

**SAINT CHRISTOPHER AND NEVIS**

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**STATUTORY RULES AND ORDERS**

**No. 3 of 2019**

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**Financial Services (Trust and Corporate Business) Regulations, 2019.**

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

*[Published 24<sup>th</sup> January 2019, Extra Ordinary Gazette No. 5 of 2019]*

***PART I – PRELIMINARY***

**1. Citation.**

These Regulations may be cited as the Financial Services (Trust and Corporate Business) Regulations, 2019.

**2. Interpretation.**

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

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

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means

- (a) the spouse or children or step-children of that person;
- (b) the trustees of any settlement under which that person has a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company,
  - (i) any director of that company;
  - (ii) any subsidiary company of that company; and
  - (iii) any director or employee of any such subsidiary company; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interest in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

“accountant” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public

Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the laws of the Federation;

“attorney-at-law” has the meaning given to it by the Legal Profession Act, No. 33 of 2008;

“auditor” means an accountant who is eligible for appointment as auditor under the rules of the institute of chartered or certified accountants of which he or she is a practising member in good standing or is otherwise approved for appointment as auditor by any supervisory body of the accounting profession recognised under the law of the Federation;

“authorisation” means authorisation granted by the Commission under these Regulations and “authorised” shall be construed accordingly;

“authorised person” means a natural person or legal person who is licensed to carry on finance business within St. Kitts and Nevis;

“chief executive”, in respect to an authorised person, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the authorised person and in relation to an authorised person whose principal place of business is in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;

“Commission” means the Financial Services Regulatory Commission established pursuant to the Financial Services Regulatory Commission Act, Cap 21.10;

“company” means any body corporate incorporated in accordance with the provisions of the Companies Act Cap 21.03, other than a corporation sole;

“controller”, in relation to a company, means

- (a) a chief executive of the company;
- (b) a chief executive of any other company of which that company is a subsidiary company;
- (c) a partner in any partnership of which the company is also a partner;
- (d) an indirect controller;
- (e) a shareholder controller;
- (f) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than fifteen per cent of the voting power in a general meeting of that company or of any other company of which that company is a subsidiary company;

and in these Regulations, a person coming within paragraph (d) is referred to as “an indirect controller” and a person coming within paragraph (e) is referred to as a “shareholder controller”;

“corporate business” means the carrying on of, and the provision of services in relation to, the business of

- (a) incorporating or establishing, as may be appropriate, companies, foundations or limited partnerships;
- (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies, foundations or limited partnerships;
- (c) maintaining the registered office or the office for service, as may be appropriate, for companies, foundations or limited partnerships;
- (d) managing or administering, as may be appropriate, companies, foundations or limited partnerships;
- (e) acting as a local representative person for foreign ships registered on the Saint Kitts and Nevis International Ship Registry;

“currency” includes foreign currency and any other means of exchange that may be prescribed;

“director” includes, in the case of a company, a person who occupies the position of a director, by whatever name called;

“documents” include information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“excluded person” means a person excluded under subregulation (2) of regulation 4;

“finance business” means any

- (a) trust business; or
- (b) corporate business,

carried on for profit or reward in or from within the Federation;

“financial year”, in relation to an authorised person, means a calendar year or where an authorised person is struck, the period not exceeding fifty-three weeks at the end of which the balance of the authorised person’s accounts is struck;

“foundation” means a foundation established under the Foundations Act, Cap. 21.19, or continued in Saint Kitts under Part VIII of that Act;

“indirect controller” in relation to a company means a person in accordance with whose directions or instructions any director of that company or any other company of which that company is a subsidiary company, is accustomed to act;

“manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of an authorised person or an office in the Federation of that authorised person;

“majority shareholder controller” means a person who is entitled to exercise or control the exercise of more than fifty per cent but not more than seventy five per cent of the voting power in a general meeting of a company or of any other company of which that company is a subsidiary company;

“minority shareholder controller” means a person who is entitled to exercise or control the exercise of no more than fifty per cent of the voting power in a general meeting of a company or of any other company of which that company is a subsidiary company;

“net assets” means the value of all the assets of a business less all its liabilities except its capital and reserves, other than reserves for duties, charges or contingencies;

“partnership” means any limited partnership established pursuant to the provisions of the Limited Partnership Act, Cap 21.12;

“person” means any natural person or a legal person;

“principal shareholder controller” means a person who is entitled to exercise or control the exercise of more than seventy five per cent of the voting power in a general meeting of a company or of any other company of which that company is a subsidiary company;

“qualified person” means a person who is an attorney-at-law or an accountant or other suitably qualified person approved by the Commission in respect of an authorised person;

“restricted business” means, trust business undertaken exclusively for persons listed in any undertaking accompanying the application for the relevant authorisation and “unrestricted business” shall be construed accordingly;

“settlement” includes any disposition or arrangement under which property is held in trust;

“trust” means any trust established under the Trusts Act Cap 5.19;

“trust business” means the carrying on of, and the provision of services in relation to, corporate business and the business of

- (a) undertaking or executing trusts;
- (b) providing trustees or protectors for trusts;
- (c) maintaining the office for service of trusts;
- (d) managing or administering trusts.

### **3. Application of these Regulations.**

The provisions of these Regulations shall be equally applicable whether persons are carrying on domestic business or foreign business.

## **PART II – AUTHORISATION**

### **4. Prohibition of Unauthorised Finance Business.**

(1) Subject to the provisions of these regulations, no person shall carry on or hold himself or herself out as carrying on any finance business in or from within St. Kitts unless that person is for the time being authorised under these regulations.

