



I assent,

SAMUEL WEYMOUTH TAPLEY SEATON

Governor-General

20th November, 2017.

SAINT CHRISTOPHER AND NEVIS

AN ACT to provide guidelines relating to escrow accounts and agreements under the citizenship by investment programme and other matters incidental thereto..

[Published 20th November 2017, Extra-Ordinary Gazette No. 59 of 2017.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

1. Short title and commencement.

This Act may be cited as the Saint Christopher and Nevis Citizenship (CBI Escrow Accounts) Act, 2017 and shall come into operation on such day as the Minister may, by notice in the *Gazette*, appoint.

2. Interpretation.

In this Act,

“Banking Act” means the Banking Act, Cap. 21.01 and any other legislation that regulates banking business in Saint Christopher and Nevis;

“Citizenship By Investment Regulations” means the Saint Christopher and Nevis Citizenship By Investment Regulations, No. 52 of 2011;

“Companies Act” means the Companies Act, Cap 21.03;

“escrow account” means an account opened with an escrow agent in the escrow agent’s name, for the benefit of the parties to a principal agreement;

“escrow agent” means an escrow agent pursuant to section 3;

“escrow agreement” means an agreement between the parties to a principal agreement and the escrow agent, under which the escrow agent agrees to supervise the parties’ payments;

“escrow business” means acting as an escrow agent in order to supervise payments

made by a party under a principal agreement, as agreed in an escrow agreement under which the escrow agent receives remuneration or a fee;

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

“Financial Services Regulatory Commission Act” means the Financial Services Regulatory Commission Act, Cap. 21.10;

“freeze” means to temporarily prohibit the transfer, conversion, disposition or movement of money held in an escrow account or to temporarily assume custody or control of said money on the basis of an Order of the court;

“freezing order” means an order made under section 18;

“Institute of Chartered Accountants of the Eastern Caribbean Agreement Act” means Institute of Chartered Accountants of the Eastern Caribbean Agreement Act, Cap. 13.03;

“Insurance Act” means the Insurance Act, Cap. 21.11;

“Legal Profession Act” means the Legal Profession Act, No. 33 of 2008;

“Minister” means the Minister responsible for Finance;

“Nevis International Exempt Trust Ordinance” means the Nevis International Exempt Trust Ordinance, Cap. 7.03;

“party to an agreement” means the parties to any agreement, under which one party has an obligation to transfer or deliver property and the other party has an obligation to pay;

“principal agreement” means an agreement for the sale, transfer or other transaction to facilitate investment under the Citizenship By Investment Regulations;

“record” means any document that must be prepared pursuant to the provisions of this Act;

“Saint Christopher and Nevis Citizenship Act” means the Saint Christopher and Nevis Citizenship Act, Cap. 1.05;

“Trusts Act” means the Trusts Act, Cap. 5.19;

“trust business” has the same meaning as under section 2 of the First Schedule to the Trusts Act;

“underlying documents” includes bank statements and any other document in relation to an escrow agreement;

“Unit” means the Citizenship By Investment Unit established under regulation 3 of the Citizenship By Investment Regulations.

3. Escrow agent

Saint Christopher and Nevis Citizenship (CBI Escrow Accounts) Act - 16.

- (1) An “escrow agent” means
- (a) a bank or any other entity whose business includes the provision of trust or custodial services who is licensed under the Banking Act and who shall conduct escrow business in accordance with the provisions of the Banking Act.
 - (b) a registered trust company or any other entity whose business is the provision of trust or custodial services who;
 - (i) is a trust company licensed to conduct trust business in the Island of Saint Christopher or the Island of Nevis or who has been granted a licence to be a Registered Agent in accordance with the Nevis International Exempt Trust Ordinance;
 - (ii) has paid-up capital of at least one million dollars;
 - (iii) has in its employ, on either a full-time or part-time basis, a certified or chartered accountant; and
 - (iv) is licensed by the Financial Services Regulatory Commission to act as an escrow agent.
 - (c) an attorney-at-law who
 - (i) is a holder of a valid practicing certificate in accordance with the provisions of the Legal Profession Act;
 - (ii) has indemnity insurance of at least one million dollars with a company registered under the Insurance Act;
 - (iii) has employed, on either a full-time or part-time basis, a certified or chartered accountant; and
 - (iv) is licensed by the Financial Services Regulatory Commission to act as an escrow agent.
 - (d) a chartered accountant who
 - (i) is the holder of a valid practicing certificate in accordance with the provisions of the Institute of Chartered Accountants of the Eastern Caribbean Agreement Act;
 - (ii) is a practicing member of the Institute of Chartered Accountants of the Eastern Caribbean (St. Kitts and Nevis Branch);
 - (iii) has indemnity insurance of at least one million dollars with a company registered under the Insurance Act;
 - (iv) is licensed by the Financial Services Regulatory Commission to act as an escrow agent.
- (2) A person who contravenes the provisions of subsection (1), commits an offence and is liable on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years or to both.
- (3) Subject to section 16, the Financial Services Regulatory Commission may refuse to issue a licence to a person who is found guilty under this section.

