

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 11 of 2018

**Financial Services Regulatory Commission (Minimum Guidelines for Compliance
Officers and Reporting Officers) Regulations**

In exercise of the powers conferred by section 51 of the Financial Services Regulatory Commission Act Cap. 21.10, the Minister makes the following Regulations:

[Published 29th May 2018, Extra Ordinary Gazette No. 29 of 2018.]

1. CITATION.

These Regulations may be cited as the Financial Services Regulatory Commission (Minimum Guidelines for Compliance Officers) Regulations, 2018.

2. INTERPRETATION.

In these Regulations, “Act” means the Financial Services Regulatory Commission Act Cap. 21.10.

“Commission” means the Financial Services Regulatory Commission established under section 3 of the Act.

3. MINIMUM GUIDELINES FOR COMPLIANCE OFFICERS AND REPORTING OFFICERS.

- (1) The Minimum Guidelines for Compliance Officers, shall be
 - (a) subject to the provisions of Regulation 12 of the Anti-Money Laundering Regulations 2011 and Regulation 12 of the Anti- Terrorism (Prevention of Terrorist Financing) Regulations 2011;
 - (b) applicable to a regulated business or financial services business or any other business or activity regulated by the Commission;
 - (c) on such terms and conditions as are set out in the First Schedule to these Regulations.

4. APPLICATION.

An application for a person to be approved as a compliance officer or a reporting officer shall be submitted on Form 1 as set out in the Third Schedule to these Regulations.

5. RENEWAL.

Where a regulated business seeks to have the services of a compliance officer or a reporting officer renewed, then the regulated business shall apply to the Commission by 31 January of each year on form 2 as set out in the Third Schedule, for the status of the

compliance officer to continue in relation to that regulated business.

6. FEES.

The submission of an application by a regulated business for a person to be

- (a) appointed as a compliance officer or a reporting officer; or
- (b) renewed in the position of a compliance officer or a reporting officer

shall be subject to the payment of the fees as set out in the Second Schedule to these Regulations.

7. BREACH OF MINIMUM GUIDELINES.

(1) A failure to comply with the Minimum Guidelines set out in the Schedules shall constitute an offence punishable in the manner provided for in section 40 of the Act.

(2) In the case of a continuing offence, a regulated business or financial services business shall be subject to a fine of \$250.00 for each day that the action complained of in subregulation (1) is not remedied within the time specified by the Commission.

FIRST SCHEDULE

MINIMUM GUIDELINES FOR THE ROLE AND APPOINTMENT OF COMPLIANCE AND REPORTING OFFICERS PURSUANT TO THE FINANCIAL SERVICES REGULATORY COMMISSION ACT, AND OTHER RELEVANT LEGISLATION

1. Introduction.

In accordance with regulation 12 of the Anti-Money Laundering Regulations (“AMLR”), No. 46 of 2011, regulation 12 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations (“ATR”), No. 47 of 2011 and paragraph 28 of the Financial Services (Implementation of Industry Standards) Regulations (“FSR”), No 51 of 2011, a regulated entity is required to appoint a fit and proper individual approved by the Financial Services Regulatory Commission (“FSRC”) as its Compliance Officer (“CO”).

Depending on the size, nature and complexity of the regulated entity, the CO may also be appointed under regulations 10(6) and 12(2)(f) of both the AMLR and ATR to perform the role of CO and Reporting Officer (“RO”), subject to the approval of the FSRC. In a small regulated entity, the CO may also perform a business function in the regulated entity. The FSRC will consider approving an individual who performs the CO function for a group of companies of which the regulated entity is a member.

The FSRC may also direct the removal of a CO/RO, in which case it is the responsibility of the regulated entity to identify another suitably qualified individual for approval and subsequent appointment as the CO/RO.

2. Duties and Responsibilities of the Compliance Officer.

The main responsibility of a CO is to put in place systems and controls (including clear lines of accountability) to ensure compliance with applicable laws and the internal policies of the regulated entity by its employees, agents, and other contractors.

The CO should also ensure that compliance risk is understood and managed, and that the regulated entity's compliance systems are part of its business operations. The term "compliance risk" means the uncertainty giving rise to the possibilities of legal or regulatory sanctions, material financial loss, or loss of reputation as a result of an entity's failure to comply with laws, generally accepted industry standards, and/or internal policies.

