

I assent,

CUTHBERT M SEBASTIAN
Governor-General
29th November, 2000

SAINT CHRISTOPHER AND NEVIS

No. 17 of 2000

AN ACT to establish a Financial Services Commission, and to provide for related or incidental matters.

(as the Minister may, by order, appoint.)

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:—

PART I – PRELIMINARY

1. This Act may be cited as the Financial Services Commission Act, 2000, and shall come into force on such date as the Minister may, by Order, appoint.

2. (1) In this Act, unless the context otherwise requires,

“Commission” means the Financial Services Commission established by Section 3 of this Act;

“Commissioner” means a person appointed to be a member of the Commission by Section 4;

“financial services” includes the carrying on of and the provision of services in relation to the businesses of investment, asset management, trusteeship, company administration, the provision and administration of corporate and other business structures and any matters ancillary to such businesses or structures;

“Minister” means the Minister responsible for Finance;

“regulated business activity” falls to be construed in accordance with the Proceeds of Crime Act;

“Regulator” means a person appointed as Regulator pursuant to Section 12 of this Act.

(2) A reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(3) A reference in this Act to a Section, Part or Schedule by number alone is a reference to the Section, Part or Schedule of that number in this Act and a reference in a Section of this Act to a paragraph or sub-paragraph by number or letter alone is a reference to the paragraph or sub-paragraph of that number or letter in the Section in which that reference occurs.

PART II – ESTABLISHMENT OF COMMISSION, ITS FUNCTIONS AND POWERS

3. For the purposes of this Act, there is established a Commission to be known as the Financial Services Commission.

4. (1) The Commission shall consist of

- (a) a Commissioner appointed by the Minister;
- (b) a Commissioner appointed by the Minister with the concurrence of the Premier of Nevis;
- (c) a Commissioner appointed by the Minister with the concurrence of the Governor of the Eastern Caribbean Central Bank;
- (d) the Regulator appointed for the island of Saint Christopher;
- (e) The Regulator appointed for the island of Nevis.

(2) There shall be a Chairperson for the Commission appointed by the Minister from among the members of the Commission.

(3) Subject to subsection (6) all members of the Commission shall be appointed by the Minister on the same terms and conditions.

(4) The Commissioners shall be appointed from persons with experience in financial services or other related discipline;

(5) The functions, powers, rights and obligations of the Commission shall not be affected by any vacancy in its membership.

(6) The Minister shall pay to the Commissioners –

(a) except in the case of a Commissioner who is a public servant, such remuneration as he may determine; and

(b) reasonable out of pocket or other expenses occasioned in the course of carrying out their duties.

5. (1) Every Commissioner shall, before he begins to act in execution of this Act, take an oath before a Judge of the High Court, in the form set out in Part I of the Schedule.

(2) Part II of the Schedule shall have effect with respect to the appointment of the Commissioners and the proceedings of the Commission.

(3) The Minister may, with the concurrence of the Premier of Nevis make Regulations amending the Schedule.

(4) Subject to this Act the Commission may regulate its own proceedings.

6. The Commission shall

(a) act as the ultimate regulatory body for financial services for Saint Christopher and Nevis;

(b) receive such reports as it may require from the Regulator in Saint Christopher and the Regulator in Nevis;

(c) be the body responsible for interacting with the international community with respect to regulatory and supervisory issues in Saint Christopher and Nevis;

(d) give general advice and guidance to the Regulators;

(e) take such steps as the Commission considers necessary or expedient for the development and effective regulation and supervision of finance business in Saint Christopher and Nevis; and

(f) be responsible for the enforcement of regulations.

7. In exercising any of its functions the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to

- (a) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Saint Christopher and Nevis;
- (b) the protection and enhancement of the reputation and integrity of Saint Christopher and Nevis in commercial and financial matters; and
- (c) the best economic interests of Saint Christopher and Nevis.

8. (1) The Commission shall have such powers as are reasonably necessary for the carrying out of its functions or incidental to their proper discharge.

(2) Without prejudice to the generality of paragraph (1) the Commission may, in connection with the carrying out of its functions,

- (a) seek and exchange information relating to the supervision and regulation of financial services in Saint Christopher and Nevis and the regulation and supervision of similar services carried on outside Saint Christopher and Nevis;
- (b) consult and seek the advice of such persons or bodies whether inside or outside Saint Christopher and Nevis as it considers appropriate;
- (c) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit;
- (d) provide advice, assistance or services to any person with a view to securing the efficient and effective provision of financial services in or from within Saint Christopher and Nevis; and
- (e) make recommendations arising out of any information received, issue guidelines to financial institutions and to advise the Minister.

9. (1) Subject to the provisions of this Act, where any functions or powers are conferred upon or vested in the Commission by or under this act or any other enactment, it shall be lawful for the Commission to delegate such functions or powers wholly or partly to

- (a) the Chairperson; or
- (b) one or more Commissioners.

(2) Nothing in subsection (1) shall authorise the Commission to delegate this

power of delegation.

(3) The delegation of any functions under this section may be amended or revoked by the Commission.

10. (1) The Commission may publish information in such form and manner as it considers appropriate with respect to

- (a) the operation of this Act and any other enactment dealing with the provision of financial services, including in particular the rights of those provided with financial services, the duties of those who provide such services and the steps to be taken for enforcing those rights or complying with those duties;
- (b) any matters relating to the functions of the Commission under this Act or any other enactment; or
- (c) any other matters about which it appears to it to be desirable to publish information concerning
 - (i) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on financial services in or from within Saint Christopher and Nevis;
 - (ii) the protection and enhancement of the reputation and integrity of Saint Christopher and Nevis and in commercial and financial matters; or
 - (iii) the best economic interests of Saint Christopher and Nevis.

