

No. 2 of 2021.

*Nevis Trust and Corporate Service
Providers Ordinance, 2021.*

Island of Nevis.



I assent,

HYLEETALIBURD, M.H.

Deputy Governor-General

26th March 2021.

ISLAND OF NEVIS

No. 2 of 2021

AN ORDINANCE to provide for the licensing and supervision of regulated activity by service providers and for matters incidental or ancillary thereto.

[Published 1st April 2021, Official Gazette No. 17 of 2021.]

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.

(1) This Ordinance may be cited as the Nevis Trust and Corporate Service Providers Ordinance, 2021.

(2) This Ordinance shall come into operation on such date as the Minister may, by Order, appoint.

2. Interpretation.

In this Act,

“*Administration*” means the Nevis Island Administration;

“*applicant*” means a person applying for a licence under this Ordinance;

“*attorney-at-law*” means a person whose name has been entered on the roll of attorneys pursuant to the Legal Profession Act, No. 33 of 2008;

“*beneficial owner*” means the natural person who ultimately owns or controls or who exercises ultimate effective control over a company, corporation foundation or trust or the natural person on whose behalf a transaction is being conducted;

“*Commission*” means the Financial Services Regulatory Commission established pursuant to the Financial Services Regulatory Commission Act, Cap. 21.10;

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“company” means a company incorporated, re-domiciled or registered under the Nevis Limited Liability Company Ordinance, 2017;

“corporate services business” means the business of engaging in the activities or providing the services under section 5 for profit or reward;

“corporation” means a corporation incorporated, re-domiciled and registered under the Nevis Business Corporation Ordinance 2017;

“Court” means the High Court of Justice established by the Supreme Court Order 1967;

“documents” include information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“dollars” or *“\$”* means Eastern Caribbean Dollars unless expressly stated otherwise in this Ordinance;

“Federation” means the Federation of Saint Christopher (St. Kitts) and Nevis;

“foundation” means a multiform foundation registered under the Nevis Multiform Foundation Ordinance, Cap. 7.08;

“government official” includes the Deputy Governor-General or former Deputy Governor-General, Premier or former Premier;

“insurer” means an insurance company incorporated under the Nevis Business Corporation Ordinance, 2017 and registered under the Nevis International Insurance Ordinance, Cap. 7.07;

“licence” means a licence granted to engage in regulated activity under this Ordinance;

“licensee” means a person who has been issued a licence under this Ordinance;

“Licensing Committee” means the Committee established under Section 3;

“local company” means a body corporate incorporated in accordance with the provisions of the Companies Ordinance, Cap. 7.06;

“Minister” means the Minister for the time being having responsibility for Finance within the Administration;

“person” means any natural or legal person;

“Police” means the Royal St. Christopher and Nevis Police Force;

“registered agent” means the person or entity providing the services described in section 5(2) of this Ordinance;

“registered agent services” has the meaning specified under Section 5(2) of this Ordinance;

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“registered office services” has the meaning specified under Section 5(3) of this Ordinance;

“Regulator” means the person described in section 30 of this Ordinance to be the Regulator for the administration of this Ordinance and includes any person appointed to be the Deputy Regulator or an Assistant Regulator when exercising any powers under this Ordinance in accordance with the directions of the Regulator;

“regulated activities” means the provision of corporate services business, trust business and foundations business by a licensee;

“senior management staff” includes a managing director, president, chief executive officer, manager, compliance officer or individual with a similar title who holds a high-ranking position within the licensee;

“trust” means a trust registered under the Nevis International Exempt Trust Ordinance, Cap. 7.03;

“trust business” means the business of engaging in the activities outlined under section 6 of this Ordinance for profit or reward.

PART II LICENSING COMMITTEE

3. Licensing Committee.

(1) There is hereby established a Licensing Committee that shall function as a licensing authority for regulated activities.

(2) The Licensing Committee shall be comprised of the following persons approved by the Cabinet of the Administration and appointed by the Minister:

- (a) the Regulator;
- (b) the Registrar of Companies, Corporations, Foundations and Trusts;
- (c) the Regulator of International Banking;
- (d) the Registrar of International Insurance, and
- (e) a Representative from the Ministry of Finance.

