

No. 11 of 2020.

*Miscellaneous Amendments (Financial
Action Task Force) Act, 2020.*

Saint Christopher
and Nevis.

I assent,



SAMUEL WEYMOUTH TAPLEY SEATON
Governor-General

17th August, 2020.

SAINT CHRISTOPHER AND NEVIS

No. 11 of 2020

AN ACT to provide for various amendments to facilitate the comprehensive implementation of measures to boost national security, strengthen investigative techniques, and to foster greater coherence within the financial services sector in keeping with the requirements of the Financial Action Task Force and for related matters.

[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 Miscellaneous Amendments (Financial Action Task Force) Act, 2020.

2. Interpretation.

In this Act, unless the context otherwise requires:

“DNFBP” means Designated Non-financial Business and Profession, pursuant to section 2 of the Financial Services Regulatory Commission Act, Cap. 21:09;

“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;

- (e) issuing and managing means of payment such as credits and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, and 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;
 - (v) commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) otherwise investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment related insurance; and
- (m) money and currency changing.

“FIU” means the Financial Intelligence Unit as established pursuant to section 3 of the Financial Intelligence Unit Act, Cap. 21:09;

“FSRC” means the Financial Services Regulatory Commission established pursuant to section 3 of the Financial Services Regulatory Commission Act”;

“OFAC” means Office of Foreign Assets Control United States Treasury Department.

3. Amendment of the Police Act.

The Police Act Cap. 19:07 is amended in section 6 by inserting immediately after subsection (1) a new subsection (2) as follows:

“ (2) Notwithstanding the generality of subsection (1) a police officer may, in the pursuit of crime detection or to discover the proceeds of crime, utilise the following investigative techniques:

- (a) postponing of arrest and waiving surrender;
- (b) controlled delivery;
- (c) undercover operations.”.

4. Amendment of Customs Act.

The Customs Act, No. 19 of 2014 is amended as follows:

(a) in section 2 as follows:

(i) by inserting in the correct alphabetical order the following new definition, as follows,

“bearer negotiable instruments” includes monetary instruments in bearer form including traveller’s cheques, negotiable instruments such as cheques, promissory notes and money orders, whether in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery and incomplete signed instruments with the payee’s name omitted;”

(ii) in the definition of “goods”, by inserting immediately after the expression, “currency”, the expression, “bearer negotiable instruments”;

(iii) in the definition of “passenger’s accompanied baggage”, by inserting immediately after the word “currency”, the expression, “bearer negotiable instruments”;

(b) by inserting immediately after section 31 a new section 31 A as follows:

“ 31A. **Suspicious Activity Reporting.**

Subject to the provisions of sections 28, 29, 30 and 31, where a customs officer becomes aware of any suspicious activity or transaction that may be linked to money laundering, the proceeds of crime, terrorist financing, proliferation of weapons of mass destruction or any related activity, the customs officer shall report such suspicious activity to the Financial Intelligence Unit.

5. Amendment of Trusts Act.

The Trusts Act, Cap. 5.19 is amended as follows:

(a) In section 5 subsection (2) by

(i) replacing paragraph (c) as follows:

“ (c) the full name, address, contact information and any identifying particulars of the trustee, settlor, protector and beneficiary and any other natural person exercising ultimate, effective control over the trust; and

(ii) by inserting a new paragraph (d) as follows:

(d) in the case where the trustee is a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office, as well as the identifying particulars of its beneficial owners, shareholders, Directors and any person with a controlling interest.

(iii) by inserting a new paragraph (e) as follows:

- (e) where it is not possible to obtain relevant information on the beneficiaries of the trust, then the trustee shall provide a written undertaking that the identifying particulars of the beneficiary would be provided to the Regulator at the time of the distribution of the assets of the trust.”

6. Amendment of Interception of Communications Act.

The Interception of Communications Act is amended by inserting in the Schedule, immediately after paragraph 18, the following new paragraphs, 19 and 20:

- “ 19. Human Trafficking
- 20. Tax Offences.”

7. Amendment to the Anti-Terrorism Act.

The Anti-Terrorism Act is amended by inserting immediately after Part VIII thereof a new Part IX as follows:

“ PART IX. TARGETED FINANCIAL SANCTIONS

114. Attorney General as Competent Authority.

(1) The Attorney General is hereby designated as the Competent Authority having responsibility for identifying and initiating proposals of 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:

- (a) 1267/1999 and its successor resolutions;
- (b) 1373 (2001) and its successor resolutions; and
- (c) 1988 (2011) and its successor resolutions.

