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I assent,

EUSTACE JOHN C.M.G.

*Deputy Governor-General.*

17<sup>th</sup> June, 2014.

## ISLAND OF NEVIS

### No. 1 of 2014

**AN ORDINANCE** to repeal and replace the Nevis Offshore Banking Ordinance Cap. 7.05 with the Nevis International Banking Ordinance, 2014; to enable international banking to be carried on by international banks from within Nevis; to encourage the development of Nevis as a responsible international financial centre; and to provide for matters incidental thereto or connected therewith.

[Published 19<sup>th</sup> June 2014, Official Gazette No. 26 of 2014.]

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

#### **PART I PRELIMINARY**

##### **1. Short Title and Commencement.**

This Ordinance may be cited as the Nevis International Banking Ordinance, 2014 and shall come into force on a date to be appointed by the Minister by Order published in the *Gazette*.

##### **2. Interpretation.**

In this Ordinance unless the context otherwise requires:

“Administration” means the Nevis Island Administration;

“advertisement” or “advertising” means any form of general notice which is designed to inform the public whether published in St Christopher and Nevis or elsewhere, by any form of media which is now known or hereinafter invented or adopted;

“Attorney” means a person whose name has been entered on the Roll of Attorneys pursuant to the Legal Profession Act No. 33 of 2008, as amended.

“Auditor” means an auditor described in Section 33 and includes a partnership of auditors;

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“Banking Act” means the Banking Act No. 4 of 2004 of the laws of the Federation of St. Christopher and Nevis;

“Capital reserve fund” shall have the meaning given that expression in Section 11;

“Companies Ordinance” means the Companies Ordinance Cap. 7.06 of the Revised Ordinances of Nevis.

“Confidential information” includes data, facts and communications concerning the assets, liabilities, transactions and business and affairs of a licensee which have been revealed in strict privacy or secrecy and which the recipient thereof is not, otherwise than in the normal course of business or professional practice, authorized by the licensee to divulge.

“Director” means a director within the meaning of Section 22;

“Dollars” means United States Dollars;

“Eligible company” shall have the meaning given to that expression in section 4;

“Financial quarter” means each of the four three month periods which date from 1<sup>st</sup> January to 31<sup>st</sup> March, from 1<sup>st</sup> April to 30<sup>th</sup> June, from 1<sup>st</sup> July to 30<sup>th</sup> September and from 1<sup>st</sup> October to 31<sup>st</sup> December of every financial year;

“Financial year” means the period from 1<sup>st</sup> January to 31<sup>st</sup> December of every calendar year.

“Foreign currency” means monies other than United States Dollars;

“Group” means,

- (a) In relation to a company, that company and
  - (i) any other company which is its holding company or subsidiary;
  - (ii) any other company which is a subsidiary of its holding company;
  - (iii) any company which directly or indirectly controls or is controlled by any company referred to in sub-paragraph (i) or (ii)
  - (iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);
  - (v) any company in which a group of relatives has a controlling interest;
- (b) In relation to a person other than a company,
  - (i) a group of relatives where each member of the group is substantially dependent upon the same income source;
  - (ii) a group of persons in which one member has power directly or indirectly to control the other members;
  - (iii) any other group of persons that may be prescribed by the Minister;

“High Court” means the High Court of the Federation of St. Christopher and Nevis.

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- “Holding company” means a body corporate which controls another through the ownership of its shares;
- “International banking” shall have the meaning given to that expression under Section 3;
- “Licensee” means a body corporate that holds a license under this Ordinance to carry on international banking from within Nevis;
- “Minister” means the Minister responsible for Finance in the Nevis Island Administration;
- “Permanent Secretary” means the Permanent Secretary in the Ministry of Finance in the Nevis Island Administration;
- “Qualified foreign bank” shall have the meaning given to that expression in Section 5;
- “Regulator” means the person appointed by the Minister under section 30 to perform the functions of Regulator of international banking under this Ordinance;
- “Senior Management” includes a Chief Executive Officer, Director, Manager or any officer or individual with a similar title who holds a high-ranking position within the Licensee;
- “Share” in relation to a company includes stock of the company.

**PART II**  
**INTERNATIONAL BANKING**

**3. International banking.**

- (1) International banking is:
- (a) receiving foreign funds through,
    - (i) the acceptance of foreign money deposits payable upon receipt demand or after a fixed period or after notice;
    - (ii) the sale or placement of foreign bonds, certificates, notes or other debt obligations or other securities, or
    - (iii) any other similar activities involving foreign money or foreign securities, and
  - (b) either in whole or in part using foreign funds so acquired for loans, advances and investments whether in Nevis or elsewhere.
- (2) International banking also includes, for the purposes of this Ordinance, any other activity which the Minister may, by regulations declare to be an activity related to an activity described in subsection (1).
- (3) A Licensee carrying on international banking shall not receive or solicit funds from any resident of Nevis, but may receive or solicit funds from any corporation registered under the Nevis Business Corporation Ordinance, Cap. 7.01 a limited liability company

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registered under the Nevis Limited Liability Company Ordinance Cap. 7.04 a trustee of a trust registered under the Nevis International Exempt Trust Ordinance, Cap. 7.03, a multiform foundation registered under the Multiform Foundations Ordinance, Cap. 7.08.

**4. Eligible company.**

- (1) An Eligible Company includes:
  - (a) a body corporate which has been incorporated under the Companies Ordinance which is a wholly owned subsidiary of a bank which is indigenous to St. Christopher and Nevis, regulated by the Eastern Caribbean Central Bank and is licensed under the Banking Act to do banking business in Nevis; or
  - (b) a subsidiary of a qualified foreign bank which has been incorporated under the Companies Ordinance; or
  - (c) a body corporate which has been incorporated under the Companies Ordinance of which the chief executive officer at the time of its application for a license, has at least ten years experience in banking or finance.

**5. Qualified foreign bank.**

- (1) A qualified foreign bank is:
  - (a) A bank which was originally incorporated and registered in a jurisdiction other than St. Christopher and Nevis that upon commencement of this Ordinance is licensed under the Banking Act; or
  - (b) a foreign bank with minimum capitalization and assets as prescribed by the Minister, that is not licensed under the Banking Act but is licensed to do domestic banking in its jurisdiction of incorporation;
  - (c) a financial institution approved by the Minister, that is directly or indirectly a wholly owned foreign subsidiary of a bank which is incorporated in a jurisdiction other than St. Christopher and Nevis.
- (2) For the purposes of this section domestic banking means the acceptance of deposits from members of the public.

**PART III**  
**LICENSING REQUIREMENTS**

**6. Requirement for license.**

- (1) A person shall not carry on international banking business or hold himself out as carrying on international banking business in Nevis without a license granted by the Minister.
- (2) A person who does international banking from within Nevis during any period in which he does not hold a license under this Ordinance commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars (\$500,000.00).
- (3) A Licensee which, at the commencement of this Ordinance holds a valid license to carry on international banking business in Nevis shall be deemed to have been granted a license under section 14 of this Ordinance.

**7. Licensee to have place of business.**

(1) The Minister shall not grant a license to a company under this Ordinance unless that company:

(a) has a place of business in Nevis approved by the Regulator which will be its registered office; and

(2) A Licensee shall not:

(a) cease to have a place of business in Nevis; or

(b) change its place of business without the written approval of the Regulator;

**8. Issue of license.**

(1) The Minister shall not issue a license under this Ordinance to any person other than an eligible company or qualified foreign bank.

(2) A license issued under this Ordinance is valid upon payment to the Administration of the prescribed license fee and shall expire on the 31<sup>st</sup> day of December of the year in which it is issued and is renewable on or before the 31<sup>st</sup> day of January in the following year upon payment of the prescribed fee.