(3) The Minister shall designate one member of the Licensing Committee to function as Chairperson of that Committee.

(4) The members of the Licensing Committee shall be appointed to serve for a period of 2 years.

4. Functions of Licensing Committee.

The functions of the Licensing Committee shall be to:

- (a) receive and review applications for licences to carry on regulated activities;
- (b) grant, refuse, suspend or revoke such licences;

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- (c) provide a report of its activities to the Minister on a quarterly basis;
- (d) any other duties that are consistent with the foregoing duties.

**PART III
REGULATED ACTIVITIES**

5. Corporate services business.

- (1) Corporate services business includes the provision of the following:
 - (a) the formation of companies and incorporation of corporations;
 - (b) registered agent services;
 - (c) registered office services;
 - (d) managers, officers, members or secretary of a company;
 - (e) directors, officers, shareholders or secretary of a corporation; and
 - (f) supervisory board members, management board members, officers or secretary of a foundation.
- (2) A person provides registered agent services if that person acts as the registered agent of:
 - (a) a corporation;
 - (b) a company;
 - (c) a trust;
 - (d) a foundation; or
 - (e) an insurer.
- (3) A person provides registered office services if that person provides the physical office or street address for the purposes of correspondence, business, notice and service of process for a company, corporation, trust, foundation or insurer under this Ordinance.
- (4) Notwithstanding subsection (1) paragraphs (d) and (e), an individual or entity does not provide corporate services business by reason only of the fact that he acts as a director, manager or officer of a company, or holds a similar position in relation to other legal persons in which he has a significant interest or of a company by which he is employed under a contract of service.

6. Trust business.

Trust business includes the provision of the following services for a trust:

- (a) acting as a professional trustee or arranging for another person to act in that capacity;
- (b) acting as a protector;
- (c) managing or administering any trust;
- (d) any other services on behalf of a beneficiary or purpose of a trust which is done in a fiduciary capacity.

**PART IV
LICENCING**

7. Requirement for a licence.

(1) No person shall carry on any regulated activities or hold themselves out as carrying on such activity in or from within Nevis unless that person holds a valid licence issued under this Ordinance.

(2) The provisions of Section 22 of this Ordinance shall apply in the circumstance where there is a contravention of the provisions of subsection (1).

8. Licensee to have a place of business.

(1) The Licensing Committee shall not grant a licence to any person under this Ordinance unless such person has a physical place of business in Nevis approved by the Regulator which shall be its registered office.

(2) A licensee shall not change its registered office without written notification on the prescribed form, payment of the prescribed fee and upon approval of the Regulator.

(3) A licensee shall notify the Regulator of a change of registered office within 30 days of such change taking effect.

9. Eligibility requirements for applicants.

(1) An applicant for a licence under this Ordinance shall be an attorney-at-law or a local company.

(2) An applicant for a licence other than an attorney-at-law shall maintain a paid-up capital in an amount not less than \$50,000.00 or the equivalent in another currency.

(3) An applicant for a licence under this Ordinance must satisfy the fit and proper requirements under section 10(7) of this Ordinance for the issuance of such licence.

(4) An individual who is a beneficial owner, director or senior management staff of a licensee must satisfy the fit and proper requirements under section 10(7) of this Ordinance and be subject to ongoing fitness and propriety assessments while that person remains in any such role.

10. Application for licence.

(1) A person who intends to engage in regulated activities from within Nevis shall apply in writing to the Licensing Committee in the prescribed form relating to the class of licence being applied for.

(2) An applicant for a licence under subsection (1) must:

- (a) submit an application in the prescribed form to the Licensing Committee;
- (b) tender with the application a non-refundable application fee as prescribed pursuant to this Ordinance, and
- (c) demonstrate that it intends to engage in regulated activities;

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(3) An application submitted under subsection (2) must be accompanied by the documentation specified in the prescribed form or any other information as the Licensing Committee may require.

(4) An application for a licence and all documents submitted pursuant to this Ordinance in support of the application must be signed by an authorised officer of the applicant.

