



I assent,

CUTHBERT M SEBASTIAN

*Governor-General.*

26<sup>th</sup> November, 2009.

## SAINT CHRISTOPHER AND NEVIS

### No. 22 of 2009

**ANACT** to establish the Financial Services Regulatory Commission to regulate providers of financial services except for financial services covered by the Banking Act, and to provide for related or incidental matters.

*[Published 26<sup>th</sup> November 2009, Official Gazette No. 53 of 2009.]*

**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:

#### **PART 1 PRELIMINARY**

1. This Act may be cited as the Financial Services Regulatory Commission Act, 2009.

Short title.

2. In this Act

Interpretation.

“affiliate” in relation to regulated entity means

- (a) a company which is or has at any relevant time been
  - (i) a holding company or subsidiary of the regulated entity;
  - (ii) a subsidiary of a holding company of the regulated entity; or
  - (iii) a holding company of a holding company or a subsidiary of a subsidiary of the regulated entity; or
- (b) any company over which the regulated entity has control;
- (c) any company over which the regulated entity and any person associated with the regulated entity has control;
- (d) any company which has common ownership with the regulated entity;

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (e) any company which has the same beneficial owner and shares common management and interlinked businesses with the regulated entity;
- “Commission” means the Financial Services Regulatory Commission established under section 3;
- “Commissioner” means a Commissioner appointed under section 5;
- “Eastern Caribbean Central Bank” means the Eastern Caribbean Central Bank established pursuant to the Eastern Caribbean Central Bank Agreement 1983;
- “family member” in relation to a person means the person’s father, mother, brother, sister, child, grandchild, husband or wife;
- “Financial Intelligence Unit” means the Financial Intelligence Unit established under the Financial Intelligence Unit Act, 2000, No. 15 of 2000;
- “licence” includes permit, permission and registration;
- “Minister” means the Minister responsible for Finance;
- “prescribed” means prescribed in Regulations made under this Act;
- “regulated entity” means an entity regulated under this Act and any enactment specified in Schedule 1;
- “regulated service” means a service carried on by a regulated entity;
- “Regulations” means regulations made under section 48;
- “regulatory authority” means an authority which, in Saint Christopher and Nevis or a country or territory outside Saint Christopher and Nevis, exercises functions corresponding to any functions of the Commission or functions as a supervisory authority of banks;
- “regulatory functions” means functions of the Commission under this Act or any enactment specified in Schedule 1;
- “Saint Christopher and Nevis Chamber of Industry and Commerce” means the Saint Christopher and Nevis Chamber of Industry and Commerce incorporated in 1949.

**PART 2**  
**COMMISSION**

3. (1) There is established a Commission to be known as the Financial Services Regulatory Commission.

Establishment and objectives of the Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The affixing of the common seal of the Commission shall be in the presence of and witnessed by the Chairperson, or any person authorised in writing by the Chairperson.

(4) The objects of the Commission are

- (a) the maintaining of public confidence in the financial system operating in Saint Christopher and Nevis;
- (b) the promoting of public understanding and awareness of the financial system operating in Saint Christopher and Nevis including the awareness of different kinds of investments or other financial dealings and the provision of appropriate information and advice; and
- (c) the securing of the appropriate degree of protection for consumers having regard to
  - (i) the differing degrees of risk involved in different kinds of investments or other transactions;
  - (ii) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
  - (iii) the need that consumers may have for advice and for accurate information.

4. (1) The Commission shall be responsible for the administration of this Act and the enactments specified in Schedule 1 and shall have the powers, duties and functions assigned to it by this Act and the enactments specified in Schedule 1.

Functions of the Commission.

(2) The Commission, without limiting the generality of subsection (1), shall

- (a) be the ultimate regulatory body for financial services and for anti-money laundering for Saint Christopher and Nevis;
- (b) maintain a general review of the operations of all regulated entities;

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (c) monitor financial services business carried on in or from within Saint Kitts and Nevis and to take action against persons carrying on unauthorised business;
- (d) monitor compliance by regulated persons with the Proceeds of Crime Act, the Anti-Terrorism Act and such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism that are set out in Schedule 1;
- (e) monitor the effectiveness of the relevant enactments in providing for the supervision and regulation of financial services business carried on in or from Saint Kitts and Nevis in accordance with internationally accepted standards;
- (f) receive any reports that may be required from the Regulator in St. Kitts and the Regulator in Nevis;
- (g) authorise and examine the affairs or business of a regulated entity for the purpose of satisfying itself that the provisions of this Act and the enactments specified in Schedule 1 are being complied with and that a regulated entity is in a sound financial position and is managing its business in a prudent manner;
- (h) assist any authorised authority in the investigation of any offence against the Laws of Saint Christopher and Nevis which it has reasonable grounds to believe has or may have been committed by a regulated entity; and cooperate with the Financial Intelligence Unit in the supervision of a regulated entity;
- (i) give general advice and guidance to the Regulators;
- (j) to maintain contact and develop relations with persons engaged in financial services business in or from within St. Kitts and Nevis with a view to
  - (i) encouraging the development of high professional standards within the financial services industry; and
  - (ii) promoting industry codes of conduct;
  - (iii) to maintain contact and develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions and to provide regulatory

*Financial Services Regulatory Commission Act, 2009 – 22.*

assistance to foreign regulatory authorities in accordance with this or any other Act;

- (k) take such steps as the Commission considers necessary or expedient for the development and effective regulation and supervision of finance business in Saint Christopher and Nevis.