**9. Application requirements.**

(1) An Eligible Company must:

(a) be incorporated under the Companies Ordinance as a company limited by shares and have the word bank included as part of its name;

(b) have objects or business activities restricted to international banking from within Nevis;

(c) have at least one director who is a citizen of St. Christopher and Nevis and who is resident in Nevis;

(d) have articles of incorporation and bylaws;

(e) have authorized paid up capital in accordance with the requirements of section 11

(2) An applicant for a license under this Ordinance must:

(a) submit an application in the prescribed form to the Minister;

(b) show that it is an Eligible Company or qualified foreign bank;

(c) give the names and addresses of its directors;

(d) give particulars of the international banking it proposes to do from within Nevis;

(e) give the names of any directors who are residents of Nevis;

(f) give a statement of the name, address, qualification and experience of its Senior Management;



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- (g) provide such other information of a financial or other nature as the Regulator may require in any particular case,
- (h) tender with the application a non-refundable application fee as prescribed by the Minister,
- (i) submit the name and registered office of its appointed auditor as defined under Section 33,
- (j) submit the name and registered office of its appointed compliance officer.

(3) An application for a license by an Eligible Company must be accompanied by a certified copy of the articles of incorporation and bylaws of the applicant.

(4) An application for a license and all documents submitted pursuant to this Ordinance in support of the application must be signed by at least two (2) directors of the company making the application.

(5) An application for a license by a qualified foreign bank must be accompanied by:

- (a) copies of the incorporation documents of the bank;
- (b) the names of the directors of the bank;
- (c) the names of the principal shareholders of the bank;
- (d) a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organized has no objection to its application for a license to do international banking business in Nevis, and
- (e) evidence satisfactory to the Regulator that it is subject to a comprehensive supervision on a consolidated basis by the appropriate authorities in its jurisdiction of incorporation.

(6) The Regulator shall, before giving consideration to any application for a license, conduct an investigation of the applicant to ascertain:

- (a) the validity of the documents submitted in support of the application;
- (b) the character of the business of the applicant;
- (c) the experience of the person or persons who are to constitute its Senior Management, and
- (d) any other matter as may be required by the Minister.

(7) The applicant shall supply such further information and data as the Regulator may reasonably require for the proper conduct of its investigation under subsection (6).

(8) The Regulator shall submit a report of its findings to the Minister within ten (10) weeks of its receipt of the application.

## **10. Tentative applicants.**

(1) A person who intends to apply for a license under this Ordinance may submit a proposal to the Minister for a license, and the Minister may indicate in a preliminary report on the recommendation of the Regulator whether or not a subsequent application based on the proposal would be favourably received by him.

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(2) With every proposal, a non-refundable administrative fee as prescribed shall be paid.

(3) Section 13 of this Ordinance shall apply in relation to every proposal submitted under subsection (1).

(4) Nothing done by the Minister under subsection (1) precludes him from later refusing an application for a license that was based on a proposal considered by him pursuant to that subsection on grounds that the applicant withheld material information or that the proposed application was made in bad faith.

(5) It is the duty of the Minister to submit a preliminary report within ninety (90) days of the receipt of the proposal from a prospective Licensee.

**11. Minimum capital for a Licensee.**

(1) The Minister shall not issue an international banking license to a company unless that company:

- (a) remains an Eligible Company;
- (b) has a fully paid up capital of not less than two million dollars (\$2,000,000.00), or such greater sum as the Minister may reasonably determine in Regulations made hereunder and promulgated by him from time to time, and
- (c) has deposited or invested the sum of two hundred thousand dollars (\$200,000.00) in the following manner:
  - (i) treasury bills issued by the Government of St. Christopher and Nevis or the Nevis Island Administration;
  - (ii) bonds and debentures issued by the Government of St. Christopher and Nevis or the Nevis Island Administration;
  - (iii) deposits with a bank licensed under the Banking Act; or
  - (iv) deposits with a financial institution approved by the Minister.
- (d) An Eligible Company shall provide an undertaking in writing not to dispose of, pledge, hypothecate, release or otherwise encumber the deposit or investment without prior notification and approval by the Minister.

**12. Maintenance of reserve fund.**

(1) Subject to subsection (2), a Licensee shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid, transfer to the fund a sum equal to not less than twenty five per cent (25%) of those profits whenever the amount of the reserve fund is less than the paid up capital of the Licensee.

(2) Subsection (1) does not apply to a Licensee whom it is shown to the satisfaction of the Minister that the aggregate reserves of the Licensee are adequate in relation to its business.

(3) A licensee shall maintain its reserve fund at a bank approved by the Regulator other than the licensee.

**13. Examination of applicants.**

(1) On receipt of an application for a license under this Ordinance, the Minister shall direct the Regulator to conduct an investigation of the applicant, its financial circumstances and any associates or affiliates of the applicant, as the Minister considers necessary in the public interest.

(2) In particular, the Minister shall require an examination to be made of:

- (a) the financial status and history of the applicant and any of its directors, associates or affiliates;
- (b) the character and experience of the directors;
- (c) the adequacy of its capital for the purpose of the business it intends to carry on;
- (d) the needs of the public or person it intends to serve;
- (e) its earnings prospects and its prospects as an employer, and
- (f) the character of every director and every shareholder having more than five percent (5%) of the shares to ensure that only fit and proper persons are concerned in the management and control of the company.

(3) For the purposes of this section, “associate” means, when used to indicate a relation with any person:

- (a) a company of which that person beneficially owns or controls directly or indirectly, shares or securities convertible into shares carrying more than ten per cent (10%) of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing or a currently exercisable option or right to purchase those shares or convertible securities;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse or a child of that person, or
- (e) a relative of that person or of the spouse of that person if the relative has the same residence as that person.

(4) For the purposes of this section:

- (a) one company is affiliated with another company if one (1) of them is the subsidiary of the other or both are subsidiaries of the same holding company or each of them is controlled by the same person;
- (b) if two (2) companies are affiliated with the same company at the same time, they are affiliated with each other at that time.

(5) A company is the holding company of another if that other company is its subsidiary.

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(6) A company is a subsidiary of another company if it is controlled by that other company.

**14. Duty to issue or refuse license.**

(1) It is the duty of the Minister to issue or refuse a license under this Ordinance to an applicant:

- (a) within three (3) months of the receipt of the application, or
- (b) if additional information is required by the Minister, within fourteen (14) days of the receipt by him of the additional information.

(2) Notwithstanding any advice or recommendation given to the Minister by the Regulator, if the Minister is of the opinion that it would be undesirable in the public interest to grant the license, he may refuse to grant that license.

(3) Where the Minister refuses to grant a license in accordance with subsection (2) the Minister is required to give reasons for the refusal and shall inform the applicant of his decision.

**15. Conditions for grant and retention of license.**

(1) A license issued under this Ordinance must show the kinds of international banking to be done from within Nevis by the Licensee.

(2) A license under this Ordinance is subject to such conditions as the Minister, on the recommendation of the Regulator, may specify in respect of the international banking to be done by the Licensee from within Nevis.

(3) A license issued under this Ordinance is valid until the 31<sup>st</sup> day of December of the year in which it is issued and renewable on or before the 31<sup>st</sup> day of January in the following year upon payment of the prescribed fee.

(4) It is a condition of a license under this Ordinance that the Licensee shall obtain the approval of the Minister before creating a subsidiary company within the meaning of section 13 whenever it opens a place of business outside of Nevis.

(5) Subsection (4) does not apply to a Licensee that is a qualified foreign bank but the Licensee shall not, without notifying the Minister of its intention to do so, create a subsidiary company within the meaning of section 13 to carry on international banking from within Nevis.