(2) This regulation shall not apply to the doing of anything by or on behalf of

- (a) the Government;
- (b) the Eastern Caribbean Central Bank;
- (c) the Eastern Caribbean Home Mortgage Bank;

- (d) the Caribbean Development Bank; or
  - (e) any other person whom the Commission may, from time to time, prescribe.
- (3) A person who contravenes this regulation commits an offence and is liable
- (a) in the case of a legal person to a fine not exceeding fifty-four thousand dollars; or
  - (b) in the case of a natural person, to a fine not exceeding twenty five thousand dollars or to a term of imprisonment for a term not exceeding two years.
- (4) For the purpose of these regulations, a person is authorised once that person is the holder of a valid licence to carry on finance business within the Federation.

#### **5. Application for and Grant and extent of Authorisation.**

(1) Subject to the provisions of these regulations where an application is made by a qualified person and on payment of the prescribed fee, the Commission may authorise that person by granting them a licence to carry on the business that the authorisation is sought for.

(2) Every authorisation shall, unless previously revoked under the provisions of regulation 7, expire on the last day of the calendar year in which it was issued.

(3) Where an application under this regulation is made by or on behalf of a person who is not at the time of the application an authorised person, the applicant shall deliver to the Commission together with the prescribed fee a statement signed by or on behalf of the applicant setting out:

- (a) the nature and scale of the finance business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangement for the management of that business; and
- (b) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.

(4) Every statement delivered to the Commission pursuant to subregulation (3) shall be accompanied by

- (a) in the case of a company, a copy of the Charter, Articles of Incorporation, Memorandum and Articles of Association of the applicant, as may be appropriate, verified by an affidavit sworn by a director and duly authenticated as follows:
  - (i) in the case of a company incorporated under the laws of the Federation, the originals of the documents referred to in paragraph (a) or notarised copies of those documents; and
  - (ii) in the case of a company incorporated under the law of any other country or territory, certified and authenticated under the public seal of the country or territory under the laws of which such company was incorporated or established;
- (b) a list containing the names, addresses and nationalities of each shareholder controller and indirect controller of the applicant, together with a statement

explaining, in respect of each of them, the nature and size of his or her controlling interest in the applicant;

- (c) a list containing the names, addresses and nationalities of each director, chief executive and manager of the applicant, together with a statement explaining, in respect of each of them, any contractual arrangements that he or she may have with the applicant;
- (d) in respect of each director, chief executive and manager of the applicant
  - (i) a police record or a notarised copy of a police record where the applicant has resided outside of the Federation for a period of more than six months in the five years preceding the date of the application;
  - (ii) two letters of references, one from a recognised bank and one from a reputable lawyer, accountant or other professional; and
  - (iii) a resume with particular emphasis on experience in the finance business for which the application is submitted;
  - (iv) certified or notarised copies of the applicant's qualifications;
  - (v) two certified or notarised copies of identification documents;
  - (vi) proof of address documentation.
- (e) the names and addresses
  - (i) of one director, chief executive or manager of the applicant who is the authorised agent in the Federation to accept on behalf of the applicant service of process and any notice required to be served on the applicant; and
  - (ii) of another director, chief executive or manager of the applicant who in the absence or inability to act of the person mentioned in sub-paragraph (i) is the authorised agent in the Federation of the applicant for the purposes of that sub-paragraph;
- (f) the names and addresses of lawyers, if any, of the applicant, together with a letter from the lawyers confirming that they act for the applicant;
- (g) the names and addresses of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant;
- (h) an undertaking in writing to maintain at all times the relevant minimum financial resources set out in subregulation (1) of regulation 6;
- (i) the audited accounts of the applicant for the three years immediately preceding the date of the application or, in the case of a new applicant three years pro forma financial statements;
- (j) a completed personal questionnaire as set out in Schedule 2;
- (k) any other information or documents as the Commission may reasonably require for the purpose of determining the application;

(5) Where an application under this regulation is made by or on behalf of a person who is at the time of the application an authorised person, the applicant shall deliver to the Commission together with the prescribed fee a statement signed by or on behalf of the applicant setting out:

- (a) the full name and principal business address of any applicant who is not a company, or in the case of a company, its full name, and the full address of its registered or principal office;
- (b) the extent to which any information given in any statement, audited accounts or other document delivered in respect of the last application has changed; and
- (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.

(6) At any time after receiving an application and before arriving at a final decision concerning that application, the Commission may by written notice require the applicant or any person who is or is to be a controller, director or manager of the applicant, to provide additional information or documents.

(7) The Commission may by written notice require the applicant or any other person referred to in subregulation (6) to provide a report by an attorney-at-law, an accountant or other qualified person approved by the Commission, on such aspects of any information received by the Commission as may be specified in the notice.

(8) The directions and requirements given or imposed under subregulation (6) may differ as between different applications.

(9) An application may be withdrawn by written notice to the Commission at any time before it is granted or refused.

#### **6. Conditions of Grant of Authorisation.**

(1) Subject to the provisions of these Regulations, no authorisation shall be granted unless the applicant has the following minimum financial resources:

- (a) in the case of trust business, net assets in the minimum sum of
  - (i) five hundred and forty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business;
  - (ii) fifty-four thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business;
- (b) in the case of corporate business, net assets in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies;

(2) Without prejudice to the generality of subregulation (1), the requirement for an applicant to have the minimum financial resources specified in that subregulation shall not apply to a natural person.