(5) In considering an application for a licence, the Licensing Committee shall conduct such investigation as it may deem necessary to ascertain:

- (a) the validity of the documents submitted with the application;
- (b) the financial condition and history of the applicant;
- (c) the ownership, structure, control and management of the applicant;
- (d) the nature of the business of the applicant to ensure the appropriate class of licence is being applied for;
- (e) the background and experience of the persons who are to constitute the applicant's senior management staff.

(6) The Licensing Committee may not grant a licence unless it is satisfied that:

- (a) the applicant has sufficient expertise to carry on regulated activities;
- (b) the applicant is a fit and proper person to carry on such business.

(7) In determining for the purpose of this Ordinance whether an applicant is a fit and proper person, regard shall be had to all the circumstances including the applicant's:

- (a) honesty, integrity and business and professional reputation;
- (b) probity, competence and soundness of judgment for fulfilling the responsibilities undertaken;
- (c) competence and capability in the area of corporate services, financial services and trust services; and
- (d) financial soundness of the applicant in the case of a licensee which is a local company.

(8) Without prejudice to the generality of the provisions under subsection (7), regard may be had to the previous conduct and activities in business 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 under any legislation designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons involved in the provision of company management and trust services, or
- (c) engaged in any business practices appearing to be deceitful, oppressive or otherwise improper.

11. Classes of licences.

- (1) There shall be several classes of licences as follows:
 - (a) a “Class I” licence permits the holder to act as a formation agent and provide registered agent and registered office, business address or accommodation, correspondence or administrative address for corporations, limited liability companies and foundations only or to act as or arranging for another person to act as a director, shareholder, secretary or officer of a corporation, a manager, member or officer of a company, or a member of the supervisory or management board of a multiform foundation;
 - (b) a “Class II” licence may be restricted or unrestricted. A restricted licence permits the holder to register and provide registered office, business address or accommodation, correspondence or administrative address for trusts only. An unrestricted licence permits the holder to carry on Class II restricted activities as well as trust business;
 - (c) a “Class III” licence permits the holder to carry on business as a registered agent for international insurance;
 - (d) a “Class IV” licence permits the holder to act as or arrange for another person to act as a director or nominee shareholder for another person.
- (2) A licence issued under this Ordinance shall authorise the licensee, for the period specified in the licence, to carry on regulated activities as specified in the licence.
- (3) The Licensing Committee may from time to time amend the classes of licences by adding to or removing from the classes outlined under subsection (1).

12. Payment of fees and penalties.

- (1) Where an applicant is informed of the approval of the licence, the applicant shall pay the prescribed licence fee within 10 days of receipt of the approval notice.
- (2) Fees paid under this Ordinance shall be payable to the Administration and form part of the Consolidated Fund.

13. Issuance of licence.

- (1) The Licensing Committee, after consideration of an application, may approve the application and issue a licence to an applicant if it is satisfied that:
 - (a) the applicant satisfies the requirements of this Ordinance in respect of the application and will, upon issuance of the licence, be in compliance with this Ordinance;
 - (b) the applicant satisfies the fit and proper criteria to carry on regulated activities;
 - (c) the issuing of the licence is not against public policy.
- (2) Where the application is approved, the Licensing Committee shall, within 10 days of such approval and upon payment of the requisite fee, issue a licence.

(3) A licensee under this Ordinance shall not be required to be licensed under the Licences on Business and Occupations Act, Cap. 18.20.

14. Refusal of licence.

(1) The Licensing Committee may refuse to issue a licence to an applicant under this Ordinance where that applicant fails to satisfy the requirements for the issuance of a licence.

(2) Where the Licensing Committee refuses to grant a licence in accordance with subsection (1), the Licensing Committee shall give reasons for the refusal and inform the applicant of its decision within 30 days of receipt of the application.

(3) An applicant whose licence is refused under this section, may submit any requested or additional information to the Licensing Committee which would allow it to satisfy the requirements for the issuance of a licence.

15. Conditions for issuance and retention of licence.

(1) A licence issued by the Licensing Committee shall specify the class of licence granted.