5. (1) The Commission shall establish and maintain its head office and principal place of business within Saint Christopher and Nevis.

Head office and operational departments.

(2) For the purpose of carrying out its functions under this Act, the Commission shall be divided into two operational departments, one located in Saint Christopher and the other in Nevis.

(3) The location of the head office and the operational departments of the Commission shall be published in the *Official Gazette*.

(4) The service of documents on the Commission is deemed to be effective if delivered at the head office or at any of the operational departments of the Commission.

6. (1) The Commission shall be comprised of the following Commissioners to be approved and appointed by the Minister

Composition of the Commission.

- (a) one person nominated by the Governor of the Eastern Caribbean Central Bank;
- (b) the Financial Secretary of Saint Christopher;
- (c) the Permanent Secretary in the Ministry responsible for Finance in Nevis;
- (d) one person nominated by the Minister responsible for Finance in Saint Christopher;
- (e) one person nominated by the Minister responsible for Finance in Nevis;
- (f) the Director of the Financial Intelligence Unit; and
- (g) one person nominated by the Minister responsible for Legal Affairs.

(2) A person appointed as a Commissioner under section (1)(d), (e) or (f) shall have experience in banking, insurance, law, economics, finance, accounting, anti-money laundering or other related fields.

(3) A person is not eligible to be appointed as a Commissioner, or having been appointed, shall be disqualified from continuing as a Commissioner if

- (a) that person or a family member of that person holds or is beneficially interested in any stock, share,

bond, debenture or other security of, or other interest in, a regulated entity except membership shares in a credit union;

- (b) a family member of that person has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a regulated entity;
- (c) that person is a director, officer, employee, agent of a regulated entity or a person providing a service or supplying goods to a regulated entity under a contract;
- (d) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;
- (e) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
- (f) has been convicted of a criminal offence except where the offence
  - (i) is a minor traffic offence,
  - (ii) is of a non-financial nature and occurred so long ago that it has no material effect on the character of the person; or
- (g) is a member of the National Assembly.

(4) In determining whether a person is eligible for appointment as a Commissioner, the Minister shall have regard to all matters that he considers relevant to the appointment including

- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of Director;
- (b) the diligence with which that person is likely to carry out the responsibilities of Commissioner.

(5) Notwithstanding subsection (4), regard may be had to the previous conduct and activities in business or financial matters of the person and, in particular, to any evidence that the person has

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment

or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

- (c) engaged in any business practices appearing to the Minister to be deceitful or oppressive or otherwise improper or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads the Minister to believe that the person carried out an act of impropriety in the handling of his or her employer's business; or
- (e) engaged in or been associated with any other business practice or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence and soundness of judgment.

(6) Where pursuant to section 22, a vacancy exists in the membership of the Commission, the Minister shall in accordance with this section appoint a person to fill the vacancy.

(7) The Minister shall by notice published in the *Gazette* give notice of the names of the Commissioners as the Commission is first constituted and every change in the constitution of the Commission.

(8) A person acting as a member of the Commission shall act in the public interest to carry out the purposes of this Act and not based on his or her personal or business interest.

7. (1) The Minister shall designate one of the Commissioners as the Chairperson of the Commission.

Chairperson and  
Deputy  
Chairperson.

(2) The Commissioners shall designate one of their number as the Deputy Chairperson.

(3) Where the Chairperson is absent, the Deputy Chairperson shall have all the powers of the Chairperson.

(4) The Minister shall by publication in the *Gazette* give notice of a designation made under this section.

8. (1) For each operational department, the Commission shall appoint a person with the prescribed qualifications as a Director to manage the affairs of the operational department on such terms and conditions as the Commission determines.

Appointment of  
Directors.

(2) Except in the case of an appointment under subsection (3), a Director shall render his or her services exclusively to the Commission and shall be answerable to the Commission for his or her acts and decisions.

*Financial Services Regulatory Commission Act, 2009 – 22.*

(3) Where the office of a Director is vacant or a Director is absent or incapacitated, the Commission may appoint, for a period not exceeding ninety days or for the duration of the absence or incapacitation, whichever is less, a person, who may be a Commissioner, as a temporary Director.

(4) A Director shall perform all the functions entrusted to him or her under this Act.

(5) Subject to subsection (6), a Director shall attend all meetings of the Commission unless the Director

(a) is instructed by the Chairperson of a meeting to withdraw;

(b) has obtained leave of absence or is prevented from attending for good cause.

(6) A Director attending a meeting of the Commission in accordance with subsection (5) has no voting rights.

Responsibilities  
of the  
Commission.

9. The Commission shall be responsible for the policy and general administration of its affairs and business.

Regulation of  
own procedures.

10. Subject to this Act and to the Regulations, the Commission shall regulate its own procedure.

Powers of the  
Commission.

11. The Commission shall have the power to do all things necessary or incidental to the objects of the Commission including, without limitation, the power to

(a) acquire, hold and dispose of real and personal property;

(b) enter into contracts;

(c) conduct investigations and apply sanctions where persons are found to be in violation of the provisions of this Act or any other legislation falling under the jurisdiction of this Act; and

(d) to do all such other things as may be necessary or incidental to the performance of its powers, duties and functions.

Committees.

12. (1) The Commission may, for the purpose of carrying out its functions pursuant to this Act, establish advisory committees to give advice to the Commission on such matters relating to the Commission's functions as the Commission may determine.

*Financial Services Regulatory Commission Act, 2009 – 22.*

(2) The Commission may appoint persons as members of an advisory committee established under subsection (1), and such persons shall hold office for such period as the Commission may determine.