4. Escrow account.

Saint Christopher and Nevis Citizenship (CBI Escrow Accounts) Act - 16.

(1) An applicant for citizenship pursuant to the provisions of the Citizenship By Investment Regulations shall enter into an escrow agreement with an escrow agent licensed by the Financial Services Regulatory Commission.

(2) All monies referred to under regulation 5 (9) (b) of the Citizenship By Investment Regulations shall be held by the escrow agent in an escrow account in Saint Christopher and Nevis

- (a) in accordance with the terms of the relevant escrow agreement; and
- (b) the written approval of the Unit, based on the results of due diligence background checks.

(3) An escrow agent shall establish and maintain separate escrow accounts, for each development, with a bank licensed under the Banking Act;

(4) An applicant who does not comply with the provisions of subsection (1) shall have his or her application form returned.

(5) The applicant, referred to in subsection (4), may resubmit his or her application in accordance with the provisions of subsection (1).

(6) The prescribed periods for action to be taken in relation to an application for citizenship by investment, under the Saint Christopher and Nevis Citizenship Act or the Citizenship By Investment Regulations, in relation to an application that is resubmitted pursuant to subsection (4) shall commence when the application has been properly made in accordance with the law.

(7) An escrow agent who contravenes the provisions of subsection (2) commits an offence and is liable on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years or to both.

- (8) Pursuant to section 16, the Financial Services Regulatory Commission may
- (a) revoke or suspend the licence of an escrow agent who is found guilty of an offence under subsection (7);
 - (b) refuse to issue a new licence to an escrow agent who is found guilty under this section.

5. Escrow agreement requirements.

(1) An escrow agreement shall comply with the provisions of this Act.

(2) The parties to an escrow agreement shall appoint an escrow agent who is not a party to the principal agreement and who has no direct or indirect interest in the principal agreement, pursuant to section 6.

(3) The escrow agent shall sign the escrow agreement.

(4) An escrow agreement shall be in writing and shall contain the following particulars:

- (a) the names and addresses of the parties and the escrow agent;
- (b) the date of signing the escrow agreement;

- (c) the title of the principal agreement and the date it was signed;
- (d) the terms and conditions for delivery of the escrow funds;
- (e) any requirements for payments out of the escrow account;
- (f) the rights and obligations of the parties to the escrow agreement;
- (g) the remuneration and fees related to performance of the escrow agreement,;
- (h) details of any drawdown process in cases where the property is under construction or sold off plan; and
- (i) any other particulars, as may be prescribed in Regulations.

(5) An escrow agent who contravenes the provisions of subsections (3) or (4) commits an offence and is liable on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years or to both.

- (6) Pursuant to section 16, the Financial Services Regulatory Commission may
- (a) revoke or suspend the licence of an escrow agent who is found guilty of an offence under subsection (5);
 - (b) refuse to issue a new licence to an escrow agent who is found guilty under this section.

(7) An escrow agent who is found guilty under the provisions of subsection (5), shall ensure that all funds that were transferred to him or her are returned to the party that transferred the funds within a period of seventy two hours.

(8) An escrow agent who contravenes the provisions of subsection (7) commits an offence and is liable on indictment to a fine not exceeding one million dollars or to a term of imprisonment not exceeding ten years or to both.

6. Conflict of Interest

An escrow agent who has a direct or indirect interest in the transactions of the parties to a principal agreement, including that

- (a) he or she is a service provider in relation to the principal agreement;
- (b) he or she is a developer in relation to the principal agreement; or
- (c) he or she is the vendor in relation to the principal agreement;

shall not act as an escrow agent for that transaction.

7. Escrow agreement to be submitted to the Unit

(1) An applicant for citizenship pursuant to the provisions of the Citizenship By Investment Regulations shall submit a notarised copy of the escrow agreement to the Unit together with his or her application.

(2) The application form of an applicant who does not comply with the provisions of subsection (1) shall be returned to the applicant.