115. Sanctions Lists.

(1) The Financial Services Regulatory Commission, the Financial Intelligence Unit, the Customs and Excise Department, the Inland Revenue Department, the Ministry of Finance, the White Collar Crime Unit, the Immigration Department as well as regulated entities shall be responsible for scrutinising the UN Sanctions Lists, the OFAC lists and any other relevant sanctions lists where individuals, groups, undertakings and entities may be identified.

(2) Where pursuant to subsection (1), an individual, group, undertaking or entity is identified on any of the relevant lists, then

- (a) the relevant authority shall notify the Attorney General’s Chambers without delay and in any case within twenty-four hours of the identification; and

- (b) a regulated 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.

(3) Where the Attorney General receives notification of an identification pursuant to subsection (2), the Attorney General shall provide relevant guidance to the relevant authority, financial institution, DNFBP or other person or entity on the treatment of the targeted funds or other assets that belong to the designated person or entity.

116. Proposals for Designation to the UNSCR.

(1) The Attorney General shall make a determination, on a reasonable basis, based on the sufficiency of evidence, as to whether an individual, group, undertaking or entity

- (a) should be proposed to the 1267 Committee, for designation as appropriate, based on the specific criteria for designation, as set forth in Security Council Resolution 1989 (2011) on Al-Qaida and related resolutions;
- (b) should be proposed to the 1988 Committee, for designation as appropriate, as set forth in Security Council Resolution 1988 (2011) concerning the Taliban and those associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan and related resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria;
- (c) should be designated as persons or entities that meet the specific criteria for designation, as set forth in resolution 1373 (2001), as put forward either on the country's own motion or where appropriate, the request of another country on such terms as may be prescribed by the Minister; or
- (d) should be identified as targets for designation based on the designation criteria set out in Resolution 1988 (2011), Resolution 1989 (2011) and related resolutions and resolution 1373 (2001) and having regard to the giving effect to actions initiated under the freezing mechanisms of other countries.

(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.

(4) Where the Attorney General is satisfied as to the sufficiency of the relevant criteria for designation, he or she shall make a proposal for designation to the relevant UNSCR Committee.

(5) Where the Attorney General makes a proposal for designation pursuant to subsection (1), notification of that proposal shall be communicated within twenty-

fours of the proposal to the financial sector, to DNFBPs and any other persons or entities who might be holding targeted funds or other assets that belong to the proposed person or entity.

(6) Where notification is given pursuant to subsection (4), the Attorney General shall also provide relevant guidance to the financial institution, DNFBP or other person or entity on the treatment of the targeted funds or other assets that belong to the person or entity proposed for designation.

117. Without Delay.

(1) Where pursuant to section 114, an individual group, undertaking or entity is designated by the 1267 Committee, 1988 Committee, 1373 (2001) or any other relevant Security Resolution Committee, all natural and legal persons within Saint Christopher and Nevis, shall be required to freeze without delay the funds or other assets of those designated persons or entities.

(2) Pursuant to subsection (1), a natural or legal person shall be required to freeze the funds or other assets

- (a) that are owned or controlled by the designated person or entity and it is not necessary that those funds or assets are tied to a particular terrorist act, plot or threat;
- (b) that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and
- (c) derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities; and
- (d) of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

118. Funds and Resources Prohibited.

Where a person or entity is designated pursuant to section 114, nationals or other persons or entities within Saint Christopher and Nevis shall not make available any funds or other assets, economic resources, or financial or other resources, directly or indirectly, wholly or jointly, for the benefit of those designated persons or entities or to any persons acting on behalf of those designated persons or entities.

119. Notification of Freezing or Other Actions.

Where any action is taken by a financial institution or DNFBP pursuant to sections 117 or 118, the financial institution or DNFBP shall notify the Attorney General, the FIU and the FSRC of the action taken to prohibit the dealing in funds, assets or other resources and that notification shall include any attempted transactions made by the designated person or entity or any person acting on behalf of the designated person.

120. Procedural Requirements.

- (1) Subject to sections 115, 116 and 117, the Minister may prescribe in Regulations

- (a) the criteria for designation pursuant to the relevant Security Council Resolutions;
- (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;
- (e) mechanisms for communicating designations to the financial sector, DNFBPs and any other person or entity, once a designation is made and providing clear and relevant guidance to the treatment of any funds or assets that are held;
- (f) measures for protection of the rights and interests of third parties acting in good faith;
- (g) any other relevant information that may be pertinent to a case for identification or proposal to the particular Sanctions Committee.

