

I assent,



SAMUEL WEYMOUTH TAPLEY SEATON

Governor-General

17th August, 2020.

SAINT CHRISTOPHER AND NEVIS

No. 10 of 2020

AN ACT to prevent, disrupt and criminalise the financing of the proliferation of weapons of mass destruction.

[Published 27th August 2020, Official Gazette No. 66 of 2020.]

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

1. Short title.

This Act may be cited as the Anti-Proliferation (Financing of Weapons of Mass Destruction) Act, 2020.

2. Interpretation.

In this Act, unless the context otherwise requires:

“Anti-Terrorism Act” means the Anti-Terrorism Act, Cap. 4.02;

“DNFBP” means a designated non-financial business and profession as defined in section 2 of the FSRC Act;

“entity” includes a legal person and legal arrangements;

“financial institutions” means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) money or value transfer services;

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- (e) issuing and managing means of payment such as credits and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money;
- (f) financial guarantees and commitments;
- (g) trading in:
 - (i) money market instruments;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities;

"FIU" means the Financial Intelligence Unit established pursuant to the provisions of section 3 of the Financial Intelligence Unit Act, Cap. 21.09;

"FSRC" or "Financial Services Regulatory Commission" means the Financial Services Regulatory Commission established pursuant to section 3 of the Financial Services Regulatory Commission Act, Cap. 21.10;

"FSRC Act" means the Financial Services Regulatory Commission Act, Cap. 21.10;

"legal person" includes legal arrangements;

"Minister" means the Minister responsible for Finance;

"Proceeds of Crime Act" means the Proceeds of Crime Act, Cap. 4.28;

"UNSC" means the United Nations Security Council;

"UNSCR" means the United Nations Security Council Resolution.

3. Attorney General as Competent Authority.

" (1) The Attorney General is hereby established as the Competent Authority with responsibility for designating persons or entities to the United Nations Security Council and its relevant Committees, pursuant to the obligations set out in the following United Nations Security Council Resolutions that impose targeted financial sanctions in respect of the financing of proliferation of weapons of mass destruction:

- (a) UNSCR 1718/2006 and its successor resolutions;
- (b) UNSCR 1737 (2006) and its successor resolutions;
- (c) UNSCR 1874 (2009) and its successor resolutions;
- (d) UNSCR 2087 (2013) and its successor resolutions;
- (e) UNSCR 2094 (2013) and its successor resolutions;
- (f) UNSCR 2231 (2015) and its successor resolutions;
- (g) UNSCR 2270 (2016) and its successor resolutions;
- (h) UNSCR 2321 (2016) and its successor resolutions;

(i) UNSCR 2356 (2017) and its successor resolutions.

(2) In making the decision in subsection (1), the Attorney General shall have regard to the specific designation criteria as set forth in the relevant Security Council Resolution.

(3) Where the Attorney General designates a natural person or entity to the UNSC in accordance with section 3 (1), notification of that designation shall be communicated to financial institutions and DNFBPs within twenty-four hours of that designation on such terms as may be prescribed by the Minister in Regulations.

4. Freezing Without Delay.

(1) Where the UNSC designates persons or entities pursuant to the UNSCRs set out in subsection (1) or any other UNSC resolutions that relate to the prevention or disruption of the financing of the proliferation of weapons of mass destruction, all natural and legal persons within Saint Christopher and Nevis shall freeze without delay or prior notice,

- (a) the funds or other assets that are owned or controlled by those designated persons or entities notwithstanding that those funds or assets may not be linked to a particular act, plot or threat of proliferation;
- (b) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and
- (c) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons or entities;
- (d) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities;

and ensure that no funds or other assets are made available in Saint Christopher and Nevis to and for the benefit of any designated person or entity without the prior authorisation of the UNSC.

(2) Pursuant to the provisions of subsection (1), the expression, “without delay”, means taking action within twenty-four hours.

(3) Where a natural or legal person takes freezing action or any other relevant action in response to the designation of a natural person or entity, the natural or legal person shall promptly notify the Attorney General, the FSRC and the FIU of that action and shall comply with the guidelines prescribed in respect of freezing and unfreezing mechanisms as well as any prescribed regulations in respect of listing or delisting of natural persons and entities.

(4) Where pursuant to subsection (3), freezing action is taken, then the natural person or legal person undertaking the freeze shall maintain that action for a period not exceeding seven days.

(5) Where property is frozen pursuant to the provisions of this section, then before the expiry of the seven-day period, the Attorney General or the FIU may, apply to the Court ex parte for a freezing order in respect of the property in question.

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(6) If an ex parte order is not obtained in respect of the property in question then at the end of the seven day period, the property shall be released from the effects of the freeze.