- (3) Every authorisation shall be subject to the conditions that the authorised person
  - (a) in the case of a legal person, maintains at all times the minimum financial resources specified in subregulation (1);
  - (b) informs the Commission by notice in writing of any change, or proposed change, in the information contained in, or supplied in connection with, the last application for an authorisation;
  - (c) carries on business only in accordance with the information referred to in paragraph (b) and such changes as the Commission may have approved.

(4) Notwithstanding anything in subregulations (1), (2) and (3), the Commission may prescribe such conditions as he or she thinks fit, applicable either generally to all authorised persons or to a class of authorised persons and may attach conditions to the authorisation of any particular person under that regulation and may from time to time vary any general condition, any condition applying to a class of authorised persons or any condition attached to an authorisation or prescribe or attach a new condition.

(5) Without prejudice to the generality of subregulation (4), such conditions may include matters which the Commission considers to be desirable in the interests of clients or prospective clients of an authorised person, whether for the purpose of safeguarding the assets of the authorised person or otherwise, and may, in particular,

- (a) require the authorised person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
- (b) require any authorised person to have higher minimum financial resources than those specified in subregulation (1);
- (c) require any authorised person to effect a policy of insurance with a reputable insurance company that is registered in Saint Christopher and Nevis under the Insurance Act Cap 21.11, against the following
  - (i) the dishonesty of employees of the authorised person; and
  - (ii) loss of documents, in such amount and of such a nature as the Commission may determine to be fit and proper, having due regard to the nature and type of business carried on by the authorised person;
- (d) specify the manner in which an authorised person may hold money for his or her clients;
- (e) prohibit the authorised person from soliciting business either generally or from persons who are not already clients of that authorised person;
- (f) prohibit an authorised person from entering into any other transaction or class of transactions;
- (g) require the removal of any director, chief executive or manager;
- (h) require the appointment of an auditor for the authorised person;
- (i) require the production to the Commission of true and fair view audited accounts; and
- (j) require that the authorised person shall at all times have appointed a director, chief executive or manager approved by the Commission responsible for ensuring compliance with the terms and conditions of the authorisation.

(6) If any person fails to comply with any condition imposed under this regulation, that person commits an offence in respect of each such contravention and shall, subject to the provisions of section 40 of the Act, be liable

- (a) in the case of a legal person to a fine not exceeding one hundred thousand dollars;
- (b) in the case of a natural person to imprisonment for a term not exceeding 2 years, or both.

(7) Notwithstanding the provisions of subregulation (6), a failure to comply with these Regulations shall be subject to a further fine of 540.00 for each day that the authorised person continues to commit an offence or allows the offence to continue.

(8) Where the Commission varies a condition attached to an authorisation or attaches a condition to an authorisation he or she shall give notice in writing to the authorised person concerned.

(9) For the purposes of this regulation the Commission may prescribe such rules governing valuation of net assets.

#### **7. Refusal, Suspension and Revocation of Authorisation.**

(1) The Commission may refuse to grant an authorisation or, where an authorisation has been granted may suspend or revoke the authorisation, if

- (a) the applicant or the authorised person has not provided information required under regulation 5 or has not provided to the Commission at any other time such information as the Commission may reasonably require;
- (b) it appears to the Commission that circumstances exist which either are likely to lead to the improper conduct of business by, or reflect discredit on, the method of conducting business of the applicant or the authorised person (as the case may be), or any person employed by or associated with the applicant or that authorised person for the purposes of his or her business;
- (c) without prejudice to the generality of paragraph (b), it appears to the Commission that by reason of the applicant or authorised person as the case may be, or any person employed by or associated with, the applicant or that authorised person for the purposes of his or her business
  - (i) having been convicted of an offence involving dishonesty in any part of the Federation or in any other place; or
  - (ii) having been convicted of an offence against these Regulations, the applicant or authorised person is not, or as the case may be, is no longer a fit and proper to be authorised;
- (d) it appears to the Commission, as a result of information provided in pursuance of the requirements of regulation 5 or information otherwise obtained, that it is not in the best interest of clients or prospective clients of the applicant or the authorised person (as the case may be) or in order to protect the integrity of the Federation in financial or commercial matters or that it is not in the best economic interests of the Federation that the applicant or authorised person should be authorised or should continue to be authorised; or
- (e) without prejudice to sub-paragraph (ii) of paragraph (c), if in connection with any application for the grant of an authorisation under these Regulations, the applicant or authorised person has provided to the Commission information which is untrue or misleading in any material particular.

(2) Notwithstanding the provisions of subregulation (1), where the possibility exists that remedial action might be taken within a short time frame to address the circumstances arising in respect of paragraphs (a) to (e), the Commission may elect to suspend the licence of an authorised person until the circumstances in question have been remedied or appropriately addressed.

(3) Where the Commission refuses to grant an authorisation or suspends or revokes an authorisation, it shall give written notice of not more than fourteen days to the applicant or authorised person, as the case may be.

(4) Where pursuant to subregulation (2), an authorised person is able to successfully remedy or address the concerns of the Commission before the licence expires, then the authorised person may notify the Commission and apply to have the licence reinstated.

**8. Authorisation Certificate and Publication of names of Authorised Persons.**

(1) Whenever the Commission authorises a person, it shall issue to that person a licence certificate, upon the payment of a licence fee as set out in Schedule 1.

(2) The Commission shall publish on its website the names and addresses of all authorised persons, together with such other information appertaining to such persons as the Commission may think appropriate.

