



Confidentiality

Issue No. 22

August 2014

- * *Confidentiality and its application to Financial Services*
- * *Legislative Environment and Key Stakeholders*
- * *Tipping Off*

The Federation of St. Kitts and Nevis ensures that a high level of confidentiality is maintained within its Financial Services Sector through the enactment of various legislation, namely the Confidential Relationships Act, Cap 21.02, the Banking Act Cap 21.01, the Nevis Offshore Banking Ordinance Cap 7.05 and AML/CFT Regulations.

These laws safeguard investors by prohibiting disclosure of any information obtained in the course of business by professional persons. Pursuant to the Confidential Relationship Act, such persons include accountants, attorneys, broker or other kind of commercial agent or adviser, bank or other financial institution, any public officer or other government employee or other persons prescribed as such for the purposes of the Act.

Confidentiality and its Application to Financial Services

Confidentiality is the protection of personal Information. Under the Confidential Relationships Act, confidential information is defined as but not limited to:

"Information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge."

Consequently, the **Confidential Relationships Act** applies to all confidential information with respect to business of a professional nature which arises in or is brought into Saint Christopher and Nevis and to all persons who come into possession of such information at any time thereafter, whether within or without Saint Christopher and Nevis (**s.3 (1)**).

Any person who divulges information, other than:

- in the course of taking or giving evidence, for the purpose of or in the course of a criminal trial,
- in the execution of a police officer's duties investigating any criminal offence, or
- during an examination or investigation under the Banking Act;

commits an offence under section 4 of the Act and is liable to:

- in the case of an individual, to a fine not exceeding ten thousand dollars, or imprisonment for 12 months or to both such fine and imprisonment; or
- in the case of a body corporate, to a fine not exceeding fifty thousand dollars.

Section 31(1) of The Banking Act, Cap 21.01, speaks to the importance of confidentiality within the Financial Services Sector. Under this section, the Act states that:

No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Central Bank, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution **except:**

- with the written authorization of the depositor or customer or of his heirs or legal personal representatives; or
- for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or
- when lawfully required to make disclosure by any court of competent jurisdiction within; or
- under the provisions of any law of (or agreement among the participating Governments;) but nothing herein shall prevent a financial institution from providing to a person, upon a legitimate business request, a general credit rating, a summary of which will be provided to the depositor or customer upon request.

For breaches under this Act, every person who contravenes the provisions of subsection (1) commits an offence under **section 31(2)** and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Legislative Environment, Regulatory Bodies & Regulated Entities

Below is a summary of the identification of the key players within this sector, the relevant legislation and the general provisions from each that should govern the activities and responsibilities of regulated bodies and regulated entities where confidentiality is concerned.

1. EMPLOYEES OF REGULATORY BODIES

• Financial Services Regulatory Commission Act

Section 15(1) of this Act states that a Commissioner, an officer or an employee of the Commission shall be required to take an oath of secrecy. The Act further states that a "Commissioner, an officer, an employee, an agent or an adviser of the Commission shall not disclose any information relating to:

- the business or affairs of the Commission;
- any application made to the Commission under this Act or any enactment specified in Schedule 1;
- the business or affairs of a regulated entity; or
- 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.

• Financial Intelligence Unit Act, Cap 21.09

Under this Act, **section 12(1)** references confidentiality and states that “a person who obtains information in any form as a result of his or her connection with the Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or other written law.”

A person who communicates any information contrary to **subsection (1)** commits an offence under **section 12(2)**, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

2. REGULATED ENTITIES

The Proceeds of Crime Act, Cap 4.28 (“POCA”), the Anti-Terrorism Act, Cap 4.02 (“ATA”), Anti-Money Laundering Regulations, 2011 (“AMLR”), Financial Services (Implementation of Industry Standards) Regulations, 2011 (“FSISR”) and the St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, Cap 20.60 all provide guidance for all regulated businesses and their duty of vigilance in relation to money laundering, terrorist financing and exchange of information. The POCA, ATA, AMLR and FSISR further speak to maintaining confidentiality when there is suspect of criminal conduct. They state “.in respect to any person who voluntarily discloses information to an authorized body arising out of a suspicion or belief that any money or other property represents the proceeds of criminal conduct is protected by law under these Acts from being sued for breach of any duty of confidentiality.” However, any misappropriation of confidential information remains an offence under the Confidential Relationships Act **s.4(1) to (6)**, the Banking Act **s.31(2)** and the Nevis Offshore Banking Ordinance **s.41(1) and (2)**.