(3) The applicant, referred to in subsection (2), may resubmit his or her application in

accordance with the provisions of subsection (1).

(4) The prescribed periods for action to be taken in relation to an application for citizenship by investment, that is resubmitted pursuant to subsection (3) shall commence when the application has been properly made in accordance with the law.

8. Duties of escrow agent.

(1) An escrow agent shall

- (a) ensure an escrow agreement is prepared;
- (b) open a separate escrow account, for each escrow agreement, in the name of the escrow agent;
- (c) keep all escrow funds, for each development, separate from any other funds or accounts held by the escrow agent;
- (d) transfer monies and interests in the escrow account to the party entitled and transfer property or evidence of debt to the party entitled in accordance with the terms of the escrow agreement;
- (e) issue evidence of all transactions, including, evidence of monies being deposited or other transactions to the party conducting the transaction and notify the other party and the Unit in writing;
- (f) prepare a release notice to be signed by the other parties to the escrow agreement authorizing the transfer of funds in accordance with the provisions of the escrow agreement;
- (g) give written notice regarding all monetary transactions and the balance of the escrow account to both parties;
- (h) close the escrow account and notify the parties
 - (i) when the terms of the escrow agreement have been fulfilled and monies have been transferred from the escrow account; or
 - (ii) if the agreement is terminated.

(2) In addition to the duties set out under subsection (1), an escrow agent shall

- (a) preserve the funds or documentary evidence of transactions of the parties;
- (b) maintain an escrow registration book in accordance with section 17 and Form 5 of the First Schedule;
- (c) keep copies of escrow agreements for a period of at least seven years from the date of filing the final entry in the registration book in relation to that escrow account.

(3) If an escrow agreement is terminated the escrow agent shall, within a period not exceeding ten business days,

- (a) pay to the proper party monies from the escrow account;
- (b) perform all other functions set out in the escrow agreement in relation to termination of the agreement,

- (c) notify the parties and the Unit of the actions being taken pursuant to the termination of the agreement.

9. Dispute settlement.

(1) Where there is a dispute between the parties to an escrow agreement, the escrow agent shall not transfer monies or other escrow property in its custody except

- (a) in accordance with the provisions of the escrow agreement,
- (b) in accordance with a written agreement made by the parties, or
- (c) in accordance with a court order.

(2) Notwithstanding subsection (1) (a) or (b), where a dispute between the parties continues for a period exceeding three months the escrow agent may take the matter to arbitration.

10. Death or other changes.

(1) Where any of the parties to an escrow agreement wishes to change the escrow agent then that change shall be done in accordance with the terms of the escrow agreement.

(2) Where the escrow agent, by reason of death, mental incapacity or physical incapacity is unable to fulfil his or her obligations under an escrow agreement then there shall be a change of escrow agent in accordance with the terms of the escrow agreement.

(3) Notwithstanding subsections (1) and (2), where there is no express provision in the escrow agreement in relation to the change of the escrow agent and the parties desire such a change then

- (a) the escrow agreement shall be terminated in accordance with the provisions on termination of the escrow agreement; and
- (b) a new escrow agreement shall be entered into with a new escrow agent.

(4) Where either of the parties to an escrow agreement, other than the escrow agent, by reason of death, mental incapacity or physical incapacity is unable to fulfil his or her obligations under the escrow agreement,

- (a) the escrow agent shall inform the Financial Services Regulatory Commission and the other party, within seven business days; and
- (b) the escrow agreement shall be terminated in accordance with the provisions on termination of the escrow agreement.

11. Remuneration and fees of escrow agent.

Remuneration or fees that an escrow agent is entitled to receive shall not be paid from or collected from the escrow account.

12. Supervision of escrow agent.

(1) The Financial Services Regulatory Commission shall supervise the escrow business of escrow agents.

Saint Christopher and Nevis Citizenship (CBI Escrow Accounts) Act - 16.

(2) An escrow agent shall submit reports or any underlying documents relating to escrow business to the Financial Services Regulatory Commission

- (a) on a monthly basis, no later than five business days after the end of the month; and
- (b) on an annual basis, no later than ninety days after the end of the calendar year.

(3) Pursuant to subsection (2), a monthly report shall be in the Form set out as Form 4 of the First Schedule and shall contain

- (a) a list of all escrow accounts held by an escrow agent;
- (b) the beginning of month and end of month balance for each escrow account;
- (c) a note of all transactions made in relation to each escrow account;
- (d) copies of all underlying documents in relation to each escrow account.

(4) Pursuant to subsection (2), an annual report shall be audited financial statements containing details on each escrow account held by the escrow agent.