(6) It is a condition of a license under this Ordinance that:

- (a) any voting shares of the Licensee's capital will be in registered form;
- (b) the Licensee will not, without the approval of the Minister on the recommendation of the Regulator:
  - (i) enter into a merger, amalgamation or consolidation,
  - (ii) transfer otherwise than in the ordinary course of its business, the
  - (iii) whole or any substantial part of its assets or liabilities,

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- (iv) change its name from that set out in its license,
  - (v) alter its articles of incorporation and bylaws,
  - (vi) transfer any of its shares or alter its share structure,
  - (vii) take any action to reduce or impair in any respect its capital, or
  - (viii) repurchase its own shares or take any action which may have a similar effect.
- (c) The Licensee will not knowingly in the course of its business accept any deposit for the account of a resident of Nevis or keep a resident of Nevis as a customer for any of its international banking services, or
- (d) The Licensee that is a foreign qualified bank shall, in the manner and to the extent prescribed, separate international banking activities from its other activities in Nevis and keep separate records of its international banking activities and will permit and assist in an audit of all its undertakings in Nevis by auditors approved by the Regulator.

(7) The Minister shall, before granting approval to any matter mentioned in subsection (6), instruct the Regulator to carry out such investigations as specified in section 13 as he thinks is required.

(8) Paragraphs (a) and (b) of subsection (6) and subsection (7) do not apply to a Licensee that is a qualified foreign bank.

(9) No person or group that is under the control of another person or group shall, without the approval of the Minister on the recommendation of the Regulator and subject to such conditions as the Minister may consider necessary, acquire or hold shares of a value of more than ten per cent (10%) of the stated capital of the Licensee.

(10) Where approval has been obtained to increase the shareholding in accordance with subsection (9), no person or group that is under the control of another person or group shall hold shares the value of which exceeds the amount approved by the Minister on the recommendation of the Regulator.

(11) A person who contravenes this section commits an offence and is liable on conviction to a fine of twenty five thousand dollars (\$25,000.00) or to imprisonment for two (2) years or to both.

**16. Display of license.**

(1) A Licensee shall display in a conspicuous place at each location where it does business a copy of its current license issued under this Ordinance.

(2) A Licensee which contravenes this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars (\$25,000.00) and a further fine of one thousand dollars (\$1,000.00) for each month during which the offence continues after a conviction is obtained.

**17. Misleading name.**

(1) The Minister may refuse to grant a licensee or revoke a license already issued if, in his opinion, the applicant or the Licensee as the case may be is carrying on or intends to carry on international banking business under a name which:

- (a) can mislead or confuse the persons for whom it intends to provide any or all of its services;
- (b) is identical with that of a firm or business house whether within Nevis or not or which so nearly resembles that name as to be calculated to deceive;
- (c) is calculated to suggest falsely, the patronage of or connection with some person or authority whether within Nevis or not, or
- (d) is calculated to suggest falsely that the applicant or company has a special status in relation to or derived from the Government, has the official backing or acts on behalf of the Government or of any Department, branch, agency or organ of Government or of any officer thereof.

(2) Subject to subsection (3), no person other than a Licensee may, without the approval of the Minister:

- (a) use the word “bank” or any of its derivatives in any language, or
- (b) use any other word indicating the doing of international banking from within Nevis

in the name, description or title under which that person carries on business or intends to carry on business in Nevis or make representation to that effect in any bill head, letter paper, notice or advertisement.

(3) Subsection (2) does not apply:

- (a) to a bank licensed under the Banking Act, or
- (b) to a qualified foreign bank or eligible company that is applying for a license under this Ordinance as a Licensee.

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars (\$25,000.00) and to imprisonment for twelve (12) months and in the case of a continuing offence to a fine of one thousand dollars (\$1,000.00) for each day during which the offence continues.

**18. Service on Licensee.**

(1) All documents in any action arising out of the operations of the Licensee shall be served on the Licensee at its registered office.

**PART IV  
RESTRICTIONS ON BUSINESS**

**19. Restriction on distribution of dividends.**

A Licensee shall not declare or pay a dividend if there are reasonable grounds for believing that:

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- (a) the Licensee is, or would after the payment be unable to pay its liabilities as they become due, or
- (b) the realizable value of the Licensee's assets would thereby be less than the aggregate of its liabilities and capital.

**20. Restriction on business activities.**

- (1) Subject to this section, a Licensee shall not:
  - (a) grant to a person or group that is under the control of another person or group, any advance or credit, or give any financial guarantee or incur any other liability on behalf of such person or group so that,
    - (i) the total value of the advances, credit facilities, financial guarantees or other liabilities at any time exceed forty percent (40%) of the sum of the assets and paid up capital of the Licensee;
    - (ii) where a portion of the facilities referred to in sub-paragraph (i) is unsecured, that portion exceeds ten per cent (10%) of the sum of the stated capital and published reserves of the Licensee;
  - (b) grant unsecured advances or unsecured credit of an aggregate amount in excess of Forty Thousand Dollars (\$40,000.00) or of one per cent (1%) of the sum of the stated capital and published reserves of the Licensee, whichever is greater, or give any financial guarantee in excess of such amount without security or incur any other liability in excess of that amount without security,
    - (i) to or on behalf of any of its directors whether or not such advances, credits, guarantees or other liabilities are obtained by or on account of the directors jointly or severally;
    - (ii) to or on behalf of any person in whom it or any of its directors is interested as a director, partner, manager or agent or as guarantor, or
    - (iii) to its holding company, any subsidiary or affiliate or any other director thereof;
  - (c) grant credit facilities on terms and conditions more favourable than the terms and conditions generally applicable to borrowers to,
    - (i) its holding company or any subsidiary or affiliate;
    - (ii) any firm in which any director or officer or the relative of such officer or director has an interest or control twenty per cent (20%) or more of the voting shares;
    - (iii) any person if the credit facilities are guaranteed by an officer, director or any relative of the officer or director;
    - (iv) any person who controls more than twenty per cent (20%) of the Licensee's shares;
  - (d) grant to its officers or employees unsecured advances or unsecured credit which exceed in aggregate, for any one officer or employee, one year's emoluments of that officer or employee;

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- (e) except in so far as may be necessary with respect to the interests or shareholding that a Licensee may acquire in satisfaction of debts due to it,
  - (i) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the business of import and export, or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking; or
  - (ii) acquire or hold, in an aggregate amount exceeding twenty per cent (20%) of the sum of the stated capital and published reserves of the Licensee, any part of the share capital of any commercial, agricultural, industrial or other undertaking,

but all such interests or shareholding, as the case may be, shall be disposed of within a period not exceeding five (5) years unless permission to extend this period has been given by the Regulator;

- (f) without the approval of the Regulator, invest in the shares of an entity so that the value of the investment at any time exceeds ten per cent (10%) of the sum of the stated capital and published reserves of the Licensee;

(2) The provision under subsection (1) shall not apply where a loan granted by the Licensee is fully collateralized irrespective of the amount loaned.

(3) Subject to this section, a Licensee shall not,

- (a) purchase, acquire or lease real estate unless,
  - (i) such real estate is necessary for the purpose of conducting its business or providing housing amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff, and
  - (ii) the market value of the real estate does not exceed the stated capital of the Licensee,

except that where the Licensee exercises its legal right in respect of any property which is the security for any debt, the Licensee may acquire such property, but in that case the property shall not be retained for a period in excess of five (5) years without the permission of the Regulator;

- (b) acquire, deal in or underwrite its own shares or the shares of its holding company;
- (c) grant any advance against the security of its own shares, or the shares of its holding company or a subsidiary of the Licensee.

(4) Subsections (1) and (3) do not apply where the Licensee does not accept third party deposits.

**PART V  
CORPORATE GOVERNANCE**

**21. Person debarred from management.**

- (1) A person who has:



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- (a) been found guilty of an offence involving dishonesty by a Court in any country, or
- (b) been or is or becomes bankrupt, suspends payment to or compounds with his creditors,

shall not act or continue to act as a director, manager, secretary or other employee in a managerial position of a Licensee.

(2) The Minister may authorize, in writing, any person who was a director of or directly involved in the management of a Licensee at the time that Licensee had its license revoked, to act or continue to act as a director, manager, secretary or other employee of a Licensee.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding twenty five thousand dollars (\$25,000.00).