**9. Display, Production and Delivery of Licence Certificate.**

(1) Every authorised person shall

- (a) keep a copy of his or her licence certificate displayed in a prominent place and open to public view in every place in or from which he or she carries on a finance business;
- (b) when required by or on behalf of the Commission to do so, produce or deliver his or her licence certificate to the Commission or to any person authorised in that behalf.

(2) If any authorised person fails to comply with the provisions of this regulation, that person commits an offence and is liable to a fine not exceeding two thousand seven hundred dollars and to a further fine not exceeding two hundred and seventy dollars for each day during which the offence continues.

**10. Renewal.**

(1) Subject to the payment of a renewal fee as set out in Schedule 1, an authorised person may apply for the renewal of the authorisation once the licence for that person has expired.

(2) Notwithstanding the prior approval of a licence to operate, an authorised person may not be granted a renewal of that authorisation where the Commission determines that

- (a) it is not in the best interest of the financial services industry to do so; or
- (b) the level of compliance with the Act, its regulations or any related enactments are not satisfactory.

(3) The Commission may renew the licence of an authorised person subject to any terms and conditions that the Commission may consider necessary in accordance with the principles set out in the Act, its regulations or any of the related enactments.

**PART III – CONTROL OF TRANSFERABILITY OF SHARES****11. Notification of new or increased Control.**

(1) No person shall become a minority, majority or principle shareholder controller or an indirect controller of an authorised person which is a company incorporated in the Federation unless

- (a) the person is a qualified person;
- (b) the person notifies the Commission in writing of the intention to become such a controller; and
- (c) the Commission notifies the person in writing that there is no objection to the person becoming such a controller,

(2) Following receipt of a notice under subregulation (1), the Commission may, by giving written notice to the person from whom the notice was received, require that person to give such additional information or documents as the Commission may require for deciding whether to serve a notice of objection.

**12. Objection to New or Increased Control.**

(1) The Commission may serve a notice of objection under this regulation on a person who has given notice under regulation 10 unless the Commission is satisfied

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the authorised person;
- (b) that the interests of clients and potential clients of the authorised person would not be in any other manner prejudiced by that person becoming a controller of that description of the authorised person; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the authorised person as a controller of the description in question, the authorised person would be likely to continue to fulfil the conditions imposed on the authorised person under regulation 7, or, if any of those conditions is not fulfilled, that the person concerned would be likely to take remedial action.

(2) A notice of objection under this regulation shall

- (a) specify which of the matters mentioned in subregulation (1) the Commission is not satisfied about and, subject to subregulation (3), the reasons for which he or she is not satisfied;
- (b) give particulars of the rights of appeal conferred by regulation 15.

(3) Subregulation (2) shall not require the Commission to specify any reason which would in his or her opinion involve the disclosure of confidential information, the disclosure of which would be prejudicial to a third party.

**13. Objection to Existing Shareholder Controller.**

(1) Where it appears to the Commission that a person who is a shareholder controller of any description of an authorised person which is a company incorporated in the Federation is not or is no longer, a fit person to be such a controller, the Commission may serve on him or her a written notice of objection to his or her being such a controller.

- (2) A notice of objection under this regulation shall
- (a) subject to subregulation (3), specify the reasons for which it appears to the Commission that the person in question is no longer a fit and proper person as mentioned in subregulation (1); and
  - (b) give particulars of the rights of appeal conferred by regulation 15.

(3) Paragraph (a) of subregulation (2) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

**14. Contravention by Controller.**

- (1) Subject to subregulation (2), any person who contravenes regulation 10 by
- (a) failing to give the notice required by paragraph (a) of subregulation (1) of that regulation; or
  - (b) becoming a controller of any description to which that regulation applies before having been served with a notice by the Commission under paragraph (b) of subregulation (1) of that regulation;

commits an offence.

(2) A person shall not be guilty of an offence under subregulation (1) if he or she satisfies the Commission that he or she did not know of the acts or circumstances by virtue of which he or she became a controller of the relevant description.

(3) Where any person becomes a controller without prior knowledge and subsequently becomes aware of the fact, he or she shall give written notice to the Commission of that fact within fourteen days of becoming aware of the fact.

(4) Any person who contravenes subregulation (3) shall be liable under the provisions of subregulation (1).

- (5) Any person who
- (a) contravenes regulation 11 by becoming a controller of any description after being served with a notice of objection to his or her becoming a controller of that description; or
  - (b) having become a controller of any description in contravention of that regulation, whether before or after being served with such a notice of objection, continues to be such a controller after such a notice has been served on him or her;

commits an offence.

(6) A person who commits an offence under subregulation (1) or (2) shall be liable to a fine not exceeding twenty-seven thousand dollars.

(7) A person who commits an offence under subregulation (3) shall be liable to a fine not exceeding fifty-four thousand dollars or, where that person is a natural person, to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and

(8) A person who commits an offence under subregulation 4(a) or (b) shall be liable to a fine not exceeding five thousand four hundred dollars for each day on which the offence has continued.