3. SPECIFIC FINANCIAL SERVICES SECTORS

The Acts that govern the operation of domestic banks, international banking, insurance companies, co-operative societies and money services businesses all highlight legislative requirements regarding confidential information and penalties for infringement.

Section 54 of the Nevis Offshore Banking Ordinance states that “a person who discloses confidential information contrary to **39(1)** (by written request, business purposes or authorized body) is guilty of an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for twelve months or both.” Similarly, **section 80(4)** of the Co-operative Societies Act, 2011 states that “a person who contravenes confidential information except for instances listed in **subsection 80(2)** commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both. Likewise, the Money Services Business Act 2008, under **section 23** states “a person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any licensee or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Authority, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer of the licensee except for the instances disclosed in this Act.

4. FINANCIAL SERVICES PRODUCTS

A sector is only as strong as the confidence and value placed on the products being offered. Hence, the legislative requirements in terms of

confidentiality for international insurance companies, trusts, limited liability companies, multiform foundations and mutual funds all contain provisions on confidentiality.

Section 44(10) of the Nevis International Mutual Funds Ordinance, Cap 7.09 and **s.38(1)** of the Nevis International Insurance Ordinance, Cap 7.07 state that any information, furnished to Registrar is privileged and shall not be disclosed to any person except authorized by the Minister or for criminal proceedings.

Both the Multiform Foundations Ordinance, Cap 7.08 and the Nevis International Exempt Trust Ordinance Cap 7.03 in sections **113(1)** and **56(1)** respectively, state that with regards to confidential information the Confidential Relationships Act shall apply to every multiform foundation and trust registered under their respective Ordinances. Likewise, LLC’s under **s.(10(3))** of the Limited Liability Companies Ordinance, Cap 7.04 are required to keep information as required by law, confidential.

Tipping Off

Tipping off is a serious criminal offence. **Section 33** of the POCA, **s.5** of the ATA and **s.12** of the FSISR state that “a person who knows or suspects that an investigation into money laundering/terrorist offence has been, is being, or is about to be made, and divulges that fact or other information to another person, whereby the disclosure of the fact or other information is likely to prejudice the investigation, commits an offence, and shall be liable, on conviction, to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding three years.”

An example of Tipping off might be if you tell a client that a Suspicious Activity Report (SAR) is or is about to be filed in respect of him/her. It is important to note that you do not have to speak to commit the offence. You can tip off by failing to respond where an answer is expected.

Therefore, **all** relevant parties are reminded that it is a **criminal offence** to disclose **any** information to **any** other person that is likely to prejudice an investigation and such may include disclosure of the existence of an internal report. Client’s affairs should always be kept confidential and particularly the existence of money laundering/terrorist offence suspicions. **Money laundering suspicions should not be discussed with clients.**

All Regulated Entities are strongly encouraged to develop policies that will foster an environment based on confidentiality. Breaches of confidentiality will cause investors to lose confidence in our Financial Services Sector; a sector that is critically important to the development of Nevis. As such, greater steps should be taken to safeguard clients’ information. Failure to act in accordance with statutory requirements constitutes an offence and all concerned shall be liable on conviction to fines as imposed by the Confidential Relationships Act **4(1-6)**; the Banking Act **31(2)**, the Financial Intelligence Unit Act **12(2)** and any other penalties under any Act that governs a specific sector or product.

Source

<http://www.nevissrc.com/regulatory-framework/supervision>