(7) In seeking an ex parte order pursuant to this Act, the Attorney General or the FIU shall make any relevant undertaking in relation to damages.

(8) The FSRC shall have responsibility for monitoring and ensuring compliance by financial institutions and DNFBPs with the provisions of this legislation and in that regard, the Financial Services Regulatory Commission Act, the Proceeds of Crime Act, the Anti-Terrorism Act, any regulations made thereto and all other relevant anti-money laundering, counter-terrorist financing legislation shall be applicable.

(9) Where the rights or interests of a bona fide third party in good faith are adversely impacted by actions taken pursuant to this Act, this Act, he or she shall notify Attorney General and the Court of his or her rights and shall provide evidence regarding same.

(10) Where the Court makes an order freezing funds pursuant to this Act, the rights and interests of a bona fide third party shall be taken into account.

5. Offences.

(1) Where a natural person acts in contravention of section 4 subsection (1), he or she commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years.

(2) Where a legal person acts in contravention of section 4 subsection (1), the Directors of that legal person, commit an offence and shall be liable on summary conviction to a fine not exceeding three hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years.

(3) Where a natural person acts in contravention of section 4 (3), he or she commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

(4) Where a legal person acts in contravention of section 4(3), the Directors of that legal person shall be liable on summary conviction to a fine not exceeding one hundred and fifty thousand dollars.

(5) The sanctions referred to in subsections (3) and (4), shall be without prejudice to the exercise of the powers of the FSRC to monitor, regulate and impose administrative sanctions in keeping with the provisions of the FSRC Act and any regulations made pursuant to that Act.

6. Identification of Suspicious Proliferation Activity.

(1) Where a financial institution or DNFBP becomes aware of any suspicious activity by a natural or legal person, group, undertaking or entity that may be connected with the financing of proliferation of weapons of mass destruction, that regulated business or entity shall file a suspicious transaction report with the Financial Intelligence Unit without delay and in any case, within twenty-four hours of the identification.

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(2) Where the Financial Services Regulatory Commission, the Customs and Excise Department, the Inland Revenue Department, Immigration Department and all other relevant government agencies or statutory bodies become aware of any suspicious activity by a natural or legal person, group or entity that may be connected with the financing of proliferation of weapons of mass destruction, notification of that suspicious activity should be made without delay to the Attorney General and to the FIU of that activity.

(3) Where the FIU receives a report of a suspicious transaction from a financial institution or entity, it shall

- (a) without delay, investigate the report and report on same to the Attorney General with a recommendation as to whether, based on the suspicious transaction report, any person should be identified as being a possible designee to the relevant UN Sanctions Committee; and
- (b) provide appropriate guidance to the reporting regulated business or entity subject to any directions prescribed by the Minister in regulations.

(4) A reference to “suspicious activity” or “suspicious transaction” shall be in keeping with the designation criteria set out in paragraph E of the Interpretive Note to Recommendation 7 of the FATF’s International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation and any regulations prescribed by the Minister in that regard.

7. Identification of Targets for Designation.

(1) Where the Attorney General receives notification pursuant to Section 6, he or she shall make a determination, on a reasonable basis, on the sufficiency of the evidence, as to whether the natural person, group, undertaking or entity

- (a) should be proposed to the 1718 Sanctions Committee, for designation as appropriate, based on the specific criteria for designation, as set forth in Security Council Resolution 1718 (2006) and its successor resolutions; or
- (b) should be proposed to the Security Council, for designation as appropriate, persons or entities as set forth in Security Council Resolution 2231(2015) and any future successor resolutions;

(2) The Attorney General shall ensure that when receiving a request that prompt determination is made on reasonable grounds as to whether the proposed designee meets the requisite criteria for designation.

(3) The Attorney General shall employ such procedures or mechanisms to collect or solicit as much information as possible to identify persons and entities that would meet the relevant criteria for designation pursuant to the relevant Security Council resolutions.

8. Regulations.

(1) Subject to section 3, the Minister may prescribe in Regulations

- (a) the criteria for designation pursuant to the relevant Security Council Resolutions;

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- (b) the procedures and standard forms for listing, providing for statements of case on the basis for listing;
 - (c) procedures for particulars and sufficiency of identifying information; and
 - (d) any other relevant information that may be pertinent to a case for identification or proposal to the particular Sanctions Committee.
- (2) The Minister shall prescribe in Regulations for the procedural requirements of freezing, unfreezing, listing and delisting and prohibiting of dealing without delay in funds or other assets of designated persons and entities.”.

ANTHONY MICHAEL PERKINS
Speaker

Passed by the National Assembly this 13th day of August, 2020.

SONIA BODDIE-THOMPSON
Clerk of the National Assembly