

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 47 of 2011

**ANTI-TERRORISM (PREVENTION OF TERRORIST FINANCING)
REGULATIONS, 2011**

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The Minister hereby makes these Regulations in exercise of the powers conferred on him by section 108 of the Anti-Terrorism Act, Cap. 4.02.

[Published 1st September 2011, Official Gazette No. 46 of 2011]

1. CITATION.

These Regulations may be cited as the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.

2. INTERPRETATION.

In these Regulations, unless the context otherwise requires,

“Act” means the Anti-Terrorism Act, Cap. 4.02;

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

“appropriate times” means

- (a) in respect of the application of identification procedures,
 - (i) times that are appropriate having regard to the degree of risk of terrorist financing, taking into account the type of customer, business relationship, product or transaction concerned; and
 - (ii) times when either a relevant person suspects terrorist 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 - (ii) times when a relevant person becomes aware that documents, data or information that he or she holds, are out of date or no longer relevant for the purposes of applying the procedure described in regulation 4(3)(b);

“beneficial owner or controller”

- (a) means a natural person who
 - (i) ultimately owns or controls a customer or other person on whose behalf a transaction is being conducted; or

- (ii) exercises ultimate, effective control over the management of a legal person or other entity; and
- (b) includes ultimate ownership or control whether it is direct or indirect; but
- (c) does not extend to a body corporate, the 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 is not known or capable of being ascertained at the time the arrangement is made;

“Commission” means the Financial Services Regulatory Commission established by section 3 of the Financial Services Regulatory Commission Act, 2009;

“compliance officer” means a senior officer of a relevant person 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 terrorist 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 terrorist 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;

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

“Guidance Notes” means the Guidance Notes issued pursuant to the Financial Services Regulatory Commission Act, 2009;

“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” 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 organization 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.

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

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

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

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

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

(2) For the purposes of these Regulations,

- (a) a business relationship formed by any relevant person is an established business relationship where that person has obtained, under procedures maintained in accordance with these Regulations, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;
- (b) the question as to what constitutes satisfactory evidence of identity may be determined in accordance with the Guidance Notes as issued by the Financial Services Regulatory Commission;
- (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 terrorist 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 terrorist 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 relevant person need only have regard to the information which is in that person’s possession or that is publicly known information.

3. GENERAL REQUIREMENTS.

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

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

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

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

- (a) take appropriate measures for the purpose of making employees aware of
 - (i) the procedures maintained under subregulation (1)(a); and
 - (ii) the provisions of the Anti-terrorism Act, the Financial Intelligence Unit Act, the Financial Services Regulatory Commission Act, the Proceeds of Crime Act and any regulations made 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 terrorist 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 terrorist financing;
 - (iv) unusual patterns of transactions which have no apparent economic or visible lawful purpose, and
 - (v) any other activity which the relevant person regards as particularly likely by its nature to be related to terrorist financing;
- (b) specify the taking of additional procedures, where appropriate, to prevent the use for terrorist financing of products and transactions which are susceptible to anonymity;
 - (c) determine whether for terrorist financing purposes a customer is a politically exposed person;
 - (d) prevent the misuse of technological developments in terrorist financing schemes;
 - (e) address any specified risks associated with non-face-to-face business relationships or transactions.

(4) The requirements of subregulation (1) (a) shall apply in relation to a person with whom, prior to the coming into force of these Regulations, a business relationship or 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 relevant person 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 terrorist financing.

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

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

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

- (1) A relevant person shall apply

- (a) identification procedures before the establishment of a business relationship or before carrying out a one-off transaction;
- (b) on-going identification procedures during a business relationship;
- (c) identification procedures where
 - (i) the relevant person suspects terrorist financing; or
 - (ii) the relevant person has doubts about the veracity or adequacy of documents, data or information previously obtained.

(2) Identification procedures referred to in subregulation (1)(a) and (1)(c) are procedures

- (a) for identifying the customer;
- (b) for determining whether the customer is legitimately acting for a third party and, if so
 - (i) identifying that third party;
 - (ii) where the third party is not an individual, understanding the ownership and control structure of that third party; or
 - (iii) where sub-paragraph (ii) does not apply, identifying each individual who is that third party's beneficial owner or controller;
- (c) in respect of a customer that is not an individual, for
 - (i) identifying any person purporting to act on behalf of the customer and verifying that the person is 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 relevant person fails to institute the requisite procedures as contemplated by this subregulation, it commits an offence and shall be liable on conviction to a fine of fifty thousand dollars and if after conviction, the contravention of the offence continues, to a further fine of two hundred and fifty dollars for each day that the 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 relevant person's knowledge of the customer, including the customer's business and risk profile; and
- (b) ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of applying the procedures described in sub-paragraph (a);