(5) The Financial Services Regulatory Commission may require the escrow agent to provide explanations or further and better particulars of matters in a report or underlying document.

(6) For the purposes of verifying the correctness of any information furnished by an escrow agent or for the purpose of securing compliance with the provisions of this Act or any Regulations made under this Act, the Financial Services Regulatory Commission may

- (a) enter any premises used by an escrow agent for the purpose of its escrow business; and
- (b) inspect and take copies of any record or underlying documents relating to his or her escrow business.

13. Functions of Financial Services Regulatory Commission under this Act

Subject to the provisions of the Financial Services Regulatory Commission Act, the Financial Services Regulatory Commission shall

- (a) supervise the enforcement of the provisions of this Act;
- (b) shall licence persons to act as escrow agents under this Act.

14. Escrow licences

(1) An application to be licensed as an escrow agent shall be in the form set out as Form 1 of the First Schedule and shall be accompanied by the relevant documentary evidence that the applicant satisfies the requirements under section 3 of this Act.

(2) The application referred to in subsection (1) shall be accompanied by a non-refundable application fee as set out in the Second Schedule.

(3) An escrow licence may be granted by the Financial Services Regulatory Commission to a person who is qualified under section 3 of this Act.

- (4) An application for an annual licence shall be as set out in
 - (a) Form 2 of the First Schedule for an entity;
 - (b) Form 3 of the First Schedule for an attorney or chartered accountant.
- (5) The annual licence fee shall
 - (a) be as set out in the Second Schedule;
 - (b) be paid by 31st January of each year.

(6) A person who contravenes the conditions stipulated in a licence, commits an offence and is liable on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years or to both.

(7) Pursuant to the provisions of section 16, the Financial Services Regulatory Commission may refuse to renew, revoke or suspend a licence granted under this Act.

15. Late payment of annual fees

- (1) Where a person licensed under this Act pays the annual licence fee
 - (a) after 31st January in any year, but before 1st March of the same year, a penalty of twenty five percent of the annual fee is payable in addition to the annual fee;
 - (b) on 1st March or by the 31st March of the same year, a penalty of fifty percent of the annual fee shall be payable in addition to the annual fee.

(2) Pursuant to section 16, non-payment of the annual licence fee after 31st March of any year that payment is due, shall result in the revocation of the licence.

16. Suspension, revocation or refusal of licence

- (1) The Financial Services Regulatory Commission may, in the case of a
 - (a) first offence, suspend a licence of an escrow agent;
 - (b) second or subsequent offence, revoke a licence of an escrow agent.

(2) Where the licence of an escrow agent has been suspended, the Financial Services Regulatory Commission may, after a period of three months and upon application, review the matter and if approved, reinstate the licence.

(3) Where the licence of an escrow agent has been revoked, the Financial Services Regulatory Commission may, after a period of one year and upon application, review the matter and if approved a licence may be granted.

(4) Where the Financial Services Regulatory Commission has refused to issue a licence an applicant may apply for a review of the matter after a period of one year.

(5) The fees to review the suspension, revocation or refusal of a licence are as set out in the Second Schedule.

(6) If upon review the matter is not approved the applicant would be directed, by the Financial Services Regulatory Commission in writing, when he or she may reapply or if the refusal is permanent.

(7) Where the Financial Services Regulatory Commission has decided to suspend, revoke or refuse to grant a license it shall give reasons to the applicant in writing.

(8) Where the Financial Services Regulatory Commission has decided that a refusal shall be permanent it shall give reasons in writing to the applicant.

17. Record keeping

(1) An escrow agent shall cause to be kept proper records and underlying documents, in relation to each escrow agreement, with respect to all sums of money received or transferred by the escrow agent and the matters in respect of which the receipt or transfer takes place.

(2) An escrow agent shall keep an updated register of escrow agreements, that he or she is a party to, in the form set out as Form 5 of the First Schedule.

(3) The register, records and underlying documents in relation to an escrow agreement shall

- (a) be kept at the registered office of an escrow agent or at such other place as the Financial Services Regulatory Commission may, in writing, permit;
- (b) at all times be open to inspection by the parties to the escrow agreement or by the Financial Services Regulatory Commission;
- (c) be sufficient to show and explain all transactions with respect to the escrow agreement;
- (d) be sufficient to enable the financial position of the escrow agreement to be determined with reasonable accuracy at any time;
- (e) be sufficient to allow a financial statement to be prepared;
- (f) be preserved for a period of at least seven years from the date of the conclusion of the escrow agreement.