(2) A licence issued by the Licensing Committee shall be subject to the conditions that the licensee:

- (a) carries on business only in accordance with the class of licence issued;
- (b) informs the Licensing Committee by notice in writing within 30 days of any change, or proposed change, in the information contained in, or supplied with the last application for a licence;
- (c) informs the Licensing Committee of any change of address of the licensee;
- (d) requests and receives prior written approval from the Licensing Committee, within 30 days of the date of the request, to operate a subsidiary, branch, agency or representative office outside of the Island of Nevis;
- (e) does not appoint members to its board of directors or appoint any senior management staff without the prior written approval of the Licensing Committee.
- (f) shall, if a company, at no time have fewer than two directors who must be individuals.

16. Compliance Officer and Reporting Officer.

A licensee shall appoint a Compliance Officer and a Reporting Officer in accordance with the provisions of the Financial Services Regulatory Commission (Minimum Guidelines for Compliance and Reporting Officers) Regulations, No. 11 of 2018.

17. Publication of licensees.

The Regulator shall, with respect to each licensee, publish a list of licensees which shall contain the following information:

- (a) the name of the licensee;

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- (b) the address of the registered office of the licensee;
- (c) the contact information of the licensee;
- (d) the name of the individual who has been approved as the managing director or manager of that licensee;
- (e) the class of licence issued to the licensee and the validity and duration of such licence;
- (f) the status of the licensee and if suspended, restricted, revoked or expired.

18. Validity and duration of licence.

(1) A licence issued under this Ordinance shall be valid from the date of the first issue to December 31st of that year and renewable annually thereafter unless previously suspended, cancelled or revoked by the Licensing Committee in accordance with this Ordinance.

(2) A licence issued under this Ordinance shall expire on the 31st day of December each year and is renewable by the 15th day of January in the following year unless that licence has been previously revoked.

**PART V
ENFORCEMENT**

19. Restriction on licence.

Where the Licensing Committee is satisfied that a licensee:

- (a) has contravened the provisions of this Ordinance, or
- (b) has failed to comply with the conditions of its licence,

the Licensing Committee may restrict the licence of the licensee by the imposition of new or additional conditions on the licensee or require the taking of such action by the licensee as the Licensing Committee considers appropriate.

20. Suspension of licence.

(1) The Licensing Committee may, if it thinks necessary as a matter of urgency for the protection of the public or as a result of any investigation in accordance with the Ordinance or Regulations made under this Ordinance, suspend the licence of a licensee for such period, or until the happening of an event as the Licensing Committee considers appropriate.

(2) A licensee whose licence is suspended under subsection (1) shall be notified accordingly by the Regulator and shall, for the purpose of this Ordinance, be deemed not to be licensed from the date of notification of the suspension.

(3) Notice under subsection (2) shall be served at the licensee's registered office and shall be published in the Gazette and on the official website of the Commission.

21. Revocation of licence.

(1) The Licensing Committee may revoke any licence to carry on regulated activities if the licensee:

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- (a) has not commenced business within 90 days after the issuance of its licence;
 - (b) has failed to comply with the conditions or restrictions of its licence;
 - (c) is in breach of any duty or obligation imposed upon it by this Ordinance;
 - (d) has ceased to carry on business under its licence in excess of 6 months;
 - (e) is carrying on business in an unlawful manner;
 - (f) has provided false or misleading information in respect of its application under this Ordinance or fails to inform the Regulator and the Licensing Committee where there is a material change in respect of the information so supplied;
 - (g) fails to pay its annual fee to renew its licence, or
 - (h) is no longer a fit and proper person.
- (2) In addition to the powers conferred on the Licensing Committee under subsection (1), the Licensing Committee may also:
- (a) issue a written warning to the licensee;
 - (b) issue a cease and desist order which requires the licensee to cease or desist from the practice or violation specified in the order, and
 - (c) impose new or additional conditions on the licensee.
- (3) When the Licensing Committee intends to revoke a licence under subsection (1), it shall give written notice to the licensee at its registered office and that notice shall specify the grounds upon which it proposes to make the revocation and shall require the licensee to submit a written statement of objection to the revocation within 30 days of receipt of the notice.
- (4) A licensee aggrieved by any decision of the Licensing Committee under this section may, within 30 days after providing a written statement of objection to the revocation, apply to the Appeals Tribunal established under this Ordinance.
- (5) Where the licensee is dissatisfied with the decision of the Appeals Tribunal, the licensee may apply to the Court.
- (6) The Licensing Committee shall publish a notice of the revocation of a licence of a licensee in the Gazette and on the official website of the Commission.
- (7) The licensee, on the revocation of its licence, shall surrender the licence to the Regulator.