- (4) For the purpose of these Regulations, identification of a person means
- (a) establishing the true identity of that person, including that person's name and legal status and where that person is not an individual, verifying the legal status of the person; and
 - (b) obtaining evidence that
 - (i) is reasonably capable of verifying that the person to be identified is in fact one and the same as the customer, third party, beneficial owner or controller being identified; and
 - (ii) satisfies the relevant person 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 terrorist financing occurring.
- (6) For the purposes of subregulation (2), the identification procedures shall include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve terrorist 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 relevant person has a business relationship with a customer that started before these Regulations came into force, the relevant person shall apply customer due diligence procedures to that relationship within sixty days after the coming into force of these Regulations.
- (9) Where a relevant person carries out a one-off transaction, he shall apply identification procedures as soon as reasonably practicable on the following terms:
- (a) if a relevant person is unable to apply the identification procedures before the establishment of a business relationship or before the carrying out of a one-off transaction to the extent specified in regulation 4(1)(a), that person shall not establish that business relationship or carry out that one-off transaction;
 - (b) if a relevant person is unable to apply the identification procedures to the extent that they involve identification of a person in the circumstances described in subregulation (5) after the establishment of a business relationship, that person shall terminate that relationship;
 - (c) if a relevant person is unable to comply with regulation 4(1)(b) in respect of a business relationship, that person shall terminate that relationship;
 - (d) if a relevant person is unable to apply identification procedures as soon as reasonably practicable, in respect of a one-off transaction, that person shall

not complete or carry out any further linked transactions in respect of that one-off transaction.

- (e) subject to paragraph (f), if a relevant person is unable to apply the identification procedures in the cases described in regulation 4(1)(c) in respect of any business relationship or transaction with a person, the relevant person shall
 - (i) not establish that business relationship or carry out or complete the transaction; or
 - (ii) terminate that business relationship or not carry out or complete the transaction as the case requires.
- (f) the relevant person need not apply the identification procedures in the case described in regulation 4(1)(c)(i) in respect of any business relationship or transaction with a person if the relevant person, having made a report under procedures maintained 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 relevant person is unable to apply the identification procedures at an appropriate time for the purposes of subregulation (7) in respect of a business relationship, the relevant person shall terminate that relationship;
- (h) in a situation where paragraph (a), (b), (c), (d), (e) or (g) applies, a relevant person shall consider whether to make a report under regulation 11;
- (i) paragraphs (a), (b), (c), (d), (e) and (g) shall not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for 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 relevant person is acting with the consent of that reporting authority;
- (l) where a relevant person acts in contravention of paragraphs (a), (b), (c), (d), (e) or (g), it commits an offence and shall be liable on conviction to a fine of

fifty thousand dollars and, if the contravention continues after such conviction, the person commits a further offence and shall be liable on conviction to an additional fine of five hundred dollars for each day that the relationship in question is allowed to continue in violation of this regulation.

- (10) A regulated person shall not, in the course of a business relationship
- (a) operate or keep open, or keep 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 relevant person that is a correspondent bank shall:
- (a) gather sufficient information about the respondent to understand fully the nature of its business;
 - (b) determine the reputation of the respondent and the quality of its supervision;
 - (c) assess the respondent’s systems and controls to combat terrorist 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 terrorist 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 relevant person that is a correspondent bank shall not enter into a correspondent banking relationship, or continue an existing correspondent banking relationship, with a respondent that is a shell bank;
 - (h) A relevant person that is a correspondent bank shall satisfy itself that its respondents do not themselves provide correspondent banking services to shell banks;
 - (i) A relevant person that is a correspondent bank shall not enter into a banking relationship where it has knowledge or suspicion that the respondent, or any of its customers is engaged in the financing of terrorism.

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

5. ENHANCED CUSTOMER DUE DILIGENCE.

(1) This regulation applies in the following cases where:

- (a) a relevant person who is registered under the Banking Act, the Nevis Offshore Banking Ordinance, 1996 as amended, or the Financial Services Regulations Order No. 25 of 1997 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 relevant person proposes to have a business relationship or carry out a one-off transaction with a politically exposed person;
- (c) a customer has not been physically present for identification purposes; or
- (d) the relevant person
 - (i) intends to conduct business transactions with persons, including legal persons and other financial institutions from or in countries which do not apply or insufficiently apply the FATF Recommendations; or
 - (ii) has a foreign branch or subsidiary in countries which do not, or which insufficiently apply the FATF Recommendations;

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

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

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

- (4) (a) Where the minimum anti-terrorism 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 with the consent of the Commission to transactions concerning those branches and subsidiaries; and
- (b) The relevant person shall inform the Commission when a foreign branch or subsidiary is unable to observe appropriate anti-terrorism measures as a result of prohibitive laws of the host country.