The CO aims to promote a culture of compliance within the regulated entity and is the first point of contact for the FSRC. He or she should have the trust and confidence of the regulated entity's Board, senior management and employees and is sufficiently independent to perform his or her duties objectively.

As stipulated in regulation 12 of both the AMLR and the ATR, a CO shall:

- * be a senior officer with relevant qualifications and sufficient experience to enable him or her to respond appropriately to enquiries relating to the regulated entity and the conduct of its business;
- * be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the regulated entity as the Regulator may require;
- * be responsible for ensuring compliance by staff of the regulated entity with the following:
 - i) the provisions of the AMLR and ATR and any other law relating to money laundering, the proceeds of crime or terrorist financing;
 - ii) the provisions of any manual of compliance procedures; and
 - iii) the internal reporting procedures established under regulation 8 of both the AMLR and ATR;
- * act as a liaison between the regulated entity and the Regulator in matters relating to compliance with the provisions of the AMLR and ATR and any other law or directive with respect to money laundering, the proceeds of crime or terrorist financing;
- * conduct ongoing staff training programs, make the necessary arrangements for updating and refreshing staff at regular intervals in order that staff of the regulated entity remain familiar with new developments, trends and techniques of money laundering and terrorist financing in relation to their job descriptions and responsibilities; and prepare and submit to the Regulator written reports on the regulated entity's compliance with the provisions of the AMLR and ATR and any other law or directive relating to money laundering, the proceeds of crime or terrorist financing. The reports shall be prepared in such form and submitted at such time as the Regulator may determine.

3. Role of the Board and Senior Management.

The regulated entity's Board and senior management should administer and monitor the ongoing competence and efficiency of the CO and the compliance function, including reporting system so that employee can report misconduct and compliance failures without fear of reprisal.

The CO's duties, responsibilities and reporting lines should be clearly documented. Senior management and the Board should provide the CO with all appropriate support, including

access to all relevant information and shall not engage in any activity that threatens the independence of the CO. The CO shall have unrestricted access to senior management, executive and non-executive directors and auditors of the regulated entity. The CO should report to the Board on matters such as:

- * an assessment of the key compliance risks the regulated entity faces and the steps being taken to address them;
- * an assessment of how the various parts of the regulated entity (e.g., divisions or units, product areas, subsidiaries) are performing against compliance standards and goals;
- * any compliance issues involving senior management and the status of any associated investigations or other actions being taken;
- * material compliance violations or concerns involving any other person, division or unit of the regulated entity and the status of any associated investigations or other actions being taken; and
- * any enforcement or other actions being taken by the FSRC or other Authority.

4. Duties and Responsibilities of the Reporting Officer.

As stipulated in Regulation 10(2) of both the AMLR and the ATR, an RO shall, among other things:

- * receive reports from any person obligated to make reports to the RO or who may wish to do so, of any information or other matter that comes to the attention of that person which gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- * consider the reports that have been forwarded to him or her in light of all other relevant information, for the purpose of determining whether the information or other matter gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- * disclose in writing to the FIU within twenty four (24) hours all relevant information that comes to his or her knowledge or is in his or her possession, after it is determined that the information or other matter reported to him or her gives rise to a knowledge or suspicion that a person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- * maintain a register of all reports made to him or her that includes details of the dates on which reports were made, the person who made the reports and information sufficient to identify the relevant documents.

5. Qualifications, Education and Fit and Proper Requirements.

Before granting approval of an application for a CO/RO, the FSRC must be satisfied that the proposed CO/RO is fit and proper. Each case will be considered on its own merits and the FSRC may have regard to current, past and prospective matters. Due regard will be given to the following qualities in relation to the proposed applicant:

- * honesty, integrity and reputation;

- * competence and soundness of judgment;
- * capability and qualification;
- * record of compliance; and
- * financial soundness;
- * time dedicated to carry on functions of a CO/RO.