(2) The Minister may prescribe in Regulations for the procedural requirements of freezing and prohibiting of dealing without delay in funds or other assets of designated persons and entities.”.

8. Amendment of Financial Services Regulatory Commission Act.

The Financial Services Regulatory Commission Act is amended as follows:

- (a) in section 2 in the definition of designated non-financial businesses and professions, by deleting paragraph (e) thereof;
- (b) in section 4(2)(g) by inserting the expression, “using a risk- based approach to supervision and monitoring”;
- (c) in section 38 by
 - (i) replacing in subsection (1), the expression, “is in breach of this Act, an enactment specified in the First Schedule, the Regulations or its licence”, with the following expression:

“ is in breach of its licence, this Act, the Financial Services Implementation of Industry Standards Regulations or any other regulations made pursuant to this Act, the Anti-Terrorism Regulations, the Anti-Money Laundering Regulations, an enactment specified in the First Schedule and the FIU Act”;
 - (ii) inserting a new subsection (5) as follows:

“ (5) The powers of the Commission in this section and section 39 shall be exercisable with or without notice depending on the severity of the breach or the particular circumstances in question.”.
 - (iii) in section 51 subsection 2 paragraph (b), by replacing the expression, “related business” with the expression, “related products”.

9. Amendment of Tax Administration and Procedures Act.

The Tax Administration and Procedures Act is amended as follows:

- (a) in section 60(1), by replacing the expression, “thirty” with the expression, “one hundred and fifty”;
- (b) in section 60(2), by replacing the expression, “fifteen” with the expression, “fifty”.

10. Amendment of FIU Act.

The FIU Act is amended in section 4 as follows:

- (a) in subsection (1) paragraph (a) by inserting, immediately after the expression, “information”, the expression, “and financial intelligence”;
- (b) in subsection (1) paragraph (b) by inserting, immediately after the expression, “suspicious transactions”, the expression, “and financial intelligence”;
- (c) in subsection (1) paragraph (d), by inserting immediately after the expression, “terrorism”, the expression, “and the financing of the proliferation of Weapons of Mass Destruction both within and”;
- (d) in subsection (1), by inserting immediately after paragraph (c) a new paragraph (f) as follows,
 - “ (f) maintain statistics on:
 - (i) suspicious transactions received and transmitted to law enforcement;
 - (ii) investigations and convictions pertaining to money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction and related financial intelligence matters;
 - (iii) property frozen, seized and confiscated; and
 - (iv) international requests for mutual legal assistance or other co-operation.”;
- (e) in subsection (3), by inserting in paragraph (f) immediately after the expression, “terrorist financing offence if any”, the expression, “law enforcement authority and”;
- (f) in subsection (3), by inserting in paragraph (g), immediately after the expression, “with”, the expression, “domestic competent authorities and”;
- (g) in subsection 4 by replacing the expression, “4(2)”, with the expression, “4(3)”;
- (h) in subsection (6), by replacing the expression, “4(2)(d)” with the expression, “4(3)(d)”

(i) by inserting, immediately after subsection (10), a new subsection (11) as follows:

- “ (11) In furtherance of the functions assigned to it under subsections (1) and (3), the Financial Intelligence Unit
- (a) may request information from regulated businesses, competent authorities and other businesses that it deems necessary or desirable for the discharge or performance of its functions;
 - (b) may on its own motion or upon request, disseminate financial intelligence and information to national and foreign authorities subject to any conditions as to use and confidentiality that it may require from those authorities;
 - (c) shall develop and disseminate information in relation to techniques, typologies and trends pertaining to money laundering, terrorist financing and the financing of the proliferation of the weapons of mass destruction;
 - (d) shall provide feedback to regulated businesses within 30 days of the receipt of the suspicious transaction report;
 - (e) shall ensure suspicious transaction information and financial intelligence in its custody or under its control are properly secured;
 - (f) shall maintain a secure and dedicated electronic database for the storage of financial intelligence and information;
 - (g) shall establish criteria for prioritising the processing of suspicious transaction reports, financial intelligence and information;
 - (h) shall implement measures to share financial intelligence and information via secure and dedicated channels; and
 - (i) shall conduct operational and strategic analyses in order to generate activity patterns, investigative leads and identify possible future behaviour.

ANTHONY MICHAEL PERKINS
Speaker

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

SONIA BODDIE-THOMPSON
Clerk of the National Assembly