**15. Restrictions on Acquisition and Disposal of Shares.**

- (1) The powers conferred by this regulation shall be exercisable where a person
  - (a) has contravened regulation 11 by becoming a shareholder controller of any description after being served with a notice of objection to his or her becoming a controller of that description; or
  - (b) having become a shareholder controller of any description in contravention of that regulation continues to be one after such a notice has been served on him or her; or
  - (c) continues to be a shareholder controller of any description after being served under regulation 11 with a notice of objection to his or her being a controller of that description.
- (2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this regulation applies shall, until further notice, be subject to one or more of the following restrictions:
  - (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them, shall be void;
  - (b) no voting rights shall be exercisable in respect of the shares;
  - (c) except in liquidation, no payment shall be made of any sum, due from the authorised person on the shares, whether in respect of capital or otherwise.
- (3) The Court may, on the application of the Commission, order the sale of any specified shares to which this regulation applies and, if they are for the time being subject to any restrictions under subregulation (2), that they shall cease to be subject to those restrictions.
- (4) The Court shall not make any order under subregulation (3) in a case where notice of objection was served under regulation 11 or 12
  - (a) until the end of the period within which an appeal can be brought against the notice of objection; and
  - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subregulation (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this regulation the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to him or her.
- (7) This regulation applies
  - (a) to all the shares in an authorised person of which the person in question is a controller of the relevant description which are held by him or her or any

associate of his or hers and were not so held immediately before he or she became such a controller of the authorised person; and

- (b) where the person in question became a controller of the relevant description of an authorised person as a result of the acquisition by him or her or any associate of his or her of shares in another company, to all the shares in that company which are held by him or her or any associate of his or hers and were not so held before he or she became such a controller of that authorised person.

(8) A copy of the notice served on the person concerned under subregulation (2) shall be served on the authorised person or the company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

#### ***PART IV – APPEALS***

##### **16. Procedure and Rights of Appeal.**

(1) Where the Commission, acting under regulation 7, refuses an authorisation or revokes any authorisation or acting under regulation 6, attaches a condition to a requisition of a particular person or varies any condition so attached, the applicant or the authorised person, as the case may be, may require the Commission to furnish him or her with a statement in writing of its reasons for that decision.

(2) Any person aggrieved by such refusal or revocation, or by the conditions attached to his or her authorisation or by any variation of such conditions may appeal to the Court, either in term or in vacation, on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

(3) Where any person appeals against the revocation of his or her authorisation or against the variation of any condition attached to his or her authorisation under regulation 6, or, where his or her original authorisation was granted without any conditions attached thereto, against any subsequent attaching of conditions, the authorisation shall not be cancelled or the condition varied or attached as the case may be, until the appeal has been determined or withdrawn.

(4) Notwithstanding anything in subregulation (3), the Court may, until an appeal is determined or withdrawn, make such order as it thinks fit for protecting the public against financial loss due to the dishonesty, incompetence or malpractice by the person appealing in respect of any of the matters mentioned in that subregulation.

(5) Any person on whom a notice of objection has been served under regulation 11 or 12 may appeal to the Court against the decision of the Commission to serve the notice, but this subregulation does not apply to a person in any case in which he or she has failed to give a notice or become or continued to be a controller in circumstances in which his or her doing so constitutes an offence under regulation 14.

##### **17. Representation to the Court by Commission.**

(1) Notwithstanding regulation 16, where the Commission decides to refuse an authorisation or to suspend or revoke any authorisation or to attach or vary any condition or where a person has ceased for any other reason to be an authorised person, the Commission may represent to the Court that, in order that the interest of the clients of the applicant, the authorised person or the former authorised person, as the case may be, shall not be prejudicially affected, the business of the applicant or the authorised person or the former

authorised person should be subject to such supervision, restraint or conditions from such time and for such periods as the Commission may specify in the representation.

(2) On the presentation of a representation under this regulation, the Court may make such order as it thinks just.

***PART V – INFORMATION***

**18. Duties of Authorised Persons.**

(1) Pursuant to section 33 of the Act, an authorised person shall maintain, in respect of any finance business carried out by that person the following information,

- (a) such books or records as accurately reflect the finance business carried out by the authorised person;
- (b) separate accounts in the books or records in respect of each of the clients of the authorised person and shall separate the funds and other property of every such client from that of the authorised person.

(2) An authorised person shall not change the name in which that person was licensed to operate outside the Federation as a subsidiary, branch, an agency or representative office without the prior written approval of the Commission.

**19. Annual Audited Accounts, Certificate of Compliance and other Documents.**

(1) An authorised person who is a legal person shall within 4 months of the end of the financial year

- (a) prepare audited financial statements in accordance with generally accepted accounting principles;
- (b) deliver to the Commission the audited financial statements together with written confirmation from an independent auditor that the annual accounts have been prepared as required under paragraph (a) and whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification;
- (c) deliver to the Commission a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by
  - (i) any subsequent application for an authorisation;
  - (ii) any subsequent notification of change in accordance with paragraph (b) of subregulation (5) of regulation 5,

remains correct and gives an accurate summary of the business of the authorised person; and

- (d) deliver to the Commission such other documents as the Commission may require.

(2) The Commission may at any time by written notice sent to an authorised person request that the authorised person shall within one month from the date of such notice deliver to the Commission a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any

subsequent notification of change in accordance with paragraph (b) of subregulation (5) of regulation 5, remains correct and gives an accurate summary of the business of the authorised person.

(3) Where an authorised person changes auditor, the authorised person shall, when required by the Commission, authorise the former auditor to disclose the circumstances that gave rise to the change, and when so authorised, the auditor shall disclose such circumstances.

(4) The period within which any document is required to be submitted under this regulation may be extended by the Commission where it considers that there are circumstances justifying an extension.

(5) The provisions of this regulation shall apply equally to a natural person doing finance business who generates revenue in excess of fifty thousand dollars (50,000.00).

(6) Where an authorised person is a natural person doing finance business that generates revenue of fifty thousand dollars (50,000.00) or less then that person shall submit financial information on an annual basis on the financial reporting forms as set out in Schedule 3.

