

**SAINT CHRISTOPHER AND NEVIS**

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**STATUTORY RULES AND ORDERS**

**No. 9 of 2021**

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**Anti Proliferation (Financing of Weapons of Mass Destruction) Regulations, 2021**

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The Minister hereby makes these Regulations in exercise of the powers conferred on him by Sections 3 and 8 of the Anti-Proliferation (Financing of Weapons of Mass Destruction) Act, 2020.

*[Published 26<sup>th</sup> March 2021, Extra-Ordinary Gazette No. 15 of 2021]*

**PART I**

**1. CITATION.**

These Regulations may be cited as the Anti-Proliferation (Financing of Weapons of Mass Destruction) Regulations, 2021.

**2. INTERPRETATION.**

In these Regulations, unless the context otherwise requires,

“Anti-Proliferation Act” means the Anti-Proliferation (Financing of Weapons of Mass Destruction) Act, No. 10 of 2020;

“applicant for business” means a person seeking to form a business relationship or carry out a one-off transaction with a regulated business who is carrying on relevant business in or from within 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 proliferation financing, taking into account the type of customer, business relationship, product or transaction concerned; and
  - (ii) times when either a regulated business suspects proliferation financing 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  - (ii) times when a regulated business becomes aware that documents, data or information that he or she holds, are out of date or no longer relevant for the purposes of applying the procedure described in regulation 4(3)(b);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 stocks 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;

“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 regulated business appointed under regulation 12;

“enhanced customer due diligence procedures” means customer due diligence procedures that involve appropriate measures to compensate for a higher risk of proliferation financing.

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

- (a) carried on in a country or territory other than St. Christopher and 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 and which business may only be carried on by a person registered or otherwise authorised for that purpose under the law of that country or territory;
- (d) subject to requirements to forestall and prevent proliferation financing that are consistent with those in the FATF recommendations in respect of that business; and
- (e) supervised, for compliance with the requirements of FATF;

- (f) carried on in a country or territory other than St. Christopher and Nevis where the level of the country's risk is assessed and the information on this risk assessment is available.”

“FATF” means the Financial Action Task Force on money laundering, terrorist financing and proliferation financing;

“Guidance Notes” means the Guidance Notes issued pursuant to the Financial Services Regulatory Commission Act, Cap 21.10;

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

“politically exposed person or PEP” 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;
  - (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, that is someone 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 subparagraph (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.
- (d) individuals who are or who have been entrusted domestically with prominent public functions including Heads of State or of Government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, and important political party officials.”

“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;

“one-off transaction” means

- (a) a transaction amounting to not less than forty thousand five hundred dollars but does not include a transaction conducted with 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 transactions 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.

“regulated business” includes the business of being engaged in or providing, financial services or related products or any regulated business activity that is referred to in Schedule 1 of the POCA;

“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;

“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;

“sufficient information” means any information obtained by applying the identification procedures in Regulation 4;

“UNSC” means the United Nations Security Council;

“UNSCR” means the United Nations Security Council Resolution.

- (2) For the purposes of these Regulations,
- (a) a business relationship formed by any regulated business 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 Financial Services (Implementation of Industry Standards) Regulations, 2011;
  - (c) a reference to the expression “key staff” means 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 proliferation financing;
  - (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 proliferation financing; 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 regulated business need only have regard to the information which is in that person’s possession or that is publicly known information.