(5) A relevant person shall:

- (a) obtain senior management approval for establishing business relationships with politically exposed persons;
- (b) take reasonable measures to establish the source of wealth and source of funds;
- (c) conduct enhanced ongoing monitoring of the business relationship.

(6) A relevant person who acts in contravention of subregulations (2), (3), (4) or (6), commits an offence and is liable on conviction to a fine of one hundred and fifty thousand dollars.

6. REDUCED CUSTOMER DUE DILIGENCE FOR LOW RISK SITUATIONS.

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

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

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

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

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

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

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

(7) Where the customer of a relevant person is

- (a) a regulated person; or
- (b) a person who carries on equivalent business to any category of regulated business, the relevant person need not comply with his or her obligations under regulation 4 (1) in respect of those procedures mentioned in paragraphs (a) and (c) of regulation 4(2).

(8) Where

- (a) a person is authorized to act on behalf of a customer;
- (b) the customer is not a relevant person;
- (c) the person who is so authorized acts on behalf of the customer in the course of employment by a financial services business; and
- (d) the financial services business is either a regulated business or equivalent business to a regulated business, the relevant person need not comply with his or her obligations under regulation 4 in respect of the procedure mentioned in regulation 4(2) paragraphs (a) to (d).

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

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 relevant person shall satisfy itself that the introducer or intermediary has appropriate customer due diligence processes in place prior to entering into business with that introducer or intermediary.

(b) Subject to the conditions in subregulation (6) being met, a relevant person 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 relevant person’s obligation under regulation 4 to apply those specified identification procedures.

(3) The reliance of a relevant person 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 relevant person shall remain liable for any failure to apply the necessary identification procedures.

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

(5) Where the relevant person 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 relevant person knows or has reasonable grounds for believing that the other party is

(i) a relevant person in respect of which the Commission discharges supervisory functions in respect of that other party’s financial services business, or

(ii) a person who carries on equivalent business;

(b) the relevant person obtains adequate assurance in writing from the other party that he

(i) has applied the identification procedures mentioned in subregulation (1),

(ii) is required to keep and does keep a record of the evidence of the identification, as described in regulation 4(4), relating to each of the other party’s customers,

(iii) will provide the information in that record to the relevant person at the relevant person’s request;

- (c) where the other party is an introducer, the relevant person obtains, in writing
 - (i) confirmation that each customer referred in 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 relevant person to assess the risk of terrorist financing involving that customer; and
 - (d) where the other party is an intermediary, the relevant person obtains in writing sufficient information about the customers for whom the intermediary is acting to enable the relevant person to assess the risk of terrorist 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 relevant person so that the intermediary becomes a customer of the relevant person;
 - (b) an introducer is a person who has a business relationship with a customer and who introduces that customer to a relevant person with the intention that the customer will form a business relationship or conduct a one-off transaction with the relevant person so that the introducer's customer also becomes a customer of the relevant person.
- (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 terrorist financing, a relevant person shall apply enhanced due diligence procedures in a manner consistent with regulation 4.

8. RECORD KEEPING PROCEDURES.

- (1) A relevant person shall keep the records specified in subregulation (2).

(2) This subregulation refers to

(a) a record comprising

- (i) a copy of the evidence of identity obtained pursuant to the application of customer due diligence procedures or information that enables a copy of such evidence to be obtained, and
- (ii) all the supporting documents, data or information, including business correspondence in respect of a business relationship or one-off transaction which is the subject of customer due diligence procedures;

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

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

(4) The relevant person 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.

(5) Where the records described in subregulation (2)(a)(i) relate to a business relationship, a relevant person shall keep those records for a period of at least five years commencing with the date on which the business relationship ends.

(6) Where the records described in subregulation (2)(a)(ii) relate to a one-off transaction, a relevant person shall keep those records for a period of at least five years commencing with the date on which the one-off transaction is completed.

(7) A relevant person 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.

(8) 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.

(9) The Commission may notify to the relevant person 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.

