursuant to subregulation (3) shall be subject to the following—

- (a) consent of the other party to such reliance with the understanding that the other party shall be bound by FATF Recommendations; and
- (b) the condition that notwithstanding the consent of the other party in (a), the relevant person shall remain liable for any failure to apply the necessary identification procedures.

(5) Where the relevant person relies on an intermediary, the applicable identification procedures shall be the ones described in regulation 4(2)(b).

(6) Where the relevant person relies on an introducer, the applicable identification procedures shall be the ones described in regulation 4(2)(a) to (c).

- (7) The conditions mentioned in subregulation (1) are that—
- (a) the relevant person knows or has reasonable grounds for believing that the other party is—
 - (i) a relevant person in respect of which the Commission discharges supervisory functions in respect of that other party's financial services business; or
 - (ii) a person who carries on equivalent business;
 - (b) the relevant person obtains adequate assurance in writing from the other party that he—
 - (i) has applied the identification procedures mentioned in subregulation (1);
 - (ii) is required to keep and does keep a record of the evidence of the identification, as described in regulation 4(4), relating to each of the other party's customers;
 - (iii) will provide the information in that record to the relevant person without delay once that information is requested.
(substituted by S.R.O. 9/2012)
- (8) This subregulation applies to any of the following—
- (a) any beneficial owner or controller of the customer;
 - (b) any third party for whom the customer is acting;
 - (c) any beneficial owner or controller of a third party for whom the customer is acting; or
 - (d) any person purporting to act on behalf of a customer.
- (9) In these Regulations—
- (a) an intermediary is a person who has or seeks to establish a business relationship or to carry out a one-off transaction on behalf of that person's customer with a relevant person so that the intermediary becomes a customer of the relevant person;
 - (b) an introducer is a person who has a business relationship with a customer and who introduces that customer to a relevant person with the intention that the customer will form a business relationship or conduct a one-off transaction with the relevant person so that the introducer's customer also becomes a customer of the relevant person.
- (10) For the purposes of subregulation (7)(b), assurance is adequate if—
- (a) it is reasonably capable of being regarded as reliable;
 - (b) the person who relies on it is satisfied that it is reliable;
 - (c) the intermediary or introducer is able to demonstrate that he or she used independent documents to verify identification information;
 - (d) the intermediary or introducer has verified that the authority of a customer purporting to act for another is valid; and
 - (e) the intermediary or introducer has accurately determined what is the nature of the customer's business.

(11) Notwithstanding the provisions of this regulation, in any case where there is a suspicion of money laundering or a transaction involving the proceeds of crime, a relevant person shall apply enhanced due diligence procedures in a manner consistent with regulation 4.

RECORD KEEPING PROCEDURES.

8. (1) A relevant person shall keep the records specified in subregulation (3).

(2) A relevant person shall ensure that records of unusual and complex transactions are maintained for at least five years and that such records shall be made available upon request to competent authorities and to auditors.

(Inserted by S.R.O. 9/2012 as subregulation (1)A)

(3) This subregulation refers to—

(a) a record comprising—

(i) a copy of the evidence of identity obtained pursuant to the application of customer due diligence procedures or information that enables a copy of such evidence to be obtained; and

(ii) all the supporting documents, data or information, including business correspondence in respect of a business relationship or one-off transaction which is the subject of customer due diligence procedures;

(b) a record containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction.

(4) The record to which subregulation (3)(b) refers shall in any event include sufficient information to enable the reconstruction of individual transactions.

(5) The relevant person shall keep the records to which subregulation (3) refers in such a manner that those records can be made available on a timely basis to the Commission, Police Officer or customs officer for the purposes of complying with a requirement under any relevant enactment.

(6) Where the records described in subregulation(3)(a)(i) relate to a business relationship, a relevant person shall keep those records for a period of at least five years commencing with the date on which the business relationship ends.

(7) Where the records described in subregulation (3)(a)(ii) relate to a one-off transaction, a relevant person shall keep those records for a period of at least five years commencing with the date on which the one-off transaction is completed.

(8) A relevant person shall keep the records described in subregulation (3)(b) in relation to each transaction for a period of five years commencing with the date on which all activities taking place within the course of that transaction were completed.

(9) For the purposes of subregulation (7) a one-off transaction is completed on the date when all of the activities taking place in that transaction have been done.

(10) The Commission may grant to the relevant person a period longer than five years, for the purposes of subregulation (1), (3) or (4) and such longer period shall then apply instead of the five years specified in those paragraphs.

