

When were the changes made?

Where can you find the new regulations and amendments?

What were the changes?

The New Regulations ??

Why is it important for you to know?

How will they affect your business operations?

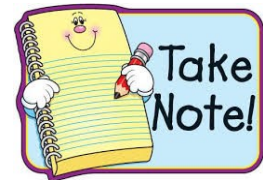
During the months of December 2018 and January 2019, a number of amendments were made to legislation governing Regulated Entities and the Financial Services Regulatory Commission (FSRC). New regulations were also passed to govern the supervision of Trust and Corporate Business. This newsletter seeks to briefly explain the various changes made to the Regulations. The new Regulations and amendments are as follows:

- ◆ Financial Services (Trust and Corporate Business) Regulations, No. 3 of 2019;
- ◆ Financial Services Regulatory Commission Act Amendment, No. 12 of 2018;
- ◆ Companies Amendment, No. 14 of 2018;
- ◆ Companies Amendment, (SRO 7 of 2019);
- ◆ Captive Insurance Companies (Amendment) Act, No. 13 of 2018;
- ◆ Limited Partnerships (Amendment) Act, No. 16 of 2018;
- ◆ Trust (Amendment) Act, No. 15 of 2018; and
- ◆ The Saint Christopher and Nevis (CBI Escrow Accounts) Act, No. 16 of 2017 (*brought into effect February 2019*).

Important Information

There were some important changes which affect the licensing and supervision of some Regulated Entities.

All updates and amended legislation can be found in the *Law Library* on our website: www.fsrc.kn.



Financial Services (Trust and Corporate Business) Regulations

Trust and Corporate Service Providers are now licensed under the Financial Services (Trust and Corporate Business) Regulation (TCBR), No. 3 of 2019. Provisions for the licensing of Trust and Corporate Service Providers were previously made under the Financial Services (Regulations) Order Cap 21.03 (Seventh Schedule); however this has been repealed. Kindly note the following licensing requirements and important changes under the new regulations:

- ◆ The term ‘*authorised person*’ means a natural person or a legal person who is licensed to carry on finance business within St. Kitts and Nevis. This means that only incorporated companies and individuals could be licensed Service Providers.
- ◆ *Authorised persons* are licensed to carry on domestic and/or foreign business. Therefore, only authorised persons can incorporate companies.
- ◆ Legal persons are required to maintain a minimum net asset requirement of US \$100,000.00. It should be noted that indemnity insurance is no longer accepted to meet this requirement.
- ◆ Section 19 outlines requirements for financial reporting:
 - Audited financial statements are to be submitted for legal persons;
 - Audited financial statements are to be submitted for natural persons with annual revenue in excess of EC\$50,000; and
 - The Reporting Forms as set out in Schedule 3 of TCBR are to be submitted for natural persons with annual revenue of EC\$50,000 or less.

Financial Services Regulatory Commission Act Amendment

The FSRC Act was amended to include definitions for *authorised person*, *Designated Non-Financial Business and Professions (DNFBPs)*, *finance business*, *financial services or related-products* and *virtual assets*. Under the Amendment, the FSRC is responsible for licensing and supervising all financial services or related-products. The Act defines financial services or related-products as any activity involving:

1. financial services business, with the exception of prudential banking business pursuant to the Banking Act, No. 1 of 2015;

2. finance business (*any trust or corporate business carried on for profit or reward from within the Federation*);
3. the use, management and sale of virtual assets;
4. business carried on pursuant to any of the enactments set out in Schedule 1 of the FSRC Act;
5. the business of an authorised person;
6. the business of DNFBNPs;
7. any other business related to finance business or financial services business that the Minister may by Order prescribe.

The amendment also introduced new penalties for persons found to be operating in contravention of the Act.



Companies Amendment No. 14 of 2018

As at 31 December 2018, exempt companies could no longer be incorporated in St. Kitts. In addition, existing exempt companies will cease to operate in the Federation after 20 June 2021. The effect of the amendments will require exempt companies to be ‘wound up’ or converted into ordinary companies.