**22. Director.**

(1) For the purposes of this Ordinance a “director” means an individual occupying the like position and performing the like functions of a director under the Companies Ordinance, however his position is designated.

(2) A reference to “directors” refers to the board of directors or the body directing the affairs of a company.

(3) A Licensee shall have at least three (3) directors all of whom are natural persons one of whom is a citizen of St. Christopher and Nevis and who is resident in Nevis.

(4) Where a company has appointed a citizen of St. Christopher and Nevis to its board of directors under this Ordinance, that director does not have to subscribe for nor acquire any shares in the company.

(5) A Licensee shall, before the appointment of a director or other senior officer, apply to the Regulator for written approval of the appointment.

**23. Office of the director.**

A director of a Licensee shall cease to hold office as a director if he:

- (a) becomes bankrupt or suspends payment to his creditors;
- (b) is convicted in Nevis of an offence triable on indictment;
- (c) is convicted outside Nevis of an offence that would be triable on indictment had it been committed in Nevis, or
- (d) becomes of unsound mind.

**24. Disqualification of director.**

A person who has been a director of a Licensee whose license is revoked under this Ordinance shall not, without the prior approval of the Minister, act or continue to act as a director of any other Licensee.

**25. Disclosure of interest.**

(1) A director of a Licensee who is interested directly or indirectly in an advance or loan from the Licensee shall as soon as possible make a declaration as to the nature of his interest to its directors at a board meeting.

(2) Subsection (1) does not apply when the interest of a director in an advance or loan consists only of being a creditor of or having an interest in a firm that is interested in an advance or loan from the Licensee if, in either case, the interest of the director is not a substantial interest.

(3) A declaration by a director of a Licensee that he is interested directly or indirectly in an advance or loan from the Licensee complies with subsection (1) of this section if:

- (a) the declaration specified the nature and extent of the interest; and
- (b) the interest of the director is not different in nature from, or greater than, the nature and extent so specified in the declaration at the time any advance or loan is made.

**26. Declaration of interest.**

(1) A director of a Licensee who holds any office or has any interest in any property whereby, directly or indirectly, his functions under this Ordinance are likely to be in conflict with his personal interests shall declare the nature, character and extent of that office or interest to the directors at a meeting.

(2) A declaration required under this section shall be made:

- (a) at the first meeting of the directors that is held after the acquisition by the declarant of that relevant office or interest, or
- (b) if the declarant was not at that time a director, after he becomes a director.

(3) A director to whom this section or section 25 applies shall in any event notify the secretary of the Licensee of his interest so that the secretary may convene a meeting of the Board of Directors for the purpose of considering the declaration, unless a meeting of the Board of Directors is already scheduled to be held within fourteen (14) days following the receipt of notification by the secretary of the director's declaration.

**27. Recording declaration.**

A director of a Licensee who has declared any interest referred to in section 25 or 26 shall:

- (a) cause the declaration made by him thereunder to be brought up and read at the next meeting of the Board of directors after it was given, and
- (b) cause the declaration to be recorded in the minutes of the meeting at which it was made or read or both.

**28. Offence.**

A director of a Licensee who contravenes section 25, 26 or 27 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for twelve (12) months or to both fine and imprisonment.

**29. Insider information.**

- (1) A person who has acquired confidential information concerning a Licensee:
  - (a) as a director, officer, employee or auditor of the Licensee;
  - (b) as agent or a custodian of the Licensee;
  - (c) as Regulator or other employee of the Administration, or
  - (d) in any other capacity.

shall not disclose that information to any person except as permitted under subsection (2) or use that information for any purpose not related to the duties through which the information was acquired.

(2) Subsection (1) does not apply to the giving of confidential information when the information:

- (a) is a general credit rating of a person that is supplied by a director, officer or employee of the Licensee following a bonafide business request;
- (b) is given with the written authorization of the beneficiary or his legal representative;
- (c) is lawfully required to be disclosed by an order of the High Court, or
- (d) is lawfully disclosed pursuant to any other enactment.

(3) A person who discloses confidential information contrary to subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars (\$20,000.00) or to imprisonment for six (6) months or to both such fine and imprisonment.

**PART VI**  
**SUPERVISION EXAMINATION AND AUDIT**

**30. Regulator of International Banking.**

(1) The Minister shall appoint a public officer to be known as the Regulator of International Banking and another person to be known as the Deputy Regulator of International Banking to assist the Regulator of International Banking, to regulate International Banking under this Ordinance.

(2) The Regulator shall have the duty to ensure the proper compliance of Licensees with the provisions of this Ordinance and shall use the powers conferred upon him by this Ordinance to fulfill his duties.

- (3) The Regulator shall have power to:
  - (a) supervise the Licensees licensed by the Minister under this Ordinance;
  - (b) examine or cause an examination to be made of each Licensee from time to time in order to ascertain whether or not the Licensee is in a sound financial condition and that the requirements of this Ordinance have been complied with by the Licensee in carrying on international banking business;

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- (c) assist in the investigation of any contravention of this Ordinance that he has reasonable grounds to believe has or may have been committed by a Licensee or any of its directors, officers or senior management;
  - (d) to examine accounts and audited financial statements of a Licensee;
  - (e) to examine and make recommendations to the Minister with respect to applications for licenses.
- (4) In the performance of his duties under this Ordinance and to verify compliance with the provisions of this Ordinance by a Licensee, the Regulator is entitled at all reasonable times:
- (a) to have access at its registered office to such books, records, vouchers, documents, cash, securities and other information on a Licensee as may be specified by the Regulator;
  - (b) to require the directors, officers and auditor of a Licensee to provide information and explanations of the condition and affairs of the Licensee;
  - (c) to request any relevant information, matter or thing from any person who the Regulator has reasonable grounds to believe is carrying on international banking business in Nevis in contravention of Section 6;
  - (d) to request any relevant information, return or certificate from Licensee either annually or on a regular basis;
  - (e) to request from any person information or expert advice relevant to the duties of the Regulator and to provide to the person assurances regarding the confidential treatment of the information or any other assurances as the Regulator may reasonably provide.
- (5) The Regulator shall keep abreast of developments in the field of international banking which appear to him to be relevant to the exercise of his powers under this Ordinance.
- (6) The Regulator may, with the written approval of the Minister, authorize another person to assist him in the performance of his duties under this Ordinance.
- (7) The Minister may from time to time give general policy directives to the Regulator which are not inconsistent with the provisions of this Ordinance and the Regulator shall give effect to those directions.
- (8) Notwithstanding the provisions of any other law, no liability shall attach to the Administration, the Regulator or any person acting on behalf of the Administration or the Regulator for anything done in the discharge or purported discharge of any function under this Ordinance unless it is shown that the act or omission was not done in good faith.

**31. Financial Statements and Annual Auditing.**

- (1) A Licensee shall, not later than three (3) months after the close of its financial year or such longer period as the Regulator may allow, forward to the Regulator and its shareholders, copies of its Annual Audited Financial Statements.
- (2) The annual audited financial statement must bear on its face the certificate of the auditor.

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(3) A Licensee that contravenes any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars (\$25,000.00) and a fine of one thousand dollars (\$1,000.00) for each month during which the offence continues after a conviction has been obtained.

(4) The report of the auditor shall be read with the report of the directors to the shareholders at the annual meeting of the Licensee.

(5) A person shall not be appointed an auditor of a Licensee, if he has any proprietary interest in the Licensee, is a director, secretary, officer, employee, agent of the Licensee or a director, secretary, officer, employee of an affiliate or holding company of the Licensee, or is an officer or employee of the Administration.

(6) When a Licensee fails to appoint an auditor pursuant to this Section, the Regulator may appoint an auditor who has all the powers of an auditor appointed by the Licensee to conduct an audit of the Licensee.