(7) If any authorised person fails to comply with the provisions of this regulation, that person commits an offence and shall be liable to a fine not exceeding five thousand four hundred dollars and to a further fine not exceeding five hundred and forty dollars for each day during which the offence continues.

#### ***PART VI – MISCELLANEOUS AND FINAL PROVISIONS***

##### **20. Restrictions on use of certain terms.**

(1) No person, other than an authorised person shall,

- (a) use any word, either in English or in any other language, in the description or title under which he or she carries on business in or from within the Federation that, in the opinion of the Commission, suggests that he or she is carrying on any finance business; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he or she is carrying on any finance business.

(2) The Commission may require an authorised person who carries on any finance business under a name which is

- (a) identical to that of any other person, whether within or outside the Federation, or which so nearly resembles that name as to be calculated to deceive;
- (b) calculated to suggest falsely the patronage of or connection with some person whether within or outside the Federation; or
- (c) calculated to suggest falsely that he or she has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,

forthwith to change the name and in default of compliance may revoke the licence issued to the authorised person.

21. The fees required to be paid in respect of trust and corporate business are set out in Schedule 1 to these Regulations.

**SCHEDULE 1**

(Reg 21)

**3. Fees to be paid to the Commission.**

The fees set out in the second column of this Schedule shall be payable in respect of the transactions set out in the first column.

Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
1. Trust Business		
(a) on filing of any application	\$1620	\$600
(b) on granting of authorisation for:		
(i) an unrestricted business	\$10,800	\$4000
(ii) restricted business	\$5400	\$2000
2. Corporate business	\$5400	\$2000
(a) on filing of application	\$1080	\$400
(b) on granting of authorisation	\$5400	\$2000
3. Renewal of authorisation to carry on trust business as		
(a) on unrestricted business	\$10,800	\$4000
(b) on restricted business	\$5400	\$2000
4. Renewal of authorisation to carry on corporate business	\$5400	\$2000

(XCD = dollars of the Eastern Caribbean Central Bank; USD = of the United States of America)

Penalties for late submission of the annual licence fees:

1. The annual fee shall be paid on or before 31<sup>st</sup> January of each year.
2. If the annual fee is paid after 31<sup>st</sup> January in any year but before 1<sup>st</sup> March in the same year, a penalty of 10% of the annual fee is payable in addition to the annual fee.
3. If the annual fee is paid on 1<sup>st</sup> March in any year or, on or before 30<sup>th</sup> June in the same year, a penalty of 50% of the annual fee is payable in addition to the annual fee.
4. The non-payment of licence fee after 30<sup>th</sup> June in the same year would result in the cancellation of the licence.

**SCHEDULE 2 (Reg 5(4)(j))****PERSONAL QUESTIONNAIRE**

NAME OF PERSON IN CONNECTION WITH WHICH THIS FORM IS BEING COMPLETED
---

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NAME OF INDIVIDUAL
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**To be completed by all Shareholder Controllers, Directors, Managers and Chief Executives of Persons Applying to be Authorised Under the Financial Services Regulatory Commission Act, Cap 21:10 of Saint Christopher and Nevis.**

**Notes:*****Meaning of Person***

**Person** includes any:-

- (a) individual;
- (b) company;

***Meaning of Shareholder Controller, Director and Managers***

**Shareholder Controller**, in relation to a person, is:-

- (a) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 15 per cent of the voting power in general meeting of that company or of any other company of which that company is a subsidiary company.

**Director**, in relation to a person is: -

- (a) a person who occupies the position of a director, by whatever name called;

**Manager**, in relation to a person is:-

- (a) a person by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of an authorised person or an office in the Federation of that authorised person.

**Chief Executive**, in relation to an authorised person is:-

- (a) a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the authorised person and in relation to an authorised person whose principal place of business is in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation.

**APPLICANT INSTITUTION:** \_\_\_\_\_

**PROPOSED POSITION:** \_\_\_\_\_  
(Shareholder Controller, Director, Manager or Chief Executive)

**NAME:** \_\_\_\_\_

**PREVIOUS NAMES AND ALIASES (if any):** \_\_\_\_\_

**DATE AND PLACE OF BIRTH:** \_\_\_\_\_  
(including town, state and country)

**IDENTIFICATION NUMBERS:** \_\_\_\_\_  
(Passport #, Voters Registration #, National Insurance #, Social Security #, Drivers' Licence # or specify other type)

**NATIONALITY:** \_\_\_\_\_  
(indicate if by birth, naturalisation, marriage)

**ADDRESS (Private & Business):** \_\_\_\_\_....

**PREVIOUS PRIVATE ADDRESSES DURING THE LAST TEN YEARS:**  
(with relevant dates)  
\_\_\_\_\_ ....

**OCCUPATION:** \_\_\_\_\_

1. Have you at any time been charged or convicted of any offence by a Civil, Criminal or Military Court? (excluding minor Road Traffic offences). If so, please give details of charge, and if convicted, the date of conviction and full particulars of the offence and the penalty imposed:  
\_\_\_\_\_ ....
2. Have you ever been required to give evidence in any trial or proceedings involving fraud, dishonesty or similar matters, other than as an expected witness? If so, give particulars:  
\_\_\_\_\_ ....
3. Have you ever been the subject of investigation/disciplinary procedures, censured, disciplined or publicly criticized by any professional body to which you belong or have belonged? If so, give particulars:  
\_\_\_\_\_ ....
4. Have you ever been refused entry to any profession or vocation? If so, give particulars:  
\_\_\_\_\_ ....
5. Have you ever been dismissed or requested to resign from any office or employment? If so, give particulars:  
\_\_\_\_\_ ....