## **PART II**

### **3. GENERAL REQUIREMENTS.**

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

- (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, preventing and deterring proliferation financing;
- (b) For the purposes of subregulation 1(a),

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

(2) A regulated business 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 proliferation financing or the internal procedures of the regulated business 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); and
    - (ii) the provisions of the Anti-Proliferation (Financing of Weapons of Mass Destruction) Act, Anti-terrorism Act, the Financial Intelligence Unit Act, the Financial Services Regulatory Commission Act, the Proceeds of Crime Act and any regulations made thereunder as well as 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, or on behalf of, any person who is, or appears to be, engaged in proliferation financing;
    - (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);
    - (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 that are otherwise sanctioned by the United Nations for purposes connected with the prevention of proliferation financing;
    - (iv) unusual patterns of transactions which have no apparent economic or visible lawful purpose, and

- (v) any other activity which the regulated business regards as particularly likely by its nature to be related to proliferation financing;
- (b) specify the taking of additional procedures, where appropriate, to prevent the use for proliferation financing of products and transactions which are susceptible to anonymity;
- (c) determine whether for proliferation financing purposes a customer is a foreign politically exposed person, domestic politically exposed person or a person who has been entrusted with a prominent function by an international organization;
- (d) identify and assess the proliferation financing risks that may arise in relation to
  - (i) the development of new products and new business practices, including new delivery mechanisms; and
  - (ii) the use of new or developing technologies for both new and pre-existing products, however in the case of financial institutions, such risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies

provided that a regulated business shall take appropriate measures to manage and mitigate the risks that have been identified and assessed.”

- (e) address any specified risks associated with non-face-to-face business relationships or transactions;
- (f) determine whether a person or entity is designated to the United Nations Security Council.

(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 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, 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 regulated business shall submit for the approval of the Commission appropriate policies for the application of

- (a) customer due diligence procedures in accordance with regulations 4, 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 proliferation financing.

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

(7) A regulated business commits an offence where it acts in a manner that is contrary to the provisions of subregulations (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, preventing and deterring proliferation financing”, 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 proliferation financing 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;

### **3A. RISKASSESSMENT.**

(1) A regulated person is required to take appropriate steps to identify, assess, and understand its proliferation financing risks for the following

- (a) customers, countries or geographic areas; and
- (b) products, services, transactions or delivery channels.

(2) Where a regulated person acts in accordance with the provisions of subregulation (1), the steps taken shall include requirements to

- (a) document their risk assessments;
- (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) keep the risk assessments up to date; and
- (d) have appropriate mechanisms to provide risk assessment information to the Commission.

(3) A regulated person is required to:

- (a) have policies, controls and procedures, which are approved by senior management, to enable it to manage and mitigate the risks that have been identified either by the country or by the financial institution;
- (b) monitor the implementation of those controls and to enhance them if necessary; and
- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.



(4) In the case of new products, services and delivery channels, the regulated person is required to:

- (a) identify and assess the proliferation financing risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.
- (b) undertake the risk assessments prior to the launch or use of such products, practices and technologies; and
- (c) take appropriate measures to manage and mitigate the risks.

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

- (1) A regulated business 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 regulated business suspects proliferation financing;
    - (ii) the regulated business has doubts about the veracity or adequacy of documents, data or information previously obtained; or
    - (iii) a customer is carrying out occasional transactions, including wire transfers, above the applicable designated threshold, including situations where the transaction is carried out in a single operation or in several operations that appear to be linked.”
- (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;
    - (iii) where sub-paragraph (ii) does not apply, identifying each individual who is that third party’s beneficial owner or controller; or
    - (iv) identifying the person acting on behalf of a third party who is an individual.
  - (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 authorised 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 regulated business 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 matter remains unresolved.
- (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 regulated business' 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; and
    - (ii) satisfies the regulated business through the use of documents, data or other information obtained from a reliable and independent source, that the evidence of identification referred to in subparagraph (i) is conclusive.
- (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 proliferation financing occurring.
- (6) For the purposes of subregulation (2), the identification procedures shall include the assessment by the regulated business of the risk that any business relationship or one-off transaction will involve proliferation financing, 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 regulated business has a business relationship with a customer that started before these Regulations came into force, the regulated business shall apply customer due diligence procedures to that relationship within sixty days after the coming into force of these Regulations.