**32. Confidentiality.**

(1) Save as specifically provided for by this Ordinance, no statement, return or information shall be required by the Regulator or the Minister with respect to the affairs of any particular international banking customer of a Licensee.

(2) Save as is specifically provided for by this Ordinance and for the purposes specified, no statement returns or information furnished or submitted by a Licensee in respect of its business shall be communicated or disclosed.

(3) The Regulator may, without the consent of the Licensee, disclose information to:

- (a) any supervisory or regulatory authority of financial institutions within Nevis;  
or
- (b) the appropriate supervisory or regulatory authority of financial institutions of another country at the request of that authority, where there is a branch, holding company or affiliate of a Licensee operating in that country; or
- (c) any international financial institution, foreign banking supervisors and any other local or foreign authority responsible for the supervision or regulation of a financial institution on a reciprocal basis and subject to a confidentiality agreement and a Memorandum of Understanding.

(4) A person who discloses confidential information furnished or submitted by a Licensee contrary to this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars (\$25,000.00) or to imprisonment for a term of twelve (12) months or to both fine and imprisonment.

**33. Auditor.**

In this Ordinance unless the context otherwise requires:

“auditor” means a person who,

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- (a) is qualified as an accountant by examination of, one (1) of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland, Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and holds a current practicing certificate if required by his institute to do so, or
- (b) possesses such other qualification in accountancy, banking or other similar qualification equivalent to the qualification set forth in paragraph (a) as the Minister may, on the recommendation of the Regulator, by order approve and is in good standing with respect to such qualification.

**34. Annual auditing.**

(1) The annual balance sheets and accounts of a Licensee shall be audited at least once in every financial year by an auditor who shall conduct the audit in accordance with the international financial reporting standards.

(2) It is the duty of the auditor appointed pursuant to subsection (1) to submit a report to the shareholders of the Licensee and to the Regulator.

(3) The report of the auditor shall state whether the auditor has obtained all the information and explanations he needed and in addition state whether in his opinion the balance sheet and account presents fairly in all material respects a true and correct view of the assets and liabilities of the Licensee as at the date of the statement and the income and expenditure of the Licensee for the year ended.

(4) It is the duty of the auditor to note in his report any instances where the operations of the Licensee might not in the opinion of the auditor be in compliance with the requirements of this Ordinance or any regulations made thereunder, the conditions of the Licensee's license or its articles of incorporation or bylaws.

(5) The report of the auditor shall be read with the report of the directors to the shareholders at the annual meeting of the Licensee.

(6) A copy of the report of the auditor shall be displayed by the Licensee in a conspicuous place at its office in Nevis.

**35. Breaches and sanctions.**

(1) Where the Minister is satisfied, on the recommendation of the Regulator that a Licensee:

- (a) has not commenced business within six (6) months after the issuance of its license;
- (b) has failed to comply with a condition of its license;
- (c) is in breach of any duty or obligation imposed upon it by this Ordinance or under the Anti-Money Laundering Regulations, 2011, Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011 or the Financial Services (Implementation of Industry Standards) Regulations, 2011;
- (d) has ceased to carry on business under its license;

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- (e) is carrying on business in an unlawful manner or is in an unsound financial position;
- (f) in the opinion of the Minister is carrying on business in a manner that is detrimental to the public interest or to the interest of its depositors;
- (g) has provided any false or misleading information in respect of its application under this Ordinance or fails to inform the Minister where there is a material change in respect of the information so supplied;
- (h) goes into liquidation;
- (i) fails to pay its annual fees; or
- (j) has committed an offence under this Ordinance

the Minister may revoke or suspend the license of the Licensee.

(2) In addition to the powers conferred on the Minister under subsection (1), the Minister may also:

- (a) issue a written warning to the Licensee;
- (b) conclude a written agreement with the Licensee providing for a program of remedial action, or
- (c) issue a cease and desist order that requires the Licensee or the person responsible for the management of the Licensee to cease or desist from the practice or violations specified in the order,
- (d) impose new or additional conditions on the Licensee.

(3) When the Minister intends to revoke a license under subsection (1), the Minister shall give written notice to the Licensee at its physical place of business in Nevis specifying the grounds upon which he proposes to make the revocation and shall require the Licensee to submit to him within thirty (30) days, a written statement of objections to the revocation.

(4) Where the Minister decides to revoke the license of the Licensee the Minister must give written notice to the Licensee and the notice shall include a statement of the reasons for the decision.

(5) Notice under subsection (4) shall be served at the last known address of the Licensee.

(6) A Licensee who is aggrieved by any decision of the Minister made under this section, may within thirty (30) days after providing a written statement objecting to the revocation apply to the High Court for redress.

(7) Where a license has been revoked, the Minister shall, as soon as possible thereafter publish a notice of the revocation in the Gazette and in one newspaper of general circulation in St. Christopher and Nevis.

(8) Where a license has been revoked the Licensee shall forthwith surrender the license in its possession to the Minister and the Minister shall direct the Regulator to appoint a suitably qualified person to carry out the function of a custodian with respect to the business and affairs of the now former Licensee.

(9) The regulator shall promptly give written notice of the revocation of the license and of the appointment of the custodian to the former Licensee, clients, creditors, directors, secretary, officers, shareholders, customers and employees of the former Licensee and any other interested persons.

## **PART VII RECEIVERSHIP, LIQUIDATION AND REORGANIZATION**

### **36. Voluntary winding up.**

(1) Except with the prior written approval of the Minister no Licensee may be wound-up voluntarily.

(2) Approval for a voluntary winding-up of a Licensee may be given by the Minister only if he is satisfied that:

- (a) the Licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and
- (b) subject to subsection (3), the winding up has been approved by the holders of at least two-thirds of the outstanding voting shares of the Licensee.

(3) Where the Minister finds in respect of a Licensee that there is imminent danger of its insolvency, the Minister may waive the requirement for shareholder approval of the winding-up of the Licensee voluntarily if

- (a) the winding-up is to be effected in whole or in part through the sale of any of the assets of the Licensee to another Licensee; and
- (b) the deposit liabilities of the Licensee to be wound-up are to be assumed by that other Licensee.

### **37. Commencement of voluntary winding-up.**

(1) When a Licensee receives the approval of the Minister to its voluntary winding-up, the Licensee shall:

- (a) cease to do business immediately and retain only such staff as is necessary for an orderly winding-up;
- (b) repay its depositors and other creditors; and
- (c) cease all operations undertaken before the receipt of the approval to wind-up.

### **38. Notice of winding-up.**

(1) Within thirty days of the receipt of the approval of the Minister to the winding-up a notice of voluntary winding-up which must contain the prescribed information, shall be sent by the Licensee in the prescribed manner or by personal service, to the depositors and creditors of the Licensee and other person having any interest in its funds or other property.

(2) The notice described in subsection (1) shall also be published in the Gazette and in one newspaper of general circulation of St. Christopher and Nevis and placed in a conspicuous place on the premises of each office or branch of the Licensee to be wound-up.



**39. Settlement of Claims.**

(1) The approval of the Minister to the voluntary winding-up of a Licensee does not adversely affect the rights of a depositor or other creditor of the Licensee to settlement in full of his claim nor the rights of any person having an interest in the funds or property of the Licensee to settlement of that interest.

(2) All claims made by persons described in subsection (1) shall be settled by the Licensee concerned within such time as the Minister may determine.

**40. Distribution of remaining assets.**

(1) The assets of a Licensee being voluntarily wound-up that remain after settlement of the claims described in section 62 are to be distributed among the shareholders of the Licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a Licensee may be made before:

- (a) all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the Licensee has deposited with the Administration sufficient funds to meet any liability that could arise under that claim;
- (b) any funds that are payable to a depositor or other creditor who has not made his claim have been deposited with the Administration; or
- (c) any funds or property held by the Licensee that could not be returned, in accordance with section 62, to the persons who have an interest therein have been deposited with or transferred to the Administration, together with the relevant records.