(3) A Commissioner may be appointed as a member of the advisory committee but no employee of the Commission shall be qualified for such an appointment.

(4) An advisory committee established under subsection (1) shall keep a record of any recommendation it makes to the Commission.

(5) The recommendation of an advisory committee established under subsection (1) shall be considered by the Commission but is not binding on the Commission.

13. (1) The Commission may employ, at such remuneration and on such terms and conditions as may be approved by the Commission, such persons as the Commission considers necessary for the performance of the powers, duties and functions of the Commission.

Staff.

(2) Notwithstanding the Insurance Act, No. 8 of 2009 the Commission may, with the approval of and subject to any general direction given by the Minister, provide for the establishment and maintenance of a pension plan and medical insurance for the benefit of its officers and employees.

(3) A person appointed pursuant to subsection (1) shall perform the duties assigned to him or her by a Director.

14. (1) The Commission shall meet monthly as far as practicable and at such other times as may be necessary or expedient for the transaction of business and in any event not less than nine times per year and the meetings shall be held at such places as the Chairperson shall determine.

Meetings of the Commission.

(2) The Chairperson may at any time call a special meeting of the Commission and shall cause a special meeting to be held within seven days of a written request for that purpose addressed to the Chairperson by any three Commissioners.

(3) The Chairperson and any other Commissioner shall be deemed to be present at a meeting of the Commission if the Chairperson or the Commissioner participates by telephone, video link or satellite, and all Commissioners participating in the meeting are able to hear and to speak to each other.

(4) At a meeting of the Commission

(a) the Chairperson shall preside; or

(b) if the Chairperson is not present, the Deputy Chairperson shall preside;

*Financial Services Regulatory Commission Act, 2009 – 22.*

(c) if neither the Chairperson nor the Deputy Chairperson is present, the Commissioners present shall choose one of their number to preside.

(5) A meeting of the Commission is duly constituted for all purposes if at the meeting there is a quorum of not less than five Commissioners participating in the meeting.

(6) Decisions of the Commission shall be taken by a simple majority of votes of Commissioners present and voting at the meeting.

(7) The Chairperson shall have an original vote and in cases of equal division the Chairperson shall have the casting vote.

(8) The Commission may co-opt any person to attend any particular meeting of the Commission at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Commission, but a co-opted person shall not have the right to vote.

Oath of secrecy  
and  
confidentiality.

15. (1) A Commissioner, an officer or an employee of the Commission shall be required to take the oath of secrecy as is set out in Schedule 2.

(2) Subject to subsection (3), a Commissioner, an officer, an employee, an agent or an adviser of the Commission shall not disclose any information relating to

- (a) the business or affairs of the Commission;
- (b) any application made to the Commission under this Act or any enactment specified in Schedule 1;
- (c) the business or affairs of a regulated entity; or
- (d) the affairs of a customer, member, client or policyholder of a regulated entity, that the Commissioner, officer, employee, agent or adviser has acquired in the course of his or her duties or in the exercise of the Commission's functions under this Act or any other law.

(3) Subsection (1) does not apply to a disclosure

- (a) for the purpose of sharing information with a regulatory authority in accordance with section 16 or with the Financial Intelligence Unit;
- (b) lawfully required or permitted by any court of competent jurisdiction in Saint Christopher and Nevis;
- (c) in respect of the business affairs of a regulated entity or of a customer, member, client or policyholder of a

regulated entity, with the consent of the person or the customer, member, client or policyholder, as the case may be, which consent has been voluntarily given;

- (d) for the purpose of enabling or assisting the Commission in exercising a function conferred on it under this Act or any other law;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a regulated entity of any customer, member, client or policyholder of a regulated entity, to which the information relates, to be ascertained;
- (g) lawfully made to a person with a view to the institution of, or for the purpose of
  - (i) criminal proceedings;
  - (ii) disciplinary proceedings, whether within or outside Saint Christopher and Nevis, relating to the exercise by an attorney-at-law, auditor, accountant, valuer or actuary of his or her professional duties; or
  - (iii) disciplinary proceedings relating to the discharge of duties by a Commissioner, officer or employee of the Commission;
- (h) for the purposes of any legal proceedings in connection with the winding-up or dissolution of a regulated entity; or
- (i) for the appointment or duties of a receiver of a regulated entity.

16. (1) The Commission may exchange information with a regulatory authority to enable the regulatory authority to discharge its regulatory functions and an exchange of information pursuant to this subsection may be based on a memorandum of understanding between the Commission and the regulatory authority.

Requests by  
regulatory  
authority.

- (2) A memorandum of understanding pursuant to subsection (1) shall
- (a) set out the scope, procedure and other details for exchange of information;
  - (b) provide for reciprocal treatment;

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (c) not provide for disclosure beyond that which is provided for under this Act; and
- (d) not relieve the Commission of any of its functions or duties under this Act.

(3) The Commission shall notify the Attorney General, in writing, immediately of the request for assistance received from a regulatory authority, with particulars of the request, and shall submit to the Attorney General copies of all documents relating to the request, and the Attorney General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in Saint Christopher and Nevis, or in any appeal from such proceedings, arising directly from any such request.

(4) Subject to subsection (5), the Commission after having sent a copy of a request for information to the Attorney General in accordance with subsection (3), may disclose to a regulatory authority information necessary to enable that regulatory authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that regulatory authority.