(9) Where a regulated business carries out a transaction, he shall apply identification procedures as soon as reasonably practicable on the following terms:

- (a) if a regulated business 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 regulated business 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 regulated business is unable to comply with regulation 4(1)(b) in respect of a business relationship, that person shall terminate that relationship;
- (d) if a regulated business 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 regulated business is unable to apply the identification procedures in the cases described in regulation 4(1)(c) in respect of any business relationship or transaction with a person, the regulated business 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 regulated business 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 regulated business, having made a report under procedures maintained pursuant to 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 regulated business is unable to apply the identification procedures at an appropriate time for the purposes of subregulation (7) in respect of a business relationship, the regulated business shall terminate that relationship;
  - (h) in a situation where paragraph (a), (b), (c), (d), (e) or (g) applies, a regulated business 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 that person's 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 regulated business is acting with the consent of that reporting authority;
  - (l) where a regulated business 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 numbered accounts, anonymous accounts or accounts which are in fictitious names; or
  - (b) conduct business with a shell bank.
- (11) (a) For the purpose of this Regulation
- (i) a correspondent banking relationship involves the provision of services such as bank accounts or the facilitation of funds transfers or securities transactions;
  - (ii) 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 regulated business that is a correspondent bank shall:

- (a) gather sufficient information about the respondent to understand fully the nature of its business;
- (b) determine from publicly available information the reputation of the respondent and the quality of its supervision, including whether it has been subject to a proliferation financing investigation or regulatory action;
- (c) assess the respondent's systems and controls to combat proliferation financing 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 proliferation financing 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 regulated business 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 regulated business that is a correspondent bank shall satisfy itself that its respondents do not themselves provide correspondent banking services to shell banks;
- (i) A regulated business 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 proliferation financing.

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

(14) Notwithstanding the provisions of regulation 4, where a regulated business

- (a) identifies a customer or beneficial owner who has been designated by the UNSC pursuant to any UNSCR that relate to the prevention or disruption of the financing of the proliferation of weapons of mass destruction; or
- (b) is informed by the Attorney General that a customer or beneficial owner has been designated in respect of the financing of proliferation of weapons of mass destruction pursuant to Section 3 or 7 of the Anti-Proliferation Act,

the regulated business shall freeze without delay or prior notice in accordance with Section 4 of the Anti-Proliferation Act.

## 5. ENHANCED CUSTOMER DUE DILIGENCE.

- (1) This regulation applies in the following cases where:
  - (a) a regulated business who is registered under the Banking Act, the Nevis International Banking Ordinance or the Financial Services (Trust and Corporate Business) Regulations, 2019 has or proposes to have a banking or a similar relationship with an institution whose address for that purpose is outside St. Christopher and Nevis;
  - (b) a regulated business proposes to have a business relationship or carry out a transaction with a foreign politically exposed person, a domestic politically exposed person or a person who has been entrusted with a prominent public function by an international organisation, when there is a higher risk business relationship with such a person;
  - (c) a customer has not been physically present for identification purposes; or
  - (d) the regulated business
    - (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 regulated business shall apply the following measures on a risk-sensitive basis
  - (a) enhanced customer due diligence procedures where regulation 4(1) paragraphs (a) to (d) apply;
  - (b) enhanced customer due diligence procedures in any other situation which by its nature can present a higher risk of proliferation financing; and
  - (c) enhanced customer due diligence procedures in business relationships and transactions with natural and legal persons, including financial institutions, from countries for which this is called for by the FATF.
- (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 regulated business to assist the Reporting Authority, the Commission or any other competent authorities.
- (4)
  - (a) Where the minimum anti-proliferation financing requirements of St. Christopher and Nevis differ from the requirements of branches and subsidiaries located outside of the Federation, the higher standard of enhanced due diligence measures shall be applied to transactions concerning those branches and subsidiaries; and
  - (b) The regulated business shall inform the Commission when a foreign branch or subsidiary is unable to observe appropriate anti-proliferation measures as a result of prohibitive laws of the host country.
- (5) A regulated business shall:

