

SAINT CHRISTOPHER AND NEVIS

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**STATUTORY RULES AND ORDERS**

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**No. 2 of 2015**

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**ISLAND OF NEVIS**

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The Minister of Finance in exercise of the powers conferred upon him by section 84 of the Nevis International Banking Ordinance, No. 1 of 2014, all other powers thereunder enabling him makes the following Regulations:

*[Published 29<sup>th</sup> October 2015, Official Gazette No. 52 of 2015]*

**1. Citation.**

These Regulations may be cited as the **NEVIS INTERNATIONAL BANKING REGULATIONS, 2015** and shall come into effect on the 1<sup>st</sup> day of December, 2015.

**2. Interpretation.**

In these Regulations the following words have the following meaning:

“Ordinance” means the Nevis International Banking Ordinance No. 1 of 2014;

**3. Applicable fees.**

The prescribed fees payable to the Regulator shall be non-refundable and are specified in Schedule 1 to these Regulations.

**4. Application for License.**

An application for a license under Section 9 of the Ordinance shall be in the form prescribed in Form 1 of Schedule 2.

**5. Form of License.**

A license to be issued to a licensee by the Minister shall be in the form as set out in Form 2 of Schedule 2.

**6. Notice of change of registered address.**

A notice of change of the registered address of the licensee under Section 7 of the Ordinance shall be in the form as prescribed in Form 3 of Schedule 2.

**7. Notice of change of particulars.**

A notice of change of particulars of the licensee under Section 9 of the Ordinance shall be in the form as prescribed in Form 4 of Schedule 2.

**8. Notice of Revocation of license.**

The notice to be issued by the Minister to a licensee upon the revocation of that licensee’s license shall be as set out in Form 5 of Schedule 2.

## **9. Tentative applicant proposal.**

A proposal under Section 10 of the Ordinance shall contain but not be limited to the matters outlined in Schedule 3.

## **10. Late payment of annual fees.**

(1) In accordance with section 8 of the Ordinance, the annual license fee shall be paid on or before the 31<sup>st</sup> day January of each year and shall accompany the prescribed renewal form as set out in Form 6 in Schedule 2.

(2) If the annual fee is paid after 31<sup>st</sup> January in any year but before the 1<sup>st</sup> of March in the same year, a late payment fee of 10% of the annual fee is payable in addition to the annual fee.

(3) If the annual fee is paid on 1<sup>st</sup> March in any year or, on or before 30<sup>th</sup> June in the same year, a late payment fee of 50% of the annual fee is payable in addition to the annual fee.

(4) If the annual fee and any applicable late payment fees are not paid on or before 30<sup>th</sup> June in the year in which the annual fee is due and payable, section 35(1) of the Ordinance shall apply.

## **11. Fixed Penalties.**

(1) This regulation shall apply to the offences specified in Schedule 4.

(2) Where circumstances giving rise to reasonable belief that a person has committed an offence to which this regulation applies exist, the Regulator may give notice in writing in the form prescribed in Schedule 5 offering that person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

(3) A person shall not be liable to be convicted of the offence if the fixed penalty is paid in accordance with these regulations and the requirement in respect of which the offence is committed is complied with before the expiration of 15 days following the date of the notice referred to in sub-regulation (2) or such longer period as may be specified in that notice or before the date on which proceedings are begun, whichever event occurs last.

(4) Where notice is given under this regulation in respect of an offence, the Regulator shall not commence proceedings against that person until the end of the 15 days following the date of the notice or such longer period (if any) as may have been specified in the notice.

(5) Where a person makes a payment of a fixed penalty under this section it shall be made to the Nevis Island Administration and in any proceedings a certificate that payment of a fixed penalty was or was not made to the Nevis Island Administration by a date specified in the certificate shall, if the certificate purports to be signed by the Regulator, be admissible as evidence of the stated facts.

(6) A notice issued under sub-regulation (2) shall:

- (a) specify the alleged offence;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation, and
- (c) state the period during which, by virtue of sub-regulation (4), proceedings will not be taken for the offence.

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

(8) In this regulation, “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in a notice issued and served under sub-regulation (2) and “convicted” shall be construed accordingly.