(5) The Commission may decline to exercise its power under subsection (4) unless the regulatory authority undertakes to make such contribution towards the costs of the exercise as the Commission considers appropriate.

(6) Nothing in this section authorises a disclosure by the Commission unless

- (a) the Commission has been given an undertaking by the regulatory authority to take all possible steps to preserve the confidentiality of the information;
- (b) the Commission is satisfied that the assistance requested by the regulatory authority is required for the purposes of the regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that regulatory authority; and
- (c) the Commission is satisfied that information provided following the exercise of its powers under subsection (1) will not be used in criminal proceedings against the person providing the information other than proceedings for an offence of perjury.

*Financial Services Regulatory Commission Act, 2009 – 22.*

17. (1) No action or other proceeding shall lie against any Commissioner, officer or employee of the Commission for or in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under this Act. Protection from liability.
- (2) The Commission shall indemnify a Commissioner, officer or employee or other person for the legal cost of defending an action in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under this Act.
18. (1) A Commissioner who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so. Declaration of interest and abstention from voting.
- (2) Where a Commissioner declares an interest under subsection (3) the Commission shall determine whether or not the Commissioner's interest in a matter is material and where the Commission determines that the Commissioner's interest is material, the Commissioner shall leave the meeting upon the matter coming up for discussion.
- (3) A declaration and the departure of a Commissioner from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.
- (4) A Commissioner shall not
- (a) fail to comply with subsection (1);
  - (b) vote in respect of a matter before the Commission in which he or she is materially interested, whether directly or indirectly; or
  - (c) seek to influence the vote of any other Commissioner in relation to a matter before the Commission in which he or she is materially interested, whether directly or indirectly.
- (5) A Commissioner who fails to comply with subsection (4) commits an offence and on summary conviction is liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.
19. The appointment of a Commissioner shall be for a period not exceeding three years, subject to reappointment for any further period and to staggering of appointments. Duration of appointment.
20. A Commissioner may resign at any time by giving notice in writing to the Minister. Resignation.
21. The Minister shall, at any time, in writing, revoke the appointment of a Commissioner if, upon evidence, the Minister is satisfied that the Commissioner Revocation.

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (a) is disqualified from being a Commissioner pursuant to section 5(3);
- (b) guilty of serious misconduct;
- (c) has been disqualified or suspended on grounds of personal misconduct, by a competent authority, from practising a profession;
- (d) has been prohibited from being a director or officer of another organisation; or
- (e) is disqualified on grounds of national security.

Vacancy.

22. The office of a Commissioner is vacated

- (a) upon the death of the Commissioner;
- (b) if the Commissioner becomes disqualified pursuant to section 5(3);
- (c) if the Commissioner resigns pursuant to section 20;
- (d) if the Minister revokes the appointment of that Commissioner pursuant to section 21; or
- (e) if the Commissioner's appointment is not renewed by the Minister as of the date of expiry of the Commissioner's term of appointment; or

if the Commissioner fails to attend three consecutive meetings of the Commission without presenting a medical certificate or without being excused by the Minister in writing, in the case of the Chairperson or by the Chairperson in writing in the case of any other Commissioner.

Remuneration.

23. A Commissioner shall be paid by the Commission out of the funds of the Commission such remuneration and allowances as may be determined by the Commission.

Expenses of the Commission.

24. All expenses incurred by the Commission shall be paid out of

- (a) monies appropriated by the National Assembly for the purpose; and
- (b) monies lawfully received by the Commission pursuant to any Act or ordinance.

Financial year, budget and plan of action.

25. (1) The financial year of the Commission commences on 1<sup>st</sup> January and ends on 31<sup>st</sup> December in each year.

(2) The Commission shall not later than October 31<sup>st</sup> in each year cause to be prepared and shall adopt and submit to the Minister

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action,

for each operational department of the Commission in respect of the next financial year.

26. The Commission shall keep proper records of accounts in accordance with generally accepted international accounting standards and principles and shall prepare and retain financial statements in respect of each financial year.

Accounts.

27. (1) The Commission shall within two months after each financial year have its accounts audited annually by an independent auditor appointed by the Commission who shall conduct the audit in accordance with generally accepted international auditing standards and provide an auditor's report to the Commission.

Audit.

(2) The Commission, the Commissioners, the Directors, officers and employees of the Commission shall grant to the auditor appointed pursuant to subsection (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person who fails to comply with subsection (2) commits an offence and on summary conviction is liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both and to revocation of his or her appointment as a Commissioner, Director, officer or employee of the Commission in accordance with this Act.

28. (1) Subject to subsection (2) and not later than three months after the end of each financial year, the Commission shall submit to the Minister an annual report on the operations and activities and transactions of the Commission for that financial year and the Minister shall not later than one month after the submission cause the same to be laid in the National Assembly.

Annual report.

(2) An annual report pursuant to subsection (1) shall be accompanied by the auditor's report pursuant to section 27.

29. (1) Subject to subsection (2), where any functions or powers are conferred upon or vested in the Commission by or under this Act or any other enactment, it shall be lawful for the Commission to delegate such functions or powers wholly or partly to

Power to delegate functions.

- (a) the Chairperson;
- (b) one or more Commissioners;
- (c) a Director; or

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (d) the Licensing Committee or any other Committee designated by the Commission
- (2) The Commission is not authorised to delegate the
  - (a) power of delegation;
  - (b) approval of the strategic plans for the Commission; or
  - (c) approval of the annual report of the Commission.
- (3) The delegation of any functions under this section may be amended or revoked by the Commission.