- (a) establish risk management systems to determine whether a customer or the beneficial owner is a high risk person or a PEP;
  - (b) obtain senior management approval before establishing or continuing, for existing customers, business relationships where a customer or beneficial owner is a high risk person or a PEP;
  - (c) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and
  - (d) conduct enhanced ongoing monitoring in relation to the business relationship between itself and a high risk person or a PEP.
- (6) A regulated business who acts in contravention of subregulations (2), (3), (4) or (5), commits an offence and is liable on conviction to a fine of one hundred and fifty thousand dollars.
- (7) Notwithstanding the provisions of regulation 5, where a regulated business
- (a) identifies a customer or beneficial owner who has been designated by the UNSC pursuant to any UNSCR that relate to the prevention or disruption of the financing of the proliferation of weapons of mass destruction; or
  - (b) is informed by the Attorney General that a customer or beneficial owner has been designated in respect of the financing of proliferation of weapons of mass destruction pursuant to Section 3 or 7 of the Anti-Proliferation Act,

the regulated business shall freeze without delay or prior notice in accordance with Section 4 of the Anti-Proliferation Act.

#### **5A. THRESHOLD TRANSACTIONS.**

Where a customer seeks to transact in an amount that is equivalent to or greater than a threshold of ten thousand dollars, a regulated business shall apply customer due diligence measures in relation to that transaction.

#### **6. SIMPLIFIED CUSTOMER DUE DILIGENCE FOR LOW RISK SITUATIONS.**

(1) A regulated business shall only apply simplified customer due diligence measures where lower risks have been identified through an adequate analysis of risks by the regulated business, by competent authorities of St. Christopher and Nevis or by a credible standards-setting international institution or body.

(2) Notwithstanding the provisions of subregulation (1), where there is a suspicion of proliferation financing, a regulated business shall not use simplified due diligence measures but shall take the necessary actions pursuant to the provisions of regulation 5 on enhanced due diligence.

(3) Notwithstanding the provisions of subregulation (1) and (2), where a regulated business

- (a) identifies a customer or beneficial owner who has been designated by the UNSC pursuant to any UNSCR that relate to the prevention or disruption of the financing of proliferation of weapons of mass destruction; or

- (b) is informed by the Attorney General that a customer or beneficial owner has been designated in respect of the financing of proliferation of weapons of mass destruction pursuant to Section 3 or 7 of the Anti-Proliferation Act,

the regulated business shall freeze without delay or prior notice in accordance with Section 4 of the Anti-Proliferation Act.

## **7. IDENTIFICATION PROCEDURES IN RELATION TO INTRODUCED PERSONS AND INTERMEDIARIES.**

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

- (2) (a) Notwithstanding the provisions of paragraph (b), a regulated business 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.

- (b) Subject to the conditions in subregulation (6) being met, a regulated business may rely on an intermediary or introducer to apply the identification procedures specified in subregulation (4) and (5) in respect of

- (i) that other party’s customers; and
- (ii) the persons to which subregulation (7) applies

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

- (c) For the purposes of this subregulation a regulated business 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.

(3) The reliance of a regulated business on the other party pursuant to subregulation (2)(b) 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.
- (b) the condition that notwithstanding the consent of the other party in (a), the regulated business shall remain liable for any failure to apply the necessary identification procedures.

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



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

- (6) The conditions mentioned in subregulation (2) are that
- (a) the regulated business knows or has reasonable grounds for believing that the other party is
    - (i) a regulated business 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 regulated business obtains adequate assurance in writing from the other party that it
    - (i) has applied the identification procedures referred to in Regulation 4,
    - (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 regulated business without delay, once that information is requested;
  - (c) where the other party is an introducer, the regulated business obtains, in writing
    - (i) confirmation that each customer referred in to subregulation (2)(b) is an established customer of that other party, and
    - (ii) sufficient information about each customer described in subregulation (2)(b) to enable the regulated business to assess the risk of proliferation financing involving that customer; and
  - (d) where the other party is an intermediary, the regulated business obtains in writing sufficient information about the customers for whom the intermediary is acting to enable the regulated business to assess the risk of proliferation financing involving that customer.
- (7) 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.
- (8) 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 regulated business so that the intermediary becomes a customer of the regulated business;

(b) an introducer is a person who has a business relationship with a customer and who introduces that customer to a regulated business with the intention that the customer will form a business relationship or conduct a one-off transaction with the regulated business so that the introducer's customer also becomes a customer of the regulated business.