(9) The Minister upon the recommendation of the Regulator may, by Order published in the Gazette, make provision as to any matter incidental to the operation of this regulation, and in particular, any such Order may:

- (a) prescribe the nature of the information to be furnished to the Regulator along with payment;
- (b) prescribe the arrangements for the Regulator to furnish any information with regard to any payment pursuant to a notice under this section.

(10) A fixed penalty levied pursuant to these regulations may be recovered as a civil debt.

## **12. Submission of information to the Regulator.**

(1) Subject to Section 30(4)(d) of the Ordinance, a licensee shall furnish to the Regulator at such time and in such manner as specified by the Regulator, information and data as the Regulator may require for the proper discharge of his functions and responsibilities.

(2) Without limiting the generality of sub-regulation (1), a licensee shall, at the request of the Regulator in relation to that licensee’s operations, and in such form as the Regulator may from time to time approve, submit:

- (a) a monthly statement of assets and liabilities not later than 14 days after the last day of the month to which it relates;
- (b) a quarterly return providing an analysis of customers’ liabilities to the licensee in respect of loans, advances and other assets of the licensee not later than 14 days after the end of the quarter to which it relates;
- (c) within such period as the Regulator may determine, such other returns as the Regulator may require.

(3) All statements and returns produced by a licensee under sub-regulation (2) and any data or information submitted by a licensee under sub-regulations (1) or (2), shall be regarded by the Regulator as confidential provided that the Regulator may disclose information in accordance with section 32 of the Ordinance.

(4) A licensee who contravenes this regulation is liable to a penalty of \$5,000.00 and \$500.00 for each day in default.

## **13. Extension of time for providing information**

The Regulator may, at the request of the licensee, extend the time within which that licensee is obliged to furnish any document or information in accordance with these Regulations.

#### 14. Rule for examination and supervision of licensee

Subject to Section 30(3) of the Ordinance, the Regulator shall observe the rules set out in Schedule 6 for the purpose of examining and supervising licensees and their operations so as to ensure the preservation of the soundness and efficiency of the international banking system.

#### SCHEDULE 1

**(Regulation 3)**

#### Table of prescribed Fees

<i>The matter in respect of which the prescribed fee is payable</i>	<i>Amount of fee in United States Dollars (US\$)</i>	<i>Enabling sections of the Ordinance</i>
Initial License fee	50,000.00	Section 8(2)
Application fee	6,000.00	Section 9(2)(h)
Administrative fee	1,500.00	Section 10(2)
Annual license fee	50,000.00	Section 8(2)

**SCHEDULE 2****FORMS****FORM 1****(Regulation 4)****APPLICATION FOR LICENCE TO CARRY OUT  
INTERNATIONAL BANKING BUSINESS**

Please complete all applicable parts of the application.

**PART 1  
APPLICANT DETAILS**

Name of Applicant: <input type="text"/>  Company No. <input type="text"/>  Date of Incorporation	Registered Office of Applicant <input type="text"/>  Business address of Applicant <input type="text"/>
Contact person for this application  <input type="text"/>	Telephone Fax Email <input type="text"/>
<u><b>Share Capital</b></u>  Authorized <input type="text"/>  Issued <input type="text"/>  Paid Up <input type="text"/>   Type of International banking business to be carried on by Applicant  <input type="text"/>	Method of Raising Share capital <input type="text"/>  Amount and nature of loan capital

**PART 2**  
**ADDITIONAL INFORMATION**

**Please append (where applicable) the following items of information.**

- Certified evidence of capital requirements.
- Name, citizenship, bankers' references and addresses of Shareholders (include names of beneficiaries where shareholders are nominees) with statutory declaration. Also amount and type of shares held.
- Résumés of each Director and Senior Management personnel of Applicant, together with Banker's references. Resumes – shall contain: name, date and place of birth, citizenship details, country of residence and length of residency, private address for past ten years, educational and professional qualifications, employment history, etc.
- Constitutional documents –  
Certified copies of company incorporation documents including the Articles of Incorporation and Bye-laws, Certificate of Incorporation and Certificate of Good Standing. (It is the applicant's responsibility to ensure that the scope of its Articles of Incorporation is sufficiently wide to carry out its proposed activities.)
- Particulars of shareholder loan –  
Include details of all loans to and from shareholders.
- Comparative financial statements – Copy of applicant's and applicant's parent company's latest audited accounts and group accounts where applicable for 3 years prior to year of application and the statements of accounts at the end of the month prior to submission of application (applies to subsidiary or continuing companies)
- Business plan – encompassing:  
the background, business objectives, proposed operations of the applicant including market plans;
  - corporate governance arrangements; fitness and probity of each director, manager or shareholder having more than 5% of the shares of the applicant;
  - an overview of the investment and lending policies, standard and procedures in respect of the applicant's portfolio of investments and loans;
  - a detailed explanation of the applicant's compliance procedures, AML/CFT policies and its risk management and control processes that identify the applicant's major risk areas i.e. market, credit, technological, operational, liquidity, strategic, legal and regulatory;
  - the source of initial and future capital for expansion, in the form of a capital plan and funding policy, including an estimate of future capital requirements. The capital should meet the business requirements of the applicant's proposed bye-laws;