6. Have you ever been censured, disciplined or publicly criticised by, or made the subject of Court Order at the instigation of:
- a) Any regulatory authority?
  - b) Any officially appointed enquiry?
  - c) Any other established body concerned with the regulation of a relevant activity<sup>1</sup> (as defined in the footnote at the end of this page). If so, give particulars?
- \_\_\_\_\_ ....

7. In connection with the formation or management of any corporation, has a court adjudged you civilly or criminally liable for any fraud, misfeasance or other misconduct towards that corporation, or any member thereof? If so, give particulars:
- \_\_\_\_\_ .....

8. In connection with the formation or management of any corporation have you been disqualified by a court from being a director or from acting in the management or conduct of the affairs of any corporation? If so, give particulars:
- \_\_\_\_\_ ....

9. Have you ever:
- (a) been adjudged bankrupt by a Court in any Jurisdiction?
  - (b) had a receiving order made against you?
  - (c) had your estate sequestered?
  - (d) entered into a Deed of Arrangement, or other composition or arrangement with your creditors?

If so, give particulars:

\_\_\_\_\_ ....

10. Has a bankruptcy petition ever been served on you? If pending, give details of the circumstances and, if not pending, how was the matter resolved?
- \_\_\_\_\_ ....

11. Have you, your company or your employer, previously dealt on a regular basis with any person carrying on a relevant activity (as defined in the footnote) who has, to your knowledge at any time, indicated that he is unwilling to effect further transactions with you, your company or your employer, by reason of any act or omission by you? If so, give particulars:
- \_\_\_\_\_ ....

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<sup>1</sup> a. Banking, finance, insurance money lending, money management, debt factoring, hire purchase financing, leasing, real estate or other financial activities.  
b. Dealing in securities.  
c. Providing investment or financial advice and management.

12. Will you be actively engaged in the business or the entity to which this application relates and devote the major portion of your time thereto? .....

13. Are you a Director of any Limited Companies or other corporations engaged in relevant activities, as defined in the footnote at the end of page 5? If so, state:

(a) Name of Companies/Corporation .....

(b) Nature of business .....

(c) Date of commencement of Directorship .....

(d) Whether or not employed on a service contract (e.g. Managing Directorship) in any case. ....

14. Have you been a Director of any Limited Companies or other Corporations, other than those stated in the previous questions? If so, state:

a) Name of Companies/Corporations .....

b) Nature of business .....

15. Are you or have you ever been engaged:

a) in Partnership

b) in business as a Principal on your own account?

If so give particulars: .....

16. Are you a beneficial owner of any controlling interest in any unlisted private or public company? If so, give particulars: .....

17. Have you ever been a director of, or directly concerned with the management of a bank or other financial institution:

a) which has been wound up by a Court;

b) the licence of which has been revoked;

c) which has been placed in receivership;

d) which has entered into an arrangement with its creditors;

e) whose business has been adjudged to have been conducted imprudently or fraudulently;

f) which has failed to meet the solvency requirements prescribed by law.

If so give particulars:

\_\_\_\_\_ .....

18. Have you ever been a director, or been directly concerned with the management or conduct of affairs of any company which has gone into liquidation, whilst you were, or within one year of your being a director, or so concerned. If so, give details of the circumstances, including:

a) Name of company

\_\_\_\_\_ .....

b) Name of the liquidator

\_\_\_\_\_ .....

c) Address of the liquidator

\_\_\_\_\_ .....

19. Have you ever been concerned with the management or conduct of affairs of any corporation which, by reason of any matter relating to a time when you were so concerned, has been censured, disciplined or publicly criticised by any:

a) regulatory authority?

b) official appointed enquiry?

c) other body concerned with regulation of a relevant activity?

If so, give particulars:

\_\_\_\_\_ .....

20. Do you (in your personal capacity or through any entity controlled by you) have outstanding any loans or other forms of indebtedness in excess of EC\$100,000. If so, state:

a) Form

\_\_\_\_\_ .....

b) Source

\_\_\_\_\_ .....

c) Maturity Date

\_\_\_\_\_ .....

21. Has any person, firm or company guaranteed the indebtedness? If so, give particulars (See previous question):

\_\_\_\_\_ .....

22. Are you at present guaranteeing the debt and obligations of any third parties? If so, give particulars:

\_\_\_\_\_ ....

I ..... declare that the answers to the above questions are complete and correct to the best of my knowledge and belief and I undertake as long as I continue to be a shareholder controller, director, manager or chief executive of the person, I will notify the Commission through the Director of any material changes affecting the completeness of the answers to questions 1 - 22.

Dated the                      day of                      20   .

Signature: .....                      Date: .....

In the presence of:

.....

(Signature)  
Justice of the Peace, or  
Attorney-at-Law, or  
Commissioner for Oaths

(Please include name and seal accordingly).

SCHEDULE 3    (Reg 19(6))

FINANCIAL REPORTING FORMS

Compilation Instructions

1. In accordance with section 33 of the Financial Services Regulatory Commission Act, Cap. 21.10, these forms should be completed on an annual basis and sent to the Director of the Financial Services Regulatory Commission -St Kitts Branch (FSRC) in electronic and printed form 90 days after the end of the financial year.
2. These statements should reflect the accruals basis of accounting.
3. All figures should be reported in Eastern Caribbean Dollars and entered as whole numbers.
4. All cells that have formulae within are password protected. Other cells can have data entered into them.
5. Please record all financial date in relation to the corporate business and citizenship by investment business.