(9) For the purposes of subregulation (6)(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.

(10) Notwithstanding the provisions of this regulation, in any case where there is a suspicion of proliferation financing, a regulated business shall apply enhanced due diligence procedures in a manner consistent with regulation 4.

(11) Notwithstanding the provisions of this regulation, the regulated business shall retain ultimate responsibility for ensuring compliance with customer due diligence requirements, particularly the identification and verification of customers.

## **8. RECORD KEEPING PROCEDURES.**

(1) A regulated business shall keep the records specified in subregulation (2).

(2) A regulated business 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.

(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 regulated business in the course of any business relationship or one-off transaction.

(4) The record to which subregulation (2)(b) refers shall in any event include sufficient information to enable the reconstruction of individual transactions.

(5) The regulated business shall keep the records to which subregulation (2) refers in such a manner that those records can be made available on a timely basis to the Commission, a police officer or customs officer for the purposes of complying with a requirement under any relevant enactment.

(6) Where the records described in subregulation (2)(a)(i) relate to a business relationship, a regulated business 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 (2)(a)(ii) relate to a one-off transaction, a regulated business 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 regulated business shall keep the records described in subregulation (2)(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 (6) a one-off transaction is completed on the date when all the activities taking place in that transaction have been done.

(10) The Commission may notify to the regulated business a period longer than five years for the purposes of subregulations (5), (6) or (7) and such longer period shall then apply instead of the five years specified in those paragraphs.

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

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

## **9. MAINTAINING A REGISTER OF PROLIFERATION FINANCING ENQUIRIES.**

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

(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.

## **10. REPORTING OFFICER.**

(1) A regulated business, 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 regulated business.

(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 regulated business shall appoint another individual within twenty-one days as the reporting officer in respect of the financial services business being carried on by the regulated business.

(4) Subject to subregulation (5), a regulated business 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.

(7) Pursuant to subregulation (1), the appointment of a reporting officer by a regulated business shall be subject to the prior written approval of the Financial Services Regulatory Commission on such terms as may be prescribed in Regulations.

## **11. REPORTING PROCEDURES AND REQUIREMENTS.**

(1) The internal reporting procedures to be maintained by a regulated business 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 proliferation financing; or that funds are linked, or related to or to be used for the financing of proliferation of weapons of mass destruction or by organisations, entities or persons who finance the proliferation of weapons of mass destruction;
- (c) if a report is made or forwarded to the reporting officer, it shall be considered by the reporting officer, in the light of all other relevant information, for the purpose of determining whether or not
  - (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 proliferation financing; or
  - (ii) that funds are linked, or related to or to be used for the financing of proliferation of weapons of mass destruction or by organisations, entities or persons who finance the proliferation of weapons of mass destruction;
- (d) the reporting officer, shall have access to all other relevant information that may be of assistance to him or her in his or her 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 proliferation financing; or

- (ii) knows otherwise or has reasonable grounds for suspecting that another person is engaged in proliferation financing,

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 subparagraphs (a) or (b), is disclosed in writing, to the Reporting Authority as soon as reasonably practicable but not more than five working days;

- (f) a regulated business 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 proliferation financing, or where there are grounds for believing that the funds in that transaction could be linked, related to or are to be used for proliferation financing, the relevant business shall submit a suspicious transaction report to the Reporting Authority within twenty-four hours of identification.
- (c) Where the report referred to in subparagraph (b) is made, or other information submitted in good faith, a regulated business 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 regulated business 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 regulated business 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 regulated business, its employees, staff, directors, owners or other authorised representative who unlawfully 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 proliferation financing, the Commission shall disclose that information to the Reporting Authority within twenty-four hours.