- the projected staff complement and organizational chart showing reporting lines for senior positions and key responsibilities and a description of the functions the individual will perform;
  - a description of any material outsourcing arrangements in the group, with partners or with third parties, that may be anticipated, including any data processing functions that may be conducted outside Nevis;
  - detailed provisioning policies and a description of the general allowances that are anticipated in executing the applicant's business plan;
  - the intended financial year end for the applicant;
  - where it is intended that an internet platform (e-commerce) would form the key delivery structure of the applicant, the plan must address:
    - (a) how customers, employees and vendors will be authenticated and authorized to prevent repudiation and fraud;
    - (b) the physical and logical network security, including security of the website and the security of customer information;
    - (c) management of systems capacity, encryption of communications and provision of electronic data processing (EDP) audits;
    - (d) continuing and contingency costs related to the development and maintenance of IT plans.
  - Contingency plans resulting from variations associated with key assumptions used in developing the business plan (provided sensitivity analysis showing the results on the business plan under various scenarios).
- Auditors and attorneys-at law confirmation of appointment – Names and address of appointed firms of auditors and attorneys-at-law together with confirmation letters.
  - List the names and addresses of the correspondent banks in which the applicant has accounts or in which the applicant intends to have accounts.
  - Restricted list statement – for restricted license, include the names and addresses of persons with which business is to be restricted.
  - If the applicant is a qualified foreign bank:
    - a) 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
    - b) 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.
  - Undertaking to provide and set apart fully paid-up capital, before and at the time business commences.

Undertaking must expressly provide that Laws of Nevis are to govern validity, interpretation and effects on the rights and obligations of each of the parties.

- Other documents/information which the Regulator deems necessary to allow a full analysis of the application.

### PART 3

#### APPLICANT MANAGEMENT

Please list all Directors of the applicant, including non-executive Directors and identify the Chief Executive or Managing Director and any other Directors with specific title. A complete resume for each person should be appended.

Name and Title	Address	Is resume attached
		YES/NO
		YES/NO
		YES/NO

### PART 4

#### DETAILS OF CORPORATE STRUCTURE OF WHICH APPLICANT FORMS PART

Please provide details of group companies of which the applicant forms part and describe the services provided.

Name of Company	Relationships (Parent, subsidiary, group or related company)	Jurisdiction of domicile	Address	Services provided	Year



**PART 5****APPLICANT ADMINISTRATION EXPERIENCE (WHERE APPLICABLE)**

Please provide details of banking business administered by the applicant or group of companies over the past 7 years.

<b>Name of banking business and jurisdiction of domicile</b>	<b>Number of years administered</b>	<b>Nature of services provided</b>

**PART 6****REGULATORY AUTHORITY**

Please provide name and address of All Regulatory Entities to which the Applicant or other group companies report or reported over the past 5 years.