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

9. MAINTAINING A REGISTER OF TERRORIST FINANCING ENQUIRIES.

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

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

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

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

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

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

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

11. REPORTING PROCEDURES AND REQUIREMENTS.

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

- (a) communication of the identity of the reporting officer to persons who are either obligated to make reports to that officer or who may wish to do so;
- (b) a report shall be made to the reporting officer, of any information or other matter that comes to the attention of any person handling financial services business and, in the opinion of the person handling that business, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in terrorist financing; or that funds are linked, or related to or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism;
- (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 terrorist financing; or
 - (ii) that funds are linked, or related to or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism;
- (d) the reporting officer, shall have access to all other relevant information that may be of assistance to him or her in his investigation;
- (e) where the reporting officer

- (i) determines that the information or other matter reported to him or her pursuant to subparagraph (c), gives rise to a knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in terrorist financing; or
 - (ii) knows otherwise or has reasonable grounds for suspecting that another person is engaged in terrorist 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 within twenty four hours of such determination or knowledge or suspicion of information obtained by him or her;
- (f) a relevant person shall maintain a register of all reports made to the reporting officer;
 - (g) the register maintained under subregulation (f) shall contain details of the date on which the report is made, the person who makes the report and information sufficient to identify the relevant documents.
- (2) (a) A regulated person shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.
- (b) Upon reasonable suspicion that
 - (i) a transaction described in subparagraph (a); or
 - (ii) any other business transaction
 could constitute or be related to terrorist 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 terrorist financing, the relevant business shall, within twenty four hours of the matter coming to its attention, submit a suspicious transaction report to the Reporting Authority.
 - (c) Where the report referred to in subparagraph (b) is made, or other information submitted in good faith, a relevant person and its employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or administrative liability, as the case may be, from complying with these regulations or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication of that report.
 - (d) A relevant person or its employees, staff, directors, owners or other authorised representatives who fail to comply with the obligations in this regulation, or who make a false or falsified report referred to above commits an offence and shall be liable on conviction
 - (i) in the case of directors or owners, to imprisonment for a term of two years or to fifty thousand dollars; or
 - (ii) in the case of a relevant person itself, to a fine of one hundred thousand dollars and a penalty of one hundred dollars for each day that the requirement is not complied with.

- (e) A relevant person, its employees, staff, directors, owners or other authorised representative who 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 terrorist financing, the Commission shall disclose that information to the Reporting Authority as soon as is reasonably practicable.

- (b) If a person is a secondary recipient of information obtained by the Commission, and forms such an opinion as is described in Regulation 8 (a)(ii), the person may disclose the information to a Reporting Authority.

(c) If any person

- (i) obtains any information while acting in the course of any investigation, or discharging any functions, to which the person's authorization or appointment relates; and
- (ii) is of the opinion that the information indicates that any other person has or may have been engaged in terrorist financing, the first person shall as soon as is reasonably practicable disclose that information to a designated reporting authority and the Commission.

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

12. DUTY TO APPOINT COMPLIANCE OFFICER.

- (1) A relevant person, 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 relevant person and the conduct of its business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the relevant person as the Regulator may require;
- (c) be responsible for ensuring compliance by staff of the relevant person with the following:
 - (i) the provisions of these Regulations and any other law relating to terrorist 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 relevant person and the Regulator in matters relating to compliance with the provisions of these Regulations and any other law or directive with respect to terrorist financing; and
- (e) prepare and submit to the Regulator written reports on the relevant person's compliance with the provisions of these Regulations and any other law or directive relating to terrorist 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 relevant person shall appoint another individual forthwith as Compliance Officer in respect of the financial services business being carried on by the relevant person.

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

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 relevant person to determine compliance by that person with the requirements of these Regulations and any other law or directive relating to terrorist 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 Guidance Notes 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 Guidance Notes 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 terrorist 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 TERRORIST DESIGNATION.

(1) A person or group which is designated as a terrorist or terrorist group pursuant to section 4 of the 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 terrorist designation.

(3) Where a designation has been made pursuant to section 4 of the 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 TERRORISTS.

(1) Where pursuant to an Order made under section 4 of the Act, the funds of a designated terrorist or terrorist group 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 terrorist or terrorist group 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 1267 (1999) or the United Nations Security Council Resolution 1452 as the case may be, of the intention to authorise access to funds, assets or resources of a terrorist or suspected terrorist or terrorist group 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 relevant person shall adopt and have regard to the provisions of the Guidance Notes as set out in the Schedule to the Financial Services (Implementation of Industry Standards) Regulations.

Dated this 31st day of August, 2011.

SAM CONDOR
Minister responsible for National Security