(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 the 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 proliferation financing, the first person shall within twenty-four hours disclose that information to a designated reporting authority and the Commission.

(4) Where a regulated business 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.

## **12. DUTY TO APPOINT COMPLIANCE OFFICER.**

(1) A regulated business, other than a sole trader, shall appoint or designate one of his staff 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 regulated business 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 regulated business as the Regulator may require;

(c) be responsible for ensuring compliance by staff of the regulated business with the following:

(i) the provisions of these Regulations and any other law relating to proliferation financing;

- (ii) the provisions of any manual of compliance procedures established pursuant to paragraph (b); and
- (iii) the internal reporting procedures established under regulation 11;
- (d) act as a liaison between the regulated business and the Regulator in matters relating to compliance with the provisions of these Regulations and any other law or directive with respect to proliferation financing; and
- (e) prepare and submit to the Regulator written reports on the regulated business's compliance with the provisions of these Regulations and any other law or directive relating to proliferation financing, 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 regulated business shall appoint another individual forthwith as Compliance Officer in respect of the financial services business being carried on by the regulated business.

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

### **13. DUE DILIGENCE AUDIT.**

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

### **14. OFFENCES AND PENALTIES.**

(1) A person who fails to comply with the requirements of these Regulations, particularly any directive issued under regulation 15 or the requirements of the Financial Services (Implementation of Industry Standards) Regulations, 2011, 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 in the case of a continuing offence, 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 Financial Services (Implementation of Industry Standards) Regulations, 2011 which may apply to that person; or
- (b) any other relevant guidance issued by 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 body corporate commit 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) shall apply equally in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she 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, as the case may be, a person concerned in the management or control of the partnership; 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.

## **15. DIRECTIVES.**

(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 proliferation financing 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.

## **16. NOTICE OF DESIGNATION IN RESPECT OF PROLIFERATION FINANCING.**

(1) A person, group or entity which is designated in respect of the financing of proliferation of weapons of mass destruction pursuant to section 3 or 7 of the Anti-Proliferation Act shall, within one week of the gazetting of the Order, be informed by the Minister of that designation including a notification of the procedure for having such a designation revoked.

(2) Notwithstanding the provisions of subregulation (1), the Minister shall only be required to take such steps that would be considered reasonably necessary to notify the designated person or group of the designation in respect of proliferation financing.



(3) Where a designation has been made pursuant to section 3 or 7 of the Anti-Proliferation Act, within one month of the gazetting of the Designation Order, the fact of the designation along with the relevant procedures for obtaining a revocation of that designation, shall be published in at least one newspaper of general circulation within the Federation.

#### **17. PROVISION FOR BASIC LIVING EXPENSES OF DESIGNATED PERSON, GROUP OR ENTITY IN RESPECT OF PROLIFERATION FINANCING.**

(1) Where pursuant to an Order made under section 3 or 7 of the Anti-Proliferation Act, the funds of a designated person, group or entity in respect of proliferation financing are frozen in Saint Christopher and Nevis, allowance shall be made for provision from the accounts in question of basic living expenses for the person as well as his or her immediate family and dependents.

(2) The question of what are “basic living expenses” shall be determined by the Registrar of the High Court in consultation with the Minister of Justice, based on representations made to him or her by the designated person, group or entity in respect of proliferation financing but notwithstanding any such representations, the term “basic living expenses” shall include the following:

- (a) food;
- (b) clothing;
- (c) shelter;
- (d) medicines and medical treatment;
- (e) taxes;
- (f) insurance premiums; and
- (g) public utility charges

(3) Further to subregulation (2) the Registrar may also determine whether access to funds may be allowed for the purpose of reasonable legal expenses.