Publication by  
the Commission.

- 30. (1) The Commission may publish information in such form and manner as it considers appropriate with respect to
  - (a) the operation of this Act and any other enactment dealing with the provision of a regulated service by the Commission, including, in particular, the rights of those provided with a regulated service, the duties of those who provide regulated services and the steps to be taken for enforcing those rights or complying with those duties;
  - (b) any matters relating to the functions of the Commission under this Act or any other enactment; or
  - (c) prudential reports of regulated entities in accordance with the Regulations regarding publishing of prudential reports;
  - (d) any other matters about which it appears to it to be desirable to publish information concerning
    - (i) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of regulated entities;
    - (ii) the protection and enhancement of the reputation and integrity of Saint Christopher and Nevis and in commercial and financial matters; or
    - (iii) the best economic interests of Saint Christopher and Nevis.
- (2) The Commission may offer for sale copies of information published under this Act.

(3) Nothing in this Act shall be construed as authorising the disclosure of information in any case where, apart from the provisions of this Act, it could not be disclosed.

31. The Commission is exempt from the payment of taxes, levies, and fees on income, property and documents.

Exemption from taxes.

### **PART 3 REPORTING REQUIREMENTS AND ENFORCEMENT**

32. (1) There is hereby established a Licensing Committee that shall act on behalf of the Commission as a licensing authority for financial services.

Licensing Committee.

- (2) (a) The Committee shall be comprised of at least three but no more than five persons nominated by the Commission.
- (b) Current members of the Commission shall not be eligible for nomination to the Committee.
- (3) The functions of the Committee shall be to
  - (a) receive, review and determine applications for licences under any financial services legislation and particularly those enactments that are listed in Schedule 1;
  - (b) suspend or revoke licences granted to applicants pursuant to any financial services legislation;
  - (c) publish the names of persons who have been granted licences or certificates under any financial services legislation as well as the names of persons whose licences have been suspended or revoked.
  - (d) make a report to the Commission on a quarterly basis of its activities;
  - (e) any other duties that are consistent with its powers as a licensing authority.

(4) The Commission shall prescribe rules for the operation of the Licensing Committee.

33. (1) A regulated entity shall submit to the Commission at such time and in such manner as the Commission may prescribe, any report, statement, information or data as required under this Act or any report, statement, information or data as the Commission may require for the proper discharge of its functions and responsibilities.

Reporting by regulated entities.

(2) Without limiting the generality of subsection (1), a regulated entity shall, at the request of the Commission, in relation to that

*Financial Services Regulatory Commission Act, 2009 – 22.*

regulated entity's operations, not later than thirty after the end of the quarter to which it relates, submit any statement that the Commission may require concerning financial position and corporate governance of an entity.

(3) At the request of a regulated entity, the Commission may for reasonable cause extend any period within which the regulated entity institution is, in accordance with the provisions of this Act, obliged to furnish any report, statement, information or data for a period not exceeding thirty days.

(4) A regulated entity that contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.

Restriction on advertising likely to mislead the public.

34. (1) A regulated entity shall not engage in advertising practices which are likely to mislead the public concerning

- (a) the relation of the regulated entity to the Commission or any department or official of the Commission;
- (b) the financial condition of the regulated entity; or
- (c) any other matter relating to the regulated entity.

(2) A regulated entity that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.

Appointment of auditor.

35. (1) A regulated entity shall appoint annually an auditor with an accreditation of Chartered Public Accountant or Association of Certified Chartered Accountant, satisfactory to the Commission whose duties shall

- (a) be to examine the books and records in accordance with internationally accepted accounting principles and to make a report on the annual financial statements and financial position, and in every such report the auditor shall state whether in the auditor's opinion the balance sheet and profit and loss account give a true and fair view of the state of affairs of the regulated entity and of its results for the period then ended; and
- (b) include any of the following duties as may from time to time be imposed on the auditor by the regulated entity at the request of the Commission

- (i) to submit such additional information in relation to the audit of the regulated entity as the Commission considers necessary;
- (ii) to carry out any other examination or establish any procedure in any particular case;
- (iii) to submit a report on any of the matters referred to in sub-paragraphs (i) and (ii);
- (iv) to submit a report on the financial and accounting systems and risk management controls of the regulated entity;
- (v) to submit a report on whether prudent policies, practices and procedures are approved and reviewed by the management of the regulated entity Commission and communicated to relevant officers;
- (vi) to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the regulated entity and are being implemented in accordance with the applicable laws.

(2) A director, manager, secretary, employee or agent of a regulated entity or other person having an interest in any regulated entity otherwise than as a prescribed retail customer shall not be eligible for appointment as auditor for a regulated entity.

(3) A person appointed as an auditor under this Act who, after an appointment, acquires any interest in a regulated entity, otherwise than as a prescribed retail customer, or becomes a director, manager, secretary, employee or agent of a regulated entity shall immediately cease to be such auditor.

(4) A regulated entity shall remunerate the auditor in respect of the discharge by the auditor of all or any of the duties set out in subsection (1).

(5) The regulated entity shall submit to the Commission, the agreement of work between the regulated entity and the auditor upon finalization of the agreement of work and no later than thirty days before the audit is to begin in order for the Commission to determine whether the auditor appointed under subsection (1) is satisfactory to the Commission.

(6) If a regulated entity fails to appoint an auditor satisfactory to the Commission, the Commission may at the expense of the regulated entity appoint an auditor for the regulated entity.