FORM SP 1

[NAME OF SERVICE PROVIDER]  
STATEMENT OF FINANCIAL POSITION  
AS AT [DAY/MONTH/YEAR]

(Expressed in [state currency])

<b>ASSETS</b>			-
<b>Current Assets</b>			-
a. Cash at Bank and In Hand	(refer to schedule 1)	-	
b. Accounts Receivables	(refer to schedule 2)	-	
c. Investments (Short-Term)	(refer to schedule 3)	-	
d. Loans (Due within One Year)	(refer to schedule 4)	-	
e. Other Current Assets	(refer to schedule 5)	-	
<b>Non-Current Assets</b>			-
a. Investments (Long-Term)	(refer to schedule 6)	-	
b. Loans (Due in Over One Year)	(refer to schedule 7)	-	
c. Investment Properties	(refer to schedule 8)	-	
d. Property, Plant & Equipment	(refer to schedule 9)	-	
e. Other Non-Current Assets	(refer to schedule 10)	-	
<b>LIABILITIES</b>			-
<b>Current Liabilities</b>			-
a. Clients' Deposits		-	
b. Other Deposits	(refer to schedule 11)	-	
c. Accounts Payable	(refer to schedule 12)	-	
d. Deferred Revenue		-	
e. Other Current Liabilities	(refer to schedule 13)	-	
<b>Non-current Liabilities</b>			-
a. Lease Obligations		-	
b. Loan Obligations	(refer to schedule 14)	-	
c. Other Non-Current Liabilities	(refer to schedule 15)	-	
<b>NET ASSETS</b>			-
<b>SHAREHOLDERS' EQUITY &amp; RESERVES</b>			-
a. Share Capital			
b. Retained Earnings			
c. General Reserves			

We declare that these statements have been prepared from the books and records of \_\_\_\_\_ (name of Authorised Person) and to the best of our knowledge are correct.\*

.....  
Signature - Authorized Person

.....  
Name of Authorized Person or Preparer of Statements

.....  
Official Seal/Stamp

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."

FORM SP 2

[NAME OF SERVICE PROVIDER]  
**STATEMENT OF INCOME**  
 FOR THE YEAR ENDED [DAY/MONTH/YEAR]

(Expressed in [state currency])

<b>INCOME</b>		-
<b>1. Services Income</b>		-
a. Citizenship Service		
b. Company Incorporation - Ordinary		
c. Company Incorporation - Exempt		
d. Registered Office		
e. Annual Returns		
f. Secretarial Services		
g. Nominee Services		
h. Other Services Income	(refer to schedule 16)	-
<b>2. Other Income</b>	(refer to schedule 17)	-
<b>EXPENSES</b>		-
<b>1. Operating Expenses</b>		-
a. Professional Fees		
b. Legal Fees		
c. Salaries		
d. Accounting and Audit Fees		
e. Licences and Fees		
f. Marketing and Promotions		
g. Administrative Expenses	(refer to schedule 18)	-
h. Other Operating Expenses	(refer to schedule 19)	-
<b>2. Other Expenses</b>	(refer to schedule 20)	-
<b>NET INCOME/(LOSS)</b>		-

FORM SP 3

**[NAME OF SERVICE PROVIDER]  
STATEMENT OF CHANGES IN EQUITY  
FOR THE YEAR ENDED [DAY/MONTH/YEAR]**

(Expressed in [state currency])

Balance at the beginning of the year	<input type="text"/>
Net Income/(Loss) for the year	<input type="text"/>
Other	<input type="text"/>
Transfer to General Reserves	<input type="text"/>
Dividends Paid	<input type="text"/>
Other	<input type="text"/>
Balance at end of year	<input type="text" value="-"/>

Schedules to Statement of Financial Position		
<b>Schedule 1: Cash at Bank and In Hand</b>		<b>\$</b>
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<b>Schedule 2: Accounts Receivables</b>		<b>\$</b>
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<b>Schedule 3: Investments (Short-Term)</b>		<b>\$</b>
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<b>Schedule 4: Loans (Due within One Year)</b>		<b>\$</b>
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<b>Schedule 5: Other Current Assets</b>		<b>\$</b>
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Schedules to Statement of Financial Position		
<b>Schedule 6: Investments (Long-Term)</b>		<b>\$</b>
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<b>Schedule 7: Loans (Due In Over One Year)</b>		<b>\$</b>
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<b>Schedule 8: Investment Properties</b>		<b>\$</b>
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<b>Schedule 9: Property, Plant &amp; Equipment</b>		<b>\$</b>
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<b>Schedule 10: Other Non-Current Assets</b>		<b>\$</b>
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Schedules to Statement of Financial Position		
<b>Schedule 11: Other Deposits</b>		<b>\$</b>
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<b>Schedule 12: Accounts Payable</b>		<b>\$</b>
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<b>Schedule 13: Other Current Liabilities</b>		<b>\$</b>
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<b>Schedule 14: Loan Obligations</b>		<b>\$</b>
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<b>Schedule 15: Other Non-Current Liabilities</b>		<b>\$</b>
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Schedules to Statement of Income		
<b>Schedule 16: Other Services Income</b>		<b>\$</b>
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<b>Schedule 17: Other Income</b>		<b>\$</b>
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<b>Schedule 18: Administrative Expenses</b>		<b>\$</b>
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<b>Schedule 19: Other Operating Expenses</b>		<b>\$</b>
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<b>Schedule 20: Other Expenses</b>		<b>\$</b>
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Made this 12<sup>th</sup> day of January, 2019.

TIMOTHY HARRIS  
*Minister responsible for Finance*