(4) An escrow agent who contravenes the provisions of this section is liable on indictment to a fine not exceeding two thousand five hundred dollars.

18. Financial Services Regulatory Commission may freeze or seize accounts

(1) Where the Financial Services Regulatory Commission has reasonable grounds for suspecting that

- (a) an escrow agent is operating in a manner contrary to the provisions of this Act or the terms of the escrow agreement; or
- (b) an escrow agent operates in a manner that is likely to jeopardize the money held in escrow; or
- (c) a party to the escrow agreement reports that the escrow agent is not fulfilling the terms of the escrow agreement;
- (d) a person is acting as an escrow agent, who is not licensed as an escrow agent,

the Financial Services Regulatory Commission may freeze the money held in the escrow account for a period not exceeding five business days to undertake investigations into the

matter.

(2) Money frozen by virtue of this section shall not be detained for more than five business days unless its continued detention is authorised by a Court Order upon an application made by the Attorney General.

(3) An Order under subsection (2) may be granted if the Court is satisfied that

- (a) there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the money is justified whilst the matter is being investigated.

(4) An Order made under subsection (2) shall authorise the continued detention of the money to which it relates for such period, not exceeding three months, beginning with the date of the Order.

(5) At any time whilst money is frozen pursuant to this section, the Financial Services Regulatory Commission

- (a) may direct its release if satisfied, that the parties to the escrow agreement, other than the escrow agent, consent to the release of the money pursuant to the terms of a new escrow agreement; or
- (b) finds upon investigation, that there is no evidence to substantiate the suspicion and to justify the continued detention of the money.

19. Exemptions

(1) The Minister may, by order, exempt any type or category of property from the application of this Act.

(2) An Order made pursuant to subsection (1), shall be subject to negative resolution of the National Assembly.

20. Regulations

The Minister may make Regulations, after consultation with the Financial Services Regulatory Commission, for the purpose of giving effect to the provisions of this Act.

21. Amendment of Schedules

(1) The Minister may amend the Schedules to this Act by Order published in the *Official Gazette*.

(2) An Order made pursuant to subsection (1), shall be subject to negative resolution of the National Assembly.

22. Transitional

(1) All persons who currently act as escrow agents for investment transactions under the Citizenship By Investment Regulations shall comply with the provisions of this Act within sixty days of this Act coming into force.

(2) Notwithstanding the provisions of subsection (1), where a person who currently

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acts as an escrow agent for investment transactions under the Citizenship By Investment Regulations is party to an existing agreement which is

- (a) under consideration by the Unit, then that person shall be permitted to continue to act as escrow agent in relation to that specific transaction until that transaction is concluded or terminated;
- (b) not concluded within the sixty day period, that person shall
 - (i) inform the Financial Services Regulatory Commission of the agreement;
 - (ii) provide a copy of the agreement to the Financial Services Regulatory Commission;
 - (iii) report to the Financial Services Regulatory Commission on the progress of his or her functions under the agreement.

FIRST SCHEDULE

FORMS

Form 1

(section 14)

**ESCROW AGENT
APPLICATION FORM**

Name of Applicant:

Category: (eg. Trust Company; Attorney-At-Law; Chartered Accountant)

Address:

Contact Information

Telephone Number:

Fax Number: _____

Email:

Website: _____

Please list Company's Directors and Senior Officers of the Entity in the table provided below.

Name _____

Position _____

Date of Appointment _____

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Financial Year End of the Entity		
Please submit the following documents along with the completed Escrow Agent Application Form.		

1. Certified or Notarized copies of Certificate or licence
 - a) Practicing certificate (lawyers)
 - b) Practicing certificate (accountants)
 - c) Licence (entity)
2. Certified or Notarized copies of identification documents for each Director and Senior Manager
3. Police Affidavit/Certificate (original)
4. Two (2) Original letters of reference (one from a Financial Institution and the other from a professional)
5. Résumé
 - a) Most recent audited Financial Statements of the Company/Entity. For a new Company/Entity, proof of Paid Up Capital is required.
 - b) Indemnity Insurance (lawyers)

I have reviewed and completed the application and enclosed the required documents outlined within this application.

Signature _____ Date _____

**"Please be advised, that in accordance with Section 8 of the Perjury Act, it is an offence punishable by a maximum fine of thirty thousand dollars or at least five years imprisonment for a person to knowingly make either*

- (a) a false voluntary declaration; or*
- (b) a false statement when any act requires information to be provided."*

FSRC USE ONLY

Date Received: _____