A CO/RO should be able to demonstrate at a minimum that he or she:

- * has had recent and relevant work experience in a compliance-related role or in a supportive function for a minimum of at least two (2) years. Favourable consideration will be given to administrative and managerial skills, performance at work, ability to make objective and independent assessments, timely response to requests for information and other related matters.
- * has a specific financial services industry, compliance, or anti-money laundering related certificate, diploma or degree recognised by the FSRC as being appropriate for this purpose. Specific qualifications may include an International Compliance Association (ICA) International Diploma in Anti-Money Laundering or Compliance; International Risk Manager Designation; Certified Anti-Money Laundering Specialist (CAMS); Certified Compliance & Ethics Professional; Certified Risk and Compliance Management Professional (CRMP); or other certificates, diploma or degree in the field of finance, banking, accounting, and/or other financial services. This list is not exhaustive as the FSRC reserves the right to recognise any other related qualification that it deems acceptable. In circumstances where the FSRC considers a qualification as inadequate, it may request that the regulated entity arrange for the applicant to undertake additional training within 6 months of the appointment in order to be better prepared for the role of CO/RO.
- * has a good understanding of the laws of St. Kitts and Nevis and the written policies and guidelines that may be issued by the FSRC, especially as they relate to financial services regulation and their relevant industry of operation;
- * is able to demonstrate sound judgment;
- * understands the nature of the business within which he/she operates;
- * has the ability to read, write and understand the English language.

It is the responsibility of the regulated entity to satisfy the FSRC that the proposed CO/RO has the relevant qualities, experience, and skills to perform his/her duties. Compliance with the "fit and proper" standard is both an initial test applied on the application for approval and a continuing test applied to the on going performance of a CO/RO.

6. Submitting an Application for Approval of a Compliance Reporting Officer

The regulated entity should apply for approval using the prescribed application form published on the web sites of the FSRC Branch Offices in the island of St. Kitts and the island of Nevis:- www.fsrc.kn and www.nevisfsrc.com, respectively. Along with the prescribed application form and fee of EC\$150.00, the regulated entity should submit on behalf of the proposed CO/RO, the following:

- * a resume or curriculum vitae

- i) outlining the relevant qualifications and experience of the proposed CO\RO; and
- ii) including the names, addresses and telephone numbers of previous employers;
- * a police certificate or sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past five (5) years;
- * two original letters of reference (one of which must be from a financial institution);
- * two notarised copies of identification (one such copy to be of the identification page of the proposed applicant’s passport);
- * notarised copies of professional and educational qualifications; and
- * an organisational chart showing direct access to the regulated entity’s Board and to whom the CO\RO will report.

Where a proposed CO\RO will serve in a dual capacity, this should be made clear and explained. Where the application is submitted by a prospective regulated entity not yet licensed, the FSRC may consider the approval of a CO\RO at the same time. An approval of a CO\RO for a regulated entity does not constitute approval for that individual to act as CO\RO for another regulated entity. If the CO\RO function is proposed to be out sourced, the FSRC will assess the relevant individual in a similar way, but will also ask for a copy of the contract for the CO’s\RO’s services. The FSRC may require additional information from the regulated entity.

The Regulated Entity will be required to apply to the FSRC annually for the renewal of the appointment of the CO/RO using the prescribed form. A renewal fee of EC\$100.00 will also be applicable.

SECOND SCHEDULE

FEES:

1. Application Fee	-	\$150.00
2. Renewal Fee		\$100.00

THIRD SCHEDULE

FORM 1:

APPLICATION FOR THE APPROVAL OF THE APPOINTMENT OF COMPLIANCE/REPORTING OFFICER

PART 1 - REGULATED ENTITY

1. NAME OF REGULATED ENTITY

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2. ADDRESS OF REGULATED ENTITY

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.....
.....

3. TYPE OF BUSINESS CONDUCTED (Please tick all applicable boxes)

- | | | | |
|-------------------------------------|--------------------------|-------------------------|--------------------------|
| Assurance Business | <input type="checkbox"/> | International Banking | <input type="checkbox"/> |
| Corporate Business/Service Provider | <input type="checkbox"/> | Credit Union | <input type="checkbox"/> |
| Deposit Taking Business | <input type="checkbox"/> | Insurance Company | <input type="checkbox"/> |
| Investment Business | <input type="checkbox"/> | Insurance Manager | <input type="checkbox"/> |
| Trust Business | <input type="checkbox"/> | Money Services Business | <input type="checkbox"/> |
| Citizenship by Investment Banking | <input type="checkbox"/> | Gaming | |

Other.....

4. NAME OF CONTACT PERSON

Name:

Position:

Telephone:

Fax:

Email:

*Delete as appropriate

PART 2 PERSONAL DETAILS OF PROPOSED COMPLIANCE REPORTING OFFICER

1. NAME

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.....
Surname First Name(s) Middle Name(s)

2. PREVIOUS NAME(S) (if any)

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.....