<b>Name of Company</b>	<b>Name and address of Regulatory Authority</b>

**PART 7**

**STATUTORY DECLARATION – TO BE COMPLETED BY SHAREHOLDERS,  
DIRECTORS AND SENIOR MANAGEMENT  
PERSONNEL**

I, [.....full name .....] Passport Number [.....]  
of [..... please state full address .....]  
do solemnly and sincerely declare as follows—

1. That I am a citizen of [.....]
2. That \*I have never been convicted of an offence under the Laws of any jurisdiction or State (except for minor traffic offences).
3. That I am of good character.
4. That I have never been the subject of any refusal in any related application for registration, license, recognition or authorization by any regulatory authority in any country of jurisdiction.
5. That I have never been the subject of any suspension, cancellation or revocation of registration license, recognition or authorization by any regulatory authority in any country or jurisdiction.
6. That no judgment has been rendered against me nor any suit or proceedings are pending against me in any country or jurisdiction which has been based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct.
7. I have never been charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of operating or dealing in mutual funds, collective investment schemes/funds, securities, banking or insurance business.
8. I have never been declared bankrupt nor have I been a party to bankruptcy or insolvency proceedings.
9. I have never been subject to proceeding relating to winding-up, dissolution, creditors' arrangement, creditors' compromise or receivership.

I make this Declaration conscientiously believing the same to be true.

SWORN at .....  
at  
this.....day of .....  
*Declarant*

Before me

.....

**FORM 2**

**FORM OF LICENCE**

*(Section 6(1))*

This is to certify that.....

*(Name of licensee)*

has been granted a license to carry on international banking business from Nevis.

1. The licensee shall not without the written approval of the Minister, carry on any business other than one for which the license has been obtained.
2. The license granted is subject to the following conditions:
  - (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 whole or any substantial part of its assets or liabilities,
    - (iii) change its name from that set out in its license,
    - (iv) alter its articles of incorporation and bylaws,
    - (v) transfer any of its shares or alter its share structure,
    - (vi) take any action to reduce or impair in any respect its capital, or
    - (vii) 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.

Dated this..... day of....., .....

.....

**Minister of Finance**

**FORM 3**

**(Section 7(2)(b))**

**NOTICE OF CHANGE OF REGISTERED ADDRESS**

Date: .....

To: Minister for Finance

Dear Sir:

We hereby notify you that we have changed our registered address and our new registered address is as follows:

.....  
.....  
.....

**FORM 4**

**(Sections 15(6) and 35(1)(g))**

**NOTICE OF CHANGE OF PARTICULARS**

Date: .....

To: Minister for Finance

Dear Sir:

We hereby notify you that we have changed the particulars set out in our application for license as follows:

Approval is requested for the following changes for the reasons outlined:

- 1. ....  
.....  
.....
- 2. ....  
.....  
.....
- 3. ....  
.....  
.....

Yours Faithfully,

**Name:** .....

**Signature:** .....

**APPROVED**, except as maybe set forth in an attachment hereto.

.....  
**Minister of Finance**

**(This form is to be completed in duplicate)**

**FORM 5**

**(Section 35)**

**NOTICE OF REVOCATION**

Name of Licensee: .....

License Number: .....

Address: .....

The Minister of Finance hereby notifies the above holder of an International Banking License, that its license has been revoked by the Minister of Finance as at [.....enter date.....] under section 35 of the Nevis International Banking Ordinance for the following reasons:

- The licensee appears unable to meet its obligations as they fall due.
- The licensee has ceased to carry on business under its license.
- The licensee has not commenced business within six (6) months after the issuance of its license.
- The licensee is carrying on business in a manner detrimental to the public interest, the interest of its depositors, or other creditors.
- The licensee is carrying on business in an unlawful manner or is in an unsound financial position
- The licensee goes into liquidation.
- The licensee fails to pay annual fees.
- The licensee has committed an offence under the Ordinance.
- The licensee has failed to carry on international banking business.
- A condition exists that would have caused the Minister to refuse to grant the licensee a license upon application.
- The licensee has gone into liquidation, is wound up or otherwise dissolved.

The licensee may, under section 35(3) of the Nevis International Banking Ordinance provide a written statement to the Minister objecting to the revocation.

The licensee may under section 35(6) of the Nevis International Banking Ordinance appeal the decision in relation to revocation by applying to the High Court of St. Christopher and Nevis for redress.

Dated this ..... day of ....., .....