(11) Where the relevant person fails to keep records in a manner consistent with this Regulation, then the relevant person commits an offence and shall be liable on conviction to a fine of twenty five thousand dollars.

(12) For the purposes of these Regulations, the term “competent authorities” means the Reporting Authority, the Commission and such other person or body authorised in law to have access to such records.

(Inserted by S.R.O. 9/2012 as subregulation (11))

MAINTAINING A REGISTER OF MONEY LAUNDERING ENQUIRIES.

9. (1) A relevant person shall maintain a register of all enquiries made of it by the Financial Intelligence Unit, the Commission and other law enforcement authorities acting under powers provided by the Act or any other Acts and any regulations made there under.

(2) The register maintained under subregulation (1) shall be kept separate from other records and shall contain at a minimum the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

REPORTING OFFICER.

10. (1) A relevant person, other than a sole trader, shall appoint an individual as a reporting officer in respect of the financial services business being carried on by the relevant person.

(2) The reporting officer’s function is to receive and consider reports in accordance with Regulation 11.

(3) When a named individual has ceased to be the reporting officer, the relevant person shall appoint another individual within twenty-one days as the reporting officer in respect of the financial services business being carried on by the relevant person.

(4) Subject to subregulation (5), a relevant person shall give the Commission written notice, within one month after the date that—

- (a) an appointment under subregulation (1) or (3) takes effect; or
- (b) a person ceases to be the reporting officer.

(5) The notice referred to in subregulation (4) is to specify the name of that reporting officer and the date on which his or her appointment takes effect or he or she ceases to be the reporting officer.

(6) A reporting officer may also be appointed as a compliance officer.

REPORTING PROCEDURES AND REQUIREMENTS.

11. (1) The internal reporting procedures to be maintained by a relevant person shall be in accordance with the following requirements—

- (a) communication of the identity of the reporting officer to persons who are either obligated to make reports to that officer or who may wish to do so;
- (b) a report shall be made to the reporting officer, of any information or other matter that comes to the attention of any person handling financial services business and, in the opinion of the person handling that business, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or the proceeds of criminal activity;

- (c) if a report is made or forwarded to the reporting officer, it shall be considered by him or her, in the light of all other relevant information, for the purpose of determining whether—
 - (i) the information or other matter contained in the report gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or the proceeds of criminal activity; or
 - (ii) funds are linked, or related to or to be used for money laundering or the proceeds of criminal activity;
- (d) the reporting officer shall have access to all other relevant information that may be of assistance to him or her in his investigation;
- (e) where the reporting officer—
 - (i) determines that the information or other matter reported to him or her pursuant to subparagraph (c), gives rise to a knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or the proceeds of criminal activity; or
 - (ii) knows otherwise or has reasonable grounds for suspecting that another person is engaged in money laundering or the proceeds of criminal activity,he or she shall ensure that all relevant information that comes to his or her knowledge or is in his or her possession pursuant to subparagraph (a) or (b), is disclosed in writing, to the Reporting Authority within twenty four hours of such determination or knowledge or suspicion of information obtained by him or her;
- (f) a relevant person shall maintain a register of all reports made to the reporting officer;
- (g) the register maintained under subregulation (f) shall contain details of the date on which the report is made, the person who makes the report and information sufficient to identify the relevant documents.

(2) (a) A regulated person shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

- (b) Upon reasonable suspicion that—
 - (i) a transaction described in subparagraph (a); or
 - (ii) any other business transaction,

could constitute or be related to money laundering or the proceeds of criminal activity, or where there are grounds for believing that the funds in that transaction could be linked, related to or are to be used for money laundering or the proceeds of criminal activity, the relevant business shall, within twenty-four hours of the matter coming to its attention, submit a suspicious transaction report to the Reporting Authority.

- (c) Where the report referred to in subparagraph (b) is made, or other information submitted in good faith, a relevant person and its employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or

administrative liability, as the case may be, from complying with these regulations or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication of that report.

- (d) A relevant person or its employees, staff, directors, owners or other authorised representatives who fail to comply with the obligations in this regulation, or who make a false or falsified report referred to above commits an offence and shall be liable on conviction—
 - (i) in the case of directors or owners, to imprisonment for a term of two years or to fifty thousand dollars; or
 - (ii) in the case of a relevant person itself, to a fine of one hundred thousand dollars and a penalty of one hundred dollars for each day that the requirement is not complied with.
 - (e) A relevant person, its employees, staff, directors, owners or other authorised representative who wilfully discloses the fact that a suspicious transaction report or related information is being reported or provided to the Reporting Authority commits an offence and shall be liable on conviction to a fine of one hundred thousand dollars.
- (3) (a) If the Commission—
- (i) obtains any information; and
 - (ii) is of the opinion that the information indicates that any person has or may have been engaged in money laundering or the proceeds of criminal activity,

the Commission shall disclose that information to the Reporting Authority as soon as is reasonably practicable.

