

ANTI-MONEY LAUNDERING REGULATIONS, 2001

No. of 2001

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SAINT CHRISTOPHER AND NEVIS
STATUTORY RULES AND ORDERS

No. of 2001

ANTI-MONEY LAUNDERING REGULATIONS, 2001

The Minister, with the concurrence of the Premier of Nevis, hereby makes these Regulations in exercise of the powers conferred on him by section 67 of the Proceeds of Crime Act, No. 16 of 2000.

1. CITATION. These Regulations may be cited as the Anti-money Laundering Regulations 2001.

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

No. 16 of 2000.

“Act” means the Proceeds of Crime Act, 2000;

“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;

“business relationship” means 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 any person to any other in the course of that

arrangement is not known or capable of being ascertained at the time the arrangement is made;

“CFATF” means the Caribbean Financial Action Task Force on money laundering;

“Commission” means the Financial Services Commission established by section 3 of Financial Services Commission Act, 2000;

“Compliance Officer” also known as “Reporting Officer” means a senior office of a relevant person appointed under paragraph 12;

“FATF” means the Financial Action Task Force on money laundering;

“Guidance Notes” means the Guidance Notes on the Prevention of Money;

“one-off transaction” means a transaction other than a transaction carried out in the course of an established business relationship formed by a relevant person;

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

No.16 of 2000.

“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, 2000.

No. 15 of 2000.

(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; and
- (c) key staff is a member of staff, who at any time in the course of his duties, has or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering.

3. GENERAL REQUIREMENTS. (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
 - (i) identification procedures in accordance with regulations 4 to 6;
 - (ii) record keeping procedures in accordance with regulations 7 to 11;
 - (iii) internal reporting procedures in accordance with regulation 14; and
 - (iv) internal controls and communication procedures which are appropriate for the

purposes of forestalling and preventing money laundering;

- (b) takes appropriate measures from time to time for the purpose of making employees aware of
 - (i) the procedures maintained under sub-regulation (a); and
 - (ii) the provisions of the Act, any regulations made thereunder and any directives issued under these Regulations; and
- (c) provides training for employees to assist them
 - (i) in 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) in dealing with customers where such transactions have been reported to the Reporting Authority in accordance with the provisions of the Act.

(2) For the avoidance of doubt, it is declared that the requirements of sub-regulation (1) (a) shall apply in relation to a person with whom, prior to the coming into force of these Regulations, a business relationship or one-off transaction was formed or carried out and such relationship or transaction is subsisting or continues upon the coming into force of these Regulations and in such a case the reference in regulation 4, 5 and 6 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.

(3) A relevant person shall submit for the approval of the Reporting Authority the identification procedures, record keeping procedures, internal reporting procedures and internal controls and communication procedures required to be maintained under sub-regulation (1)(a) and the Reporting Authority may keep, for its own use, copies of such documents.

4. IDENTIFICATION PROCEDURES IN RELATION TO NEW AND CONTINUING RELATIONSHIPS (1) A relevant person shall establish and maintain identification procedures which, as soon as is reasonably practicable after contact is first made between that person and business an applicant for business concerning any particular business relationship, require:

- (a) the production by the applicant for business of a satisfactory evidence of his identity; or
- (b) the taking of such measures as are specified in these Regulations as will produce satisfactory evidence of his identity.

(2) Sub-regulation (1) shall not apply if there are reasonable grounds for believing that the applicant for business is

- (a) a regulated person; or
- (b) an authorized financial institution in a country or territory which is a member of the FATF or CFATF has anti-money laundering laws and procedures that are at least equivalent to those of the Federation.

(3) Sub-regulation (1) shall not apply if there are reasonable grounds for believing that the applicant for business

- (a) acts in the course of a business in relation to which a regulatory authority outside the Federation exercises regulatory functions; and

- (b) is based or incorporated in or formed under the law of a country or territory outside the Federation (which is a member of the FATF or CFATF) in which there are in force anti-money laundering laws and procedures that are at least equivalent to those of the Federation.

(4) For the purposes of sub-regulations (2) (b) and (3) (b), a country or territory outside the Federation shall be deemed to have in force anti-money laundering laws and procedures that are at least equivalent to those of the Federation if it is recognized by the Commission as specified in the Guidance Notes.

(5) A relevant person shall establish and maintain procedures which, in respect of transactions undertaken after a business relationship has been established in compliance with sub-regulation (1), require

- (a) the satisfactory verification of evidence of identity produced under sub-regulation (1) (a) or
- (b) the taking of such measures as are specified in the procedures as will produce satisfactory verification of evidence or identity produced under sub-regulation (1) (b),

as soon as reasonably practicable after transactions are undertaken which are significantly different from the normal pattern of previous business.

(6) Procedures comply with this regulation if they require that when satisfactory evidence of identity or satisfactory verification of evidence of identity is not obtained or produced, the business relationship and transactions shall not proceed any further.

(7) A regulated person shall not, in the course of a business relationship, operate or keep open or keep anonymous account or accounts which are in fictitious names.