22. Carrying on regulated activities without a licence.

- (1) If the Regulator has reasonable cause to suspect that:
- (a) a person is carrying on regulated activity without a licence granted under this Ordinance; and
 - (b) evidence of contravention of section 7(1) is found on any premises within the Federation,

then the Regulator may lay information on oath before a Magistrate as regards his suspicions.

(2) Upon filing of the information in subsection (1), the Magistrate may, by warrant, authorise the Regulator named in such warrant to enter and search such premises with the assistance of the Police and seize any books, accounts, records, vouchers and other documents, cheques, securities and cash as may be found on the premises relating to the conduct of corporate services business to ascertain whether the person is carrying on corporate services business without a licence.

(3) A warrant issued under subsection (2) may authorise the officer to:

- (a) detain the books, accounts, records, vouchers and other documents, cheques, securities and any cash for a period not exceeding 30 days;
- (b) make copies of the books, accounts, records, vouchers and other documents and cheques, securities and cash; and
- (c) retain the copies of the books, accounts, records, vouchers and other documents and cheques, securities and any cash.

(4) Where under this section a person has power to enter premises that person may if necessary, use reasonable force to achieve entry.

(5) A person who obstructs the Regulator or any other person named in the warrant in the exercise of any power conferred under this section commits an offence and is liable on summary conviction to a fine of \$5,000.00 or to imprisonment for a term of six months or to both such fine and imprisonment.

23. Transactions effected prior to suspension or revocation of licence.

The suspension or revocation of a licence under this Ordinance does not void or affect any agreement, transaction or arrangement relating to the provision of regulated activities entered into by the licensee before suspension or revocation of the licence and does not affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

PART VI ADMINISTRATION

24. Restriction on use of certain terms.

No person other than a licensee shall:

- (a) use any word, either in English or in any other language, in the description or title under which they carry on business in or from within Nevis that, in the opinion of the Licensing Committee, suggests regulated activities;
- (b) make any representation in any document or in any other manner that is likely to suggest that they are carrying on regulated activities.

25. Display of licence.

(1) A licensee shall display a copy of its licence granted under this Ordinance in a conspicuous place in the public part of any place where regulated activities is carried on by the licensee.

(2) A licensee which contravenes this section shall pay an administrative penalty in the sum of \$2,500.00 and a further penalty of one hundred dollars (\$100.00) per day during which it is in breach of the requirement under subsection (1).

26. Renewal of licence.

(1) A licensee shall, on or before the 15th day of January each year, apply to the Licensing Committee in the prescribed form to have its licence renewed.

(2) The licensee shall submit the application for renewal together with the non-refundable prescribed renewal fee to the Licensing Committee.

(3) Notwithstanding the prior approval of a licence, a licensee may not be granted a renewal of that licence where the Licensing Committee determines that:

- (a) it is not in the best interest of the financial services industry to do so; or
- (b) the level of compliance with this Ordinance, its regulations or any related enactments are not satisfactory.

(4) Where the Licensing Committee makes a decision to refuse to renew a licence, it shall notify the licensee of the decision and provide reasons for the refusal.

(5) The Licensing Committee shall deliver that notice of refusal to renew a licence to the licensee not later than thirty days after the date of receipt of the application for renewal.

(6) A licence in respect of which the prescribed renewal fee remains unpaid by the 31st of March in any year shall lapse forthwith but if, within a period of one month, the person who held the licence prior to its lapse pays the prescribed renewal fee and an administration fee equivalent to ten percent of the prescribed renewal fee, the Licensing Committee may renew the licence for the period from January 1st to December 31st of the year in question.