- (b) If a person is a secondary recipient of information obtained by the Commission, and forms such an opinion as is described in Regulation 8 (a)(ii), the person may disclose the information to a Reporting Authority.
- (c) If any person—
 - (i) obtains any information while acting in the course of any investigation, or discharging any functions, to which the person's authorisation or appointment relates; and
 - (ii) is of the opinion that the information indicates that any other person has or may have been engaged in money laundering or the proceeds of criminal activity,

the first person shall as soon as is reasonably practicable disclose that information to a designated Reporting Authority and the Commission.

(4) Where a relevant person acts in contravention of subregulation (1)(c), or (e), or (2) (a) or (b), it commits an offence and shall be liable on conviction to a fine of one hundred thousand dollars.

DUTY TO APPOINT COMPLIANCE OFFICER.

12. (1) With the exception of a sole trader, and subject to subsection (2), a relevant person shall appoint or designate an employee of the relevant business to be

approved by the Commission as a Compliance Officer for the purposes of these Regulations.

(2) A Compliance Officer shall—

- (a) be a senior officer with relevant qualifications and sufficient experience to enable him or her to respond appropriately to enquiries relating to the relevant person and the conduct of its business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the relevant person as the Regulator may require;
- (c) be responsible for ensuring compliance by staff of the relevant person with the following—
 - (i) the provisions of these Regulations and any other law relating to money laundering or the proceeds of crime;
 - (ii) the provisions of any manual of compliance procedures established pursuant to paragraph (b); and
 - (iii) the internal reporting procedures established under regulation 8;
- (d) act as a liaison between the relevant person and the Regulator in matters relating to compliance with the provisions of these Regulations and any other law or directive with respect to money laundering or the proceeds of criminal activity; and
- (e) prepare and submit to the Regulator written reports on the relevant person's compliance with the provisions of these Regulations and any other law or directive relating to money laundering or the proceeds of criminal activity, and the reports shall be prepared in such form and submitted at such time as the Regulator may determine;
- (f) a compliance officer may also be appointed as a Reporting Officer.

(3) When a named individual has ceased to be a Compliance Officer, the relevant person shall appoint another individual forthwith as Compliance Officer in respect of the financial services business being carried on by the relevant person.

(4) For the purposes of subregulation (2)(a), the question as to whether a senior officer of a relevant person has relevant qualifications and sufficient experience shall be determined in accordance with such guidelines as the Commission may determine.

DUE DILIGENCE AUDIT.

13. Notwithstanding regulation 11 or any enactment relating to the conduct of inspections to verify compliance, the Regulator may conduct an inspection of any relevant person to determine compliance by that person with the requirements of these Regulations and any other law or directive relating to money laundering.

OFFENCES AND PENALTIES.

14. (1) A person who fails to comply with the requirements of these Regulations, the requirements of the Guidance Notes issued under regulation 16 or any directive issued under regulation 15 for which a penalty is not specifically provided commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars, and, if the contravention continues after such conviction, the person

commits a further offence and is liable to an additional fine of one hundred dollars for each day on which the contravention continues.

(2) In determining whether a person has complied with the requirements of these Regulations or any directive issued under regulation 15, a court may take account of—

- (a) any provision in the Guidance Notes which may apply to that person; or
- (b) any other relevant guidance issued by the Reporting Authority, the Commission or any other body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.

(3) In proceedings against a person for an offence under these Regulations, it shall be a defence for the person to prove that he took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations or any directive issued under regulation 15 in respect of which he is charged.

(4) Where an offence under these Regulations has been committed by a body corporate, the directors as well as the corporate body commits that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, subregulation (4) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where an offence under these Regulations that is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with—

- (a) the consent or connivance of a partner in the partnership or a person concerned in the management or control of the association; or
- (b) is attributable to the failure to exercise due diligence by a partner in the partnership or, as the case may be, a person concerned in the management or control of the association,

the partner or other person concerned, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(7) The penalties issued pursuant to these Regulations, shall be in addition to any penalties sanctions or other measures taken by the Commission under the Financial Services Regulatory Commission Act.