*Financial Services Regulatory Commission Act, 2009 – 22.*

(7) The Commission may at the expense of a regulated entity appoint an auditor to conduct an independent audit of the regulated entity, in accordance with the instructions of the Commission, and to report the findings or results of the audit to the Commission.

Serious breaches recognised by auditor.

36. If, in the course of the performance of an auditor's duties, an auditor is satisfied that

- (a) there has been a serious breach of or non-compliance with the provisions of this Act or any enactment listed in Schedule 1 or any Regulations, notice, order, guidelines or directions issued under this Act or any enactment specified in Schedule 1;
- (b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;
- (c) losses have been incurred which reduce the paid up or assigned capital, as the case may be, of the regulated entity by twenty-five per cent or more;
- (d) serious irregularities have occurred, including those that affect the interest customers; or
- (e) the claims of customers covered by the assets cannot be confirmed,

the auditor shall report the matter to the regulated entity and the Commission within three days of discovery.

Reports of auditor.

37. (1) The Commission may request copies of reports of a regulated entity submitted to the Commission by both its internal and external auditors.

(2) An auditor shall report to the Commission any matter it is required to report on any regulated entity to any investigative, regulatory or other institution, simultaneously with its report to that regulated entity.

(3) The report of the auditor made in accordance with subsection (2), shall be presented together with the annual report of the regulated entity.

(4) A regulated entity shall submit a copy of the financial statements and the auditor's report to the Commission within three months of the end of the financial year.

(5) A regulated entity which fails to comply with a request under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.

*Financial Services Regulatory Commission Act, 2009 – 22.*

(6) A regulated entity which fails to comply with the requirements of subsections (2) and (3) within three months of the end of its financial year, commits an offence and is liable to a fine not exceeding fifty thousand dollars except where an extension to the period has been granted by the Commission.

(7) An auditor or a regulated entity that fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.

38. (1) The Commission shall examine or cause an examination to be made of each regulated entity whenever in its judgement such examination is necessary or expedient in order to determine that the regulated entity is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

Disclosure and access to books and records and examination by Commission.

(2) The Commission may also request information where necessary as it pertains to affiliates of a regulated entity.

(3) The Commission may assess a regulated entity for the reasonable expenses of conducting an examination under subsections (1) and (2).

(4) The Commission shall forward copies of balance sheets, statements and reports on the results of any examination made pursuant to this section to the regulated entity.

39. (1) Subject to section 38, if the Commission is of the opinion that

Commission's powers and measures for preventing adverse consequences.

(a) a regulated entity or a director, an officer, or an employee of a regulated entity, is in breach of this act, an enactment specified in Schedule 1, the Regulations or its licence;

(b) an allegation of breach is made to the Commission against a regulated entity or a director, an officer or an employee of a Commission against a regulated entity, the Commission may conduct any investigation it considers necessary in relation to the regulated entity or the director, an officer or an employee of the entity and may perform any of the following in the course of such investigation:

(i) compel the production of documents, records or information in the custody or control of the regulated entity;

- (ii) compel the appearance of a director, an officer or an employee of a regulated entity or any other person for the purpose of ascertaining compliance with this Act, an enactment specified in the Schedule, the Regulations or the licence;
- (iii) inspect, examine or make copies of any document or record in the possession of the regulated entity relevant to the licence held by the regulated entity;
- (c) require verification of source and amount of income of the regulated entity and all other matters to the licence;
- (d) enter or inspect any premises for the purpose of ascertaining compliance with this Act, an enactment specified in Schedule 1, the Regulations or the licence; and
- (e) seize or remove any document or records relating to the licence or the regulated entity for the purpose of examination and inspection;
- (f) hire a third-party to conduct an investigation of which the expense may be charged to the regulated entity upon which the investigation is being conducted.

(2) For the purpose of discharging its functions and duties under this Act, the Commission shall, as it reasonably requires, be entitled to request any information, matter or thing from any person the Commission has reasonable grounds to believe is providing a regulated service without a licence.

(3) Where the Commission reasonably suspects that a person is committing an offence by providing a regulated service without a licence, a police officer may lay before a Magistrate, an information on oath setting out the grounds for the suspicion and apply for the issue of a warrant to search the premises where the regulated service is believed to be provided.

(4) Where an application is made under subsection (5) for a warrant, the Magistrate may issue a warrant authorising a police officer, whether named in the warrant or not, with such assistance, including assistance from the Commission and by such force as is necessary and reasonable, to enter upon the premises, search and inspect the premises and to

- (a) examine, inspect, make copies of, seize or remove any document or record; and

- (b) seize any equipment or other property found on the premises in the course of the search that the police officer has reasonable grounds to believe is being used in the commission of the offence.

(5) The High Court may, upon application by the Director of Public Prosecutions, made on his or her own initiative or at the request of the Commission, where it is satisfied that a person charged or who is about to be charged with an offence under this Act, grant an order freezing the property of, or in the possession or under the control of that person including monies in a bank account.

(6) The High Court may, in making a freezing order, give directions with regard to

- (a) the duration of the freezing order; or
- (b) the disposal of the property for the purpose of
  - (i) determining a dispute relating to the ownership of or other interest in the property or a part of the property;
  - (ii) the proper administration of the property during the period of freezing;
  - (iii) the payment of debts incurred in good faith prior to the making of the freezing order;
  - (iv) the payment of money to a person referred to in subsection (7) for the reasonable subsistence of that person and that person's family; or
  - (v) the payment of the costs of a person referred to in subsection (7) to defend criminal proceedings against that person.