The amendment also set out the requirement for companies to obtain authorisation from the Commission to carry on finance business.

Companies Amendment (SRO 7 of 2019)

The amendment outlines some changes in fees associated with the Companies Registry.

Captive Insurance Companies (Amendment) Act

The amendment made provisions for the licensing of insurance managers under the Captive Insurance Companies Act, Cap 21.20. The authorisation for insurance managers was previously included in the Seventh Schedule of the Companies Act; however this has been repealed.

Limited Partnerships (Amendment) Act

Limited Partnerships Act, Cap. 21.12 was amended to repeal Section 75. Previously, limited partnerships were authorised to carry on finance business under this Section. Under the new regulations for Trust and Corporate Business, limited partnerships can no longer be licensed to carry on finance business.

Trust (Amendment) Act, No. 15 of 2018

The Trust Act Chap 5.19 was amended to repeal Section 107. Previously, trusts were authorized to carry on finance business under this Section. Pursuant to the new regulations for Trust and Corporate Business, trusts can no longer carry on finance business under the Trust Act.

The Saint Christopher and Nevis (CBI Escrow Accounts) Act

The Escrow Bill was passed in the National Assembly in December 2017; however it took effect in February 2019. The legislation outlines the requirements for the licensing of Escrow Agents for CBI business and the duties and responsibilities of the Agents.

The FSRC is the regulatory body responsible for supervising and licensing Escrow Agents under the Saint Christopher and Nevis (CBI Escrow Accounts) Act. The Agents are required to submit monthly financial reports and annual financial statements to the FSRC. *(Please see the FSRC’s November 2018 Newsletter for further details on the Escrow process).*

The FSRC encourages the management and staff of Regulated Entities to familiarize themselves with the relevant amendments and new regulations.

Amendment to the Financial Action Task Force (FATF) Recommendations

In addition to the laws and regulations of St. Kitts and Nevis, the FSRC and Regulated Entities are also guided by the FATF Recommendations. The laws and regulations are often updated to comply with these international standards.

In October 2018, the FATF amended its recommendations after recognising the need to adequately mitigate the money laundering (ML) and terrorist financing (TF) risks associated with virtual asset activities. Recommendation 15 now requires countries to regulate virtual asset service providers (VASPs) for AML/CFT purposes.

To assist countries with the implementation of effective measures to prevent the use of virtual assets for ML/TF purposes, the FATF has developed an Interpretive Note to Recommendation 15. The Interpretive Note will be formally adopted as part of the FATF Standards in June 2019.

The Draft Interpretive Note outlines the following:

1. Virtual assets are to be considered as “property,” “proceeds,” “funds,” “funds or other assets,” or other “corresponding value”. Countries will be required to apply the relevant measures under the FATF Recommendations to virtual assets and VASPs.
2. In accordance with Recommendation 1, countries should identify, assess, and understand the ML/TF risks emerging from virtual asset activities and the activities or operations of VASPs.
3. VASPs should be licensed or registered.
4. VASPs should be subject to effective monitoring systems. They should be supervised or monitored by a competent authority to ensure compliance with national AML/CFT requirements.
5. Proportionate and dissuasive sanctions, whether criminal, civil or administrative, should be available for VASPs that fail to comply with AML/CFT requirements
6. In accordance with Recommendation 10 and 21, VASPs should be required to conduct customer due diligence for transactions exceeding a particular threshold. VASPs should also be required to obtain and hold accurate information on the originator and beneficiary of virtual asset transfers.

In accordance with the amendment to Recommendation 15, the FSRC Act was amended to include the definition of virtual assets. The use, management and sale of virtual assets was also included in the definition of financial services or related products. All persons providing financial services or related products are to be licensed and regulated by the FSRC as set out in Section 43(a) of the FSRC Act. Additionally provisions will be made in local legislation for the effective monitoring and supervision of virtual asset activities and VASPs upon finalization and publication of the Interpretive Note.