DIRECTIVES.

15. (1) The Commission may, for the purposes of these Regulations, issue such directives as it considers necessary and such directives, when issued, shall be published in the *Gazette* and at least one locally circulated newspaper.

(2) Where FATF has decided to apply money laundering counter-measures to a country, the Commission may, in respect of a person who is situated or incorporated in that country, direct a regulated person to—

- (a) not enter into a business relationship;
- (b) not carry out an occasional transaction;

- (c) not proceed any further with a business relationship or occasional transaction;
- (d) impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction; or
- (e) apply enhanced customer due diligence measures to any business relationship or occasional transaction as the case may be.

USE OF GUIDANCE NOTES.

16. In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a relevant person shall adopt and have regard to the provisions of the Guidance Notes as set out in the Schedule to the Financial Services (Implementation of Industry Standards) Regulations.

THIRD SCHEDULE

(Section 63)

CONSTITUTION AND PROCEDURE OF THE BOARD

Constitution of Board.

1. The Board shall consist of not less than five persons appointed by the Minister by instrument as follows—
 - (a) the Financial Secretary in Saint Christopher and Nevis.
 - (b) the Permanent Secretary in the Ministry of Finance in Nevis; and
 - (c) not less than three other persons selected by the Minister from persons appearing to him to have wide experience in the law, law enforcement, management and finance.

Appointment of Chairperson.

2. The Minister shall appoint a member to be the Chairperson of the Board.

Temporary Appointment.

3. The Minister may, in accordance with paragraph 1, appoint any person to act temporarily in the place of any member who is absent from Saint Christopher and Nevis or is unable to act.

Tenure.

4. (1) A member shall hold office for a period of three years unless he resigns or his appointment is revoked before the end of that period.
(2) Every member is on the expiration of the period of his appointment eligible for further appointment.
(3) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph 1 to fill that vacancy but shall hold office only for the unexpired portion of the period of the former member.

Remuneration of Board Members.

5. The Minister shall pay the members of the Board—
- (a) such remuneration as he may determine; and
 - (b) reasonable out of pocket or other expenses occasioned in the carrying out of their duties.

Resignation of members.

6. A member other than the Chairperson, may, at any time resign his office by instrument in writing transmitted through the Chairperson and, from the date of the receipt by the Minister of the instrument, the member ceases to be a member.

Resignation of Chairperson.

7. The Chairperson may, at any time resign his office by instrument in writing addressed to the Minister and, upon receipt by the Minister of such instrument, the Chairperson ceases to be Chairperson and, if the instrument so specifies, also ceases to be a member.

Non-attendance at meetings.

8. A member who fails, without reasonable excuse, to attend three consecutive meetings of the Board ceases to be a member and is not eligible for appointment to the Board until the expiration of three years from the date when he ceases to be a member.

Revocation.

9. The Ministry may, at any time, by instrument in writing revoke the appointment of any member.

Publication of notice.

10. The appointment and cessation of appointment of any member shall be notified in the *Official Gazette*.

Meetings.

11. The Board shall meet at such times as may be necessary or expedient for the transaction of its business.

Special Meetings.

12. The Chairperson may, at any time call a meeting of the Board and shall call a meeting within seven days—
- (a) of the receipt by him of a request for the purpose addressed to him in writing and signed by three other members;
 - (b) of receiving a direction to that effect addressed to him in writing and signed by the Minister.

Quorum.

13. A majority of the members shall constitute a quorum.

Presiding at meetings.

14. The Chairperson shall preside at all meetings of the Board and in case of his absence, the Members present and constituting a quorum shall elect a temporary Chairperson from among their number who shall preside at the meeting.

Decisions.

15. The decisions of the Board shall be by a majority of votes and in any case in which the voting is equal, the Chairperson, or temporary Chairperson presiding at the meeting has, in addition to an original vote, a second or casting vote.

Minutes.

16. The minutes in proper form of each meeting shall be kept by the Secretary or such other Officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairperson.

Attendance of public officer at meetings.

17. (1) The Chairperson may invite any public officer to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A public officer referred to in sub-paragraph (1) may take part in the deliberations of the Board but shall not vote on any matter.

Validity of decisions of the Board.

18. Any act or proceedings taken by the Board under this Act or the Regulations shall not be questioned on the grounds of—

- (a) the existence of any vacancy in the membership or any defect in the Constitution of the Board;
- (b) any omission, defect or irregularity that does not affect the merits of the case.

(Inserted by Act 10 of 2008)