(7) A freezing order shall cease to have effect after sevendays of the freezing order being made if the person against whom the freezing order was made has not been charged with an offence under this Act within the seven days.

(8) Neither the Commission nor the State shall be liable for damages or costs arising directly or indirectly from the making of a freezing order under subsection (7) unless it is proven on a balance of probability that the application for the freezing order was made in bad faith.

(9) Where under subsection (8) the High Court gives a direction for the administration of frozen property, the person upon whom the duty to administer the property is imposed is not liable

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (a) for any loss or damage to the property;
- (b) for the costs of proceedings taken to establish a claim to the property; or
- (c) to a person having an interest in the property,

unless the High Court is of the opinion that the person has been negligent in respect of taking of custody or control of the property.

(10) A person shall not

- (a) fail to comply with a request of the Commission pursuant to subsections (3) or (4); or
- (b) hinder, obstruct, prevent or interfere with a police officer, a Commissioner, the Director General or an employee of the Commission in the exercise of a power under this section.

(11) A person who contravenes the provisions of subsection (10) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years or to both.”.

Sanction of the Commission.

40. (1) Subject to sections 38 and 39 if the Commission is of the opinion that a financial service business or a regulated business is operating in a manner that:

- (a) is, or is likely to be financially unsound and prejudicial to the provisions set out in the Proceeds of Crime Act, the Anti-terrorism Act or any other enactment or guidelines regulating the conduct of financial services or regulated businesses for the purposes of combating money laundering or the financing of terrorism; or
- (b) may jeopardise the reputation and integrity of Saint Christopher and Nevis in commercial and financial matters,

the Commission may take one or more of the following actions:

- (i) issue a written warning to the financial services or regulated business;
- (ii) conclude a written agreement with the financial service business or regulated business, providing for a program of remedial action; or
- (iii) issue a cease and desist order that requires the financial services business or a regulated business or the person responsible for its management to cease and desist from the practice or violations specified in the order.

(2) Where the Commission has imposed the relevant measures pursuant to subsection (1) and there has been no material change in the conduct in question, then the Commission may, after exhausting the measures in subsection (1), recommend that the Licensing Committee take appropriate action as follows:

- (a) restricting or varying the operation of a licence;
- (b) revoking the relevant licence of the financial services business or regulated business to do finance business;

(3) A regulated entity served with a cease and desist order issued under subsection (1) may apply to the High Court for an order setting aside, varying or suspending the operation of the cease and desist order.

(4) A regulated entity, its affiliate, or any director, officer, employee or significant shareholder of a licensed regulated entity who fails to comply with any requirement or contravenes any prohibition imposed on that business under this section commits an offence and is liable, on summary conviction,

- (a) in the case of a body corporate that is a regulated entity or its affiliate, to a fine of one hundred thousand dollars and in the case of a continuing offence, to a further penalty of five thousand dollars for each day on which the offence continues after conviction thereof;
- (b) in the case of an individual specified in this section, to a fine of twenty-five thousand dollars, and in the case of a continuing offence, to a further penalty of one thousand dollars for each day on which the offence is continued after conviction thereof.”.

#### **PART 4 MISCELLANEOUS**

41. A person shall pay to the Commission, at the prescribed time, a prescribed fee on account for any act, matter or thing done or required to be done under this Act or any enactment specified in Schedule 1.

Fees.

42. (1) The Commission may require a person to pay a fee of a prescribed amount where that person fails to-

Fee for late filing.

- (a) file a return or other information required to be filed by that person under this Act or any enactment specified in Schedule 1 at the interval set out in, or within the time required by, that enactment;

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (b) provide complete and accurate information with respect to a return or other information required to be filed by that person under this Act or any enactment specified in Schedule 1; or
- (c) pay the fee that is payable under section 39 at the prescribed time.

(2) A failure to file a return or provide information or to pay the fee under subsection (1) is deemed to be a contravention for each day during which the failure continues.

Debt due to  
Commission.

43. (1) A fee that is payable to the Commission under sections 40 or 41(1) constitutes a debt due to the Commission and may be recovered as a debt in any court of competent jurisdiction.

(2) Interest may be charged on the unpaid amount of a fee that is payable under sections 40 or 41(1) at the rate of one and one half per cent per month or part thereof for the period during which it remains unpaid.

Fixed penalty  
offences.

44. (1) This subsection shall apply to an offence specified in Schedule 3.

(2) Where circumstances giving rise to a reasonable belief that a person has committed an offence to which this subsection applies exist, the Commission may give a notice, in writing in the form prescribed, offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

(3) A person shall not be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of fifteen days following the date of the notice referred to in subsection (1) or such longer period, if any, as may be specified in that notice or before the date on which proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the fifteen days following the date of the notice or such longer period, if any, as may have been specified in the notice.

(5) Payment of a fixed penalty under this subsection shall be made to the Accountant-General and in any proceedings, a certificate that payment of a fixed penalty was or was not made to the Accountant General by a date specified in the certificate shall, if the certificate purports to be signed by the Accountant General, be admissible as evidence of the facts stated in the notice.

*Financial Services Regulatory Commission Act, 2009 – 22.*

- (6) A notice under subsection (2) of this subsection shall
- (a) specify the offence alleged;
  - (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
  - (c) state the period, whether fifteen days or a longer period, during which, by virtue of subsection (4), proceedings will not be taken for the offence.

(7) The fixed penalty for the offence specified in Schedule 3 shall be the penalty specified therein in relation to such offences.