(4) Where a decision is made by the Registrar for provision of access to the funds in question, he or she shall notify the Minister of that decision.

(5) (a) Pursuant to the notification referred to in subregulation (4), the Minister shall notify the Committee established pursuant to the United Nations Security Council Resolution 1718 (2006) or the United Nations Security Council Resolution 2231 (2015) as the case may be, of the intention to authorise access to funds, assets or resources of a designated person, group or entity for basic living expenses or for necessary extraordinary expenses.

(b) Within forty-eight hours, in the absence of a negative response from the Committees pursuant to paragraph (a), the Minister may proceed to authorise access to the funds, assets or resources on the terms indicated.

#### **18. JUDICIAL REVIEW.**

A person or group that has been so designated in accordance with section 4 of the Act may, within twenty one days of being informed of the designation, apply to the High Court for judicial review of the action of the Minister.

## **19. USE OF GUIDANCE NOTES.**

In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a regulated business 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.

### **PART III De-Listing Procedures**

## **20. FOR THE PURPOSES OF THIS PART.**

- (a) “de-listing” means removal of any person, group of persons or entity from the list of designated persons in respect of the financing of the proliferation of weapons of mass destruction pursuant to section 3 or 7 of the Anti-Proliferation Act; and
- (b) “Special Committee” means the Special Committee established under regulation 4.

## **21. REQUEST FOR DE-LISTING.**

Any application made pursuant to section 4(3) of the Act, for de-listing shall be made to the Minister in writing stating the grounds on which such an application is made.

## **22. SPECIAL COMMITTEE.**

(1) The Minister may appoint a Special Committee to hear any requests for de-listing that may be forwarded to him or her.

(2) The Special Committee referred to in subsection (1) shall consist of the following persons

- (a) a senior officer representing the Ministry responsible for matters of national security;
- (b) the Permanent Secretary of the Ministry responsible for Homeland Security or his or her nominee;
- (c) the Director of the Financial Intelligence Unit or his or her nominee;
- (d) the Director of the Financial Services Regulatory Commission or his or her nominee;
- (e) a senior officer representing the Legal Department.

## **23. HEARING.**

(1) Within thirty days of receiving an application for de-listing, the Minister may schedule a hearing for the applicant before a Special Committee to determine the merits of the applicant’s case and shall notify the applicant accordingly.

(2) An applicant for de-listing shall be entitled to have legal representation at the hearing and to put forward such evidence to support his or her request.

(3) Within seven days after the hearing, the Special Committee shall notify the Minister of its recommendation to either let the designation stand or to revoke same.

(4) Where the Minister receives a notification pursuant to subsection (3) he or she shall inform the applicant without delay of his or her decision.

#### **24. APPEAL.**

Where an applicant is dissatisfied with the decision of the Minister then he or she, may within fourteen days after receiving notification of that decision, make an appeal to the High Court.

#### **25. POWERS AND FUNCTIONS OF THE SPECIAL COMMITTEE.**

(1) The Special Committee shall have such powers and functions as are reasonably necessary for the execution of its functions or incidental to their proper discharge.

(2) The functions of the Special Committee are

- (a) to consider applications made under section 3(2) of the Act for de-listing;
- (b) to make recommendations to the Minister in respect of applications for de-listing;
- (c) to advise and make recommendations to the Minister on matters related to the de-listing of terrorists.

(3) The Special Committee may, in connection with the carrying out of its functions, consult and seek advice of such persons or bodies whether inside or outside of Saint Christopher and Nevis, as it considers appropriate.

#### **26. PROCEEDINGS OF SPECIAL COMMITTEE.**

The provisions of the Schedule shall have effect with respect to the Constitution, proceedings and other matters of the Special Committee.