**41. Interruption of winding-up.**

(1) If the Regulator determines that the assets of a Licensee that is being voluntarily wound-up are not sufficient for the full discharge of the obligations of the Licensee or that the completion of such a winding-up is being unduly delayed, the Regulator may seize the management and control of the Licensee by posting a notice to that effect on the premises of the Licensee and by placing persons appointed by the Minister into the offices of the Licensee.

(2) When the Regulator seizes the management and control of a Licensee under subsection (1) he shall immediately begin proceedings for compulsory winding-up in accordance with this Ordinance.

**42. Seizure in other cases.**

(1) Notwithstanding section 64, the Regulator may seize the management and control of a Licensee when:

- (a) the realizable value of the Licensee's assets is less than the aggregate of its liabilities and capital accounts or the Licensee's financial condition suggests that it will shortly be in that circumstance;

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- (b) its business is being conducted in an imprudent manner or is not being conducted in accordance with this Ordinance;
- (c) the Licensee refuses to submit to inspection of its records or operations by an auditor appointed under section 33 or the Regulator; or
- (d) its license has been revoked or suspended under this Ordinance.

(2) A seizure of the management and control of a Licensee under this section is affected by placing a notice to that effect on the premises of the Licensee and by placing persons appointed by the Minister into the offices of the Licensee.

(3) A Licensee aggrieved by a seizure under this section may institute proceedings in the High Court for recovery of management and control of the institution and the High Court may make such order in respect thereto as to it seems just and consistent with the purposes of this Ordinance.

**43. Duty of Minister.**

- (1) Within thirty (30) days after the Regulator has seized the management and control of a Licensee under this Ordinance, the Minister shall begin proceedings in the High Court:
- (a) for the compulsory winding-up of the Licensee; or
  - (b) for the re-organization of the Licensee.

**44. Power of High Court.**

- (1) The High Court may in respect of proceedings by the Minister under section 43 order
- (a) the compulsory winding-up of the Licensee;
  - (b) the reorganization of the Licensee subject to such terms and conditions as the court may determine; or
  - (c) the return of the management and control of the Licensee to its shareholders, directors and officers subject to such safe-guards or conditions, if any, as the court may consider for the purposes of this Ordinance.

**45. Notice of application.**

- (1) Forthwith after he makes an application to the High Court under section 43 in relation to a Licensee, the Minister shall give notice of the application
- (a) to the directors and shareholders of the Licensee, and
  - (b) to the depositors and other creditors of the Licensee.

**46. Appointment of custodian.**

If the High court orders the compulsory winding-up or reorganization of a Licensee pursuant to an application under section 43, the High court shall appoint a custodian to be responsible to the Court and to supervise the winding-up or re-organization of the Licensee.

**47. Functions of custodian.**

(1) In respect of the Licensee for which he has been appointed and subject to the provision of section 52, the custodian has the exclusive power and duty to manage and control the affairs of the Licensee.

(2) Without limiting his powers or duties under subsection (1), the custodian may, in respect of the Licensee for which he has been appointed,

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ staff;
- (d) execute any instrument in its name;
- (e) initiate, defend and conduct in its name any action or proceeding to which the Licensee is or might be a party;
- (f) end the seizure of the Licensee by restoring it to its directors and shareholders; and
- (g) re-organize or wind-up the Licensee in accordance with this Ordinance.
- (h) invite claims by depositors or other persons with interest against the Licensee, giving a date by which any such claims shall be submitted and deal with any such claims in the order in which they are submitted.

**48. Inventory of assets.**

(1) Forthwith after assuming management and control of a Licensee, the custodian shall make an inventory of its assets and forward a copy of the inventory to the Registrar of the High Court.

(2) The copy of the inventory forwarded to the Registrar shall be kept available at all reasonable times for the inspection of interested persons.

**49. Reorganization.**

(1) Where the re-organization of a Licensee has been ordered by the High Court, the custodian shall develop a plan of re-organization and deliver a copy thereof to each of the depositors and other creditors of the Licensee who under the plan would not receive full restitution or payment of their claims.

(2) The copy of the re-organization plan must be accompanied by a notice requiring that objections to the plan be delivered to the custodian not later than thirty (30) days after the last of the copies have been delivered under subsection (1).

(3) If within the time limited therefor by subsection (2) the custodian does not receive objections in writing to the reorganization from persons who in the aggregate hold at least one-third of the total amount of deposits and other liabilities of the Licensee, the custodian may carry out the re-organization plan referred to in subsection (1).

(4) When an objection to the re-organization plan is received from one-third or more of the persons described in subsection (3), the custodian shall submit further re-organization

plans in like manner until such time as fewer than one-third of the persons described in subsection (3) object within the time limited therefor or he may refer the matter back at anytime to the High Court for further directions.

(5) The High Court may extend the time limited by subsection (1) and upon cause shown may exempt the custodian from delivering the plan to some or all of the persons mentioned in subsection (1).

#### **50. Content of plan.**

A re-organization plan developed by the custodian of a Licensee must, so far as it is practicable to do so

- (a) be equitable to all classes of depositors;
- (b) provide for bringing in new funds to establish adequate ratios between
  - (i) capital and deposits, and
  - (ii) liquid assets and deposits; and
- (c) provide for the removal of any directors or any officer or employee responsible for the circumstances that led to the seizure of the Licensee.

#### **51. Application for order by custodian.**

If, in the course of the re-organization of a Licensee, it appears to the custodian that circumstances render the plan or its execution undesirable, he may apply to the High Court for an order

- (a) to modify the plan, or
- (b) to wind-up the Licensee compulsorily.

#### **52. Compulsory winding-up.**

(1) Where the High Court under section 44 orders the compulsory winding-up of a Licensee, the custodian appointed therefor by the Court may, subject to subsection (2), perform the functions of the Licensee.

(2) A custodian of a Licensee described in subsection (1) may not, without an order of the High Court to do so,

- (a) sell any assets or transfer any property of the Licensee that has a value exceeding one hundred thousand dollars (\$100,000.00);
- (b) create a security interest in any asset or property of the Licensee in favour of a creditor who extends a new credit to the Licensee;
- (c) compromise or release any claim the amount of which exceeds one hundred thousand dollars (\$100,000.00); or
- (d) pay any claim other than one in respect of an obligation incurred by the custodian in the exercise of his winding-up functions before the schedule referred to in section 56(c) has been approved by the High Court.

**53. Termination of service contracts.**

Subject to any other law governing conditions of employment, the custodian of a Licensee that has been ordered by the High Court to be compulsorily wound-up shall terminate not later than nine months after the order of the High Court:

- (a) any employment contract of the Licensee;
- (b) any contract for services to which the Licensee is a party, and
- (c) any obligations of the Licensee as a lessee of property

**54. Right of lessor.**

A lessor of any property referred to in section 76

- (a) must be given notice of not less than ninety (90) days of the intended termination of the obligations of a Licensee thereunder;
- (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the Licensee; and
- (c) has no right to damages by reason only of any termination of the obligations of the Licensee, notwithstanding any term of the lease to the contrary.

**55. Statements of accounts.**

(1) Within sixty (60) days after an order for the compulsory winding-up of a Licensee, the custodian shall deliver a statement of account to any depositors and other creditors.

(2) The statement of account is a statement of the nature and amount for which a claim of a person described in subsection (1) is shown on the books of the Licensee.

(3) A notice specifying that any objection to the statement of account is to be made on a date specified in the notice, not being later than sixty (60) days after the delivery of the notice, must accompany the statement of account.

(4) The High Court on application of the custodian for cause shown may exempt the custodian from delivering a statement of account to any person mentioned in subsection (1).