27. Surrender of licence.

(1) A licensee who ceases to carry on regulated activities may surrender its licence to the Licensing Committee upon production of:

- (a) evidence satisfactory to the Licensing Committee that its operations have ceased;
- (b) evidence that it has repaid all deposits and has transferred all assets held or administered by it;
- (c) if the licensee is a company wound up voluntarily, evidence that it is solvent and able on demand to repay all deposits held by it and to pay all its other debts in full and has transferred all assets held or administered on behalf of companies managed by it to or at the direction of those companies.

(2) In the case of the surrender of licence in accordance with paragraph (c) of subsection (1), the Licensing Committee may apply to the Court for an order that the licensee be wound up either by the Court or subject to the supervision of the Court and where the Court so orders, the provisions of the Companies Ordinance relating to the winding up of companies by or subject to the supervision of the Court shall apply *mutatis mutandis*.

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(3) An insolvent licensee may apply to Licensing Committee to surrender its licence and the Licensing Committee may, in its absolute discretion, approve the surrender by the licensee of its licence on such terms and conditions as it considers appropriate.

(4) Where a licensee surrenders its licence to the Licensing Committee and that licensee subsequently intends to engage in regulated activities then that licensee shall comply with the application requirements under this Ordinance for the issue of a licence.

28. Duties of licensee.

(1) A licensee shall, in respect of its regulated activities maintain financial records in Nevis that:

- (a) are sufficient to show and explain its transactions;
- (b) will at any time, enable its financial position to be determined with reasonable accuracy;
- (c) will enable its financial statements to be audited in accordance with this Ordinance and the Financial Services Regulatory Commission Act, Cap 21.10.

(2) A licensee shall at all times keep its financial records at its registered office in Nevis.

(3) A licensee shall maintain separate accounts and records for each company, corporation, foundation or trust that it manages and separate the accounts and assets of these entities from its own.

(4) A licensee that contravenes this section shall be subject to an administrative penalty of \$15,000.00 and a daily penalty of \$1,000.00 if the breach continues.

(5) A licensee shall retain all financial records for a period of at least five years after the termination of the business relationship to which such records relate.

29. Disposing of or acquiring interest in licensee.

(1) A person owning or holding any share or interest, whether legal or equitable, in an entity licensed under this Ordinance shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest unless the prior written approval of the Licensing Committee has been obtained.

(2) A person shall not, whether directly or indirectly, acquire an interest in a licensee unless the prior written approval of the Licensing Committee has been obtained.

(3) A licensee shall not, unless the prior written approval of the Licensing Committee has been obtained:

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause or permit or acquiesce in any other reorganization of its share capital that results in a person acquiring a significant interest in a licensee or a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

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(4) An application to the Licensing Committee for approval under subsections (1), (2) or (3) shall be made by the licensee.

(5) The Licensing Committee shall not grant approval under this Section unless it is satisfied that, following the disposition or acquisition, the licensee will continue to meet the criteria for licensing specified under this Ordinance and any person who will acquire a significant interest in the licensee satisfies the fit and proper criteria under this Ordinance.

(6) A person who contravenes subsections (1) or (2) and licensee that contravenes subsection (3) shall be subject to an administrative penalty of \$15,000.00 and a daily penalty of \$1,000.00 of the breach continues.

PART VII SUPERVISION AND INSPECTION

30. Regulator.

(1) The Minister shall appoint a public officer to be known as the Regulator and other public officers to be known as the Deputy Regulator and Assistant Regulators to supervise and regulate licensees under this Ordinance.

(2) The Regulator shall have the duty to ensure the proper administration of this Ordinance and proper compliance by licensees with the provisions of this Ordinance.