**SCHEDULE 3****(Section 10)****INFORMATION TO BE INCLUDED IN PROPOSAL**

- (a) Overview of the Parent/Group to which the applicant belongs;
- (b) Ownership Structure;
- (c) Applicant's Objectives and Proposed Operations;
- (d) Legal Structure;
- (e) Organisation of the Applicant (including corporate governance arrangements, fitness and probity of key personnel, etc.);
- (f) Reporting Structures.
- (g) Capital, Funding and Solvency Projections; and
- (h) Financial Information and Projections;

**SCHEDULE 4****OFFENCES IN RESPECT OF WHICH LIABILITY TO CONVICTION MAY BE DISCHARGED BY PAYMENT OF FIXED PENALTY**

<b>Section of Ordinance</b>	<b>Offence</b>	<b>Fixed Penalty</b>
6(2)	Carrying on International Banking within Nevis without a license	Not exceeding \$500,000.00 and a further penalty of \$50,000.00 for each day in default
15(11)	Breach of condition of license	\$25,000.00 and a further penalty of \$1,000.00 for each day in default
16(2)	Failure to display copy of current license	\$25,000.00 and a further penalty of \$1,000.00 for each month in default
17	Unauthorised use of the word "bank" in name	\$25,000.00 and a further penalty of \$1,000.00 for each day in default
21	Appointment of a person debarred from management	\$25,000.00 and a further penalty of \$1,000.00 for each day in default
25, 26, 27, 28	Failure of director to disclose and declare interest	\$10,000 for each contravention
29	Disclosure of confidential information	\$20,000.00

31	Failure to forward to the Regulator and shareholders, copies of Annual Audited Financial Statements by the prescribed date or forwarding returns after the prescribed date	\$25,000.00 and a further penalty of \$1,000.00 for each month in default
76	Failure to report to the Regulator any abandoned property in its possession or failure to deposit or convey to the Administration and abandoned property	\$25,000.00 and a further penalty of \$1,000.00 for each day in default
77(1) and (2)	Conducting international banking from within Nevis during any period in which a licensee/director /officer does not hold a license	Not exceeding \$250,00.00 (Licensee)Up to \$50,000.00 (director/ officer)
78	Engaging in advertising practices contrary to Ordinance	\$10,000.00 and a further penalty of \$1,000.00 for each day in default
79	Making false statements and obstruction	\$50,000.00
<b>Section of Regulation</b>	<b>Offence</b>	<b>Fixed Penalty</b>
10(4)	Failure to submit returns as required by the Regulator	\$5,000.00

**SCHEDULE 5  
NOTICE OF OPPORTUNITY TO DISCHARGE LIABILITY**

The Minister of Finance, Nevis Island Administration has reason to believe that  
 ..... [*insert name of licensee*] has  
 committed an offence under Section/Regulation\* ..... of the Nevis International  
 Banking Ordinance/Nevis International Banking Regulations\*  
 having.....  
 .....  
 .....[*state particulars of offence*]; and hereby gives  
 ..... [*insert name of licensee*] the opportunity  
 to discharge liability for this offence by payment of the sum of ..... [*insert  
 fixed penalty listed in Schedule 4 in words and figures*] to the Nevis Island Administration  
 on or before the ..... day of ....., 20..... and before that date, no  
 proceedings in respect of this offence will be taken.

.....  
**Regulator of International Banking**

\*delete as appropriate

**SCHEDULE 6**  
**RULES OF EXAMINATION AND SUPERVISION OF**  
**INTERNATIONAL BANKS**

1. The Regulator shall-
  - (a) regularly evaluate the condition, solvency and liquidity of all licensees;
  - (b) establish appropriate and prudent standards for conducting safe and sound international banking business;
  - (c) set prudent and appropriate capital adequacy requirements in accordance with the Basel Capital Accord and its Amendments;
  - (d) evaluate the international banks' policies, practices and procedures related to the granting of loans and making of investments and the on-going management of the loan and investment portfolios;
  - (e) ensure that international banks have management information systems that enable management to identify portfolio concentration in line with established limits;
  - (f) ensure that international banks have in place and use systems that accurately measure, monitor and adequately control market and other risks;
  - (g) ensure that international banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and loan-loss reserves;
  - (h) ensure that international banks have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including anti-money laundering and countering the financing of terrorism rules that promote high ethical and professional standards, and so prevent the use of the international bank for criminal purposes;
  - (i) co-operate with supervisors in other jurisdictions to the extent necessary for the purposes of cross-border supervision and consistent with the policy established by the Basel Committee for cross-border supervision.

Made by the Minister of Finance this 14<sup>th</sup> day of October 2015.

VANCE W. AMORY  
*Minister responsible for Finance*