**56. Claims.**

Not later than ninety (90) days after the last day specified in the notice for filing claims against a Licensee being compulsorily wound-up, the custodian shall:

- (a) reject any claim, of which he doubts the validity;
- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority of his claim under this Ordinance;
- (c) prepare for filing with the High Court a schedule of the actions proposed to be undertaken for the purpose of the compulsory winding-up of the Licensee;
- (d) notify each person whose claim is allowed in full; and
- (e) publish, once a week for three (3) consecutive weeks in a newspaper of general circulation in Nevis,

- (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection, and
- (ii) the date, not being earlier than thirty (30) days from the date of the publication, on which the custodian will file that schedule with the High Court.

**57. Objections.**

(1) Within twenty (20) days of the filing of a schedule under section 56, a depositor or other creditor or shareholder of the Licensee concerned, or other interested person, may file with the High Court any objection he has to any action proposed in the schedule referred to in section 56 (c).

(2) After notice served on the custodian and such interested parties as the High Court may require, the High Court shall hear the objection and make such order thereon as it considers just in the circumstances.

(3) When the High court allows an objection, the order must set out the manner in which the schedule referred to in section 56 (c) is to be modified.

**58. Distribution of assets.**

(1) When a schedule has been filed under section 56 in respect of a Licensee, the custodian may make a partial distribution to the claimants against the Licensee whose claims are undisputed or allowed by the High court, if the custodian establishes an adequate reserve for the payment of disputed claims against the Licensee.

(2) As soon as practicable after all objections against the distribution proposed by the custodian have been heard and determined, final distribution of the assets of the Licensee concerned shall be made by the custodian.

**59. Priority of claims.**

(1) The following claims have priority against the general assets of a Licensee being compulsorily wound-up under this Ordinance:

- (a) firstly, the necessary and reasonable expenses incurred by the custodian in carrying out his functions under this Ordinance;
- (b) secondly, the wages and salaries of the officers and employees of the Licensee that accrued during the three (3) months immediately preceding the seizure of the Licensee under this Ordinance;
- (c) thirdly, any monies owing to the Administration;
- (d) fourthly, the Licensee's depositors ;
- (e) fifthly, all other claims.

(2) After payment of all other claims against the Licensee, of which notice was received by the custodian within the time provided for in section 47(2)(h) togetherwith interest at such rate as the High court determines, all remaining claims against the Licensee that were not filed within the time limited therefor under this Ordinance may then be paid.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to claimants in that class, the amount available shall be distributed by the custodian on a pro rata basis among the claimants in that class.

#### **60. Distribution to shareholders.**

The assets of a Licensee being compulsorily wound-up that remains after the final distribution to claimants pursuant to section 59 shall be distributed by the custodian among the shareholders of the Licensee in proportion to their respective rights.

#### **61. Abandoned funds.**

(1) Any funds of a Licensee being compulsorily wound-up under this Ordinance that remain unclaimed after the final distribution under section 59 and not subject to distribution under any other provision of this Ordinance shall be deposited with the Administration by the custodian of the Licensee.

(2) Funds deposited with it under subsection (1) must be held by the Administration for ten (10) years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the ten (10) years referred to in subsection (2) in respect of any funds, those funds remaining unclaimed become abandoned property and may be transferred to and used as part of the Nevis Island Consolidated Fund.

#### **62. Completion of winding-up.**

(1) When all the assets of a Licensee being wound-up have been distributed or dealt with as required by this Ordinance, the custodian shall render an audited statement to the High court.

(2) If the High Court is satisfied with the audited statement rendered by the custodian in respect of a Licensee being wound-up, it may by order direct the Registrar of Companies to strike the name of the Licensee from the register of companies under the Companies Ordinance and publish notice thereof in the gazette.

(3) When its name is struck off the register of companies pursuant to an order under subsection (2) the Licensee is thereupon dissolved and its license under this Ordinance is revoked.

### **PART VIII RESIDENCE**

#### **63. Residents of Nevis.**

- (1) For the purposes of this Ordinance, the following are residents of Nevis, namely:
- (a) an individual ordinarily resident in Nevis;
  - (b) a trust company, partnership, limited partnership or other body incorporated, established, formed or organized in Nevis under the law in force in Nevis, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly by the Government or by persons who are residents under the provisions of paragraph (a) or (c);

- (c) any other trust, corporation, partnership, limited partnership or other entity who or which is a resident of, or ordinarily resident or domiciled in Nevis as under the Income Tax Act, but does not mean a person registered or licensed under any law in force in Nevis relating to international financial services;
- (d) For the purposes of this Ordinance, a person who has obtained citizenship of St. Christopher and Nevis by way of the citizenship by investment program is not a resident of Nevis.

## **PART IX SPECIAL TAX PROVISIONS**

### **64. Exemption from tax.**

Except as provided by this Part, no income tax, capital gains tax or other direct tax shall be levied in Nevis upon the profits or gains of a Licensee in respect of the international banking it does from within Nevis.

### **65. Transfer of assets exemption.**

(1) Except as provided by this Part, no tax or duty shall be levied upon a Licensee, its shareholders or transferees in respect of the transfer of all or any part of its securities or other assets to another Licensee.

(2) Where a Licensee transfers shares of a Licensee that are held by that person or Licensee to another person who is not a resident of Nevis or to another Licensee, the transfer is exempt from the payment of any tax or duty thereon.

(3) Except as provided by this part,

- (a) no income tax or capital gains tax, and
- (b) no other direct tax

shall be levied or collected in Nevis in respect of any dividend, interest or other return from any shares, securities, deposits or other borrowing of a Licensee or any assets managed by the Licensee if the dividend, interest or other returns are in respect of shares, securities deposits or other borrowings or assets beneficially owned by a person who is not a resident of Nevis; but the onus of establishing ownership lies upon the Licensee.

### **66. Withholding tax.**

(1) Notwithstanding any provision of the Income Tax Act, but subject to subsection (2), no Licensee need withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowings of the Licensee or in respect of that person holding shares or securities of the Licensee.

(2) All dividends, interests or other return attributable to the shares or security of all the management of assets by a licensee that are payable to resident of Nevis and known as such by the licensee shall be reported to the Inland Revenue Department.



**67. Service fees.**

(1) When a tax levied in Nevis is in the nature of a service charge or utility charge for a service provided by the Administration, a Licensee is not exempt from that charge under this Part.

(2) A service or utility charge includes a charge or fee levied or imposed for the issuance of any incorporation registration or license required in Nevis.

**68. Customs duty.**

(1) The Minister may by order exempt a Licensee in respect of its business from all or so much of any duty payable under the Customs Control and Management Act, Cap. 20.04 in respect of any goods imported by the Licensee in respect of its business as the Minister considers expedient.

(2) For the purposes of being considered for exemption under subsection (1), the Licensee has to satisfy the Minister that the goods concerned:

- (a) are not being made or manufactured in Nevis;
- (b) are essential as equipment or fixtures for doing business from within Nevis, and
- (c) are not merely goods that will be used up or expended in the ordinary course of business.

**69. Employee benefits.**

(1) Where the Minister is satisfied that a Licensee must use the services of specially qualified persons in order to do its business effectively from within Nevis and that:

- (a) it is unable to acquire those services in Nevis, and
- (b) it is unable to retain or hire those services from outside Nevis without special tax benefits being made available

the Minister may authorize an offshore benefit provision for the employment of those specially qualified persons.

(2) An offshore benefit provision is one whereby a prescribed percentage of an employee's or contractor's salary or fees from a Licensee:

- (a) is exempt from any duty or tax in Nevis;
- (b) may be paid in a foreign currency, or
- (c) may be paid in some other prescribed manner in another currency or otherwise notwithstanding any other law to the contrary.