3. DATE OF BIRTH

.....
.....
Day Month Year

4. (A) NATIONALITY

(B) COUNTRY OF RESIDENCE

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5. CURRENT RESIDENTIAL ADDRESS

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6. PREVIOUS RESIDENTIAL ADDRESS (if address has changed in the last five (5) years)

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7. PASSPORT NUMBER and ISSUING COUNTRY

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.....		
PART 3 - EDUCATION AND QUALIFICATIONS		
1. Provide details of academic and professional qualifications and date(s) obtained.		
ACADEMIC INSTITUTION ATTENDED	DIPLOMA/DEGREE/ PROFESSIONAL QUALIFICATION ATTAINED	YEAR COMPLETED

2. Provide details of membership(s) in professional organisations or institutions.			
ORGANISATION/ ASSOCIATION	MEMBERSHIP STATUS (e.g. Student, Associate,	MEMBER SINCE	MEMBERSHIP NUMBER (if applicable)

Fellow, etc.)

PART 4 - EMPLOYMENT DETAILS (please duplicate page for more than one employer)

Please indicate positions held during the last five (5) years, listing the most recent appointment first. Please use additional pages as necessary.

1. NAME OF EMPLOYER

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.....

Telephone: Fax: Email:

2. NAME OF CONTACT PERSON

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3. ADDRESS OF EMPLOYER

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.....

4. PERIOD OF EMPLOYMENT: From: To:

5. NATURE OF BUSINESS

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.....
.....
.....

6. POSITION(S) HELD

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7. RESPONSIBILITIES

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.....

8. NAME OF REGULATORS (if any)

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.....

9. REASON FOR LEAVING EMPLOYMENT: Resignation Expiration
of Contract

 Redundancy Retirement Termination/Dismissal
Other.....

.....
.....
(please specify)

PART 5 - FITNESS AND PROPRIETY

This section should be completed by placing a circle around the appropriate answer. Please list any incident or action in any jurisdiction, with the exception of minor traffic offences. Please note that no time restriction applies to the matters you are asked to disclose. If the answer to any of the following questions is "YES", please provide full details on a separate sheet. This section should be completed by or on the behalf of the proposed Compliance/Reporting Officer.

1. Have you ever been arrested, detained, charged, indicted or summoned to answer for any criminal offence or violation for any reason whatsoever, regardless of the result of the event, in any country? (Except MINOR traffic offences)

YES NO

If "yes" give details. List all cases without exception. Please use additional pages as necessary.

Date of Arrest or Detention, etc.

Age

Charge

Location

Result

2. Do you have any criminal or civil charges pending?

YES NO

3. Has any disciplinary, enforcement, disqualification or similar proceeding been taken against you by any professional body, regulatory body or association or are any such proceedings pending?

YES NO

If "yes", name the regulatory or professional body or association:

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1. Will the proposed Compliance/Reporting Officer be employed under a full time contract of employment?

YES NO

2. If the answer to 1 above is "no" provide details of employment with regulated entity.

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3. Will the proposed Compliance/Reporting Officer also serve as the regulated entity's Reporting Officer?

YES NO

If "no" what is the name of the Reporting officer?

.....

4. What other positions or offices (if any) does or will the proposed Compliance/Reporting Officer hold with the firm?

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PART 1 - REGULATED ENTITY

5. NAME OF REGULATED ENTITY

.....
.....

6. ADDRESS OF REGULATED ENTITY

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.....
.....
.....

7. TYPE OF BUSINESS CONDUCTED (Please tick all applicable boxes)

- | | |
|-------------------------------------|-------------------------|
| Assurance Business | International Banking |
| Corporate Business/Service Provider | Credit Union |
| Deposit Taking Business | Insurance Company |
| Investment Business | Insurance Manager |
| Trust Business | Money Services Business |
| Citizenship by Investment | Gaming |
| Banking | |

Other.....

8. NAME OF CONTACT PERSON

Name:

Position:

Telephone:

Fax:

Email:

*Delete as appropriate

The following declaration should be completed by the proposed Compliance/Reporting officer in relation to the information provided in sections 2, 3, 4 and 5.

I certify that the information provided in sections 2, 3, 4 and 5, is to the best of my knowledge and belief, complete and true and there are no other facts or matters relevant to this application of which the FSRC should be aware. I undertake to inform the FSRC, forthwith, of material changes to the information supplied on this application.