(2) The Commission may offer for sale copies of information published under this Act.

(3) Nothing in this Act shall be construed as authorising the disclosure of information in any case where, apart from the provisions of this Act, it could not be disclosed.

11. (1) Any regulated business which carry on financial services as defined by this Act shall submit to the Commission

- (a) such reports or information as may be required; and
- (b) an audited annual statement within six months from the close of each financial year.

(2) A regulated business that fails to submit the information specified in subsection (1) of this section commits an offence and shall be subject on summary conviction to a fine not exceeding fifty thousand dollars.

PART III – REGULATORS

12. (1) For the purposes of this Act there shall be Regulators.

(2) The Regulators referred to in subsection (1) shall be appointed from persons with experience in law, banking or finance.

13. The Regulators on behalf of the Commission

- (a) shall have direct responsibilities for the regulation of financial services in the island of Saint Christopher and in the island of Nevis, respectively;
- (b) shall issue guidelines and advisories to regulated businesses;
- (c) shall receive reports which regulated businesses are required to submit, and make recommendations to the Commission on matters arising out of the report.
- (d) shall establish training requirements and facilitate, with the cooperation of regulated businesses, the training of any personnel in respect of the business transaction record-keeping and reporting obligations as required by this Act or any other Acts;
- (e) may instruct the regulated business to take such steps as may be appropriate to facilitate any investigation by the Regulator;
- (f) may consult with any person, institution or organisation within Saint Christopher and Nevis for the purposes of the exercise of its powers or duties under this Act;
- (g) may pursuant to this Act enter into any premises of any regulated business during normal working hours to inspect any business transaction record kept by that regulated business and ask any questions relevant to the record, and to make any notes or to take any copies of the whole or any part of the record;
- (h) destroy any note or copy of the note made or taken pursuant to paragraph (g) of this section within three years of the inspection save where the note or copy of the note has been sent to a law enforcement authority; and

(i) shall perform such other functions that are assigned by the Commission.

PART IV – MISCELLANEOUS PROVISIONS

14. (1) The Commission shall prepare accounts in respect of each financial year and report on its operations during the year.

(2) The Minister shall lay a copy of the accounts and report prepared by the Commission before the National Assembly.

15. The Nevis Island Administration having requested that the provisions of this Act do apply to the island of Nevis, in so far as it may

SCHEDULE

Section 5(1)

PART I

OATH OF OFFICE

Form of oath to be taken by the Commissioners

I,.....(name)
swear and promise before God that I will well and faithfully discharge the duties as a member of the Saint Christopher and Nevis Financial Services Commission under the Financial Services Commission Act, 2000.

PART II

Section 5(2)

APPOINTMENT OF COMMISSIONERS AND PROCEEDINGS OF THE COMMISSION

Terms of appointment of Commissioners

1. A Commissioner shall hold and vacate office in accordance with the terms of his appointment.
2. A Commissioner shall be appointed by instrument in writing for a period not exceeding three years and upon expiry of such period shall be eligible for reappointment.
3. A Commissioner may at anytime resign his office by giving not less than one month's notice in writing to the Chairman except that in the case of the Chairman he shall tender his resignation in writing to the Minister.
4. If the Minister is satisfied that a Commissioner
 - (a) has been absent from three consecutive meetings of the Commission without the permission of the Commission;
 - (b) has become bankrupt;
 - (e) is incapacitated by physical or mental illness; or
 - (d) is unable or unfit to discharge the functions of a Commissioner,he may terminate his appointment, except that in the case of a Commissioner appointed with the concurrence of the Premier, no such termination shall have effect without the Premier's concurrence.
5. Nothing in paragraph 4 shall affect the continuance of any other appointment with the Commission held by a Commissioner whose appointment is terminated under paragraph 4.
6. A Commissioner shall retire from the office on reaching the age of seventy-two years.

Disclosure of interest

7. Where a Commissioner has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter
 - (a) he shall disclose the nature of his interest at a meeting of the Commission in person or by means of a written notice brought to the attention of the

Commission;

- (b) the disclosure shall be recorded in the minutes of the Commission; and
- (c) he shall withdraw from any deliberations of the Commission in relation to that matter and not vote upon it.

For the purposes of this paragraph a general notice given by a Commissioner that he is a member or director of a particular organisation and is to be regarded as interested in any matter concerning that organisation is sufficient disclosure in relation to any such matter.

Procedure at meetings

- 8. At a meeting of the Commission
 - (a) a simple majority of the Commissioners shall form a quorum;
 - (b) the Chairman shall preside at all meetings and in his absence the quorum of Commissioners present shall elect one of their number to perform the duties of Chairman;
 - (c) each Commissioner shall have one vote on each matter for deliberation; and
 - (d) in the event of an equality in the votes the Chairman of the meeting shall have a casting vote.

Transaction of business without meeting

- 9. A resolution is a valid resolution of the Commission, even though it was not passed at a meeting of the Commission, if
 - (a) it is signed or assented to by a majority of Commissioners; and
 - (b) proper notice of the proposed resolution was given to all Commissioners.

Minutes of Meetings

- 10. The Commission shall keep proper minutes of its proceedings including minutes of any business transacted in accordance with paragraph 8.

WALFORD V GUMBS
Speaker

Passed by the National Assembly this 22nd day of November 2000.

JOSÉ LLOYD
Clerk of the National Assembly