**PART X**  
**ABANDONED PROPERTY**

**70. Abandoned Property.**

(1) Property of the following kinds held or owing in the course of its business by a Licensee in respect of which no activity has been evidenced for a period of ten (10) years is abandoned property:

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- (a) any general deposit, that is a demand saving or matured time deposit made with the Licensee together with any interest or dividends but exclusive of legal charges;
- (b) funds that were paid towards the purchase of shares or other interests in a Licensee;
- (c) any sum payable on cheques or other instruments on which the Licensee is liable;

and in respect of which the Licensee has, by registered mail to the latest known address of the owner, given notice of its intention to deliver the contents into the custody of the Administration and the owner has failed to respond within a period of one (1) year.

(3) Activity is evidenced in respect of the property described in subsection (1) if the owner thereof has:

- (a) within ten (10) years of the date of deposit increased or decreased the amount of the deposit or presented a passbook or other record for the crediting of interest in respect of the deposit;
- (b) within ten (10) years of paying funds for the purchase of shares or other interest mentioned in subsection (1) (b), increased or decreased the amount of the funds or presented a document or book for crediting of dividends in respect thereof;
- (c) within ten (10) years of making the last deposit, inquiry or communication concerning any item mentioned in subsection (1), correspond with the Licensee concerning the items or otherwise indicated an interest in the items as evidenced by a memorandum about them by the Licensee.

**71. Disposal of abandoned property.**

(1) A Licensee shall, once in each financial year, report to the Regulator all its holding of abandoned property within the meaning of this Ordinance and shall, from time to time, deposit with or convey to the Administration in the prescribed manner all abandoned property.

(2) When a Licensee has deposited with or conveyed to the Administration any abandoned property, the Licensee is relieved from any liability to the beneficial owners thereof to the extent of the value of the property deposited or conveyed to the Administration.

(3) Within thirty (30) days after reporting to the Regulator pursuant to subsection (1), the Regulator shall give notice by registered mail to the beneficial owner of the property, at his latest known address; but with the approval of the High Court on application thereto, the Regulator may be exempted from mailing the copy of the notice to the owner.

(4) A Licensee that fails to report to the Regulator any abandoned property in its possession or that fails to deposit with or convey to the Administration any abandoned property as required by this Ordinance commits an offence and is liable on summary conviction to a fine not exceeding two hundred thousand dollars (\$200,000.00).

**72. Sale of abandoned Property.**

(1) The Administration may sell at public auction any property that has been conveyed to it under section 71 after the expiration of thirty (30) days from the latest date of publication or the notice referred to in section 71(3) and the mailing of the copy of the notice to the owner as the case may be.

(2) The public auction may be held after such reasonable advertising of the sale as the Administration considers suitable.

**73. Payment to consolidated Fund.**

(1) The Regulator shall pay into the Nevis Island Consolidated Fund all monies received by the Administration as abandoned property and the proceeds to the public auction of any abandoned property less, in each case:

- (a) such amount as the Minister considers necessary to reserve for the payment of claims later made and approved by him; and
- (b) amounts deducted by the Regulator as approved by the Minister for reasonable expenses incurred in connection with the publishing and mailing of notice, service charges, and the sale of abandoned property.

**74. Claims against property.**

(1) A person who claims a beneficial interest in any abandoned property deposited with or conveyed to the Administration may make a claim for the value thereof within the prescribed time and in the prescribed manner.

(2) When the Minister is satisfied that a claimant is entitled to the abandoned property, the Administration shall deliver up the property, or make payment for the value thereof, as the case requires.

**75. Notice to claimants.**

(1) When the Minister admits or refuses a claim under section 74, he shall forthwith notify the claimants of his decision.

(2) A person aggrieved by a refusal of his claim for abandoned property by the Minister may within twenty-one (21) days of receiving notice of the refusal, appeal the decision to a judge of the High Court in chambers who may make such order thereon as he considers equitable.

**76. Offence in relation to abandoned property.**

A Licensee that fails to report to the Regulator any abandoned property in its possession or that fails to deposit with or convey to the Administration any abandoned property as required by this Ordinance, commits an offence and is liable on conviction to a fine not exceeding twenty five thousand dollars (\$25,000.00).

**PART XI**  
**OFFENCES**

**77. Unlicensed international banking.**

(1) A Licensee who does international banking from within Nevis during any period in which he does not hold a license under this Ordinance commits an offence and is liable to a fine not exceeding two hundred and fifty thousand dollars (\$250,000.00).

(2) A director or officer of a company that does international banking from within Nevis without a license under this Ordinance commits an offence and is liable to a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for five (5) years or to both fine and imprisonment.

(3) Subject to subsection (4) a person who holds funds obtained from doing international banking business from within Nevis during any period in which he did not hold a license under this Ordinance shall repay those funds in accordance with the direction of the Minister.

(4) The High Court may order any profits derived from the conduct of international banking from within Nevis without a license under this Ordinance to be forfeited to the Administration.

**78. Misleading advertising.**

(1) A Licensee that engages in advertising practices that are likely to mislead concerning:

- (a) the relationship of the Licensee with the Administration or any department or office of the Administration;
- (b) the true interest rate paid on deposit or charged or credited;
- (c) the true returns on the management of investments;
- (d) the insured or guaranteed status of deposit or other liabilities or of investments managed by it, or
- (e) the financial condition of the designated institution

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars (\$10,000.00).

(2) A Licensee shall, in respect of its business, furnish the Regulator with copies of all its advertisements.

**79. False statements and obstruction.**

A director, officer, employee or agent of a Licensee who, with intent to deceive

- (a) makes a false or misleading statement or entry in a book, account, record, report or statement of the Licensee or omits a statement or entry that should be made therein, or
- (b) obstructs:

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- (i) the carrying out by an auditor of his proper function under this Ordinance, or
- (ii) the examination of a Licensee as required pursuant to this Ordinance

commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars (\$50,000,00) or to imprisonment for five (5) years.

**PART XII**  
**MISCELLANEOUS**

**80. Minimum criteria for determining fit and proper status.**

(1) A person who is, or is likely to be a director, shareholder or manager of a Licensee under this Ordinance shall be a fit and proper person to hold the particular position which he holds or is likely to hold.

(2) In determining whether a person is a fit and proper person to hold a position as outlined under subsection (1), regards shall be had to:

- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the diligence with which that person is fulfilling or likely to fulfill the responsibilities of that position; and
- (c) whether the interests of depositors or potential depositors of the Licensee are, or are likely to be in any way threatened by that person holding the position.

(3) Without prejudice to the generality of the foregoing, regard may be had to the previous conduct and activities in business and financial matters of the person in question and, in particular, to any evidence that the person has:

- (a) committed an offence involving fraud, dishonesty or violence;
- (b) contravened any provision made by or under any legislation designed for protecting members of the public against a financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking 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 be deceitful, oppressive or otherwise improper or reflects discredit on that person's method of conducting business;
- (d) an employment record which leads one to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

**81. Extending time.**

At the request of a Licensee, the Regulator may extend the time within which any documents or information required from the Licensee under this Ordinance must be sent to the Regulator.

**82. Application of the other legislation.**

(1) The provisions of the Companies Ordinance Cap 7.06 relating to the winding up of a company do not apply to a Licensee.

(2) The Bankruptcy Act, Cap. 5.04 does not apply to a Licensee.

(3) The Banking Act, Cap. 21.01 does not apply to a Licensee in respect of its international banking business.

**83. Exemptions.**

Sections 17 and 19 and PART VII – Receivership, Liquidation and Re-organization of this Ordinance do not apply to a Licensee that is a qualified foreign bank.

**84. Regulations.**

The Minister may make regulations that are necessary for the carrying into effect of this Ordinance and in respect of acts, matters or things that are required by this Ordinance to be prescribed.

**85. Repeal.**

The Nevis Offshore Banking Ordinance Cap. 7.05 is hereby repealed.

FARREL SMITHEN  
*President*

Passed by the Nevis Island Assembly this 12<sup>th</sup> day of June 2014.

MYRA A. WILLIAMS  
*Acting Clerk of the Nevis Island Assembly*