(8) In any proceedings for an offence to which this subsection applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty unless, in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of the notice, or, as the case may be, to such payment.

(9) In this subsection “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice referred to in subsection (1).

45. A person who commits an offence under this Act for which no penalty is given is liable on summary conviction to a fine not exceeding five thousand dollars.

General penalty.

46. The enactments specified in the first column of Schedule 4 are amended to the extent specified in the second column of Schedule 4.

Amendment of enactments.

47. The powers conferred on the Commission pursuant to this Act are in addition to any other powers conferred on the Commission pursuant to any other enactment.

Powers under other enactments.

48. (1) There is hereby established an Appeals Tribunal for the purpose of hearing appeals pursuant to this section.

Appeal.

(2) The Appeals Tribunal appointed pursuant to subsection (1) shall comprise three persons appointed by the Minister.

(3) An appeal against the decision of the Commission pursuant to this Act or an enactment specified in Schedule 1 shall lie to the Appeals Tribunal appointed pursuant to subsection (1) except where an enactment specified in Schedule 1 provides otherwise.

(4) The Appeals Tribunal appointed pursuant to subsection (1) shall regulate its own procedure.

*Financial Services Regulatory Commission Act, 2009 – 22.*

- Transitional provisions. 49. The fees in respect of financial services collected on each island shall continue to be paid in the same manner as is consistent with the enactments specified in Schedule 4 until ninety days after the coming into force of this Act and thereafter the fees shall be paid in a manner and on such basis for each island as designated by the Commission.
- Application to Nevis. 50. The Nevis Island Administration having requested that the provisions of this Act do apply to the island of Nevis, in so far as it may be necessary to comply with section 37(3) of the Constitution, consents to the provisions of this Act applying to the island of Nevis in respect of those matters over which it has exclusive jurisdiction.”.
- Amendment of Schedules. 51. The Minister may by Order published in the *Gazette* amend Schedules 1, 2 and 3.
- Regulations. 52. The Minister may make Regulations
  - (a) prescribing the qualifications of the Director;
  - (b) prescribing anything that is required or authorised by this Act to be prescribed;
  - (c) generally for carrying out the purposes and giving effect to the provisions of this Act.
- Repeal. 53. The Financial Services Commission Act 2000, No. 17 of 2000 is repealed.
- Savings. 54. The assets and liabilities of the Financial Services Commission Established under section 3 of the Financial Services Commission Act, No. 17 of 2000 are hereby transferred to and vested in the Commission.

**SCHEDULE 1**

*(Sections 2, 10, 11, 30, 35, 39, 40, 41, 46, 47, 48, 50)*

**ENACTMENTS**

1. Captive Insurance Companies Act, No. 12 of 2006
2. Co-operative Societies Act,
3. Development Bank of St. Kitts and Nevis Act, 1981
4. Exempt Insurance Companies Act, 1986
5. Financial Services Order, 1997 made pursuant to the Companies Act
6. Insurance Act, No. 8 of 2009
7. Money Services Business Act, No. 26 of 2008
8. Nevis Business Corporation Ordinance (1984)
9. Nevis International Exempt Trust Ordinance (1994)
10. Nevis Offshore Banking Ordinance (1996)

**SCHEDULE 2***(Section 15)***OATH OF SECRECY**

Form of oath to be taken by the Commissioners

I,.....(name) swear and affirm that I will well and faithfully discharge the duties as a Commissioner of the Financial Services Regulatory Commission under the Financial Services Regulatory Commission Act, 2009 and the rules and instructions thereunder and that I will not without due authority in that behalf disclose or make known any matter or thing that comes to my knowledge by reason of my employment or office.

**SCHEDULE 3***(Section 42 )***FIXED PENALTY OFFENCES**

<b>Section</b>	<b>Amount of fixed penalty</b>
Section 27(3)	\$30,000
Section 32(3)	\$30,000
Section 33(2)	\$30,000
Section 36(5)	\$30,000
Section 36(7)	\$30,000

**SCHEDULE 4***(Section 44)***ENACTMENTS AMENDED****1. Captive Insurance Act**

The Captive Insurance Act is amended by

- (a) inserting the following definition of “Commission in its correct alphabetical sequence in section 2:

“Commission” means the Financial Services Regulatory Commission established pursuant to the Financial Services Regulatory Commission Act 2009;”;

- (b) inserting a new section immediately after section 4 of the Act as follows:

“Commission to supervise. 4A. The Commission shall have supervisory authority over the Registrar pursuant to the provisions of the Financial Services Regulatory Commission Act, 2009.”.

**2. Money Services Business Act**

The Money Services Business Act is amended in section 2 by replacing the definition of the word “Authority” as follows:”

“Authority” means the Financial Services Regulatory Commission created pursuant to the Financial Services Regulatory Commission Act, 2009;”

3. **Insurance Act, No. 22 of 2009**

The Insurance Act is amended as follows by:

- (a) inserting the following definition of “Commission in its correct alphabetical sequence in section 2:

“Commission” means the Financial Services Regulatory Commission established pursuant to the Financial Services Regulatory Commission Act 2009;”;

- (b) By replacing section 5(2) of the Act as follows:

“ (2) The Commission shall have supervisory authority over the Registrar pursuant to the provisions of the Financial Services Regulatory Commission Act, 2009.”.

CURTIS A MARTIN  
*Speaker*

Passed by the National Assembly this 20<sup>th</sup> day of October, 2009.

JOSÉ LLOYD  
*Clerk of the National Assembly*