5. IDENTIFICATION PROCEDURES IN RELATION TO ONE-OFF TRANSACTIONS. (1) A relevant person shall establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between that person and an applicant for business concerning any one-off transaction, require

- (a) the production by the applicant of satisfactory evidence of his identity; or
- (b) the taking of such measures as are specified in the procedures as will produce satisfactory evidence of his identity.

(2) Sub-regulation (1) shall not apply if there are reasonable grounds for believing that the applicant for business is a person specified in regulation 4 (2) or (3), and regulation 4 (4) shall apply accordingly.

(3) Procedures comply with this regulation if they require that when satisfactory evidence of identity is not obtained or produced, the business relationship and transaction shall not proceed any further.

6. IDENTIFICATION PROCEDURES IN RELATION TO INTRODUCED PERSONS. (1) Where an applicant for business is introduced to a relevant person by a third party (in this regulation referred to as “ the introducer”) the relevant person shall establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between the relevant person and the introducer, require

- (a) the production by the introducer of satisfactory evidence of the identity of the applicant; or
- (b) the taking of such measures as are specified in these regulations as will produce satisfactory evidence of the identity of the applicant.

(2) Sub-regulation (1) shall not apply if there are reasonable grounds for believing that

- (a) the introducer is a person specified in regulation 4 (2);or

- (b) the relevant person and the applicant for business are bodies corporate in the same group.

(3) In sub-regulation (2) (b) the term “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company, and “subsidiary” and “holding company” shall be construed in accordance with the Companies Act.

No. 22 of 1996.

- (4) Sub-regulation (1) shall not apply if there are reasonable grounds for believing that

- (a) the introducer acts in the course of a business in relation to which regulatory authority outside the Federation exercises regulatory functions; and

- (b) the introducer is based or incorporated in or formed under the law of a country or territory outside the Federation which is a member of the FATF or CFATF and in which there are in force anti-money laundering laws and procedures that are at least equivalent to those of the Federation; and

- (c) the introducer will comply with terms of business made in accordance with sub-regulation (6).

(5) Regulation 4 (4) applies to sub-regulation (4)(b) as if the reference to sub-regulation (2) (b) and (3) (b) in regulation 4 (4) were a reference to sub-regulation (4)(b).

(6) Written terms of business between the relevant person and the introducer shall, notwithstanding sub-regulation (2), in all cases require the introducer

- (a) to verify the identity of all applicants for business introduced to the

relevant person sufficiently to comply with the requirements of the Act, and Regulations made thereunder.

- (b) to maintain a record of the evidence of verification of identity and records of all transactions for at least five years calculated in accordance with regulation 9 (1);
- (c) to supply to the relevant person forthwith upon request evidence of the verification of identity in any particular case; and
- (d) to inform the relevant person specifically of each case where the introducer is not required or has been unable to verify the identity of the applicant.

(7) Procedures comply with this regulation if they require that when satisfactory evidence of identity is not obtained or produced, the business relationship and transactions shall not proceed any further.

7. MAINTAINING A RECORD OF VERIFICATION OF IDENTITY. Where a relevant person is required under these Regulations to verify the identity of a person, the relevant person shall establish and maintain a record in the Federation which

- (a) indicates the nature of the evidence obtained; and
- (b) comprises a copy of the evidence or, where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained.

8. MAINTAINING A RECORD OF TRANSACTIONS. Where a relevant person is required under these Regulations to verify the identity of a person, the relevant person shall maintain a record of all transactions carried out by or on behalf of that person (such as records sufficient to identify the source and recipient of payments

from which investigating authorities will be able to compile an audit trail for suspected money laundering).

9. LIMITATION PERIOD FOR RETENTION OF RECORDS.

(1) A relevant person shall maintain the records required by regulations 6, 7 and 8 for at least five years from the date

- (a) when all activities relating to one-off transaction or a series of linked transactions were completed;
- (b) when the business relationship was formally ended; or
- (c) where the business relationship was not formally ended, when the last transaction was carried out.

(2) Where a report has been made to the Reporting Authority in pursuance of regulation 14 (1) (f), or the relevant person knows or believes that a matter is under investigation, that person shall without prejudice to sub-regulation (1), retain all relevant records for as long as may be required by the Reporting Authority.

(3) For the purposes of this regulation, the question as to what records may be relevant in the investigation process may be determined in accordance with the Guidance Notes.

10. FORMAT AND RETRIEVAL OF RECORDS. (1) A relevant person shall ensure that any records required to be maintained under these Regulations are capable of retrieval in legible form without undue delay.

(2) A relevant person may rely on the records of a third party in respect of the details of payments and transactions by customers, provided that it is satisfied that the third party is willing and able to retain and, if asked, to produce in legible form, copies of the records required.

11. MAINTAINING A REGISTER OF MONEY LAUNDERING ENQUIRIES. (1) A relevant person shall maintain a register of all enquiries made of it by the Commission and other law enforcement authorities acting under powers provided by the Act or any other Acts and any regulations made thereunder.