31. Powers and duties of Regulator.

(1) The Regulator shall be responsible for:

- (a) maintaining a general review of corporate services business and trust business practices in relation to licensees;
- (b) supervising licensees and maintaining a general review of the operations of licensees;
- (c) examining or causing an examination to be made of each licensee from time to time in order to ascertain whether or not the requirements of this Ordinance have been complied with in relation to the carrying on of regulated activities;
- (d) investigating any contravention of this Ordinance that he/she has reasonable grounds to believe has or may have been committed by a licensee, its directors, owners or senior management staff;
- (e) examining accounts, books, records and audited financial statements of a licensee;
- (f) examining and making recommendations to the Licensing Committee with respect to applications for licences.

(2) In the performance of duties under this Ordinance and in order to verify compliance with the provisions of this Ordinance by a licensee, the Regulator shall be entitled at all reasonable times:

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- (a) to have access to the registered office of a licensee to conduct inspection of the Licensee;
- (b) to require the officers of a licensee to provide information and explanations in relation to the affairs of the licensee;
- (c) request any relevant information from the Licensee either annually or on a regular basis.

32. Examination and supervision

(1) A licensee shall be subject to inspection and examination by the office of the Regulator on a regular basis.

(2) The Regulator shall conduct on-site examinations and off-site supervision of the business of the licensee for the purpose of ensuring that the provisions of this Ordinance and the anti-money laundering, countering the financing of terrorism and proliferation laws are being complied with.

(3) In the performance of the duties assigned and exercise of powers under this Ordinance, the Regulator shall be entitled at all reasonable times during an examination of a licensee:

- (a) to have access to such books, records, vouchers, documents, cash and securities of the licensees;
- (b) to request from the manager or any officer designated by the manager of the licensee such information or explanation as he deems necessary in accordance with the examination;

(4) The Regulator shall be permitted by a licensee to conduct an inspection without giving prior notice to the licensee of his intention to conduct that inspection.

(5) The Regulator shall be at liberty to request information from a licensee in furtherance of his duties under this Ordinance without having to go onsite to make such request and in response to a request made in this manner, the licensee shall have the option to submit the requested information electronically or hard copy.

(6) A licensee which fails to comply with any request made under this section shall be liable to payment of an administrative penalty in the sum of \$10,000.00 on account of such non-compliance.

(7) A person who, while an inspection or examination is being conducted:

- (a) assaults or obstructs the Regulator, or officer of the Commission in the performance of his functions under this section;
- (b) uses any threatening language to the Regulator or officer of the Commission in the performance of his functions under this section, or
- (c) prevents or attempts to prevent, by the offer of any gratuity, bribe or other inducement, the Regulator or officer of the Commission from performing his functions under this section

commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.

33. Preservation of confidentiality.

No person who, in his capacity as Regulator, Deputy Regulator, Assistant Regulator, or officer of the Commission, has acquired knowledge or information in relation to the business of a licensee shall disclose to any person any information obtained in relation to the licensee except:

- (a) with the written authorization of the licensee or its authorized representative;
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Ordinance;
- (c) when lawfully required to make disclosure by a court of competent jurisdiction within the Federation; or
- (d) under the provisions of any law of the Federation.

34. Exchange of information.

(1) Notwithstanding Section 33, the office of the Regulator may, without the consent of the licensee, share any information received or any report prepared by him in the performance of his duties under this Ordinance with the appropriate supervisory or regulatory authority of another country at the request of that authority on a reciprocal basis and subject to a confidentiality agreement.

(2) A person who discloses confidential information submitted by a licensee contrary to this section commits an offence and is liable on summary conviction to a fine of \$25,000.00 or to imprisonment for a term of twelve months or to both fine and imprisonment.

35. Restrictions on names of licensees.

(1) The Licensing Committee shall not grant a licence and a licensee shall not continue to hold a licence under a name which:

- (a) is identical to that of any other licensee or which in the opinion of the Licensing Committee so closely resembles that name as to be calculated to deceive;
- (b) in the opinion of the Licensing Committee is calculated to suggest falsely the patronage of or connection with another licensee, a Minister of the Administration or other government official;
- (c) in the opinion of the Licensing Committee is calculated to suggest falsely that the licensee has special status in relation to or derived from the Administration, or has the official approval of, or acts on behalf of the Administration or any of its departments or officials;
- (d) includes any prohibited word or expression prescribed in Regulations.