Name of proposed Compliance/Reporting Officer:

.....

Signature:

Date:	
AUTHORISATION TO SEEK ADDITIONAL INFORMATION		
I hereby authorise the FSRC to contact all relevant authorities and authorise said authorities to provide you with whatever information you may request.		
Name of proposed Compliance/Reporting Officer:		
.....		
Signature:		
Date:		
Please forward to: The Financial Services Regulatory Commission (St Kitts/Nevis* Branch)		
<p><i>"Please be advised, that in accordance with Section 8 of the Perjury Act, it is an offence punishable by a maximum fine of thirty thousand dollars or at least five years imprisonment for a person to knowingly make either</i></p> <p>(a) a false voluntary declaration; or</p> <p>(b) a false statement when any act requires information to be provided."</p>		

<i>*Circle as appropriate</i>			
FORM 2 RENEWAL APPLICATION COMPLIANCE/REPORTING OFFICER			
<u>PART 2 - EDUCATION AND QUALIFICATIONS</u>			
1. Provide details of academic and professional qualifications and date(s) obtained.			
ACADEMIC INSTITUTION ATTENDED	DIPLOMA/DEGREE/ PROFESSIONAL QUALIFICATION ATTAINED	YEAR COMPLETED	

against you by any professional body, regulatory body or association or are any such proceedings pending?

YES **NO**

If "yes", name the regulatory or professional body or association:

.....

19. Have you been found guilty of conducting any unauthorised regulated activities or been investigated for possible conduct of unauthorised regulated activities?

YES **NO**

20. Have you been the subject of any regulatory investigation or is any such investigation pending?

YES **NO**

21. Has any application for your regulatory approval ever been refused?

YES **NO**

22. Have you ever been obstructive, misleading or untruthful in dealing with a court, tribunal, official inquiry, regulatory or professional body?

YES **NO**

23. Have you been subject of any bankruptcy proceedings or filed for bankruptcy, entered into a compromise agreement or other similar arrangement with your creditors or had receiver appointed in respect of any property?

YES **NO**

24. Have you at any time failed to satisfy any personal or business related debts due?

YES **NO**

25. Have you been the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity?

YES **NO**

26. Have you ever been expelled or excluded from, or refused admission to, a professional body?

YES **NO**

27. Have you been refused, restricted in, or had suspended, the right to carry on trade, business or profession for which a specific license, authorization, registration, membership or other permission is required?

YES **NO**

28. Have you ever been asked to resign, or been dismissed from any fiduciary office or position of trust?

YES **NO**

29. Are you aware of any matter relating to your character, reputation or financial position that the FSRC may regard as relevant in considering this application?

YES **NO**

30. Has any business with which you have been associated as a director, senior officer or officer ever entered a formal insolvency process or ceased trading whilst insolvent, while you were associated with it or within one year after your association ceased?

YES **NO**

The information provided in sections 1 and 5 is, to the best of our knowledge and belief, complete and true. There are no other facts or matters relevant to this application of which the FSRC should be aware. We undertake to inform the FSRC forthwith, of any material changes to the information supplied on this application form.

Signed on behalf of the applying regulated entity:

Name of Authorized

Signatory:.....

Position:.....

Signature: Date:
.....

The following declaration should be completed by the proposed Compliance/Reporting officer in relation to the information provided in sections 2, 3, 4 and 5.

I certify that the information provided in sections 2, 3, 4 and 5, is to the best of my knowledge and belief, complete and true and there are no other facts or matters relevant to this application of which the FSRC should be aware. I undertake to inform the FSRC, forthwith, of material changes to the information supplied on this application.

Name of proposed Compliance/Reporting Officer:

.....

Signature: Date:.....

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I hereby authorise the FSRC to contact all relevant authorities and authorise said authorities to provide you with whatever information you may request.

5. Does the proposed Compliance Officer/Reporting Officer hold any shares in, or have any interest, legal or equitable, direct or indirect, in the regulated entity?

YES NO

6. If the answer to 5 above is “yes” provide details of share holding or other interest.

.....
.....

7. Is the proposed Compliance/Reporting Officer able, directly, to exercise more than 10% of the voting power of the regulated entity?

YES NO

8. If answer to 7 above is “yes” provide details.

.....
.....
.....

9. Provide an organisational chart which includes the proposed Compliance/Reporting Officer’s position.

PART 7 - DECLARATIONS