(2) The register maintained under sub-regulation (1) shall be kept separate from other records and shall contain as 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.

12. DUTY TO APPOINT COMPLIANCE OFFICER. (1) A relevant person shall appoint or designate one of his staff, as may 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 experience to enable him to respond sufficiently well 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
 - (i) the provisions of these Regulations and any other law relating to money laundering;
 - (ii) the provisions of any manual of compliance procedures established under sub-regulation (b); and
 - (iii) the internal reporting procedures established under regulation 14;

- (d) act as the 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; 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, and the reports shall be prepared in such form and submitted at such time as the Regulator may determine.

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

13. DUE DILIGENCE AUDIT. Without prejudice to regulation 12 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.

14. ESTABLISHMENT OF PROCEDURES FOR RECOGNISING AND REPORTING SUSPICIOUS TRANSACTIONS. (1) A relevant person shall establish written internal reporting procedures which, in relation to its relevant business, will

- (a) enable all its directors or, as the case may be, partners, all other persons involved in its management, and all key staff to know to whom they should report any knowledge or suspicion of money laundering activity;
- (b) ensure that there is a clear reporting chain under which suspicions of money laundering activity will be passed to the Compliance Officer.
- (c) identify a Compliance Officer to whom a report is to be made of any information or

other matter which comes to the attention of the person handling that business and which in that person's opinion give rise to knowledge or suspicion that another person is engaged in money laundering;

- (d) require the Compliance Officer to consider any report in the light of all other relevant information available to him for the purpose of determining whether or not it gives rise to a knowledge or suspicion of money laundering;
- (e) ensure that the Compliance Officer has reasonable access to any other information which may be of assistance to him and which is available to the relevant person; and
- (f) require that the information or other matter contained in a report is disclosed promptly to the Reporting Authority where the Compliance Officer knows or suspects that another person is engaged in money laundering.

(2) A relevant person shall maintain a register of all reports made to the Compliance Officer in pursuance of sub-regulation (1)(f).

(3) The register maintained under sub-Regulation (2) 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.

15. REPORTING OF SUSPICIOUS BUSINESS TRANSACTIONS BY RELEVANT PERSON. (1) 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.

(2) Upon reasonable suspicion that the transaction described in sub-regulation (1) could constitute or be related to money laundering, a relevant business shall promptly report the suspicious transaction to the Reporting Authority.

(3) When the report referred to in sub-regulation (2) is made in good faith, a relevant person and its employees, staff, directors, owners or other representatives as authorized by law shall be exempted from criminal, civil or administrative liability, as the case may be, for 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.

(5) A criminal offence is committed by a relevant person or its employees, staff, directors, owners or other authorized representatives who, acting as such, willfully fail to comply with the obligations in this regulation, or who willfully make a false or falsified report referred to above.

16. STAFF TRAINING. (1) A relevant person shall provide education and training for all directors or, as the case may be, partners, all other persons involved in its management, and all key staff to ensure that they are aware of

- (a) the provisions of the Act and regulations made thereunder;
- (b) their personal obligations under those enactments;
- (c) the manual of compliance procedures established under regulation 12(2)(b) and the internal reporting procedures established under regulation 14;
- (d) the procedures maintained by the relevant person in compliance with the duties imposed under these Regulations, and
- (e) their personal liability for failure to report information or suspicions in accordance with internal procedures.

(2) A relevant person shall, in addition, provide training in accordance with the requirements of this regulation to all new key staff as soon as practicable after their appointment.

17. TRAINING FOR SENIOR AND SPECIALIST STAFF. A relevant person shall also provide education and training appropriate to particular categories of staff in:

- (a) its policies and procedures to prevent money laundering;
- (b) its customer identification, record-keeping and other procedures; and
- (c) the recognition and handling of suspicious transactions.

18. REQUIREMENT FOR REFRESHER TRAINING. 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 and the internal procedures of the relevant person.

19. OFFENCES AND PENALTIES. (1) A person who fails to comply with the requirements of these Regulations or any directive issued under regulation 20 commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, and, if in the case of a continuing offence, the contravention continues after such conviction, he commits a further offence and is liable to an additional fine of five thousand 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 20, a court may take account

- (a) of any provision in the Guidance Notes which may apply to that person;
- (b) in a case where sub-regulation (a) does not apply, of any other relevant guidance issued by a 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 20 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 shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, sub-regulation (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 committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or 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, he, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

20. DIRECTIVES. 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.

21. USE OF GUIDANCE NOTES. In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a relevant person may adopt or have regard to the provisions of the Guidance Notes.

22. NEGATIVE RESOLUTION. These Regulations shall be subject to negative resolution of the National Assembly of Saint Christopher and Nevis.

23. COMMENCEMENT. These Regulations shall
come into operation on the day of , 2001.

Made by the Minister this day of , 2001.

Denzil Llewellyn Douglas
Minister of Finance

Laid before the National Assembly this day of May, 2001.

Jos Lloyd
Clerk of the National Assembly