(2) The Licensing Committee may refuse to grant a licence to or revoke the licence of a person who contravenes subsection (1).

(3) The Licensing Committee may, by written notice, request that a licensee in breach of subsection (1) forthwith change its name.

(4) A licensee which fails to change its name within 7 days of the date of receipt of a written notice under subsection (3) commits an offence and is liable on summary conviction to a fine of \$10,000.00.

PART VIII APPEALS

36. Appeals Tribunal.

(1) There is hereby established an Appeals Tribunal to receive, consider and determine appeals submitted by licensees aggrieved by a decision of the Licensing Committee.

(2) The Appeals Tribunal shall be comprised of three individuals appointed by the Minister as follows:

- (a) two Commissioners from the Commission; and
- (b) an independent individual with the requisite skill set and knowledge of the financial services industry.

(3) The Appeal Tribunal shall regulate its own procedure.

(4) Members appointed to the Appeals Tribunal shall serve for a period of 2 years and may be eligible for reappointment to serve for another 2 years after which they may no longer be eligible to serve having completed two terms.

37. Appeals.

(1) An applicant aggrieved by a decision of the Licensing Committee to refuse its application for a licence, may apply to the Appeal Tribunal within 7 days of being notified of the decision and the Tribunal shall hear and determine such an appeal within 30 days.

(2) A licensee aggrieved by a decision of the Licensing Committee, to revoke its licence may apply to the Appeal Tribunal within 30 days of the date of filing an objection with the Licensing Committee in relation to the revocation.

(3) The Appeal Tribunal shall consider an appeal submitted by a licensee and notify the licensee of its decision on the matter within 30 days of receipt of that licensee's application.

(4) A licensee shall have the right to appeal to the Court from any decision of the Appeal Tribunal.

PART IX MISCELLANEOUS

38. Immunities.

Neither the Regulator, Deputy Regulator, Assistant Regulators any employee of the office of the Regulator nor any member of the Licensing Committee shall be liable for anything done or omitted in the discharge or purported discharge of its functions under this Ordinance unless it is shown that the act or omission was not done in good faith.

39. Ordinance Advisory Committee.

(1) The Minister may establish an Advisory Committee as an advisory body for matters pertaining to this Ordinance and the Committee shall consist of such members as the Minister may from time to time appoint.

(2) In establishing the Advisory Committee under subsection (1), the Minister shall have regard to the desirability of having members who have the expertise and knowledge of the Ordinance and the applicable financial services laws.

(3) It shall be the duty of the Advisory Committee established under this section to:

- (a) advise the Minister on any matter that the Advisory Committee believes that the Minister should be aware of, on an annual basis by September 30th or on such more frequent occasions as determined by the Advisory Committee;
- (b) provide such recommendations as it considers appropriate regarding possible amendments to this Ordinance; and
- (c) advise the Minister on any matter which is referred to it by the Minister.

(4) The Advisory Committee shall regulate its own procedures.

40. Regulations.

The Minister may make Regulations for giving effect to the provisions of this Ordinance and without limiting the generality of the foregoing, may make Regulations respecting:

- (a) forms to be used by licensees;
- (b) fees payable under this Ordinance;
- (c) penalties payable under this Ordinance;
- (d) the winding up of licensees;
- (e) the handling, maintenance and recording of client funds by licensees;
- (f) record keeping requirements of licensees;
- (g) capital and liquidity requirements of licensees;
- (h) anti-bribery and corruption controls;
- (i) data protection and security;
- (j) professional indemnity insurance to be maintained by licensees;
- (k) the implementing of controls in respect of the recruitment, ongoing assessment and training of all employees and directors of licensees;
- (l) any other matter required to be prescribed under this Ordinance.

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41. Existing business.

A person who at the commencement of this Ordinance is engaged in regulated activities shall not later than 9 months after the coming into force of this Ordinance be fully compliant with its provisions.

HONOURABLE FARREL SMITHEN
President

Passed by the Nevis Island Assembly this 23rd day of March, 2021.

MYRA A WILLIAMS
Clerk of the Nevis Island Assembly