### **SCHEDULE**

#### **Proceedings of Special Committee**

##### **1. APPOINTMENT OF MEMBERS.**

- (1) The members of the Special Committee shall be appointed by instrument in writing.
- (2) Each member of the Special Committee shall be eligible for re-appointment.
- (3) The appointment of any person as a member of the Special Committee and the termination of office of such person whether by death, resignation, revocation, effluxion of time or otherwise shall be notified and published in the Official Gazette.

##### **2. TERMS OF APPOINTMENT.**

A member of the Special Committee shall hold and vacate office in accordance with the terms of his or her instrument of appointment.

##### **3. APPOINTMENT OF CHAIRPERSON AND SECRETARY.**

The Committee shall appoint a Chairperson and a Secretary from amongst its members.

##### **4. SECRETARIAT**

- (1) The Secretariat for the Special Committee shall be serviced by a Secretariat from the Ministry responsible for the matters of national security.

- (2) The Special Committee shall have an administrative officer assigned to it from the Ministry responsible for National Security.
- (3) The administrative officer shall provide administrative, recording and secretarial support to the Special Committee and shall not have a vote.

#### **5. RESIGNATION.**

A member of the Special Committee may, at any time, resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson and such resignation shall take effect from the date of receipt of such instrument by the Minister.

#### **6. DISMISSAL.**

Where the Minister is satisfied that a member of the Special Committee

- (a) has been absent from meetings longer than three consecutive meetings without the permission of the Chairperson;
- (b) has become bankrupt or made arrangements with his or her creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unfit to discharge the function of a member of the Special Committee,

the Minister may declare his or her office as a member of the Special Committee to be vacant and shall notify the fact in such manner as the Minister thinks fit and thereupon, that office shall become vacant.

#### **7. VACANCIES AND TEMPORARY MEMBERSHIP.**

- (1) If any vacancy occurs in the membership of the Special Committee, such vacancy shall be filled by the appointment of another person who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, so however, that such appointment shall be made in the same manner and from the same category of persons, if any, as the appointment of the previous member.
- (2) Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed or elected shall be appointed or elected only for the remainder of such term.

#### **8. MEETINGS.**

- (1) The Special Committee shall meet at such times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such times and places and on such days as the Special Committee may determine.
- (2) Subject to subsection (5) the Chairperson may, at any time, summon a meeting of the Committee.
- (3) The Chairperson shall preside at a meeting of the Special Committee and in his or her absence the members of the Committee present shall elect one of their number to preside as Chairperson at that meeting.
- (4) The decisions of the Special Committee shall be by a majority of votes and in addition to an original vote, in any case in which the voting is equal, the Chairperson, or in his or

absence, any other member presiding at that meeting as Chairperson, shall have a casting vote.

- (5) The Chairperson shall summon a meeting of the Committee within 7 days
- (a) of a request to that purpose addressed to him or her by three members of the Special Committee; or
  - (b) of a direction to that effect addressed to him or her by the Minister.

## **9. QUORUM.**

At any meeting of the Special Committee, a quorum shall consist of three persons.

## **10. MINUTES.**

- (1) Minutes in proper form of each meeting of the Special Committee shall be kept by the Secretary or in his or her absence, such person as the Special Committee may appoint for the purpose.
- (2) A copy of the minutes of every meeting shall be submitted to the Minister within 14 days after the meeting.

## **11. MEMBERS NOT LIABLE.**

A member of the Special Committee shall not be personally liable for any act or default of the Special Committee done or omitted to be done in good faith in the course of its operations.

## **12. DISCLOSURE.**

A member of the Special Committee who is directly or indirectly interested in any matter which is being dealt with by the Special Committee shall

- (a) disclose the nature of his or her interest; and
- (b) shall not take part in any deliberation or decision of the Special Committee with respect to that matter.

## **13. REMUNERATION.**

The members of the Special Committee may be remunerated on such terms as the Minister may direct.

Dated this 26<sup>th</sup> day of March 2021.

TIMOTHY HARRIS  
*Minister responsible for Finance*